

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 16, 2023

3:30 p.m.

MEMBERS PRESENT

Senator David Wilson, Chair
Senator James Kaufman, Vice Chair
Senator Forrest Dunbar
Senator Cathy Giessel

MEMBERS ABSENT

Senator Löki Tobin

COMMITTEE CALENDAR

SENATE BILL NO. 58

"An Act relating to Medicaid eligibility; expanding eligibility for postpartum mothers; conditioning the expansion of eligibility on approval by the United States Department of Health and Human Services; and providing for an effective date."

- MOVED SB 58 OUT OF COMMITTEE

PRESENTATION GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

- HEARD

SENATE BILL NO. 8

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 58

SHORT TITLE: MEDICAID ELIGIBILITY: POSTPARTUM MOTHERS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/06/23	(S)	READ THE FIRST TIME - REFERRALS
02/06/23	(S)	HSS, FIN

02/09/23 (S) HSS AT 3:30 PM BUTROVICH 205
02/09/23 (S) Heard & Held
02/09/23 (S) MINUTE(HSS)
02/14/23 (S) HSS AT 3:30 PM DAVIS 106
02/14/23 (S) <Above item removed from agenda>
02/14/23 (S) MINUTE(HSS)
02/16/23 (S) HSS AT 3:30 PM BUTROVCH 205

BILL: SB 8

SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM

SPONSOR(s): WILSON

01/18/23 (S) PREFILE RELEASED 1/9/23
01/18/23 (S) READ THE FIRST TIME - REFERRALS
01/18/23 (S) HSS, L&C
02/16/23 (S) HSS AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

HEIDI LIEB-WILLIAMS, Chair

Governor's Council on Disabilities and Special Education
Anchorage, Alaska

POSITION STATEMENT: Co-presented an overview of the Governor's Council on Disabilities and Special Education.

PATRICK REINHART, Executive Director

Governor's Council on Disabilities and Special Education
Department of Health
Anchorage, Alaska

POSITION STATEMENT: Co-presented an overview of the Governor's Council on Disabilities and Special Education.

COREY GILMORE, Chair

Community Inclusion and Support Committee
Governor's Council on Disabilities and Special Education
Anchorage, Alaska

POSITION STATEMENT: Co-presented an overview of the Governor's Council on Disabilities and Special Education.

GARY ZEPP, Staff

Senator David Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a presentation on SB 8.

MATTHEW D. MITCHELL, Senior Research Fellow
Knee Center

West Virginia University
Morgantown, West Virginia,
POSITION STATEMENT: Testified by invitation on SB 8.

JAMIE CAVANAUGH, Attorney
Institute for Justice
Arlington, Virginia
POSITION STATEMENT: Testified by invitation on SB 8.

ACTION NARRATIVE

[3:30:52 PM](#)

CHAIR DAVID WILSON called the Senate Health and Social Services Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Kaufman, Giessel, Dunbar, and Chair Wilson.

At ease from 3:31:55 to 3:32:09.

SB 58-MEDICAID ELIGIBILITY: POSTPARTUM MOTHERS

[3:32:09 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SENATE BILL NO. 58 "An Act relating to Medicaid eligibility; expanding eligibility for postpartum mothers; conditioning the expansion of eligibility on approval by the United States Department of Health and Human Services; and providing for an effective date."

[3:32:24 PM](#)

CHAIR WILSON found no comments or questions and solicited a motion.

[3:32:42 PM](#)

SENATOR KAUFMAN moved to report SB 58, work order 33-GS1583\A, from committee with individual recommendations and attached fiscal note(s).

[3:32:56 PM](#)

CHAIR WILSON found no objection and SB 58 was reported from the Senate Health and Social Services Standing Committee.

[3:33:06 PM](#)

At ease.

PRESENTATION **GOVERNOR'S COUNCIL ON DISABILITIES**

AND SPECIAL EDUCATION

[3:35:37 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of a presentation on the Governor's Council on Disabilities and Special Education.

[3:35:56 PM](#)

HEIDI LIEB-WILLIAMS, Chair, Governor's Council on Disabilities and Special Education, Anchorage, Alaska, introduced herself.

