

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

LATE

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

SERAFIN COLMENARES, JR., Ph.D., M.P.H.
ADMINISTRATOR

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House Committee on Health, Human Services & Homelessness

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

Testimony of Serafin Colmenares, Jr. SHPDA Administrator

Tuesday, February 2, 2021
9:30 a.m., Videoconference

1 **Agency's Position:** The State Health Planning and Development Agency is in support of
2 House Bill 224.

3 **Fiscal Implications:** The bill allows the use of special funds for personnel expenditures and
4 authorizes fees and fines.

5 **Purpose and Justification:** House Bill 244 amends HRS Section 323D-12 by exempting
6 certain facilities and services from the certificate of need requirements, authorizes a public
7 hearing fee and fines for non-compliance with an approved certificate of need, allows the use
8 of SHPDA's special funds for personnel expenditures and makes the corresponding
9 appropriations.

10 Under HRS 323D-12.6, SHPDA's special fund was established "to assist in offsetting
11 program expenses of the agency." SHPDA is currently allowed a special fund ceiling of
12 \$114,000 annually for this purpose. Funding for the position of SHPDA administrator was
13 taken away by the legislature following the departure on June 30, 2019 of the then SHPDA
14 administrator. A new administrator was hired by July 1, 2020 but the funds for the position
15 were not restored. Since no general funds are available to fund the position, the use of the
16 special funds is being proposed. In addition, additional fees and fines are being proposed to

1 increase the special funds, thereby allowing SHPDA to support existing or hire new positions,
2 such as that of an investigator, which is needed to enforce CON compliance.

3 This bill strengthens and enables SHPDA to support itself and perform its statutory
4 functions. SHPDA supports it.

5 Thank you for this opportunity to testify.



**Testimony to the House Committee on Health, Human Services, & Homelessness
Tuesday, February 2, 2021; 9:30 a.m.
State Capitol, Conference Room 329
Via Videoconference**

RE: HOUSE BILL NO. 0224, RELATING TO THE STATE PLANNING AND DEVELOPMENT AGENCY.

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **COMMENTS** on House Bill No. 0224, RELATING TO THE STATE PLANNING AND DEVELOPMENT AGENCY.

The bill, as received by your Committee, would:

- (1) Establish a cap of \$2,000,000 on the State Health Planning and Development Special Fund (Special Fund) and direct that all funds in excess of the cap on June 30 of each succeeding year lapse to the General Fund;
- (2) Establish an unspecified fee for a public hearing whenever a request is made of the State Health Planning and Development Agency (SHPDA) to reconsider a previous decision;
- (3) Establish an administrative penalty not to exceed an unspecified amount for failure to comply with an approved certificate of need;
- (4) Exempt hospice homes and other hospice facilities, psychiatric facilities, substance abuse facilities, and dialysis centers located in a hospital with regard to out-patient services from the certificate of need process;
- (5) Appropriate unspecified amounts of Special Funds for fiscal years 2021-2022, and 2022-2023, respectively, for the hiring of full-time equivalent permanent positions within SHPDA; and

- (6) State that an unspecified position previously funded by general funds be funded from the Special Fund and appropriate an unspecified amount of funds from the Special Fund for this purpose.

By way of background, the HPCA represents Hawaii Federally-Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

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. [See, Section 323D-1, HRS.] Among other things, this law establishes the State Health Planning and Development Agency [See, Section 323D-11, HRS.], Subarea Health Planning Councils [See, Chapter 323D, Part III, HRS.], and a certificate of need process that is intended to ensure that any new facility or expansion of an existing facility be evaluated on its probable impact on health care costs. [See, Section 323D-44, HRS.]

This law makes explicit that:

" . . . No person, public or private, nonprofit or for profit, shall:

- (1) Construct, expand, alter, convert, develop, initiate, or modify a health care facility or health care services in the State that requires a total capital expenditure in excess of the expenditure minimum;*
- (2) Substantially modify or increase the scope or type of health service rendered; or*
- (3) Increase, decrease, or change the class of usage of the bed complement of a health care facility or relocate beds from one physical facility or site to another;*

unless a certificate of need therefor has first been issued by the state agency."
[See, Section 323D-43, HRS.]

The HPCA asserts that Chapter 323D, HRS, is sound public policy because it requires the State to evaluate the need for health care within an area based on the financial impact to residents and communities. We question, however, whether exempting hospice homes and other hospice facilities, psychiatric facilities, substance abuse facilities, and dialysis centers located in a hospital will make it more difficult for investors and developers to consider entering into underserved areas.

Would an investor be willing to invest in a project if a competing facility could be established within the same geographical area at any time? Enacting these exemptions might actually hamper or prevent the expansion of services within underserved communities.

The HPCA is especially concerned on the impact this bill may have on certain rural communities that are already being serviced by health care providers. If totally unregulated expansion is allowed without consideration of the health care providers who are and have been servicing rural communities for generations, those providers could be forced out of the marketplace. And how will that affect the patients in those areas who have been accustomed to seeing their family provider for decades if the provider will not be around anymore? What would Grandma say if she can't see Dr. Blank anymore (who she has seen regularly for the past forty years?). Will Grandma trust a new provider?

While we are not opposed to this bill at this time, we are very concerned that the enactment of this measure will directly impact our member FQHCs, our employees, and our patients. For these reasons, we caution this Committee and urge their careful consideration of the policy implications that this bill will have.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.

TESTIMONY FROM TORI ABE CARAPELHO, PRESIDENT & CEO, NAVIAN HAWAII

To provide comments on HB 224
Relating to the State Health Planning and Development Agency

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND HOMELESSNESS
February 2, 2021, 9:30 a.m.
Via Video Conference

Chair Yamane and members of the committee,

Thank you for the opportunity to provide comments on HB 224, which would exempt hospice, psychiatric, and substance abuse facilities and certain dialysis center services from the certificate of needs requirements. As a longtime local hospice provider with more than 40 years of experience, we would like to see hospice facilities omitted from this bill.

Hospice homes and other hospice facilities should continue to be required to secure a certificate of need (CON) for establishing or expanding facilities and services in Hawaii. CON programs are needed to control health care costs and increase access to care.

