



PACIFIC LEGAL FOUNDATION

**Testimony of Angela C. Erickson
Pacific Legal Foundation
on SB 26
Alaska Senate Labor and Commerce Committee
April 21, 2021**

Chair Costello, Vice Chair Revak, and members of the Senate Labor and Commerce Committee:

My name is Angela C. Erickson. I am the Strategic Research Director at the Pacific Legal Foundation (PLF). I would like to thank you for giving me the opportunity to testify before the Senate Labor and Commerce Committee regarding SB 26 to repeal the State's certificate of need program.

PLF has a strong history of opposing and helping strike down unconstitutional certificate of need (CON) laws. We filed our first lawsuit against CON laws in the transportation context in Oregon in 2008. In 2019 we filed our first healthcare CON lawsuit in Kentucky on behalf of entrepreneur Phillip Truesdell who operates a non-emergency ambulance company transporting individuals who need additional help to doctors' appointment or between facilities. In total we've had 10 cases across the country fighting these unconstitutional laws.

Certificate of need laws require healthcare providers to obtain approval from state regulators before opening or expanding healthcare services or technology. In a process that takes months or even years, Alaska allows existing companies to weigh in on whether additional competition will harm them. The concern of potential harm to the existing companies' bottom lines can lead to requests being denied in a process that ultimately creates a "Competitor's Veto."

These laws are in violation of the Fourteenth Amendment that guarantees that people will not be deprived of liberty without "due process of law." This means that any time the government passes a law, it must be pursuing a legitimate public health or safety goal rather than merely favoring entrenched businesses.

Though these laws may protect high profits for certain established hospitals, they don't protect the most important figure in the healthcare relationship—the patient. Patients in states with CON laws are at greater risk of being denied the care they need.

When the pandemic hit in March 2020 it became clear that laws designed to restrict the number of providers in an area were counter to providing necessary healthcare. Thankfully, 24 of the 38 states with these laws, including Alaska, suspended them in some way as a response to the pandemic, allowing hospitals to respond more effectively to a spike in demand for care.¹ (On March 31st, Governor Michael Dunleavy suspended Alaska's certificate of need program for hospital beds.²)

We all appreciate how much our hospitals and healthcare workers have done over the past year. Repealing Alaska's CON law acknowledges the expertise and knowledge each of them has to respond to new conditions, while also acknowledging the absurdity of CON laws. There is no reason to believe that a government agency knows what Alaskan patients need more than hospitals and doctors during the pandemic. The same holds true as we emerge from the pandemic.

When a disaster happens—whether a pandemic, a hurricane, or a massive car accident—healthcare workers can respond more rapidly when restrictive regulations don't stand in the way. In times of crisis, speed is essential.

We already knew that CON laws were anti-competitive—but the COVID-19 pandemic has highlighted how they restrict the ability of medical facilities to respond rapidly to a pandemic and prevent physicians from providing necessary medical services. Worse yet, these laws place decisions that should be made by physicians in consultation with patients and their families into the hands of politicians and bureaucrats.

Through SB 26, Alaska would allow those who have sworn an oath to help the sick to provide the infrastructure that they deem necessary to do so.

And after Alaska's CON law is repealed, you can expect the outcomes that academics have found and published in peer-reviewed journals over the last four decades:

- The total costs of healthcare per patient and costs for each visit will decline relative to states with CON laws still on the books.³
- The supply of healthcare will increase and expand to new areas creating new jobs.⁴
- And the quality of healthcare will increase while deaths from pneumonia, heart failure, heart attacks, and complications after surgery will decrease.⁵

The fact that these inflexible regulations can easily be discarded in times of crisis demonstrates how irresponsible these policies are in the first place. If throwing out the regulations leads to good outcomes during a medical emergency, they should stay off the books. It's time to permanently end Alaska's CON law. By allowing medical providers to open or expand their services without spending months or years to get approval, you allow Alaska's healthcare providers to do what they do best—save lives.

Thank you again for the opportunity to provide testimony. I'm happy to be a resource if you have any further questions.

¹ Erickson, Angela C. "State are suspending Certificate of Need laws in the wake of COVID-19 but the damage might already be done." (January 11, 2021) <https://pacificlegal.org/certificate-of-need-laws-covid-19/>

² Governor Michael J. Dunleavy, Covid-19 Disaster Order of Suspension No. 2 (March 31, 2020). Appendix A. Suspending AS 18.07.11(8).

³ [Bailey](#), James B., "Can Health Spending Be Reined in Through Supply Constraints? An Evaluation of Certificate-of-Need Laws." (2016). Mercatus Working Paper; [Ho](#), Vivian, and Meei-Hsiang Ku-Goto. "State deregulation and Medicare costs for acute cardiac care." *Medical Care Research and Review* 70:2 (2013): 185-205; [Grabowski](#), David C., Robert L. Ohsfeldt, and Michael A. Morrissey. "The effects of CON repeal on Medicaid nursing home and long-term care expenditures." *INQUIRY: The Journal of Health Care Organization, Provision, and Financing* 40:2 (2003): 146-157; [Noether](#), Monica. "Competition among hospitals." *Journal of Health Economics* 7:3 (1988): 259-284; [Rahman](#), Momotazur, Omar Galarraga, Jacqueline S. Zinn, David C. Grabowski, and Vincent Mor. "The impact of certificate-of-need laws on nursing home and home health care expenditures." *Medical Care Research and Review* 73:1 (2016): 85-105; [Rivers](#), Patrick A., Myron D. Fottler, and Jemima A. Frimpong. "Regulation on Hospital Costs." *Journal of Health Care Finance* 36:4 (2010): 1-16; [Rivers](#), Patrick A., Myron D. Fottler, and Mustafa Zeedan Younis. "Does certificate of need really contain hospital costs in the United States?" *Health Education Journal* 66, no. 3 (2007): 229-244.

⁴ [Carlson](#), Melissa DA, Elizabeth H. Bradley, Qingling Du, and R. Sean Morrison. "Geographic access to hospice in the United States." *Journal of Palliative Medicine* 13:11 (2010): 1331-1338; [Stratmann](#), Thomas, and Matthew C. Baker. "Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to Mri, Ct, and Pet Scans." (2016). Mercatus Working Paper; [Stratmann](#), Thomas, and Matthew C. Baker. "Barriers to Entry in the Healthcare Markets: Winners and Losers from Certificate-of-Need Laws." (2017). Mercatus Working Paper; [Stratmann](#), Thomas and Christopher Koopman. "Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals." (2016). Mercatus Working Paper.

⁵ [Ghosh](#), Sriparna, Agnitra Roy Choudhury, and Alicia Plemmons, "Certificate-of-Need Laws and Healthcare Utilization During COVID-19 Pandemic" (July 29, 2020); [Stratmann](#), Thomas and David Wille, "Certificate-of-Need Laws and Hospital Quality." (2016). Mercatus Working Paper; [Wu](#), Bingxiao, Kyoungrae Jung, Hyunjee Kim and Daniel Polsky. "Entry Regulation and the Effect of Public Reporting: Evidence from Home Health Compare." *Health Economics* 28:4 (2019): 492-516.