

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 6, 2018

1:31 p.m.

DRAFT

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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

SENATE BILL NO. 105

"An Act relating to the licensure of marital and family therapists; relating to professional liability insurance for marital and family therapists; relating to medical assistance for marital and family therapy services; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

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)
04/06/17	(S)	Heard & Held

04/06/17 (S) MINUTE (L&C)
04/06/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/06/17 (S) -- MEETING CANCELED --
04/07/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)
04/07/17 (S) Heard & Held
04/07/17 (S) MINUTE (L&C)
02/06/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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

NAOMI LOPEZ-BAUMAN, Director
Healthcare Policy
Goldwater Institute
Phoenix, Arizona
POSITION STATEMENT: Provided supporting testimony for SB 62.

DR. HAL SCHERZ, Founder and Secretary
DOCS 4 Patient Care Foundation
Atlanta, Georgia
POSITION STATEMENT: Testified in support of SB 62.

DANIEL GILMAN, Attorney Advisor
Office of Policy Planning
Federal Trade Commission (FTC)
Washington, DC
POSITION STATEMENT: Testified in support of SB 62.

MATTHEW D. MITCHELL, Economist
Mercatus Center
George Mason University
Arlington, Virginia
POSITION STATEMENT: Testified in support of SB 62.

BECKY HULTBERG, President and CEO
Alaska State Hospital and Nursing Home Association (ASHNHA)
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to SB 62.

MARY KASPARI, President
Interior Alaska Hospital Foundation
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 62.

RANDY BEALER, representing self
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 62.

BILL WARD, representing self
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 62.

MICHAEL JESPERSON, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 62.

JOE FONG, Administrator
Providence Seward Medical and Care Center
Seward, Alaska

POSITION STATEMENT: Testified in opposition to SB 62.

DR. RICHARD MANDSAGER
Administrator
Providence Alaska Medical Center
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 62.

DR. TIMOTHY SILBAUGH, MD FACEP, Business Manager
Alaska Emergency Medicine Associates
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 62.

DR. ANNE ZINK, Emergency Physician
MatSu Regional Medical Center
Palmer, Alaska

POSITION STATEMENT: Testified in opposition to SB 62.

DAVID MORGAN, representing self
Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 62.

DAWN WARREN FRASIER, Member
Interior Alaska Hospital Foundation
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 62.

JOHN LEWIS, Vice President
Interior Alaska Hospital Foundation
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 62.

JOSHUA RUSSEL, representing self
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 62.

DAVID WALLACE, CEO
Mat-Su Regional Medical Center
Palmer, Alaska

POSITION STATEMENT: Testified in opposition to SB 62.

MIKE POWERS, COO
Tanana Valley Clinic
and former CFO/CEO Fairbanks Memorial Hospital
Fairbanks, Alaska,

POSITION STATEMENT: Testified in opposition to SB 62.

KARL GARBER, President
AgeNet
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 62.

ACTION NARRATIVE

[1:31:20 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Stevens, Meyer, Micciche, and Chair Costello. Senator Gardner arrived shortly.

SB 62-REPEAL CERTIFICATE OF NEED PROGRAM

[1:31:55 PM](#)

CHAIR COSTELLO announced the consideration of SB 62. She asked the sponsor to remind the members what they heard when they considered the bill last year.

[1:32:26 PM](#)

SENATOR DAVID WILSON, Alaska State Legislature, Juneau, Alaska, introduced SB 62 speaking to the following sponsor statement:

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.

CHAIR COSTELLO opened public testimony on SB 62.

1:36:50 PM

NAOMI LOPEZ-BAUMAN, Director, Healthcare Policy, Goldwater Institute, Phoenix, Arizona, stated that SB 62 is important for Alaskans because the certificate of need (CON) laws put process before patient health care needs and preferences. CON laws were adopted in the 1970s and allow competitors to veto new health care providers or a new hospital. These laws persist today and stifle competition. She drew a parallel to the smart phone industry. "Imagine what our smart phones might look like if the manufacturer first had to get permission from its competitor." She emphasized that just as there shouldn't be laws against smart phone innovations, the State of Alaska should not make it illegal or onerous to offer more health care options and services, particularly in rural areas.

MS. LOPEZ-BAUMAN referred to research by the Mercatus Center at George Mason University that found that CON laws reduce health care quality, access to care, and the availability of medical equipment. She opined that Alaskans may be more profoundly affected because traveling to other states for treatment can be prohibitively expensive and logistically difficult.

She pointed out that CON laws were originally established to counter the cost-plus reimbursement system that no longer exists. Instead, hospitals today generally receive a fixed amount from insurers for patient care, which makes the CON laws obsolete.