Exempting hospice facilities from requiring a certificate of need will likely lead to a proliferation of “low-volume” facilities, which some view as providing lower quality of care. Our community does not need this. The certificate of need process is an effective barrier to keep unethical organizations from establishing services in our state. While the majority of hospice providers across the country are mission-driven and care-oriented, there are some that are motivated by other reasons that don’t serve our communities well.

Here in Hawaii, hospice agencies are Medicare-certified, but they are not licensed under state laws or regulations. The CON process ensures that any company looking to enter the market has a good track record, sufficient finances and a mission-driven approach to keep patients and their families safe.

Lastly, CON programs help distribute care to disadvantaged population. Removal of CON will favor for-profit organizations, which may be less willing to provide indigent care.

It is for all these reasons that I kindly ask you remove hospice facilities and services from HB 224. Thank you for your consideration.



HB224 Exempt Behavioral Health for Certificate of Need (CON)

COMMITTEE ON HEALTH, HUMAN SERVICES & HOMELESSNESS:

- Rep Ryan Yamane, Chair; Rep. Adrian Tam, Vice Chair
- Tuesday, Feb. 2nd 2021: 9:30 am: Videoconference

Hawaii Substance Abuse Coalition Opposes HB224: Recommends a Task Force

GOOD MORNING 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.

HSAC supports that Hawaii's Certificate of Need needs revision and reform, not exemptions without rules. Similar to most states, the rules are being revised to preserve the best intentions of oversight and remove those regulations which are no longer effective. This requires a discussion or a Task Force to determine how do we maintain accountability while removing bureaucratic restraints. How do we stimulate more services to meet an increasing need, while ensuring quality of standards are met following scientific evidenced-based practices?

Most states are reforming CON (35 states) new rules and guidelines. Those that did exempt or abolish (15 states) created new rules (12 states). Currently, 35 states and Washington, D.C. operate a CON program with wide variation state-to-state.¹ Several states have enacted legislation in 2019 to modify CON oversight for certain health facilities and services, but they maintained or legislated several approval processes that function similarly to CON. We respectfully recommend at discussion in a Task Force to reform or modify, but still maintain some approval processes to ensure quality of care levels.

The Pros and Cons of CONs. Based on the presumption that medical services don't operate similar to usual economic principles, CONs were designed to limit the proliferation of medical services because such services are designed to promote more people using more services that may be beyond the actual need, which raises healthcare costs.² More services becomes a marketing competition for more people utilizing services and not a competition to lower prices because there is a large number of people not accessing services. More money spent on marketing results in less money spent on quality and outcomes. Moreover, CONs encourage development of rural, underserved areas to receive treatment.

¹ National Council of State Legislatures (NCSL) [https://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx#:~:text=Contacts,-Health%20Program&text=Certificate%20of%20Need%20\(CON\)%20laws,services%20in%20a%20given%20area.&text=CON%20programs%20aim%20to%20control,expenditures%20meet%20a%20community%20need](https://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx#:~:text=Contacts,-Health%20Program&text=Certificate%20of%20Need%20(CON)%20laws,services%20in%20a%20given%20area.&text=CON%20programs%20aim%20to%20control,expenditures%20meet%20a%20community%20need)

² John Locke Foundation: North Carolina. <https://www.johnlocke.org/policy-position/certificate-of-need-laws/>

Pros: Ensure accountability and a certain level of quality care. Discourage lower quality, non-performers who lower prices while lowering quality. CON regulations are best when designed to prevent overcharging and to discourage facilities to provide unnecessary care.³ Currently, the CON follow the state's health plan, establishes need, determines quality, reviews pricing for services, considers alternative healthcare options, and considers the availability of resources⁴ (especially since most facilities serve low income needing government support.). This needs to be revised as to criteria used and level of bureaucracy.

Cons: A highly CON bureaucratic process can be a deterrent. Too few services are available to meet the community need. The few facilities in Hawaii are some of the best in the nation though there are long wait lists. Providers report that they do need relief with more services, yet most are reluctant to expand due to low rates for the low income or for high end facilities, not enough population base to support their high rates. CONs should not be a deterrent, and conversely, its exemption should not be a license to market substandard care.

Let's have a Task Force that includes government, stakeholders, providers, and community to make the best reform for Hawaii.

- House and Senate legislative representative, DOH Director or designee, DHS Director or designee, Attorney General or designee, HSAC's designee, Residential Treatment provider, University of Hawaii psychiatric department, Hospice representative, dialysis center services representative, Hawaii Psychiatric Medical Association representative, Insurance provider(s).

What is the biggest obstacle to having sufficient numbers of behavioral health treatment?

Most acute care behavioral health facilities are for the low income, subject to Medicare, Medicaid and uninsured rates. Mostly, they are government supported. The rates are so low that they are below costs for quality care and the resultant workforce is underpaid causing too few workers choosing to work in this field. No quality-oriented agency is contemplating the lowering of prices for the low income. The few high end commercially oriented facilities have high prices that are going up as a result of their marketing efforts, not competing for lower prices. While there is a couple of high end facilities that are good here in Hawaii, most high end services choose to close their doors and move on to more populated areas with higher profits rather than stay here by reducing their prices.

Like most states, let's have an intelligent, informed discussion with various experts before making changes to significant institutional structures. All of us want a better CON, let's meet to design one through a Task Force.

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

³ Wikipedia: Certificate of Need: https://en.wikipedia.org/wiki/Certificate_of_need

⁴ State of Hawaii: Department of Health: State Health Planning and Development Agency: <https://health.hawaii.gov/shpda/certificate-of-need/>

HB-224

Submitted on: 1/31/2021 5:39:02 PM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Hyrum Kirton	Bristol Hospice	Oppose	No

Comments:

Hello my name is Hyrum Kirton and I am the CEO of Bristol Hospice. Thank you for the opportunity to provide comments on this bill. Among other things, this bill would add new exemptions from the requirement to secure a certificate of need (CON) to include hospice homes and other hospice facilities; psychiatric facilities; substance abuse facilities; and dialysis centers located in a hospital providing outpatient services.

I request that hospice services be struck from this bill and continue to be included in the services that required a CON. The bill does not clearly identify what exactly the language means if routine hospice would be included in the exclusion or just inpatient. In any case either type of care should require a CON process for the state of Hawaii.

