



**STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY**  
DEPARTMENT OF HEALTH - KA 'OIHANA OLAKINO

**JOSH GREEN, M.D.**  
GOVERNOR OF HAWAII  
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII

**KENNETH S. FINK, MD, MGA, MPH**  
DIRECTOR OF HEALTH  
KA LUNA HO'ŌKELE

**John C. (Jack) Lewin, M.D.**  
ADMINISTRATOR

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1177 Alakea St., #402, Honolulu, HI 96813 Phone: 587-0788 Fax: 587-0783 www.shpda.org

**Senate Committee on Health and Human Services and  
Senate Committee on Commerce and Consumer Protection**

**S.B. 2123 Relating to Health**

**Testimony of John C. (Jack) Lewin, M.D.  
SHPDA Administrator**

**Wednesday, February 7, 2024  
1:00 p.m.**

1 **Agency's Position: OPPOSE**

2 **Fiscal Implications: None**

3 **Purpose and Justification:** The State Health Planning and Development Agency (SHPDA)  
4 strongly opposes the repeal of the State's Certificate of Need (CON) program. The CON  
5 system originated as a federal program funded in all states in the 1970s. When federal funding  
6 ended, some states dropped out. However, 35 states and the District of Columbia continue to  
7 fund the CON process and still believe it has value as a planning tool in controlling costs by  
8 preventing unnecessary and wasteful investments in health care facilities and equipment.  
9 When done effectively, CON determinations must be based on current medical science and  
10 practice, current utilization and other sources of data, and, very importantly, on public  
11 comment by the affected community health sector providers and citizens around the  
12 appropriateness and need of the proposed investments.

13 Empirical studies have shown both substantial economic and service quality benefit from  
14 CON regulation and related planning. In three separate studies conducted by the three major

1 U.S. automakers, each reported lower per-person health costs in states with CON programs  
2 than in states without such programs, with costs in some non-CON states being nearly triple  
3 what they were in states having a CON program. The three automakers also conducted a  
4 separate CT and MRI cost analysis comparison and that found that the cost per covered life for  
5 CT scans was 67 percent higher in states without CON due to higher utilization and cost per  
6 scan; the cost per covered life for MRI was 20 percent higher in non-CON states.

7 Similarly, the largest study of CON regulation on quality and treatment outcomes  
8 published in The Journal of the American Medical Association found that open heart surgery  
9 mortality rates were 21% lower in states with CON regulation than in states without.

10 Of course, states manage the CON process with varying effectiveness and timeliness.  
11 We believe Hawai'i's program is one of the best of the states. We have statewide advisory  
12 councils that effectively reflect the attitudes of the people and health care professionals affected  
13 by CON applications on their island or region. Basically, three members of our staff, among  
14 other responsibilities, are largely responsible for the technical, public testimony, and data  
15 analytics and statistics aspects of our program, which produces CON results expeditiously and  
16 efficiently.

17 We are aware that the Federal Trade Commission (FTC) published a paper during the  
18 George W. Bush Administration in 2004<sup>1</sup> suggesting ending CON programs in the US as anti-  
19 competitive. This report is always cited when "kill the CON" measures arise. But we note that in  
20 response to this paper the American Health Planning Association (AHPA) published a strong  
21 rebuttal in 2005<sup>2</sup>, calling the FTC report a "largely political treatise," and concluding that the CON  
22 is "a useful market balancing tool, and that under current and expected health system market

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<sup>1</sup> FTC-DOJ joint report: Improving Healthcare: A Dose of Competition. July 23, 2004

<sup>2</sup> Federal Trade Commission and Certificate of Need: an APHA Critique: American Health Planning Association. January 2005

1 conditions, community-based planning and CON regulation are useful in promoting  
2 competition”.<sup>3</sup>

3 Most importantly, for the State of Hawaii, the CON program serves as a regulatory  
4 framework to prevent for-profit investors from entering the health care marketplace with the sole  
5 purpose of realizing the revenue from the lucrative service lines, such as cardiology, oncology  
6 and orthopedics when not in short supply, to the detriment of Hawaii’s public safety-net  
7 hospitals, which rely on the revenue from these service lines to subsidize all the necessary, but  
8 unprofitable, services to their communities. The direct results would be reduced access for the  
9 underserved population and further significant state subsidies to support these hospitals.