PATRICK REINHART, Executive Director, Governor's Council on Disabilities and Special Education, Department of Health, Anchorage, Alaska, introduced himself.

COREY GILMORE, Chair, Community Inclusion and Support Committee, Governor's Council on Disabilities and Special Education, Anchorage, Alaska, introduced himself.

[3:36:43 PM](#)

MR. REINHART stated that the presentation would cover the council's history, home and community-based services concerns and legislative issues. He turned to slide 4 and gave the following background information regarding the council:

- The council is comprised of 21 -26 Alaskans appointed by the governor.
- Most appointees either have an intellectual or developmental disability (I/DD) or are family members of a disabled individual.
- The council includes many federal and state-designated partners.
- One seat is designated for a member of the legislature. The position is currently vacant.
- The council staff consists of 8 people, half who have a disability.

[3:37:50 PM](#)

MR. REINHART moved to slides 5 - 7 and provided the following council history:

- The Council was established in 1978.
- Early years was all about moving people from Harborview and other institution-like settings into the community and establishing principles for home and community-based services.

- Council successfully advocated for over 20 pieces of state legislation, and changes to federal laws, aimed at improving our capacity to serve persons with disabilities in the community and improve opportunities such as employment. For example...
- Closure of Harborview Developmental Disabilities and switch to home and community-based services
- Medicaid Buy-In for Working people with disabilities
- Creation and reauthorizations of the Special Education Service Agency (SESA)
- Medicaid support for children with disabilities in schools
- Newborn Hearing Screening
- Removal of "R" Word from statutes
- Employment First
- ABLE ACT and ABLE Act Update (Achieving Better Life Experience savings plan)
- Used Durable Medical Equipment
- Disability Training and ID
- Developmental Disabilities Shared Vision
- Supported Decision Making Agreements
- Elimination of minimum wage exemption for persons with disabilities

[3:39:53 PM](#)

MR. REINHART advanced to slide 8 and spoke to the five roles of the council:

[Original punctuation provided.]

- State Developmental Disabilities Council from federal law, DD Act
- Special Education Advisory Panel (SEAP) for Department of Education and Early Development (DEED) from federal law, Individual with Disabilities Education Act (IDEA)
- Interagency Coordinating Council (ICC) for Dept of Health, Senior and Disability Services (DOH/SDS); also IDEA
- Special Education Service Agency (SESA) board oversight from state law

- Alaska Mental Health Trust Authority Beneficiary Advisory Board (I/DD) also from state law

[3:41:03 PM](#)

MR. GILMORE presented slide 9 as follows:

[Original punctuation provided.]

Alaskans share a Vision of a flexible system in which each person directs their own support, based on their strengths and abilities, toward a meaningful life in their home, their job and their community. Our Vision includes supported families, professional staff and services available throughout the state now and into the future.

Statute Reference: AS 47.80.095 and AS 47.80.130(a)

[3:42:00 PM](#)

MR. GILMORE said the shared vision, in essence, is "I live the life I chose, with the support that I direct." Everyone wants to live a good life and should be able to direct the support they need, whether it be family or staff. He said the council has organized itself around a five-year plan that supports making its vision a reality. The council's concerns and solutions regarding staffing include ensuring staffing exists.

[3:43:24 PM](#)

MR. GILMORE moved to slide 10 and said he chairs the Community Inclusion, Supports, and Services Committee (CISS). He spoke to the following points:

- ACL Living Well - committee members participating in activities (presentations, I have Rights PSA)
- Disability and Aging Summit (October 2022)
- Hybrid - Approximately 85 attendees

[3:45:18 PM](#)

MR. REINHART turned to slide 11, Intellectual and Developmental Disability (I/DD) Registry as follows:

[Original punctuation provided.]

- I/DD Registry: 423 individuals, 254 of whom are active on the ISW waiver
- ISW Waiver: 553 individuals on, or offered a spot

- I/DD Waiver: 2,075 individuals on, or offered a spot on the IDD waiver
- IDD Draws: For FY23 - 33 for the I/DD waiver, 80 for the ISW waiver
- Approx. as of October 26, 2022

3:46:28 PM

MS. LIEB-WILLIAMS advanced to slides 12 - 13 Self Advocacy and Leadership Committee, spoke to its activities and successes as follows:

[Original punctuation provided.]

