

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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Senate Ways and Means Committee

HB 224 HD 1 SD 1, Relating to the State Health Planning and Development Agency

Testimony of Serafin Colmenares, Jr. SHPDA Administrator

Tuesday, April 6, 2021
9:30 a.m., Videoconference

1 The State Health Planning and Development Agency (SHPDA) provides comments on,
2 and offers amendments to, House Bill 224 HD 1 SD 1.

3 House Bill 244 HD 1 SD 1 amends HRS Section 323D-12 by authorizing the
4 Department of Health (DOH) to perform the duties required of SHPDA; requiring the State
5 Health Services and Facilities Plan (HSFP) to be updated every five years; removing SHPDA
6 as administrator of the SHPDA special fund; transferring all SHPDA special funds exceeding
7 \$2 million annually to the general fund; authorizing a public hearing fee and fines for non-
8 compliance with an approved certificate of need; exempting certain facilities and services from
9 the certificate of need requirements; and appropriating funds from the SHPDA special fund to
10 fund positions in SHPDA.

11 We support updating the HSFP every five years, authorizing additional SHPDA fees and
12 fines, and allowing the use of SHPDA special fund to fund positions, however, for the reasons
13 below, SHPDA must be solely responsible for performing the functions in HRS 323D as well as
14 the sole authority to administer and expend the agency's special fund.

15 SHPDA was established by law (HRS 323D) as an independent, administratively
16 attached agency in the Department of Health and tasked with the responsibility for promoting

1 accessibility for all the people of Hawaii to quality health care services at reasonable cost. Its
2 functions include the administration of the state's statutorily mandated certificate of need
3 program, the preparation and implementation of the State Health Services and Facilities Plan,
4 the coordination of state-wide community health planning activities to determine the health
5 needs of the state, and data collection and the conduct of studies regarding the causes of
6 health care costs.

7 As an independent body, it exercises regulatory authority by requiring/approving
8 Certificates of Need for the establishment and expansion of hospitals and other health facilities
9 and the purchase of major medical equipment. Its regulatory authority extends to all hospitals
10 (except federal), including state and other hospitals or health facilities falling under the purview
11 of, or are under contract with, the DOH.

12 The DOH is a service provider and has under it, the State Hospital and other hospitals
13 and facilities that are under the purview of, or are under contract with, the DOH, including
14 hospitals within the Hawaii Health Systems Corporation (HHSC). Allowing the DOH to perform
15 the functions in HRS 323D would result in a conflict of interest – as a provider of health care
16 services, DOH cannot, at the same time, be the decision maker; it should not regulate itself.

17 Allowing the DOH to perform the regulatory functions under HRS 323D would
18 jeopardize every CON application where HHSC, for example, had a financial interest in the
19 outcome of the decision. Specifically, this conflict of interest would arise if any HHSC hospital
20 opposed a CON application submitted by a competitor or if HHSC was the CON applicant and
21 the application was opposed by a competitor. Not only would this lead to a multitude of legal
22 actions, but it would also be of concern from the public health perspective. The legal actions
23 would prevent HHSC safety net hospitals from proceeding with crucially important projects or

1 prevent the purchase of needed medical equipment while the conflict of interest lawsuit makes
2 its way through the court system.

3 Allowing the DOH to perform the regulatory functions under HRS 323D would also
4 create the same conflict of interest situation in any application involving the Hawaii State
5 Hospital or in any application where the DOH was contracting with a third-party health care
6 provider.

7 SHPDA therefore recommends that this bill be amended to remove all references to the
8 DOH performing SHPDA's functions under HRS 323D.

9 As far as preparing and revising the State Health Services and Facilities Plan every five
10 years, SHPDA is in support since it will allow the plan to be updated on a regular basis and be
11 more reflective of and responsive to the changing health needs of the State.

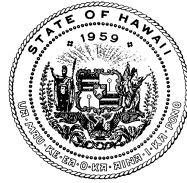
12 With regards to the administration of the state health planning and development special
13 fund, we believe that, to be more effective, SHPDA should be the administrator of the fund
14 since it is the agency that will spend the money. The statute itself (HRS 323D-12.6 (b)) states
15 that "moneys in the special fund *shall be expended by the state health planning and*
16 *development agency* to assist in offsetting program expenses of the agency." We, therefore,
17 recommend that the bill be amended to put back the original wording in 323D-12.6 (a): "There
18 is established within the state treasury, *to be administered by the state health planning and*
19 *development agency*, the state health planning and development special fund into which shall
20 be deposited all moneys collected under this chapter."

21 As mentioned above, SHPDA's special fund was established "to assist in offsetting
22 program expenses of the agency." SHPDA is currently allowed a special fund ceiling of
23 \$114,000 annually for this purpose. It is to be noted that general funds for the position of
24 SHPDA administrator were taken away by the legislature following the departure on June 30,

1 2019 of the then SHPDA administrator. A new administrator was hired by July 1, 2020 but the
2 funds for the position were not restored. Given the reduction in its general funds, the use of
3 the special fund to support personnel costs is needed by SHPDA.

4 The bill also proposes additional fees and fines that will increase the agency's special
5 fund. SHPDA supports the increase in special fund and its use for personnel expenditures
6 since it will enable SHPDA to support existing positions and even hire new staff, such as that
7 of an investigator, to support the agency's work in enforcing compliance.

8 Thank you for this opportunity to testify.



STATE OF HAWAII
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**Testimony in SUPPORT of HB224 HD1
RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY.**

SENATOR JARRETT KEOHOKALOOLE, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: March 22, 2021

Room Number: N/A

1 **Department Testimony:** The Department of Health (DOH) recoms supports Certificate of Need
2 (CON) and comprehensive statewide health planning as an essential functions of state
3 government to promote accessibility, quality, and sustainability.

4 As of April 1, 2021, the Governor's Budget Memo does not request the restoration of funds and
5 certain positions for the State Health Planning and Development Agency. The Governor's
6 Executive Biennium Budget, as well as HB200 HD1 reflect this position. As a result, the
7 department recommends this meausre move forward as a corollary to the state budget to assure
8 functions of SHPDA persist regardless of its status as an attached agency.

9 Chapter 323D authorizes at least three important functions: Certificate of Need, comprehensive
10 statewide planning, and the collection of health care adiminstrative data, all of which must be
11 preserved.

12 Certificate of Need

13 Similar to licensing and other regulatory functions discharged by DOH, CON is subject to
14 administrative rules, public hearings, contested case rights, and oversight by the Legislature.
15 The department recommends that if moved laterally, civil servants continue to operate CON as
16 opposed to exempt or appointed employees to maintain objectivity, fairness, and fidelity to laws
17 and rules. CON must remain data-driven and objective and DOH supports any amendments to
18 assure and strengthen that model.

1 Comprehensive State Planning

2 The Health Services and Facilities Plan is a guiding document for both CON and health care
3 services planning in Hawaii that addresses the health care needs of the State, including inpatient
4 care, health care facilities, and special needs. The plan depicts the most economical and
5 efficient system of care commensurate with adequate quality of care and includes standards for
6 utilization of health care facilities and major medical equipment.

7 Regardless of SHPDA's status as an attached agency this role must also be preserved, but should
8 be expanded to include more than health care assets like bed counts and clinics, and include or be
9 informed by social determinants of health, health equity, and environmental justice. The last
10 State Function Health Plan was published in 1989
11 (<https://files.hawaii.gov/dbedt/op/docs/Health.pdf>) and may serve as a model for 21st century
12 comprehensive health planning. The role of the State in this regard is to coordinate and prioritize
13 with the private sector and to cooperate where there is mutual agreement, and not to establish a
14 government-run health care system. The department is open to amendments to assure
15 appropriate limits of government are applied to Hawaii's market-based health care system.

