

**ALASKA STATE LEGISLATURE  
JOINT MEETING  
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE  
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**

September 18, 2007

Anchorage AK

1:39 p.m.

**MEMBERS PRESENT**

SENATE HEALTH, EDUCATION AND SOCIAL SERVICES

Senator Bettye Davis, Chair

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES

Representative Peggy Wilson, Chair

Representative Bob Roses, Vice Chair

Representative Anna Fairclough

Representative Sharon Cissna

Representative Berta Gardner

**MEMBERS ABSENT**

SENATE HEALTH, EDUCATION AND SOCIAL SERVICES

Senator Joe Thomas, Vice Chair

Senator John Cowdery

Senator Kim Elton

Senator Fred Dyson

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES

Representative Mark Neuman

Representative Paul Seaton (via teleconference)

**OTHER LEGISLATORS PRESENT**

Representative Scott Kawasaki (via teleconference)

Representative Bill Stoltze

**COMMITTEE CALENDAR**

Certificate of Need Program Work Session

**PREVIOUS COMMITTEE ACTION**

No previous action to record.

**WITNESS REGISTER**

RICHARD BENAVIDES  
Staff to Senator Davis  
Alaska State Capitol  
Juneau, AK

**POSITION STATEMENT:** Outlined the purpose of the meeting

ROBERT JAMES CIMASI, President  
Health Capital Consultants  
St Louis, MO

**POSITION STATEMENT:** Described the focused research his company conducted on CON

THOMAS PIPER, Director  
Missouri Certificate of Need Program  
Jefferson City, MO

**POSITION STATEMENT:** Delivered a PowerPoint presentation related to CON

DEAN MONTGOMERY  
American Health Planning Association  
Falls Church, VA

**POSITION STATEMENT:** Compared the scope and coverage of the Alaska CON program with programs in other states

ELMER LINDSTROM, Project Manager  
Department of Health & Social Services (DHSS)

**POSITION STATEMENT:** Described the negotiated rule making process

JEREMY HAYES  
Anchorage Director  
Advanced Medical Centers of Alaska  
Anchorage, AK

**POSITION STATEMENT:** Described drawbacks related to CON

NORMAN STEVENS, CEO  
MatSu Regional Hospital Center  
Palmer, AK

**POSITION STATEMENT:** Offered the view that the proponents of repealing CON are financially motivated

SHAWN MORROW, CEO  
Bartlett Regional Hospital  
Juneau, AK

**POSITION STATEMENT:** Presented experiential evidence from the Oklahoma CON program

DOCTOR CHAKRI INAMUPDI, President  
Alaska Radiology Associates  
Anchorage, AK

**POSITION STATEMENT:** Offered suggestions for changing CON

JEANINE HINMAN, Attorney  
Advanced Medical Center of Alaska (AMCA)  
Anchorage, AK

**POSITION STATEMENT:** Supported repeal of CON

JEFF JESSE, CEO  
Alaska Mental Health Trust Authority  
Anchorage, AK

**POSITION STATEMENT:** Suggested addition to CON for adolescent mental health services

KIM BLACK  
Alaska Open Imaging Center  
Eagle River, AK

**POSITION STATEMENT:** Spoke in favor of the negotiated rule making process

LAURIE HERMAN, Regional Director of Government Affairs  
Providence Health & Services in Alaska  
Anchorage, AK

**POSITION STATEMENT:** Stated support for negotiated rule making

#### **ACTION NARRATIVE**

**CHAIR BETTYE DAVIS** called the joint meeting of the Senate and House Health, Education and Social Services Standing Committees to order at [1:39:06 PM](#). Present at the call to order were Representative Gardner, Representative Neuman, Representative Roses, Representative Fairclough, Co-Chair Wilson, and Chair Davis.

#### **CERTIFICATE OF NEED PROGRAM WORK SESSION**

CHAIR DAVIS announced that the committee would conduct a work session on the Certificate of Need Program. The information that's gathered will be helpful when we return to Juneau and consider the bills, she added.

[1:40:09 PM](#)

RICHARD BENAVIDES, Staff to Chair Davis, explained that the purpose of the meeting is to bring the CON stakeholders together to discuss the current and potential impacts related to the CON program.

MR. BENAVIDES outlined the agenda and introduced the three invited experts. He explained that Alaskan stakeholders who testified were asked to follow a format that included: experience based testimony; aspects that stakeholders would like to see changed; the positive implications of changing CON; the negative implications of changing CON; areas open to compromise; and areas not open to compromise.

