ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE
April 6, 2017
9:08 a.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Kevin Meyer
Senator Gary Stevens
Senator Berta Gardner

MEMBERS ABSENT

Senator Shelley Hughes, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 62
"An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 62
SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM
SPONSOR(s): SENATOR(s) WILSON

02/17/17	(S)	READ THE FIRST TIME - REFERRALS
02/17/17	(S)	L&C, FIN
04/06/17	(S)	L&C AT 9:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR DAVID WILSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 62.

GARY ZEPP, Staff
Senator David Wilson
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Provided supporting information on SB 62.

JON SHERWOOD, Deputy Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Provided an overview of Certificate of Need (CON).

THOMAS STRATMANN, Professor of Economics and Law
Senior Research Fellow
Mercatus Center
George Mason University
Arlington, Virginia
POSITION STATEMENT: Testified in support of SB 62.

ACTION NARRATIVE

9:08:54 AM
CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 9:08 a.m. Present at the call to order were Senators Stevens, Meyer, Gardner, and Chair Costello.

SB 62-REPEAL CERTIFICATE OF NEED PROGRAM

9:09:15 AM
CHAIR COSTELLO announced the consideration of SB 62. She stated that the intention is to hear an introduction, take invited testimony and hold the bill for further consideration. She explained that this bill would repeal the Certificate of Need Program.

9:10:06 AM
SENATOR DAVID WILSON, Alaska State Legislature, sponsor of SB 62 said he has an MBA in health care administration and thus is familiar with this complicated topic. He reported that when he and his staff were doing research on the bill, they heard from many individuals who are unwilling to come forward and discuss the issue out of fear that they would lose their hospital privileges.

SENATOR WILSON paraphrased the following sponsor statement for SB 62:

Senate Bill 62 repeals Alaska's certificate of need (CON) program and provides for a two-year window before the repeal becomes effective.

The certificate of need programs were first mandated nationally by the federal government in 1974, then subsequently repealed in 1987 by the federal government. Thirteen states have since repealed their certificate of need programs across the nation; thirty-four have CON laws, and three don't have a CON program, but require approval for certain facilities and services.

Certificate of need programs were originally intended to reduce healthcare costs, improve access to care, and regulate and limit the entry and supply of medical services and facilities. CON programs create internal subsidies and encourage the use of the economic profits to cross-subsidize indigent care.

However, the healthcare system has evolved from a fee-for-service system, which lacked incentives to lower prices, to a prospective payment system. CON laws over the last forty years have stifled competition, created a barrier to new medical facilities and services for healthcare consumers, and prevented the free market forces which improve the quality and lower the costs of healthcare services.

Alaska's certificate of need program poses a substantial threat to the proper performance of healthcare markets and services.

9:12:47 AM
SENATOR WILSON paraphrased the following PowerPoint on the Certificate of Need program:

What is a Certificate of Need Program?

Certificate of Need (CON) programs originated to regulate the number of beds in hospitals and nursing homes and to prevent purchasing more equipment than necessary. The intent was that new or improved facilities or equipment would be approved based primarily on a community's genuine need. Statutory criteria often were created to help planning agencies decide what was necessary for a given location. By

reviewing the activities and resources of hospitals, the agencies made judgments about what needed to be improved. Once need was established, the applicant organization was granted permission to begin a project. These approvals generally are known as Certificates of Need.

Alaska's Certificate of Need Program Overview

- Alaska's Certificate of Need (CON) program was enacted in 1976 in response to the National Health Planning and Resources Development Act which tied federal funding to the enactment of CON laws. These laws restrict the addition of healthcare facilities (including expansion) by requiring that persons obtain state approval for certain projects, which is given based on calculated need. The rationale is that controlling supply will help to reduce costs of healthcare services. Healthcare services are not a typical economic product because consumers are generally more restrained in their choices. However, the federal government repealed its mandate in 1987. 14 states have since repealed their Certificate of Need laws, despite their controversial nature.

