

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

April 1, 2019

1:31 p.m.

MEMBERS PRESENT

Senator David Wilson, Chair
Senator John Coghill, Vice Chair
Senator Gary Stevens
Senator Cathy Giessel
Senator Tom Begich

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 1

"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. 93

"An Act relating to a workforce enhancement program for health care professionals employed in the state; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 1

SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM

SPONSOR(s): SENATOR(s) WILSON

01/16/19	(S)	PREFILE RELEASED 1/7/19
01/16/19	(S)	READ THE FIRST TIME - REFERRALS
01/16/19	(S)	HSS, FIN
03/27/19	(S)	HSS AT 1:30 PM BUTROVICH 205
03/27/19	(S)	Heard & Held
03/27/19	(S)	MINUTE (HSS)
03/29/19	(S)	HSS AT 1:30 PM BUTROVICH 205

03/29/19 (S) -- MEETING CANCELED --
04/01/19 (S) HSS AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

KEITH SMITH, M.D., Medical Director
Surgery Center of Oklahoma
Oklahoma City, Oklahoma

POSITION STATEMENT: Testified on reasons Alaskans seek care at his center during the hearing on SB 1.

SONYA CONANT, Human Resources Director
Matanuska-Susitna Borough
Palmer, Alaska

POSITION STATEMENT: Testified on cost savings from sending employees out of state for surgery during the hearing on SB 1.

JEANNIE MONK, Senior Vice President
Alaska State Hospital and Nursing Home Association (ASHNHA)
Juneau, Alaska

POSITION STATEMENT: Opposed SB 1.

MIKE POWERS, Chief Operating Officer
Foundation Health Partners
Fairbanks, Alaska

POSITION STATEMENT: Opposed SB 1.

FRED BROWN, Executive Director
Pacific Health Coalition
Anchorage, Alaska

POSITION STATEMENT: Supported SB 1.

WARD HINGER, Chief Executive Officer
Imaging Associates
Anchorage, Alaska

POSITION STATEMENT: Opposed SB 1.

PATRICK SHIER, Alaska Membership Representative
Pacific Health Coalition
Wasilla, Alaska

POSITION STATEMENT: Supported SB 1.

MIKE PRAX, representing self
Fairbanks, Alaska

POSITION STATEMENT: Supported SB 1.

JARED KOSIN, Associate Administrator

Mat-Su Regional Medical Center
Palmer, Alaska

POSITION STATEMENT: Opposed SB 1.

DAVID HYMAN, M.D., representing self
Co-author of Overcharged: Why Americans Pay Too Much for Health
Care; Law Professor
Georgetown University
Washington, D.C.

POSITION STATEMENT: Supported SB 1.

MONIQUE MARTIN, Director
Government Relations and Regulatory Navigation
Alaska Regional Hospital
Anchorage, Alaska

POSITION STATEMENT: Opposed SB 1.

ACTION NARRATIVE

[1:31:09 PM](#)

CHAIR DAVID WILSON called the Senate Health and Social Services Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Coghill, Stevens, Begich, and Chair Wilson.

SB 1-REPEAL CERTIFICATE OF NEED PROGRAM

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CHAIR WILSON announced that the only order of business would be SENATE BILL NO. 1, "An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

CHAIR WILSON noted that the committee adopted CSSB 1, Version M during the previous hearing. The committee also heard an overview and invited testimony on March 27.

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KEITH SMITH, M.D., Medical Director, Surgery Center of Oklahoma, Oklahoma City, Oklahoma, spoke in favor of repealing the Certificate of Need (CON). He explained that he does not have any self-interest because any relaxation of CON in Alaska will limit the flow of patients from Alaska to his Surgery Center in Oklahoma City. He has always fought against the Certificate of Need because he viewed it as raw protectionism for the status

quo and the hospitals in the area. It is still a prevalent problem, although it is lessening because many patients are willing to fly for services due to abusive pricing. Most of the patients receiving operations at his surgery center are from out of state. Historically, most were from Alaska and Wisconsin, which reflects abusive pricing in those regions. He would like to encourage the committee to completely rescind any CON regulations. However, removing regulations would not be enough, he said.

