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Testimony on SB 8 before the  
Alaska Senate Health & Social Services Committee

February 21, 2023

Good afternoon Chairwoman Wilson, Vice-Chair von Imhof, and members of the Committee. My name is Naomi Lopez and I am the vice president of healthcare policy at the Goldwater Institute, which is based in Phoenix, Arizona. Thank you for allowing me to testify regarding SB 8 as you consider this important issue of healthcare access.

Why is SB 8 important for Alaskans? The reason is simple: Today's Certificate of Need (CON) laws are limiting patients' health care access. It is time to put patients first.

Adopted in the 1970s, these laws require competitors' stamp of approval before providers can offer more healthcare services, such as opening a new hospital. CON laws persist today only to protect existing hospitals from new competitors.

These laws also threaten healthcare services to remain stuck in the 1970s, stifling the full potential of 21<sup>st</sup> century medicine and technology. For example, a couple of years ago I learned that I would need a test for sleep apnea. While I do make my health a priority, I was a bit concerned about both the nights away from home that a sleep study would require and the cost, which can easily reach \$3,000.

That is why I was so excited when my provider followed up asking me if I preferred to do a home test or an in-lab test. Not only do I have a strong preference for sleeping in my own bed, but the idea that I could do the test when it was convenient for me and could easily be "re-scheduled" if needed made this decision easy.

But then I also learned that the cost for the home cost would be \$175. That is a small fraction of the cost of the in-lab test.

Fortunately, the in-home testing service I used didn't have to ask the sleep clinics in my area

for permission to provide the service to me since there was no CON law where I live that prevented me from using these services. The process and testing was convenient, seamless, and affordable. And fortunately, I did not need any additional medical interventions.

However, there are many states and various examples across the country where CON laws are preventing patients from getting needed and timely care. In *CON Job: Certificate of Need Laws Used to Delay, Deny Expansion of Mental Health Options*, our investigative reporter detailed how CON laws are negatively affecting Americans who require mental healthcare. The anti-competitive CON laws—which are on the books in 35 states and the District of Columbia—allow existing hospitals and healthcare companies to prevent new providers from entering the marketplace.

While the idea behind these laws was that they would control costs, the reality is that they stifle competition, limit the availability of needed services and drive-up costs, all to the benefit of existing providers and the detriment to the most vulnerable. According to the Goldwater Institute's most recent work on this issue, smaller metropolitan and rural areas may be the hardest-hit when projects are rejected – or never pursued in the first place.

The Goldwater Institute is now partnering with the Beacon Institute in Tennessee to build upon their important first steps in continuing the repeal of their CON laws. We are using data and visualizations to show state lawmakers where additional facilities and services are being denied, as well as what the value of these investments would have been to those communities. See figures below. This should serve as important reminder that the CON system denies both patient access and additional economic opportunities, often to those communities who need both the most.

Imagine that Alaska put patients first, allowing their communities and providers to decide what health care services would be offered. In the same way that there shouldn't be laws against food delivery services to sell food that is delivered to one's door, the state of Alaska should not make it illegal or onerous to offer more health care options and services.

One of the fears of updating the law is that the quality of patient care might suffer. The reality is that patients in states without CON laws have access to more health care options – and at a lower cost.

But Alaskans today are already suffering with limited choices. Imagine a patient who is having respiratory symptoms from a suspected case of the flu. Because she lives in a rural area and a facility has been deemed unnecessary in her area by the larger hospitals, she is forced to arrange for medical transport many hours away to the nearest facility offering care, and she will end up paying more for that service.

There is a better way.

Extensive research and analysis by the Mercatus Center at George Mason University finds that CON laws reduce healthcare quality, reduce access to care, and reduce availability of medical equipment that is important in patient diagnosis and treatment.

An argument made by CON proponents is that, by limiting the availability of certain medical services, CON laws ensure more favorable patient outcomes in those select facilities because they receive a higher volume of patients. Carried to its logical extreme, should lawmakers then allow cancer treatments only at Alaska Regional Hospital? Using that same logic, allowing other facilities, such as the Alaska Cancer Research Center, to also provide cancer treatments would mean fewer cancer patients at Alaska Regional Hospital which would then result in worse patient outcomes.