MS. LOPEZ-BAUMAN read the following joint statement from the U.S. Department of Justice and the Federal Trade Commission to show that the federal government has abandoned the CON system:

Certificate of need laws impede the efficient performance of health care markets. By their very nature, CON laws create barriers to entry and expansion to the detriment of health care competition and consumers. They undercut consumer choice, stifle innovation, and weaken markets' ability to contain health care costs. Together we support the repeal of such laws as well as steps that would reduce their scope.

She noted that she submitted written testimony.

[1:37:31 PM](#)

SENATOR GARDNER joined the committee.

CHAIR COSTELLO asked Ms. Lopez-Bauman to describe the Goldwater Institute's work.

MS. LOPEZ-BAUMAN explained that the Goldwater Institute is a nonpartisan 501 (c)(3) libertarian research institution that works on public policy issues and is involved in litigation.

SENATOR MICCICHE commented that for someone like himself who believes in a free market, this seems like an easy decision.

He asked if she was aware that huge swaths of Alaska had essentially no medical services and thus counted on a certificate of need to develop initial services "Have you worked much in Alaska?"

MS. LOPEZ-BAUMAN replied she did some research on Juneau and found that health care consumers' lives are better in that part of the state than they were 15-18 years ago because cancer patients now have the option of treatment closer to home.

SENATOR MICCICHE observed that he and Ms. Lopez-Bauman seem to be talking about two different things. He thanked her for the answer.

CHAIR COSTELLO encouraged people to submit written testimony.

[1:43:14 PM](#)

DR. HAL SCHERZ, Founder and Secretary, DOCS 4 Patient Care Foundation, Atlanta, Georgia, testified in support of SB 62. He related that this physician-run health care think tank has been involved nationwide in efforts to repeal certificate of need laws. He highlighted a conference in Washington, D.C. in 2017 that brought together experts from academia, medicine, public policy, patient advocacy, the legal profession, and state government. The consensus was that CON laws harm patients both medically and financially, stifle competition and innovation, and harm physician practices. He opined that these laws may also be unconstitutional and monopolistic.

He directed attention to the article he coauthored and submitted for the record titled, "Eliminating CON Law is a Meaningful Step in Lowering Alaska's Health Care Costs."

DR. SCHERZ shared his opinion of CON laws speaking as a policy expert and a practicing physician:

CON laws are a remnant of health care policy from the 1960s and 1970s that clearly no longer apply in this new era of health care. They came into existence to protect hospitals and nursing homes from competition at a time when medical services were predominantly paid for by fee-for-service. The federal government incentivized states to adopt these laws with funding that they terminated a decade later because the promises of savings and improved patient access which were promised, were never realized. Nonetheless, states retained these laws because of the powerful lobbying efforts of hospitals which benefited by eliminating competition.

Fast forward to 2018. Most of the laws and regulations that are on the books in health care protect hospitals

and they give them carte blanche when it comes to controlling the health care market. Most hospitals call themselves not-for-profit entities, which simply means that they do not distribute the earnings to shareholders. These enterprises are in fact some of the most profitable entities in the community.

Since 1970, the number of physicians across the country has gone up 100 percent while the number of hospital administrators during this same period of time has risen 3,400 percent. Salaries for CEOs at the largest hospitals are typically in excess of \$1 million annually and those of other medical executives are not far behind. If you travel to any large city, the most ambitious building projects are those of hospitals. And the trend toward consolidation and mergers and acquisition have positioned the hospitals as the power brokers of health care. This trend, which also includes the hospital acquisition of physician practices, has left patients with very little patient choice regarding where to get their health care. Simultaneously, hospitals charge fees that are 5-10 times that of the services received at outside facilities.

There is no transparency or consistency regarding hospital fees. Patients have no idea what they are being charged and two patients can have identical services and pay vastly different amounts for them. As an anecdote to illustrate the insanity of this situation, understand that hospitals are purchasing physician practices because it is good business for them. This is because they get paid often ten times as much for the identical service delivered at the hospital as it would be at a doctor's practice.

For example, if Dr. Smith who is a GI specialist as he does colonoscopies in his office-based GI lab, charges \$200 for the colonoscopy and the patient has a 20 percent copay, then they're responsible for \$40. However, if Dr. Smith sells his practice to Anchorage general hospital, he keeps the same office but simply changes the signage and then does a colonoscopy the very next day. That charge for the colonoscopy is no longer \$200, but \$2,000 and the patient is now responsible for \$400 out of pocket. CON laws allow this practice to continue because competition is

prevented. The losers are the patients. They no longer have any choice.

Please give Alaskans a choice.

[1:48:56 PM](#)

SENATOR GARDNER asked if he submitted the publication he referenced.

DR. SCHERZ replied he submitted the article to Mr. Zepp.

CHAIR COSTELLO advised that the sponsor's staff indicated he would provide the article.