DR. SMITH said that if the State of Alaska is interested in better quality care and lower cost, not only should the CON be repealed but the state should consider buying only from those who display their pricing. Price listing would be a positive move in the marketplace. All the patients from Alaska have been thrilled with the care and price at his Surgery Center. Patients know the prices upon arrival. He has previously made arrangements with the Alaska Health Trust for teachers. The teachers came in a steady stream for their surgical procedures.

He encouraged the committee to rescind all restrictive language that prohibits new competitors from entering the marketplace. Competition typically improves quality and reduces prices.

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SENATOR BEGICH asked how many Alaskan patients go to his center annually.

DR. SMITH answered probably 50. The number of patients has been higher in the past, but his surgery sees about four or five patients from Alaska per month.

SENATOR BEGICH asked if patients go to Oklahoma because of a better price, better service, or both.

DR. SMITH replied that initially patients are attracted to the center based on the price since patients cannot assess the quality of the service until after surgery. However, his patients return to Alaska and refer their friends to his surgery center. The Surgery Center charges \$4,500 for ventral hernia repair. One patient in Alaska was quoted \$60,000 for the same surgery. A patient scheduled for knee replacement surgery this month was quoted \$90,000 in Alaska, but his center charges \$15,499. He offered his belief that as long as regulations prevent new competition price gougers have no incentive to change.

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SONYA CONANT, Human Resources Director, Matanuska-Susitna Borough, Palmer, said the Mat-Su employee health insurance plan has adopted a program to send employees out of state for surgery to contain costs. The Mat-Su Borough is a self-funded health fund that covers about 320 employees and their 600 dependents. In 2010-2011, the MSB examined options to reduce its health insurance costs and to provide good employee health care. At the time, the MSB's medical claims for that plan year were \$4.2 million or \$1,300 per employee per month. In 2010, the MSB joined the Pacific Health Coalition consisting of a group of self-funded plans in Alaska and the Pacific Northwest to negotiate with providers and pharmacy benefit managers to reduce costs to the plan. The MSB considered PTO agreements and network agreements and changed some of its plan requirements. For example, the MSB requires preauthorization for surgery, and it also reviewed its pharmacy spend. It determined the MSB was making good strides in cost containment.

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MS CONANT reported the MSB health plan costs per employee per month went from \$1,300 in 2010 to \$1,548 in 2018, or a 19 percent cost increase over seven years. Although the MSB has kept its health care costs below the annual rate of health care increases, the borough still wanted to save additional money. In September 2017, the MSB joined the BridgeHealth plan through the coalition for nonemergency surgery benefits. Third-party data ranked BridgeHealth providers in the top 25th percentile in the nation for their surgical specialties. MSB's employees have the option to use BridgeHealth, their local provider, the preferred hospital, which is Alaska Regional Hospital, or Providence hospital for their care, but some costs will apply to members. However, employees who opt to use the BridgeHealth plan will not incur any out-of-pocket deductible or copay expenses. The program prepays the selected provider a negotiated bundled rate prior to the surgery. Patients would work with a care coordinator to schedule and coordinate the surgery. The plan coverage includes coverage for first-class air travel, and meals and lodging allowances for the patient and an escort. Patients return to Alaska when medically able, she said. One concern was that Alaskan providers might not give follow-up care if the surgeon did not perform the initial surgery. Fortunately, follow up care has not been an issue, but if it did arise, a coalition of network providers will provide any needed follow-up care.

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SENATOR GIESSEL joined the committee.

MS. CONANT reported that since September 2018, that plan year had four surgeries performed using the BridgeHealth plan. The cost of the four surgeries was just over \$79,000 with a net savings of \$104,000. The MSB has benefited from BridgeHealth, with average savings of \$25,000 to \$30,000 per surgery. During the three-month period from November 2018 to January 2019, its employees had three surgeries for a cost of \$71,500 and a net savings of \$76,000. The MSB's employees have provided positive feedback on their experiences. She acknowledged some initial problems, including delays in obtaining medical record transfers to providers for review prior to surgery. These issues have been resolved in most cases by having employees communicate and work directly with their local providers.

She said the MSB is excited about the program. The MSB wants its employees to schedule surgeries as soon as possible, be comfortable, and avoid all out-of-pocket costs, as well as reduce plan costs for the borough. Since adopting BridgeHealth, some local providers have approached the coalition to indicate their willingness to potentially offer the same bundled rate for surgeries. Although the BridgeHealth plan is only in its second year, the MSB anticipates its costs will stay at or below the national health care level.