10 We acknowledge the CON process managed by SHPDA is not by itself a sufficient cost-  
11 containment strategy for keeping all health care costs from rising too rapidly to protect  
12 affordability. More is needed. But the CON contribution is useful, valuable, and provides  
13 important public notice.

14 Thank you for the opportunity to testify.

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<sup>3</sup> FTC and CON: An APHA Critique. American Health Planning Association. January 2005. Pg 14.

Feb. 7, 2024, 1 p.m.  
Hawaii State Capitol  
Conference Room 225 and Videoconference

**To: Senate Committee on Health and Human Services**

**Sen. Joy A. San Buenaventura, Chair**

**Sen. Henry J.C. Aquino, Vice-Chair**

**Senate Committee on Commerce and Consumer Protection**

**Sen. Jarrett Keohokalole, Chair**

**Sen. Carol Fukunaga, Vice-Chair**

**From: Grassroot Institute of Hawaii**

**Ted Kefalas, Director of Strategic Campaigns**

TESTIMONY IN SUPPORT OF SB2123 — RELATING TO HEALTH

Aloha Chairs, Vice-Chairs and Committee Members,

The Grassroot Institute of Hawaii would like to offer its support for [SB2123](#), which would repeal the state's certificate-of-need program.

If enacted, this bill would comprise an important step forward in increasing healthcare affordability and accessibility in Hawaii. Recent studies suggest that CON laws have the counterproductive effect of limiting healthcare quality and access, especially for rural areas and vulnerable populations.

Consider that:

- States with certificate-of-need laws have fewer hospitals, substance treatment facilities, psychiatric hospitals, ambulatory surgical centers, dialysis clinics, nursing home beds, open heart surgery programs and hospice care facilities.<sup>1</sup>

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<sup>1</sup> Mitchell, Matthew D. "[West Virginia's Certificate of Need Program: Lessons from Research.](#)" Mercatus Center at George Mason University, Sept. 22, 2021.

- CON regulations tend to lead to fewer hospital beds, decreased access to medical imaging technology and longer wait times.<sup>2</sup>
- CON regulations are linked to fewer rural hospitals and alternatives. Residents of CON states have to travel farther for care and are more likely to leave their states for care.<sup>3</sup>

Defenders of CON laws claim that they are needed to constrain high healthcare costs and guarantee access to higher-quality care. However, that is not supported by the research, which demonstrates that such laws are associated with higher per-person healthcare costs and higher death rates from treatable complications following surgery.<sup>4</sup>

According to a 2020 [study](#) from the Mercatus Center, Hawaii has the highest number of certificate-of-need restrictions in the country.<sup>5</sup> The result of those restrictions is to make healthcare 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 to those without, the Mercatus Center determined that CON laws increase annual per capita healthcare spending in Hawaii by \$219 and reduce the number of healthcare facilities in the state by about 14%.<sup>6</sup>

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%.<sup>7</sup>

By imposing limitations on the construction of healthcare facilities, 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 mental health.

Since 2006, Hawaii officials have denied<sup>8</sup> more than two dozen certificate-of-need petitions, representing over \$200 million in private healthcare investment. Those included three medical facilities that would have added 206 beds, increasing the current hospital capacity by 8%.

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<sup>2</sup> [Ibid.](#)

<sup>3</sup> [Ibid.](#)

<sup>4</sup> [Ibid.](#)

<sup>5</sup> ["Hawaii Certificate-of-Need Programs 2020,"](#) Mercatus Center, March 22, 2021.

<sup>6</sup> ["Certificate of Need Laws: Hawaii State Profile,"](#) Mercatus Center, November 2020. Available at <https://www.mercatus.org/publication/hawaii-and-certificate-need-programs-2020>.

<sup>7</sup> [Ibid.](#)

<sup>8</sup> ["Certificate of Need Applications and Decisions,"](#) Hawaii State Department of Health.

The thinking behind certificate-of-need laws has long since been abandoned, and CON reform has been a growing trend in healthcare policy. More than a dozen states have fully repealed their CON programs, and even more have been rolling them back.

It is time that Hawaii joins those states by eliminating its certificate-of-need regime. Over time, repeal would reduce costs, incentivize the construction of new facilities, and improve healthcare quality and access in Hawaii.

Thank you for the opportunity to testify.

