



ALASKA STATE HOSPITAL &
NURSING HOME ASSOCIATION

March 14, 2022

Senate Finance Committee
Alaska State Capitol
120 4th Street
Juneau, AK 99801
Senate.Finance@akleg.gov

RE: ASHNHA Opposes SB 26 Certificate of Need Repeal

Dear Committee members,

The Alaska State Hospital and Nursing Home Association (ASHNHA) opposes SB 26, which seeks to repeal Alaska's Certificate of Need (CON) program. We want to express in the strongest possible terms our opposition to a full repeal of CON.

ASHNHA recognizes that problems exist within the current CON program, but a statutory repeal of Alaska's CON laws is not the answer. Rather, this issue can best be solved through refinements to the administrative code, and ASHNHA is committed to working with the Legislature and the Department of Health & Social Services on such an approach.

Given that past testimony on this matter has been completely dominated by individuals who do not live or provide health care in Alaska, and arguments have been largely developed from stale data that is more than 10 years old, Alaska providers ask that you consider the very real consequences of a CON repeal.

First, repeal of the state's CON program would increase Medicaid general fund costs. The goal of CON programs is to restrain health care costs and coordinate planning for health care infrastructure development. Remember, thirty-five states retain a CON program or some variation of a CON-type program. If a full repeal is such a sound, good idea, why do a majority of states in the union use these programs? The answer is because CON provides a public, transparent process for vetting projects that could add significantly to a state's Medicaid costs.

As an example, over 90% of the patients in a skilled nursing facility (i.e. nursing home) in Alaska at a given time are paid for by Medicaid. Medicaid pays a capital rate in addition to an operating rate, so any new construction will be financed primarily by Medicaid. Without some level of state involvement in authorizing projects, costs could grow unconstrained. In addition, at a time when health care is moving toward greater transparency, CON repeal reduces transparency and public involvement in decision-making.

Second, CON repeal threatens the sustainability of community hospitals, which must continue to provide 24-hour emergency services to all regardless of ability to pay. Because of the community responsibility to provide 24-hour emergency medical services, hospitals have



significant fixed and operating costs that must be covered. Not all services in a facility are profitable. In fact, many operate at a loss and the facility relies on profitable services to maintain operations. Without reasonable CON standards, health care providers with purely economic motives can cherry-pick profitable service lines which will threaten a hospital's ability to provide the full range of care to a community. Hospitals, unlike concierge, single-specialty, and niche providers, provide stabilizing treatment to anyone who comes to the door and maintain critical emergency preparedness infrastructure.

During the COVID pandemic we have clearly seen the importance of community hospitals and the key role they have played in emergency preparedness, supporting community testing and vaccines, and caring for patients.

Finally, CON repeal is based upon a flawed assumption that the health care market functions as a normal free market and that repeal will reduce prices. Health care is not a free market, and supporting CON does not make you anti-free market. Going back to a "grocery store analogy" provided in testimony to a previous committee, CON repeal is not akin to having a single grocery store in Juneau with a monopoly where repeal would simply increase competition and lower prices. Rather, it is more akin to having two grocery stores in Juneau where one (i.e. hospital) is required to be open 24 hours per day, have adequate employees and groceries at all times, and provide groceries to all customers regardless of their ability to pay versus a boutique grocery store (i.e. "competitor"), which is allowed to offer only profitable grocery items, only provide groceries to customers who can pay for them, and only operate during peak retail hours. No economist on the globe would view this scenario as a free market.

CON repeal is a fast track to a boom in unnecessary, boutique health care and a complete degradation of access to critical community health care services. When the consequences of the wrong choice could mean reduction of services or closure of a hospital, the Legislature should move forward cautiously and with full information.

We agree that problems exist within the current CON program and we encourage the Department of Health and Social Services to convene Alaska providers—not out-of-state interest groups—to work together on developing practical and necessary updates to CON regulations. In fact, a similar process consisting of a negotiated rule-making stakeholder group was successfully used in 2007 to revamp the program, and we support recreating that effort.

We urge the Legislature to "first do no harm" and to table this legislation while regulations are reviewed and modernized. Thank you for your time and consideration.

Sincerely,

Jared C. Kosin, JD, MBA
President & CEO