- Persons in favor of Certificate of Need laws argue that they do limit healthcare costs, and are in favor of a transparent process allowing for stakeholder input before large projects are undertaken. Those in favor of amending or abolishing Certificate of Need laws argue that they have the opposite effect on health care costs-increasing rather than decreasing them by limiting competition; that they are difficult to administer and not always addressed consistently; and that these laws give more control to bigger businesses and those with more political clout.

- Current Alaska Certificate of Need laws require persons expending more than $1,500,000 to construct, remodel, or purchase equipment for a health facility to obtain a Certificate of Need. The office is currently staffed by one (busy) individual. The office is represented by the Department of Law in two civil lawsuits and two appeals (one before the administrative appeals office; the other before the superior court). Staff recommends that the statutes

and regulations be updated to reflect the current status of the healthcare industry, including an evaluation of the monetary threshold and the current methodologies. The statutes could also be amended to limit the applicability of Certificate of Need laws to those services, such as skilled nursing facilities, that are most likely to have a direct increase or burden on the state budget.

Purpose of Certificate of Need Programs

Certificate of Need laws are state-level regulatory initiatives that require individuals in the healthcare industry to obtain permission to make significant capital expenditures or to construct or expand facilities and services, based on the theory that controlling the supply of facilities, equipment, and services is the best method to restrain rising healthcare costs.

The Certificate of Need laws are state-level regulatory initiatives that require individuals in the healthcare industry to obtain permission to make significant capital expenditures or to construct or expand facilities and services, based on the theory that controlling the supply of facilities, equipment, and services is the best method to restrain rising healthcare costs.

The Certificate of Need laws were created to set up health planning agencies to control future healthcare expansion based on need.

Certificate of Need laws are to regulate and evaluate healthcare facilities and services to prevent the overbuilding of healthcare facilities and services beyond a community's capacity.

9:17:05 AM

National History of Certificate of Need

1974: National Health Planning Resources Development Act (NHPRDA), required states to establish oversight agencies for the submission of proposals for any major capital spending on health care reprices (e.g. new construction, building expansions, new technology). This required all states seeking federal funding for health programs implement a Certificate of Need program.

1974-1982: Health care costs continue to rise nationwide despite 100 percent state participation in NHPRDA.

1982: Congress initiates review of Certificate of Need programs and the Congressional Budget Office study doesn't offer a recommendation but reports that problems with NHPRDA has limited the program's success in achieving cost savings.

1983-1985: Seven states abandon Certificate of Need despite NHPRDA is still in effect.

1987: Congress repealed the National Health Planning Resources Development Act, which required states to implement a Certificate of Need program. Following the repeal, 14 states terminated their Certificate of Need programs.

Alaska's History of Certificate of Need

Alaska's participation in a certificate of need program started in 1976 and seven pieces of legislation have been enacted since then.

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 facilities.

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.

1983: HB 85 (Ch. 95, SLA 1983), added a $1.0 million floor for requiring a certificate of need.

1990: HB 85 (Ch. 85, SLA 1990), provided authorization to Department of Health and Social Services to charge a fee for the certificate of need.

1991: SB 86 (Ch. 21, SLA 1991), 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.

9:32:38 AM
GARY ZEPP, Staff, Senator David Wilson, Alaska State Legislature, continued the PowerPoint:

U.S. Department of Justice/Antitrust Division and the Federal Trade Commission's Analysis on Certificate of Need Programs

- The U.S. Department of Justice Antitrust Division and the Federal Trade Commission have jointly studied the effects of Certificate of Need laws across the country, hearing from 250 panelists, elicited 62 written submissions, and generated almost 6,000 pages of transcripts over two years. The group also included attorneys and economists that focused on healthcare markets. Antitrust economists holding doctorates on the study of markets and their performance, with a specialization in healthcare markets.

- This group has studied markets across the country involving hospitals, physicians, ambulatory surgery centers, stand-alone radiology programs, medical equipment, pharmaceuticals and other healthcare products.

- Through this work, the group understands the competitive forces that drive innovation in and contain the cost of healthcare. The goal is to ensure a competitive marketplace in which consumers will have the benefit of high quality, cost-effective healthcare and a wide range of choices. The mission is to preserve and promote competition, rather than preserve any particular marketplace rival or group of rivals.