Ted Kefalas  
Director of Strategic Campaigns  
Grassroot Institute of Hawaii



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*Eric W. Gill, Senior Vice-President*

February 5, 2024

Committee On Health And Human Services  
Senator Joy A. San Buenaventura, Chair  
Senator Henry J.C. Aquino, Vice Chair

Committee On Commerce And Consumer Protection  
Senator Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair

### **Testimony with comments on SB2123**

Chairs San Buenaventura and Keohokalole, Vice Chairs Aquino and Fukunaga, and Members of the Committees,

UNITE HERE Local 5 represents 10,000 working people in the hotel, food service and health care industries across Hawaii. We provide comments on SB2123, which would abolish the Certificate of Need program. Whether the Certificate of Need program as currently structured provides an overall positive benefit for healthcare development in the state, is not for us to say as we are not experts. What we do know is that taking the public out of the process is not in the interest of the public.

It is postulated in the preamble to this legislation that the Certificate of Need program may stifle competition by protecting incumbent providers and creating a burdensome approval process. Deregulation, however, also protects incumbent providers, particularly large corporations, as they are much better equipped to undercut competition until putting it out of business or acquiring it. Therefore, the key is not to eliminate regulation, but to fix it so it does what our communities need it to do.

With this in mind, we recommend modifying the Certificate of Need program rather than repealing it. Let's commit to fixing the problems. Let's commit to keeping the public involved and informed. There needs to be a meaningful public input process for healthcare development, as there should be for all other development.

Thank you for your consideration.



**Testimony to the Senate Committee on Health and Human Services  
Wednesday, February 7, 2024; 1:00 p.m.  
State Capitol, Conference Room 225  
Via Videoconference**

**RE: SENATE BILL NO. 2123 – RELATING TO HEALTH.**

Chair San Buenaventura, Vice Chair Aquino, 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 respectfully **OPPOSES** Senate Bill No. 2123, RELATING TO HEALTH.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live 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.

This bill, as received by your Committee, would repeal the State's certificate of need (CON) program.

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 (SHPDA) [**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.]*

The HPCA asserts that Chapter 323D, HRS, is essential 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.

In practice, however, Chapter 323D, HRS, has not achieved its intended goals. SHPDA has historically been underfunded, understaffed, and plagued by controversy over various high-profile projects over the years. This has led to delays in the review process and increased costs for developers and health care providers wanting to enter into new service areas. As noted in the purpose clause of this bill, especially for areas in critical need of essential services, delays and increased costs ultimately hurt the health care outcomes of Hawaii's citizens, especially in rural, underserved areas.

The CON process is supposed to be a safety net that limits unfettered development of health care facilities and eliminates expensive duplication of expensive facilities depending on the services that various regions and communities can bear. Yet, in speaking with many of your colleagues, there is a growing sentiment that the CON process is unnecessary and archaic, and that the needs are so great throughout the State that all restrictions should be lifted.

The HPCA also recognizes that the State has an opportunity to see SHPDA and the CON process be revitalized. The Governor was previously a health care professional based at an FQHC on a neighbor island. He knows first-hand the challenges that rural and isolated communities face.

**Testimony on Senate Bill No. 2462**  
**Monday, January 29, 2024; 1:00 p.m.**  
**Page 3**

The Administrator of SHPDA is the former Director of Health under the Waihee Administration who is considered to be a preeminent expert in the provision of health care to the underserved. Many view him as the “father” of Hawaii’s MedQUEST Program and a contributor to the creation of the federal Affordable Care Act.

Further, just last week, this Committee approved multiple measures that would significantly increase the funding for SHPDA and clarify its mission moving forward.

Enactment of this bill in concert with those other measures would relegate SHPDA to a role akin to the Office of State Planning with a focus solely on health care. Without the CON process, there would be no safety net to prevent large facilities and networks of providers to come into new services areas irrespective of the specific needs and desires of those communities.

Can you imagine a grandmother in Honokaa or Hana or Manele who has always gone to the lone practitioner for decades only to find that the practitioner cannot compete with the big mainland operation that comes in. How does that grandmother transition to having to change the way she has received her health care that she has been accustomed to for so long? What is the likelihood that she avoids getting the care she needs because she is not able to deal with a different way that health care is provided?

The CON process is supposed to take these types of issues into consideration. The CON process is supposed to protect the unique qualities of communities by soliciting and respecting the input from those communities.

How will these interests be protected without the CON process?