- Council members attended the Independent Living and Trust conferences, and Trust pre-conference trainings.
- Council chair delivered keynote speech and Vice-Chair led panel of selfadvocates at the National Association of Developmental Disabilities conference in Washington DC this past summer
- While in DC, met with both Senator Murkowski and Senator Sullivan and enlisted their support in fight for the Council to exist as multiple boards in one. The feds wanted to break us into pieces saying we were out of compliance with federal law.
- The advocacy and leadership by GCDSE Council members and staff regarding the DD Act Compliance matter WORKED!
 - Council members attended the Bill signing to repeal Subminimum Wage statute.
 - Empower Hour for self-advocates is back on schedule (monthly) after year hiatus.
 - Members participate in national self-advocacy groups, like Self-Advocacy Resource and Technical Assistance Center (SARTAC): <https://www.selfadvocacyinfo.org/>

3:51:57 PM

MR. REINHART turned to slide 14, Special Education Service Agency (SESA), and spoke to the following:

[Original punctuation provided.]

- Established 1986, the Council serves as majority of governing Board of SESA. Recently reauthorized for 8 more years.
- They host quarterly meetings in their new building in Midtown Anchorage, which includes a lending library.
- Specializes in low incidence disabilities and travel to rural and remote schools around Alaska to train teachers/staff on:
 - Autism
 - Deaf and hard of hearing
 - Vision impairment
 - Emotional disabilities
 - Multiple disabilities

3:53:03 PM

MR. REINHART moved to slide 15, Interagency Coordinating Council (ICC), and spoke to the following:

[Original punctuation provided.]

- Required under Individuals with Disabilities Education ACT (IDEA) Part C
- Support and advise Early Intervention/Infant Learning Program(EI/ILP) under Senior and Disability Services (SDS)
- Identify sources of fiscal and other support; promote interagency agreements
- Collaborate with EI/ILP on transition of toddlers w/disabilities to preschool and other appropriate supports
- Developing and implementing policy

3:53:36 PM

MR. REINHART moved to slide 17, Employment Committee and spoke to the following points:

[Original punctuation provided.]

- Support of Project SEARCH internship for youth with I/DD sites in Anchorage, Fairbanks and Matsu
- Keeping up with Employment Transitions for adults and youth

- Supporting cultural and Rural Transition Curriculum
- Trust Micro Enterprise Grants (up to \$10,000)
- Promote employment for persons for disabilities in state government with partners
- Examine regulations that may be limiting persons with I/DD from operating micro business in group homes

[3:55:41 PM](#)

MR. REINHART turned to slides 18- 19, Alaska Work Matters Task Force many, and spoke to the following points:

[Original punctuation provided.]

- Task Force formed by Governor Dunleavy in 2020
- Wrapped up this summer and produced 23 recommendations on improving opportunities for employment for persons with disabilities
- Centralized Accommodation Fund within State Government
 - Possible Lunch and Learn coming up
- Ad Hoc group moving recommendations forward to include Council, Vocational Rehabilitation, Trust, and Beneficiary Boards

[3:57:12 PM](#)

MR. GILMORE advanced to slide 20, Peer Power: Empower Hour and spoke to the following points:

[Original punctuation provided.]

- Statewide Monthly meetings of self- advocates
- They choose subject matter and speakers
- Self-advocates paid to lead or co-lead events
- Council is contracting with Peer Power to run these

[3:58:57 PM](#)

CHAIR WILSON commented that the Division of Vocational Rehabilitation has been discussing issues with legislators

regarding the Centralized Accommodation Fund and believed a bill would be forthcoming.

[3:59:10 PM](#)

MR. REINHART turned to slide 21, 2023 Advocacy Agenda, and spoke to the following points:

[Original punctuation provided.]

- We are in a Workforce Crisis!
- Flexible HCBS and SelfDirected Services
- Deaf and Hard of Hearing Bill of Rights
- Adult Home Care
- Centralized Accomodation Fund
- Community and Public Transportation

[4:00:37 PM](#)

MR. REINHART moved to slide 22 and said the council feels the impact of Alaska net migration. It is difficult to find and keep direct service professionals.

