

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

SENATOR JARRETT KEOHOKALOLE, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: March 22, 2021

Room Number: N/A

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

4 The Governor's Executive Biennium Budget proposes the downsizing of the State Health
5 Planning and Development Agency (SHPDA) and the transfer of CON resources to the
6 Department of Health. The department recommends this measure move forward as a corollary to
7 the state budget to assure functions of SHPDA persist regardless of its status as an attached
8 agency.

9 Chapter 323D authorizes at least three important functions: Certificate of Need, comprehensive
10 statewide planning, and the collection of health care administrative 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.

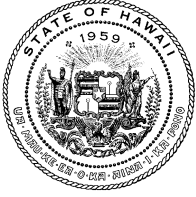
11 The project is in Phase I as of February 2020 and it is critical that it remain free from disruption.
12 Regardless of SHPDA's status as an attached agency, DOH strongly recommends that authority
13 for the APCD remain in force either in chapter 321, chapter 346, or related statute.

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



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

DAVID Y. IGE
GOVERNOR OF HAWAII

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

SERAFIN COLMENARES, JR., Ph.D., M.P.H.
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Senate Committee on Health

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

Testimony of Serafin Colmenares, Jr. SHPDA Administrator

Monday, March 22, 2021
1:20 p.m., Videoconference

1 The State Health Planning and Development Agency offers comments on House Bill
2 224 HD 1.

3 House Bill 244 HD 1 amends HRS Section 323D-12 by removing SHPDA as
4 administrator of SHPDA's special funds; transferring all SHPDA special funds exceeding \$2
5 million annually to the general fund; authorizing a public hearing fee and fines for non-
6 compliance with an approved certificate of need; exempting certain facilities and services from
7 the certificate of need requirements; and appropriating funds from the SHPDA special fund to
8 fund positions in SHPDA.

9 SHPDA was established by law (HRS 323D) as an administratively attached agency in
10 the Department of Health and tasked with the responsibility for promoting accessibility for all
11 the people of Hawaii to quality health care services at reasonable cost. Its functions include
12 the administration of the state's certificate of need program, the preparation and
13 implementation of the state health services and facilities plan, the coordination of health
14 planning activities to determine the health needs of the state, and the conduct of studies
15 regarding the causes of health care costs.

1 We understand that, owing to the budgetary shortfall that was expected due to the
2 COVID-19 pandemic, the Governor had to resort to budget cuts, layoffs and even the
3 elimination of agencies to keep the state afloat. However, these actions appear to be no longer
4 needed with the passage of the American Rescue Plan Act. Thus, we are hopeful that SHPDA
5 will now be maintained as an independent attached agency.

6 Under HRS 323D-12.6, SHPDA's special fund was established "to assist in offsetting
7 program expenses of the agency." SHPDA is currently allowed a special fund ceiling of
8 \$114,000 annually for this purpose. General funds for the position of SHPDA administrator
9 were taken away by the legislature following the departure on June 30, 2019 of the then
10 SHPDA administrator. A new administrator was hired by July 1, 2020 but the funds for the
11 position were not restored. In addition, additional cuts from its general fund are being
12 proposed under the governor's budget. Given the reduction in its general funds, the use of the
13 special fund for personnel expenditures is needed by SHPDA. In addition, the additional fees
14 and fines being proposed will increase the special fund. The increase in special fund and its
15 use for personnel expenditures will therefore enable SHPDA to support existing positions and
16 hire new positions, such as that of an investigator, to support the agency's work in enforcing
17 compliance.

18 However, SHPDA would be more effective if it remains as an independent attached
19 agency and continues to administer the special fund since it is the one that expends it.
20 SHPDA therefore recommends that HRS 323D-12.6 (a) be worded according to its earlier
21 version to read: "(a) There is established within the state treasury, *to be administered by the*
22 *state health planning and development agency*, the state health planning and development
23 special fund into which shall be deposited all moneys collected under this chapter."

