Certificate of Need

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Senate Labor and Commerce
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Key questions: CON

1. What problem are we trying to solve?
2. Will CON repeal address this problem?
3. What important purpose does CON serve?
4. What happens if we get CON wrong?
5. What information do we need to make this decision?

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What is CON?

- A review process used to promote responsive health facility and service development, rational health planning, health care quality, access to health care, and health care cost containment.
- Goals: meet need for public services, promote transparency, avoid excessive, unnecessary or duplicative development of facilities or services.
- State of Alaska has a vested interest because of state dollars spent on Medicaid.

Primary criticism of CON

- It prevents competition
- Assumption is that increased competition will lead to lower health care prices
- Thus, CON repeal (in theory) will reduce health care costs

Assumption: competition is not occurring

Reality:

1. *CON has not limited small outpatient imaging or surgery centers in most markets due to the state's statutory framework and lax regulation*
2. CON has limited high-cost, capital intensive surgery centers, expensive hospital expansions
3. CON has limited SNF development
   - Mat-Su Valley CON

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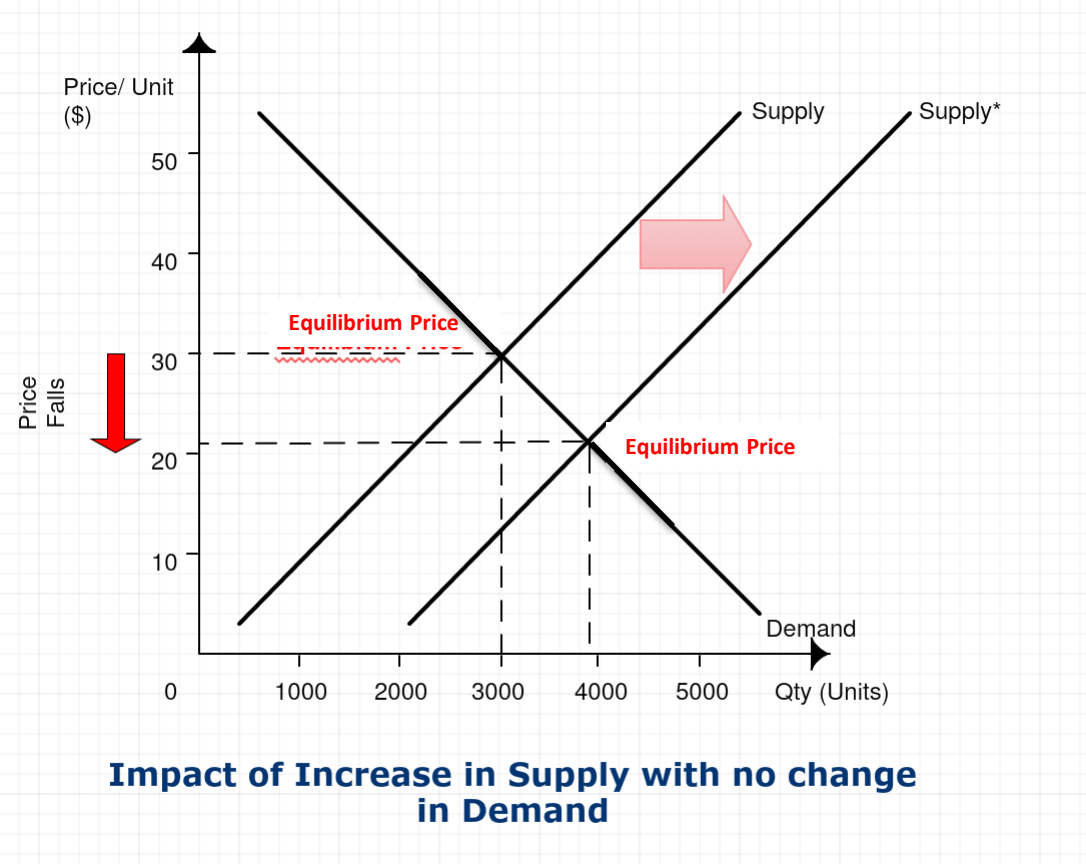
Theory: CON will reduce prices



Impact of Increase in Supply with no change in Demand

This is what CON repeal proponents believe will happen:

- Supply increases
- Price falls
- Quantity increases

"Note, however, that one need not assume SID (supplier-induced demand) to predict aggregate demand increases in response to increased competition. A simple market supply and demand model predicts this."