[4:01:07 PM](#)

MR. GILMORE said he lives in a group home. Currently, there are only two staff, so he frequently must wait to receive assistance and attends committee meetings on his iPad while in bed.

[4:01:51 PM](#)

MS. LIEB-WILLIAMS advanced to slide 23, Eradicate the Waitlist, and discussed the following:

[Original punctuation provided.]

- The 32nd Alaska Legislature directed the Department of Health (DOH) to develop a plan to eradicate the "waitlist" for IDD HCBS services
- DOH developed a comprehensive plan the Council supports. Waitlist Eradication Plan

- Without the right resources and tools to address issues in the short-term, long-term goals like Eradicating the Waitlist, cannot be realized.
- The Council recommends funding the first step in the Waitlist Eradication Plan, estimated at \$647,800

[4:03:51 PM](#)

MS. LIEB-WILLIAMS turned to slide 24, Home and Community Based Services (HCBS) Medicaid Rates Need Overhaul and spoke to the following points:

[Original punctuation provided.]

- Outdated rate structure that does not cover the cost of doing business in some service categories.
- Workforce shortage crisis equals loss of providers, and/or providers choosing not to serve rural and remote areas, or hard to serve individuals
- The Department has new rates currently under review now
- Hopeful for changes, but a long-term review of rate setting for HCBS services must be addressed

MR. REINHART stated that the Department of Family and Community is aware of the rate concern and the need to compete for workers in low-level jobs.

[4:05:01 PM](#)

MR. REINHART turned to slide 25, Create Self-Directed Options Thru Medicaid HCBS Waivers, and spoke to the following points:

[Original punctuation provided.]

- Self-directed services are personal care and related services provided under the Medicaid State plan and/or section 1915(c) waivers
- Participation in self-directed option is voluntary
- Participants set their own provider qualifications and train them

- Participants determine how much they pay for a service, support, or items
- The federal government, Centers for Medicare and Medicaid (CMS) allows state to select this option, under 1915 (j) State options.
- States can target people already getting section 1915(c) waiver services

[4:05:56 PM](#)

MR. REINHART turned to slide 26, 1915(j) Person-Centered and Directed Planning Process, and spoke to the following points:

[Original punctuation provided.]

- Service plan is based on an assessment of need for PAS
- Service plan and budget plan are developed using a person-centered and directed process
- Participants can engage in and direct the process
- Participants can choose family, friends, and professionals to be involved as needed/wanted
- Participants' preferences, choices, and abilities, as well as strategies to address these preferences must be identified in the service plan

[4:06:22 PM](#)

MR. REINHART turned to slide 27, Other Solutions, and spoke to the following points:

[Original punctuation provided.]

- Improve Environmental Modification (Emods) system
- Initiate Adult Companion Services
- Convert funding for medical supplies into a debit card
- Provide Department of Health Background Check Unit (BCU) with resources to improve efficiency and allow hires on provisional basis while waiting for background check
- Consider other emergency powers to DOH/SDS that allow for flexible solutions for persons at risk of institutionalization

[4:06:56 PM](#)

SENATOR DUNBAR asked someone to speak to the mobility challenges caused by the lack of snow removal in Anchorage this winter.

[4:07:21 PM](#)

MR. GILMORE stated that impassable sidewalks force him to utilize AnchorRIDES, aggravating his back injury.

[4:08:02 PM](#)

MR. REINHART stated he heard unbelievable stories of people unable to get to work. The bus stops were cleared of snow but not sidewalks.

[4:08:43 PM](#)

MS. LIEB-WILLIAMS moved to slide 28, Support HB 58/SB 57 Adult Home Care, and discussed the following:

[Original punctuation provided.]

- Establishes a new residential setting category, "Adult Care Home," in which a smaller, non-business home can provide care for 1-3 individuals
- This will help address the shortage of services and settings for seniors and other individuals who require help with the activities of daily living and other assistance to live more independently.
- This bill allows for the youth to transition from a licensed foster care home to a licensed adult care home.
- Allows family members to care for individuals and receive financial support for their service.