24 Thank you for this opportunity to testify.

Monday, March 22, 2021 at 1:20 PM
Via Video Conference

Senate Committee on Health

To: Senator Jarrett Keohokalole, Chair
Senator Rosalyn Baker, Vice Chair

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

**Re: Testimony in Support of HB 224, HD2 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 which addresses the role of the State Health Planning and Development Agency (SHPDA) and makes changes to certain aspects of the certificate of need (CON) process. We also propose amendments to improve SHPDA's ability to develop the state health services and facility plan on a more timely basis which will strengthen the CON process.

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. Thus, SHPDA as opposed to the statewide health coordinating council (statewide council), a volunteer-based council, should be tasked with the development and revision of the State's health services and facilities plan (state plan).

Under the current statute, revision of the health services and facilities plan by the statewide council is permissive. With the rapid evolution of the manner in which healthcare is delivered, reassessing and revising the state plan every five (5) years is vital to ensuring that quality healthcare is equitably accessible by our citizens. Although the proposed amendments shift the responsibility for the health plan to SHPDA, the statewide council retains an important role in the development of the State's health services and facilities plan as it would assist in preparing the state plan and approve it.

The attached 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 AMENDMENTS

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.

(a) The state agency 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 shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. The state agency may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency 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 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.

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

SECTION [1]2. Section 323D-12.6, Hawaii Revised Statutes, is amended to read as follows:

"[1]§323D-12.6[1] **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.

[(-)] (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 ~~[2]~~4. Section 323D-47, Hawaii Revised Statutes, is amended to read as follows:

"§323D-47 Request for reconsideration. The state agency may provide by rules adopted in conformity with chapter 91 for a procedure by which any person may, for good cause shown, request in writing a public hearing before a reconsideration committee for purposes of reconsideration of the agency's decision. The reconsideration committee shall consist of the administrator of the state agency and the chairpersons of the statewide council, the review panel, the plan development committee of the

statewide council, and the appropriate subarea health planning council. The administrator shall be the chairperson of the reconsideration committee. A request for a public hearing shall be deemed by the reconsideration committee to have shown good cause, if:

- (1) It presents significant, relevant information not previously considered by the state agency;
- (2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;
- (3) It demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision;
- (4) It provides such other bases for a public hearing as the state agency determines constitutes good causes; or
- (5) The decision of the administrator differs from the recommendation of the statewide council.

To be effective, a request for [~~such~~] a public hearing and a fee of \$ _____ shall be received within ten working days of the state agency decision. A decision of the reconsideration committee following a public hearing under this section shall be considered a decision of the state agency for purposes of section 323D-44."

SECTION [~~3~~]5. 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]6. 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

(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]7. 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~~]8. 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~~]9. 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~~]10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION [~~9~~]11. This Act shall take effect on July 1, 2060.



March 22, 2021 at 1:20 pm
Senate Committee on Health

To: Chair Jarrett Keohokalole
Vice Chair Rosalyn H. Baker

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

Re: Testimony in Support with Proposed Amendments
HB 224 HD 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 testimony in **support with proposed amendments** on this bill, which seeks to make changes to the planning functions of State Health Planning and Development Agency (SHPDA), as well as some aspects of the certificate of need (CON) process. Most of our members support maintaining these functions at SHPDA and appreciate that the legislature is considering this measure to strengthen the requirements of the agency in supporting healthcare planning and consumer protection in the state through the CON process.

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." We support the amendments offered by other parties that would *require* SHPDA to complete planning reports every five years as it will help providers, policymakers, and the public to best understand the needs of patients in the state.

Thank you for the opportunity to support the proposed amendments on this measure.



INSTITUTE FOR JUSTICE

March 21, 2021

**Testimony from Jaimie Cavanaugh on behalf of the Institute for Justice
In Support of HB 224.HD1**

My name is Jaimie Cavanaugh. On behalf of the Institute for Justice (IJ), I'm providing the following testimony in support of HB 224.HD1, 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.HD1 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 and please contact me with any questions.

Sincerely,



Jaimie Cavanaugh
Attorney
Institute for Justice
jcavanaugh@ij.org
(c) 248-895-1555

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).

