

SENATE FINANCE COMMITTEE
March 16, 2022
1:03 p.m.

1:03:55 PM

CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 1:03 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman
Senator Donny Olson
Senator Natasha von Imhof
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Mia Costello, Sponsor; Melodie Wilterdink, Staff to Senator Costello; Gary Zepp, Staff to Senator Wilson; Jamie Cavanaugh, Certificate of Need Attorney, Institute for Justice.

PRESENT VIA TELECONFERENCE

Matthew Mitchell, Mercatus Center at George Mason University, Arlington, VA.

SUMMARY

SB 26 REPEAL CERTIFICATE OF NEED PROGRAM

SB 26 was HEARD and HELD in committee for further consideration.

SB 130 ELECTRONIC PULL-TAB GAMES

SB 130 was HEARD and HELD in committee for further consideration.

#sb130

SENATE BILL NO. 130

"An Act relating to electronic pull-tabs."

1:04:40 PM

Co-Chair Bishop relayed that it was the first hearing of SB 130 during the current session. The committee had heard a bill introduction the previous session and had taken public testimony. The intent of the committee was to hear a bill reintroduction and to set the bill aside.

1:05:13 PM

SENATOR MIA COSTELLO, SPONSOR, recounted that many years previously the state had adopted a policy to recognize certain gaming activities in the state, including raffles, bingo, and pull tabs. The bill dealt solely with pull tabs. She noted that a few years previously bingo had gone to an electronic format. The bill would allow for a new format for pull tabs and allow for an electronic representation of a pull-tab. The bill would not change where pull tabs were offered, nor who was allowed to play, nor how the pull tabs were paid for. She reminded that pull-tabs supported charities in the state including entities such as Veterans of Foreign Wars, sports teams, schools, and Native villages. The funds were often used for scholarships.

1:07:40 PM

AT EASE

1:07:52 PM

RECONVENED

MELODIE WILTERDINK, STAFF TO SENATOR COSTELLO, thought that the senator had given a great overview of the bill. She made note that one of the supporting documents (copy on file) listed all of the charities in the state that had pull tab permits.

Co-Chair Bishop asked if Ms. Wilterdink could provide a number.

Ms. Wilterdink cited that at the bottom of page 6 there was a total of 249 charities in the state held pull tab permits.

Co-Chair Bishop stated the committee would set the bill aside. He thanked the sponsor and staff.

SB 130 was HEARD and HELD in committee for further consideration.

#sb26

SENATE BILL NO. 26

"An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

1:09:01 PM

Co-Chair Bishop asked the sponsor if he would like to address the bill from the testifier seat.

1:09:24 PM

AT EASE

1:11:37 PM

RECONVENED

Co-Chair Bishop relayed that it was the first hearing for SB 26. He intended to hear a bill introduction and sectional analysis and then set the bill aside. He commented on the size of the bill.

1:12:13 PM

Senator David Wilson, Sponsor, asserted that well-intended government laws and regulations had unintended consequences that could be negative for businesses and prevent the expansion of the economy in the state. He asserted that some of such laws led to limited consumer choices for services, and stifled competition and expansion in certain industries. He mentioned Uber and Lyft in contrast to taxis, the hospital sector, distilleries and bars, and healthcare. He asserted that Alaskans deserved a free market where the law of supply and demand of direct production of goods and services kept prices low.

Senator Wilson continued his remarks. He commented on the complexity of the healthcare system. He commented on individuals in the gallery. He thought many individuals would not come forward because of pressures. He explained that the bill would repeal the Certificate of Need (CON) and would allow a window of repeal before the bill became effective. He referenced an amendment in the previous committee, which would adjust the repeal date. He would examine historical arguments regarding CON laws, which he thought did not provide economic justification for depriving consumers with the benefits of a free market. He asserted that that the state's CON program provided a substantial threat to performance and expansion of the healthcare market. He recounted that the mandate of CON laws happened in 1974 and was developed to cut down on overinflation of healthcare costs. He discussed the transition from reimbursement to fee-for-service structures.

[1:16:15 PM](#)

Senator Olson referenced his time spent in medical school and thought the reason for the CON was due to too many economic factors causing healthcare providers to be overextended. He recalled that the federal government had established the CON so that a provider had to prove it could survive ups and downs of the nation's economy.

Senator Wilson asserted that several presidential administrations had supported the repeal of CON. He referenced letters from the Federal Trade Commission and the Department of Justice from two administrations (copy on file). He would also be seeking support from the current administration.

Senator Olson asked the sponsor why the proposed CON repeal was necessary in Alaska, where healthcare and providers were so far apart, and the market was so small.