- The nine antitrust principals were derived from their work over many years including: Importance of Competition and the Harm Caused by Regulatory Barriers to Entry.

- Healthcare services are different than other sectors of the economy but the basic truth should not be lost-market forces improve the quality and lower

costs of healthcare services. Increased competition in healthcare does not require us to choose between the benefits of competition or the delivery of high-quality healthcare.

- Certificate of Need Laws Create Barriers to Beneficial Competition:
  - Certificate of Need laws are a classic government-erected barrier. When the federal government enacted Certificate of Need laws, private insurance reimbursed healthcare expenses predominantly on a "cost-plus basis." The desired effect of the "cost-plus basis" was to incentivize over investment. Certificate of Need laws were adopted because excessive capital investments, spurred by the then-current cost-plus-basis method of reimbursement, were driving up healthcare costs.

- Protecting Revenues of Incumbents Does Not Justify Certificate of Need Laws.
  - The rational for keeping the Certificate of Need laws is that incumbent hospitals should be protected against competition so that they can use their profits to cross-subsidize care for the uninsured or under-insured patients. If new competitors were to enter the market, community hospitals could not continue to exploit their existing market power over consumers. There are other methods to explore for legislators so they won't have to choose between covering the healthcare for the indigent without impeding the proper function of the healthcare markets.
  - MedPAC (a clinical research organization based in Cincinnati, Ohio) found that community hospitals responded to the competition by improving efficiencies, adjusting their prices, and expanding profitable lines of business.

- Certificate of Need laws Impose Other Costs and May Facilitate Anti-Competitive Behavior:
  - Competitors at times go farther and enter into agreements not required by Certificate of Need laws but nonetheless facilitated by them.
  - West Virginia hospital used the threat of objection during a Certificate of Need process, and delayed and increased costs, to induce a hospital seeking a Certificate

of Need not to apply for the Certificate of Need that would have well served Charleston and provided greater competition for business.

- Vermont home health agencies entered into territorial market allocations, using the protection of Certificate of Need laws, to gain exclusive geographic markets. The U.S. Department of Justice-Antitrust Division and the Federal Trade Commission found that Vermont consumers were paying higher prices than consumers where home health agencies competed against each other.

The American free market system is built on the premise that open competition and consumer choice maximize consumer welfare – even when complex products and services such as healthcare are involved. The Federal Trade Commission and the Department of Justice play an important role in safeguarding the free-market system from anticompetitive conduct by bringing enforcement actions against parties that violate antitrust and consumer protection laws.

9:38:28 AM

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

- Is Alaska's Certificate of Need program working effectively to reduce healthcare costs to consumers within the state? Why are healthcare costs still on the rise?

- Alaska's Certificate of Need laws have led healthcare providers to sell state of the art medical equipment and buy lessor, lessor 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 and 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 services. Does this improve or provide better quality healthcare to Alaskans?

9:39:18 AM

Pennsylvania Healthcare Entities Support Repealing Virginia's Certificate of Need

- Pennsylvania repealed their Certificate of Need laws and the Pennsylvania Hospital Association testified at a Virginia Legislative hearing where Virginia is trying to repeal their Certificate of Need laws.

- Pennsylvania Hospital Association stated, "Reinstating an administratively cumbersome and costly process will result in unintended consequences, including stifling innovation in health care delivery in hospital settings and potentially preventing the appropriate availability of services within communities."

- Also opposed to Certificate of Need laws is the Pennsylvania Medical Society. They opposed Certificate of Need laws because, "Certificate of Need laws politicize the healthcare approval process and are not effective at holding down costs. Pennsylvania's experience how a free market has done a better job of ensuring that citizens have access to care. They repealed their Certificate of Need program many years ago.

9:40:27 AM
SENATOR WILSON displayed the following articles on repealing certificate of need:

Articles on Repealing Certificate of Need

Federal Trade Commission (FTC) and Department of Justice (DOJ) Joint report

Consumers want high-quality, affordable, accessible health care, vigorous competition promotes the delivery of high-quality, cost-effective health care.