CO-CHAIR WILSON commented that this recurring and controversial issue needs a solution.

[1:47:16 PM](#)

ROBERT JAMES CIMASI, President, Health Capital Consultants, testified via teleconference from St Louis, MO. He described the focused research his company conducted, which resulted in a reference manual and sourcebook that encompasses the statutory, regulatory, administrative, and legal aspects of CON regulation from inception to the present.

MR. CIMASI highlighted eight points in support of the position that CON is a failed public health policy: 1)CON has a history of failure; 2)effects of CON repeal in other states; 3)the Federal Trade Commission has repeatedly denounced CON; 4)CON has failed to lower health care costs; 5)CON is anti-competitive; 6)CON is a barrier to health care innovation; 7)CON reduces access and patient choice; and 8)CON has not improved health care quality.

MR. CIMASI concluded his testimony with the statement that in his view it's important to pass bills to repeal CON in Alaska. There are better ways to control cost and quality. [The full testimony may be found in the committee file.]

[1:58:10 PM](#)

CHAIR DAVIS noted that Representative Seaton was on line and Senator Dyson and Representative Neuman were represented by staff.

[1:59:09 PM](#)

REPRESENTATIVE CISSNA asked what part of the study had direct Alaskan research.

MR. CIMASI said his firm has done consulting work in Alaska, they tracked how CON certificates have been filed in Alaska, and they have reviewed studies from Washington that focused on Alaska. They are familiar with the geopolitical subdivisions in Alaska and they know that there are large provider systems. The geographic dispersion is a real barrier to entry for providers to bring in different ways of delivering care that would provide quality and lower the cost, he stated.

[2:01:52 PM](#)

REPRESENTATIVE ROSES asked if in those states that have repealed CON, there is reduced access to private companies for Medicare and TRICARE patients resulting in increased burden on the larger facilities.

MR. CIMASI said his company's review shows no evidence that repealing CON has resulted in a lack of access for Medicare or military patients. In fact, there is evidence that health care is restricted because of the continuation of CON.

CHAIR DAVIS noted that Representative Stoltze had joined the meeting.

REPRESENTATIVE GARDNER said the argument for retaining CON is that large providers aren't free market agencies. They have many government mandates to meet the needs of anyone who walks through the door.

MR. CIMASI said if the government is placing burden on large and acute care community hospitals that isn't placed on other providers, then those hospitals should be paid to provide those services.

[2:06:45 PM](#)

CHAIR DAVIS asked why some states that repealed CON are putting it back.

MR. CIMASI said it relates to advocacy and not patient care.

[2:08:25 PM](#)

CO-CHAIR WILSON noted that the American Health Planning Association reports that 36 states and D.C. have CONs. None have gotten rid of CON in the last ten years, but several are planning to put it back. She asked if his research took variation between states into account.

MR. CIMASI acknowledged that there are some states where CON has changed, but the fact is it's a huge lobbying and advocacy battle that's being waged and it's all about competition. There's no evidence that CON reduces cost, brings better quality or prevents physician self-referral.

2:10:48 PM

REPRESENTATIVE WILSON mentioned access problems in rural Alaska and said none of the ambulatory surgical centers or imaging center groups have wanted to help with access, which is probably because of cost. She said she has trouble figuring out how access is going to be helped if CON is eliminated.

2:12:02 PM

THOMAS PIPER, Director, Missouri Certificate of Need Program, Jefferson City, MO, delivered a PowerPoint presentation demonstrating how CON relates to health care market entry, competition, and protecting public interests. He said he would cover the topics of health care cost, the CON background, its concepts, its success, and relationship to competition. Also he would illustrate the benefits when business measures CON impact, when the public is assured broad input, and when there is balance between competing interests. [The full testimony and PowerPoint may be found in the committee file.]

REPRESENTATIVE ROSES noted that the study shows that New York and Michigan have much lower costs. Both states are heavily unionized and negotiate preferred providers for a lower cost. He asked if there's any differentiation in the information between that and having the CON.

MR. PIPER said not that he's aware of. Ford Motor Company indicated that it used comparable compilations in the composition of their study and that the health care benefits were comparable.