Senator Wilson cited that Alaska was the most expensive place in the world for healthcare services. He used the example of a colonoscopy, which had an average price of \$1,200 to \$1,500, yet in Alaska was almost \$5,000 \$7,000 despite the technology being unchanged. He understood that eliminating CON would not lower all healthcare costs but thought that it was one element that would help.

Senator Olson asked about the potential effect on health corporations in rural Alaska.

Senator Wilson stated that the forthcoming presentation would address exemptions, one of which was for Native-owned entities. He noted that currently there was a massive expansion by a provider in Southeast. He referenced small private clinics and privately-owned pharmacies that had closed. He thought there had been abuse in the system that had created unfair competitors.

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GARY ZEPP, STAFF TO SENATOR WILSON, wanted to address Senator Olson's question. He reminded that the CON had begun in the 1960's and in the 1970s the federal government had mandated that states participate and tied it to funding. He cited high inflation rates of 16 percent. He thought the early effort was the government's attempt to control healthcare costs. He cited that 13 states including over 40 percent of the population had no CON and had functioning healthcare markets.

Senator von Imhof emphasized that healthcare was a significant cost driver in the state. She pointed out that Alaska was different than the continental United States in being surrounded by water or Canada. She referenced Washington and mused that the entire population of Alaska could fit into a suburb of Seattle. She commented on the dwindling state population and the cost of equipment. She shared that she had many comments on the matter. She did not see how eliminating CON would somehow create competition and lower costs.

Senator Wilson asserted that the change was not about cost but was also about access and quality. He used the example of the Matanuska-Susitna (Mat-Su) Borough, where a competitor had put up an imaging facility near a hospital, thus disqualifying the hospital from getting a CON for its new imaging equipment. He mentioned access to quality. He thought it had taken the hospital 12 years to get a new CON to update its imaging services.

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Senator Wielechowski referenced a letter from Foundation Health Partners (copy on file) which cited that the margin

was less than three percent for Fairbanks Memorial Hospital. He contended that the organization was making a "cherry picking argument," and asserting that the hospital made money on some things, and lost money on other things. He thought the organization was worried about other organizations coming in and picking off the more profitable areas, and then making the entire hospital unprofitable.

Mr. Zepp relayed that the sponsor had done research on states that repealed CON. He identified that if there was an ambulatory surgery center in a repeal state, sometimes there was an excise tax imposed. He asked if Senator Wielechowski was linking his comment to the Emergency Medical Treatment and Labor Act (EMTALA), or uncompensated care in emergency rooms.

Senator Wielechowski relayed that he was not citing specific departments but was referencing the letter from Foundation Health Partners.

Mr. Zepp cited that some repeal states implemented an excise tax, which was allocated to hospitals that provided uncompensated care to help level things out.

Co-Chair Bishop wanted to revisit Senator Wilson's earlier statement regarding the support of previous presidential administrations. He thought Senator Wilson had cited that the two Bush Administrations, the Clinton Administration, and the Obama Administration had supported CON.

Senator Wilson affirmed that those past administrations were on the record as supporting the repeal of CON.

Co-Chair Bishop asked Senator Wilson to provide his written testimony of his opening statement.

Senator Wilson agreed.

Senator Wilson wanted to note that the binders provided to members were just a fraction of the empirical data he had found on the topic of the bill. He asserted that there was no other bill, aside perhaps from the appropriation bills, that had more supporting backup data.

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Senator von Imhof asked who in Alaska was required to accept Medicare and Medicaid, and whether it was optional or required.

Senator Wilson relayed that acceptance of Medicare and Medicaid was dependent upon some other requirements of an agency. He cited that if a provider received grant funds from the state, it was required to accept patients that used Medicaid and Medicare. He continued that it could be optional for some private providers that chose not to receive additional state or federal funds for its operations.

Senator von Imhof made note of the annually set rates for Medicare and Medicaid, and thought the rates were less than the market rates. She thought other insurance companies would pay the difference and referenced an 80 percent rule. She asked about the incentive for a new surgery center to accept Medicare and Medicaid, which clearly had below market rates and may or may not cover its costs. She asked why the new surgery center would not cherry-pick the highest payers, especially considering the high equipment cost. She was concerned that places such as Fairbanks Memorial Hospital and Providence Hospital being used a county hospital, without higher payers to help cover higher costs. She questioned the overall value for patients at Fairbanks Memorial Hospital and patients that did not have access to the surgery center. She likened the surgery center to a spa in comparison.

Senator Wilson believed that one would not open a business if it would not be profitable. He did not think it would create chaos if the CON was repealed, and asserted that chaos had not happened in states that had repealed CON. He mentioned Alaska market rates. He cited that Alaska was one of four states that had higher Medicaid rates than Medicare rates. He mentioned issues beyond healthcare costs. He discussed medical tourism. He cited that Alaska hospitals were some of the most profitable in the nation. He thought the Mat-Su hospital was at about 24 percent profitability. He relayed that Providence Hospital had purchased a hospital in California. He did not see Senator von Imhof's argument would be a concern in the state.