Accordingly, the HPCA respectfully requests that this Committee and the Legislature defer action on this proposal for a few years and allow the Green Administration and Dr. Lewin the opportunity to make the CON process work as it was intended – to serve as a safety net that moderates health care development in a manner that is community-based and reasonable. If Governor Green and Dr. Lewin can’t make a significant difference, then the entire health care system and not just the CON process should be reevaluated.

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](mailto:eabe@hawaiiipca.net).



Wednesday, February 7, 2024 at 1:00 pm  
Conference Room 225

**Senate Committee on Health and Human Services**

To: Chair Joy A. San Buenaventura  
Vice Chair Henry J.C. Aquino

**Senate Committee on Commerce and Consumer Protection**

To: Chair Jarrett Keohokalole  
Vice Chair Carol Fukunaga

From: Paige Heckathorn Choy  
Associate Vice President, Government Affairs  
Healthcare Association of Hawaii

Re: **Testimony in Opposition**  
**SB 2123, Relating to Health**

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 30,000 people statewide.

Thank you for the opportunity to submit our comments in **opposition** to this measure. The certificate of need (CON) process in Hawaii works efficiently and serves as a critical tool to keep down healthcare costs and protect patients in the state. There are real benefits to the CON process: first, the process inhibits the unfettered growth of expensive services that cannot realistically be supported in smaller communities; and, second, by ensuring that dubious and bad actors are not able to gain a foothold among vulnerable populations as can happen in other states.

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

In 2021, the legislature considered removing some settings of care from the CON requirement. Our organization and many of our members were supportive of adding psychiatric services and certain chronic renal dialysis services to those classes to be exempt from CON rules. While we oppose the total repeal of this program, we would continue to support the language in Section 4, found in HB 224 HD 1 SD 1 CD 1, introduced in the 2021 legislature. We have attached that particular language at the end for your review.

We appreciate the continued focus of the legislature on ensuring that healthcare remains affordable and of high quality. Repealing the CON laws will not help our state maintain those goals, and we would request deferral of this measure.

**"§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; provided that for purposes of this paragraph, "psychiatric services" means services for the diagnosis and treatment of mental illness or mental disorders in persons;

(17) Chronic renal dialysis services; provided that for purposes of this paragraph, "chronic renal dialysis services" means services for the treatment of irreversible kidney failure involving the removal of waste substance from a patient's blood by hemodialysis or peritoneal dialysis; or

~~[(16)]~~ (18) Other facilities or services that the agency through the statewide council chooses to exempt, by rules pursuant to section 323D-62."



**Kaua'i Hospice**  
*a special kind of caring*

February 5, 2024

**Committee on Health and Human Services**

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

**Committee on Commerce and Consumer Protection**

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

**RE: TESTIMONY IN OPPOSITION OF SB 2123  
RELATING TO THE STATE HEALTH PLANNING & DEVELOPMENT AGENCY**

Greetings Chair and Honorable Members of the Committee(s),

Thank you for the invaluable opportunity to provide testimony opposing **SB2123**, which seeks to repeal the Certification of Need (CON) program.

The Certificate of Need process and its associated requirements play a pivotal role in fostering healthy, high-quality, and responsibly managed growth within our communities. It is essential to underscore that CON requirements do not impede progress; rather, they serve as a vital resource for consumer protection in Hawai'i. These requirements facilitate rigorous evaluation, often incorporating valuable input from the public and stakeholders, while simultaneously curbing healthcare expenditure. Stripping away the Certificate of Need for hospice homes and other hospice facilities would inevitably result in an influx of low-volume establishments, compromising the quality of care and depleting the already limited resources available to our island communities.

CON programs serve a crucial function by ensuring equitable access to care for disadvantaged populations and addressing healthcare deserts that new or existing medical centers may neglect. The removal of CON requirements would inadvertently favor for-profit institutions, potentially disinclined to provide indigent care. It is imperative to recognize that the passage of **SB2123** is not aligned with the best interests of Hawai'i. The CON process must endure as a vital tool, guaranteeing that those who choose to offer hospice service in Hawai'i do so with the utmost dedication, at the right time and place, armed with the necessary resources and a genuine commitment to serve all the people of our beloved state.

