
HOUSE RESOLUTION

REQUESTING A STUDY OF THE NECESSITY FOR HAWAII'S CERTIFICATE OF
NEED PROGRAM UNDER CHAPTER 323D, HAWAII REVISED STATUTES.

1 WHEREAS, Certificate of Need programs are state-level
2 regulatory programs that require approval from a state health
3 planning agency for construction, expansion, or major capital
4 expenditures by health care facilities and services; and
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6 WHEREAS, Certificate of Need programs aim to control health
7 care costs by restricting duplicative services and determining
8 whether new capital expenditures meet a community need; and
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10 WHEREAS, Hawaii's Certificate of Need law, codified as part
11 V of Chapter 323D, Hawaii Revised Statutes, was established in
12 1975 in response to the National Health Planning and Resources
13 Development Act of 1974, which conditioned the award of federal
14 public health service grants upon a state's adoption of the
15 regulatory measures; and
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17 WHEREAS, in 1987, the federal mandate and funding
18 provisions of the National Health Planning and Resources
19 Development Act were repealed; and
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21 WHEREAS, since the repeal of the National Health Planning
22 and Resources Development Act, twelve states have fully repealed
23 their Certificate of Need programs or allowed their programs to
24 expire, while three other states do not officially operate a
25 Certificate of Need program, but maintain several approval
26 processes that function similarly to a Certificate of Need
27 program; and
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29 WHEREAS, Hawaii's Certificate of Need law requires the
30 State Health Planning and Development Agency to approve a
31 Certificate of Need for the construction, expansion, alteration,
32 conversion, development, initiation, or modification of all
33 health care facilities or health care services in the State; and



1
2 WHEREAS, like Certificate of Need laws in many other
3 states, Hawaii's Certificate of Need law is intended to provide
4 a coordinated system that links statewide planning for health
5 services with facilities development; and

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7 WHEREAS, Hawaii's Certificate of Need program, like other
8 programs nationwide, has faced criticism in several areas,
9 including that the program:

- 10
11 (1) Hampers the efficient performance of health care
12 markets by creating barriers to entry and expansion,
13 restricting free and open competition, and limiting
14 consumer choice, resulting in higher prices;
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16 (2) Hampers innovation and improvements in the delivery of
17 better health care by limiting competition;
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19 (3) Is inconsistently administered;
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21 (4) Fails to meet its objective of controlling health care
22 costs; and
23
24 (5) Specifically limits rural hospitals and alternatives
25 for neighbor island residents; and
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27 WHEREAS, throughout the years, measures proposing to repeal
28 the Certificate of Need law have been introduced but not
29 enacted, including House Bill No. 551, H.D. 2, Floor Amendment 3
30 (2003), Senate Bill No. 1354 (2010), and Senate Bill No. 858
31 (2011); and
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33 WHEREAS, the most recent measure to propose repealing
34 Hawaii's Certificate of Need law is Senate Bill No. 2123 (2024),
35 which received strong opposition for a February 7, 2024, hearing
36 from the State Health Planning and Development Agency stating:
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38 "35 states and the District of Columbia continue to
39 fund the CON process and still believe it has value as
40 a planning tool in controlling costs by preventing
41 unnecessary and wasteful investments in health care
42 facilities and equipment.



1
 2 Empirical studies have shown both substantial economic
 3 and service quality benefit from CON regulation and
 4 related planning. In three separate studies conducted
 5 by the three major automakers, each reported lower
 6 per-person health costs in states with CON programs
 7 than in states without such programs, with costs in
 8 some non-CON states being nearly triple what they were
 9 in states having a CON program.

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 11 [T]he largest study of CON regulation on quality and
 12 treatment outcomes published in The Journal of the
 13 American Medical Association found that open heart
 14 surgery mortality rates were 21% lower in states with
 15 CON regulation than in states without.

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 17 But we note that in response to [a paper suggesting
 18 ending CON programs in the United States as anti-
 19 competitive,] the American Health Planning Association
 20 (AHPA) published a strong rebuttal in 2005, calling
 21 the FTC report a 'largely political treatise,' and
 22 concluding that the CON is 'a useful market balancing
 23 tool, and that under current and expected health
 24 system market conditions, community-based planning and
 25 CON regulation are useful in promoting competition.'