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Mr. Zepp commented on states that had repealed CON, and asserted that there was a competitive healthcare system with better outcomes and typically better pricing. He referenced support data. He agreed that Alaska was not like Washington, but thought the bill would be good for the state.

Senator von Imhof thought it was difficult to compare Alaska to 13 other states. She was concerned that repealing CON would widen the gap between "the haves and the have-nots." She commented on the small number of payers and thought imposing free market forces would not work. She shared concerns that people that could afford high payments would go to private clinics and others would go to hospitals, which would have a difficult time recouping costs.

Mr. Zepp mentioned an invited testifier that could speak to Senator von Imhof's concerns.

Senator von Imhof restated her question. She noted that currently hospitals in the state handled very expensive care for pre-term babies in intensive care units (ICU) as well as geriatric care for people that spent days or weeks in the hospital. She highlighted the costs, which were frequently covered by Medicaid or Medicare. She pondered how hospitals would be able to pay for the neo-natal ICU and the care for elder population, if hospitals were not able to conduct other procedures that private insurance paid for.

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MATTHEW MITCHELL, MERCATUS CENTER AT GEORGE MASON UNIVERSITY, ARLINGTON, VA (via teleconference), emphasized that the topic of CON was well-studied by academics, and relayed that he had identified and read 93 peer-reviewed papers on the subject. He cited that none of the papers had found that CON laws were associated with decreased spending in healthcare. He continued to cite that 60 percent of the studies found that CON laws were associated with higher spending per patient and capital and 40 percent found mixed results. He described CON laws as supply restrictions that undermined competition. He asserted that the best models in healthcare suggested that when you undermined competition and created local monopolies, consumers lost.

Mr. Mitchell continued and noted that another well-studied aspect of CON laws was access. He cited that 73 percent of studies that assessed the affect of CON on access found that it limited access. He suggested that the patients in Alaska had access to fewer neo-natal ICUs and fewer psychiatric care centers. He referenced Senator von Imhof's concern about what made a provider accept Medicare and Medicaid. He pointed to two studies that indicated that psychiatric care facilities and substance abuse facilities were less likely to accept Medicaid in CON states than in non-CON states. He summarized that the data from almost 100 studies assessing outcomes in CON and non-CON states largely conformed with the theory that limiting supply resulted in higher cost, less access, and diminished quality of care.

Co-Chair Bishop asked if any of the 100 studies referenced by Mr. Mitchell were Alaska-specific.

Mr. Mitchell believed that a majority of the studies included data from Alaska.

Co-Chair Bishop asked if any of the studies were about Alaska alone.

Mr. Mitchell argued that to do a proper study, one would never want to use data only from one state, because variation was needed to compare outcomes from CON and non-CON states. He asserted that there needed to be a control group.

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Senator von Imhof asked how many states he knew of where the Medicare reimbursement rate was less than the Medicaid reimbursement rate.

Mr. Mitchell did not have the information on hand but offered to get back to the committee with the information.

Senator von Imhof thought the question was important, because in Alaska the Medicare reimbursement rate was significantly less than any other reimbursement rate, including Medicaid. She mentioned writing an article for Alaska Business Monthly and interviewing Providence Hospital. The hospital had indicated that one of its biggest cost drivers was end-of-life care, which was very

expensive and covered by Medicare with low reimbursement. She could not imagine any private company wanting to open an end-of-life care facility if it could not cover its costs if Medicare paid below market rate. She thought in other states, Medicare paid higher or comparable to others. She hoped Dr. Mitchell could look into the matter.

Mr. Zepp addressed a presentation entitled "Alaska's Certificate of Need Program - AS 18.07 - Senate Bill 26 - "An Act repealing the certificate of need (CON) program for health care facilities"" (copy on file). He hoped the committee members received binders with materials that he characterized as "the tip of the iceberg" when it came to studies on the benefits of repealing CON. He noted that there were experts available to answer questions if necessary. He referenced a book that had been mailed to all committee members entitled "Conning the Competition."

Mr. Zepp stated that he would cover why the bill proposed to repeal CON. He asserted that the legislation challenged the fortresses of Alaska's restrained healthcare market. He asserted that the repeal was about improving quality and access to care, allow for new entrants and healthcare competition, and to slow down medical tourism. Further, the repeal would increase healthcare employment opportunities by allowing a free-market competition and providing healthcare providers with additional employment options.

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Mr. Zepp showed slide 2, "Our healthcare providers are cherished and valued members of our communities!":

The concept of repealing Alaska's certificate of need program is not meant in any way, shape, or form to dishonor, disrespect, or minimize how important our healthcare providers are to Alaskans!