Testimony of
Jonathan Ching
Government Relations Manager

Before:
Senate Committee on Health
The Honorable Jarrett Keohokalole, Chair
The Honorable Rosalyn H. Baker, Vice Chair

March 22, 2021
1:20 p.m.
Via Videoconference

Re: HB224 HD1, Relating to the State Health Planning and Development Agency

Chair Keohokalole, Vice Chair Baker, and committee members, thank you for this opportunity to provide testimony on HB224 HD1, which exempts psychiatric services, special treatment facilities, and chronic renal dialysis services from the Certificate of Need requirements. It also authorizes administrative penalties for persons who do not comply with an approved certificate of need and appropriates funds from the health planning development fund.

Kaiser Permanente Hawai'i offers the following COMMENTS on HB224 HD1 and requests the following amendments.

We take no position on Part II or Part III.

We support maintaining the Certificate of Need functions within the State Health Planning and Development Agency (SHPDA). As such, we support amendments (attached) that we believe would strength the CON process under SHPDA. These amendments, which were developed in discussions with other healthcare organizations, would require SHPDA to complete planning reports to the extent practicable every five years as it will help the entire provider community and policymakers in understanding the needs of patients in the state. We believe further empowering the Statewide Health Coordinating Council, which serves as an advisory council to SHPDA, to assist SHPDA in preparing and revising as necessary the state health services and facilities plan will regularly ensure that there are proper healthcare facilities in an area.

We ask the committee to adopt these requested amendments. Mahalo for the opportunity to testify on this important measure.

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

H.B. NO. 224
H.D. 1
PROPOSED
S.D.1

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.

(a) The state agency 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 shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. The state agency may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency 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 to the extent practicable every five years.

(b) The state agency 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.

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

SECTION [1]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, 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.”

HB224, HD1

Relating to the State Health Planning and Development Agency

Testimony before the
Senate Committee on Health
March 22, 2021 at 1:20 pm

Good afternoon Chairperson Keohokalole, Vice Chairperson Baker and Members of the Senate Committee on Health. 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 they retained me to help them with this bill as it currently includes dialysis.

I respectfully request that you **amend this bill in two places:**

Please Amend by deleting -- Page 3, line 12; imposing a fee to request a public hearing – I respectfully request that this line be deleted from the bill. This passage proposes to impose a new fee on people who request a public hearing to request a Reconsideration (appeal) of the Agency's decision(s). For Certificate of Need, there already is a narrow list of reasons why a reconsideration can be requested. Following this narrow list, people can request a reconsideration of an Agency decision. However, proposing to impose a fee when requesting a reconsideration appears to be overly protectionist of the Agency.

Please Amend by deleting -- Page 9, line 5; “chronic renal dialysis services...” – I respectfully request that this line be deleted from the bill. Dialysis is what kept my Dad alive for three years. It is an important service and must be regulated. Currently, all the outpatient dialysis providers in Hawaii are all national, for-profit companies. They should not be exempted from Hawaii's certificate of need regulations as is proposed in this bill. Dialysis providers should be required to meet these Hawaii regulatory standards the same as all important healthcare providers in our State.

Hawaii consistently ranks at the top of national healthcare ratings and I believe that Hawaii's Certificate of Need program and Hawaii's Prepaid Health Care Act definitely contribute to our top rankings. Certificate of Need ensures we have accessible and cost effective healthcare services/facilities while the Prepaid Health Care Act ensures Hawaii people have employer-based healthcare coverage that pays for those services/facilities. These two Hawaii programs are foundational to outstanding healthcare in Hawaii! Healthcare is a public utility and it is why it is regulated.

Thank you for this opportunity to provide testimony.

March 22, 2021

TO: Senator Jarrett Keohokalole, Chair
Senator Rosalyn Baker, Vice-Chair
Members of the Senate Health Committee

RE: Testimony in **SUPPORT** of House Bill (HB) 224, House Draft (HD) 1

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

Chair Keohokalole and Vice-Chair Baker and Members of the Committee:

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. 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.