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CHAIR WILSON asked if competition has helped to lower the costs.

MS. CONANT answered that local providers offering the same rate would be considered a cost-savings measure and provide the MSB with another negotiation tool.

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SENATOR BEGICH asked if she was testifying that elimination of the Certificate of Need program would create more options and competition, which could result in competitive medical care in Alaska so more patients could obtain their care in Alaska.

MS. CONANT responded that she was unsure. She said her background is with hospitals. She said that numerous for-profit surgery centers and day surgery centers are being built. She said that she supports eliminating CON if it will result in quality care for Alaskans at a reduced price. However, she thought it went beyond the CON because providers must be candid about costs and set reasonable rates. She recalled an earlier speaker suggested that providers should post their rates so

patients can be informed about their medical costs prior to receiving the services.

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SENATOR BEGICH asked, as more local competition occurs, if the MSB would no longer need to use the BridgeHealth network.

MS. CONANT answered that the BridgeHealth network would be available as a benefit. She said that if competition increases, prices are reduced, and the quality of care is at the same level as BridgeHealth, that many patients would likely prefer to remain at home. However, BridgeHealth providers are ranked in the top 25th percentile. The MSB would not want their employees seeking surgical care solely based on lowest cost, since it could potentially result in additional services or surgical procedures, she said.

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SENATOR BEGICH asked what criteria would be used to determine high quality for new surgery centers and new providers.

MS. CONANT answered that some indicators can be gleaned from agencies who review services during the accreditation and reaccreditation process. Other indicators would be physician quality ratings and patient outcomes, and third-party surgeon ratings.

CHAIR WILSON asked for the MSB's annual health insurance costs.

MS. CONANT answered that the MSB's annual cost is about \$8 million for medical, dental, vision, and administrative fees.

CHAIR WILSON asked if she knew what annual mill rate that equated to.

MS. CONANT said she was unsure.

[1:52:06 PM](#)

CHAIR WILSON opened public testimony on SB 1.

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At ease.

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CHAIR WILSON reconvened the meeting.

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JEANNIE MONK, Senior Vice President, Alaska State Hospital and Nursing Home Association (ASHNHA), Juneau, spoke in opposition to SB 1 for four main reasons. She offered to provide a summary of her concerns in writing since time is limited and she has raised these concerns numerous times. Instead, she offered to focus on one issue she heard at last week's hearing related to a delayed implementation until 2024 to allow the Department of Health and Social Services (DHSS) time to develop its regulations. ASHNHA agree that problems exist with the current CON program and the organization supports improving CON through regulation. However, ASHNHA is concerned whether after a full repeal, the DHSS will have authority to draft regulations concerning CON-like activities. If the CON is repealed the regulations would also be repealed since the statutory authority that permitted them will also be revoked. She asked how the department will know what to regulate without the statute.

She said that if the goal is to improve CON through regulation, which ASHNHA strongly supports, she questioned the need to repeal the statute. ASHNHA believes that repealing the statute is not necessary and may hamper the effort to improve regulation.

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MS. MONK offered to respond to the analogies comparing health care to coffee shops or fast food restaurants. She provided comparisons that illustrated health care is subject to laws and regulations that prevent it from functioning as a free market. Hospitals are subject to EMTALA [Emergency Medical Treatment and Active Labor Act], which requires that anyone coming to an emergency department must be stabilized and treated, regardless of their insurance status or ability to pay. Hospital facilities run 24/7, must abide by certain regulations, treat difficult patients, and be prepared in case of an earthquake or other emergency. Further, Medicaid or Medicare rates are fixed and cannot be cut without warning. None of these things apply to coffee shops or fast food restaurants because these businesses are subject to different rules and expectations.

She offered her belief that creating a free market for health care and repealing CON are two separate issues. The Alaska State Hospital and Nursing Home Association (ASHNHA) would like to see DHSS work with providers to improve the regulations. Repealing CON would be destabilizing during an uncertain time in health care.

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SENATOR COGHILL asked if ASHNHA has provided the department with suggestions or changes to the CON process.