- **Folland, S., Goodman, A. C., & Stano, M. (2013). *The Economics of Health and Health Care* (7th ed.). Upper Saddle River, NJ: Prentice Hall.**

Reality: health care is not a normal market

- In a normal markets, competition reduces cost and increases quantity.
- *Health care is NOT a normal market.*
- Competition will lower prices if the impact is only on supply. *If demand also increases, competition can actually raise prices.*
- Providers impact demand, an observation strongly supported by economic studies.
- In some areas of our market, we have an oversupply of certain services, yet costs have not gone down.
- How does this happen?

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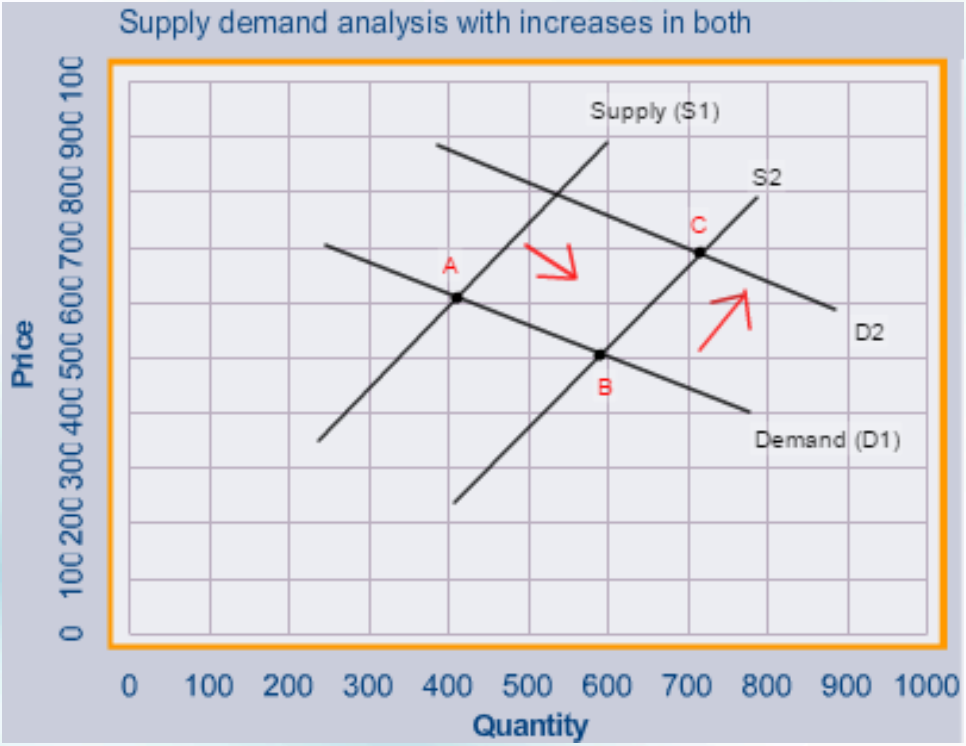
Reality: competition can increase prices!



Original price	$600 (Point A)
Original quantity	400 (Point A)
Original total cost (PxQ)	$240,000
Price after supply and demand increases	$700 (Point C)
Quantity after supply and demand increases	700 (Point C)
New total cost	$490,000
Net effect	**Increased total cost by $250,000 and per unit cost by $100.**

Under certain circumstances, competition can <u>increase quantity and price</u>, leading to higher costs for the health care system.

A Starbucks on every corner means we drink a lot more coffee.

Does CON address our cost problem?

Lack of competition in the health care market is not commonly cited as a driver of health care costs.

"… choice and competition have no proven track record of cost control in medical care either in the United States or elsewhere."

Elhauge, E. (2010). The Fragmentation of U.S. Healthcare: causes and solutions. New York, Oxford University Press.

Primary factors driving health care costs:

1. Fee-for-service system, which rewards volume of procedures, incentivizing overtreatment
2. Prescription drugs
3. New medical technology, and our use of new medical technology
4. Aging population
5. Unhealthy lifestyles
6. High administrative costs
7. Service provider consolidation (not much of a factor in Alaska)

Mack, M. (2016). What drives rising health care costs? *Government Finance Review.* 26-32.