With over four decades of experience in tending to the hospice, bereavement, and palliative care needs of those residing on the Garden Island, we (Kaua'i Hospice) are acutely aware of our finite resources, particularly our access to qualified healthcare personnel. The Certificate of Need requirements provide Hawai'i with the means to ensure that our limited resources are efficiently allocated toward delivering high-quality, person centered care. I respectfully implore you to stand in opposition to **SB2123** and safeguard the CON requirements for hospice homes and other hospice facilities. The well-being of our community, particularly those facing end-of-life challenges, depends on it.

Thank you for the opportunity to submit **testimony in strong opposition to SB2123**. Together, we can continue to prioritize the health and welfare of the people of Hawai'i.

Most sincerely,

Tricia-Lynn Kalaniho'okaha Yamashita, MPH  
Executive Director, Kaua'i Hospice, Inc.

**Cc: Senate President, Ron Kouchi  
Representative, Dee Morikawa  
Representative, Nadine Nakamura  
Representative, Luke Evslin**



Wednesday, February 7, 2024 at 1:00 pm  
Conference Room 225 & Videoconference

**Senate Committee on Health and Human Services**

To: Senator Joy San Buenaventura, Chair  
Senator Henry Aquino, Vice Chair

**Senate Committee on Commerce and Consumer Protection**

To: Senator Henry Aquino, Chair  
Senator Carol Fukunaga, Vice Chair

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

**Re: SB 2123 – Testimony In Opposition  
RELATING TO HEALTH.**

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My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs for 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.

I write in **opposition** to SB 2123 which proposes to repeal the Certificate of Need Program (CON).

The CON process is an essential regulatory forum for the management of healthcare delivery capacity in our State. The CON process facilitates transparency, accountability, and the opportunity for dialogue between providers seeking to expand services in the healthcare marketplace through independent agency review. The CON process accomplishes this objective by requiring that any new service from an existing or new provider meets the six criteria established in Chapter 323D including (1) impact on the relationship to the state plan, (2) patient need and accessibility, (3) quality of service/care, (4) cost and finances, (5) relationship to the existing healthcare system, and (6) the availability of resources to deliver the service.

The risks from the fragmentation of care are of great concern in Hawaii due to the size and geographic distribution of the population across our islands and where health care services are delivered almost entirely through a system of non-profit providers. SHPDA's administration of the CON process helps manage the risk of fragmentation of care that

can easily occur when the introduction of a new service does not consider the impact to the larger healthcare delivery system. In our experience, the CON process required under HRS 323D has been fair, transparent, and grounded in the application of objective criteria placed upon both existing and new providers seeking to expand or provide new healthcare capacity.

Thank you for the opportunity to testify.

February 5, 2024

Dear Chair Senator Joy An Buenaventura, Co- Chair Senator Henry Aquino, and members of the Senate Committee on Health and Human Services,

This testimony is in **strong opposition to SB2123 to remove a certificate of need (CON) requirement.**

In my role as Executive Director of Kōkua Mau, a statewide coalition to improve care, we support strong hospice programs that provide quality care to those at the end of life. Across the country, I hear from colleagues that CON is a vital step to keep hospice quality high, especially for small non-profits. Other states that have no CON or have eliminated CON are confronted with a flood of agencies that are looking at profits and not at patient and family support and quality. This is an alarming trend across the country.

A recent article in the American Journal of Hospice and Palliative Medicine finds a correlation between CON and quality, especially for small hospices.  
<https://hospicenews.com/2023/06/27/certificate-of-need-laws-may-influence-hospice-quality-outcomes/>

I just returned from a national meeting on hospice organizations last week in Austin Texas and this was an important topic. Across the board among the 20 states represented, CON was seen as a crucial procedure but unfortunately there is a nationwide effort to remove CON even when its value has been shown.

Kōkua Mau is a statewide coalition that has worked since 1999 to improve care for those with serious illness. We work to help those who may be facing serious illness and their loved ones understand decisions they may need to make and to understand different care options. As such we encourage early completion of Advance Directives (available in 11 languages for free on our website) as well as information on POLST, palliative care, hospice care and grief and bereavement.

Mahalo nui loa



Jeannette Kojane, MPH  
Executive Director  
Kōkua Mau, A Movement to Improve Care  
[koijane@kokuamau.org](mailto:koijane@kokuamau.org)

**LATE**

**SB-2123**

Submitted on: 2/6/2024 1:44:03 PM

Testimony for HHS on 2/7/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jamie Detwiler	Testifying for Hawaii Federation of Republican Women	Oppose	Written Testimony Only

Comments:

SB2123 – Certificate of Need Repeal

Honorable Chair San Buenaventura, Chair Keohokalole, Vice Chairs, and Committee Members

The Hawai'i Federation of Republican Women supports the intent of SB2123. However, we OPPOSE SB2123.