Please support the passage of the HB 58 or SB 57, Adult Home Care Services

[4:09:24 PM](#)

MS. LIEB-WILLIAMS advanced to slide 30, Pass Deaf and Hard of Hearing Bill of Rights urged support for the passage of the Deaf Children's Bill of Rights. She discussed the following:

[Original punctuation provided.]

- All children have the right to receive their education in the Least Restrictive Environment (LRE)

- Deaf and Hard of Hearing Children have the right to:
 - Have their ability to communicate and to acquire language treated as a priority.
 - Learn from qualified professionals who can communicate directly with Deaf children
 - Have opportunities to interact with Deaf adult role models
 - Have Deaf peers of the same language mode, level, and age
 - Have full access to all information, specialized personnel, school programs, social activities

[4:12:08 PM](#)

CHAIR WILSON asked the Department of Family and Community Services (DFCS) to provide more information to the committee on its plan to end the Intellectual and Developmental Disabilities (IDD) Home and Community Based Services (HCBS) waitlist.

[4:12:56 PM](#)

At ease.

SB 8-REPEAL CERTIFICATE OF NEED PROGRAM

[4:16:49 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SENATE BILL NO. 8 "An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

[4:18:00 PM](#)

CHAIR WILSON said SB 8 would repeal certificate of need (CON) laws. SB 8 provides a three-year window before taking effect so that companies and the state can prepare for needed changes. He stated that his office had examined historical and current arguments for certificate of need (CON) laws and determined they do not provide an economic justification for depriving customers of an open healthcare market. He stated that health care does not follow the same principles as a free market but should be as accessible as possible. He opined that Alaska's certificate of need program substantially threatens the proper performance of healthcare market services. There are examples of abuse taking place in Alaska. SB 8 is one of the most studied pieces of legislation heard at the Capitol. He stated that his office is willing to share information and studies.

[4:20:37 PM](#)

GARY ZEPP, Staff, Senator David Wilson, Alaska State Legislature, Juneau, Alaska, said SB 8 speaks for Alaskans working and raising families that don't have time to follow legislation, hire a lobbyist or a special interest group to represent them. Competition matters for Alaskan consumers; data, peer-reviewed research, and analysis reflect this.

[4:21:25 PM](#)

MR. ZEPP turned to slide 1 and spoke to the following:

[Original punctuation provided.]

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, family members, and neighbors, our loved ones.

But government laws and regulations have suppressed competition, caused constrained healthcare markets, disallowed new entrants, new technologies, and disincentivized innovation. Data/Research shows, without competition, the incentive to lower prices and improve quality and innovation diminishes.

[4:22:30 PM](#)

MR. ZEPP advanced to slide 3, What is a Certificate of Need and provided information as follows:

[Original punctuation provided.]

Certificate of Need (CON) laws are state regulatory mechanisms for approving major capital expenditures and projects for new health care facilities, expansion of existing facilities, adding new equipment and technology, and providing new or the expansion of existing healthcare services.

Healthcare entities must obtain government permission before proceeding, this permission is based on a 1970's (53 years ago) model.

Note: Alaska's current CON threshold for approval is \$1.5 million.

The original Certificate of Need laws were created to contain rising healthcare costs (this was during the Great Inflation period, from 1965 thru 1982 the rate of inflation reached as high as 15% in 1980), prevent over-supply of medical infrastructure and services, and improve access to care, especially for indigent populations or in underserved areas.

Note: Over forty years of peer reviewed data shows CON has failed and has not delivered on the promises made in the 1970s. Even the Federal Government realized the national law they passed did not work. They mandated this in 1982 (tied to federal funding) and repealed in 1987, it lasted a whopping five years. CON laws in Alaska require healthcare entities to obtain government permission for healthcare facilities, equipment, technology, and services for over 20 medical categories.

Note: Alaska's CON approval process is not done by health care professionals like doctors and nurses, it's a government entity that decides what health care facilities, services, equipment, and new technologies should be available to you, your family, and friends.

Certificate of Need laws have not worked how it originally was intended. It protects the incumbent healthcare providers. This is not good for Alaskans and it's time to repeal!