We are concerned that hospice homes and other hospice facilities would be excluded from the CON process under this bill as it is written currently. It appears it would remove the ability for the island leadership or the department of health to dictate what providers enter the state. It is clear from the utilization data that the need is being met in Hawaii for hospice services as 49% of medicare beneficiaries are receiving hospice before death in Hawaii this is average for the nation. The CON process gives the department the ability to carefully decide what providers will be allowed to operate in the state and avoids issues that can arise when anyone can start up a hospice in the area without any oversight. In Florida when they removed the CON for Home Health a rash of new providers came in and along with that fraud became a big problem. Florida has not removed the CON for Hospice. The federal government had to step in and enforce a moratorium of new home health licenses for at time due to the fraud and abuse.

The CON process allows for existing providers to provide a high level of service and do so in a very stable consistent manner. It also allows the state to better control how services will be provided and does not restrict the states ability to add new providers when needed to ensure Hawaii residents get the services they need. Hawaii is a unique island with unique needs that are best suited and addressed through the CON process. There is no other state like Hawaii in the USA.

One of the reasons that the CON is helpful for hospice is that hospice agencies, while Medicare-certified by the state, are not licensed under states laws or regulations. The CON is then a helpful state-based tool for hospice agencies and other interested parties

to help ensure that any company that seeks to come in has a good track record, sufficient finances, and a mission-driven approach that keeps patients and their families safe.

The residents of Hawaii have been well served by the current CON process and to abruptly remove this requirement would I believe not serve the unique culture and community of the islands.

Thank You.

Hyrum Kirton



February 2, 2021 at 9:30 am

House Committee on Health, Human Services, and Homelessness

To: Chair Ryan I. Yamane
Vice Chair Adrian K. Tam

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

Re: **Submitting Comments**
HB 224, 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 bill. Among other things, this bill would add new exemptions from the requirement to secure a certificate of need (CON) to include hospice homes and other hospice facilities; psychiatric facilities; substance abuse facilities; and dialysis centers located in a hospital providing outpatient services. We request that hospice services be struck from this bill and continue to be included in the services that required a CON.

We are concerned that hospice homes and other hospice facilities would be excluded from the CON process under this bill because it may allow for unscrupulous providers to come into the state more easily and compromise patient care. Our hospice members provide high-quality care in their respective communities—however, there are many operators of hospice agencies on the mainland who often seek to open up in communities that have questionable quality of care or may not have the finances necessary to continue operations and thus leave patients and their families part-way through treatment.

Many of our members—especially post-acute care providers—believe that the CON process is an effective barrier to unscrupulous actors from entering into the state and providing care. We understand that the majority of hospice providers in the country are mission-driven and provide adequate care; however, we believe that there is a need to have some barriers in place to keep those who do not seek to best serve our populations from opening in the state. One of the reasons that the CON is helpful for hospice is that hospice agencies, while Medicare-certified by the state, are not licensed under states laws or regulations. The CON is then a helpful state-based tool for hospice agencies and other interested parties to help ensure that any company that seeks to come in has a good track record, sufficient finances, and a mission-driven approach that keeps patients and their families safe. Thank you for the opportunity to comment on this bill.

To whom it may concern regarding House Bill 224 regarding the abolishment of the CON for Hospice Facilities.

I respectfully request that the House reconsider and omit Hospice from Bill HB224.

As a member of a Hospice care team, we are very concerned that ending Certificate of Need for Hospice in Hawaii would have grave negative impacts on patients and families who elect hospice in the state of Hawaii.

As seen below in Medicare data through June 2020. The State of Hawaii Currently is at or above the national average for Death Service Ratio by Hospice at 48% as well as Hospice Penetration at 71% which means residents who would like to receive the services of hospice care receive it at the same rates or better than other states nationally. Hawaii has a Death rate per thousand lower than the national average and a higher ALOS indicating that Hospice services are provided for a longer length of time and resources given longer than most states. This data would strongly indicate Hospice services are being provided at exceptional levels to patients and families and the need for more new providers would not change these facts.



© HealthPivots

Based on Medicare Claims through June 2020

Select a State (or National)
National

National Hospice Utilization Trend

Year	Medicare Enrollment	Death Rate per 1,000	Resident Deaths	Death Service Ratio	Hospice Deaths	Hospice Penetration	Patients Served	Days per Patient (ALOS)	Patient Days
National 2020	64,441,270	38.1	2,456,271	0.48	1,185,728	0.72	1,773,747	70	124,868,393
Hawaii 2020	288,822	32.6	9,420	0.48	4,549	0.71	6,646	72	479,976

Below are projected assumptions for Hospice providers using statistical norms for states that do not have a CON in place for Hospice near Hawaii. This data shows that the number of hospice providers would most likely quadruple with 30 new hospice providers to be expected if statistical norms for other states were to play out. This will dilute the quality of care, place undue stress on the already thin labor pool and create negative impacts on patient care **This new projected number of Hospice providers will most definitely strain the resources of the state surveying entities, as well as increase costs and other potential problems that have been seen in other states that deregulate.**

CURRENT SUPPLY OF PROVIDERS IN 2020	CA	FL	TX	HI
Medicare Enrollee Population	6,643,655	4,815,678	4,421,825	288,822
Count of Hospice Agencies	987	45	602	10
Count of Home Health Agencies	1,382	791	1,578	14
Hospice Agencies per 100,000 Medicare Enrollees	14.9	0.9	13.6	3.5
Home Health Agencies per 100,000 Medicare Enrollees	20.8	16.4	35.7	4.8

CERTIFICATE OF NEED REGULATION	CA	FL	TX	HI
Hospice Agencies	No	Yes	No	Yes
Home Health Agencies	No	No	No	Yes

WHAT IF .. HAWAII HOSPICE PROVIDERS DEREGULATED	CA	FL	TX	HI Projected providers
Potential De-Regulated Hospice Agency Counts	987	45	602	39.2
Potential De-Regulated Home Health Agency Counts	1382	791	1578	68.04

Conclusion: The number of hospice agencies in Hawaii would quadruple if certificate of need were eliminated.

Notes:

Source: HealthPivots DataLab State Profiles for Hospice and Home Care Agencies
 Agency counts exclude agencies serving fewer than 11 Medicare patients

Other Notes:

Florida deregulated Home Health Agencies from Certificate of Need in 2008
 The results was an explosion in the number of HH agencies followed by a Federal moratorium on new HH providers in FL
 Florida and other states have decided to not deregulate hospices from Certificate of Need

It could be assumed that the creation of HB 224 was to facilitate or create more housing options to care for increased numbers of the great people of Hawaii as they age at end of life.