Again, we support the purpose and intent of this Act which is to repeal the State's certificate of need program to improve both the quality of and access to health care in the State while lowering costs. However, I have the following concerns and questions:

1. SB2123 proposes to create additional layers of government bureaucracy by amending Chapter 323D by addition section VII.
2. Layers of review and approval by unelected bureaucrats:

a reconsideration committee

committee shall consist of the administrator of the state agency and the chairpersons of the statewide council

the plan development committee of the statewide council subarea health planning council

Then you have to request for a public hearing shall be deemed by the reconsideration committee to have shown good cause

It provides other bases for a public hearing that the state agency determines constitutes good causes; or The decision of the administrator differs from the recommendation of the statewide council

Capital expenditure review process.

Then you have to conduct studies reviewing the causes of health care costs, including inflation.  
The state agency may contract for services.

Review by Statewide council and subarea councils.

On p.14 of SB2123 you address

1011 Waiuanue Avenue  
Hilo, Hawaii 96720-2019  
Phone: (808) 969-1733  
Fax: (808) 961-7397

care@hawaiicarechoices.org  
www.hawaiicarechoices.org

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*Excellence & Advancement*  
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#### COMMITTEE ON HEALTH & HUMAN SERVICES

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#### COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

**RE: TESTIMONY IN OPPOSITION OF SB2123**

**RELATING TO HEALTH CARE – Repeals the Certificate of Need Program. Makes conforming amendments.**

**Hearing: Wednesday, February 7, 2024**

Dear Chairs San Buenaventura and Keohokalole, Vice Chairs Aquino and Fukunaga and Members of the Committees:

Thank you for the opportunity to provide testimony opposing SB2123, which repeals the Certificate of Need (CON) Program.

The Hawaii CON process provides a vital structure and a means to help ensure that any new hospice organizations is warranted and will not harm existing providers that are meeting the needs of the community they serve. Our CON regulations allow for all stakeholders, from citizens to existing healthcare systems, to provide input for the need of another service provider. If the CON Program is repealed, there will be no protection for the Hospices in Hawaii who have established deep roots, made substantial investments and maintained the delivery of critical services in their communities.

Further, the addition of an outside hospice provider will create confusion, greater apprehension of accessing services, and subject patients and their families to the typical ebb and flow of a free market. Competition for healthcare professionals in a limited workforce will increase, thus diminishing the quality of existing programs.

Hawai'i Care Choices is a nonprofit, tax-exempt charitable organization, which exists to provide a continuum of quality and specialized care for seniors or for patients facing a serious and/or life-limiting illness, and their loved ones who care for them. In addition, our organization is committed to providing the community-at-large with bereavement support and grief counseling.

We respectfully request that the Committees restore, revisit and reform the CON Program.

Sincerely,



Brenda S. Ho, MS, RN  
Chief Executive Officer

## TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF SB 2123

Senate Committees on Health and Human Services and  
Commerce and Consumer Protection  
February 7, 2024 at 1:00 p.m. a.m.  
Conference Room 225 & Video

Chairs San Buenaventura and Keohokalole, Vice Chairs Aquino and Fukunaga, Members,

**Please pass SB2123.** Our Certificate of Need (“CON”) laws are unduly antiquated, anti-competitive, expensive and destructive. They are hurting our health care providers, patients and taxpayers. Our CON laws should be repealed, as proposed by SB2123.

I am very familiar with the CON process, having litigated CON issues in our state courts and SHPDA for many years. I am a retired attorney and former president of Hawaii State Bar Association. For over 20 years, I focused my legal practice on health law, and was recognized as one of America’s Best Lawyers in Health Law and Hawaii’s Lawyer of the Year in Health Law.

States created CON laws because the 1974 National Health Planning & Development Act withheld federal Medicare/Medicaid reimbursements to states that did not enact CON laws. CON laws were supposed to avoid duplication and costs in health care and enhance access. Sadly, CON laws are causing more harm than good. The US Dept of Justice & Federal Trade Commission oppose CONs for the many competitive harms they cause to the healthcare marketplace. [https://www.justice.gov/archive/atr/public/press\\_releases/2008/237153a.htm](https://www.justice.gov/archive/atr/public/press_releases/2008/237153a.htm). The US government in 1987 repealed the CON requirements, thus removing the impetus that caused states to adopt CON laws. In 2018, the US Department of Health and Human Services further recommended that states repeal their CON laws.

