



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony in SUPPORT of SCR176
REQUESTING THE DEPARTMENT OF HEALTH TO EXPLORE WAYS IT CAN
EXERCISE OVERSIGHT OVER COMMUNITY HEALTH CENTERS AND OTHER
MEDICAL SERVICE ENTITIES WHEN A DANGER TO THE COMMUNITY'S
HEALTH EXISTS.

SENATOR JARRETT KEOHOKALO, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: March 29, 2021

Room Number: N/A

1 **Department Testimony:** The Department of Health (DOH) supports the intent of this
2 resolution, which is to establish a community dialogue on quality oversight of critical health care
3 infrastructure. Presently, health care entities are regulated by several state agencies by law or
4 contract and a conversation to streamline but enhance oversight is appropriate. However, the
5 department expresses serious concerns regarding the potential for DOH to take control of a
6 medical service entity if there is a threat to the health and safety of a community, which shifts
7 burden and risk to the State and which may have constitutional implications. Nevertheless, the
8 overall goals of this resolution merit discussion.

9 Thank you for the opportunity to testify.

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

11

LATE



**Testimony to the Senate Committee on Health
Monday, March 29, 2021 1:20 p.m.
Via Videoconference**

**RE: SENATE CONCURRENT RESOLUTION NO. 176/SENATE RESOLUTION NO. 141,
REQUESTING THE DEPARTMENT OF HEALTH TO EXPLORE WAYS IT CAN EXERCISE
OVERSIGHT OVER COMMUNITY HEALTH CENTERS AND OTHER MEDICAL SERVICE
ENTITIES WHEN A DANGER OF THE COMMUNITY'S HEALTH EXISTS.**

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

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **COMMENTS** on Senate Concurrent Resolution No. 176 and Senate Resolution No. 141.

The measure, as received by your Committee, would request the Department of Health to study options for it to provide better oversight over community health centers, dental clinics and other entities, and provide to the 2022 Legislature, among other things:

- (1) A recommendation regarding additional authority that will enable the Department of Health to adequately oversee community health centers, dental clinics, and other medical service entities;
- (2) An overview of other jurisdictions that oversee these types of medical service entities, and how those jurisdictions provide oversight;
- (3) A recommendation regarding whether the Governor, the Department of Health, or another entity should have the authority to order the closure of a medical service entity, or take control of a medical service entity, if there is a threat to the health and safety of the community or if a determination is made that the medical service entity is not providing proper medical services; and
- (4) Recommendations for additional staffing and support for the Department of Health to adequately oversee medical service entities.

Testimony on Senate Concurrent Resolution No. 176/Senate Resolution No. 141
Monday, March 29, 2021; 1:20 p.m.
Page 2

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.

We are Kalihi-Palama Health Center, Kokua Kalihi Valley Comprehensive Family Services, Koolauloa Health Center, Wahiawa Health, Waianae Coast Comprehensive Health Center, Waikiki Health, Waimanalo Health Center, Bay Clinic, Hamakua Health Center, West Hawaii Community Health Center, Lanai Community Health Center, Hana Health, Malama I Ke Ola Health Center, Molokai Community Health Center, and Kauai Community Health Center.

At the outset, the HPCA notes that these resolutions are substantively similar to resolutions introduced during the Regular Session of 2020 -- House Concurrent Resolution No. 108, and House Resolution No. 89. These measures were scheduled to be heard by the House Committee on Health on March 17, 2020. However, on that day, the Legislature suspended all operations due to the COVID-19 pandemic. When the Legislature reconvened, these resolutions were never rescheduled for hearing. Because the hearing on March 17, 2020 was cancelled, all testimony submitted on those measures were not received as part of the official record on those measures. To set the record straight, we have attached the testimony we submitted on House Concurrent Resolution No. 108 and House Resolution No. 89, to help provide context to our comments today on Senate Concurrent Resolution No. 176 and Senate Resolution No. 141.

I. IMPACTS OF COVID-19 ON FQHCs AND HAWAII'S SOCIAL SAFETY NET

When COVID-19 hit our islands in February 2020, county governments implemented emergency powers to enforce social distancing throughout communities. These steps were followed by the Governor issuing Emergency Proclamations ceasing all businesses and operations not identified as essential.