[1:49:51 PM](#)

DANIEL GILMAN, Attorney Advisor, Office of Policy Planning, Federal Trade Commission (FTC), Washington, DC, thanked the committee for the opportunity to present the views of the FTC on certificate of need (CON) laws. He stated that the prepared remarks review recent statements on the effects of CON laws issued jointly by the Federal Trade Commission and the Antitrust Division of the US Department of Justice. He called the committee's attention to the Agencies' joint 2017 statement on Alaska Senate Bill 62 and CON laws. He requested the committee include that statement in the record. He said these prior statements reflect the Agencies' extensive experience with health care competition and the effects of CON laws.

MR. GILMAN clarified that any additional comments or responses to questions do not necessarily reflect the views of the FTC or any individual commissioner or the Department of Justice.

He read the following:

CON laws, when first enacted, had the laudable goals of reducing health care costs and improving access to care. However, after considerable experience, it has become apparent that CON laws do not provide the benefits they originally promised. Worse, in operation CON laws can undermine some of the very policy goals that they are supposed to advance.

As detailed in our written statement, we have identified at least three types of serious problems with CON laws. First, CON laws create costly regulatory barriers to entry and expansion. Those barriers can increase prices, limit consumer choice,

and stifle innovation. Second, incumbent firms can use CON laws to thwart otherwise beneficial market entry or expansion by new or existing competitors. Third, as illustrated by the FTC's experience in the *Phoebe Putney* case, CON laws can deny consumers the benefit of an effective remedy following the consummation of an anticompetitive merger or acquisition. For these reasons, last April we respectfully suggested that Alaska repeal its CON laws and we're here today to reiterate that suggestion. We urge you to consider all the ways that CON laws may harm health care consumers. Namely, individual patient as well as both public and private third-party payers. And those ways include these.

- I. Entry restrictions tend to raise costs and prices. They also limit opportunities for providers to compete, not just on price but also on nonprice aspects of health care like quality and convenience that may be particularly important to patients.
- II. Impeding new entry to health care markets can be especially harmful in rural and other underserved areas. CON laws may delay or block the development of facilities and services where they are needed most. And they can reinforce market power that incumbent providers may enjoy in already concentrated areas. (By concentrated we mean concentrations of the number of providers, not that there are many providers.)
- III. Empirical evidence on competition in health care markets generally has demonstrated that more competition leads to lower prices. In particular, studies of provider consolidation by FTC staff and independent scholars consistently indicate that, "Increases in market hospital concentration lead to increases in the price of hospital care." In particular, the best empirical evidence also suggests that greater competition incentivizes providers to become more efficient and that repealing or narrowing CON laws can reduce the per-patient cost of health care. Empirical evidence has not shown that CON laws control spending, improve quality of care, cross-subsidize charity care, or improve access to care. We have found no empirical evidence that

CON laws have restricted so called over-investment.

We urge you to consider the detailed discussion of the available empirical evidence that is contained in the 2017 statement. We would be happy to entertain questions about that as follow up. We urge you also to consider that more targeted policies may be more effective at ensuring more access to care without inflicting the same harm on competition and, ultimately, health care consumers.

[1:55:13 PM](#)

SENATOR GARDNER said an argument she's heard in favor of maintaining CON is that it helps hospitals that are required to provide care to everybody regardless of their ability to pay. Competing facilities draw away business that hospitals need to help subsidize the services that competing facilities don't want to offer.

MR. GILLMAN said the CON laws do help hospitals, but it's important to look at whether they improve charity care or provide more services to the indigent community. He noted that the 2017 joint statement discusses several empirical studies that found that CON laws neither foster charity care nor deliver on the cost-shifting promise. The evidence is lacking to support the notion that hospitals will exploit their market power to generate extra profits and then spend those profits in a socially useful way. He suggested there are other approaches such as the Medicare Critical Access Hospital Program that provides extra reimbursement for rural critical access hospitals.

CHAIR COSTELLO asked how repealing CON laws will affect emergency rooms.

MR. GILLMAN replied there is no evidence that CON laws have helped sustain emergency room services.

SENATOR MICCICHE asked if he was speaking for the Federal Trade Commission in opposition to CON laws.

MR. GILLMAN clarified that the statement that he read was screened and approved by the Federal Trade Commission. The subsequent questions he fielded do not necessarily represent the views of the FTC. The 2017 statement was jointly issued by the

Federal Trade Commission and the Antitrust Division of the US Department of Justice. It's an official statement.

SENATOR MICCICHE pointed out that Alaska is geographically diverse, is more than twice the size of Texas, has a population of 734,000, and very limited availability of medical care.