MS. MONK answered yes. She explained that ASHNHA's working group worked over six months to develop a series of recommendations for regulatory changes that were shared with the department.

SENATOR BEGICH asked if that those recommendations were available to the public.

MS. MONK answered that the recommendations are very technical, but ASHNHA would share them with the committee.

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SENATOR STEVENS said that his district has three small community hospitals in Homer, Cordova, and Kodiak. These small hospitals have expressed concern about CON being repealed, how this will effect emergency room services and if business could be "cherry picked" from the hospitals. He asked whether the CON repeal would affect smaller communities differently than larger ones.

MS MONK answered yes, that the smaller communities such as Fairbanks, Soldotna, Homer, and Juneau would have a much greater reason for concern. The Anchorage market consists of numerous surgery centers, but it still has not resulted in lower prices to patients. However, if a surgery center was built in Homer, it could place the hospital at extreme risk.

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MIKE POWERS, Chief Operating Officer, Foundation Health Partners (FHP), Fairbanks, spoke in opposition to SB 1. He said that FHP is a small health system, including Fairbanks Memorial Hospital, Tanana Valley Clinic, and Denali Center, which is a skilled long-term care facility. He has participated in the effort to defend the Certificate of Need (CON) over the last 30 years. In his experience, opponents of CON laws are solely limited to profitable services, typically surgery and imaging centers. Opponents of CON typically cite improved quality and reduced costs as justification for doing away with this public process. He pointed out that physicians in imaging and surgery centers perform a high volume of a narrow range of procedures.

MR. POWERS said that advocates of the CON and meaningful and regulatory and public review of these redundant health care services agree that niche providers can theoretically create efficiencies, but typically at the expense of the greater community good and the community hospitals. First, these

providers can cherry-pick the most profitable patients from the general hospitals, which creates unfair competition. Second, it threatens the cross-subsidization of profitable services and places Medicare/Medicaid, behavioral health, primary care, and pediatric care at risk. The Alaska market lacks meaningful regulatory review to consider the community's needs as a whole. Niche providers also deprive general hospitals of the scale and scope and profits hospitals need for the unprofitable departments, such as burn programs, emergency rooms, and behavioral health secure units that operate 24/7.

MR. POWERS said he has learned from his 30 years of experience in Alaska that physician-owned surgical centers tend to treat patients with better insurance coverage and those with lower clinical risk. This leaves the community hospitals like Fairbanks Memorial to treat the uninsured and the highest clinical risk patients. Those who oppose CON regulations argue that niche competitors who are not subject to regulatory approval foster competition, lower charges, and increase quality. However, he has not seen any evidence of that occurring in Fairbanks, he said.

MR. POWERS said that the public policy challenge is to facilitate development of a responsible marketplace, one in which the desired benefits of competition and real value in health care are realized. Meeting community needs, not individual investor needs, is the key to maintaining a responsible marketplace in the solo community hospital environments of Alaska. Through a balance of market forces, community planning, and CON regulation, it is possible to shape a responsible marketplace.

MR. POWERS said that even though the current market structure is not a classic competitive one, it achieves the desired goal of competition and greater access, lower costs, and higher quality health care. The CON helps create a responsible marketplace and outweighs the classic model of supply and demand by understanding the cost to the community of providers who cherry-pick patients, and by understanding who treats their fair share of indigent and Medicare/Medicaid patients. In closing, he said the CON doesn't limit competition, rather it promotes good community planning.

[2:03:26 PM](#)

FRED BROWN, Executive Director, Pacific Health Coalition, Anchorage, spoke in support of SB 1. He said the coalition is a nonprofit, parent company that was formed nearly 25 years by

four Alaska health plans. It now comprises over 45 member health plans in Alaska and the Pacific Northwest. These funds consist of employer-sponsored health plans, including the state, borough and municipal and school-district sponsored plans, as well as private employers and Taft-Hartley health plans. Their member funds represent over 100,000 employees and their dependents in Alaska and 150,000 employees in the Pacific Northwest. He said that the Mat-Su Borough is a member, and Ms. Conant summarized what PHC does. The PHC's mission is to ensure that Alaska and Northwest workers and their families have access to value and quality-based health care, benefits, and services. The PHC broadly encourages competition and open access to health care markets.