As an unintended and unexpected result from these actions, patients stopped going to FQHCs except for when they were sick. Because FQHCs are structured to provide primary care and the proactive management of chronic diseases and conditions, FQHCs saw a significant decrease in the amount of patients who normally frequent these other services, such as optometry, and dentistry, to name a few.

Because the margins for FQHCs were (and still are) so tight, FQHCs in Hawaii began to lay off not only workers who provided those other services, but more importantly, primary care providers. The situation got so bad that it was unclear how long many of Hawaii's FQHCs could sustain this diminishment of revenue.

Because of this, on March 26, 2020, HPCA Board Chair Cheryl Vasconcellos, and HPCA Chief Executive Officer Robert Hirokawa sent a letter to Governor Ige, in which both Senate President Ron Kouchi and House Speaker Scott Saiki were copied, that pleaded for assistance from the State to keep Hawaii's fifteen FQHCs operational during the pandemic. Among other things, the HPCA requested the State's assistance in payment adjustments, the timely compliance with supplemental payments, and the provision of telehealth services, including reimbursement for services provided via standard telephone contact.

In recognition that the failure of a single FQHC, let alone all of them, would seriously and irreparably decimate Hawaii's social safety net, the Departments of Human Services and Health provided a rapid infusion of resources to keep the FQHCs afloat.

As the months progressed and some of the social distancing restrictions were relaxed, patients began to return to FQHCs for primary care but not nearly to what was experienced before COVID-19 hit. The alternative payment "patch" and the provision of reimbursement for telehealth services has helped, but the margins for most if not all FQHCs are still razor thin.

Despite this, FQHCs have stepped up to help during the pandemic. FQHCs have instituted vaccination programs with the State and counties, fronting up the costs for administration since the federal government only provides the vaccine, because this is desperately needed by our patients and the community. We've even put on food drives to help the thousands of workers laid off during this unprecedented economic crisis.

II. ACTIONS OF HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND HOMELESSNESS TOWARD FQHCs DURING THE 2021 REGULAR SESSION

Earlier this session, this Committee heard House Bill No. 1297, a measure that would have, among other things, repealed the Community Health Center Special Fund, and transferred all unencumbered balances on July 1, 2021, to the General Fund. As we noted in our testimony on that measure, the repeal of the CHC Special Fund would have been devastating to not only FQHCs, but to entire communities in rural and underprivileged communities throughout the State.

Despite there being no supportive testimony for that measure (See, House Standing Committee Report No. 345 on House Bill No. 1297, House Draft 1, dated February 17, 2021), this Committee reported out the measure stating that the repeal of the Community Health Centers Special Fund *"will meaningfully assist the State in carrying out its core functions and assist in the State's recovery from the economic harm caused by the COVID-19 pandemic."*

Thankfully, the House Committee on Finance (FIN Committee) did not agree with that assessment. Noting that the repeal of the Community Health Center Special Fund would lead to the elimination of the emergency room services at Waianae Coast Community Health Center at night, the partial closure of Hana Health's 24-hour Urgent Care facility, and reduced operations at all fifteen FQHCs throughout the State, the FIN Committee deleted all provisions that would have repealed the Community Health Center Special Fund.

III. HPCA'S POSITION ON HOUSE CONCURRENT RESOLUTION NO. 148 AND HOUSE RESOLUTION NO. 124

As health care professionals, FQHCs are duty-bound to protect and preserve the health and welfare of our patients. Because of this, we welcome the establishment of reasonable and necessary laws that strengthen the protections provided to our citizenry. However, when the lawmaking process is utilized to harass, besmirch, or intimidate good people from doing their jobs of helping their fellow citizens, one has to question why this is happening.

No one can speak to the intentions behind these measures except for the introducer. The HPCA can only speak to the black letter of the measures at hand. We question the validity of the statements made in these resolutions, as we did in the resolutions that were introduced last year. However, we also note that in a public forum sanctioned by the Hawaii House of Representatives last year, a member of this body in that member's official capacity as a State Representative tried to intimidate Board members and the Chief Executive Officer of Molokai Health Center to immediately resign and allow the Representative's campaign supporter take control of the facility. Board members were also confronted individually by the Representative as reported by Board members. To their credit, the Board and the Chief Executive Officer have stood firm and continue to do the difficult work of operating the only health center on that island.