They are our friends, neighbors, and family members, our loved ones.

But government policies and regulations have suppressed competition, allowed a constrained market to escalate prices, produced lower-quality services, dis-incentivized innovation, and new entrants.

Research shows, without competition, the incentive to lower prices and improve quality and innovation diminishes.

Mr. Zepp turned to slide 3, "Certificate of Need Programs":

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

The basic assumption underlying CON is that excess needs stemming from the overbuilding of healthcare facilities results in healthcare price inflation and services beyond a community's capacity.

The Certificate of Need laws were originally created to contain healthcare costs, prevent over-supply of medical services and infrastructure, and improve access to care, whether indigent or in underserved areas.

CON laws in Alaska require medical providers to obtain government permission to compete for over 20 medical services. Please take note: The approval process is not done by health care providers like nurses or doctors; it's a government entity that decides what health care facilities and/or services should be available to you, your family, and friends (your loved ones).

However, the overwhelming empirical evidence shows the CON has worked like envisioned in Alaska; 40 years of data/research studies back this up. Certificate of Need has not worked how it originally was intended and it's time to repeal!

Mr. Zepp noted that SB 26 did not change healthcare licensing and accreditation. He noted that licensing occurred through the Division of Healthcare Services, and accreditation through the Centers for Medicaid and Medicare Services. He noted that while not a magic bullet to fix

everything, SB 26 was a step in the right direction for Alaskans that did not have a voice.

Mr. Zepp showed slide 4, "Current National Status of Certificate of Need Programs," which showed a graphical map. He cited that currently 35 states had a CON, 3 states had a version of a CON, and 13 states had fully repealed CON. The 13 states that had repealed the CON represented over 40 percent of the population, or about 131 million Americans. The 13 states had functioning healthcare markets, and research and data showed that the states were enjoying benefits from the repeal.

Mr. Zepp advanced to slide 5, "Alaska's Legislative History of Certificate of Need":

The following is a past summary of enacted legislation passed by the Alaska Legislature regarding the certificate of need program:

1976: HB 665 (Ch. 275, SLA 1976), which repealed and replaced all of AS 18.07 to establish the certificate of need program and regulation of healthcare facilities.

1982: HB 591 (Ch. 59, SLA 1982), covers only a temporary but not an emergency certificate of need for a health care facility and added a definition of certificate of need dealing with the issuance of certificates.

1982: HB 591 (Ch. 25, SLA 1981), clarified that Pioneer Homes are not subject to certificate of need.

1983: SB 85 (Ch. 95, SLA 1983), added a \$1,000,000 (\$1.0 million) floor for requiring a certificate of need.

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

1991: SB 86 (Ch. 21, SLA 1991), deleted the federal statutes and changed the title section.

1996: HB 528 (Ch. 84, SLA 96), Placed a moratorium on nursing home beds and established a legislative working group on long-term care.

2004: HB 511 (Ch. 48, SLA 04), Included Residential Psychiatric Treatment Centers

Mr. Zepp referenced earlier comments by Senator Olson and noted that in the 1970s when the governor mandated the CON tied to funding, it was repealed in the 1980s because it did not work.

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Mr. Zepp discussed slide 7, "Why repeal Alaska's Certificate of Need?":

The Federal Trade Commission, the Dept. of Justice, the Mercatus Center, and many other researchers have studied this issue for over 4 decades and some have even testified here in our legislature supporting the repeal of the CON.

Here are a few points (data & research derived from the various studies) as to why we should repeal CON:

- CON programs limit the introduction and expansion of medical services & equipment, rehabilitation centers, nursing home beds, and medical imaging technologies;
- Rural hospital closures: The data and research shows that the closures are related to Low Patient Volume, Challenging Payer Mix (Medicare & Medicaid patients, which pay less), Geographic Isolation (located far away from population centers), and Workforce shortages. None of this has to do with whether you have a CON or not;
- High-quality health care: Data and research indicates that deaths from treatable complications following surgeries and mortality from heart failure, pneumonia and heart attacks are significantly higher in CON states than non-CON states; and,
- Charity care: Studies have shown, there is not evidence that charity care is higher in CON states than non-CON states.
- Racial Disparities: According to research, racial disparities seems to increase in CON states.

Mr. Zepp cited that there were four studies in members' binders that provided data about rural hospital closure. He cited a report that identified that hospital margins in Alaska could range as much as 223 percent higher than the Lower 48. He cited that emergency care in America was two percent of all United States' (U.S. medical costs. He reminded that the CON concept from the 1970s was to charge private insurers two to three times the amount for services for uninsured patients so hospitals could cover uncompensated care. He mentioned the Department of Health and Social Services payments of federal dollars through the state to help with uncompensated care. The payments ranged from \$17.6 million to as much as \$25 million.