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MR. BROWN said that ten years ago the PHC testified in support of granting the Certificate of Need to the Surgery Center of Fairbanks. However, the PHC now believes that more competition is needed in Fairbanks and in Alaska. As the committee knows, Alaska has the highest health care costs in the United States. The PHC has tried for many years to reduce medical costs in Alaska by contracting with orthopedists and other specialists in Fairbanks and other parts of the state to add them to the PHC's preferred provider network. Only recently, after PHC's member plans began contracting with BridgeHealth for travel benefits, and patients began traveling outside Alaska for treatment, did local providers recognize the need to compete. PHC now has orthopedists in its network. He offered his belief that repealing the CON statutes is the next logical step to encourage competition. The Alaska health care market should move forward toward free market operations. He said that better ways exist to subsidize providers and address issues related to "cherry-picking" the most profitable surgeries and the cost of indigent care.

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WARD HINGER, Chief Executive Officer, Imaging Associates, Anchorage, spoke in opposition to repealing the CON in SB 1. He said more than half of the states have some sort of CON. He attested that nothing about the CON prevents competition. It merely provides a mechanism to the state to determine what kind of health care investment is needed and allow it to go forward in a planned, thoughtful, and hopefully safe manner. Alaska requiring CON does not allow one business or provider to create a monopoly or prevent competition. The decision to issue or not issue lies with the state, specifically the DHSS. He offered his

belief that removing the checks and balances would negatively impact patient safety and quality of care.

MR. HINGER offered his belief that the state has been inconsistent and even negligent in administering the CON. He said that the state has shirked the responsibility given to it by the CON to demand quality and successful investments that benefit all of Alaskans. Based on his 20 years of health care administrative experience, eliminating the CON would do two things. First, it would encourage the worst type of health care investment, which is the kind that only makes money at the highest margins with no need to demonstrate quality, safety, or necessity. Second, it would cause quality centers, such as Imaging Associates, that hold the CON to compete with others that do not share their community-minded view of service and quality. In a sense, Imaging Associates would be economically forced to match the "other" model.

He said that Imaging Associates, like the local hospitals, currently provide an all-modality service, offering all imaging services for comprehensive and quality care. A number of those important services are at low-to-no margin, alongside some of the highest margins CTs and MRIs. Their state-of-the-art imaging services are offered to all patients, regardless of payer status. Imaging Associates provides significant financial support to charity organizations in Alaska.

He expressed concern that if the state were to allow a high-margin only site, such as an MRI or CT center to open on every street corner, it would bleed away the modalities. Imaging Associates would be forced to scale back to the same level of exclusive or limited services and would likely be forced to stop offering low-margin services and ultimately cap the number of Medicaid and Medicare patients or not participate in either. He said that in the end, Alaskans will lose. He urged members to seek ways to strengthen the CON and make it work better rather than to eliminate it.

MR. HINGER offered three suggestions to make the CON statutes and regulations meaningful. First, the state should require each certificate seeker to document how the provider will demonstrate and maintain quality. Second, payers should pay the same whether equipment is old or new. Finally, the provider with the CON should take all-payer status, Medicare, and Medicaid patients. In closing he said that the CON does not limit competition. If the state determines a lack of competition in some areas of the state, it can remedy it by approving more Certificates of Need.

SENATOR STEVENS asked Mr. Hinger to submit his three suggestions in writing.

[2:10:53 PM](#)

PATRICK SHIER, Alaska Membership Representative, Pacific Health Coalition (PHC), Wasilla, supported SB 1. He said that introducing more competition has been instrumental in helping PHC. The introduction of BridgeHealth, in particular, helped to reduce some of the world-class high costs. The PHC supports the introduction of more competition to lower the cost of high-quality care, he said.

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MIKE PRAX, representing self, Fairbanks, spoke in support of SB 1. He said that he has been following this issue for about 30 years and little has changed. He agreed that hospitals in some communities subsidize medical services, which provides some community benefits. And as earlier testifiers mentioned, when services are too costly people will seek alternatives, including traveling to the Lower 48 for their medical services. He expressed concern that the CON process has skewed the market. The fiscal notes indicate that Medicaid services will increase, which just creates other problems, he said. He offered his support to repeal the CON and allow the market to resolve the issues.