2:29:10 PM

DEAN MONTGOMERY, American Health Planning Association, Falls Church, VA, said he would make a detailed comparison of the scope and coverage of the Alaska CON program with programs in other states. The information is based on work he did for the Alaska Hospital and Nursing Home Association. The study looked at five questions: 1)the scope of the program in Alaska; 2)whether the regulation of the Alaska services is more or less stringent than others; 3)whether the rules and regulations are applied equitably to institutional and non-institutional providers of health services; 4)whether there's a level playing

field; and 5)the implications and ramifications for Alaska community hospitals. [The full testimony may be found in the committee file.]

MR. MONTGOMERY concluded his testimony with the statement that it's relatively easy to establish new services in Alaska compared to other states. That has substantial implications for community hospitals in Alaska that are small, have fewer back up services, higher emergency case loads, and high charity-care case loads. Clearly, the free standing facility has a substantial advantage, he said.

2:43:05 PM

ELMER LINDSTROM, Project Manager, Department of Health and Social Services (DHSS), opined that the two differing positions that have been described are well reflected in the state. Clearly this has been an ongoing controversy, and it's a very contentious program area for DHSS.

MR. LINDSTROM related that in 2004 the legislature amended the CON statute modestly to add CON coverage for two facilities. They were independent diagnostic testing facilities and residential psychiatric treatment centers. Legislative intent directed the department to rewrite the regulations and develop comprehensive standards such that CON program applicants would understand the measures used to evaluate the applications. The intent language also directed DHSS to have a public process to aid in developing the standards.

MR. LINDSTROM explained that over the course of 18 months, multiple public comment opportunities were provided and the standards and regulations were developed. Although no one at DHSS thought that everyone would be satisfied, he and others thought that the controversy would die down over time. Unfortunately, it hasn't worked out that way, he said. After the department put out a modest set of regulations, the public pointed out lots of problems with the CON program and the underlying statute.

MR. LINDSTROM said that at that point Commissioner Jackson decided to take a different approach. After consulting with the governor's office, Anna Kim was selected to be a convener to speak to the various parties to see if there was interest in pursuing a negotiated regulation process. That statutory process is designed to bring consensus on controversial issues that can eventually result in new regulations. The statute gives the commissioner the power to ask the group to look beyond the

regulations and he believes that she will be interested in that provision. He knows there is a desire that the timeline for this new approach be short, so that the process is finished by the first of the year.

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REPRESENTATIVE GARDNER asked if patients would be considered stakeholders.

MR. LINDSTROM said the statute envisions, and the commissioner believes, that the interested parties are the entities that are subject to the CON program. However, the process will be open and transparent to the public. Responding to a question, he said that the meetings would be publicly noticed and that the legislative committees would be alerted.

CO-CHAIR WILSON suggested he consider what other states have done to avoid the perception of any conflicts of interest.

[2:58:28 PM](#)

MR. LINDSTROM responded to a question about how many changes might be expected and advised that there are strongly held feelings on this topic. There is no silver bullet.

CHAIR DAVIS asked if he had information on the proposed ballot initiative.

MR. LINDSTROM said the initiative is sponsored by private individuals and he understands that it's been certified. Nevertheless the commissioner intends to move forward toward a negotiated regulation project.

REPRESENTATIVE LYNN disclosed that he is a co-sponsor of the initiative. That process would bring in Alaska stakeholders, he added.

[3:02:47 PM](#)

JEREMY HAYES, Anchorage Director, Advanced Medical Centers of Alaska, reported that Alaska has the most expensive health care costs in the nation and the second poorest access to health care. It also has the most restrictive CON program of any state. There is no evidence that CON has done anything to control costs in Alaska and it thwarts entrepreneurial competition, he said.

MR. HAYES said ideally, the CON program should be repealed. However, it's probably more realistic to reevaluate the current system relative to states that are comparable demographically.

He highlighted four aspects of CON that warrant re-evaluation. 1)the \$1,150,000 threshold for requiring CON approval; 2)the threshold items including but not limited to value of land acquisitions, net present value of the lease, and other line items; 3)the appeals process; and 4)the general & concurrent review standards.

MR. HAYES said he supports the establishment of a negotiated regulation committee. He would be willing and honored to participate. [The full testimony may be found in the committee file.]

