

February 14, 2023

Senate Health & Social Services Committee
Alaska State Capitol
120 4th Street
Juneau, AK 99801
Senate.Health.And.Social.Services@akleg.gov

RE: AHHA Opposes SB 8 Certificate of Need Repeal

Dear Committee members,

For 70 years, the Alaska Hospital & Healthcare Association (AHHA) has served as a non-profit trade association representing Alaska's hospitals, nursing homes, and other healthcare partners across the continuum of care. AHHA members play an invaluable role, both as community providers and essential employers, in cities, towns, and villages across Alaska.

AHHA opposes SB 8, 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.

CON laws are a healthcare planning and regulatory mechanism used by many states to balance healthcare access and cost. Because healthcare does not operate like a free market, regulatory constraints are deemed necessary to ensure expensive, unneeded services and facilities are not developed and that underserved populations have sufficient access to care.

AHHA recognizes that problems exist with the current CON program, but a statutory repeal of Alaska's CON laws is not the answer. Critical to evaluating the CON debate is understanding that any analysis that considers CON status as a binary choice—i.e. repeal or not repeal—is grossly oversimplified. Among the 35 states with CON laws, there are huge variations in services covered, enforcement, administrative policies, and threshold levels.

Accordingly, this issue in Alaska can best be solved through refinements to the administrative code, and AHHA is committed to working with the Legislature and the Department of Health on such an approach.

In the past, the CON debate in our state has been dominated by individuals providing testimony who do not live or provide healthcare in Alaska. On behalf of Alaskan providers, we ask that you consider the very real consequences of CON repeal.

First, repeal of the state's CON program would increase Medicaid general fund costs. The goal of CON programs is to restrain healthcare costs and coordinate planning for healthcare infrastructure development. Remember, 35 states retain a CON program or some variation thereof. If a full repeal is such a sound, good idea, why do most 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 healthcare is moving toward greater transparency, CON repeal reduces transparency and public involvement in decision-making.

Furthermore, we have evidence of this playing out in other states that repealed CON laws. In Georgia, Pennsylvania, Ohio, and Indiana, per capita health expenditures for hospital and physician services grew at a higher rate in the years following CON repeal than the US average growth rate over the same period. Prior to repeal, three of the states' expenditures had been growing at a lower rate than the US average.

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, healthcare 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.

For example, Georgia repealed CON for single-specialty ambulatory surgery centers (ASCs) in 2008. The impact was immediate and significant—more than 180 single-specialty ASCs popped up in the first year of repeal, in addition to the 49 CON-approved ASCs that already existed. Within five years of repeal, the number of ASCs in Georgia grew by nearly 500%, while the volume of cases per facility declined. No Georgia hospitals closed in the three-year period leading up to CON repeal (2005 to 2007). However, nine Georgia hospitals closed since repeal in 2008.

The story is similar for the state of Pennsylvania. After Pennsylvania CON laws were sunset, the number of ASCs increased by almost 200% over the next decade.

Ohio repealed CON with a phased approach from 1995 to 1997. In the first three years following repeal, the number of ambulatory surgery centers increased by more than 500%. During the same three years, Ohio lost 14 of its 94 hospitals or 15% of the hospitals in the state.

Finally, CON repeal is based upon a flawed assumption that the healthcare market functions as a normal free market and that repeal will reduce prices. Healthcare is not a free market, and supporting CON does not make you anti-free market. Going back to a “grocery store analogy” once provided in the past, 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. surgery center or imaging center), 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.

Additionally, if one statistically compares Alaska to “No-Con” states (i.e. states without CON laws), Alaska’s healthcare system outperforms for access and quality, shedding further doubt on the efficacy of CON repeal in our state. For example, Alaska has 3 hospitals for every 100,000 residents, a rate that is 50% higher than the No-CON state median. Alaska provides 203 acute care hospital beds per 100,000, virtually the same as in No-CON states. Alaska has access to more Medicare-certified ASCs than No-CON states. This is especially interesting because a “study” from the Mercatus Center on Alaska inaccurately asserts Alaska would have 15.2 ASCs without a CON program (Alaska already has 17 ASCs in operation today). Alaska’s quality scores outperform No-CON states, especially for nursing homes. Finally, the distribution of Alaska’s hospitals is disproportionately higher in rural areas compared to the population, ensuring access to residents in more distant communities.

CON repeal is a fast track to a boom in unnecessary, boutique healthcare and a complete degradation of access to critical community healthcare 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 with the current CON program and we encourage the Department of Health to convene Alaska providers to work together on developing practical and necessary updates to CON regulations. 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.

Lastly, AHHA encourages committee members to review the December 2022 “CON Analysis and Impact Study,” which is an analysis produced by Ascendient Healthcare Advisory, Inc, a national expert on CON laws. AHHA commissioned this analysis to assess current data for making objective conclusions on the potential impact of repealing Alaska’s CON laws. The full study is enclosed with this letter, and the first five pages offer a summary of the report.

Thank you for your time and consideration. We urge the Legislature to table this legislation and direct the Department of Health to review and modernize the CON program’s regulations.

Sincerely,

Jared C. Kosin, JD, MBA
President & CEO

Enclosure: “CON Analysis and Impact Study”