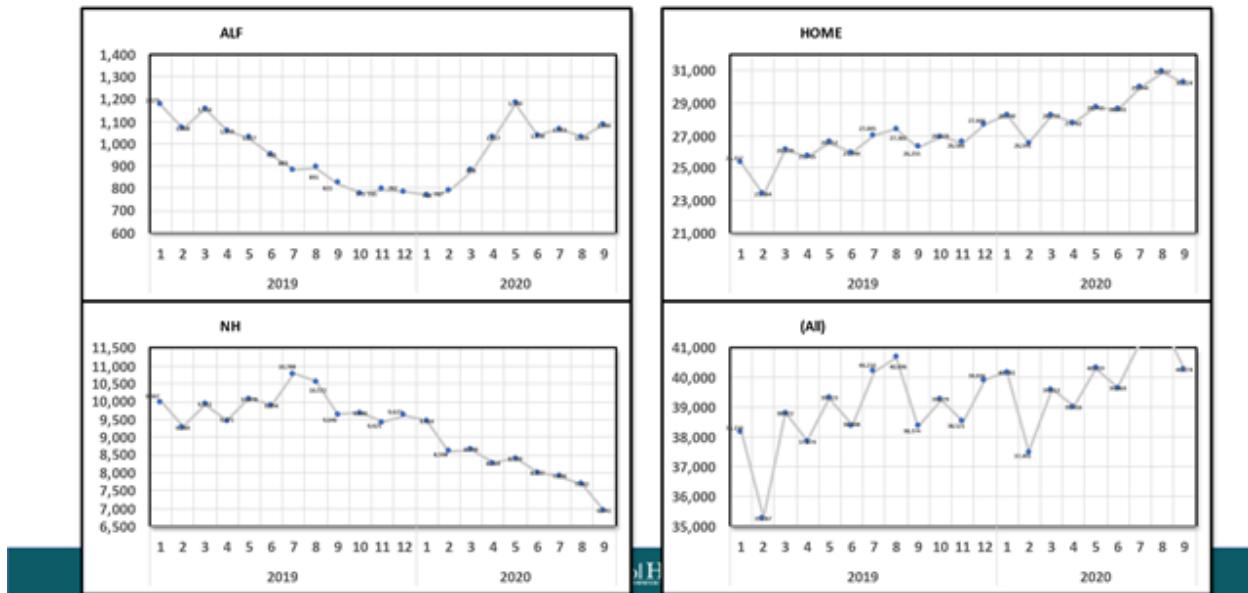
It should be noted that by eliminating the CON for Hospice, this will NOT create more of these “bed availability” options.

See the 2020 Medicare utilization data below through September for the state of Hawaii days of care: Assisted living, Nursing Homes, Home and all Hospice utilization.

Hospice has been unable to provide care in facility settings due to COVID-19 , however hospice providers have been providing record levels in number of days of care in the patients homes in response to the needs of the community. **(New record of 31,000 days in August)**

Ending the CON for Hospice will not effectively add more housing options for the state of Hawaii.

Hospice location HAWAII 2020



Also,

We are very concerned that bill that would in fact create an environment that would negatively affect patients, staff members and families who elect hospice care as it did similar to when other states including Florida have deregulated the entry of providers. Increases in fraud, abuse and poor delivery of care most definitely were the result of this decision.

See below the measure that the impact of the Florida decision to de-regulate **home health** from certificate of need – which resulted in an explosion of HH agencies – followed by a contraction.

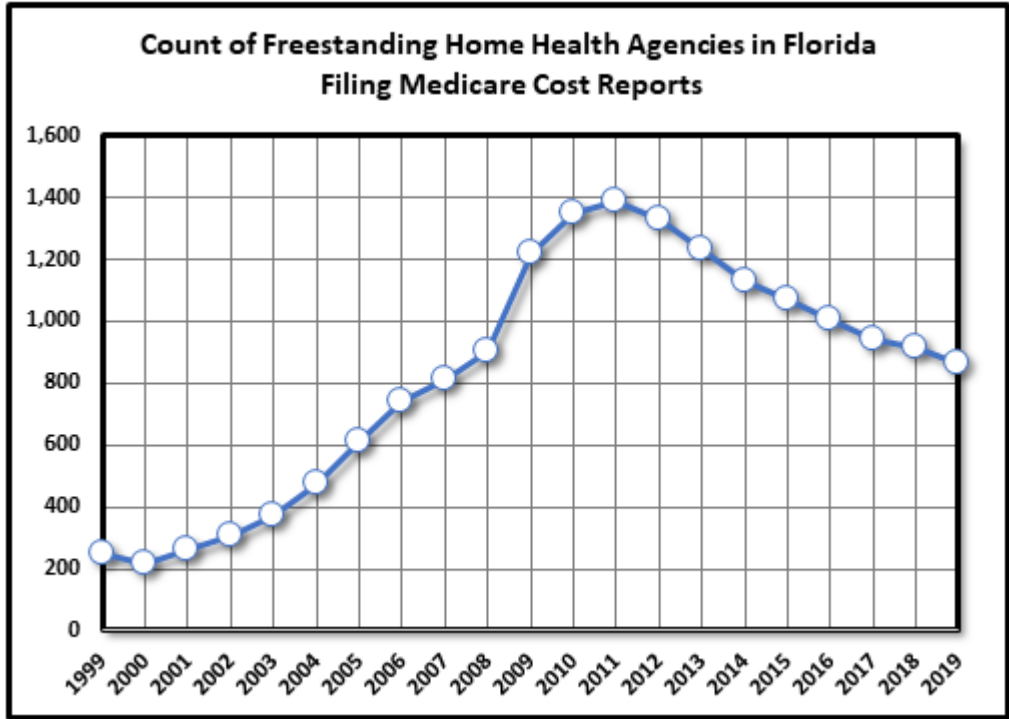
2008: CON requirement for home health agencies eliminated

2013: CMS [Moratorium](#) on new home health agencies in selected FL counties

2016: CMS extends Moratorium to be statewide in FL.

2019: Moratorium lifted

The deregulation led to a sudden boost in providers supply in Florida that compromised the integrity of the home health payment system. A full or partial 5-year moratorium on new providers was lifted on January 31, 2019. This was a **highly disruptive period** in the delivery of home health services in Florida for Medicare, for home health providers and for the public.