US Department of Justice, Antitrust Division (Vol. 30 No. 1 Fall 2015): Original Certificate of Need laws cost-savings rationale fails to deliver - Certificate of Need laws are simply output restrictions mandated by government. Normally, if you want the price to decline, creating an artificial shortage of it isn't

the way to achieve that. Output restrictions restrain the social benefits of free market competition.

Certificate of Need laws inhibit competition - Certificate of Need laws help to insulate incumbent providers from competition. Powerful economic reasons drive incumbents to oppose an applicant from providing similar healthcare services. Certificate of Need laws insulate politically powerful incumbents from market forces. Limited exemption from competition in a non-transparent way to achieve indigent care is not good public policy, because the cost of Certificate of Need laws is never disclosed or even evaluated.

Certificate of Need laws and indigent care: Some providers do a poor job of indigent care and benefit from Certificate of Need laws, while others do an excellent job and gain little to nothing.

National Conference of State Legislators: Unintended Consequences: Decrease competition; reduce access to healthcare; barriers to new competition, may increase healthcare costs.

Mercatus Center – George Mason University: Certificate of Need states have 13 percent fewer beds; decrease of 4.7 hospital beds per 100,000; decreases in CT scan, MRI services, and optical and virtual colonoscopy services.

National Institute for Healthcare Care Reform (2011): Certificate of Need applicants experience “being caught in the competitive crossfire during review and process (appeals, public hearings, court battles); existing competitors are more often involved in contesting approval of competitors’ applications causing delays and costing money; hospitals use Certificate of Need process to protect existing market share and block competitors; smaller community hospitals tend to view Certificate of Need process as uneven due to the lack of financial resources to go through lengthy court battles with larger hospitals; physicians support repeal due to market barrier; Certificate of Need laws can be a barrier to new technologies and innovation due to lengthy process and cost.

> Despite hospitals love-hate view of Certificate of Need regulations, a consultant concluded that hospitals believe they are better off with regulations in place than without them. One state hospital association respondent said member hospitals initially had mixed views about the benefits of Certificate of Need but banded together to support the process after realizing it was a valuable tool to block new physician owned facilities.

9:40:35 AM
SENATOR WILSON summarized that relaxing the Certificate of Need regulation will increase provider competition, help force downward pressure on costs, and, importantly, increase patient choice. He said that most major medical insurers have developed a travel agency within their insurance pool because patients are opting for healthcare tourism. He related his preference to keep those healthcare dollars in Alaska.

He said Certificate of Need ultimately chooses who gets to compete in the healthcare sector. Reforming the law won't untangle the entire healthcare issue, but lawmakers in this state ought to capitalize on the opportunity to make this highly regulated industry a little more patient friendly, he said.

SENATOR WILSON offered to go through a sectional analysis.

9:42:36 AM
SENATOR MEYER asked if healthcare costs have gone down in the states that have repealed their CON programs.

SENATOR WILSON said it's mixed. Some states that have repealed the laws have higher costs and some have lower costs. He offered to follow up with a better analysis.

SENATOR MEYER asked if Alaska's CON program has helped to get more rehab beds in Anchorage and other communities.

SENATOR WILSON replied it depends on the type of facility, its size, the equipment involved and whether it meets the $1.5 million threshold.

9:43:54 AM
SENATOR GARDNER said she is interested in getting information on: 1) the lawsuits that have been filed in Alaska related to the CON program; 2) data on cost savings or increases in Alaska; and 3) impacts on access to new equipment and technology –

selling high-quality equipment and buying a less expensive model to keep from exceeding the $1.5 million threshold.

SENATOR WILSON said his office has had difficulty getting data from the Department of Health and Social Services and disagrees with some of the information in the fiscal note. He hopes to be able to address some of the financial costs by the time the bill reaches the Finance Committee.