16 The COVID-19 pandemic is an example of how public health and health care must coordinate to
17 address Hawaii's health priorities. For example, CON is required for new dialysis centers, for
18 which there is a shortage due to the higher-than-national rates of diabetes, chronic kidney
19 disease, and end-stage renal disease in Hawaii. A convergence of public health and health care
20 planning may be a key strategy to reducing the disease burden such that existing dialysis
21 resources should be sufficient. Although the state has no choice but to expand dialysis centers, it
22 begs the question of how effective our community's response to diseases of lifestyle have been.

23 All Payer Claims Database

24 The All Payer Claims Database (APCD) is a central repository for state-funded health care
25 administrative data and a partnership between DOH, SHPDA, the Department of Human
26 Services, the University of Hawaii, and several other agencies authorized in 2018. The goal of

1 the APCD is to inform consumers and policymakers of the healthcare costs, population health,
2 and healthcare system of Hawaii.

3 Program development is based on three phases:

- 4 • Phase I: limited dataset is accessed only by the assigned and approved SHPDA,
5 MedQUEST Health Analytics staff, and/or the agencies' designee, PHIDC;
- 6 • Phase II: limited dataset subset of the data becomes available to select State Agency
7 researchers who have undergone a review and certification process, which is still to be
8 determined; and
- 9 • Phase III: subset of the data becomes available to external researchers who have
10 undergone a review process, which is still to be determined.

11 The project is in Phase I as of February 2020 and it is critical that it remain free from disruption.
12 Regardless of SHPDA's status as an attached agency, DOH strongly recommends that authority
13 for the APCD remain in force either in chapter 321, chapter 346, or related statute.

14 The department supports the Governor's budget as drafted as a matter of Executive Branch
15 policy, but requests the Legislature consider this measure to assure critical functions are
16 maintained.

17 Thank you for the opportunity to testify.

18 **Offered Amendments:** N/A.

19



HB224 SD1 HD1 Exempt Behavioral Health for Certificate of Need (CON)

COMMITTEE ON WAYS AND MEANS:

- Sen. Donovan Dela Cruz, Chair; Sen. Gilbert Keith-Agaran, Vice Chair
- Tuesday, Apr 6 2021: 9:30: Videoconference

Hawaii Substance Abuse Coalition Comments HB224 SD1 HD1:

Offer Recommendations:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of over 30 substance use disorder and co-occurring mental health disorder treatment and prevention agencies.

Most states are reforming CON with new rules and guidelines and those that did exempt created new simplified rules. They legislated an approval processes that provided a limited function of oversight.

After exempting CON without any new rules, several states experienced out of state providers coming into their state to provide substandard services for profit reasons while consumers suffered poor quality programming.

HSAC recommends that SHPDA have a simplified form for a permit for new residential facilities that requires national accreditation such as CARF or JACHO to ensure evidenced-based practices are followed.

This competency unethical

Validating that national accreditation is in place is a simple administrative process that ensures accountability and certain required level of quality of care.

ensures and prevents practices.

Like most states, let's have a simplified process that still gives some assurances that consumers are protected.

We appreciate the opportunity to provide testimony and are available for questions.



INSTITUTE FOR JUSTICE

**Testimony from Jaimie Cavanaugh
Attorney, Institute for Justice
Senate Committee on Ways and Means**

April 2, 2021

My name is Jaimie Cavanaugh. On behalf of the Institute for Justice (IJ), I'm providing the following testimony in support of HB 224 SD1, which proposes exempting psychiatric services, special treatment facilities, and chronic renal dialysis services from the certificate of need (CON) program.

Since 1991, IJ has been fighting to rid the nation of CON laws because of their detrimental effects. CON laws raise costs, reduce healthcare options throughout the state, and deliver little more than government backed monopolies to those lucky enough to get a certificate. IJ has been successful at removing CON laws. Federal courts have struck down CON laws and state houses have removed these barriers to enter markets. To further IJ's goal of getting rid of CON laws, this summer I authored a report comparing medical CON laws around the country.¹

My testimony will make two points. First, I will briefly discuss some of the relevant findings from my 2020 report showing that CON laws should be repealed. Second, I will provide evidence that federal agencies agree that CON laws should be repealed.

First, approximately 40% of the nation's population live in states without CON programs—states such as California, New Hampshire, Texas, or Idaho.² These are a mix of populous and rural states, red and blue. The healthcare markets in these states have not deteriorated without CON laws. Sadly, however, 38 states and the District of Columbia maintain CON programs, which reduce access to needed healthcare facilities and services.³

The COVID-19 pandemic has laid bare the existing problems with CON laws. Proponents of CON laws often argue they increase access to care and reduce healthcare costs. If that were true, the nation would have needed more CON laws to fight COVID-19, not fewer. Yet, in response to the pandemic, 25 of the 39 CON jurisdictions suspended or loosed their CON requirements.⁴ In other words, CON programs were preventing healthcare providers from responding to the needs of the public. As a result, states were forced to quickly suspend their CON programs in 2020 to increase access to healthcare.

Outside pandemics, CON laws harm patients by limiting their healthcare options. CON laws force providers to jump through hoops just to get the chance to offer a new service or open a new facility. This entails filling out lengthy applications, paying large application fees, undergoing the hearing process that amounts to a full-blown trial, and surviving a competitor's veto.⁵ And after all of that, most applications are denied, leaving patients with fewer options. As a result, incumbent providers have no incentive to innovate their services or lower their prices. As one might imagine, CON laws lead to increased costs and decreased availability of services. Worse,

Hawaii is one of the states that regulates the most categories of CONs.⁶ Therefore, repealing some of Hawaii’s CONs, as this bill proposes, is a step in the right direction toward larger reform.

Second, the government should not be in the business of picking winners and losers in the marketplace. The state should not say one dialysis provider can operate but four others equally qualified providers cannot. This is not just my conclusion. Federal agencies have concluded the same in their review of healthcare CONs, finding as follows:

- In 1988, an FTC report found “no evidence that CON programs have led to the resource savings they were designed to promote, but rather indicates that reliance on CON review may raise [] costs.”⁷
- In 2004, a major report on healthcare by the FTC & DOJ concluded that “[t]he Agencies believe that CON programs are generally not successful in containing health care costs and that they can pose anticompetitive risks. As noted above, CON programs risk entrenching oligopolists and eroding consumer welfare.”⁸
- In 2015, the FTC & DOJ issued a joint statement: “[I]t is now apparent that CON laws can prevent the efficient functioning of health care markets in several ways First, CON laws create barriers to entry and expansion, limit consumer choice, and stifle innovation. Second, incumbent firms seeking to thwart or delay entry by new competitors may use CON laws to achieve that end. . . . Finally, the evidence to date does not suggest that CON laws have generally succeeded in controlling costs or improving quality.”⁹

In conclusion, HB 224 SD1 is an important step in the right direction. IJ respectfully requests a yes vote on this bill because it rightly ends three types of CONs, but I urge the members of this committee to consider removing additional types of CONs or repealing Hawaii’s CON program in its entirety in the future. Thank you for reviewing this testimony.

¹ Jaimie Cavanaugh, *et al.*, *Conning the Competition* (2020), available at <https://ij.org/report/conning-the-competition/>

² Cavanaugh, *supra* note 1 at 8.

³ *See, e.g.*, Cavanaugh, *supra* note 1 “Origin of CON Laws” at 5.

⁴ Cavanaugh, *supra* note 1 at 6.

⁵ *See* Cavanaugh, *supra* note 1 at 49.

⁶ Cavanaugh, *supra* note 1 at 9.

⁷ FTC, *The Effect of State Certificate-of-Need Laws On Hospital Costs: An Economic Policy Analysis* iv (1988).