Sadly, Hawaii has kept its CON laws despite numerous studies showing CON laws cause more harm than good. CON laws:

- Grant monopoly privileges to existing health care facilities who use CON laws to foreclose new and innovative competitors from getting a CON
- Create anti-competitive harms, as monopolists holding a CON can then raise their prices and reduce their services due to the lack of competition
- Reduce the number of health care providers and facilities
- Destroy competition and innovation that can reduce prices, enhance medical care and inventions, and expand access to underserved populations
- Reduce patients’ access to health care and reduce their choices of providers
- Cause undue delays and expenses in getting healthcare facilities and equipment
- Restrict health facilities/providers from updating facilities & equipment to meet patient needs and innovations in health care

Each of these results harm Hawaii's effort to provide the best health care to our residents. Our CON laws have been perpetuated without proper cost-benefit analysis as to their results.

When I represented health care providers/facilities in numerous CON proceedings, some CON cases took years of extensive work and resources, with hundreds of thousands of dollars being spent and numerous health care providers needing to participate in legal adversarial proceedings, just to be able to get a CON (permission) to provide their patients the services the patients desperately needed. Deficiencies in the state procedures and any challenge from opponents could (and did) result in years of legal proceedings that bounced between the courts and various review panels at SPHDA (State Health Planning and Development Agency). My reaction when I saw this bill was "Hallelujah! Finally, it's about time."

Please pass SB2123 and repeal our CON laws.

Mahalo for your consideration of this testimony in support of SB 2123.

Ellen Godbey Carson  
Honolulu, Hawaii

A selection of articles describing history and deficiencies of CON laws is below:

<https://www.usnews.com/news/best-states/articles/2021-07-09/on-the-heels-of-the-pandemic-states-should-get-rid-of-certificate-of-need-laws>

<https://spn.org/articles/certificate-of-need-laws/>

<https://www.mercatus.org/economic-insights/features/certificate-need-laws-how-they-affect-healthcare-access-quality-and-cost#2392643287-2120127247>





February 7, 2024

The Hon. Joy San Buenaventura, Chair, Senate Committee on Health & Human Services  
The Hon. Jarrett Keohokalole, Chair, Senate Committee on Consumer Protection  
Members of the Committees

Re: SB 2123, Relating to Health

Mahalo for the opportunity to **comment** on SB 2123, Relating to Health. This bill would repeal the Certificate of Need Program. We respectfully ask that you **amend this bill to exempt renal care facilities from the repeal of the Certificate of Need program.**

Due to the very diverse needs of rural as compared to Hawaii's urban communities and remote versus accessible locations we believe that the Certificate of Need process is essential to ensuring appropriate and adequate establishment of facilities when and where needed. Maintaining the Certificate of Need requirements would ensure the continuation of a process which, while not perfect, reliably serves the state and the needs of all residents.

U.S. Renal Care serves more 2,000 patients on four islands in Hawaii and more than 26,000 patients across 32 states in more than 400 facilities providing in-center and home dialysis. Our mission is to change the lives of people living with kidney disease. We spend each and every day dedicated to promoting awareness about kidney health.

The Maui wildfires underscored the importance of having adequate healthcare services across islands and in different regions so that the healthcare service providers can address and prevent gaps in service. We were able to serve patients who would have otherwise had to seek care off island following the disaster and it is only because of the Certificate of Need process that we have been able to optimally serve Hawaii communities. The Certificate of Need process is designed to and does strike a balance ensuring service-provider competition to promote quality care and ensuring that there is adequate need and justification so that healthcare operations are viable and sustainable.

Please amend this measure to ensure that the Certificate of Need program is continued for renal care facilities if it moves forward.

**SB-2123**

Submitted on: 2/5/2024 5:17:52 PM

Testimony for HHS on 2/7/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Daniel Fischberg, MD, PhD	Individual	Oppose	Written Testimony Only

Comments:

The certificate of need process is essential to ensuring high quality hospice care remains available to people in need in Hawaii. Without the CON process, our communities could face the influx of for-profit hospices that are acknowledged by national hospice and palliative care experts as clearly the greatest threat today to high quality hospice in the US. Please keep the CON process in place as it stands so that Hawaii can continue to serve as a model for states looking to ensure access to the highest quality hospice and palliative care.

