

Alaska's Certificate of Need Program - AS 18.07

Senate Bill 26 - “An Act
repealing the certificate of
need (CON) program for
health care facilities”



Our healthcare providers are cherished and valued members of our communities!

The concept of repealing Alaska's certificate of need program is not meant in any way, shape, or form to dishonor, disrespect, or minimize how important our healthcare providers are to Alaskans!

They are our friends, neighbors, and family members, our loved ones.

But government policies and regulations have suppressed competition, allowed a constrained market to escalate prices, produced lower-quality services, dis-incentivized innovation, and new entrants. Research shows, without competition, the incentive to lower prices and improve quality and innovation diminishes.

Certificate of Need Programs

Certificate of Need (CON) laws are state-level statutory laws that require individuals in the healthcare industry to obtain permission to make significant expenditures or to construct or expand facilities and services, based on the theory that controlling the supply of facilities, equipment, and services is the best method to restrain rising healthcare costs and prevent over-expansion of healthcare facilities.

The basic assumption underlying CON is that excess needs stemming from the overbuilding of healthcare facilities results in healthcare price inflation and services beyond a community's capacity.

The Certificate of Need laws were originally created to contain healthcare costs, prevent over-supply of medical services and infrastructure, and improve access to care, whether indigent or in underserved areas.

CON laws in Alaska require medical providers to obtain government permission to compete for over 20 medical services. ***Please take note: The approval process is not done by health care providers like nurses or doctors; it's a government entity that decides what health care facilities and/or services should be available to you, your family, and friends (your loved ones).***

However, the overwhelming empirical evidence shows the CON has worked like envisioned in Alaska; 40 years of data/research studies back this up. Certificate of Need has not worked how it originally was intended and it's time to repeal!

Certificate of Need State Laws



Source: National Conference of State Legislators

Alaska's Legislative History of Certificate of Need

The following is a past summary of enacted legislation passed by the Alaska Legislature regarding the certificate of need program:

1976: HB 665 (Ch. 275, SLA 1976), which repealed and replaced all of AS 18.07 to establish the certificate of need program and regulation of healthcare facilities.

1982: HB 591 (Ch. 59, SLA 1982), covers only a temporary but not an emergency certificate of need for a health care facility and added a definition of certificate of need dealing with the issuance of certificates.

1982: HB 591 (Ch. 25, SLA 1981), clarified that Pioneer Homes are not subject to certificate of need.

1983: SB 85 (Ch. 95, SLA 1983), added a \$1,000,000 (\$1.0 million) floor for requiring a certificate of need.

1990: HB 85 (Ch. 85, SLA 1990), provided authorization to Dept. of Health & Social Services to charge a fee for the certificate of need.

1991: SB 86 (Ch. 21, SLA 1991), deleted the federal statutes and changed the title section.

1996: HB 528 (Ch. 84, SLA 96), Placed a moratorium on nursing home beds and established a legislative working group on long-term care.

2004: HB 511 (Ch. 48, SLA 04), Included Residential Psychiatric Treatment Centers.

Source: Legislative Affairs Agency, Research Center

What are we trying to solve in Alaska by repealing our certificate of need laws?

CON laws contribute to the highest healthcare costs in the world;

Lack of competition and monopolies drive costs higher not lower

CON challenges: The legal and regulatory costs of preparing, submitting an application, monitoring the application through the process, and potential third-party legal challenges can better be channeled into healthcare for Alaskans

CON laws are supposed to strengthen and enrich our hospital systems;

Hospital margins in Anchorage are at 20.6%, relative to 6.9% for the national average

CON laws are supposed to promote high-quality care

CON states have a higher mortality rate and readmission rate than non-con states

CON laws restrict competition and protect incumbents;

Competition compels companies to deliver increasing value to its customers - Alaskans

The investment of \$1.5m, the time, and the risk add to the costs of an entrant trying to access Alaska. The money isn't going to the new facility, or to expand an existing facility, or to improve the health care for Alaskans

CON laws are supposed to promote charity care;

Emergency care in the U.S. is just 2% of all U.S. medical costs. CON doesn't affect charity care

CON laws create barriers to innovation of new technologies and the entrance of new providers

CON laws prevent innovation, limit new technology and block new entrants

Why repeal Alaska's Certificate of Need?

