



FEDERAL TRADE COMMISSION
Washington, DC 20530



DEPARTMENT OF JUSTICE
Washington, DC 20580

March 11, 2019

The Honorable David Wilson
Alaska State Senate
State Capitol, Room 115
Juneau, AK 99801-1182

Dear Senator Wilson:

The Federal Trade Commission (the “FTC” or “Commission”) Office of Policy Planning and the Antitrust Division of the Department of Justice (the “Division”) (together, the “Agencies”) appreciate your invitation¹ to comment on Alaska Senate Bill 1 (“S.B. 1”), which would repeal Alaska’s certificate of need (“CON”) requirements for health care facilities.²

The Agencies have been consistent over the years in advocating that states can improve competition in the provision of health care by repealing or curtailing their certificate of need laws. At the same time, we are not in a position to review the most recent developments in Alaska health care competition, or timely analyze the specific likely impacts of S.B. 1 on those developments. We hope, however, that the Agencies’ prior examination of health care competition and CON regulations may be of use to you in your deliberations. In particular, we note recent statements by the Agencies regarding the competitive effects of CON regulations pertaining to Alaska: first, was a joint statement by the FTC and the Division regarding the competitive effects of CON regulations and the likely effects of a 2017 proposal to repeal CON requirements in Alaska (the “Statement”);³ second, was 2018 Commission testimony to the

¹ Letter from the Hon. David Wilson, Alaska Senate, to Bilal Sayyed, Dir., Fed. Trade Comm’n Off. Pol’y Plan. (Feb. 21, 2019).

² S.B. 1, 31st Leg., 1st Sess. (Alaska 2019). Our comments address only those provisions in the bill that would repeal Alaska’s CON requirements. *See, e.g., id.* at Sec. 5 (repealing Alaska Stat. § 18.07.031, which requires a certificate of need for certain expenditures for “(1) construction of a health care facility; (2) alteration of the bed capacity of a health care facility; or (3) addition of a category of health services provided by a health care facility.”)

³ Joint Statement of the Fed. Trade Comm’n and the Antitrust Div. of the U.S. Dep’t of Justice regarding Certificate-of-Need (CON) Laws and Alaska Senate Bill 62, Which Would Repeal Alaska’s CON Program (Apr. 2017), https://www.ftc.gov/system/files/documents/advocacy_documents/joint-statement-federal-trade-commission-

Alaska Senate Committee on Labor & Commerce, which revisited the issues raised by the Agencies in the 2017 Statement.⁴ Copies of those two statements are attached.

Because of the importance of health care competition to consumers and the economy as a whole, this sector has long been a priority for the Agencies, which have extensive experience investigating the competitive effects of mergers and business practices by hospitals, insurers, pharmaceutical companies, physicians, and other providers of health care goods and services. In particular, the Agencies have examined the competitive impact of CON laws for several decades. As observed in the Statement, “[b]y interfering with the market forces that normally determine the supply of facilities and services, CON laws can suppress supply, misallocate resources, and shield incumbent health care providers from competition from new entrants.”⁵ Among other things,

- “Empirical evidence on competition in health care markets generally has demonstrated that consumers benefit from lower prices when provider markets are more competitive.”⁶
- “Proponents of CON programs contend that CON laws contain health care costs by preventing ‘overinvestment’ in capital-intensive facilities, services, and equipment.”⁷ However, we have found “no empirical evidence that CON laws have successfully restricted ‘over-investment,’”⁸ but can “restrict investments that would benefit consumers and lower costs in the long run.”⁹
- “Incumbents may exacerbate the potential competitive harm by taking advantage of the CON process—and not merely its outcome—to protect their revenues.”¹⁰

Again, we hope that our recent analyses of CON laws and Alaska health care competition, along with the materials cited therein, will be helpful as you consider S.B. 1. Please feel free to contact us if you have any questions about these materials or related issues.¹¹

[antitrust-division-us-department-justice-regarding/v170006_ftc-doj_comment_on_alaska_senate_bill_re_state_con_law.pdf](#) [hereinafter *Joint Statement*].

⁴ Statement of the Fed. Trade Comm’n to the Alaska Senate Comm. on Labor & Commerce on Certificate-of-Need Laws and SB 62 (Feb. 6, 2018), https://www.ftc.gov/system/files/documents/advocacy_documents/statement-federal-trade-commission-alaska-senate-committee-labor-commerce-certificate-need-laws/p859900_ftc_testimony_before_alaska_senate_re_con_laws.pdf

⁵ Joint Statement, *supra* note 3, at 5.

⁶ *Id.* at 10 (citations omitted).

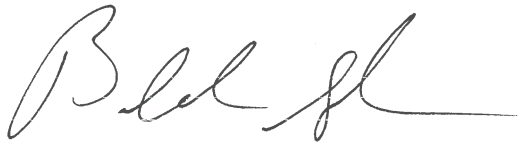
⁷ *Id.* at 9.

⁸ *Id.* at 11.

⁹ *Id.* at 11-12.

¹⁰ *Id.* at 6.

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Bilal Sayyed, Director
Office of Policy Planning
Federal Trade Commission

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Daniel E. Haar", with a long horizontal flourish extending to the right.

Daniel E. Haar, Acting Chief
Competition Policy & Advocacy Section
Antitrust Division
U.S. Department of Justice