MR. GILLMAN responded that Alaska is unique in some respects, but other states also have substantial rural regions and concerns about delivery of care and critical access hospitals. They have not done a special study in Alaska, but nationally CON laws, including in rural states, do not improve the availability, quantity, or quality of charity care.

He added:

We do understand that there is a concern about what will happen to critical access hospitals. We simply have not found evidence that these rural hospitals, that remote hospitals do a better job and thrive better under CON laws than they do without them. We just haven't found that.

[2:04:48 PM](#)

MATTHEW D. MITCHELL, Economist, Mercatus Center, George Mason University, Arlington, Virginia, testified in support of SB 62. He referenced the February 6, 2018 letter he submitted to the committee and stated the following:

CON laws require health care providers wishing to open or expand a health care facility to first prove to a regulatory body that the community needs the service they plan to offer. Policy makers hoped that these programs would restrain health care costs, increase quality, and improve access to care for poor and underserved communities. However, by limiting supply and undermining competition, CON laws may undercut each of these laudable aims.

Because 15 states have repealed their certificate of need programs, we have quite a bit of information to help predict what would happen if other states, such as Alaska, were to repeal their CON laws. Economists have been able to use modern statistical methods to compare outcomes in CON and non-CON states to estimate the effects of the regulation. These methods control

for factors such as socioeconomic conditions that might confound the estimates.

TABLE 1 in my written testimony summarizes some of this research. It is organized around the stated goals of CON laws. Briefly, it is hoped that CON laws will ensure an adequate supply of health care resources. The evidence suggests they do not. States with CON laws have fewer hospitals, they have fewer ambulatory surgery centers, they have fewer dialysis clinics, and they have fewer hospice care facilities. Patients in these states have access to fewer beds and fewer medical imaging devices. They are more likely to leave their counties in search of care and they are more likely to leave their states in search of care.

The data suggests that Alaska without CON would have 42 percent more hospitals than it currently does. Of particular interest to Alaskans, it is hoped that CON laws will ensure access to health care for rural communities. They do not. States with CON laws have fewer rural hospitals, they have fewer rural hospital substitutes, and they have fewer rural hospice facilities. Residents of CON states must drive further to obtain care, and the data suggests that an Alaska without CON would have 45 percent more rural hospitals than it currently does.

It's hoped that CON laws will promote high quality. They do not. Research suggests that deaths from treatable complications following surgery and mortality rates from heart failure, pneumonia, and heart attacks are all statistically higher in CON states relative to non-CON states. In states like Alaska with especially comprehensive CON programs - that is they require CON for many different procedures, patient satisfaction is lower. Patients are much less likely to rate their experience as a 9 or a 10 on a scale of 1 to 10.

It's hoped that CON laws will encourage charity care. They do not. It is hoped that CON laws promote the use of hospital substitutes. They do not. Finally, it is hoped that CON laws will restrain the cost of care. They do not.

All of this research is cited in my written testimony. I have also attached two working papers addressing the effect of CON on rural care and on spending, as I believe these papers should be of particular interest to your state.

Given the substantial evidence that CON laws do not achieve their stated goals, one may wonder why these laws continue to exist in so much of the country. The explanation seems to lie in the special interest theory of regulation. Mainly, CON laws perform a valuable function for incumbent providers of health care services by limiting their exposure to new competition. Research finds that existing hospitals, for example, are not affected by CON laws, whereas new hospitals and hospital substitutes like ambulatory surgery centers are. This helps explain why antitrust authorities at the federal Department of Justice and at the Federal Trade Commission have long argued (as we've heard today) that these regulations are anticompetitive and harmful to consumers.

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At ease

[2:10:03 PM](#)

CHAIR COSTELLO reconvened the meeting and welcomed Ms. Hultberg.

[2:10:26 PM](#)

BECKY HULTBERG, President and CEO, Alaska State Hospital and Nursing Home Association (ASHNHA), Juneau, Alaska, testified in opposition to SB 62. She said she enjoyed hearing the perspectives of the previous testifiers, all of whom are from the Lower 48. She questioned their relevance in Alaska and provided several fact-checks before starting the presentation.

- In Alaska, CON is a rigorous state process; it does not require a competitor's stamp of approval.
- The cost-plus system exists in Alaska. All hospitals are paid by Medicaid based on cost and rural hospitals are cost-plus under the Medicare methodology.
- Alaska is primarily fee for service and most states that have repealed CON laws have replaced them with something else.

She said that whether to repeal CON can be distilled to two questions. 1) Will CON repeal increase competition and reduce

costs, and 2) What will the consequences be to the health care system if we take that action?

MS. HULTBERG highlighted that the State of Alaska has a vested interest in CON in protecting its budget. She explained that skilled nursing in Alaska is paid 85-90 percent by the Medicaid program. That includes cost-based reimbursement and construction assistance to cover the capital costs. Should CON be repealed, the cost of developing new skilled nursing beds would be shared equally between the state and federal government.