Mr. Zepp referenced the claim that if CON was repealed, Medicaid costs would rise. He asserted that there was no evidence that states that repealed a CON had seen an increase after the repeal.

Mr. Zepp cited that U.S. Presidents George W. Bush, Barack Obama, and Donald Trump were on the record supporting repeal of CON. He cited that Governor Bill Walker supported repealing CON. He asserted that repealing CON benefitted citizens. He encouraged members to peruse the data supporting the topic.

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Mr. Zepp asserted that CON healthcare facilities, services, and technology was unfairly exposed to competitors through the CON process where incumbents were able to review, comment, and object to the application.

Mr. Zepp showed slide 8, "Alaskans pay the highest healthcare costs in the world!":

Why would Alaska's health care providers not want to open Alaska to a free market? Here are some data examples to think about:

- Alaska ranks the highest in the nation at \$11,064 per capita in 2014; (Medicaid & Medicare data was last released in June 2017, which covers 1991-2014. The next release is scheduled for 2022);
- The total Anchorage consumer price index was up 77% from 1991- through 2017, but the medical care part

of the index was up 210% - Nearly three times faster than the prices in the overall CPI;

- Hospital margin averages in Alaska run at 15.6%, Anchorage margins average 20.6%, that's 5% higher than San Francisco, which is the next highest in the country;
- Hospital Margins can be as much as 223% higher than the lower 48 states; and,
- Medicare Fee Schedule for Diagnostic Radiology (imaging) in Alaska increased from 491% in 2014 to 533% in 2016 (percentage above the average reimbursement rate).

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

Mr. Zepp suggested that CON was designed to restrain healthcare costs, and thought evidence and studies showed that CON regulations tended to increase the costs of services. He noted that comparison states for the data on the slide were Washington, Oregon, Idaho, Wyoming, and North Dakota. He highlighted his support for choice, competition, new entrants, and new technologies in healthcare.

Mr. Zepp reviewed slide 9, "Alaska's economy is losing dollars because of the high cost of healthcare":

Let's talk briefly about medical tourism: Because employers are looking at ways to keep healthcare costs down and increase the quality for their employees, they have engaged with third party vendors to manage and coordinate medical services for their members. They seek healthcare services in the lower 48.

- Summary data from several third-party vendors related to the medical tourism within Alaska:
 - State of Alaska: 2019-2020: 93 completed procedures
 - o Total savings = \$3.9 million dollars, average cost savings = \$42,407 per procedure;
 - Orthopedics for 11 procedures:
 - In Alaska = \$547,082 Lower 48 = \$236,510 Savings of \$337,572 or 58.8% less
 - Pacific Health Group: 2019: 220 completed procedures

- Total cost savings = \$5.7 million

Mr. Zepp discussed savings through using third-party vendors and medical tourism.

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Senator Wilson discussed slide 10, "What happened to CON during the COVID pandemic?":

The requirement to submit a certificate of need prior to temporarily increasing bed capacity was suspended on March 31, 2020. The suspension ended on February 14, 2021. Approximately 11 months without CON regulations.

Alaska suspended the certificate of need laws to meet the demand for increased beds and equipment necessary during the pandemic.

The industry was able to meet the health care demand during a crisis, without CON.

Amazon, Walmart, and McDonald's didn't run up here to open up any health care facilities during the suspension. The health care industry in Alaska wasn't turned on its head or destroyed without CON.

What happens when the next pandemic strikes and we have CON?

The suspension of CON regulations provided flexibility to the health care industry to meet the market demands. This is another reason the law should not exist now!

So why do we need CON?

Alaska already has the highest healthcare prices in the world!

Senator Wilson cited that 25 jurisdictions had had CON requirements suspended or loosened during the pandemic. He noted that during the CON suspension in Alaska, there had been no ambulatory surgery clinics that applied for a CON, no exemptions to build capacity, and there had been no facilities trying to stake a claim to come to the state when the pandemic was over.

Co-Chair Bishop asked if the lack of new facilities during the pandemic was due to hospitals being full.

Senator Wilson answered in the negative. He described an example of starting a dialysis center or ambulatory surgery center, which took a couple of years to build. He thought most of the surgery centers currently being built were under a certain dollar threshold and were unsafe because of fewer medical professionals on hand. He mentioned large medical entities that were exempt from applying for a CON. He referenced a facility that wanted to open a surgery center in a metropolitan area, that could put a hospital out of business. He discussed leasing medical equipment in physician-owned facilities. He questioned why the state needed a CON when the CON requirements could be suspended for 11 months during the pandemic.