⁸ FTC & DOJ, *Improving Health Care: A Dose of Competition* ch. 8 p. 6 (2004).

⁹ Joint Statement of the FTC and the Antitrust Division of the DOJ to the Va. Certificate of Public Need Work Group (2015).



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Members, Senate Committee on Ways and Means

From: Jason C. Chang, Executive Vice President & Chief Operating Officer, The Queen's Health Systems

Jacce S. Mikulanec, Manager, Government Relations, The Queen's Health Systems

Date: April 6, 2021

Re: Support with amendments of HB224, HD1, SD1: Relating to the State Health Planning and Development Agency

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to provide comments in support of HB224, HD1, SD1 relating to the State Health Planning and Development Agency (SHPDA).

Queen's supports amendments made in the previous committee which would improve the CON process by requiring SHPDA to update the health services and facilities plan every five years with the assistance of the statewide health coordinating council. Through consistent revisions and assessment of the plan, SHPDA will ensure that the criteria evolve with the needs of the community and continues to provide equitable access to care.

Furthermore, we support and concur with the proposed amendments put forth by Hawai'i Pacific Health, and other stakeholders, that place the CON and associated duties and functions solely under the direction of SHPDA and clarifies the Statewide Health Coordinating Council's role to "assist" rather than be responsible for preparing and revising the State Health Services and Facilities Plan every five years.

Thank you for allowing us to submit testimony with proposed amendments on HB224, HD1, SD1.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

April 6, 2021 at 9:30 am

Senate Committee on Ways and Means

To: Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair

From: Wesley Lo
Chief Executive Officer
Ohana Pacific Health/Hale Makua Health Services

**Re: Testimony in Support and Proposed Amendments
HB 224, HD2, SD1 Relating to the State Health Planning and Development Agency**

My name is Wesley Lo, and I am the Chief Executive Officer of Ohana Pacific Health and Hale Makua Health Services. We are locally owned and managed post-acute care healthcare provider. Our combined operations represent the largest post-acute care services in the State of Hawaii, and includes over 950 Nursing home beds across all four major islands, as well as a 2 Adult Residential Care Homes, 3 Home Health Agencies, 3 Adult Day Health Agencies and a Care Management Company.

Thank you for the opportunity to provide testimony in strong **support** of this bill. In addition, we also propose amendments to the measure to clarify the role of SHPDA and DOH to preserve the semi-autonomous nature of SHPDA, which will allow independent decision making and ensure the separation of interests with the Executive Branch.

SHPDA administers the Certificate of Need Program (CON), implements the Health Services and Facilities Plan, and promotes the sharing of facilities or services by health care providers to achieve economies of scale and restrict unusual costly services. SHPDA is also tasked with preparing the state health services and facilities plan, an important function in the changing climate of health care today.

SHPDA's role in the planning for the future healthcare delivery system is critical as Healthcare costs across the nation are spiraling out of control, the landscape is dramatically shifting, and the healthcare and economic complexities are increasing exponentially. There are many special interests entering into the market, which are more driven by economic motives as opposed to a "quality healthcare services at a reasonable cost". The highly specialized and technical duties SHPDA performs cannot be replicated by another state agency or department. Maintaining the semi-autonomous nature of SHPDA is vital to addressing the health care needs of our communities and diverse populations.

The current draft of HB224, HD1, SD1 allows DOH to act as an alternated agency to SHPDA, which creates a conflict of interest with the Executive Branch.

It is critical that SHPDA maintain its independence as a semi-autonomous agency that is able to exercise independent decision making to avoid any potential conflict of interest and ensure that the State continues to "promote accessibility for all the people of the State to quality health care services at reasonable cost".

We respectfully request that the attached amendments are adopted

Thank you for the opportunity to testify

A BILL FOR AN ACT PROPOSED AMENDMENT

RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. Section 323D-12, Hawaii Revised Statutes, is amended to read as follows:

"§323D-12 **Health planning and development functions; state agency** [~~-~~] [~~;~~ ~~department of health~~]. (a) The state agency [~~or~~ ~~department of health~~] shall:

(1) Have as a principal function the responsibility for promoting accessibility for all the people of the State to quality health care services at reasonable cost. The state agency [~~or department of health~~] shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. The state agency [~~or department of health~~] may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency [~~or department of health~~] shall promote the sharing of facilities or services by health care providers whenever possible to achieve economies and shall restrict unusual or unusually costly services to individual facilities or providers where appropriate;

(2) Serve as staff to and provide technical assistance and advice to the statewide council and the subarea councils in the preparation, review, and revision of the state health services and facilities plan;

(3) Conduct the health planning activities of the State in coordination with the subarea councils, implement the state health services and facilities plan, and determine the statewide health needs of the State after consulting with the statewide council; ~~and~~

(4) Administer the state certificate of need program pursuant to part V[-]; and

(5) Prepare and revise as necessary the state health services and facilities plan every five years.

(b) The state agency ~~[or the department of health]~~ may:

(1) Prepare such reports and recommendations on Hawaii's health care costs and public or private efforts to reduce or control costs and health care quality as it deems necessary. The report may include, but not be limited to, a review of health insurance plans, the availability of various kinds of health insurance and malpractice insurance to consumers, and strategies for increasing competition in the health insurance field[-];

~~[(2) Prepare and revise as necessary the state health services and facilities plan.]~~

~~[(3)]~~ (2) Prepare, review, and revise the annual implementation plan[-];

~~[(4)]~~ (3) Assist the statewide council in the performance of its functions[-];

~~[(5)]~~ (4) Determine the need for new health services proposed to be offered within the State[-];

~~[(6)]~~ (5) Assess existing health care services and facilities to determine whether there are redundant, excessive, or inappropriate services or facilities and make public findings of any that are found to be so. The state agency shall weigh the costs of the health care services or facilities against the benefits the services or facilities provide and there shall be a negative presumption against marginal services[-];

~~[(7)]~~ (6) Provide technical assistance to persons, public or private, in obtaining and filling out the necessary forms for the development of projects and programs[-];

~~[(8)]~~ (7) Prepare reports, studies, and recommendations on emerging health issues, such as medical ethics, health care rationing, involuntary care, care for the indigent, and standards for research and development of biotechnology and genetic engineering[-]; and

~~[(9)]~~ (8) Conduct such other activities as are necessary to meet the purposes of this chapter."

SECTION 2. Section 323D-12.6, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§323D-12.6[+]~~ **State health planning and development special fund; created; deposits; expenditures; fees.** (a) There is established within the state treasury, to be administered by the state health planning and development agency, _____, the state health planning and development special fund into which shall be deposited all moneys collected under this chapter ~~[323D]~~.

(b) Moneys in the special fund shall be expended by the state health planning and development agency to assist in offsetting program expenses of the agency.

(c) All unencumbered and unexpended moneys in excess of \$2,000,000 remaining on balance in the special fund at the close of June 30 of each year shall lapse to the credit of the general fund.

~~[(e)]~~ (d) The agency shall adopt rules in accordance with chapter 91 to establish reasonable fees for the purposes of this chapter."

SECTION 3. Section 323D-14, Hawaii Revised Statutes, is amended to read as follows:

"§ 323D-14. Functions; statewide health coordinating council
The statewide council shall:

- (1) ~~[Prepare and revise as necessary]~~ Assist the state agency in preparing and revising as necessary the state health services and facilities plan every five years, including reviewing and approving the state health services and facilities plan;
- (2) Advise the state agency on actions under section 323D-12;
- (3) Appoint the review panel pursuant to section 323D-42; and
- (4) Review and comment upon the following actions by the state agency before such actions are made final:
 - (A) The making of findings as to applications for certificate of need; and
 - (B) The making of findings as to the appropriateness of those institutional and noninstitutional health services offered in the State."