26
 27 Most importantly, for the State of Hawaii, the CON
 28 program serves as a regulatory framework to prevent
 29 for-profit investors from entering the health care
 30 marketplace with the sole purpose of realizing the
 31 revenue from the lucrative service lines, such as
 32 cardiology, oncology and orthopedics when not in short
 33 supply, to the detriment of Hawaii's public safety-net
 34 hospitals, which rely on the revenue from these
 35 service lines to subsidize all the necessary, but
 36 unprofitable, services to their communities. The
 37 direct results would be reduced access for the
 38 underserved population and further significant state
 39 subsidies to support these hospitals."

40 ; and

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1 WHEREAS, the Healthcare Association of Hawaii also opposed
2 the repeal of Hawaii's certificate of need program at the same
3 hearing and submitted written testimony stating:

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5 "The certificate of need (CON) process in Hawaii works
6 efficiently and serves as a critical tool to keep down
7 healthcare costs and protect patients in the state. There
8 are real benefits to the CON process: first, the process
9 inhibits the unfettered growth of expensive services that
10 cannot realistically be supported in smaller communities;
11 and, second, by ensuring that dubious and bad actors are
12 not able to gain a foothold among vulnerable populations as
13 can happen in other states.

14
15 The CON process works efficiently in Hawaii—while opponents
16 of the CON may paint the process as cumbersome, our
17 members' experiences are the opposite. Further, the
18 findings of this measure allege that the CON process
19 increases costs and reduces quality, which is simply not
20 true in the case of Hawaii. We have one of the lowest
21 spends per beneficiary in the state for the Medicare and
22 Medicaid programs, yet we consistently rank as one of the
23 top—if not the top—state in terms of health and quality of
24 care in several studies and reports."

25 ; and

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27 WHEREAS, at the same hearing, additional opposition to
28 repeal of Hawaii's Certificate of Need law or support for the
29 law was expressed in written testimony by the Hawaii Primary
30 Care Association; Kauai Hospice; Hawaii Pacific Health; Kokua
31 Mau, A Movement to Improve Care; Hawaii Care Choices; U.S. Renal
32 Care; two medical doctors; a former State Administrator of the
33 State Health Planning and Development Agency; and one
34 individual; and

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36 WHEREAS, based upon the locally divided opinions on this
37 issue, national health care reform, and other changes taking
38 place in the health care marketplace, it seems appropriate to
39 examine the relevancy of Hawaii's Certificate of Need program
40 and its effects on health care access, quality, competition, and
41 costs; now, therefore,
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1 BE IT RESOLVED by the House of Representatives of the
2 Thirty-second Legislature of the State of Hawaii, Regular
3 Session of 2024, that the Legislative Reference Bureau is
4 requested to conduct a study of the necessity for Hawaii's
5 Certificate of Need program under chapter 323D, Hawaii Revised
6 Statutes; and

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8 BE IT FURTHER RESOLVED that the study is requested to
9 examine:

- 10 (1) The role of the Certificate of Need program in Hawaii;
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12 (2) Whether certain facilities, types of facilities, or
13 services should be exempt from the Certificate of Need
14 program;
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16 (3) Whether modifications made to the Certificate of Need
17 program in other states may be beneficial to implement
18 in Hawaii;
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20 (4) What the average cost of a certificate of need
21 application in Hawaii is and whether certificate of
22 need requirements have discouraged healthcare
23 providers from constructing or expanding facilities in
24 the State;
- 25
26 (5) Whether the "competitor's veto"--that is, the ability
27 of marketplace competitors to testify against the
28 granting of a certificate of need--should be
29 eliminated;
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31 (6) Whether reform of the Certificate of Need could help
32 reduce strain on healthcare facilities and improve the
33 number of available beds in a future healthcare
34 emergency, similar to that experienced during the
35 COVID-19 pandemic; and
- 36
37 (7) Whether reducing or eliminating Certificate of Need
38 requirements may improve health care access on
39 neighbor islands and for vulnerable populations; and
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1 BE IT FURTHER RESOLVED that the Legislative Reference
2 Bureau is requested to submit a report of its findings and
3 recommendations regarding the Certificate of Need program,
4 including appropriate recommendations to eliminate or modify the
5 existing Certificate of Need program and any proposed
6 legislation, to the Legislature no later than twenty days prior
7 to the convening of the Regular Session of 2026; and

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9 BE IT FURTHER RESOLVED that certified copies of this
10 Resolution be transmitted to the Director of Health,
11 Administrator of the State Health Planning and Development
12 Agency, and Director of the Legislative Reference Bureau.

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OFFERED BY: James S King
MAR 07 2024