Senator Wilson showed slide 11, "Thank you for support of Senate Bill 26 - "An Act repealing the certificate of need program for health care facilities"."

Co-Chair Bishop referenced Senator Wilson's example of a colonoscopy costing \$7,500. He asked where the procedure was.

Senator Wilson answered "Anchorage."

Co-Chair Bishop relayed that a colonoscopy was cheaper in Fairbanks.

[2:01:19 PM](#)

Senator von Imhof referenced the high cost of healthcare in Alaska and agreed that there was no silver bullet. She questioned how much repealing the CON requirement would change the situation. She asked how many of the states mentioned earlier had Medicaid expansion or Indian Health Service funds. She noted that a lot of the Medicaid expansion population qualified for both, which had helped funnel money into rural areas to build expensive facilities. She asked how many of the states had the 80th percentile rule. She thought the issue was very complicated in a small population with the other "levers" she had mentioned. She reiterated that she was worried that repealing the CON would create an even wider gap between the "haves and have nots."

Mr. Zepp asked for Dr. Mitchell to address Senator von Imhof's comments.

Dr. Mitchell thought it was notable that when researchers were comparing outcomes in different states or across time, the studies used regression analyses. He continued that all the estimates were driven by estimates that controlled other factors. He thought there were three sets of evidence: how CON affects quality, how CON affects cost, and how CON affects access. He cited that there were four times as many studies that found that CON undermined quality rather than enhanced quality. He emphasized access, and thought the evidence was overwhelming. He cited that the typical patient in a CON area had access to 30 percent fewer hospitals, to 14 percent fewer ambulatory surgery centers, and 30 percent fewer rural hospitals.

Dr. Mitchell continued his remarks. He cited that there was quite a bit of research on rural states. In rural states, patients had to drive longer distances to obtain care in CON states relative to non-CON states. There were fewer substance abuse facilities and psychiatric care facilities, and the facilities were less likely to accept Medicaid in CON states. He continued that there was also a larger black-white disparity in the provision of care in CON states versus non-CON states in certain procedures. He noted that the black-white disparity disappeared upon repeal of the CON laws.

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Mr. Mitchell referenced Senator von Imhof's concerns about the "haves and have nots," and thought she was right to be focusing on the topic. He contended that evidence suggested that repealing the CON was the way to help the most vulnerable, since CON did not stand in the way of care for people with resources to fly outside the state but did stand in the way of care for those that did not have the resources.

Senator Wielechowski was curious if there was any research regarding hospitals shutting down in states that had gotten rid of the CON.

Dr. Mitchell mentioned that overall, there were 30 percent more hospitals per capita in states without CON laws than

states with CON laws. There was also more of other types of providers. He noted there was studies that showed hospital profitability did fall but recovered after three to four years.

Senator von Imhof asked how a hospital overcame a fall in profitability if the population stayed the same.

Dr. Mitchell relayed that some of the evidence suggested that hospitals recovered by becoming more adaptable. There was research to suggest that hospitals were less likely to change missions, adopt new programs and adapt to changing circumstances of the hospital patients if protected by CON laws that limited competition.

Senator von Imhof hoped that as the bill progressed there would be invited testimonies from hospitals that could describe plans to adapt.

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Co-Chair Bishop asked if Dr. Mitchell was a doctor of economics or a medical doctor.

Dr. Mitchell stated he had a Ph.D. in economics.

Co-Chair Bishop asked what Milton Freedman would say about CONs.

Dr. Mitchell did not know.

Co-Chair Bishop asked what one swift action Mr. Mitchell would take to reduce healthcare costs in America if he were able.

Dr. Mitchell relayed that he had studied CON laws for a decade, and he was very familiar with the issue. He did not think it would be responsible to say that he had compared CON repeal with all other proposed reforms. He thought it was pretty obvious given the data, that repealing the CON was a step in the right direction. He pondered whether the proposed repeal was better than other reforms, including price transparency. He was unable to comment.

Senator Wilson addressed Senator von Imhof's comments and cited a study from the National Institute of Healthcare Reform. The study included a response from a hospital that

indicated that CON laws were a valuable tool in blocking new facilities from coming into market. He reiterated that SB 26 was one of the most researched and documented pieces of legislation that had moved through the body since his time in the legislature.

Co-Chair Bishop thanked Mr. Zepp for the time he took in putting the research together for the bill.

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Mr. Zepp shared that the sponsor believed that the CON had distorted the Alaska healthcare market. He asserted that the path was unsustainable. He emphasized controlling the state's destiny rather than letting the restrained healthcare markets guide us. He asked support to repeal government control of healthcare options, facilities, and services.

Co-Chair Bishop asked about Mr. Zepp's earlier comment regarding healthcare workers.