I respectfully request that the members of the Hawaii house vote to OMIT HOSPICE from Bill HB224.

R. Troy Backus RN
Bristol Hospice-Hawaii

HB-224

Submitted on: 2/1/2021 9:00:39 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erin Hamilton	Bristol Hospice	Oppose	No

Comments:

As an advocate for hospice & healthcare providers in our state & a born and raised resident of Hawaii : we vote to omit hospice from Bill HB224.

We strongly warn with deep concern for Hawaii's delicate & currently unstable healthcare & economic environment to remove hospice from bill HB224. Hospice is regulated on a federal level & if including hospice in HB224, we will risk further economic & healthcare infrastructure devastation & future choice for our state. We cannot as a state forego more economic & healthcare devastation & hardship at this time.

Checks and balances, will be lost to corporations & our legislators, people & local leaders will lose decision capabilities.

Again, We vote-to Omit -Hospice from Bill HB224 and the reasons to omit hospice from Bill HB224 is because:

1) the states bill of CON de-regulation to include foster homes, care homes, nursing facilities & hospice facilities is our honorable legislatures proposal to solving a very real problem; a shortage of nursing/long term care beds in Hawaii. This proposal is based on strong merit, & validity with the best interest in mind of our shaken economy & healthcare systems due to COVID19. Including anticipation of future economic impacts for Hawaii, with the highest ever recorded history of Medicaid applicants (due to COVID19).

However, deregulation of CON for Hospice in Hawaii will NOT solve our long term care bed concern. In fact, it is imperative we remove hospice from HB224 exactly for this concern. 2) We must avoid a desaturation of more economic hardship on the local state level. Avoid an even larger economic & healthcare deficit on placing our Medicaid & Medicare patients. Our most vulnerable population must be protected.

3) Deregulation of CON for hospice will take away healthcare rights, & responsibilities from state legislation & put hospice and end of life care for our people in the hands of large corporations or other smaller agencies that have questionable quality care or finances necessary to continue operations and local regulations. They will than without

local oversight, leave our Kupuna, patients and families part-way through treatment. They will come in droves, lack supervision & regulation.

The solution to creating more long term or aging beds, for our Kupuna is to increase the volume of our nursing facilities, Assisted living facilities & foster/care homes (ARCH, expanded care) as a CON state NOT hospice providers.

Again we the people of Hawaii and it's citizens ask to please consider this testament for the stability & future of our Kupuna and to maintainIng end of life care as a place of dignity, with stable, localized care and not a place of "business" in the hands of companies with no financial backing or vested interest in Hawaii's long term stability. Keep Hawaii's Kupuna and our loved ones facing life limiting illnesses in the hands of our trusted state, it's legislation & its people.

Please hear our voices, remove hospice from bill HB224.

HB-224

Submitted on: 2/1/2021 9:04:03 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Abby Paredes	Poailani Inc	Oppose	No

Comments:

Po'ailani Inc. is a long time Dual Diagnosis treatment facility on Oahu that has provided essential and speciality services to the homeless, mentally ill and SUD population. We are members of the Hawaii Substance Abuse Coalition and recommend a Task Force to allow informed discussions and input from providers, especially those of us that have over 25 years experience working with the CON process. We are requesting to be included in this reform process. Thank you.

Abby Paredes, CEO

February 2, 2021 at 9:30 am
House Committee on Health, Human Services, and Homelessness

To: Chair Ryan I. Yamane
Vice Chair Adrian K. Tam

From: Sonnie Linebarger

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

To Whom It May Concern,

As a Hospice nurse and Advocate, I want to *thank you for the opportunity to provide **comments** on this bill. Among other things, this bill would add new exemptions from the requirement to secure a certificate of need (CON) to include hospice homes and other hospice facilities. We request that hospice services be **struck** from this bill and continue to be included in the services that required a CON.*

As a member of a Hospice care team, we are very concerned that ending Certificate of Need for Hospice in Hawaii would have grave negative impacts on patients and families who elect hospice in the state of Hawaii.

As seen in Medicare data through June 2020. The State of Hawaii Currently is at or above the national average for Death Service Ratio by Hospice at 48% as well as Hospice Penetration at 71% which means residents who would like to receive the services of hospice care receive it at the same rates or better than other states nationally. Hawaii has a Death rate per thousand lower than the national average and a higher ALOS indicating that Hospice services are provided for a longer length of time and resources given longer than most states. This data would strongly indicate Hospice services are being provided at exceptional levels to patients and families and the need for more new providers would not change these facts.

Below are projected assumptions for Hospice providers using statistical norms for states that do not have a CON in place for Hospice in close proximity to Hawaii. This data shows that the number of hospice providers would most likely quadruple with 30 new hospice providers to be expected if statistical norms for other states were to play out. This will dilute the quality of care, place undue stress on the already thin labor pool and create negative impacts on patient care **This new projected number of Hospice providers will most definitely strain the resources of the state surveying entities, as well as increase costs and other potential problems that have been seen in other states that deregulate.**

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CERTIFICATE OF NEED REGULATION	CA	FL	TX	HI
Hospice Agencies	No	Yes	No	Yes
Home Health Agencies	No	No	No	Yes

We believe that the CON process is an effective barrier to unscrupulous actors from entering into the state and providing care. We understand that the majority of hospice providers in the country are mission-driven and providing adequate care, however, we believe that there is a need to have some barriers in place to keep those who do not seek to best serve our populations from opening in the state. One of the reasons that the CON is helpful for hospice is that hospice agencies, while Medicare-certified by the state, are not licensed under states laws or regulations. The CON is then a helpful state-based tool for hospice agencies and other interested parties to help ensure that any company that seeks to come in has a good track record, sufficient finances, and a mission-driven approach that keeps patients and their families safe.

We are very concerned that bill that would in fact create an environment that would negatively affect patients, staff members and families who elect hospice care as it did similar to when other states including Florida that have deregulated the entry of providers. Increases in fraud, abuse and poor delivery of care most definitely were the result of this decision.

In conclusion, I respectfully request that the members of the Hawaii house vote to OMIT HOSPICE from Bill HB224.

HB-224

Submitted on: 2/1/2021 9:04:47 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
kingsada Hanashiro	Bristol Hospice	Oppose	No

Comments:

Please remove hospice agencies from HB 224, as there is sufficient support, and choice, for our community with the hospice agencies already in place.



