

Alaska's Certificate of Need Program - AS 18.07

Senate Bill 8 - “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, family members, and neighbors, our loved ones.

But government laws and regulations have suppressed competition, caused constrained healthcare markets, disallowed new entrants, new technologies, and disincentivized innovation. Data/Research shows, without competition, the incentive to lower prices and improve quality and innovation diminishes.

What is a Certificate of Need?

Certificate of Need (CON) laws are state regulatory mechanisms for approving major capital expenditures and projects for new health care facilities, expansion of existing facilities, adding new equipment and technology, and providing new or the expansion of existing healthcare services.

Healthcare entities must obtain government permission before proceeding, this permission is based on a 1970's (53 years ago) model.

Note: Alaska's current CON threshold for approval is \$1.5 million.

The original Certificate of Need laws were created to contain rising healthcare costs (this was during the Great Inflation period, from 1965 thru 1982 the rate of inflation reached as high as 15% *in 1980*), prevent over-supply of medical infrastructure and services, and improve access to care, especially for indigent populations or in underserved areas.

Note: Over forty years of peer reviewed data shows CON has failed and has not delivered on the promises made in the 1970s. Even the Federal Government realized the national law they passed did not work. They mandated this in 1982 (tied to federal funding) and repealed in 1987, it lasted a whopping five years.

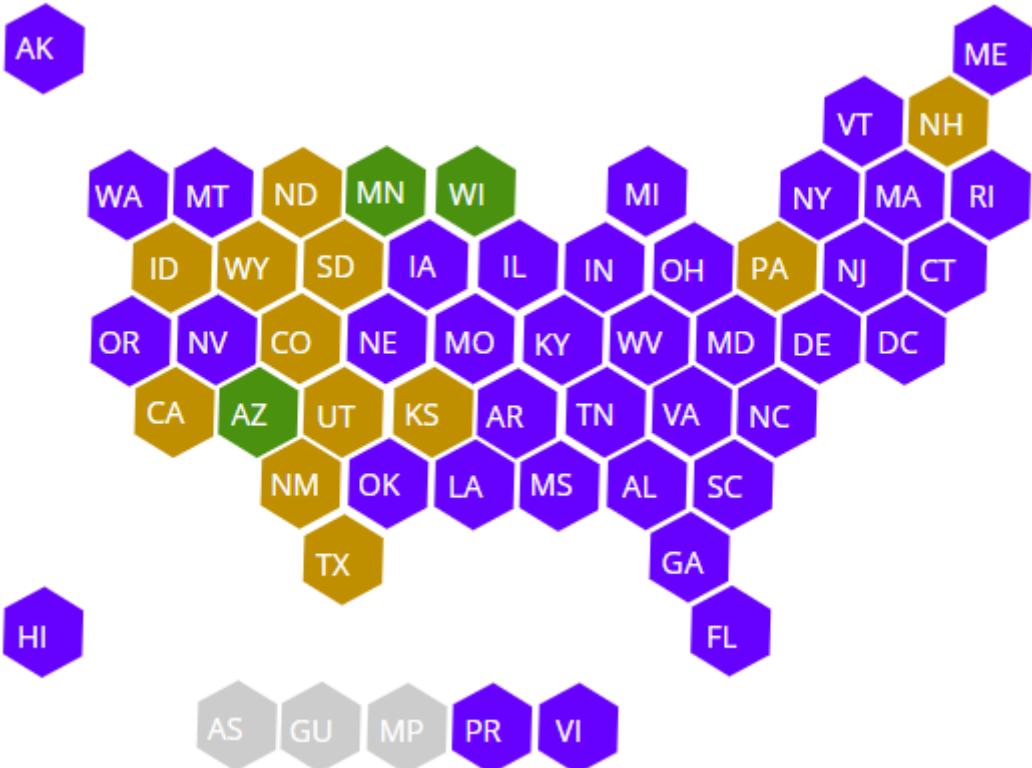
CON laws in Alaska require healthcare entities to obtain government permission for healthcare facilities, equipment, technology, and services for over 20 medical categories.

Note: Alaska's CON approval process is not done by health care professionals like doctors and nurses, it's a government entity that decides what health care facilities, services, equipment, and new technologies should be available to you, your family, and friends.

Certificate of Need laws have not worked how it originally was intended. It protects the incumbent healthcare providers. This is not good for Alaskans and it's time to repeal!

Current National Status of Certificate of Need Programs

Certificate of Need State Laws



Legend

CON program in place
Variation on CON program* (click on map for details)
No CON program
No data

Alaska Healthcare Lobbying Contract Summary
FY19 - FY22



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.

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

Reasons why Alaska should Repeal the Certificate of Need Program

Do CON laws restrain the cost of healthcare services?

(No, by limiting supply, CON laws increase per-service & per-procedure healthcare costs)

Do CON laws ensure healthcare access for rural communities?