Satellite Healthcare

March 22, 2021 at 1:20 pm

Senate Committee on Health

To: Senator Jarrett Keohokalole, Chair
Senator Rosalyn Baker, 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 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 improve SHPDA's ability to develop the state health services and facility plan on a more timely basis which will strengthen the CON process. These amendments have been developed in collaboration with other Major Healthcare providers across the State

The Healthcare landscape in Hawaii, is a complex and delicate, and is critical to the overall success of the State of Hawaii. In particular, it is important that there is "accessibility for all people of the State to quality healthcare services at reasonable cost", which is the Purpose of SHPDA defined in Chapter 323D of the HRS.

In order to ensure this accessibility to these services, it is critical that we have appropriate and timely long-range planning to allow us to adapt to the rapidly changing landscape. HRS 323D-15 provides for a State Health Services and Facilities Plan, which "shall address the health care needs of the State....The plan shall depict the most economical and efficient system of care commensurate with adequate quality of care, and shall include standards for utilization of health care facilities and major medical equipment. The plan shall provide for the reduction and elimination of underutilized, redundant, or inappropriate health care facilities and health care services".

This plan is critical in leading the State through the rapid changes in the healthcare landscape

I had the honor of participating in the last Health Services and Facilities Plan; however, this most recent plan was completed in 2009, which was 12 years ago. Since that time, there has been significant changes in the landscape as it relates to services, technology, providers and government insurance (Medicaid/Medicare) and commercial insurance, which need to be factored in ensuring “accessibility for all...”. In addition, the preparation of the plan, was time consuming since the responsibility of the preparation of the plan was placed on a voluntary advisory committee.

The proposed amendments provide for the update of this critical plan every five years, as well as define the responsibilities of SHPDA to prepare the plan with approval authority transferred to Statewide Health Care Advisory Council to ensure appropriate resources are available to complete this plan on a timely basis.

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.

(a) The state agency 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 shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. The state agency may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency 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 to the extent practicable every five years.

(b) The state agency 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.

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

SECTION [1]2. Section 323D-12.6, Hawaii Revised Statutes, is amended to read as follows:

"[1]§323D-12.6[1] **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, 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 ~~[2]~~4. Section 323D-47, Hawaii Revised Statutes, is amended to read as follows:

"§323D-47 Request for reconsideration. The state agency may provide by rules adopted in conformity with chapter 91 for a procedure by which any person may, for good cause shown, request in writing a public hearing before a reconsideration committee for purposes of reconsideration of the agency's decision. The reconsideration committee shall consist of the administrator of the state agency and the chairpersons of the statewide council, the review panel, the plan development committee of the statewide council, and the appropriate subarea health planning council. The administrator shall be the chairperson of the

reconsideration committee. A request for a public hearing shall be deemed by the reconsideration committee to have shown good cause, if:

- (1) It presents significant, relevant information not previously considered by the state agency;
- (2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;
- (3) It demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision;
- (4) It provides such other bases for a public hearing as the state agency determines constitutes good causes; or
- (5) The decision of the administrator differs from the recommendation of the statewide council.

To be effective, a request for [~~such~~] a public hearing and a fee of \$ _____ shall be received within ten working days of the state agency decision. A decision of the reconsideration committee following a public hearing under this section shall be considered a decision of the state agency for purposes of section 323D-44."

SECTION [~~3~~]5. 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]6. 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

(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]~~7. 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]~~8. 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]9. 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]10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION [9]11. This Act shall take effect on July 1, 2060.

HB-224-HD-1

Submitted on: 3/21/2021 11:25:05 AM

Testimony for HTH on 3/22/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Speedy Bailey	Testifying for AMR	Comments	No

Comments:

AMR supports this bill in general for strengthening SHPDA. We support that SHPDA special funds be administered by SHPDA. We also support the additional CON fees and fines. W do not support the proposed exemptions from the CON process. Thank you.



March 22, 2021

1:20 p.m.

VIA VIDEOCONFERENCE

**To: Senate Committee on Health
Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair**

**From: Grassroot Institute of Hawaii
Joe Kent, Executive Vice President**

RE: HB224 HD1 — 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 HD1, which would exempt special treatment facilities, psychiatric services and chronic renal dialysis services 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.