She disputed the assumption that repealing CON will increase competition and lead to lower health care prices. She pointed out that the largest market in the state already has many ambulatory surgery centers and imaging centers and this competition has not resulted in any reduction of prices.

2:13:20 PM

MS. HULTBERG displayed a chart showing the impact of increased supply with no change in demand. She said the assumption is health care behaves like a normal market, but that is not the reality for a number of reasons.

- Third-parties pay the bill, so consumers are less price sensitive.
- Information is asymmetric information between the people providing the service and those consuming the service.
- Quality is sometimes more important than price.

She said the reality is that in certain cases competition in health care can result in increased prices. She drew an analogy to a Starbucks on every corner. To the question of whether CON addresses the cost problem, she maintained that lack of competition in the health care market is not commonly identified as a cost driver in health care. She clarified that the factors that many studies identify as health care cost drivers are not necessarily directly related to certificate of need.

2:15:20 PM

MS. HULTBERG presented the hospital perspective of certificate of need and why it is important. She explained that the Emergency Medical Treatment and Active Labor Act (EMTALA) requires hospitals to see patients 24 hours a day regardless of their ability to pay. Hospitals lose money on some services and make it up on others. When services migrate outside the hospital, there is less volume over which to spread cost. Some of the facilities that have migrated out do not see patients who

cannot pay and sometimes do not see Medicaid or Medicare. To demonstrate this point, she drew an analogy between two fast-food restaurants. One is required by law to be open 24 hours per day and to give food away for free to those who cannot pay. The other doesn't have those restrictions.

She listed the ways hospitals subsidize community services.

- Primary care senior clinics (The Medicare clinics in Anchorage are run by the two hospitals)
- Forensic nursing sexual assault response
- Subspecialty services for children
- Homeless services (medical respite)
- Community health programs

She compared a hospital to a public utility pointing out the significant cost of maintaining a functioning infrastructure. She emphasized that undercutting the ability of a hospital to pay for its infrastructure, could jeopardize that service. She highlighted that during the tsunami warning people went to the hospital because it was open and safe.

[2:18:15 PM](#)

MS. HULTBERG displayed 2016 data on rural hospital closures and warned against assuming that hospitals will be able to maintain services indefinitely given the current market. The facilities most at risk are Homer, Kodiak, Ketchikan, Soldotna, and Fairbanks. It is these mid-size community hospitals that do not have a significant market. To demonstrate this point, she quoted a health care futurist who said, "Are community hospitals obsolete? It's a serious question. Just about every trend of late seems to suggest the days are numbered for many, if not most." Given these trends, it seems that the first step in maintaining viable community hospitals is don't make it worse. She pointed out that government plays a significant role in the financing and regulation of health care through the dollars spent on Medicaid and the potential increase in that spending.

She said part of this conversation is about what we value. It's the value of the services that hospitals provide. It's the value of having facilities in the community that are willing and able to serve the poor and vulnerable. It's the value of having a well-equipped and staffed emergency room available anytime it's needed.

[2:20:26 PM](#)

MS. HULTBERG addressed the question of whether we have the information to make a decision about CON by quoting the Lewin Group that evaluated Illinois' CON program in 2007. They said,

The traditional arguments for CON are empirically weak... However, given the potential for harm to specific critical elements of the health care system, we would advise the Illinois legislature to move forward with an abundance of caution.

She advised the committee to also move forward with caution and understand the implication of CON repeal on the critical elements of the health care system. She welcomed future conversations about CON regulations and the health care infrastructure.

2:21:15 PM

SENATOR MICCICHE commented on the \$2.7 billion Medicaid expenditure and asked if conversations are taking place to develop a hybrid model that protects critical services while expanding private innovation to help keep costs down.

MS. HULTBERG opined that the state's regulatory CON framework provides many vehicles for competition, and it that was the answer, prices would already be lower. She suggested that the goal everyone should be aiming for is how to lower the total cost of care over a person's life. She directed attention to slide 11 that lists the primary factors driving health care costs:

1. Fee-for-service system, which rewards volume of procedures, incentivizing overtreatment
2. Prescription drugs
3. New medical technology, and our use of new medical technology
4. Aging population
5. Unhealthy lifestyles
6. High administrative costs
7. Service provider consolidation (not much of a factor in Alaska)

She acknowledged that her answer wasn't entirely satisfactory. "Nobody has figured this out in our country and we are all continuing to struggle with it." She noted that health care stakeholders in Alaska are holding conversations on this topic.

SENATOR STEVENS asked her to comment on the statement that without CON Alaska would have 45 percent more hospitals. He said he couldn't imagine that.