Imagine how that logic would harm those who are currently undergoing cancer treatments in Juneau today. A patient would be forced to travel to Anchorage at the worst possible time and under the most difficult circumstances.

Of course, this argument in favor of limiting available options fails to recognize that patients in remote areas of the state already face the worst of all possible outcomes when they cannot access *any* treatment at the worst possible time and when they need it most. But that is essentially how the CON laws work.

It is also important to point out that, contrary to claims by some CON proponents, CON laws were originally established to counter the cost-plus reimbursement system. At the time, there was an incentive for facilities to expand their offerings, regardless of demand. Today, the cost-plus system no longer exists. Instead, hospitals are typically reimbursed a fixed amount by insurers for patient care – making these CON laws obsolete.

The same federal government that once encouraged the CON system has even abandoned it. According to a joint statement of the U.S. Department of Justice and the Federal Trade Commission:

“Certificate-of-Need laws impede the efficient performance of health care markets. By their very nature, CON laws create barriers to entry and expansion to the detriment of health care competition and consumers. They undercut consumer choice, stifle innovation, and weaken markets’ ability to contain health care costs. Together, we support the repeal of such laws, as well as steps that reduce their scope.”

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Imagine how this would increase a patient choice in medical care, their options for innovative treatments, and the lower cost for that care.

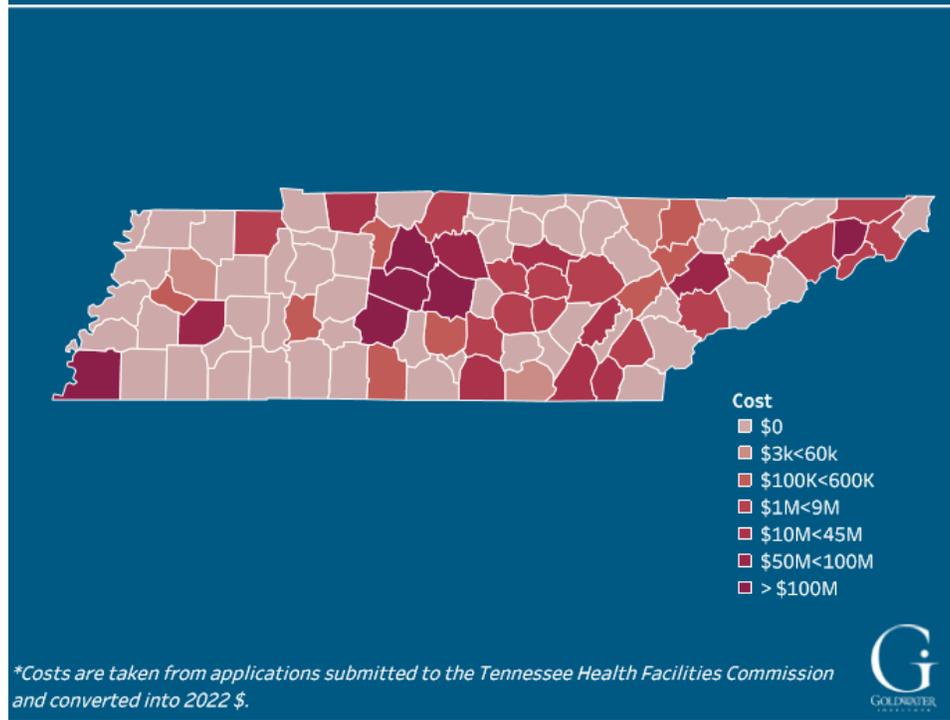
The fundamental question at stake is: Should doctors, medical professionals, and communities have to beg Juneau for permission to provide health care options that are legal and have already been deemed safe? Government should be freeing healthcare providers to give more patients access to better care, not supporting policies that give them less.

Alaska needs to begin putting patients first so that every Alaskan, especially the most vulnerable, can have access to the care that best meets their needs, and access to the best technology and innovation at the lowest cost.

Thank you again for your time and consideration of this very important bill.

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### The Value of Denied Healthcare Projects by Tennessee County (2000-2022)



### The Proportion of Denied CON Applications by Combined Statistical Area in the State of Tennessee (2000-2022)