[2:13:57 PM](#)

JARED KOSIN, Associate Administrator, Mat-Su Regional Medical Center (MSRMC), Palmer, spoke in opposition to SB 1. The premise of the bill calls for competition and the free market to resolve costs. However, hospitals do not operate under the free market or fair competition models. As previous testifiers mentioned, hospitals are the only entities required by the federal EMTALA laws to treat all patients who come to emergency departments for treatment. Emergency departments are costly for patients. Emergency departments (ERs) lose money since ERs have high physical overhead costs, expensive equipment, and operate 24 hours a day. Highly specialized services like imaging and surgery subsidize ERs, such as the Mat-Su Regional Medical Center, so these hospitals can exist. He expressed concern that if SB 1 passes, imaging centers, ambulatory surgery centers, or freestanding emergency departments will flood the market. He has heard anecdotally that in Texas so many freestanding emergency departments seek to cater to patients with higher cost of care that these centers are on almost every street corner. These types of entities are not mandated to see patients 24 hours a

day, year round, regardless of payer status, he said. He urged members to fix the CON, update its formulas, but not to repeal it.

He said that the Mat-Su Regional Medical Center commits to working with the legislature to find practical solutions. He expressed concern that the existing regulations will not be in place if this bill passes. New statutory authority will be necessary in order to promulgate new regulations, so a full repeal makes no sense.

[2:16:47 PM](#)

DAVID HYMAN, M.D., representing self, Law Professor, Georgetown University, Washington, D.C., supported SB 1. In 2004, he reviewed the CON laws, working with the Federal Trade Commission (FTC) and Department of Justice (DOJ). The final report reached some conclusions about the CON statutes. In 2017, 2018, and 2019 the FTC and DOJ submitted comments to the state of Alaska that reached similar conclusions. One conclusion is that CON laws create barriers to entry that deprive consumers of the benefits of health care competition. Substantial research shows the benefits of competition. Of course, the state needs to be realistic about the benefits of potential competition, such that it will not be feasible in some areas of Alaska, but it will work in many areas, he said.

DR. HYMAN said another conclusion is that incumbent providers can take advantage of the CON process to protect their current market position and revenues. Alaska courts have heard pleadings on behalf of incumbent providers of services. For example, the Alaska Supreme Court case Alaska Spine Center v. Mat-Su Valley Medical Center provides a case study. Finally, the CON has not achieved its goals. The subsidies used to cross-subsidize less profitable services are obtained by overcharging everyone else. Incumbent providers do not want market entry because it makes it more difficult for them to make those adjustments. If the state would like to encourage people to provide certain kinds of treatment, it could subsidize it directly rather than give incumbent providers a license to overcharge some people and offer cut-rate pricing to others.

[2:19:06 PM](#)

MONIQUE MARTIN, Director, Government Relations and Regulatory Navigation, Alaska Regional Hospital (ARH), Anchorage, spoke in opposition to SB 1. She said that meaningful analysis to show the effect on Alaska's hospitals by repealing the CON has not been done. Alaska Regional Hospital encourages the state to

conduct a study to understand potential impacts before considering such a bill. The state needs to avoid unintended negative consequences, including cherry-picking patients, by reviewing the CON regulatory process. She expressed concern that the repeal of the CON program could dramatically increase Medicaid general fund costs at a time when the state seeks to reduce them. The governor's budget includes over \$700 million in Medicaid reductions, she said. Many of the reductions to Medicaid are unallocated, which creates a lot of uncertainty in the provider community. She explained that in 2017, Alaska Regional Hospital went through the CON process to create a 24-bed, acute adult psychiatric unit, but the hospital put the project on hold until the health care delivery system in Alaska is more stable. After going through that process, the ARH believes that the CON process could be improved. In closing, she suggested that the DHSS should move forward with to review the program using the ASHNHA's suggestions on ways to improve that program.

[2:21:05 PM](#)

CHAIR WILSON closed public testimony on SB 1.