SENATOR GARDNER said it's important to have that information in this committee as well because it's a policy question that will be informed by the costs. She stated that notwithstanding the cover letter stamped "Confidential," the testimony from Health Capital Consultants is not confidential once the committee has it and it's distributed to the public.

SENATOR WILSON agreed.

9:46:29 AM
SENATOR STEVENS asked him to address the concern that repealing CON would put hospitals at a competitive disadvantage because small practices and clinics can cherry pick, but hospitals are required to accept everyone who comes in for treatment, whether they can pay or not.

SENATOR WILSON said there will always be folks who will target a market because it is more profitable. He reported that in 2008 Alaska was one of four states that had higher rates for Medicaid than Medicare. The industry is booming because of the reimbursement system, he said. He also pointed out that there are always people who have procedures done out of state because of the cost, and that tribal entities do not need to have a certificate of need process to open a surgery center.

9:49:39 AM
At ease

9:53:30 AM
CHAIR COSTELLO reconvened the meeting and welcomed Mr. Sherwood to offer testimony.

9:53:46 AM
JON SHERWOOD, Deputy Commissioner, Department of Health and Social Services (DHSS), explained that a Certificate of Need program is a state review process for health facilities that requires providers to get the certificate before they can build certain kinds of facilities. It is intended to help ensure a

consistent application of resources in the development of health care. It involves a significant role for public participation in the decisions.

A requirement for a Certificate of Need is triggered depending on the type of health care facility. These include hospitals, nursing homes, ambulatory surgical centers, diagnostic facilities, residential psychiatric treatment centers, and kidney dialysis facilities. The monetary trigger is that projects must be equal to or above the $1.5 million Certificate of Need threshold. All nursing facility conversions must apply regardless of the cost.

9:55:41 AM
MR. SHERWOOD said that providers can engage in the Certificate of Need process by: submitting a request for determination of whether a CON is needed; submitting an application if the provider knows a CON is required; or submitting a letter of intent for concurrent review if an entity wants to compete for a CON with an existing applicant. For the latter, the window for submitting the application is 30 days after which the concurrent process starts. Basically, DHSS looks at both (or multiple) applications at the same time. He noted that Providence Alaska Medical Center and Alaska Regional Hospital recently submitted concurrent applications for emergency services in the Anchorage area.

The fee for the Certificate of Need process for activities that are less than $2.5 million is $2,500. The fee for larger projects is one-tenth of one percent of the estimated cost of the project, up to a maximum of $75,000. Once DHSS receives the applications, staff reviews the answers to questions that are part of the application process. They look at both the general standards for all applications and the specific standards for the type of facility. A determination of need is made using step methodologies and public comments. Staff then prepares a written analysis for a recommendation to the commissioner. The three choices the commissioner can make are: approve the Certificate of Need; not approve the Certificate of Need; or approve the Certificate of Need with specific conditions.

9:59:10 AM
MR. SHERWOOD said the general review standard of the CON application includes: documented need, relationship to community and statewide health plans, stakeholder participation, looking at different alternatives for meeting the needs, impacts to the existing system, and patient access. He highlighted that the

hurtle that must always be met is the documented need. Earlier comments about stakeholder participation and consideration of alternatives depending on the type of facility may be more or less involved based on the particular situation.

10:00:04 AM
He displayed slide 9 that lists the service-specific review standards for different services. He described the list as "comment sense" with review of specific criteria depending on the type of provider. For example, certain standards for hospital labs or emergency departments would not be used for long-term nursing care or diagnostic imaging. He reiterated that there is public participation in the Certificate of Need process.

Once the application is determined complete, the public has 30 days to comment and a meeting is scheduled no sooner than 15 days and no later than 30 days after the notice. He highlighted that in some instances, this may be the only opportunity for the public to comment on a project it will use and pay for. He said the foregoing is to align the decision-making process to ensure that relevant applications are considered at the same time on the same schedule. This provides a certain level of equity to providers.

10:01:59 AM
MR. SHERWOOD displayed slide 11 and opined that Senator Wilson did a fine job when he gave an overview of the history of Certificate of Need. He noted that states without Certificate of Need laws typically use other mechanisms such as moratoria and strict licensing standards to regulate costs and avoid duplication of services.