SECTION ~~[3]~~4. Section 323D-50, Hawaii Revised Statutes, is amended to read as follows:

"§323D-50 Certificates of need, penalties. (a) Any person who violates any provision of this part, or rules thereunder, with respect to the requirement for certificate of need shall be guilty of a misdemeanor for each seven-day period or fraction thereof that the violation continues. Each subsequent seven-day period shall constitute a separate offense.

(b) Any license to operate a health facility may be revoked or suspended by the department of health at any time in a proceeding before the department for any person proceeding with an action covered under section 323D-43 without a

certificate of need. If any such license is revoked or suspended by the department, the holder of the license shall be notified in writing by the department of the revocation or suspension. Any license to operate a health facility that has been revoked under this section shall not be restored except by action of the department.

(c) Any person who violates any provision of this chapter or rules adopted under this chapter, with respect to the agency's requests for reporting, may be subject to an administrative penalty not to exceed \$2,000 for each seven-day period or fraction thereof that the violation continues. The administrator of the state agency may impose the administrative penalty specified in this section by order; provided that no penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing pursuant to chapter 91. The administrative penalty contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person charged makes a written request for a hearing. For any judicial proceeding to recover the administrative penalty imposed, the administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.

(d) Any person who violates or fails to act in compliance with an approved certificate of need granted by the state agency

may be subject to an administrative penalty not to exceed
\$ _____ for each seven-day period or fraction thereof that
the violation continues."

SECTION [4]5. Section 323D-54, Hawaii Revised Statutes, is amended to read as follows:

"§323D-54 Exemptions from certificate of need requirements. Nothing in this part or rules with respect to the requirement for certificates of need applies to:

(1) Offices of physicians, dentists, or other practitioners of the healing arts in private practice as distinguished from organized ambulatory health care facilities, except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision for any private office or clinic involving a total expenditure in excess of the expenditure minimum;

(2) Laboratories, as defined in section 321-11(12), except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision for any laboratory involving a total expenditure in excess of the expenditure minimum;

(3) Dispensaries and first aid stations located within business or industrial establishments and maintained solely for the use of employees; provided such facilities do not regularly provide inpatient or resident beds for patients or employees on a daily twenty-four-hour basis;

(4) Dispensaries or infirmaries in correctional or educational facilities;

(5) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly provide health care facilities or health care services;

(6) Any home or institution conducted only for those who, pursuant to the teachings, faith, or belief of any group, depend for healing upon prayer or other spiritual means;

(7) Dental clinics;

(8) Nonpatient areas of care facilities such as parking garages and administrative offices;

(9) Bed changes that involve ten per cent or ten beds of existing licensed bed types, whichever is less, of a facility's total existing licensed beds within a two-year period;

(10) Projects that are wholly dedicated to meeting the State's obligations under court orders, including consent decrees, that have already determined that need for the projects exists;

(11) Replacement of existing equipment with its modern-day equivalent;

(12) Primary care clinics under the expenditure thresholds referenced in section 323D-2;

(13) Equipment and services related to that equipment, that are primarily invented and used for research purposes as opposed to usual and customary diagnostic and therapeutic care;

(14) Capital expenditures that are required:

- (A) To eliminate or prevent imminent safety hazards as defined by federal, state, or county fire, building, or life safety codes or regulations;
- (B) To comply with state licensure standards; or
- (C) To comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such Act;

(15) Extended care adult residential care homes and assisted living facilities; [ø]

(16) Psychiatric services as defined in section 11-186-3, Hawaii administrative rules;

(17) Special treatment facilities as defined in section 11-186-3, Hawaii administrative rules;

(18) Chronic renal dialysis services as defined in section 11-186-3, Hawaii administrative rules; or

~~[(16)] (19) Other facilities or services that the agency through the statewide council chooses to exempt, by rules pursuant to section 323D-62."~~

PART II

SECTION ~~[5]~~6. There is appropriated out of the state health planning and development special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2021-2022 and the same sum or so much thereof as may be necessary for fiscal year 2022-2023 for the hiring of _____ full-time equivalent (.0 FTE) permanent positions within the state health planning and development agency, including _____ full-time equivalent (.0 FTE) investigators.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

PART III

SECTION ~~[6]~~7. The _____ position within the state health planning and development agency previously funded by general funds shall be funded from the health planning and development special fund.

SECTION ~~[7]~~8. There is appropriated out of the state health planning and development special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2021-2022 and the same sum or so much thereof as may be necessary for fiscal year 2022-2023 to fund

the position within the state health planning and development agency.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION [~~8~~]9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION [~~9~~]10. This Act shall take effect on July 1, 2060.



April 6, 2021

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

Re: HB 224 HD1, SD1 – Relating to the State Health Planning and Development Agency

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 224, HD1, SD1, which requires the state health planning and development agency or department of health to update the state health services and facilities plan every five years. Authorizes the department of health to perform the duties required of the state health planning and development agency. Transfers moneys in excess of \$2,000,000 in the state health planning and development special fund to the general fund at the end of each fiscal year. Exempts psychiatric services, special treatment facilities, and chronic renal dialysis services from the certificate of need requirements. Authorizes administrative penalties for persons who do not comply with an approved certificate of need. Appropriates funds from the health planning development fund. Effective 7/1/2060.

HMSA supports the efforts of the State Health Planning and Development Agency (SHPDA) in ensuring the needs of the community are evaluated and met. As a supporter of a free choice model of healthcare, HMSA encourages a broad and diverse network of providers. We believe that the language in this bill regarding the certificate of need (CON) process works to allow SHPDA to administer their special fund and ensure balance based on criteria developed in the interest of the patient and the community.

Thank you for allowing us to testify on HB 224 HD1 SD1. Your consideration of our comments is appreciated.

Sincerely,

Matthew W. Sasaki
Director, Government Relations

Tuesday, April 6, 2021 at 9:30 AM
Via Video Conference

Senate Committee on Ways and Means

To: Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

**Re: Testimony in Support of HB 224, HD2, SD1 and Proposing Amendments
Relating to The State Health Planning and Development Agency**

My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

HPH writes in **support** of HB 224, HD2, SD1 which, among other items, addresses the role of the State Health Planning and Development Agency (SHPDA) or Department of Health (DOH) in updating the state health services and facilities plan, and authorizes the DOH to perform the duties required of SHPDA. We also propose amendments to clarify the role of SHPDA in order to avoid any conflict of interest. The amendments also create consistency between SHPDA and the Statewide Health Coordinating Council regarding the revision of the State Health Services and Facilities Plan (Plan).

Chapter 323D, Hawaii Revised Statutes (HRS), the Health Planning and Resources Development and Health Care Cost Control Law, was enacted to promote accessibility for all the people of the State to quality health care services at reasonable costs. Among other things, this law established the State Health Planning and Development Agency or SHPDA. The purpose of SHPDA is to “promote accessibility for all the people of the State to quality health care services at reasonable cost.

Although SHPDA is attached to the DOH, HRS Section 323D-11 plainly states the relationship is for “administrative purposes only”. SHPDA was specifically tasked with the duty of “administering the state health planning and cost containment activities as required by law”, which may not always be consistent with the interests of the DOH. Thus, at the time it was created, the legislature intended that SHPDA remain independent of the DOH, maintaining a separation of interests to avoid any potential conflict with the executive branch. The current draft of HB 244, HD1, SD1 allows the DOH to act as an alternate agency to SHPDA which creates a conflict of interest with the executive branch

as well as confusion as to the roles of both SHPDA and the DOH. As a semi-autonomous agency, SHPDA is able to exercise independent decision making authority in fulfilling its statutory mandate of promoting accessibility to quality health care services for all residents of Hawai'i.