Hearing: Tuesday, February 2, 2021

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

To: Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair

From: Brenda S. Ho
Chief Executive Officer

RE: TESTIMONY IN OPPOSITION OF HB 224

RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY.

Exempts hospice, psychiatric, and substance abuse facilities and certain dialysis center services from the certificate of need requirements. Authorizes fines for persons who do not comply with an approved certificate.

Dear Chair Yamane, Vice Chair Tam, and Members of the Committee:

Thank you for the opportunity to provide comments on **HB 224** which if approved, would exempt hospice homes and other hospice facilities, from the requirement to obtain a certificate of need (CON) to operate in Hawaii. We request that the exemption be struck from this bill and continue to be included in the services that require a CON.

The Hawaii CON process provides a vital structure and a means to help ensure any new hospice organizations are actually needed and will not harm existing providers that are meeting the needs of the community they serve. Our CON regulations allow for all stakeholders, from citizens to existing healthcare systems, to provide input into the need of another service provider. If hospice is exempt from the CON process, there will be no protection for the Hospices in Hawaii who have established deep roots, made substantial investments and maintained the delivery of critical services in their communities. This is especially true since Hawaii does not require state licensure.

Hawai'i Care Choices and existing hospices programs are meeting and/or exceeding the needs of end-of-life care for the people of Hawaii. If HB 224 is passed, hospice organizations will have open access to expand their business opportunities and wealth. Large multi-state hospice organizations are looking for the next area to expand their business portfolios, thus creating competition for the market share of staffing professionals and our limited service population. Hawaii would be inundated with new start up hospices with a narrow vision and a lack of regulatory expertise and resources necessary to operate, impacting the quality of care for patients and their families in a time of need.

According to Jay D. Cushman, President, HealthPivots, a renowned consultant in the hospice industry, "if the CON for hospice were eliminated in Hawaii – I would expect the number of agencies in Hawaii to quadruple – from 10 to about 40 – based upon the experience of states like CA and TX – where there is no regulation. In all likelihood, these additional providers would be chains with no experience or appreciation of Hawaii culture and norms. Florida, which still has CON for hospice – deregulated home health with disastrous results."

Hawai'i Care Choices believes a certificate of need for hospice homes and other hospice facilities is highly necessary. The addition of an outside hospice provider will create confusion and greater apprehension for those seeking hospice care. At risk with this exemption is the cultural awareness, community connections, and subjecting Hawaii's seriously and terminally ill patients and their families to the typical ebb and flow of a free market

Again, mahalo for the opportunity to express my opposition of HB 224 that exempts hospice from the State Health Planning and Development Agency certificate of need requirements.

February 2, 2021

9:30 a.m.

Conference Room 329

To: House Committee on Health, Human Services, & Homelessness

Rep. Ryan I. Yamane, Chair

Rep. Adrian K. Tam, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB224 — RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB224, which would exempt hospices, psychiatric facilities, substance abuse facilities and certain dialysis centers from the state's "certificate of need" requirements.

If enacted, this bill would take an important step toward addressing Hawaii's ongoing difficulties with health care affordability and access. By creating exemptions to the certificate-of-need requirements for certain facilities, you would improve both the quality and affordability of care for many Hawaii residents.

According to a 2020 [study](#) from the Mercatus Center, Hawaii has the highest number of certificate-of-need restrictions in the country. The result of those restrictions is to make health care more expensive, limit access to care and lower the overall quality of care.

By comparing costs and outcomes in states with restrictive certificate-of-need laws and those without, the [Mercatus Center](#) determined that CON laws increase annual per capita health care spending in Hawaii by \$219 and reduce the number of health care facilities in the state by about 14.

The center also estimates that without certificate-of-need laws, deaths from post-surgery complications would decrease by about 5% and the proportion of patients who would rate their hospital highly (at least 9 out of 10) would increase by 4.7%.

Due to certificate-of-need laws, many of Hawaii's problems with health care access and affordability are self-inflicted. By removing these restrictions — not only for the facilities contemplated in this bill, but for other facilities and services as well — we could go a long way toward improving health care in Hawaii.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President, Grassroot Institute of Hawaii

LATE

HB-224

Submitted on: 2/1/2021 7:03:49 PM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tricia Yamashita	Kauai Hospice, Inc.	Oppose	No

Comments:

February 1, 2021

House Committee, Health, Human Services & Homelessness

Representative Ryan I. Yamane, Chair

Representative Adrian K. Tam, Vice Chair

RE: TESTIMONY IN OPPOSITION OF HB 224

RELATING TO THE STATE HEALTH PLANNING & DEVELOPMENT AGENCY

Dear Chair Yamane and Members of the Committee:

Thank you for the opportunity to provide testimony in **opposition of HB 224** which establishes the State health planning and development special fund; created; deposits; expenditures and fees and specifically the language allowing for the “exemption from certificate of need requirements” (CON) for hospice homes and other hospice facilities.

The Certificate of Need process and requirements support healthy, quality, committed growth for our communities. CON requirements do not block change, they serve as a consumer protection resource for Hawai'i. The CON requirements mainly provide for an evaluation, and often include public and stakeholder input, while limiting health care spending. Removal of the Certificate of Need for Hospice homes and other hospice facilities will lead to a proliferation of low-volume facilities, providing lower quality of care, reducing the already limited finite resources of our island communities.

CON programs help distribute care to disadvantaged populations or geographic areas that new and existing medical centers may not serve. Removal of CON will favor for-profit institutions which may be less willing to provide indigent care. Passage of this bill is not right for Hawai`i. The CON process should remain in place as a tool to insure those choosing to provide Hospice services in Hawai`i are doing it for the right reasons, at the right time, in the right place, with the right resources and heart to serve all of the people of Hawai`i.

As the Executive Director of Kaua`i Hospice, we have over 35 years experience serving the hospice, bereavement, and palliative care needs of people living on the Garden Island. I am keenly aware of our limited resources, including access to qualified health care personnel. The Certificate of Need requirements provides Kaua`i with the opportunity to insure our finite resources are used in the delivery of quality person-centered care. I ask that you oppose HB224 and secure the CON requirements for hospice homes and other hospice facilities.

Thank you again for the opportunity to submit this testimony in **opposition of HB224**.