10:02:47 AM
He stated that the last major change to Alaska's Certificate of Need standards was in 2005. The public notice requirements were expanded; methods and standards were revised; the application fee was implemented; there was clarification that ambulatory surgical centers did not require a Certificate of Need to change locations within a service area if services were not expanded; and residential psychiatric treatment centers (largely for children) were added.

10:03:38 AM
He said that slide 13 shows that most Certificate of Need activity in the last three years relates to the determination of whether a Certificate of Need is needed. He reported that the

number of Certificate of Need applications each year is relatively small. There were two applications in each 2014 and 2016 and one in 2015. There was an appeal each of those years.

10:04:22 AM
MR. SHERWOOD reported that Alaska Medicaid accounts for about one-quarter of hospital use and over 80 percent of nursing home use. Recent statistics indicate that Medicaid is used in half the nursing homes in the state at a 90 percent or higher rate. He explained that the Medicaid program is statutorily required to reimburse hospitals and nursing homes on a reasonable cost basis. Because newer facilities cost more and thus charge more for services, DHSS looks at that aspect when it reviews an application.

10:05:43 AM
He directed attention to slide 15 that shows the fiscal impact of some denied or partially denied applications in the last few years. He noted that the Alaska Regional free-standing emergency room was denied, and applications were recently partially denied for two proposed nursing facilities in the MatSu area. He said it's difficult to say what DHSS would spend if there wasn't a Certificate of Need program. We don't know how many applications would still get proposed in that environment and we don't know the kind of applications that aren't submitted because a prospective applicant may think the need is already met, he said.

10:07:23 AM
MR. SHERWOOD said that some of the general considerations for policymakers include: whether the Certificate of Need program reflects current healthcare science and technology; whether the program looks at the right things; whether the dollar thresholds are still working; and whether the health care facilities subject to Certificate of Need are the most likely to impact the state budget.

He displayed slide 17 that lists Certificate of Need resources; statutory and regulatory citations; the DHSS Certificate of Need website; and the National Conference of State Legislatures website that has information about Certificate of Need laws.

10:09:03 AM
SENATOR STEVENS directed attention to slide 3 and asked why DHSS isn't policing potential scams that keep the cost of a new healthcare center under the $1.5 million threshold so it's not necessary to apply for a Certificate of Need.

MR. SHERWOOD said it's challenging but the department tries to police that by staying abreast of fair market prices for equipment that an entity might list. Other safeguards include policing by industry competitors and the fact that Alaska has relatively few applications. He cited an example where the department disallowed the cost of a transaction that was not arm's length, which resulted in the entity losing its Certificate of Need.

SENATOR STEVENS observed that there is no punishment for something that he views as illegal.

MR. SHERWOOD advised that when the department becomes aware of false information the punishment is the denial of the Certificate of Need.

10:13:42 AM
THOMAS STRATMANN, Professor of Economics and Law, and Senior Research Fellow, Mercatus Center, George Mason University, Arlington, Virginia, stated that in four data-driven studies he and his co-authors used economic and health measures to examine the impact of Certificate of Need laws. These measures were compared between the 35 states that have Certificate of Need laws and those states that do not have these laws. He noted that he included these four peer-reviewed studies with his written testimony. He said the findings are consistent, although unfortunate. "Across the board, CON laws have failed."

The first finding is that Certificate of Need laws harm patients by reducing the quality of health care. Finding two is that CON laws harm patients by reducing access to health care. Finding three is that CON laws harm patients by reducing medical equipment that helps to diagnose illnesses and prevent premature deaths. He said that these findings are consistent with the Federal Trade Commission and the Department of Justice positions that CON laws fail to meet stated goals and are harmful to patients because they: reduce the availability of medical care, make it difficult for providers to offer services, and do not save costs. He said these harmful effects are enhanced in Alaska that is geographically distant from the Lower 48. He opined that it is cost-prohibitive for most residents to travel to the Lower 48 to access medical services not provided in the state.