A new Section 3 is included in the proposed amendments to clarify the role of the Statewide Health Coordinating Council (State Council) in relation to the preparation of the Plan. As the current draft of HB 224 mandates that SHPDA prepare the Plan every five years, the State Council's function with respect to the Plan should be to review and approve the Plan. The amendment creates consistency in the bill as well as between SHPDA and the State Council.

The attached amendments clearly delineate the role of SHPDA independent of the DOH, as well as clarifying the State Council's relationship to SHPDA. The amendments were developed in collaboration with our healthcare partners and SHPDA. There is agreement and consensus on the proposed amendments as these changes will enable SHPDA to work more effectively in carrying out its statutorily mandated mission.

Thank you for the opportunity to testify.

A BILL FOR AN ACT PROPOSED AMENDMENT

RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. Section 323D-12, Hawaii Revised Statutes, is amended to read as follows:

"§323D-12 **Health planning and development functions; state agency** ~~[-] [; department of health]~~. (a) The state agency ~~[or department of health]~~ shall:

(1) Have as a principal function the responsibility for promoting accessibility for all the people of the State to quality health care services at reasonable cost. The state agency ~~[or department of health]~~ shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. The state agency ~~[or department of health]~~ may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency ~~[or department of health]~~ shall promote the sharing of facilities or services by health care providers whenever possible to achieve economies and shall restrict unusual or unusually costly services to individual facilities or providers where appropriate;

(2) Serve as staff to and provide technical assistance and advice to the statewide council and the subarea councils in the preparation, review, and revision of the state health services and facilities plan;

(3) Conduct the health planning activities of the State in coordination with the subarea councils, implement the state health services and facilities plan, and

determine the statewide health needs of the State after consulting with the statewide council; ~~and~~

(4) Administer the state certificate of need program pursuant to part V[-]; and

(5) Prepare and revise as necessary the state health services and facilities plan every five years.

(b) The state agency ~~[or the department of health]~~ may:

(1) Prepare such reports and recommendations on Hawaii's health care costs and public or private efforts to reduce or control costs and health care quality as it deems necessary. The report may include, but not be limited to, a review of health insurance plans, the availability of various kinds of health insurance and malpractice insurance to consumers, and strategies for increasing competition in the health insurance field[-];

~~[(2) Prepare and revise as necessary the state health services and facilities plan.]~~

~~[(3)]~~ (2) Prepare, review, and revise the annual implementation plan[-];

~~[(4)]~~ (3) Assist the statewide council in the performance of its functions[-];

~~[(5)]~~ (4) Determine the need for new health services proposed to be offered within the State[-];

~~[(6)]~~ (5) Assess existing health care services and facilities to determine whether there are redundant, excessive, or inappropriate services or facilities and make public findings of any that are found to be so. The state agency shall weigh the costs of the health care services or facilities against the benefits the services or facilities provide and there shall be a negative presumption against marginal services[-];

~~[(7)]~~ (6) Provide technical assistance to persons, public or private, in obtaining and filling out the necessary forms for the development of projects and programs[-];

~~[(8)]~~ (7) Prepare reports, studies, and recommendations on emerging health issues, such as medical ethics, health care rationing, involuntary care, care for the indigent, and standards for research and development of biotechnology and genetic engineering[-]; and

~~[(9)]~~ (8) Conduct such other activities as are necessary to meet the purposes of this chapter."

SECTION 2. Section 323D-12.6, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]~~**323D-12.6**~~[§]~~ **State health planning and development special fund; created; deposits; expenditures; fees.** (a) There is established within the state treasury, to be administered by the state health planning and development agency, _____, the state health planning and development special fund into which shall be deposited all moneys collected under this chapter [~~323D~~].

(b) Moneys in the special fund shall be expended by the state health planning and development agency to assist in offsetting program expenses of the agency.

(c) All unencumbered and unexpended moneys in excess of \$2,000,000 remaining on balance in the special fund at the close of June 30 of each year shall lapse to the credit of the general fund.

~~[-e)]~~ (d) The agency shall adopt rules in accordance with chapter 91 to establish reasonable fees for the purposes of this chapter."

SECTION 3. Section 323D-14, Hawaii Revised Statutes, is amended to read as follows:

"§ 323D-14. Functions; statewide health coordinating council
The statewide council shall:

- (1) [Prepare and revise as necessary] Assist the state agency in preparing and revising as necessary the state health services

and facilities plan every five years, including reviewing and approving the state health services and facilities plan;

- (2) Advise the state agency on actions under section 323D-12;
- (3) Appoint the review panel pursuant to section 323D-42; and
- (4) Review and comment upon the following actions by the state agency before such actions are made final:
 - (A) The making of findings as to applications for certificate of need; and
 - (B) The making of findings as to the appropriateness of those institutional and noninstitutional health services offered in the State."

SECTION [3]4. Section 323D-50, Hawaii Revised Statutes, is amended to read as follows:

"§323D-50 Certificates of need, penalties. (a) Any person who violates any provision of this part, or rules thereunder, with respect to the requirement for certificate of need shall be guilty of a misdemeanor for each seven-day period or fraction thereof that the violation continues. Each subsequent seven-day period shall constitute a separate offense.

(b) Any license to operate a health facility may be revoked or suspended by the department of health at any time in a proceeding before the department for any person proceeding with an action covered under section 323D-43 without a certificate of need. If any such license is revoked or suspended by the department, the holder of the license shall be

notified in writing by the department of the revocation or suspension. Any license to operate a health facility that has been revoked under this section shall not be restored except by action of the department.

(c) Any person who violates any provision of this chapter or rules adopted under this chapter, with respect to the agency's requests for reporting, may be subject to an administrative penalty not to exceed \$2,000 for each seven-day period or fraction thereof that the violation continues. The administrator of the state agency may impose the administrative penalty specified in this section by order; provided that no penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing pursuant to chapter 91. The administrative penalty contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person charged makes a written request for a hearing. For any judicial proceeding to recover the administrative penalty imposed, the administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.

(d) Any person who violates or fails to act in compliance with an approved certificate of need granted by the state agency

may be subject to an administrative penalty not to exceed
\$ _____ for each seven-day period or fraction thereof that
the violation continues."

SECTION [4]5. Section 323D-54, Hawaii Revised Statutes, is amended to read as follows:

"§323D-54 Exemptions from certificate of need requirements. Nothing in this part or rules with respect to the requirement for certificates of need applies to:

(1) Offices of physicians, dentists, or other practitioners of the healing arts in private practice as distinguished from organized ambulatory health care facilities, except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision for any private office or clinic involving a total expenditure in excess of the expenditure minimum;

(2) Laboratories, as defined in section 321-11(12), except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision for any laboratory involving a total expenditure in excess of the expenditure minimum;

(3) Dispensaries and first aid stations located within business or industrial establishments and maintained solely for the use of employees; provided such facilities do not regularly provide inpatient or resident beds for patients or employees on a daily twenty-four-hour basis;

(4) Dispensaries or infirmaries in correctional or educational facilities;

(5) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly provide health care facilities or health care services;

(6) Any home or institution conducted only for those who, pursuant to the teachings, faith, or belief of any group, depend for healing upon prayer or other spiritual means;

(7) Dental clinics;

(8) Nonpatient areas of care facilities such as parking garages and administrative offices;

(9) Bed changes that involve ten per cent or ten beds of existing licensed bed types, whichever is less, of a facility's total existing licensed beds within a two-year period;

(10) Projects that are wholly dedicated to meeting the State's obligations under court orders, including consent decrees, that have already determined that need for the projects exists;

(11) Replacement of existing equipment with its modern-day equivalent;

(12) Primary care clinics under the expenditure thresholds referenced in section 323D-2;

(13) Equipment and services related to that equipment, that are primarily invented and used for research purposes as opposed to usual and customary diagnostic and therapeutic care;

(14) Capital expenditures that are required:

- (A) To eliminate or prevent imminent safety hazards as defined by federal, state, or county fire, building, or life safety codes or regulations;
- (B) To comply with state licensure standards; or
- (C) To comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such Act;

(15) Extended care adult residential care homes and assisted living facilities; [~~or~~]

(16) Psychiatric services as defined in section 11-186-3, Hawaii administrative rules;

(17) Special treatment facilities as defined in section 11-186-3, Hawaii administrative rules;

(18) Chronic renal dialysis services as defined in section 11-186-3, Hawaii administrative rules; or

~~[(16)]~~ (19) Other facilities or services that the agency through the statewide council chooses to exempt, by rules pursuant to section 323D-62."