Most sincerely,

Tricia L. K. Yamashita,

Executive Director

Kaua`i Hospice, Inc.

WRITTEN TESTIMONY OF

MICHAEL G. DUICK, M.D.

February 2, 2021

TO: House Committee on Health, Human Services, and Homelessness

RE: PROPOSED HOUSE BILL 224

Dear Chair Yamane and Members of the Committee:

With great respect, I submit my **opposition** to the portion of proposed House Bill 224 which amends §323D-54 **to exempt hospice homes and other hospice facilities from Certificate of Need requirements.**

I am an internal medicine physician with subspecialty board certification in hospice and palliative medicine. I have held an active, unrestricted license to practice medicine in the state of Hawaii since July 2004. Over the past decade, I have dedicated my career to caring for hospice patients, their family members and caregivers. During that time, I have provided care to thousands of patients with terminal illness. I serve as a Volunteer Board Member of Kōkua Mau, which is our state's hospice and palliative care organization. I am an active member of the National Hospice and Palliative Care organization and also serve as a voluntary faculty member at the University of Hawaii, where I teach medical students about hospice and end-of-life care. Lastly, I am a resident of Kailua, where I live with my wife and children.

During my career, I have authored and submitted four separate Certificate of Need (CON) applications to the State Health Planning and Development Agency (SHPDA) pertaining to hospice. In my experience, I found the CON application process to protect the integrity of our healthcare system in Hawaii. This process ensures the following:

- 1) That the Health Services and Facilities Plan, as required by law in HRS §323D-15, is addressing the health care needs of the state by providing for the reduction or elimination of underutilized, redundant, or inappropriate health care facilities and health care services while focusing on increasing cost-effective access to necessary health care services. Of note, the Health Services and Facilities Plan specifically addresses that access is distinguished from convenience.

PO BOX 30273, HONOLULU, HAWAII 96820

- 2) The Certificate of Need Program, as required by law in HRS §323D-43(c) and HAR §11-186, demands that applicants for hospice care demonstrate the ability and good faith to meet important requirements, including:
- a) Relationship of the hospice proposal to the state Health Services and Facilities Plan.
 - b) The need that the population served (i.e., terminally ill patients) has for the proposed hospice service. In particular, the hospice proposal must show how the elderly, low income persons, racial and ethnic minorities, women, persons with disabilities, and other underserved groups are likely to have access to such hospice services.
 - c) That the applicant has or will comply with federal and state licensure requirements. It is important to note that Hawaii has no licensure requirement for hospice services.
 - d) That the proposed hospice services will not have an impact on the overall costs of health care services to the community, which would include increased costs to the current providers of hospice care.
 - e) **That the proposed hospice services will have a relationship with the existing hospice providers of the state with the ability to provide less costly or more effective alternative methods of hospice services.**
 - f) That the proposed hospice service has adequate resources, **including health care personnel** and funds to provide such services.

The most recent CON application for hospice care that I submitted on June 16, 2020 (CON Application #20-07A), which was subsequently approved, intends to add 5 additional hospice inpatient beds to a home in Honolulu. The discipline required to complete this CON application was of great importance to me to ensure that the proposed project met the highest quality of healthcare standards that our terminally ill patients and their family members deserve.

To protect patients, I hope the CON process remains in place to properly vet hospice companies. Removing the CON requirement for hospice homes and hospice facilities in Hawaii will remove a critical safeguard and also eliminate public participation in major decisions that affect our local healthcare needs with respect to end-of-life care.

In Hawaii, we provide unique and innovative hospice and palliative care programs developed by local insurance carriers such as HMSA and UHA that are available nowhere else in the continental states. I can assure you that, at this time, patient access to high-quality hospice and palliative care services in our state is not impeded by the CON process. In fact, I believe the CON process has only improved our integrity, increased access to high-quality hospice care, and allowed for the development of unique, innovative programs for the seriously ill.

For the reasons stated above, I strongly oppose the elimination of hospice homes and other hospice facilities from Hawaii's CON process as proposed in this measure.

I hereby attest that I drafted this testimony and have knowledge of the content and the information contained herein. I declare that the testimony submitted is true and correct to the best of my knowledge and belief.

Thank you for your time and consideration.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Michael G. Duick". The signature is written in a cursive style with a large initial "M" and "D".

Michael G. Duick, M.D.

HB-224

Submitted on: 1/31/2021 8:32:40 PM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Katherine W. Brooks, MHA, RN	Individual	Comments	No

Comments:

In the case of hospice organizations there is great concern regarding elimination of the CON process. Currently the neighbor island hospices struggle with a limited ability to grow a census that is large enough to reach a financial break-even point. These non-profit entities must engage in significant fundraising in order to cover the costs of operating a Medicare Certified agency meeting all requirements. In Hawaii, on all islands, we have community based non-profits that have served their communities for over 30 years.

On the mainland hospice is provided by large for-profit hospice chains and several of them have made applications for a CON over the past 15 years. These corporate organizations desire to open locations in Hawaii and spend a large amount of money gaining market share. Competing with them wastes resources. On the neighbor islands there isn't adequate population to support multiple hospices so adding additional hospices does not improve access but dilutes the census to below break-even and threatens the survival of the legacy hospice organizations.

The other concern is entry into the market of smaller start-ups that want to open in Hawaii. Over the past 15 years we have managed to fend off many of them through the CON process. At the hearings it has been obvious that some of the applicants were of questionable integrity, were lacking in clinical expertise or were very poorly funded. Luckily they were not granted certificates of need.

Hospice is a unique service because end-of-life only affects a single individual once (and for a limited time frame)so there is no "shopping around" possible. We feel that the CON process is protective of the community members of the neighbor islands at a very fragile time.

Katherine Werner Brooks, MHA, BSN

Executive Director

North Hawaii Hospice, Inc.

[\(808\) 895-2633](tel:8088952633)

HB-224

Submitted on: 1/31/2021 10:00:48 PM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melanie Boehm	Individual	Comments	No

Comments:

We need more discussion and planning and input from a representative group who would be affected or who would be working together toward understanding this effort.