MR. HAYES responded to questions and said it's his contention that CON regulations are the largest barrier to access, but transportation and access do present problems. He also said he has spoken with economists and that the lack of access to facilities and the lack of physicians in the state contribute to the lack of access for patients. He believes that the CON process contributes to physicians' unwillingness to come to Alaska. He agrees that getting rid of CONs isn't the answer to all the problems with regard to cost.

[3:15:08 PM](#)

NORMAN STEVENS, CEO, MatSu Regional Hospital Center, offered the view that the proponents of repealing CON are financially motivated. He relayed that the hospital went through the two year process, followed CON rules, built a new \$101 million facility, and brought world-class health care to MatSu citizens. He commented on physician recruiting and said he has yet to have a physician bring that topic up as an issue. He believes that boutique providers carve off the more profitable programs such as surgery and radiology and they skew public opinion about costs. He contends that most private providers are exempt from joint commission oversight and their quality is no better. [The full testimony may be found in the committee file.]

MR. STEVENS emphasized that hospitals are at significant risk nationwide. He asked the committee to look at motivations, at protecting communities, and make sure that community hospitals are open and operating in the future.

[3:24:39 PM](#)

SHAWN MORROW, CEO, Bartlett Regional Hospital, Juneau, presented experiential evidence from the Oklahoma CON program, which includes only long-term care. Oklahoma does not have CON programs for diagnostic imaging, surgery centers, and hospitals.

MR. MORROW relayed that since 1990, 13 hospitals have closed and some communities have had to institute a sales tax to keep their hospitals viable. He said that the lack of CON regulations for acute care has played a part in: 1)deteriorating the financial stability of community-based hospitals; 2)weakening access to health care services; and 3)increasing the tax burden on Oklahomans.

MR. MORROW expressed the view that when specialty providers carve out high profit margin services, less money is available to hospitals to off-set basic and essential services that lose money. If CON is repealed in Alaska, he believes that physician and investor owned specialty facilities would proliferate. Although he isn't saying that eliminating CONs will cause hospitals to close, he does believe that their financial stability will be weakened and they'll be vulnerable to changes in reimbursement aimed at lowering costs. [Full testimony is available in the committee file.]

REPRESENTATIVE ROSES referenced the hospital closures and asked if there were changes in the health care delivery systems or insurance programs other than the elimination of CON that affected that situation.

MR. MORROW said absolutely. In 1985 the major reimbursement method became DRG-based [diagnosis-related group] and in 1997 there was the Balanced Budget Act. "Again, CON I do not think alone...resulted in the closure of so many hospitals..., but...I do affirm that it was a contributing factor," he stated.

[3:29:01 PM](#)

DOCTOR CHAKRI INAMUPDI, President, Alaska Radiology Associates, stated that his experience relates to imaging only. He explained that his facility has nine board certified radiologists and two nurse practitioners. The group has been practicing diagnostic and interventional radiology in Alaska for nearly thirty years and it cares for over 100,000 patients a year

DOCTOR INAMUPDI said his group would like certain aspects of the CON policy changed to close loopholes.

- Remove the exemption for imaging in physician offices and establish the same criteria for receiving a CON as is used for hospitals and independent diagnostic testing facilities.
- Reduce the dollar limit for establishing the need for CON for imaging equipment and construction costs to \$500,000 from the current \$1,000,000. This would address the issue

of purchase and use of less expensive, outdated and substandard equipment to avoid the CON process.

DOCTOR INAMUPDI outlined the following positive implications of changing the CON policy:

- It would reduce the proliferation of unnecessary imaging. The groups that are exempted by the CON are ordering the imaging exams for their patients and they use their own expensive equipment.
- It would control health care costs for employers. He cited a Ford Motor Company study that indicates health care costs that are 160 percent higher in non-CON states compared to adjacent CON states.
- Lowering the threshold to \$500,000 would reduce the incentive for facilities to purchase older and poor-quality imaging equipment.

DOCTOR INAMUPDI said his group doesn't believe that Alaska residents would be negatively impacted by the suggested changes. In fact future potential litigation and appeals could be reduced.

DOCTOR INAMUPDI said his group would compromise on the suggested \$500,000 threshold and on permitting the physician exemption provided the parameters are clearly defined. His group is not willing to compromise on the total elimination of CON or on any facet of a regulation that jeopardizes the quality of patient care.

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REPRESENTATIVE ROSES asked if he would favor doing away with CON if all physicians and health care providers were required to post prices.