MS. HULTBERG replied it doesn't apply to the Alaska market, but if it did it would also mean 45 percent more spending on hospitals in Alaska.

[2:25:23 PM](#)

MARY KASPARI, President, Interior Alaska Hospital Foundation, Delta Junction, Alaska, testified in support of SB 62. She said she is a 20-year resident of Delta Junction and has been an RN for 35 years. In 2011, she started working to get a critical access hospital in Delta Junction. The feasibility study showed the community could sustain a 10-bed long-term care facility along with a 10-bed critical access hospital with swing-bed capabilities. In 2013 the foundation applied for and received a new access point grant to open the first community health center in the Interior. The Interior Alaska Medical Clinic opened in 2014 and the Interior Alaska Pharmacy opened in 2017. The last phase of the project is to construct the critical access hospital with 24/7 emergency room coverage. The roadblock is the certificate of need even though there is no competition in a 200-mile radius. She urged the committee to dissolve CON or at least make a rural exemption that is immediately effective.

[2:29:43 PM](#)

RANDY BEALER, representing self, Delta Junction, Alaska, testified in support of SB 62. He reported that medical air transport became unavailable in Delta Junction when the 24-hour medical facility reduced hours to the work day. Emergencies after hours, weekends, or holidays require an ambulance ride to Fairbanks. He shared personal medical emergencies and stressed that the certificate of need requirement is a roadblock to basic health care. Denying 24-hour emergency care and a small hospital for rural communities is not beyond comprehension.

[2:32:37 PM](#)

BILL WARD, representing self, Delta Junction, Alaska, testified in support of SB 62. He stated that the statutory requirement for certificate of need is a tool that municipal hospitals and large health care organizations use to strengthen their power base and thwart the legitimate needs of small Alaskan communities. The community of Delta Junction has demonstrated the need for a critical access hospital but is being stymied by the CON requirement. The lack of primary and emergency health care jeopardizes the desire of older residents to continue to

live in the community. The clinic and EMTs are obligated to send anyone who has an undetermined illness or trauma to Fairbanks for diagnostic testing. This is expensive, time-consuming, and sometimes an overreaction. It is also a burden on the Fairbanks emergency room. He urged the committee to do away with the outmoded and restrictive requirement to obtain a CON.

[2:36:10 PM](#)

MICHAEL JESPERSON, representing self, Anchorage, Alaska, testified in support of SB 62. He opined that the best way to reduce prices in any industry is more competition. He lives in midtown Anchorage and can get care if he needs it, but it's more difficult in rural areas. Small communities need emergency services and access to medivacs. Removing the certificate of need requirement increases competition and reduces the substantial cost of opening a medical facility. He acknowledged that opening new medical facilities takes time but removing this one hurdle will save a step for everyone, make it less expensive to open a new facility, and save a few more lives. He urged the committee to pass SB 62 to remove certificate of need and bring competition back to the market.

[2:39:21 PM](#)

JOE FONG, Administrator, Providence Seward Medical and Care Center, Seward, Alaska, said he supports the conversation about whether the current CON is appropriate, but doesn't believe a full repeal is the answer. He clarified that the center is part of the Providence system, but it is city owned so its success directly impacts the state, not the larger Providence organization. He explained that rural hospitals generally have small margins and they rely heavily on outpatient services like imaging, therapies, labs, and surgical services to be able to offer 24-hour ER coverage. The Seward center doesn't see a lot of people in a 24-hour period but there is no argument that the community needs access to these services. However, removing a barrier or incentivizing competition may have a long-term negative impact on the ability to provide urgent care and emergency services. He provided an example of the way the community addressed competition through collaboration and opined that may not always be feasible. He reiterated support for continued conversation about the current law, but not a full repeal.

[2:43:04 PM](#)

DR. RICHARD MANDSAGER, Administrator, Providence Alaska Medical Center, Anchorage, Alaska, urged the committee to hold SB 62 and continue the dialog about how to improve the CON regulations. He

said hospitals are a public utility in the sense that they need to be open all the time, but in many communities supporting these services is marginal. He acknowledged that the current CON statute isn't perfect and opined that it provides a way to talk through and rationalize services. He advised that Providence didn't oppose awarding CONs for Alaska Regional and MatSu to build more behavioral health services. More of these services are needed and it's a useful dialog to talk this through with the community, he said. Hospitals have become a place for the very sick, and the challenge is to make sure these services are available into the future. He reiterated his support for continuing the dialog about how to improve CON regulations.

[2:46:30 PM](#)

DR. TIMOTHY SILBAUGH, MD FACEP, Business Manager, Alaska Emergency Medicine Associates (AEMA), Anchorage, Alaska, said he is affiliated with Providence Alaska Medical Center and is speaking in opposition to SB 62. He opined that the CON process provides thoughtful use of state medical resources, has been effective in developing a strong health care system, and has prevented the introduction of expensive medical entities that would drive up costs.

