
HOUSE CONCURRENT 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19 Development Act were repealed; and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22 and Resources Development Act, twelve states have fully repealed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,



1 conversion, development, initiation, or modification of all
2 health care facilities or health care services in the State; and

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

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

- 12
- 13 (1) Hampers the efficient performance of health care
14 markets by creating barriers to entry and expansion,
15 restricting free and open competition, and limiting
16 consumer choice, resulting in higher prices;
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 - 18 (2) Hampers innovation and improvements in the delivery of
19 better health care by limiting competition;
 - 20
 - 21 (3) Is inconsistently administered;
 - 22
 - 23 (4) Fails to meet its objective of controlling health care
24 costs; and
 - 25
 - 26 (5) Specifically limits rural hospitals and alternatives
27 for neighbor island residents; and
- 28

29 WHEREAS, throughout the years, measures proposing to repeal
30 the Certificate of Need law have been introduced but not
31 enacted, including House Bill No. 551, H.D. 2, Floor Amendment 3
32 (2003), Senate Bill No. 1354 (2010), and Senate Bill No. 858
33 (2011); and

34
35 WHEREAS, the most recent measure to propose repealing
36 Hawaii's Certificate of Need law is Senate Bill No. 2123 (2024),
37 which received strong opposition for a February 7, 2024, hearing
38 from the State Health Planning and Development Agency stating:

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40 "35 states and the District of Columbia continue to
41 fund the CON process and still believe it has value as
42 a planning tool in controlling costs by preventing



1 unnecessary and wasteful investments in health care
2 facilities and equipment.

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

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

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

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

42 ; and



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

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

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

26 ; and

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

36
37 WHEREAS, based upon the locally divided opinions on this
38 issue, national health care reform, and other changes taking
39 place in the health care marketplace, it seems appropriate to
40 examine the relevancy of Hawaii's Certificate of Need program
41 and its effects on health care access, quality, competition, and
42 costs; now, therefore,



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2 BE IT RESOLVED by the House of Representatives of the
3 Thirty-second Legislature of the State of Hawaii, Regular
4 Session of 2024, the Senate concurring, that the Legislative
5 Reference Bureau is requested to conduct a study of the
6 necessity for Hawaii's Certificate of Need program under chapter
7 323D, Hawaii Revised Statutes; and

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

- 11
12 (1) The role of the Certificate of Need program in Hawaii;
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14 (2) Whether certain facilities, types of facilities, or
15 services should be exempt from the Certificate of Need
16 program;
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18 (3) Whether modifications made to the Certificate of Need
19 program in other states may be beneficial to implement
20 in Hawaii;
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22 (4) What the average cost of a certificate of need
23 application in Hawaii is and whether certificate of
24 need requirements have discouraged healthcare
25 providers from constructing or expanding facilities in
26 the State;
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28 (5) Whether the "competitor's veto"--that is, the ability
29 of marketplace competitors to testify against the
30 granting of a certificate of need--should be
31 eliminated;
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33 (6) Whether reform of the Certificate of Need could help
34 reduce strain on healthcare facilities and improve the
35 number of available beds in a future healthcare
36 emergency, similar to that experienced during the
37 COVID-19 pandemic; and
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39 (7) Whether reducing or eliminating Certificate of Need
40 requirements may improve health care access on
41 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 Concurrent 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:

Samuel S. King

MAR 07 2024