While the intent of certificate-of-need laws may be to increase health care quality, research demonstrates that such laws actually decrease both quality and access.

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%.

A further consideration is that by imposing limitations on the construction of facilities intended to address substance abuse and psychiatric issues, certificates of need have the effect of limiting treatment options for Hawaii residents. The lack of alternatives and options has an effect on everything from care for the homeless to an effective criminal justice response for victims of drug abuse.

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



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 Health

Testimony by
Hawaii Government Employees Association

March 22, 2021

H.B. 224, H.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** which as currently drafted exempts psychiatric services, special treatment facilities, and chronic renal dialysis services from the certificate of need requirements and appropriates funds from the health planning development fund.

The State Health Planning and Development Agency (SHPDA) performs an important function in Hawai'i's healthcare industry. It is important that it continues to exist as an attached agency and not as a division or program within the Department of Health. As an attached agency, SHPDA maintains its ability to operate autonomously and unbiased by the Department's programmatic goals, as DOH is a provider of healthcare facilities and services that are regulated by SHPDA. Below please find the proposed amendments to H.B. 224, H.D. 1 that we strongly support:

Special Fund remain with SHPDA: SHPDA should be able to administer its own Special Fund to support its programs to the extent possible. SHPDA performs an important regulatory function and for it to be beholden to another entity that manages its funds could led to unintended conflict of interest situations. We request H.B. 224 be amended to insert language which allows SHPDA to administers its Special Fund.

Oppose Fee for Reconsideration: The proposal to impose a fee on persons questioning and appealing (asking for a reconsideration) of the Agency's decisions is oppressive and overly protective of the Agency. Appealing an Agency decision should be without the burden of a fee.

Support Financial Penalty: We strongly support this bill's proposal to impose a financial penalty on persons who fail to comply with Certificate of Need approvals. Establishing a financial penalty strengthens the program.

Oppose new exemptions: We oppose exempting more services from Certificate of Need. A pandemic is the wrong time to exempt services from this regulatory requirement, especially lifesaving ones like dialysis which are utilized by our members and their families with End Stage Renal Disease statewide. We urge you to delete these proposed new exemptions from this bill.

Committee on Health
March 22, 2021
Page 2

We respectfully urge the Committee to consider and adopt the proposed
aforementioned amendments. Thank you for the opportunity to provide testimony on
H.B. 224, H.D. 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Perreira". The signature is fluid and cursive, with the first name "Randy" and last name "Perreira" clearly distinguishable.

Randy Perreira
Executive Director



March 22, 2021

The Honorable Jarrett Keohokalole, Chair
The Honorable Rosalyn H. Baker, Vice Chair
Senate Committee on Health

Re: HB224 HD1 – Relating to the State Health Planning and Development Agency

Dear Chair Keohokalole, Vice Chair Baker, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of HB 224 HD1, which 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 and believe that the language in this bill regarding the certificate of need (CON) process works to ensure balance based on criteria developed in the interest of the patient and the community.

Additionally, we would like to cite the proposed amendments for HB 224 HD1 by our health system partners Hawaii Pacific Health and the Queen's Health System by which their language looks to improve on SHPDA's systematic ability to further assess and develop the state health services and facility plan.

Thank you for allowing us to comment on HB 224 HD1. Your consideration is appreciated.

Sincerely,

Matthew W. Sasaki
Director, Government Relations



**Testimony to the Senate Committee on Health
Monday, March 22, 2021; 1:20 p.m.
Via Videoconference**

RE: HOUSE BILL NO. 0224, HOUSE DRAFT 1, RELATING TO THE STATE PLANNING AND DEVELOPMENT AGENCY.

Chair Keohokalole, Vice Chair Baker, 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, House Draft 1, RELATING TO THE STATE PLANNING AND DEVELOPMENT AGENCY.

The bill, as received by your Committee, would:

- (1) Replace the State Health Planning and Development Agency (SHPDA) with an unnamed agency as the agency responsible for administering the State Health Planning and Development Special Fund (Special Fund)
- (2) Establish a cap of \$2,000,000 on the Special Fund and direct that all funds in excess of the cap on June 30 of each succeeding year lapse to the General Fund;
- (3) 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;
- (4) Establish an administrative penalty not to exceed an unspecified amount for failure to comply with an approved certificate of need;
- (5) Exempt psychiatric facilities, special treatment facilities, and chronic renal dialysis services from the certificate of need process;
- (6) 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

- (7) 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.