CHAIR WILSON directed attention to information in members' packets on the recent Alaska Supreme Court decision that Dr. Hyman referenced. The case illustrated that the state's CON laws are complex and difficult. The Department of Health and Social Services (DHSS) determined that an ambulatory surgical facility seeking to relocate from Anchorage to Wasilla did not need to submit such documentation because it was moving within the same community as defined by the relevant statute. He said that the [parties and the state] spent several years trying to get a clear definition of the applicability of regionality in CON laws. The department reversed its position, he said. He said the issue surrounding the lawsuit is a huge issue in his district. The lawsuit has caused headaches to all entities involved, including the state, the Alaska Spine Center, the Mat-Su Surgery Center, and the Mat-Su Regional Hospital. The state incurred substantial legal costs because it was a codefendant.

CHAIR WILSON said that since he anticipates further judicial appeal, the committee will not discuss the merits of the case, but will share the court case summary, including facts and disclosures that is part of the public record.

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SENATOR BEGICH said he was not aware that DHSS had reversed its position. He recalled that in 2016 the department said CON

wasn't necessary. He asked when the department changed its interpretation.

CHAIR WILSON replied that he was referring to the rule determining whether Wasilla is included in the community of Anchorage. He said that at one time it was, but now it is not.

SENATOR BEGICH clarified that was sometime before 2016.

CHAIR WILSON agreed.

[2:24:00 PM](#)

CHAIR WILSON informed members that he asked the Legislative Legal Services to address Senator Begich's question, but the committee has not yet received a response. He related his understanding that the CON regulations would still be in effect for five years after the passage of this bill, which would allow the department substantial time to meet with stakeholders to develop new regulations and to identify any new statutes required.

He said that the department has been working on this issue for 30 years. He referred to Tab 2 in members' packets to the economic research that spans 40 years and addresses the indigent care and rural health care questions. Federal EMTALA requires three percent of hospital care as charity care in Alaska, which is not a huge percentage, he said. As sponsor of SB 1, he did not believe that it would not be hurtful to allow other entities to come into Alaska, and the committee has heard testimony from the FTC and DOJ in terms of competition. He referred to another article in members' packets in Tab 3, related to competition and health care. The committee understands that health care is complex. While he is not saying that the free market applies, the FTC and DOJ gave testimony in Georgia that included many empirical references to demonstrate the importance of competition in health care.

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SENATOR GIESSEL related that in about 2006 she was an observer during the negotiated rule making on CON. She agreed that Alaska has the highest health care costs in the U.S, which has the highest health care costs in the world. She said she supports the CON repeal, but this alone will not reduce the cost of health care in Alaska. She acknowledged that Alaska has unique situations. The biggest one is the 80th percentile rule, which requires insurers to base their payments for out-of-network claims on the amount at or above 80 percent of what all the

providers charge for a specific service in a given area of the state.

SENATOR GIESSEL said she was interested in the slide [from the March 27, 2019 presentation] that depicted a map showing the evolution of the CON in the U.S. for 2017. It showed states without any CON regulations, including Idaho and North Dakota. She worked with Lori Wing-Heier, Director of the Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), who researched reimbursement issues and discovered Idaho and North Dakota had lower reimbursement rates than Alaska. She pointed out that Montana requires a CON and its reimbursement rates were similar to Idaho and North Dakota. They were significantly lower than Alaska. She argued that while she supports repealing the CON, prior testimony indicates that without statutory authority to replace the CON, regulations cannot be written. While the department must have that foundation piece to write regulations, it is only one piece of health care costs. Further, the 80th percentile is a significant driver of health care costs. She said that the [state] cannot address the 80th percentile without addressing balance billing, otherwise known as surprise billing. [Per the American Medical Association, Balance billing happens when a patient's health insurance company pays an out-of-network physician or other health care provider less than the amount the physician charges for the care. So-called "surprise billing" can also refer to emergency care provided by an out-of-network provider.] She offered to provide the research information to the committee

CHAIR WILSON said that the committee would request an answer to Senator Begich's question from Legislative Legal Services.