(No, CON laws are associated with fewer rural hospitals, rural hospital substitutes, rural hospice care facilities)

Do CON laws promote high-quality healthcare?

(No, mortality rates are higher in CON states, including heart failure, pneumonia, and heart attacks post surgery)

Do CON laws encourage more charity care for underserved people and communities?

(No, there is no evidence that states with CON provide more charity care, and are actually associated with greater racial disparities than NON-CON states)

Do CON laws ensure an adequate supply of healthcare resources?

(No, CON states have fewer hospitals, ambulatory surgery centers, dialysis clinics, nursing home beds, and hospice care facilities)

Do CON laws encourage alternative healthcare facilities?

(No, CON laws restrict services like medical imaging, and ambulatory surgery centers)

Do CON laws encourage new technologies and equipment?

(No, CON laws prevent innovation, limit new technologies, equipment, and new entrants in the healthcare arena)

Do CON laws shield incumbent health care providers?

(Yes, CON laws prevent competition from new entrants and innovation in health care delivery)

Alaskans Deserve Choice in Healthcare

Certificate of Need disrupts the natural market forces and is significantly anti-competitive. It is a barrier to new market entrants and disincentive of the introduction of new technologies.

Healthcare outcomes improve as a result of healthcare competition.

Hospitals in competitive markets have demonstrated to have average costs below those of less competitive markets. Hospital expenses per capita, are less in Non-CON states than hospitals expenses per capita in CON states.

Healthy competition give power to patients by creating choices for healthcare and raising quality as providers compete for patients.

Research indicates that deaths from treatable complications following surgery and mortality rates from heart failure, pneumonia, and heart attacks are all statistically significantly higher among hospitals in CON states than hospitals in Non-CON states;

Alaskans deserve a choice because competition matters!

Alaska already has one of the highest healthcare prices in the world!

CON protects the incumbents and dis-allows new entrants and competition Bad for Alaskans ☹

Why would Alaska's health care providers not want to open Alaska to a free market? Here are a couple of facts to think about:

- ▶ Anchorage healthcare prices for all services are 165% above the national average;
- ▶ Anchorage healthcare prices for inpatient services is 196% above the national average;
- ▶ Surgical Services are twice as high in Alaska relative to other geographies; and,
- ▶ Evaluation & Management Services were twice as high in Alaska relative to other geographies.

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

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 seeking a CON approval first.

Amazon, Walmart, and CVS Pharmacy didn't 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 that restricts healthcare for Alaskans?

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?

How is Alaska's Certificate of Need program working today?

- ▶ Is Alaska's Certificate of Need program working effectively to reduce healthcare costs and increase access to consumers within the state?

Why are healthcare costs still on the rise?

- ▶ Alaska's Certificate of Need laws have led to manipulation of the laws. Examples include, healthcare providers selling state-of-the-art medical equipment and buying lesser quality priced medical equipment to remain under the Certificate of Need \$1.5 million threshold.

Wouldn't those dollars better serve Alaskans if they were invested in healthcare facilities, innovation, increased access for the underserved, and allowing new entrants to provide additional quality health care services?

- ▶ Alaska's Certificate of Need laws result in territorial disputes and legal costs between healthcare providers, because one healthcare provider objects to another healthcare provider's plans to add healthcare facilities and/or services.

Does a territorial fight over who earns the high profit margins improve or provide better quality healthcare to Alaskans?

Thank you to the many healthcare researchers, healthcare professionals, and healthcare economists for sharing their data, research and analysis on CON source contributors include the following:

The Federal Trade Commission/Dept. of Justice; the Mercatus Center-George Mason University; the Centers for Medicaid/Medicare; the U.S. Department of Health & Human Services; the U.S. Department of the Treasury; the U.S. Department of Labor; The U.S. Government Accountability Office (GAO); the State of Alaska Department of Health & Social Services and the Department of Commerce, Community & Economic Development; UAA Institute of Social and Economic Research; American Medical Association; The American Journal of Medicine; American College of Emergency Physicians; the American Hospital Association; National Institute for Health Care Reform; National Academy for State Health Policy; Rutgers University-Center for Health Policy; Harvard Medical School; The Sanford School of Public Policy-Duke University; Brown University; Temple University; Columbia University School of Law; University of Maryland; Cecil G. Shep Center for Health Services Research-University of North Carolina; Providence Veterans Medical Center; Institute for Justice; 2018 Bipartisan Blueprint for Improving Our Nation's Health System Performance-Governors from Colorado, Ohio, Alaska, Pennsylvania, and Nevada; Millman Group-Primera Insurance Company; Becker's Hospital review; Dr. Robert Cimasi, and many others have studied this issue for over 4 decades and some have even testified here in our legislature supporting the repeal of the CON.

Thank you for support of Senate Bill 8
- “An Act repealing the certificate of
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