The bill would take effect on July 1, 2060, to facilitate continued discussion on this issue.

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.]

Testimony on House Bill No. 0224, House Draft 1
Monday, March 22, 2021; 1:20 p.m.
Page 3

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 psychiatric facilities, special treatment facilities, and chronic renal dialysis services from the certificate of need process 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.

HB-224-HD-1

Submitted on: 3/19/2021 6:27:39 PM

Testimony for HTH on 3/22/2021 1:20:00 PM

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

Comments:

SHPDA should remain an independent agency attached to the DOH. It's special fund CON funding should be enhanced.

HB-224-HD-1

Submitted on: 3/21/2021 7:24:49 AM

Testimony for HTH on 3/22/2021 1:20:00 PM

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 Certificate of Need. 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.

COMMITTEE ON HEALTH

March 22, 2021
1:20 P.M.
Via Videoconference

**TESTIMONY ON HB 224 HD 1
RELATING TO THE STATE HEALTH PLANNING AND DEVELOPMENT
AGENCY**

By

Patrick Boland

Good afternoon Chair Keohokalole and members of the Health Committee. I am testifying in **opposition to the exemption of chronic renal dialysis services from certificate of need (CON).**

I am Patrick Boland. Twenty years ago I retired from the State Health Planning and Development Agency (SHPDA) after 32 years of service with that Agency and other programs in the State Department of Health. Most of that time I managed the Certificate of Need (CON) program.

Chronic renal dialysis services should not be exempted from CON. This is an important component of the health care system and CON regulation assures that expansion will be in the best interests of the patients and the community, not the provider. The fact that the need for such services is increasing means we will need more stations and perhaps more facilities. It is not an ipso facto demonstration that we need more providers. Additional providers should not enter the system free of CON oversight.

Thank you for the opportunity to submit testimony.

Testimony from
Loma H. Hassell, II, M.D.

HB224, HD1 in the
Senate Committee on Health
March 22, 2021 at 1:20 pm

Chairperson Jarrett Keohokalole, Vice Chairperson Rosalyn Baker, and members of the Senate Committee on Health, my name is Dr. Loma Hassell and I am here to offer **comments and propose amendments to page 9** this legislative House Bill.

From 2008 through 2020, I was a practicing nephrologist on Maui. I dedicated my life to caring for patients with kidney diseases including those with End State Renal Disease (ESRD) who were on dialysis. I am presently unaffiliated with any provider of dialysis services and I offer my impartial opinion to this Senate Committee.

Up to 20% of the Medicare budget is spent on kidney disease. In 2019, the former federal Administration launched the Advancing American Kidney Health Initiative that directed the US Department of Health and Human Services to transform how kidney disease is prevented, diagnosed, and treated within the next decade¹ The federal CMS is focused on moving patients from in-center dialysis to home dialysis and kidney transplantation and is incentivizing reimbursement for End Stage Renal Disease in this direction. Home dialysis and peritoneal dialysis can be done more frequently and for shorter periods of time. The equipment and supplies needed for home and peritoneal dialysis are quite different than in-center dialysis.

With the federal shift in focus to home and peritoneal dialysis it becomes crucial to maintain and strengthen laws that regulate in-center dialysis. Federal's shifts in reimbursement that favor home based modalities of dialysis will make it crucial for the state to ensure that any provider of in-center dialysis meets certificate of need requirements for maintaining services over the long term. If the state fails to do so, then the healthcare system will be at risk of attracting providers who may be unable to sustain quality care, who will be unable to care for the underinsured, and who will be unable locate in-center dialysis services in financially unattractive communities.

Please amend this bill by deleting the proposed exemption for “chronic renal dialysis services as defined in section 11-186-3” of the Hawaii Administrative Rules. This passage is located on page 9 of HB224, HD1.

