FOUNDATION HEALTH PARTNERS

(907) 452-8181 Phone
(907) 458-5324 Fax
www.foundationhealth.org
1650 Cowles Street
Fairbanks, AK 99701

April 9, 2021

Senate Labor and Commerce Committee Members
Capitol Building
Juneau, Alaska 99801

Subject: Opposition to SB 26, Repeal of Certificate of Need

Dear Committee Members,

We are writing to request that you oppose legislation repealing Certificate of Need statutes. An effective CON Program is good for Alaska and good for Foundation Health Partners. It considers all the right issues: program volume, project cost, conflict of interest, and the community safety net. And lastly, it prevents cherry picking of lucrative services at the expense of sole community hospitals such as Fairbanks Memorial Hospital and the communities they serve. It controls price inflation, prevents market saturation and unnecessary facilities and services resulting in escalating Medicaid costs to the State. Increased Medicaid costs to Alaska will result in increased pressure on all healthcare providers already struggling to serve this population through low reimbursement rates.

Historically, FHP's margin is less than 3%. In 2020, in response to COVID-19 government aid allowed FHP to breakeven, and we are hopeful that we can reach the breakeven point again in 2021. Fairbanks Memorial Hospital (FMH) is the Sole Community Hospital in the Interior and responsible to provide 24-hour emergency medical services and emergency preparedness.

When margins allow, the Greater Fairbanks Community Hospital Foundation has a legacy of reinvesting funds in growing health care services where needed in our community. Low margin profitability provides the ability to balance positive margin services and negative margin services to: (1) optimize core operations and (2) reinvest in our community's unmet health care needs such mental health treatment, long-term care, victims of sexual assault, oncology, cardiology, behavioral health and hospice services; and has expanded Medicare access to all residents through our ownership of Tanana Valley Clinic.

Without the Certificate Need Program, the economics of sole community hospitals like FMH will create financial uncertainty. We have provided the attached CON Issue Paper for your review.

Thank you for your service. Please do not hesitate to contact us if you have questions or would like additional information.

Sincerely,

Shelley Ebenal, CEO Foundation Health Partners

Jeff Cook, Board President,
GFCHF and Foundation Health Partners, LLC

cc: Governor Dunleavy, Randy Ruaro, Chief of Staff to Gov. Dunleavy, Commissioner Adam Crum, Interior Delegation members Senators Click Bishop, Scott Kawasaki, Rob Meyer, and Representatives Mike Cronk, Grier Hopkins, Bart LeBon, Steve Thompson, Mike Prax, Adam Wool

THE ISSUE

CON HELPS ENSURE LOW-COST CARE BY PREVENTING UNNECESSARY SERVICES

35 states currently maintain some form of CON program, along with Puerto Rico, the US Virgin Islands and the District of Columbia. States that have retained CON programs currently tend to concentrate activities on outpatient facilities and long-term care. This is largely due to the trend toward free-standing, physician owned facilities that constitute an increasing segment of the health-care market.

In New York State, there was a significant increase in ASC creation after the state loosened its CON requirements in 1996. But as costs have risen and the safety net has deteriorated, they made CON more stringent again iii and placed a moratorium on home care agencies in 2018. After abolishing CON, Ohio suffered an explosion ofniche providers and resurrected it. In 2018, Indiana reenacted CON.iii

CON MANAGES NICHE PROVIDERS

Niche providers, unchecked, can threaten the health care safety net

- Community hospitals use revenues from profitable areas, such as ambulatory surgery, outpatient imaging, and treating heart disease, to subsidize areas that lose money, such as 24-hour emergency rooms, home care, mental health and charity care.
- Niche providers cherry-pick the most profitable procedures, such as CT scans and orthopedic surgeries. They profit from cutting hospitals out of the loop. But this leaves the hospitals with too many of the patients least able to pay their bills, or those whose complicated conditions run-up high expenses.iv
- Many niche providers limit their exposure to unprofitable business. They provide less uncompensated care because they don't offer the businesses that treat high numbers of these patients. They often limit or do not accept Medicaid. And they focus on the healthiest and best-insured patients.
- The GAO has found that specialty providers treated significantly fewer Medicaid patients than hospitals in their area, and that "patients…tend to be less sick than patients with the same diagnoses at general hospitals."v
- Another study also found that ASCs treat less medically complex Medicare patients than hospital outpatient surgery departments.vi
- Few limited-service providers have obligations under the Emergency Medical Treatment and Labor Act (EMTALA). They operate on an ambulatory basis, do not have Emergency Departments, and typically operate normal business hours, not the 24/7 hours of hospitals.

Niche providers consume scarce resources and increase labor costs.

- Niche providers draw away scarce hospital staff and specialty physicians. They jeopardize emergency department coverage while simultaneously relying on the community hospital for free back-up when one of their patients develops complications beyond their capacity.