Value of CON

1. Promotes and ensures access for underserved populations.
2. May prevent oversupply of services, equipment and facilities, which can lead to overutilization (supply-induced demand).
3. May protect high-volume services, where high volume is important to maintain quality (e.g. NICU).
4. Provides a vehicle for health care cost transparency and public input into the health planning process. Repealing CON moves backward on the issue of transparency.
5. Manages major capital expenditures, protecting Medicaid budget.

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Why do hospitals care about CON?

- Emergency Medical Treatment and Active Labor Act (EMTALA)
- Uncompensated care

Uncompensated Care at Alaska Hospitals				
2011	**2012**	**2013**	**2014**	**2015**
$ 85,047,723	$ 90,025,771	$ 94,475,540	$ 89,001,149	$ 72,594,126

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Hospitals subsidize community services

Examples:

- Sexual assault response (forensic nursing)
- Subspecialty services for children
- Homeless services (medical respite)
- Primary care (senior clinics)
- Community health (school programs, etc.)

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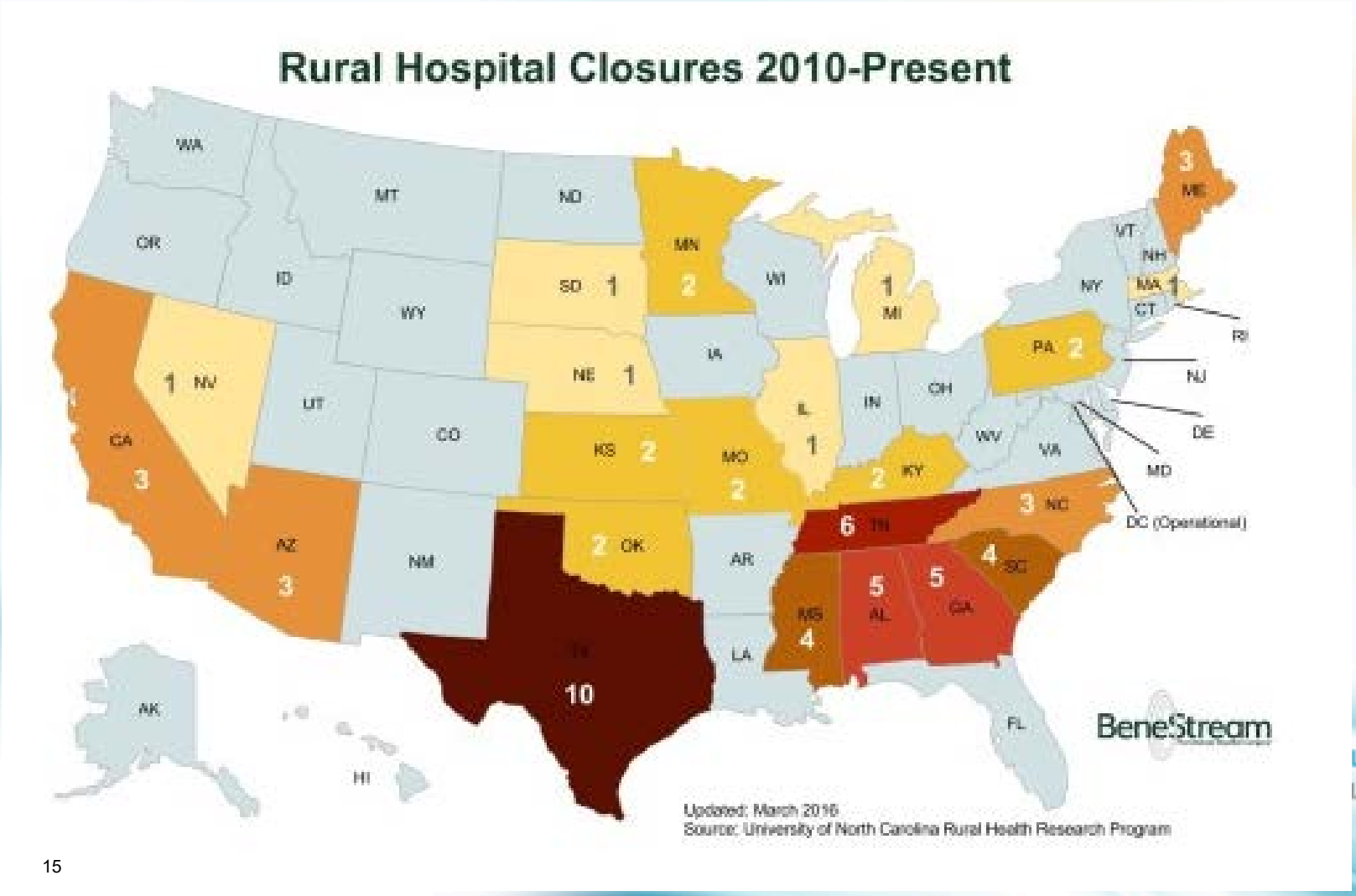
Alaska hospital market

Profitable few, but marginal many



What is at risk? The community hospital.