He related that in 2015 to 2017 the Providence Alaska Medical Center successfully applied for a CON to develop a pediatric specialty emergency care center. There was a thorough discussion of the proposal and competitors were free to oppose it. He opined that lifting the CON process would result in a proliferation of expensive facilities that would drive up costs but provide no coordinated benefit to the Alaska health care system.

Referring to Senator Costello's question about what would happen to emergency rooms should CON be appealed, he said they would become freestanding emergency centers. These unique facilities are allowed by federal regulations to charge the same hospital facility fee as a traditional hospital-based emergency department. They do not currently exist in Alaska, and essentially provide service where it isn't needed at a much higher cost. They also directly translate into allowable increases in Medicaid fees to offset the infrastructure investment.

[2:49:39 PM](#)

DR. ANNE ZINK, Emergency Physician, MatSu Regional Medical Center, Palmer, Alaska, testified in opposition to SB 62. She mentioned the \$1.5 million exemption that people in MatSu and

Anchorage have taken advantage of, which has added facilities and increased competition, and she agreed with testimony from Delta Junction that access to emergency care is critical. She expressed concern that repealing CON would threaten emergency departments. Surgery centers would come in and wouldn't be required to cover costs at the hospital, which would jeopardize emergency services for Medicare, Medicaid and the uninsured. These centers would also attract itinerant surgeons from the Lower 48 who may not be available in emergencies.

DR. ZINK said she has seen the certificate of need process work well in Alaska. First, it doesn't accommodate the freestanding emergency departments that Dr. Silbaugh talked about that significantly increase costs without helping patient care. Also, Mat-Su Regional went through the arduous process to apply for a certificate of need for behavioral health. It ultimately brought the community to resolution and the state approved the beds. She concluded saying that Alaska has unique challenges and it's necessary to look at what makes sense in each community. That is why she is opposed to SB 62.

[2:52:22 PM](#)

DAVID MORGAN, representing self, Anchorage, Alaska, stated he has worked in health care finance and management for 31 years. He noted that he submitted written testimony and the Alaska profile that George Mason University prepared about what would happen without the certificate of need. It shows significant reductions on spending, improved access, and positive trending quality measures.

He said the experience in Illinois in getting rid of certificate of need was that rural hospitals responded to the threat of competition by changing the services they delivered, adding swing beds and long-term beds. He said he is currently working with the Kaiser Foundation on market place average bench mark premiums from 2014 to 2018. That identifies what was really paid in insurance and health care. Economists found that those states without certificate of need had a lower rate of increase than those states that did. California was an exception, but it has embedded regulations more severe than CON and major health care taxes that helped raise costs.

MR. MORGAN warned that examples that are given of the effect of the repeal of CON don't necessarily look at the total cost of health care in the state or community. He noted that Senator Giessel said there is a three-year wait for behavioral health and suggested looking at the economic issues to see who has a

material interest. That will lead you to look more closely at the certificate of need issue, he said.

He advised that he sent most of the information from George Mason about what would happen in Alaska without certificate of need. He would follow up shortly with the market place benchmark costs. This shows which states do and don't have CON and ranks them according to the percentage those costs have grown over four years. It's very surprising, he said.

SENATOR GARDNER asked him to share the information.

MR. MORGAN said he sent everything to Mr. Zepp except the study that uses Kaiser Foundation information and that should be ready to send shortly.

CHAIR COSTELLO asked Margaret Brody to provide information on the cost for an application for a certificate of need, and the timeframe for the department to process the application and get back to the applicant.

MARGARET BRODIE Department of Health and Social Services (DHSS) deferred the question to Donna Stewart, the executive director of the Office of Rate Review. It falls under her purview.

CHAIR COSTELLO said she would follow up with her.

[3:02:20 PM](#)

DAWN WARREN FRASIER, Member, Interior Alaska Hospital Foundation, Delta Junction, Alaska, testified in support of SB 62. She said this small community has no hospital or emergency services for a hundred miles in any direction. People from surrounding communities pass through Delta Junction heading to Fairbanks for emergency medical services. She described the members of the Interior Alaska Hospital Foundation as regular folks looking to improve health care options for their families, friends, and neighbors. They have been able to open a pharmacy and a community health clinic. The next phase is a critical access hospital that could have up to 10 beds and a 24/7 emergency room. The foundation has raised some funds to proceed but has discovered it needs a certificate of need to proceed. This will cost close to \$200 thousand. This requirement seems silly given the circumstances in Delta Junction, she said.

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SENATOR GARDNER asked Ms. Brodie if the Department of Health and Social Services (DHSS) will take a position on the bill.