[4:24:52 PM](#)

MR. ZEPP advanced to slide 4 and provided the following statistics on the status of states and CON programs:

35 States have CON programs

- 13 require review when ownership of a facility or large practice is transferred.
- 9 states require a CON approval for expanding hospice, nursing home, or home health agency services.
-

3 States do not operate a CON but have a variation of a CON program as follows:

- Arizona - ambulance services and ambulances

- Minnesota - moratorium on hospitals and beds; nursing home beds; intermediate care facilities; radiation therapy facilities in certain counties
- Wisconsin long-term care; moratorium on nursing home and hospital beds

12 states that have fully repealed their CON:

- California, Idaho, Utah, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Kansas, Texas, Pennsylvania, New Hampshire.
- These twelve states represent 31 percent of the US population, or 101 million people living without a CON.

States with current legislation to repeal all or part of CON:

- Connecticut, Iowa, Kentucky, Montana, Mississippi, Oklahoma, South Carolina, Tennessee, West Virginia

[4:27:07 PM](#)

MR. ZEPP said 35 states still have some form of CON. A major challenge facing those states is lobbying efforts, even though the federal government repealed the CON mandate in 1987. Lobbying efforts in Alaska have risen 152 percent over the last four years. Alaska passed its first CON law in 1976. In 1990 the state began charging for the submission of an application when seeking approval for a CON. January 2008 was the last major attempt to repeal CON in Alaska. At the time, the Commission of Health and Social Services stated, "...that the CON program was put in place to increase access to care and to keep the cost of facility care down; however, better tools to serve these purposes are now available." There were nine active lawsuits against the state's CON program.

[4:28:47 PM](#)

MR. ZEPP turned to slide 5, Alaska's Legislative History of Certificate of Need, and spoke to the following laws:

[Original punctuation provided.]

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.

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.

[4:28:46 PM](#)

MR. ZEPP turned to slide 6 and said repealing CON is a battle between regulators and competing healthcare organizations fighting over who should receive the government's franchise for Alaska's newest technology and facilities. Alaskans have no choice. He stated the following are data and research points derived from various studies that support the repeal of CON:

- There have been 93 peer reviewed studies of CON containing 115 tests; Mercatus published approximately 10 percent.
- 3.5 times as many tests find CON is associated with lower quality than states without CON.
- 10.5 times as many studies find CON is associated with worse cost, spending, and efficiency outcomes than states without CON.
- 16.5 times as many studies find CON is associated with diminished access than states without CON.
- CON programs limit the introduction and expansion of medical services & equipment, rehabilitation centers, nursing home beds, and medical imaging technologies.

- Data and research show that rural hospital closures have nothing to do with having CON, but instead are related to:
 - Low patient volume
 - Challenging payer mix of Medicare and Medicaid patients, which pay less.
 - Geographic Isolation
 - Workforce shortages
- Data and research indicate that deaths from treatable complications following surgeries and mortality from heart failure, pneumonia, and heart attacks are significantly higher in CON states.
- Studies have shown no evidence that charity care is higher in CON states. In fact, racial disparities seem to increase in CON states due to the lack of access.
- CON programs grant a government-protected monopoly to incumbent providers. According to a Milliman Group report on behalf of Primera Insurance Company, hospital margins in Alaska can range as much as 223 percent higher than states in the Lower 48.

[4:32:20 PM](#)

SENATOR DUNBAR asked for more information about the nine CON-related lawsuits in 2008.

[4:32:50 PM](#)

MR. ZEPP replied that he would provide the committee with additional information. He noted Mr. Mitchell and Ms. Cavanaugh were also available to answer questions.

[4:33:25 PM](#)

MR. ZEPP moved to slide 7 and said Alaskans deserve a choice in healthcare. CON was designed to restrain healthcare costs. However, CON regulations' effect on costs has shown a consistent tendency to increase the costs of healthcare services. A Milliman report prepared for the Alaska Health Care Commission and two other reports provide points to consider regarding Alaska's healthcare markets:

- Alaska's general cost of living ranks seventh among states but has among the highest health care costs in the world.
- Healthcare premiums in Alaska are 130 percent higher than the comparable states of Washington, Oregon, Idaho, Wyoming, and North Dakota.
- Average hospital costs are 138 percent higher than comparable states.