"Are community hospitals obsolete? It's a serious question. Just about every trend of late seems to suggest the days are numbered for many, if not most."

- The core business for hospitals, inpatient care, is shrinking.
- *Competition in hospital outpatient services is intensifying…. Private investors are funding independent diagnostic imaging, labs, urgent care, ambulatory surgery, freestanding emergency rooms and other outpatient programs, driving competition up and margins down.*
- Clinical innovations are driving hospital costs up more than they're reimbursed.
- Hospitals are odd-man out in the recent mega-deals.
- And the regulatory climate for hospitals is harsh.

Paul Keckley, health care futurist, January 29, 2018

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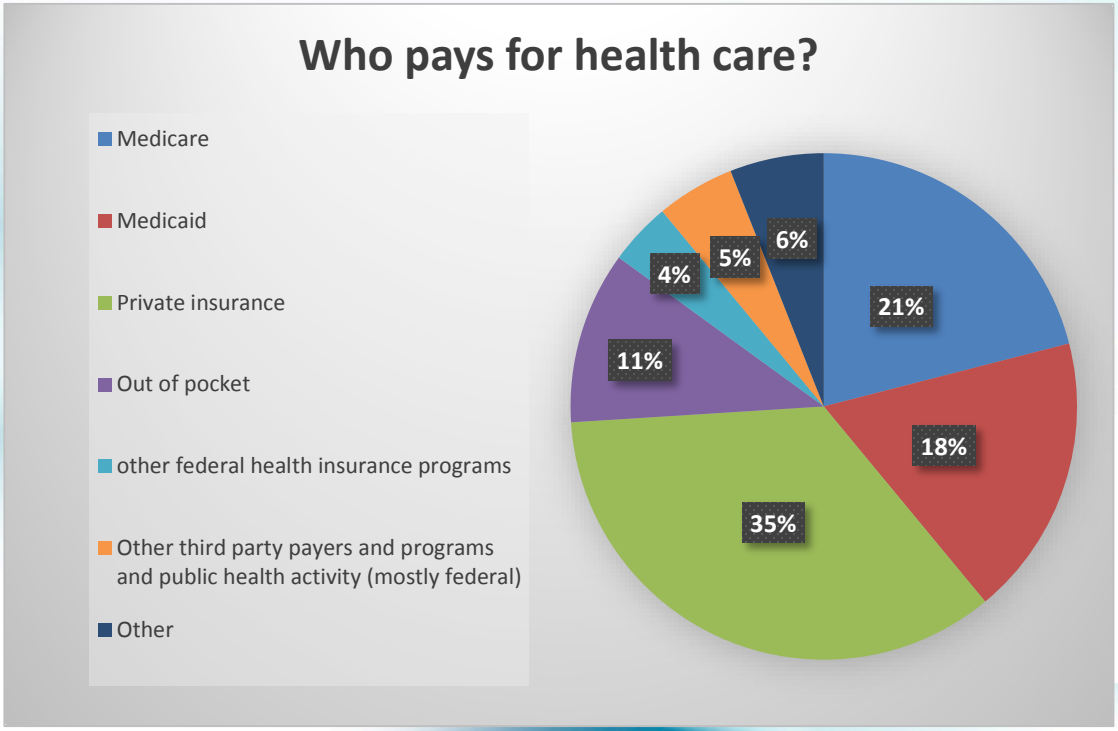
CON and the public interest

- Government plays a significant role in both the financing and regulation of health care.
- Intent of CON law is to ensure that health care services operate in a manner fully consistent with the public interest.
- State of Alaska: Medicaid budget implications



It’s about what we value….

- What is the value of the community services, like forensic nursing and Medicare clinics, that hospitals subsidize in the community?
- What is the value of having certain specialty services in the community (e.g. pediatric oncology)?
- What services do you want available in your hospital if you or a family member have a medical emergency?
- What is the value of rural hospitals?