PART II

SECTION ~~[5]~~6. There is appropriated out of the state health planning and development special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2021-2022 and the same sum or so much thereof as may be necessary for fiscal year 2022-2023 for the hiring of _____ full-time equivalent (.0 FTE) permanent positions within the state health planning and development agency, including _____ full-time equivalent (.0 FTE) investigators.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

PART III

SECTION ~~[6]~~7. The _____ position within the state health planning and development agency previously funded by general funds shall be funded from the health planning and development special fund.

SECTION ~~[7]~~8. There is appropriated out of the state health planning and development special fund the sum of

§ or so much thereof as may be necessary for fiscal year 2021-2022 and the same sum or so much thereof as may be necessary for fiscal year 2022-2023 to fund the position within the state health planning and development agency.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION [~~8~~]9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION [~~9~~]10. This Act shall take effect on July 1, 2060.

HB-224-SD-1

Submitted on: 4/4/2021 11:14:42 PM

Testimony for WAM on 4/6/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Emelyn S Kim	Individual	Oppose	No

Comments:

My name is Emelyn Kim and I am the Chair of the Health Planning Council, West Oahu Subarea (WOSAC). As a volunteer, I believe citizen involvement in government is an integral part of a healthy democracy. One of my duties and responsibilities is to assist in the review of the Certificate of Need (CON) applications from service providers and make recommendations as to whether these proposals meet the certificate of need criteria of Department of Health (DOH). The State Health Planning & Development Agency (SHPDA) administers the CON program and recruits volunteers from the community to serve on both subarea and state councils of the Health Planning Council.

I oppose this bill because it jeopardizes the independent regulatory nature of SHPDA within the DOH. This bill would authorize the DOH to perform duties required of SHPDA and remove it as administrator of the SHPDA's special funds. Without this oversight by SHPDA and other subarea councils, there would be a conflict of interest. DOH is a service provider because it regulates the State Hospital and other medical facilities. DOH cannot be both a service provider and the decision maker in the CON process. DOH should not be allowed to regulate itself.

Thank you for considering my testimony.

Emelyn Kim



HB 224 HD1 SD1 Relating to the State Health Planning and Development Agency

Testimony submitted to
The Senate Committee on Ways and Means
Hearing scheduled for
April 6, 2021 at 9:30 am

Good afternoon Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Committee on Ways and Means. My name is Jocelyn Saccamago and I am a Regional Vice President of Operations with Liberty Dialysis Hawaii. Thank you for this opportunity to present written testimony.

We respectfully submit testimony in **OPPOSITION** to **HB 224 HD1 SD1** relating to the State Health Planning and Development Agency. We are specifically opposed to the provision in the bill that excludes outpatient dialysis facilities from Certificate of Need (CON). This proposed exemption from CON appears arbitrary and could allow for unscrupulous providers to come into the state more easily and compromise patient care.

Very similar to the hospice industry – which were included in a previous version of this bill - dialysis companies vary greatly in size, capacity, quality of care, and focus on patients. Taking away regulatory standards found in Hawaii's CON program removes necessary guardrails and requirements on providers that otherwise protect the market and more importantly, patients. **We respectfully ask that you please remove the proposed exemption for "chronic renal dialysis" from this bill** (see page 10, line 20).

Hawaii has one of the highest rates of end stage renal disease (ESRD) per capita in the United States and people on dialysis. We also have higher rates of diabetes and hypertension which are often precursors to ESRD. It is critical that given the ongoing and future projected need of dialysis services in Hawaii, the state continue to take an active role in ensuring dialysis providers are held to a high standard and that the service areas are fair and accessible to patients.

With the current CON requirements, Hawaii is fortunate to have several chronic renal dialysis companies serving the community – all of which provide good patient quality of care. We are proud to be among those that were approved by Hawaii CON regulations. Please do not jeopardize this enviable quality of care by taking away CON regulatory standards for chronic renal dialysis in Hawaii.

Liberty Dialysis Hawaii comes from a long tradition of caring for dialysis patients in Hawaii. We were formerly owned by St. Francis Healthcare System. For generations, the Sisters of St. Francis were at the forefront of dialysis care in Hawaii and the nation. The Sisters were the very first to provide life-saving dialysis services in Hawaii.

In the early 2000's, the Sisters sold their dialysis centers and "St Francis Medical Center selected Liberty Dialysis to assume responsibility for operation of the St. Francis dialysis centers because of Liberty's reputation for partnering with non-profit hospitals and leading nephrologists to provide care in underserved areas. In 2011, Liberty Dialysis was acquired by Fresenius Medical Care North America. Fresenius is a world leader in dialysis products and services.

Dialysis is a life-saving procedure. Meeting CON healthcare regulatory standards is of extreme importance to the overall healthcare system and to patients. The dialysis community should not be arbitrarily targeted and included in this legislation. **For all these reasons, we oppose HB 224 SD 1 and request that chronic renal dialysis be removed from the bill.**

Thank you for your consideration and this opportunity to provide written testimony. Should you have questions, please contact Maria Garcia, Sr. Director of State Government Affairs, Fresenius Medical Care North America Government Affairs, maria.c.garcia@fmc-na.com ; (707)246-2773.

April 5, 2021

TO: Senator Donovan Dela, Chair
Senator Gilbert Keith-Agaran, Vice-Chair
Members of the Senate Ways and Means Committee

RE: HB224 HD1, SD1 Relating to the State Health Planning and Development Agency –
SUPPORT

Satellite Healthcare is a not-for-profit dialysis provider founded in 1974 by a Stanford nephrologist. Headquartered in Silicon Valley, Satellite Healthcare serves more than 8,000 patients at its more than 80 dialysis centers in California, New Jersey, Tennessee and Texas. We look forward to the opportunity to deliver comprehensive services to dialysis patients in the State of Hawaii.

Satellite Healthcare has partnered with Kuakini Health System, The Queen's Medical Center and ISI, a subsidiary of HMSA in creating a joint venture to solve the longstanding challenge of caring for high acuity patients who receive dialysis treatment in the hospital because of life-threatening or serious medical needs. The organizations will work collaboratively to bring care for these patients to an outpatient setting in Honolulu that will include in-center dialysis, a next generation high acuity program, and home dialysis training.

Satellite Healthcare supports HB224, HD1. SD1. HB224, HD1 provides an exemption to chronic renal dialysis services as defined in section 11-186-3 (HAR) from the certificate of need process. This exemption will allow organizations to move quickly in establishing dialysis services, and increase access to many waiting patients in our community.

The number of outpatient dialysis patients is continuing to grow in the State of Hawaii and the increase in the new end-stage renal disease (ESRD) patients has left existing dialysis centers at or near capacity. The number of newly diagnosed ESRD patients in the State jumped by thirty percent (30%) from 2012 to 2015. Recent publicly available information in 2017 estimates 3,482 ESRD patients total statewide, following a five percent (5%) per year average increase from 2013. While there has been growth in the number of outpatient dialysis facilities over that time, the supply of dialysis stations is not keeping up with demand, especially as it relates to projections over the next five years.