- Position payment levels are 148 percent higher than the national average.
- Hospital payments are 56 percent higher than the national average.
- Hospital margin averages in Alaska are approximately 15.6 percent. In Anchorage the margins can be 20 percent or greater. This is 5 percent higher than San Francisco.

[4:35:12 PM](#)

MR. ZEPP moved to slide 8 and stated that from 1991 to 2017, the Anchorage consumer price index was up 77 percent while medical care was up 210 percent. Hospital payments are 1.7 times the national average. Using shoulder surgery as an example of Alaska's high costs, he reckoned Alaskans would pay approximately \$16,000 out-of-pocket while other states would pay \$4,000. Medical expenses are a leading cause of personal bankruptcy.

[4:36:46 PM](#)

MR. ZEPP turned to slide 9 and said twenty-four states suspended CON laws and regulations during the COVID pandemic, which enabled healthcare providers flexibility regarding capacity and equipment. Alaska was without CON regulations for approximately 11 months. There was one application related to a certificate of need during this period. Proponents of CON laws say they are necessary for "health and safety." Yet the industry could meet the health care demand during a crisis without CON approval. He opined that getting through a pandemic without CON is evidence that Alaska does not need it.

[4:37:54 PM](#)

MR. ZEPP advanced to slide 10 and said CON had not held healthcare costs down in Alaska. Alaska has one of the world's highest healthcare costs, which continue to rise. The CON process can cause legal battles and conflicts between an incumbent and an entrant seeking to bring new healthcare facilities or services to Alaska. He opined that this is not good for Alaska as it wastes money better spent investing in healthcare innovation, facilities, and access. Allowing incumbents and entrants to provide additional quality healthcare services for Alaskans is better. Territorial fights over who earns the high-profit margins do not improve or provide Alaskans with better healthcare. US Presidents G.W. Bush, Clinton, Obama, and Trump supported the repeal of CON. Governor Walker also supported its repeal. He likened the CON process to insider trading because it unfairly exposes healthcare facilities, services, and technology to competitors for review, objection,

and filing legal proceedings. The data supporting the repeal of CON is voluminous. He opined that committee members should read the overwhelming peer-reviewed research and data to realize the support for its repeal.

[4:39:53 PM](#)

MR. ZEPP advanced to slide 11 and stated the Alaska Hospital and Healthcare Association (AHHA) sponsored a consultant to protect the profit levels of some healthcare entities and responded to the sponsor's efforts to repeal CON. Not surprisingly its response favors the position of AHHA and claims the Mercatus Center's research is not peer reviewed. However, the research is one of many peer-reviewed studies favoring the repeal of CON. Studies supporting the repeal of CON have been done by reputable entities, several of whom have testified before the legislature in support of SB 8:

[Original punctuation provided.]

The Federal Trade Commission/Dept. of Justice; the Mercatus Center-George Mason University; the Centers for Medicaid/Medicare; the U.S. Department of Health & Human Services; the U.S. Department of the Treasury; the U.S. Department of Labor; The U.S. Government Accountability Office (GAO); the State of Alaska Department of Health & Social Services and the Department of Commerce, Community & Economic Development; UAA Institute of Social and Economic Research; American Medical Association; The American Journal of Medicine; American College of Emergency Physicians; the American Hospital Association; National Institute for Health Care Reform; National Academy for State Health Policy; Rutgers University-Center for Health Policy; Harvard Medical School; The Sanford School of Public Policy-Duke University; Brown University; Temple University; Columbia University School of Law; University of Maryland; Cecil G. Shepley Center for Health Services Research-University of North Carolina; Providence Veterans Medical Center; Institute for Justice; 2018 Bipartisan Blueprint for Improving Our Nation's Health System Performance-Governors from Colorado, Ohio, Alaska, Pennsylvania, and Nevada; Millman Group-Primera Insurance Company; Becker's Hospital review

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MR. ZEPP moved to slide 12 and stated that CON is not in the best interest of Alaskans because it silences their voice. He reiterated that some individuals in healthcare and lobbyists will say horror will happen if CON is repealed. Ask for data to back up the statements. Health care in Alaska needs to be more available, cheaper, and of higher quality. CON regulations do not help Alaska achieve what is needed to make healthcare more available, affordable, and of higher quality. SB 8 provides an opportunity for Alaskans to have a choice in health care and health care services.

