

MAR 06 2020

SENATE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
ON THE FEASIBILITY OF ENACTING STATUTORY AUTHORITY FOR
COLLECTIVE NEGOTIATION BETWEEN PHYSICIANS AND HEALTH CARE
INSURERS IN HAWAII TO RESTRAIN OR BALANCE THE MONOPSONISTIC
MARKET POWER OF HEALTHCARE INSURERS OVER INDEPENDENT
PHYSICIANS.

1 WHEREAS, the health care system in Hawaii is in crisis
2 because there is a severe shortage of physicians in the State;
3 and
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5 WHEREAS, the gap between supply and demand for doctors in
6 Hawaii has grown by sixty-five percent since 2010, according to
7 the recent Physician Workforce Assessment Study conducted in
8 2020 by the Area Health Education Center of Hawaii at the
9 University of Hawaii; and
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11 WHEREAS, the biannual Physician Workforce Assessment Study
12 also reported an estimated shortage of eight hundred twenty
13 physicians with the neighbor islands being hardest hit; and
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15 WHEREAS, there is a physician shortfall of sixteen percent
16 on Oahu, compared with a forty-four percent shortfall for Hawaii
17 island, thirty-six percent for Maui County, and thirty-two
18 percent for Kauai; and
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20 WHEREAS, the physician shortage is due to the State's
21 increasing inability to recruit and retain physicians, and poses
22 a serious problem for Hawaii residents because it prevents
23 timely and appropriate access to life-saving healthcare; and
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25 WHEREAS, a primary barrier to recruiting and retaining
26 physicians is the fact that physician compensation in Hawaii is
27 relatively low and not competitive nationally, as evidenced by
28 Hawaii's inability to attract qualified out-of-state physicians
29 or to retain graduates from the John A. Burns School of Medicine
30 in Honolulu; and
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1 WHEREAS, a major factor in the relatively low compensation
2 for Hawaii's physicians is the State's highly concentrated
3 health insurance market; and
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5 WHEREAS, an examination of the Hawaii insurance market by
6 the American Medical Association (AMA) entitled "Competition in
7 Health Insurance: A Comprehensive Study of U.S. Markets"
8 (2019), reveals a highly concentrated total insurance market,
9 with a single insurer controlling sixty-seven percent of the
10 total market, and its second largest insurer controlling twenty-
11 one percent; and
12

13 WHEREAS, the AMA ranked Hawaii to be the third least
14 competitive health insurance market in the nation, behind only
15 Alabama and Louisiana; and
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17 WHEREAS, highly concentrated health insurance markets are
18 said to cause disparate, imbalanced, and monopsonistic market
19 power between insurers and the independent physicians providing
20 health care services; and
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22 WHEREAS, in addition to market concentration, the
23 relatively weak bargaining power of physicians compared to
24 health insurers is also a result of federal antitrust law, which
25 generally bars physicians from collectively negotiating their
26 contracts with insurers, and contributes to the monopsonistic
27 market favoring insurers; and
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29 WHEREAS, independent physicians contend that such monopsony
30 power enables health plans to approach contract negotiations
31 with a "take-it-or-leave-it" attitude that puts physicians in
32 the untenable position of accepting inappropriate and "adhesive"
33 contract terms; and
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35 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the
36 United States Supreme Court created an exemption to federal
37 antitrust laws referred to as the "State Action Doctrine" or the
38 "Parker Immunity Doctrine", and authorized state actions that
39 could foreseeably cause anti-competitive effects when taken
40 pursuant to a clearly expressed and legislatively adopted state
41 policy; and
42



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1 WHEREAS, in 2009, the Alaska Legislature found that
2 permitting physicians to engage in collective negotiation of
3 contracts with health benefit plans to be appropriate and
4 necessary to benefit competition in the health care market, and
5 adopted a statute consistent with the Parker Immunity Doctrine
6 to authorize collective negotiations between competing
7 physicians and health benefit plans; and
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9 WHEREAS, it is appropriate and necessary for the State of
10 Hawaii to consider authorizing physicians to collectively
11 negotiate their contracts with health benefit plans to address
12 the physician shortage crisis in Hawaii; now, therefore,
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14 BE IT RESOLVED by the Senate of the Thirtieth Legislature
15 of the State of Hawaii, Regular Session of 2020, that the
16 Legislative Reference Bureau is requested to conduct a study of
17 the Alaska Legislation, the Parker Immunity Doctrine and its
18 current legal status, the extent of any statutory or policy
19 implementation by other states, and the feasibility of enacting
20 a statutory authority compliant with the Parker Immunity
21 Doctrine to allow collective negotiation between physicians and
22 health care insurers in Hawaii; and
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24 BE IT FURTHER RESOLVED that the Legislative Reference
25 Bureau is requested to submit a report of its findings and
26 conclusions, including any recommended legislation, to the
27 Legislature no later than twenty days prior to the convening of
28 the Regular Session of 2021; and
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30 BE IT FURTHER RESOLVED that certified copies of this
31 Resolution be transmitted to the President of the Senate,
32 Speaker of the House of Representatives, and Director of the
33 Legislative Reference Bureau.
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OFFERED BY: 

