
SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
RELATING TO A STATE'S AUTHORITY TO ALLOW COLLECTIVE
NEGOTIATION BETWEEN PHYSICIANS AND HEALTH CARE INSURERS.

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, according to the 2020 Physician Workforce
6 Assessment Project conducted by the Area Health Education Center
7 at the University of Hawaii at Manoa John A. Burns School of
8 Medicine, the gap between the supply and demand for physicians
9 in Hawaii continues to increase and has been exacerbated by the
10 coronavirus disease 2019 (COVID-19) pandemic; and
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12 WHEREAS, the Physician Workforce Assessment Project also
13 reported an estimated shortage of one thousand eight physicians,
14 with the neighbor islands being hardest hit; and
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16 WHEREAS, the physician shortage in each county in 2020 was
17 twenty percent on Oahu, compared with fifty-three percent for
18 Hawaii island, forty-two percent for Maui County, and thirty-
19 three percent for Kauai; and
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21 WHEREAS, the physician shortage is due to the State's
22 increasing inability to recruit and retain physicians, and poses
23 a serious problem for Hawaii residents because it prevents
24 timely and appropriate access to life-saving health care; and
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26 WHEREAS, a primary barrier to recruiting and retaining
27 physicians is because physician compensation in Hawaii is
28 relatively low and not competitive nationally, as evidenced by
29 Hawaii's inability to attract qualified out-of-state physicians
30 or to retain graduates from the John A. Burns School of Medicine
31 in Honolulu; and



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2 WHEREAS, a major factor in the relatively low compensation
3 for Hawaii's physicians is the State's highly concentrated
4 health insurance market; and
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6 WHEREAS, a 2019 examination of the Hawaii insurance market
7 by the American Medical Association entitled "Competition in
8 Health Insurance: A Comprehensive Study of U.S. Markets",
9 revealed a highly concentrated total insurance market in Hawaii,
10 with a single insurer controlling sixty-seven percent of the
11 total market, and its second largest insurer controlling twenty-
12 one percent; and
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14 WHEREAS, the American Medical Association ranked Hawaii to
15 be the third least competitive health insurance market in the
16 nation, behind Alabama and Louisiana; and
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18 WHEREAS, highly concentrated health insurance markets are
19 said to cause disparate, imbalanced, and monopsonistic market
20 power between insurers and the independent physicians providing
21 health care services; and
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23 WHEREAS, in addition to market concentration, the
24 relatively weak bargaining power of physicians compared to
25 health insurers is also a result of federal antitrust law, which
26 generally bars physicians from collectively negotiating their
27 contracts with insurers and contributes to the monopsonistic
28 market favoring insurers; and
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30 WHEREAS, independent physicians contend that such monopsony
31 power enables health plans to approach contract negotiations
32 with a "take-it-or-leave-it" attitude that puts physicians in
33 the untenable position of accepting inappropriate and adhesive
34 contract terms; and
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36 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the
37 United States Supreme Court created an exemption to federal
38 antitrust laws referred to as state action immunity or the
39 Parker immunity doctrine, which authorized state actions that
40 could foreseeably cause anti-competitive effects when taken
41 pursuant to a clearly expressed and legislatively adopted state
42 policy; and



1
2 WHEREAS, in 2009, the Alaska Legislature found that
3 permitting physicians to engage in collective negotiation of
4 contracts with health benefit plans is appropriate and necessary
5 to benefit competition in the health care market, and enacted a
6 law consistent with the Parker immunity doctrine to authorize
7 collective negotiations between competing physicians and health
8 benefit plans; and
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10 WHEREAS, it is appropriate and necessary for Hawaii to
11 consider authorizing physicians to collectively negotiate their
12 contracts with health benefit plans to address the physician
13 shortage crisis in the State; now, therefore,
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15 BE IT RESOLVED by the Senate of the Thirty-first
16 Legislature of the State of Hawaii, Regular Session of 2021, the
17 House of Representatives concurring, that the Legislative
18 Reference Bureau is requested to conduct a study relating to a
19 state's authority to allow collective negotiation between
20 physicians and health care insurers; and
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22 BE IT FURTHER RESOLVED that the study is requested to
23 examine the Alaska law authorizing collective negotiation by
24 physicians, the Parker immunity doctrine and its current legal
25 status, and the extent of any statutory or policy implementation
26 by other states relating to collective negotiation by
27 physicians; and
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29 BE IT FURTHER RESOLVED that the Legislative Reference
30 Bureau is requested to submit a report of its findings and
31 recommendations to the Legislature no later than twenty days
32 prior to the convening of the Regular Session of 2022; and
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34 BE IT FURTHER RESOLVED that a certified copy of this
35 Concurrent Resolution be transmitted to the Director of the
36 Legislative Reference Bureau.