MS. BRODIE said she didn't believe so.

3:05:24 PM

JOHN LEWIS, Vice President, Interior Alaska Hospital Foundation, Delta Junction, Alaska, testified in support of SB 62. He advised that he is a 14-year resident of Delta Junction and an 82-year-old senior. He opined that the community should not be required to apply for a certificate of need because the closest hospital is 100 miles. An immediate exemption from the requirement is in order. The application is very costly, and that money should instead be used for the project. He requested the committee eliminate the bill.

3:07:11 PM

JOSHUA RUSSEL, representing self, Delta Junction, Alaska, testified in support of SB 62. He recounted previous testimony and observed that no one seems to want to get rid of the roadblock to access emergency medical services for half of the state. He related that he is a father of four, a disabled veteran with health problems, and a certified emergency medical technician (EMT). He pointed out that anyone who experiences a medical emergency has a much better chance of survival if they receive medical care within the first "golden" hour. Under ideal conditions, the closest hospital for Delta residents is 90 minutes away. He listed the emergencies he has experienced as an EMT in Delta and suggested that their chances of survival and better quality of life would have increased if the proposed 10-bed critical access hospital had been available. He said \$200 thousand is a lot to spend on a certificate of need application, particularly when there is no competition in the community. He asked the committee to do the right thing and pass SB 62 from committee. At the very least, exempt rural communities from the certificate of need process.

3:11:28 PM

DAVID WALLACE, CEO, Mat-Su Regional Medical Center, Palmer, Alaska, testified in opposition to the wholesale repeal of the certificate of need. He said his opposition to SB 62 is for the same reasons that his colleagues articulated. He highlighted Dr. Zink's testimony for laying out the challenges the Palmer hospital faces. He acknowledged the challenges that Delta Junction residents face trying to get basic health care, confirmed that the certificate of need could be improved, and agreed with Ms. Hultberg that hospitals should be part of the discussions to improve the CON statute and allow health care to evolve in Alaska.

He referenced testimony from people living out-of-state and offered his perspective that Alaska is different than any other state, but that it could learn things about what has worked well in other jurisdictions. He suggested that full repeal of the certificate could have negative consequences. He cited a drill for responding to mass casualties as an example of how the hospital partners with the state to provide services. He listed competing imaging and surgery centers in town that have either worked around the CON law or used the \$1.5 million expansion/development provision, and reiterated support for collaboration to improve the current law.

[3:15:44 PM](#)

MIKE POWERS, COO, Tanana Valley Clinic, and former CFO/CEO Fairbanks Memorial Hospital, Fairbanks, Alaska, testified in opposition to SB 62. He cited experience with a variety of certificate of need approvals over the past 30 years. Most important, he said, is the build out of responsive and effective ER services. He related his experience with three mass casualties that flooded the ER after hours. He also noted that a number of CONs were not approved over the same timeframe. In each instance the CON process was followed, and the community was engaged. "There was rational, thoughtful health planning deployed; there was high-quality, right-sized health capacity created." He said he appreciates Delta Junction's desire for a critical access facility and believes that Fairbanks would like to see additional capacity in that location. However, it needs to be done constructively or it won't provide the service that can stand the 24/7 test of quality and consistency. Appropriate planning [through the CON process] is imperative to ensure "judicious, efficacious, quality service." He stated support for amending CON regulations to improve health planning abilities and encouraged the committee to seek Alaskan data on charity care and who is providing the services.

[3:19:21 PM](#)

KARL GARBER, President, AgeNet, Juneau, Alaska, testified in opposition to SB 62. He related that he is also the Executive Director of Alzheimer's Resource of Alaska and was an administrator of an Alaskan nursing home for 10 years. He explained that AgeNet is a statewide association that provides home and community-based services for seniors that typically have nursing-home-level-of-care needs. It serves over 10,000 seniors annually, so they can remain at home as long as possible. Preventing adverse events like falls, missed

medications, and missed meals from happening helps to prevent high-cost hospitalizations and long-term nursing home stays.

He stated support for the continuation of certificate of need for nursing homes because adding more isn't affordable right now. He opined that the best use of scarce resources is to focus on developing more home and community-based services. He reported that AARP recently released a study showing that Alaska ranks fifth in the U.S. for long-term services and support. In part this is due to the certificate of need law that requires identification of the need and the best use of state resources.

[3:21:57 PM](#)

CHAIR COSTELLO closed public testimony on SB 62.

SENATOR GARDNER said she would like to hear about the regulatory changes the state might agree are appropriate.

CHAIR COSTELLO said she would reach out and request DHSS engage in the process.

[SB 62 was held in committee.]

[3:23:24 PM](#)

There being no further business to come before the committee, Chair Costello adjourned the meeting at 3:23 pm.