As stated in our testimony last year, after an extensive investigation by the Department of Health, the Department found no wrongdoing on the part of Molokai Health and that at no time was the health, welfare or safety of patients jeopardized.

IV. FEDERAL PREEMPTION

FQHCs are established and regulated pursuant to Section 330 of the Public Health Service Act (42 U.S.C. 254(b), as amended, 42 C.F.R. Part 51C and 42 C.F.R. Part 56 for Community and Migrant Health Centers, respectively, and 45 C.F.R. Part 75). Because of this, it is questionable whether the State would be preempted from providing the State Department of Health with the oversight authority proposed under this Resolution. **At a minimum, the Attorney General should be consulted to determine whether federal law would preempt the State from proceeding in this manner.**

IV. CONCLUDING REMARKS

The HPCA shares these comments with you because our fifteen FQHC members have nothing to hide. We are steadfastly committed to improving the health care outcomes of our 160,000 patients in rural and underprivileged communities throughout the State. Especially during this difficult time of the COVID-19 pandemic -- where the State of Hawaii is experiencing the highest unemployment rate in our Nation, families are struggling to put food on the table and keep a roof over their heads -- our fifteen FQHCs are doing all that we can to help these people in need.

We cannot control the actions of this body. If in your wisdom, you truly believe that FQHCs need more oversight or more restrictions on our operations, then that is your prerogative. But please note that additional regulation will undoubtedly make it that much more difficult for us to do our jobs -- whether it be to provide COVID contact tracing or vaccinations in very isolated communities, or whether it be providing primary care to COFA beneficiaries in Kalihi or the homeless in Waikiki or Wahiawa, or emergency care on Leeward Oahu or Hana, Maui. Your actions will definitely have impacts.

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



**Testimony to the House Committee on Health
Tuesday, March 17, 2020; 8:30 a.m.
State Capitol, Conference Room 329**

**RE: HOUSE CONCURRENT RESOLUTION NO. 108/HOUSE RESOLUTION NO. 089,
REQUESTING THE DEPARTMENT OF HEALTH TO EXPLORE WAYS IT CAN EXERCISE
OVERSIGHT OVER COMMUNITY HEALTH CENTERS WHEN A DANGER TO THE
COMMUNITY'S HEALTH EXISTS.**

Chair Mizuno, Vice Chair Kobayashi, and Members of the Joint 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 **STRONGLY OPPOSES** House Concurrent Resolution No. 108, and House Resolution No. 089, REQUESTING THE DEPARTMENT OF HEALTH TO EXPLORE WAYS IT CAN EXERCISE OVERSIGHT OVER COMMUNITY HEALTH CENTERS WHEN A DANGER TO THE COMMUNITY'S HEALTH EXISTS.

The resolutions, as received by your Committee, would request the Department of Health to conduct a study that explores options for it to provide better oversight over community health centers, dental clinics, and other medical service entities, and submit a report of findings and recommendations, including proposed legislation, to the 2021 Legislature.

At the outset, 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.

PART I. THESE RESOLUTIONS ARE NOT NECESSARY.

The HPCA does not believe these resolutions are necessary because FQHCs are adequately regulated by both the federal government and the State of Hawaii.

The United States Department of Health and Human Services (HHS) requires the Health Resources and Services Administration (HRSA) to *"manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements, including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination."*

Consistent with applicable laws and HRSA's program oversight responsibilities, health centers are assessed for compliance with these requirements and are provided an opportunity to remedy areas of non-compliance whenever reasonably possible.

Immediate enforcement action may be taken against health centers in certain situations, including, among others:

- Findings that a health center, in responding to the terms or conditions of award/designation, misrepresented the actions it took to correct areas of non-compliance. For example, a site visit reveals that HRSA lifted a Progressive Action condition based on false or misrepresented information submitted by the health center;
- Documented public health or welfare concerns. Examples may include threats to health center patient safety, violations of state scope of practice regulations or guidelines, inappropriate or illegal prescribing practices, lack of appropriate infection control procedures, and occupational or environmental hazards; or
- Failure of the health center organization to demonstrate operational capacity to continue or maintain its health center service delivery program. For example, a health center has ceased operations and is no longer providing primary care services or is providing only minimal services.