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CHAIR WILSON opened invited testimony on SB 8.

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MATTHEW D. MITCHELL, Senior Research Fellow, Knee Center, West Virginia University, Morgantown, West Virginia, said CON is well-studied because of its history. The federal government repealed the CON mandate in 1987. Thirty-five states soon after repealed CON, which created many opportunities to compare its effects. There have been 93 peer-review studies comparing CON states to non-CON states. Evidence shows that states that repealed CON have better quality and access to healthcare. He provided numerous statistics supporting the elimination of CON to improve access, quality, and cost. The research is consistent with the basic economic theory that when supply is restricted, lower supplies result. Anti-trust authorities at the US Department of Justice and the Federal Trade Commission consistently make the case that certificate of need laws do not achieve intended goals.

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SENATOR DUNBAR asked if Florida repealed its CON laws.

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MR. MITCHELL responded that Florida had repealed most of its CON laws. Its repeal of laws pertaining to hospitals and hospital beds was of major significance.

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SENATOR DUNBAR said the map on slide 4 shows Florida as a CON state, and he was only seeking clarity.

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CHAIR WILSON opined that Florida appears as a CON state because of its partial repeal.

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MR. ZEPP responded that a state would be categorized as a CON state if it has at least one service requiring a certificate of need.

[4:50:34 PM](#)

SENATOR KAUFMAN asked for the most thoroughly tabulated study comparing CON and non-CON states addressing availability, cost, and quality.

[4:51:24 PM](#)

MR. MITCHELL suggested that everyone should be skeptical of studies but have confidence in pieces of literature that point in the same direction. He advised members to read *The Effects of Certificate of Need Laws on the Quality of Hospital Medical Services* since it used a cross-border design and looked for a variety of outcomes.

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CHAIR WILSON said his office would distribute the study to members.

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JAMIE CAVANAUGH, Attorney, Institute for Justice, Arlington, Virginia, stated that the Institute for Justice has worked to end certificate of need laws through litigation and legislation. She said she published a policy report in 2020 about why repealing CON laws will decrease state spending. She conducted a survey in 2020 when states adjusted CON laws due to the pandemic and concluded that if CON laws created greater access to health care, then states would have needed more CON laws during the pandemic. However, the opposite was true. States had to suspend CON laws to allow hospitals to add beds and services; this happened in Alaska. In the Fall of 2022, some states also suspended CON laws for Respiratory Syncytial Virus (RSV) to allow healthcare providers the flexibility to respond to real-time patient needs. Doctors and patients should be deciding when care is necessary, not bureaucrats.

MS. CAVANAUGH said another key point from her report is that CON laws did not prevent rural hospital closures. She shared the following findings:

- Alabama, Oregon, Tennessee, and Washington have CON laws that do not apply to rural areas, presumably to encourage the expansion of healthcare facilities.

- Idaho, North Dakota, South Dakota, and Wyoming have no CON laws and are among the most rural US states.
- Utah and Colorado have no CON laws and have not experienced a rural hospital closure since 2005.

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MS. CAVANAUGH stated that CON laws are known to increase healthcare costs, which leads to increased state and personal healthcare spending. North Carolina State Treasurer Dale Folwell filed a friend of the court brief with the North Carolina Supreme Court because rising health care costs are challenging the solvency of the teacher and state employer health care plan. She noted that the plan is partially funded by taxpayers and had almost \$4 million in expenditures in FY 2022. She quoted his reasoning for filing the lawsuit as follows:

"Con laws contribute to consolidated health care monopolies by distorting market power in favor of large institutional hospitals. This illegal distortion of market power then results in higher prices, lower quality, and less availability of health care services. In turn, large institutional hospitals create incredible excess revenue while failing to earn their tax exempt status through the provisions of charity care and engage in businesses practices harmful to North Carolinians."

MS. CAVANAUGH stated that the content of this quote occurs in every state with CON laws. It is happening in Alaska. Repealing CON is one way to begin correcting the problems.

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CHAIR WILSON held SB 8 in committee.

[4:59:39 PM](#)

There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee meeting at 4:59 p.m.