SENATOR BEGICH highlighted four areas that were raised during testimony on SB 1. First, was to address regulations. The second area relates to the accreditation process for surgery centers. He said he was unsure whether an accreditation process exists, but that seemed to be a means to ensure quality care. The third area was raised by Senator Stevens, in terms the difference in areas covered by a CON and areas not covered by a CON and how that affects hospitals in small communities. He expressed concern that smaller communities might lose their only hospital. The final question was what could be addressed by regulation as opposed to statutory changes. He echoed Senator Giessel's comments about the need to comprehensively examine health care. He highlighted questions to address health care costs, including figuring ways to build a larger pool to reduce risk, examining the 80th percentile rule, and working to achieve meaningful

transparency to drive costs down. He recalled two people with opposing views testified on the transparency issue, which Senator Giessel and Representative Spohnholz took a lead in last year. He said he was encouraged that the BridgeHealth network is helping to drive provider costs down.

SENATOR BEGICH said he understands reasons for supporting [SB 1] and why it makes sense. However, he would like the committee to explore some of these questions before he is fully on board. He offered his belief that the debate has raised questions, which he hoped the committee could address in a meaningful way. At this point, he was unsure of how to craft amendments.

CHAIR WILSON requested that Senator Begich contact his office with any amendments or [conceptual amendments].

SENATOR BEGICH referred to a question he previously asked, which was whether any rural hospitals in Idaho and North Dakota had closed.

SENATOR STEVENS said he was surprised that the committee did not invite smaller hospitals to testify. He would like to have heard from small hospitals.

CHAIR WILSON reminded members that this topic has been discussed for many years and it was part of a recent ASHNHA conference as well. He pointed out that some hospitals are members of ASHNHA. The issue has also been discussed in the Journal of Commerce and some newspapers. He indicated that it is hard trying to make sure all stakeholders are involved, but the committee works to ensure that the public is involved. He welcomed the smaller hospitals to submit their written comments, which can be considered as the bill moves through the process.

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SENATOR COGHILL said he supports the concept in SB 1. He acknowledged that this bill will not solve all of the health care problems in Alaska, but it is a good start. He said he hoped the hospitals understand the legislature is trying to solve a conundrum and does not seek to destroy hospitals. Hospitals are a vital part of health care. He related his understanding that cost shifting is their highest concern, since hospitals bill the highest rate for patients [with insurance coverage]. The big issue is to figure out how [hospitals] can provide services to indigent population without subsidizing those costs.

SENATOR COGHILL highlighted two areas that got his attention. First, is that patients already leave the state for medical services when the costs are lower, and the state or other health plans cover it. While he understood local providers want the legislature to support local hire, people will seek less expensive care. The second area relates to overcharging and undercharging at hospital emergency rooms due to the federal rule that requires hospitals to take indigent patients. He said he would be a little less sympathetic to hospitals if emergency centers opened and hospitals closed. He described the community hospital in his hometown, which is small enough to be a monopoly, but it has grown enough to be competitive, which he found to be an interesting balance. By removing the CON, Alaska would allow [competition], so the question will be whether the [community] hospital will be able to retain its competitive edge, he said. He suggested that Medicaid and ER care will need to be discussed. He highlighted that the state has tried multiple ways to address "frequent fliers" who frequent ERs because of their drug and alcohol abuse. He said, "... in Fairbanks, I tip my hat to the hospital who has picked up those services where the state just can't seem to get its feet under it."

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SENATOR COGHILL offered his support for SB 1, which will repeal the Certificate of Need (CON) because the process needs to be addressed and it is based on good economic principles. He expressed an interest in the Department of Health and Social Services (DHSS) and Alaska State Hospital and Nursing Home Association (ASHNHA)'s suggestions. He said he would like to know how Alaska can make improvements and what can be done better. He emphasized that Alaska must change the way health care operates because patients will go elsewhere. He questioned the model of care for indigents if [hospitals] must subsidize indigent care. He expressed an interest in the department's feedback from hospitals. He related his understanding that larger hospitals often have a smaller hospital that is subsidized. For example, Providence Hospital subsidizes the [Providence Valdez Medical Center (PVMC)] in Valdez. He offered his belief that without a good profit base in Anchorage, the PVMC Valdez would probably not make it. He said that hospitals will need to face the realities.

SENATOR COGHILL asked about the [effective] date of 2024. He understood that it would allow time to plan regulations and address economic concerns.

CHAIR WILSON agreed that was the intent. In further response, he said that the committee will ask the department to share any data from the working group meetings with the Alaska State Hospital and Nursing Home Association (ASHNHA).

[CHAIR WILSON held SB 1 in committee.]

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There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee at 2:44 p.m.