Mr. Zepp relayed that the CON had distorted the Alaska healthcare market and created more self-interest concerns for business entities, which did not benefit Alaskans nor healthcare workers. He explained that he was referring to New Hampshire repealing the CON law in 2016. He cited information that showed nursing employment growth after repeal of the CON.

Co-Chair Bishop thought the state was in a new paradigm. He observed the people in the gallery. He commented on a 6,500-person healthcare worker shortage. He asked how long it would take to fill the healthcare worker gap if the bill were to pass.

Senator Wilson stated ideally there would be more competition and would bring more profitability to the state. He mused that the gallery represented about \$1.2 million in lobbyist fees to help stop the bill. He alternatively hoped individuals were there to support the legislation.

Co-Chair Bishop thought there was a long way to go with workforce development in the state. He referenced the pandemic and that it had exacerbated the problem. He

commented on the need to help the healthcare industry become fully staffed.

[2:15:55 PM](#)

Mr. Zepp addressed a sectional analysis for SB 26, Version I (copy on file):

Section 1: AS 12.25.030(e) - Title 12, Code of Criminal Procedure

PAGE 1, LINES 4-6:

This conforming section replaces the statutory definition of a "health care facility" reference under the "Arrests & Citations" chapter of statutes and deletes the previous reference under the "Certificate of Need" program.

Section 2: AS 12.55.155(c)(36)(A) - Title 12, Code of Criminal Procedure

PAGE 1, LINE 7 - PAGE 2, LINE 4:

This section provides for a new definition of a "health care facility" reference under the "Sentencing and Probation" chapter of statutes.

Section 3: AS 12.55.155(c)(36) - Title 12, Code of Criminal Procedure

PAGE 2, LINES 5 - 7:

This section adds the definition of a "residential psychiatric treatment center" reference under the "Sentencing and Probation" chapter of statutes.

Section 4: AS 18.20.400(c) - Title 18, Health, Safety, Housing, Human Rights, and Public Defender

PAGE 2, LINE 8 - PAGE 4, LINE 10:

This conforming section adds the definition of a "residential psychiatric treatment center" reference under the "Overtime Limitations for Nurses" chapter of statutes.

Section 5: AS 18.20.400 - Title 18, Health, Safety, Housing, Human Rights, and Public Defender

PAGE 4, LINE 11 - LINE 23:

A conforming section that adds the definition of a "residential psychiatric treatment center" reference under the "Overtime Limitations for Nurses" chapter of statutes.

Section 6: AS 18.20.499(2) - Title 18, Health, Safety, Housing, Human Rights, and Public Defender

PAGE 4, LINE 24 - PAGE 5, LINE 5:

A conforming section that adds the definition of a "health care facility" reference under the "Overtime Limitations for Nurses" section of statutes and deletes the previous "Certificate of Need" statutory references

Section 7: AS 18.26.220 - Title 47, Welfare, Social Services, and Institutions

PAGE 5, LINE 6 - LINE 16:

This section is amended to add the state licensing requirements for facilities and services under a new statutory reference remove the previous requirements for facilities and services under a "certificate of need" program under the "Centralized Licensing and Related Administrative Procedures" chapter of statutes. The amended section maintains licensing requirements for facilities and/or services.

Section 8: AS 18.35.399(9) - Health, Safety, Housing, Human Rights, and Public Defender

PAGE 5, LINE 17 - LINE 29:

A conforming section that removes the reference to the "certificate of need" statute and replaces it with the updated statute reference under AS 18.20.400 (d), "Definitions".

Section 9: AS 18.07.021-18.07.111; AS 21.86.030(c)(1); AS 44.64.030(a)(18); and AS 47.80.140(b)

PAGE 5, LINE 30 - PAGE 6, LINE 1:

This conforming section repeals various statutory references related to the "certificate of need" program.

[2:19:16 PM](#)

Mr. Zepp continued to address the sectional analysis:

Section 10: Section 4, ch. 275, SLA 1976, is repealed:
PAGE 6, LINE 2:

Repeals a section of uncodified law in sec. 4, ch. 275, SLA 1976, which provided a transition to allow medical facilities in existence or under construction before July 1, 1976, to obtain certificates of need.

Section 11: Certificate of Need; Applicability:

PAGE 6, LINE 3 - LINE 16:

Amends uncodified law and provides that the Department of Health & Social Services may not take any action to revoke, enforce, or modify a certificate of need issued to a health care facility before the effective date of the Act. This section includes a sliding scale that increases the threshold amount, in fiscal years FY24 through FY 31, of when a "Certificate of Need" is required by the Department of Health & Social Services.

Section 12:

PAGE 6, LINE 17 - LINE 22:

Adds a new subsection that directs the Department of Health and Social Services to create regulations necessary to implement the changes made by this Act by July 1, 2023.