Limited-service providers increasingly represent a conflict-of-interest.

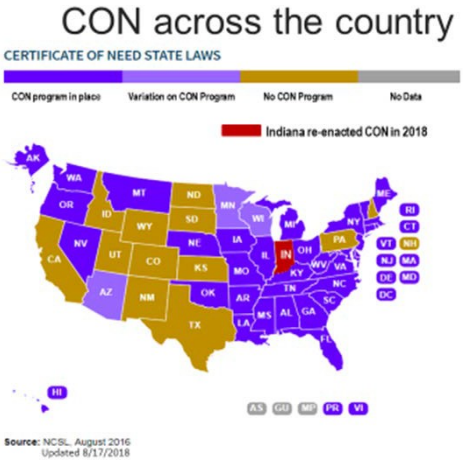
- Some physicians make decisions about care for their patients that also effects on their personal financial interest. Federal regulations intended to control physician self-referral are not always effective. vi

Alaskan niche providers are especially likely to be a problem.

- Roughly half of Alaskans live in areas too sparsely populated to support meaningful competition. This extremely low population density results in a uniquely high proportion of sole community providers (only Sitka and Anchorage have more than one hospital) whose financial viability is often tenuous and is tied to the services that are targets of new, entrepreneurial, niche providers.
- The State has an unusually high percentage of charge-based payers, no managed care, and limited rate setting.
- Niche providers don't offer services that are not already available at the hospital, so they target profitable patients while letting the hospital treat the uninsured and less profitable patients.
- Most tertiary services are available only in Anchorage and serves as the only statewide hub. The way the Anchorage market responds to CON rules has repercussions statewide. Regulations that are appropriate for Anchorage are unlikely to work in other communities.

CON PROVIDES NECESSARY STATE OVERSIGHT

- Health care is—and always will be—an imperfect market. Structural economic forces tend to increase utilization and costs while simultaneously curtailing access to services for the poor.
- Niche providers exploit weaknesses in the marketplace for private gain. They take advantage of payment anomalies. They weaken hospitals by cherry-picking profitable patients, and make it harder for hospitals to continue to cross-subsidize unprofitable services and provide charity care.



WE NEED YOUR HELP

CON has been the subject of contentious debate for years. Many specious arguments are made that CON limits competition and leads to higher costs. The reverse is true. We believe research confirms that regulation of healthcare capacity is in the broadest interests of all Alaskans.

- Weakening CON would make it likely that the communities in Alaska will see spiraling healthcare costs, and higher utilization—without increasing total access, cost, price or quality.
- Weakening CON will not result in better healthcare for rural communities or larger communities. It will only raise the overall cost of healthcare by enriching a few investors at public expense.
- We are strongly opposed to weakening CON for these reasons. And we urge you—in the light of the evidence—to work against any efforts to do so.

A strong CON Program is good for Alaska. It is responsible regulation that helps ensure that decisions are made in the broad interests of the public. It looks at all the right issues to: program volume, project cost, conflict of interest, and the community safety net.

A CON process can objectively determine whether a real community need exists. Where existing providers are meeting community need, allowing or encouraging the entry of cherry-picking niche providerswon't help the community, it won't help the State, it won't help insurance companies or industry, and it certainly won't help the local community hospital. It only helps the niche provider. Redundant services raise health care costs, lower quality and diminish access.

A strong CON Program is in the interest of all Alaskans. It helps limit cost increases and helps ensure that unnecessary facilities won't harm Alaska's fragile health care network.

Vigilantly protect Alaska's Certificate of Need Process.

NOTES

[i] Lawrence P. Casalino; Kelly J. Devers; Linda R. Brewster. "Focused Factories? Physician-Owned Specialty Facilities." Health Aff 22(6):56-67, 2003. © 2003 Project HOPE. Posted 12/23/2003.

[ii] Indiana is the most recent state to enact legislation to establish a certificate of need program. Signed by Governor Holcomb, SB190 went into effect July 1, 2018. It requires the Office of Family and Social Services to cooperate with the Department of Health in establishing a comprehensive certificate of need program and sets for the application requirements and exemptions. http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx.

[iii] G. Lynn, "Perspectives on Competition Policy and the Health Care Marketplace: Single Specialty Hospitals" (Statement of the American Hospital Association the FTC/DOJ hearing, 27 March 2003), 1-3.

[iv] Selecting the healthiest patients is profitable because Medicare and many payors reimburse providers based on the cost of caring for a patient whose disease and overall health are average.

[v] A. Winter, "Comparing the Mix of Patients in Various Outpatient Surgery Settings," *Health Affairs* (Nov/Dec 2003):68-75.

[vi] They prohibit specialty physician referrals to a specialty program within the hospital if the physicians have any ownership interest, but allow unfettered referrals by those same physicians to some types of freestanding limited-service facility they own.