DOCTOR INAMUPDI said the Medicare and Medicaid prices are fixed and he doesn't believe that would change. "Eliminating the CON would actually hurt by proliferation of imaging services."

[3:39:02 PM](#)

JEANINE HINMAN, Attorney, Advanced Medical Center of Alaska (AMCA), Anchorage, said she is also talking as the wife of a physician. She said if she were convinced that repealing CON would cause hospitals to suffer in a significant way, then she wouldn't support the repeal. "But I don't believe it," she said. The four CONs that have been approved are hospitals, and she

believes that the profit margin at Providence Hospital is plenty high.

MS. HINMAN said she doesn't think she and her husband would have moved here, if they'd known about the hostile legal environment that uses CON as a vehicle for litigation. Knowing that it's hamstrung AMCA in three different markets, she said there probably is a recruitment problem in the state.

MS. HINMAN pointed out that CON doesn't address access to health care in rural areas so the idea that maintaining the status quo will help access doesn't track. She suggested that a truly mobile ambulatory surgery center where doctors go out to villages is another avenue to consider.

MS. HINMAN responded to a question about timeframes and explained that she returned to Alaska a month ago, but she's been working for AMCA on CON related legal issues longer than that. She made the point that litigation doesn't add value to health care, it just adds cost.

[3:47:37 PM](#)

JEFF JESSE, CEO, Alaska Mental Health Trust Authority, Anchorage, said he brings the perspective of children and adolescent mental health services. Several years ago residential psychiatric treatment centers were added to the CON process and that's been a tremendous benefit for the "Bring the Kids Home" (BTKH) initiative. He noted that three years ago 428 youths were housed out of state and now the number is under 250. This year home and community-based services will be reviewed to help kids before they reach the point that they need to be placed in residential facilities, he said.

MR. JESSE suggested that the CON process needs to cover two areas in addition to residential psychiatric treatment centers. The first is acute care facilities for adolescents needing mental health services. The second is called conversion. Briefly, that's where a provider could start lower levels of care and convert them to CON covered services without going through the CON process.

REPRESENTATIVE GARDNER asked if companies are willing to build residential treatment facilities because they feel the investment would be protected.

MR. JESSE said no; "It isn't so much that we need to encourage providers to invest in that higher level of care, we need to limit the number of beds that are there."

REPRESENTATIVE GARDNER said she's looking for the empirical data.

MR. JESSE explained that at the beginning of the BTKH process, DHSS looked at the Alaskan adolescents who were in RPTC [residential psychiatric treatment center] level care in the Lower 48. They learned that the reason many were in that level of care was because lower levels of care weren't available within Alaska.

REPRESENTATIVE GARDNER commented that it isn't necessarily a CON issue.

MR. JESSE said he agrees but the point is, that was the default placement when lower level care wasn't available in the state. "We don't want to duplicate that problem with our in state array of services," he said.

[3:54:49 PM](#)

KIM BLACK, Alaska Open Imaging Center, Eagle River, spoke in favor of the negotiated rule making process. She highlighted that the statute needs clarification because radiologists are currently left out of the physician exemption in the CON. Alaska Open Imaging Center does have physician owners who are on the premises when patients come in, she said.

[3:56:42 PM](#)

LAURIE HERMAN, Regional Director of Government Affairs, Providence Health & Services in Alaska, Anchorage, stated for the record that Providence is very pleased with the innovative step that Commissioner Jackson has suggested with regard to negotiated rule making.

CHAIR DAVIS expressed hope that the process would be successful.

CO-CHAIR WILSON opined that more regulations aren't always the best answer. It's a good idea to look at everything as a whole and see if changes are needed.

REPRESENTATIVE GARDNER said she looks forward to seeing the process move forward.

REPRESENTATIVE LYNN said he feels that monopolies aren't in the best interest; the patient is who really matters; competition tends to lower prices; he is not necessarily opposed to the negotiation process; and he would like to see the related bills move forward.

CHAIR DAVIS stated that the bills will proceed when the legislature is in session.

REPRESENTATIVE CISSNA said one fix could be to keep people healthy from the start.

REPRESENTATIVE FAIRCLOUGH said she appreciates the opportunity to learn more about CON in Alaska and is pleased to see all the interest.

REPRESENTATIVE ROSES said he hopes the negotiations go well and that stakeholders come to some agreement.

There being no further business to come before the committee, Chair Davis adjourned the meeting at [4:03:52 PM](#).