Section 13:

PAGE 6, LINE 23:

Section 12 of this Act takes effect immediately under AS 01.10.070(c).

Section 14:

PAGE 6, LINE 24:

Provides that, except section 13 of the Act, the effective date of the Act is July 1, 2024.

[2:20:50 PM](#)

Mr. Zepp addressed an Explanation of Changes document - Version B to I document (copy on file):

One change:

Page 6, lines 8 through 16:

- o Amendment added in the Senate Labor & Commerce Committee inserted a sliding scale that increases the threshold amount, in fiscal years FY24 through FY 31, of when a "Certificate of Need" is required by the Department of Health & Social Services.

- o If enacted in its current form, the legislation would fully repeal Alaska's "Certificate of Need" on July 1, 2031.

Mr. Zepp noted that Section 11 of the bill provided for a delayed implementation date of three years. He explained that the intent was to create a glide path for businesses entities that had invested multiple millions of dollars. As of July 1, 2024, the threshold to apply for a CON went from \$1.5 million to \$5 million. On July 1, 2026, the amount increased to \$7.5 million. On July 1, 2028 the amount reached \$10 million. In 2030 the amount reached \$15 million. The current level was \$1.5 million. He added that July 1, 2031 would be the full repeal of CON for Alaska.

Co-Chair Bishop thanked Dr. Mitchell for calling in to the meeting.

Mr. Zepp informed that Jamie Cavanaugh, a CON attorney from Michigan, was present to answer questions.

Senator Olson asked to have Ms. Cavanaugh come to the table to address some questions expressed by Senator von Imhof.

[2:24:18 PM](#)

JAMIE CAVANAUGH, CERTIFICATE OF NEED ATTORNEY, INSTITUTE FOR JUSTICE, introduced herself. She referenced comments by Dr. Mitchell regarding profitability of hospitals, and cited that incumbent hospitals were not closing due to CON repeals. Further, studies showed that the hospitals were more profitable after the initial drop in profitability after CON repeal.

Senator Olson understood Ms. Cavanaugh's comments. He asked if a normal hospital administrator would say the same thing.

Ms. Cavanaugh heard from hospital administrators and hospital associations that they shared the same fear, but had not seen examples of a rural hospital closing.

Senator Olson referenced Senator von Imhof's comments about the widening spread between the "haves and the have-nots." He wondered if the concern was valid if the CON was repealed.

Ms. Cavanaugh thought the widening gap was not something to worry about. She cited that Alaska was already losing medical dollars to the Lower 48. She contended that if there was anything that could be done to increase

competition and drive prices down, it would keep medical dollars in the state and it would benefit hospitals. She referenced Dr. Mitchell's citation of studies that showed racial disparities diminishing when CON laws were repealed. She summarized that the evidence did not show that any disparities widened but did show that CON repeal helped the problem.

[2:27:25 PM](#)

Senator Olson considered Alaska Native hospitals and beneficiaries of the federal government and asked about the effect of the proposed repeal.

Ms. Cavanaugh thought the hospitals Senator Olson referred to were exempt from the CON.

Senator Olson noted that there was still competition, and contended that people with private insurance could go to Anchorage for medical care rather than a rural hospital.

Senator Wilson believed the co-chair had an example to share in which an exempt facility wanted to compete with a hospital in the same district and was opening a new facility. He thought there were Native-owned hospitals that wanted to compete with the private sectors and opening a variety of services including a dialysis center. He made the point that entities had to go through a multi-million-dollar CON application process, while exempt entities could move forward to profitability.

Senator Wielechowski was curious if there were any other states that had abolished CON and had then gone back to having a CON.

Ms. Cavanaugh cited that Indiana had abolished its CON program and then had reenacted a CON in 2019 only for nursing homes.

Senator Wielechowski asked if there was a rational reason for the return. He asked what had occurred, and if the state had made a mistake.

Ms. Cavanaugh thought the state had made a mistake going back to a CON. She did not know the policy reasons behind the decision.

Senator Wilson recalled that there was a National Conference of State Legislatures (NCSL) conference in Tennessee, and there had been some states that were looking at repealing CON. There had been a private meeting off the record, in which someone from Indiana had stated the reinstatement of CON was due to a nursing home lobbying group.

Co-Chair Bishop thanked Ms. Cavanaugh for her testimony.

Co-Chair Bishop set the bill aside.

SB 26 was HEARD and HELD in committee for further consideration.

[2:31:40 PM](#)

AT EASE

[2:33:02 PM](#)

RECONVENED

Co-Chair Bishop discussed the agenda for the following day. He noted that he was removing SB 81 from the following day's agenda.

#

ADJOURNMENT

[2:33:56 PM](#)

The meeting was adjourned at 2:33 p.m.