As such, passage of this bill will help meet the growing need for more facilities and dialysis stations by allowing them to be established and starting operations more quickly.

Thank you for the opportunity to testify on this matter.

**Hawaii State Senate
Committee on Ways and Means**

HB224 HD1 SD1

**Relating to the State Health Planning and Development Agency
TESTIMONY with Proposed Amendment for Consideration**

TESTIFIER: Pliny Arenas – U.S. Renal Care
DATE: April 6, 2021
TIME: 9:30 AM
PLACE: Room 211 and Videoconference

Good morning Chair Dela Cruz, Vice-Chair Agaran and members of the Senate Committee on Ways and Means:

My name is Pliny Arenas, and I am the Vice-President of Operations for U.S. Renal Care. Thank you for allowing me to provide testimony TO AMEND HB224 HB1 SD1 related to the State Health Planning and Development Agency (SHPDA) addressing the exemption from Certificate of Need (CON) Requirements of Chronic Renal Dialysis Services as defined in section 11-186-3, Hawaii administrative rules.

Our proposed Amendment for HB224 H.D.1 S.D.1 is as follows to allow for an exemption:

(18) Chronic renal dialysis services located in Oahu Regional Government Hospitals as defined in section 11-186-3, Hawaii administrative rules; or

We support the continuation of the Certificate of Need Process and SHPDA for the development of Chronic Renal Disease Services in the State of Hawaii with one exception... the exemption of CON requirements for Chronic Renal Disease Facilities located in Oahu Regional Government Hospitals.

US Renal Care has always contended that the sustainability of the CON process is the key to patient access and quality of care. The reason I mention this, is because of the consequential impact of this issue. However, the COVID-19 pandemic has wreaked havoc on our health systems and the ability to provide Chronic Renal Dialysis services in Oahu Regional Government Hospitals may be needed to stabilize this situation.

In closing, I reiterate our position, that we support continued development through the CON process to address the growing healthcare needs of our communities. However, in light of the COVID-19 pandemic,

we strongly feel that our proposed amendment is a measured solution that will provide a narrow exemption for the expansion of dialysis services only through Oahu Regional Government Hospitals.

The net result of this amendment will be to ensure a sustainable and robust healthcare network in our state that will see us through this window of COVID-19 instability. Thank you again for allowing me to share our perspective on this issue.

HB224 HD1 SD1

Relating to the State Health Planning and Development Agency

Testimony submitted to the
Senate Committee on Ways and Means

Hearing date: April 6, 2021
Via Videoconference and Conference Room 211

Good morning Chairperson Dela Cruz, Vice Chairperson Keith-Agaran and Members of the Senate Committee on Ways and Means. My name is Marilyn A. Matsunaga and I served as the SHPDA Administrator from 1995 to 2003. The Certificate of Need (CON) program resides within this state agency. My Dad spent the last three years of his life on dialysis at St. Francis which is now Liberty Dialysis and I am humbled to be working with them with on this legislation.

I very respectfully submit testimony **OPPOSING** this bill

Please remove the proposed exemption for chronic renal dialysis (page 10, line 20 of the bill): Dialysis is a crucial, life-saving service and must be regulated. Currently, there are several outpatient dialysis providers in Hawaii including national corporations and all have met Hawaii's healthcare regulatory requirements found in Certificate of Need (CON) in serving patients statewide. Dialysis providers must be required to meet these Hawaii healthcare regulatory standards the same as all important healthcare providers in our State. Please do not exempt them from Hawaii's healthcare regulatory requirements found in CON.

Per statute, the entity responsible for proposing exemptions, if necessary, is the Statewide Health Coordinating Council (SHCC). The SHCC is composed of healthcare experts and community leaders and they study medical best practices to formulate these CON regulations that comply with industry standards. The SHCC did not propose these new exemptions and I very respectfully ask you to please defer to the SHCC so they may perform their mandated work.

Conflict of Interest: The functions of 323D cannot be assigned to DOH "or" SHPDA. All of SHPDA's functions must remain in SHPDA as an Administratively Attached Agency. Its Certificate of Need (CON) regulatory function is in clear conflict of interest with the DOH – the DOH is at times an applicant for a Certificate of Need approval. This is why when Hawaii's CON program was established during the Ariyoshi Administration it was established as an "attached agency" and not as a program under the direction of the DOH.

Thank you very much for this opportunity to provide testimony to the Senate Committee on Ways and Means.



April 6, 2021 at 9:30 am
Via Videoconference

Senate Committee on Ways and Means

To: Chair Donovan M. Dela Cruz
Vice Chair Gilbert S.C. Keith-Agaran

From: Paige Heckathorn Choy
Director of Government Affairs
Healthcare Association of Hawaii

Re: **Submitting Comments**
HB 224 HD 1 SD 1, Relating to the State Health Planning and Development Agency

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities, and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high-quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

Thank you for the opportunity to provide **comments** on this measure. We support most of this measure to strengthen the responsibilities of the State Health Planning and Development Agency (SHPDA), allow more revenue-generating capabilities, and use the special fund for helping to support the agency's functions. In particular, we support the amendment on page 2, lines 16-17 creating a new §323D-12(5) requiring SHPDA to prepare and revise the state health services and facilities plan every five years. This amendment will help providers, policymakers, and the public to best understand the needs of patients in the state.

However, we do oppose the amendments offered in §323D-12(1) stating that *either* SHPDA or the Department of Health (DOH) may carry out the functions described in the rest of the statute. Many of our members have expressed that SHPDA has served as an efficient, effective administrator of the CON program due to their relative independence as an attached agency and that the CON program is an essential consumer tool to protect patients from "bad actors." There is general consensus among providers that they would like to see the agency maintained and support efforts to strengthen the responsibilities of the agency.

We also support amendments offered by other testifiers to clarify that the Statewide Health Coordination council shall *assist* SHPDA as necessary to write the state health services and facilities plan, and to allow SHPDA to administer its special fund. Thank you for the opportunity to provide comments with general support for this measure, with opposition to §323D-12(1).

Phone: (808) 521-8961 | Fax: (808) 599-2879 | HAH.org | 707 Richards Street, PH2 - Honolulu, HI 96813

Affiliated with the American Hospital Association, American Health Care Association/National Center for Assisted Living, National Association for Home Care and Hospice, American Association for Homecare, Council of State Home Care Associations, and National Hospice and Palliative Care Organization



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
The Senate
Committee on Ways & Means

LATE

Testimony by
Hawaii Government Employees Association

April 6, 2021

H.B. 224, H.D. 1, S.D. 1 – RELATING TO THE STATE HEALTH
PLANNING AND DEVELOPMENT AGENCY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO **respectfully proposes amendments to H.B. 224, H.D. 1, S.D. 1** which requires the State Health Planning & Development Agency (SHPDA) or the Department of Health (DOH) to update the state health services and facilities plan every five years, authorizes the Department to perform the duties required of SHPDA, transfers excess funding into the general fund, and exempts certain services from the certificate of need requirements.

Due to the complexities of delivering accessible healthcare at a reasonable cost to everyone in Hawai'i, SHPDA performs an important regulatory function in Hawai'i's healthcare industry. SHPDA currently maintains its ability to operate autonomously and unbiased by DOH's programmatic goals, as DOH is a provider of healthcare facilities and services that are regulated by SHPDA. In order to avoid any potential conflicts of interest, it is important that SHPDA continues to exist as an independent, attached agency to the Department and to maintain clearly distinguished roles between the two, therefore we cannot support the current draft of H.B. 224, H.D. 1, S.D. 1 which allows DOH to act as an alternate agency, since comingling of these roles will cause confusion.