**SB-2123**

Submitted on: 2/5/2024 4:43:58 PM

Testimony for HHS on 2/7/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Hope Young	Individual	Oppose	Written Testimony Only

Comments:

The CON for hospice agencies protects Hawaii consumers from a saturated market and substandard services to hospice patients and their families.

TO: Hawaii State Senate Committee on Health and Human Services  
Hawaii State Senate Committee on Commerce and Consumer Protection

FROM: Marilyn A. Matsunaga, MBA  
Former State Administrator, State Health Planning & Development Agency

DATE: Wednesday, February 7, 2024 at 1:00 pm  
Hawaii State Capitol -- Conference Room 225 & Videoconference

RE: **SB2123 RELATING TO HEALTH**

Chairs San Buenaventura and Keohokalole; and Vice Chairs Aquino and Fukunaga; and Members of the Senate Committees on Health and Human Services, and Commerce and Consumer Protection.

My name is Marilyn A. Matsunaga and I served the people of Hawaii as their State Administrator of the State Health Planning & Development Agency (SHPDA) which administers the Certificate of Need (CON) Program from 1995 to 2003, the term limit per the Hawaii Revised Statutes.

Thank you for this opportunity to testify in **STRONGEST OPPOSITION** to this bill which seeks to abolish Hawaii's vital Certificate of Need program.

Hawaii's SHPDA and its Certificate of Need program were founded during Governor Ariyoshi's service as Hawaii's Governor. Gov. Ariyoshi held up planning and community involvement in planning as key purposes of government.

Healthcare services/facilities are akin to a public utility and Hawaii's Certificate of Need program is the only place that provides public review of healthcare facilities/services. Without the Certificate of Need program, there would be no transparency.

*Quantity* does not quite correlate with *restrictiveness* and Hawaii's list of "28 healthcare services" reflects the importance that we in Hawaii place on ensuring transparency in the provision of essential healthcare services and facilities for our people by the public review and monitoring functions of Hawaii's Certificate of Need program.

The Certificate of Need program ensures that healthcare proposals comply with licensure and certification requirements and have a past record of sound compliance; are accessible to all residents in particular underserved groups and minorities including our kupuna and Native Hawaiians; will be reasonable in costs charged to patients and the community; are financially feasible and not just setting up to "cherry pick"; will be in sync with the state's plan for healthcare services and facilities to serve communities; and have the resources needed to actually implement/sustain their proposal. SHPDA also has the function to monitor these facilities and services based on these key components of a provider's competency. Because of its public review and monitoring functions, many believe CON is an effective sentinel that keeps grifters away.

I most respectfully ask you to please defer action on SB2123. Thank you.

FROM THE DESK OF

**MICHAEL DUICK, M.D.**

February 6, 2024

Senate Committee on Health and Human Services  
Senator Joy A. San Buenaventura, Chair  
Senator Henry J.C. Aquino, Vice Chair

Senate Committee on Commerce and Consumer Protection  
Senator Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair

**RE: Testimony in Opposition to SB 2123, Relating to Health**

Dear Members of the Committees on Health and Human Services and Commerce and Consumer Protection:

I thank you for the opportunity to voice my strong opposition to to SB 2123.

I have spent my professional career practicing in the fields of hospice and palliative medicine on Oahu and Maui. In my experience, the Certificate of Need (CON) process for hospice care has helped our state to be a shining example of providing high-quality, cost-effective care to those with life-limiting illness.

Considering that private equity control of healthcare is reaching a fever pitch, CON laws are needed now more than ever. Studies show that private equity investments in healthcare are generally associated with higher costs to patients and payers.

Furthermore, the CON process ensures that providers wanting to operate medical programs in Hawaii meet extremely important criteria, including quality of the proposed service, prior to starting operations. Removing these CON safeguards would have disastrous outcomes. One just needs to look at the hospice experience in California, which has significant state oversight but no CON process. The widespread fraud and quality-of-care deficiencies present there are costing taxpayers millions of dollars and, much worse, harming patients and families during a most vulnerable time in their lives.

Repealing our CON laws will not help us keep our healthcare affordable and of the highest quality.

Thank you for your time and consideration.

Sincerely yours,



Michael Duick, M.D.

Board Certified, Hospice & Palliative Medicine