Thank you.

¹ National Kidney Foundation. (n.d.) The Advancing American Kidney Health Initiative. Retrieved March 10, 2021, from <https://www.kidney.org/advocacy/advancing-american-kidney-health-initiative>.

HB-224-HD-1

Submitted on: 3/21/2021 12:43:27 PM

Testimony for HTH on 3/22/2021 1:20:00 PM

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

Comments:

This testimony is in support of HB224 HD1.

My name is Emelyn S. Kim and I have a consulting business, Elder Care 808 that provides counseling and assistance to caregivers of older adults. Also, I am the Chair of the Health Planning Council, West Oahu Subarea (WOSAC). As a volunteer, I believe citizen involvement in government is 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 DOH.

I support this bill because it proposes that State Health Planning and Development Agency (SHPDA) be allowed to use special funds for personnel expenditures and increases SHPDA's special funds by adding fees and fines for violations of the CON requirements. Also, SHPDA should be allowed to continue to administer the special fund since it is the agency that uses it.

Respectfully submitted,

Emelyn S. Kim



LATE

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

COMMITTEE ON HEALTH :

- Sen. Jarrett Keohokalole, Chair; Sen. Rosalyn Baker, Vice Chair
- Tuesday, Feb. 23, 2021: 2:00 pm: Videoconference

Hawaii Substance Abuse Coalition Comments HB224 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 ensures competency and prevents unethical practices.

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

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.

LATE



HB224, HD1 Relating to the State Health Planning and Development Agency

Senate Committee on Health
Hearing scheduled for
March 22, 2021 at 1:20 pm
Via videoconference on

Good afternoon Chair Jarrett Keohokalole, Vice Chair Rosalyn Baker, and members of the Senate Committee on Health. 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 testimony.

We are testifying to **AMEND HB224, HD1 – by deleting lines 5 & 6 on page 9.**

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. St. Francis has had no reason to regret that choice" (written testimony of Jerry Correa, December 11, 2009). In 2011 Liberty Dialysis was acquired by Fresenius Medical Care North America. Fresenius is a world leader in dialysis care. We recently unveiled our KidneyCare365 program; a personalized holistic support program for patients. Fresenius has been included on the Forbes List of best employers.

In an earlier version of this bill, it also proposed to exempt hospice providers from the Certificate of Need standards. The Healthcare Association of Hawaii rightly stated that: "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...there are many operators...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" (Healthcare Association of Hawaii, testimony dated 2/2/2021, to the House Committee

on Health, Human Services, and Homelessness). The proposed exemption for hospice was thereafter removed from the bill. We are asking for the same understanding and consideration for dialysis services.

Dialysis is a life saving service. Sadly, Hawaii's continuing high incidence rate of End Stage Renal Disease (ESRD, kidney failure) makes it an attractive "market" for dialysis providers. While it may be that the current incidence rate is high, that does not mean we should open the flood gates to any and all providers regardless of their ability to meet regulatory standards.

There are several outpatient dialysis companies already in Hawaii. We are all for-profit companies. We all have gone through the Certificate of Need review process to ensure that we meet its regulatory standards in serving Hawaii's people. Like any regulatory process, it can be challenging perhaps even annoying at times, but we believe that all dialysis providers should all prove that we meet Hawaii's regulatory standards to provide dialysis care for Hawaii's people. Meeting the Certificate of Need regulatory standards is of extreme importance in healthcare.

Thank you for this opportunity to provide testimony.



To: The Honorable Jarrett Keohokalole, Chair
The Honorable Rosalyn H. Baker, Vice Chair
Members, Senate Committee on Health

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: March 22, 2021

Re: Support with amendments of HB224, HD1: 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, relating to the State Health Planning and Development Agency (SHPDA). This bill would exempt certain services from the certificate of need (CON) requirements under §323D-54 HRS and authorizes fines for persons who do not comply with an approved certificate of need.

Queen's supports and concurs with the proposed amendments offered by Hawai'i Pacific Health and other stakeholders (including the Healthcare Association of Hawai'i), 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. Currently, updates to the health services and facilities plan are voluntary. 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.

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