HB-224

Submitted on: 2/1/2021 8:44:26 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tania Mejia	Individual	Oppose	No

Comments:

I oppose this bill as hospice agencies need to be regulated through the CON process to ensure quality care and checks and balances within the system. With the many unregulated agencies opening up business in the state will dilute the agencies who have been already providing quality care along with the compassionate image of what hospice really is. Having a controlled environment with several agencies in our state will allow us to have fair competition in a safe "regulated" environment for our patients. With out CON, I can forsee much unregulated uncertainty and this decison should be revisited with much thought before proceeding in opening it up to individuals just wanting to make several dollars with a cost of someone's life.

HB-224

Submitted on: 2/1/2021 8:56:47 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tricia Pancner	Individual	Oppose	No

Comments:

1/31/21

Dear Review Committee Members,

RE: HB 224 RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY.

I am writing you this letter in response to the bill HB 224, which would make various changes including the exemption of hospice and hospice homes from the certificate of need requirement. I truly appreciate the opportunity to make comments and want to plead my request that you reconsider and carve out Hospice Organizations and Hospice Homes from that list of exemptions.

The CON has allowed the State of Hawaii to assure optimal Quality of Care to those patients and families at the most vulnerable time of their lives. As a certified Hospice Nurse I have seen first hand the negative impact and poor quality outcomes that an exemption to the CON can result in. We take great pride in our beautiful Aloha state of Hawaii to assure that our Ohana are given the best end of life care possible! Our Hospice Item Set scores exceed the National Average and we collaborate among all existing Hospices and Healthcare Providers on the Island to meet the needs of everyone.

Hospice Standards of Excellence can vary by provider and require frequent and careful oversight to assure compliance with Federal and State Regulations. It is my deep fear that removing the CON will create the same issues that have arisen in other states with the end result being poor patient care and poor outcomes for our loved ones that need Hospice Care. No one gets a second chance to have a good death. It is imperative that we maintain close watch over the need for additional Hospice providers to assure that this does not happen. The U.S. Department of Health and Human Services Office of Inspector General (OIG) has identified a number of vulnerabilities in Hospice including but not limited to: inappropriate billing practices, fraud schemes, disparities among those who need it most and those who are admitted based on their level of need and their cost (OIG, 2018, p.2).

We provide Hospice care on the island to everyone that qualifies regardless of cost. We take pride in our families, our care, our culture, and our community. We assure best practice standards and assure the highest quality of care. If it is your family member, loved one, or friend that needs hospice you would want to assure that they had the best care possible. I confidently can say that we have that in Hawaii at present. I can also confidently say that if the CON is taken away that will not be the case.

Thank you for your consideration.

Malaho,

Tricia Pancner, RN, BSN, Certified Hospice Nurse and Hospice Executive Director in Hawaii

Resources:

U.S. Department of Health and Human Services Office of Inspector General (OIG), Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio, July 2018, p. 1- 23, Retrieved from <https://oig.hhs.gov/oei/reports/oei-02-16-00570.pdf>

HB-224

Submitted on: 2/1/2021 9:06:55 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jamie Cambra	Individual	Oppose	No

Comments:

I oppose Bill HB224 as Hospice are specialized services provided through licensed providers. If CONs are not mandated we could be dealing with ill equip providers that are not closely regulated. The established hospices had to justify their need to be here and are closely monitored on the Federal and State Level. This ensures the proper system in place that identifies the need and a regulatory measures so that patients receive the services that they rightfully deserve in a safe environment.

HB-224

Submitted on: 2/1/2021 9:08:34 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carol Middleton	Individual	Oppose	No

Comments:

I respectfully request that hospice services be struck from this bill and that the CON for hospice agencies continue as a requirement.

It is of utmost importance that we ensure regulation of hospice agencies entering the State of Hawaii to provide end of life care. Patients and families rely on hospice agencies to provide care and services at a vulnerable time. It is vital that hospice agencies be required to submit to the CON process, which will help to ensure protection of our community from subpar service levels.

Thank you for this opportunity to submit testimony.

HB-224

Submitted on: 2/1/2021 9:14:08 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lorrin Honda	Individual	Oppose	No

Comments:

As a concerned senior, **I vote to remove hospice from Bill HB224 exempting a CON for hospice in Hawaii.** I feel that the state should enforce the CON process so end of life services in Hawaii are regulated.

HB-224

Submitted on: 2/1/2021 9:14:15 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ray Ogai	Individual	Oppose	No

Comments:

Aloha Committee Members,

My understanding of the State's Certificate of Need is to provide access and quality of care to those in need, while keeping the providing agency accountable for maintaining the quality of programs and services. If there are changes to access (e.g. barriers) or quality (performance outcomes) then these should be looked at in detail to revise the requirements for the Cert. of Need. I would support the input and participation between State and providers on looking at the issues together and determining best care for those in need.

Thank you,

-Ray O.

HB-224

Submitted on: 2/1/2021 9:16:09 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanette Dove	Individual	Oppose	No

Comments:

*Thank you for the opportunity to provide **comments HB 224**. . Among other things, this bill would add new exemptions from the requirement to secure a certificate of need (CON) to include hospice homes and other hospice facilities; psychiatric facilities; substance abuse facilities; and dialysis centers located in a hospital providing outpatient services. We request that hospice services be struck from this bill and continue to be included in the services that required a CON.*

We are concerned that hospice homes and other hospice facilities would be excluded from the CON process under this bill because it may allow for providers to come into the state and potentially compromise the current standard of excellence in patient care. Our hospice teams provide high-quality care within the communities we serve and strive to provide sustained quality in the delivery of care to the most vulnerable population- those traversing their end of life journey.

We believe that the CON process is an effective barrier to hospice actors from entering into the state and providing care that may not embody a mission driven approach to quality of care. We understand that the majority of hospice providers in the country are mission-driven and providing good care;; however, we believe that there is a need to place gates that demand new providers align with the highest possible standards of care for the community. The CON a helpful state-based tool for hospice agencies and other interested parties to help ensure that any company that seeks to come in has a good track record, sustained quality scores, patient/family satisfaction in alignment with national standards, sufficient finances, and a mission-driven approach that keeps patients and their families at the fore front of the delivery of end of life care.

HB-224

Submitted on: 2/1/2021 9:20:15 AM

Testimony for HHH on 2/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
June Honda	Individual	Oppose	No

Comments:

I vote to remove hospice from Bill HB224 exempting a CON for hospice in Hawaii. As a senior residents of Arcadia Retirement Community, we kupuna are at a vulnerable time and I feel that the state should enforce the CON process for our safety.