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… and who gets care

CON laws can protect access to care for:

- The poor
- The very sick
- Those who do not have commercial insurance (Medicare, Medicaid, uninsured)
- Rural areas
- Urban neighborhoods with high populations of uninsured

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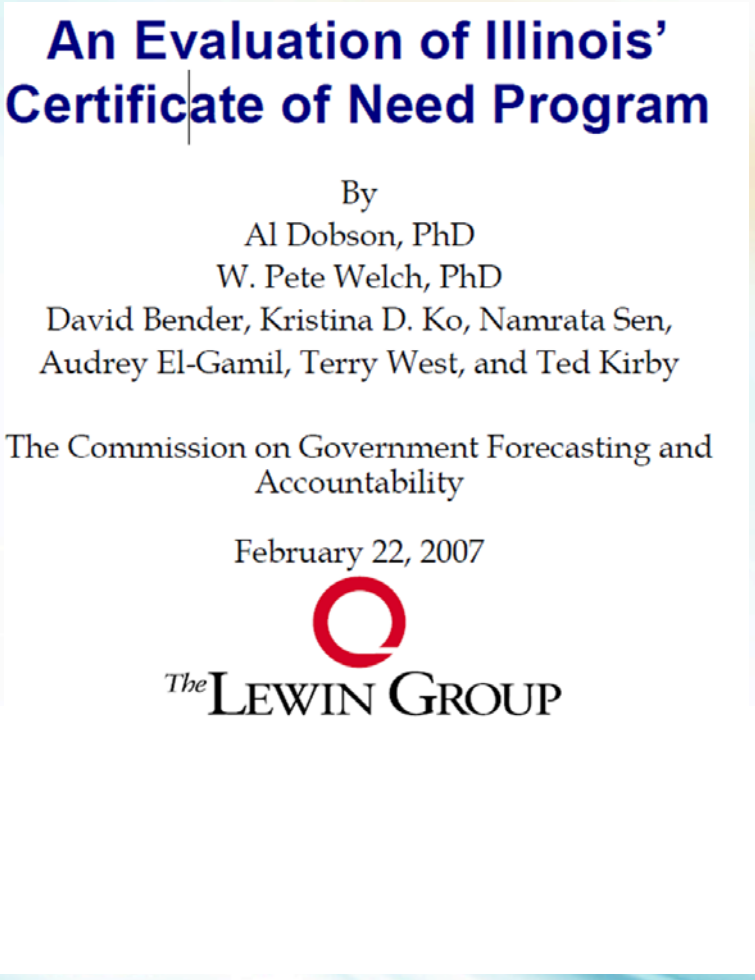
Do we have the information to make this decision?

"The traditional arguments for CON are empirically weak… However, given the potential for harm to specific critical elements of the health care system, we would advise the Illinois legislature to move forward with an abundance of caution. *Nontraditional arguments for maintaining CON deserve consideration, until the evidence on the impact that specialty hospitals and ambulatory surgery centers may have on safety net providers can be better quantified." (p. iii)*



A path forward…

- Loopholes and lack of enforcement in current CON law make it ineffective
- Appropriate to have a conversation about whether the law is working as intended and how it could be strengthened/changed
- Alaska's unique provider environment must be considered
- We recommend:
  1. The conversation be informed by data
  2. The state consider regulatory changes to improve the CON program.

Thank you! (And few studies to note.)

Lorch, S.A., Maheshwari, P., & Even-Shoshan, O. (2012). The impact of Certificate of Need Programs on Neonatal Intensive Care Units. *Journal of Perinatology 32, 39-44.*

***"*Conclusion: There has been an erosion of CON programs that oversee NICUs. CON programs are associated with more efficient delivery of neonatal care."**

Lucas, F.L. Siewers, A., Goodman, D.C., Wang, D., & Wennberg, D.E. (2011) New cardiac surgery programs established from 1993 To 2004 led to little increased access, substantial duplication of services. *Health Affairs.*

***"*We observe that certificate-of-need requirements may help avoid unnecessary duplication of services by preventing new programs from opening in close proximity to existing ones."**

Hellinger, F.J. (2009). The effect of Certificate-of-Need laws on hospital beds and healthcare expenditures: an empirical analysis. *The American Journal of Managed Care, 15(10), 767-744.*

Conclusion: Certificate-of-need programs have limited the growth in the supply of hospital beds, and this has led to a slight reduction in the growth of healthcare expenditures.