The Federal Trade Commission, the Dept. of Justice, the Mercatus Center, and many others researchers have studied this issue for over 4 decades and some have even testified here in our legislature supporting the repeal of the CON.

Here are a few points (data & research derived from the various studies) as to why we should repeal CON:

- CON programs limit the introduction and expansion of medical services & equipment, rehabilitation centers, nursing home beds, and medical imaging technologies;
- **Rural hospital closures:** The data and research shows that the closures are related to Low Patient Volume, Challenging Payer Mix (Medicare & Medicaid patients, which pay less), Geographic Isolation (located far away from population centers), and Workforce shortages. None of this has to do with whether you have a CON or not;
- **High-quality health care:** Data and research indicates that deaths from treatable complications following surgeries and mortality from heart failure, pneumonia and heart attacks are significantly higher in CON states than non-CON states; and,
- **Charity care:** Studies have shown, there is not evidence that charity care is higher in CON states than non-CON states.
- **Racial Disparities:** According to research, racial disparities seems to increase in CON states.

Alaskans pay the highest healthcare costs in the world!

Why would Alaska's health care providers not want to open Alaska to a free market? Here are some data examples to think about:

- ▶ Alaska ranks the highest in the nation at \$11,064 per capita in 2014; (Medicaid & Medicare data was last released in June 2017, which covers 1991-2014. The next release is scheduled for 2022);
- ▶ The total Anchorage consumer price index was up 77% from 1991-through 2017, but the medical care part of the index was up 210% - *Nearly three times faster than the prices in the overall CPI;*
 - Hospital margin averages in Alaska run at 15.6%, Anchorage margins average 20.6%, that's 5% higher than San Francisco, which is the next highest in the country;
 - Hospital Margins can be as much as 223 % higher than the lower 48 states; and,
 - Medicare Fee Schedule for Diagnostic Radiology (imaging) in Alaska increased from 491% in 2014 to 533% in 2016 (percentage above the average reimbursement rate).

ALASKA HAS THE HIGHEST HEALTH CARE COSTS IN THE WORLD!!!

Alaska's economy is losing dollars because of the high cost of healthcare

Let's talk briefly about medical tourism: Because employers are looking at ways to keep healthcare costs down and increase the quality for their employees, they have engaged with third party vendors to manage and coordinate medical services for their members. They seek healthcare services in the lower 48.

► Summary data from several third-party vendors related to the medical tourism within Alaska:

- State of Alaska: 2019-2020: 93 completed procedures
 - *Total savings = \$3.9 million dollars, average cost savings = \$42,407 per procedure;*

► Orthopedics for 11 procedures:

- *In Alaska = \$547,082 Lower 48 = \$236,510 Savings of \$337,572 or 58.8% less*

► Pacific Health Group: 2019: 220 completed procedures

- *Total cost savings = \$5.7 million*

What happened to CON during the COVID pandemic?

The requirement to submit a certificate of need prior to temporarily increasing bed capacity was suspended on March 31, 2020. The suspension ended on February 14, 2021. Approximately 11 months without CON regulations.

Alaska suspended the certificate of need laws to meet the demand for increased beds and equipment necessary during the pandemic.

The industry was able to meet the health care demand during a crisis, without CON.

Amazon, Walmart, and McDonald's didn't run up here to open up any health care facilities during the suspension. The health care industry in Alaska wasn't turned on its head or destroyed without CON.

What happens when the next pandemic strikes and we have CON?

The suspension of CON regulations provided flexibility to the health care industry to meet the market demands. This is another reason the law should not exist now!

So why do we need CON?

Alaska already has the highest healthcare prices in the world!

Thank you for support of Senate Bill
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