We can support the proposed amendments provided by the health care providers to clarify the role of the Statewide Health Coordinating Council and to clearly define the role of SHPDA's independence from DOH. Thank you for the opportunity to provide testimony on H.B. 224, H.D. 1, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

HB-224-SD-1

Submitted on: 4/5/2021 8:05:57 AM

Testimony for WAM on 4/6/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerald Ohta	Individual	Oppose	No

Comments:

We support updating the Health Services and Facilities Plan every 5 years, authorizing additional SHPDA fees and fines, and allowing the use of SHPDA special fund to fund positions, but we do not support the transfer of SHPDA's functions to the DOH and the removal of SHPDA as administrator of the SHPDA special fund.

HB-224-SD-1

Submitted on: 4/5/2021 11:40:15 AM

Testimony for WAM on 4/6/2021 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Colbert	Individual	Oppose	No

Comments:

Please amend this bill and do not exempt chronic renal dialysis services from the Certificate of Need process. Dialysis must be regulated by CON and held to the same regulatory standards as all other important healthcare services. Chronic dialysis services are a crucial, life saving healthcare service depended on by far too many people in Hawaii. I served as a volunteer on the Statewide Health Coordinating Council and some years ago also managed the operations dialysis centers in Hawaii. I know that there are vital reasons why dialysis is regulated by SHPDA's Certificate of Need program as it ensures that dialysis provide access to care in all areas of Hawaii. I urge you to amend this bill by NOT exempting chronic renal dialysis services from Certificate of Need. Thank you.

HB-224-SD-1

Submitted on: 4/5/2021 12:55:53 PM

Testimony for WAM on 4/6/2021 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Orianna Skomoroch	Individual	Oppose	No

Comments:

I do not support the transfer of SHPDA's functions to the DOH and the removal of SHPDA as administrator of the SHPDA special fund. However I do support updating the Health Services and Facilities Plan every 5 years, authorizing additional SHPDA fees and fines, and allowing the use of SHPDA's Special Fund to fund positions.

Respectfully Submitted,

Orianna Skomoroch

LATE

HB-224-SD-1

Submitted on: 4/5/2021 1:23:21 PM

Testimony for WAM on 4/6/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Holt	Individual	Oppose	No

Comments:

This testimony is in opposition to provisions in HB224 HD1 SD1 I that would dismantle portions of the existing law that establishes the Statewide Health Planning and Development Agency (SHPDA) as an independent regulatory body. I support updating the Health Services and Facilities Plan every 5 years, authorizing additional SHPDA fees and fines, and allowing the use of SHPDA special fund to fund positions. But I do not support the transfer of SHPDA's functions to the DOH and the removal of SHPDA as administrator of the SHPDA special fund.

I serve as a volunteer on the Statewide Health Coordinating Council, as well as the Maui County Subarea Advisory Council. Independent, unbiased oversight is critical to maintaining the efficiency and effectiveness of health care systems in Hawai'i. According to a 2020 analysis by DBEDT, the health care and social services industry makes up \$6.6 billion or 6.8% of the state's GDP. It is the fourth largest industry in the state. http://files.hawaii.gov/dbedt/economic/reports/GDP_Report_Final.pdf

The Department of Health is a large agency with many responsibilities. Given the importance of health care both to individual citizens and to the overall economy, SHPDA's regulatory role is critical and it should be segregated from the Department's other administrative and client service duties.

Thank you for considering this testimony.

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LATE

Bronster Fujichaku Robbins

ATTORNEYS AT LAW

Testimony regarding HB224 HD1 SD1
Relating to the State Health Planning and Development Agency

Submitted to
the Senate Committee on Ways and Means
Conference Room 211 and Videoconference
Hearing Date: April 6, 2021 at 9:30 a.m.

Submitted by Margery Bronster

Good morning Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Senate Committee on Ways and Means.

My name is Margery S. Bronster and I am the founding partner of the law firm of Bronster Fujichaku Robbins. I also served the people of Hawaii as their State Attorney General from 1995-1999. I respectfully submit testimony **in OPPOSITION** to this bill.

There are legal and technical issues in the latest version of this bill that make it legally flawed.

First, the bill is vague about which state entity is to be held ultimately accountable for performing these mandated planning and regulatory functions of the state. Is the State Health Planning and Development Agency (SHPDA) the accountable entity or is it the State Department of Health (DOH)? The absence of a clear line of accountability may open the state to needless and expensive litigation involving one of our largest industries.

Further, the bill may create a conflict of interest by having the State Department of Health (DOH) to perform Certificate of Need (CON) regulatory functions or to develop the Health Services and Facilities Plan which guides the CON process. This is because the DOH is at times an applicant itself for a CON. For example, in 2016 the DOH applied for a CON for the establishment of a long term psychiatric bed patient facility in Kaneohe. At other times, DOH stands in opposition to Certificate of Need applications submitted by other organizations.

Another section of the bill is inconsistent with HRS Chapter 323D. The list of proposed new exempted services is inconsistent with functions mandated in Hawaii Revised Statutes (HRS) section 323D-14. Per HRS section 323D-14, it is the function of the Statewide Health Coordinating Council (SHCC) to prepare and revise as necessary the State Health Services and Facilities Plan (HSFP). The HSFP sets important criteria for the Certificate of Need process. At the center of this planning function is identifying which facilities and services shall or shall not require a Certificate of Need application.

The SHCC did not develop this list of proposed new exemptions as contemplated by HRS chapter 323D. A review of the SHPDA meeting minutes available online indicates the last meeting for the Statewide Health Coordinating Council was held in July 2020. Those minutes are still labeled “Draft Minutes” and with the pandemic it is assumed SHCC has had difficulty meeting since last July. At that July meeting, the SHCC was seeking candidates for appointment to the Plan Development Committee and “had a preliminary discussion on reviewing/updating the State Health Services and Facilities Plan.” The SHCC and/or its Plan Development Committee have not met since then and did not review nor did they propose any new exemptions to the Certificate of Need requirements. Therefore, the proposed new exemptions in this bill were developed in violation of statutory functions required of the SHCC.

There is a proposed section related to penalties for failure to comply with Certificate of Need requirements. However, it appears redundant to existing sections of HRS chapter 323D that provide the Agency with the power to impose penalties. This makes it unclear as to which penalty applies to which kind of violation. Because it lacks clarity, it will be challenging for the Agency to effectively impose penalties on violators. The lack of clarity also may lead to litigation brought on by those who the Agency seeks to penalize.

Finally, the approved organizational chart for SHPDA found on the DOH website does not include any positions labeled as “investigator” or other similar position. This would make proposing funding for an “investigator” unnecessary.

Thank you for this opportunity to provide testimony.

HB-224-SD-1

Submitted on: 4/6/2021 7:21:03 AM

Testimony for WAM on 4/6/2021 9:30:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Tamia McKeague	Individual	Oppose	No

Comments:

To the Representatives, Rep Chair, Rep. Vice Chair and Comittee Members:

My name is Tamia McKeague, I am writing to oppose the amendments to SHPDA in House Bill 224 JD1 SD1. I, support updating the Health Services and Facilities Plan every 5 years, authorizing additional SHPDA fees and fines, and allowing the use of SHPDA special fund to fund positions, however I do not support the transfer of SHPDA's functions to the DOH and the removal of SHPDA as administrator of the SHPDA special fund.

I oppose the bill because SHPDA will be losing its independence as a regulatory agency. Placing it under the DOH Director would lead to conflicts of interest because DOH is a health provider and it should not regulate itself.

Sincerely,

Tamia McKeague