In addition to these requirements, FQHCS are also regulated by the State of Hawaii in accordance with Title 19, Hawaii Revised Statutes (HRS), generally, and Chapters 321, and 453, HRS, specifically. These requirements specify the manner in which services at FQHCs may be provided to ensure that the public's health and welfare are preserved.

II. THESE RESOLUTIONS UNFAIRLY AND INACCURATELY DISPARAGE FQHCS AND UNDERMINE THE PUBLIC'S CONFIDENCE IN THE SOCIAL SAFETY NET.

We currently live in a very different world than what we had just a few weeks ago. The Coronavirus Pandemic poses the greatest public health threat to our State in decades. As the true social safety net, FQHCs are preparing to help the sick should outbreaks occur. This is a commitment that the HPCA and our members take very seriously.

The House of Representatives has tried to reassure the public that its institutions can meet this challenge head-on. Speaker Saiki himself just five days ago convened an informational briefing with business leaders from across the State on this crisis. A major point that was stressed was the need to boost the public's confidence in our businesses, industries, and institutions. FQHCs are important institutions that will play a critical role in tending to the sick.

Testimony on House Concurrent Resolution No. 108/House Resolution No. 089

Tuesday, March 17, 2020; 8:30 a.m.

Page 3

The HPCA strongly believes that these resolutions, as presently drafted, greatly undermine the public's confidence in FQHCs at a time when our services are desperately needed. We also question whether these resolutions were adequately fact-checked before their introduction.

Regarding Molokai Community Health Center (MCHC), yes, there was a partial shut down for a four-day period that precipitated investigations by both HRSA and the DOH. Both found no wrong-doing on MCHC's part.

At no time was the public's health and welfare jeopardized during this incident. In fact, Molokai General Hospital, which was in service during that time, was available to any and all who needed emergency medical services. To say that "*the closure of the clinic put the health and safety of Molokai residents, who were unable to see a doctor or obtain crucial medication, at risk*", is hyperbole at its worst.

To say that ". . . *the health center refused to cooperate with the investigation. . .*" is blatantly false, as the staff from HRSA and DOH can attest.

And to compare the four-day partial closure of MCHC to a high-profile case of malpractice by a non-FQHC dentist in private practice that resulted in the death of a child is grossly misleading and unfair.

The dedicated staff of FQHCs are currently preparing for the possibility of entire communities becoming incapacitated from this lethal new disease. They are gearing up knowing there is a strong possibility that they themselves might get sick and possibly even die. They, like all of us, are worried about what may come and whether they will be able to cope with uncertain outcomes.

For this reason, the HPCA takes umbrage with these resolutions and urge this Committee not to exacerbate an already tenuous situation. The public needs reassurances from their elected leaders that the social safety net is secure. For our part, FQHCs will continue to serve the needs of our People.

III. THESE RESOLUTIONS WILL REQUIRE THE DEPARTMENT OF HEALTH TO INCUR COSTS AT A TIME WHEN LIMITED STATE RESOURCES ARE DIMINISHING.

If after reading Chapters 321 and 453, HRS, this Committee still believes there is a need to approve these resolutions, please keep in mind that the DOH will need to expend unbudgeted resources to perform this study. Given the Council on Revenues recent downgraded projections on expected tax collections for the remainder of this fiscal year and beyond, as well as the growing demands that the Coronavirus Pandemic is expected to place on the DOH specifically, is it prudent to request this unnecessary study at such a critical time?

If you still believe that a study is needed and that appropriations should be given toward this task, shouldn't the DOH also be asked to determine how much additional State funds should be allocated to support FQHCs in light of the essential role we will play in addressing the Coronavirus Crisis above and beyond what we already provide for the basic health care needs of our citizens? **Keep in mind that our fifteen FQHCs provide primary care services to over 160,000 patients in some of the most remote areas and to some of the most underserved populations throughout the State.**

For the foregoing reasons, we respectfully urge this Committee to file these resolutions.

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.