10:17:35 AM
MR. STRATMANN stated that Certificate of Need laws require state agency approval before a licensed health care provider can

either expand or establish a new health care facility. CON laws require permission from a state regulator to provide medical services or to produce medical equipment. New York became the fourth state to pass CON laws in 1964 and 25 other states followed over the next 10 years. In 1974 Congress passed the National Health Planning and Resources Development Act that required states to implement CON requirements to receive funding for certain federal programs. Congress repealed the CON mandate in 1986 and many states began to retire the program.

He emphasized that CON laws are designed to restrict competition. He said he's aware of no other industry where a competitor can oppose the application of another entity simply by claiming that there is no need for that additional service. "In my view this is akin to a McDonald's having to get permission from Burger King to open a restaurant in Alaska." Medical providers in Alaska are required to get government permission to compete for 20 medical services. There is a CON for adding hospital beds, to open a new hospital, to purchase an MRI machine or a CT scanner or a PET scanner. Permission is even required to open a neo-natal care unit in Alaska.

MR. STRATMANN stated that the primary goals of Certificate of Need laws are to: ensure an adequate supply of health care resources, protect access to rural and underserved communities, promote higher quality care, support charity care, and control costs. He said that while the laws were introduced with good intentions, their effectiveness is measured by their outcomes. His research looking at whether the express goals of Certificate of Need are being achieved used measures such as number of hospitals, number of hospital beds, and number of ambulatory surgery centers. The data unambiguously show that states without CON laws have more than 30 percent more hospitals than states with CON laws. Alaska had about 25 hospitals in 2011, whereas a comparable state without CON laws had 35 hospitals. This suggests that CON reduces access to medical care, particularly in rural areas. Another finding is that states without CON have more beds per capita. This is important because patients are less likely to be turned away from a hospital and hospitals are closer to patients' residences. Another finding is that without CON Alaska would have had 25 ambulatory surgery centers instead of the 17 it currently has.

He said the negative effects of CON on medical supplies is not just restricted to facilities. Medical input is also affected because Alaska has CONs that require permission to purchase imaging equipment. The data shows that Alaska residents receive

about 6,000 MRI scans, but he estimates that residents in statistically similar states but without CON receive about 8,000 scans or 30 percent more. Similarly, residents in states without CON have 30 percent more CT scans than Alaska residents.

In states without CON laws, hospitals have an incentive to compete to attract patients. However, hospitals cannot compete that well on prices as most competitors do because many of their patients are Medicare and Medicaid and the prices hospitals can charge for these patients are pretty much fixed. Therefore, hospitals will compete on different margins so there is a strong incentive in states without CON to compete for patients by providing better quality medical services. However, this incentive does not exist to the same extent in states that have a CON law because in these states hospitals are shielded by law from competition.

MR. STRATMANN said that in contrast to this line of reasoning, some proponents of CON claim that it is good to have fewer hospital providers. The argument is that physicians have more experience in performing operations because they have more volume which translates to more experience in operating and thus higher quality of medical services.

To analyze which of these competing views is correct, he used data from the Centers for Medicare and Medicaid Services on the quality of medical services delivered by hospitals. He found CON does not improve the quality of medical care. In fact, states without a CON law have lower quality of services as measured by the hospital mortality rates and readmission rates. There are also higher mortality rates for surgery patients with serious complications in states with CON laws. This includes Alaska, he said.

10:26:14 AM
MR. STRATMANN said that one of the claims of CON proponents is that CON increases charity care, but the data do not show any additional services for the poor. The takeaway is that CON laws are bad for Alaska residents, he said. They reduce access to facilities, particularly in rural areas. They reduce access to equipment and services like MRIs and most importantly CON decreases quality of services and increases mortality rates of residents. Alaska would be better off joining the 15 states that do not have CON laws, he concluded.

CHAIR COSTELLO advised members get questions to her office and they would be distributed to today’s presenters.

[CHAIR COSTELLO held SB 62 in committee.]

10:27:59 AM
There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 10:27 a.m.