

March 11, 2025

Testimony of Pacific Legal Foundation before the Maine House Health Coverage, Insurance, and Financial Services Committee—Ending Certificate of Need for Mental Health and Substance Use Treatment

Chair Gramlich and members of the Committee:

My name is Jaimie Cavanaugh, and I am Legal Policy Counsel at Pacific Legal Foundation (PLF). PLF is a national public interest law firm dedicated to defending Americans' civil liberties. Since its founding more than 50 years ago, PLF has been helping Americans fight for their constitutional rights in courthouses and legislatures across the country.

Part of PLF's work includes supporting healthcare entrepreneurs who want to offer needed services, but are restricted by certificate of need (CON) laws. I have represented immigrants in Kentucky who wanted to open a niche home health service for Nepali-speaking refugees, but were shut out of the market by CON laws. I have also written extensively about CON laws and worked with legislators in more than a dozen states to repeal and reform CON laws.

LD 189

Thank you for considering LD 189. This bill repeals CON requirements for mental health services and facilities and substance use treatment services and facilities. If enacted, this legislation would make it possible for providers to open or expand mental health facilities and services and substance use treatment facilities and services. Both of these healthcare services are sorely needed in Maine and throughout New England.

The Problem

Maine is suffering from a severe shortage of mental health facilities and service and substance use treatment facilities and services.¹ The Portland Press Herald reports that there has been “a dramatic increase in mental health waitlists in Maine since the start of the COVID-19 pandemic in 2020[.]”² Further questions about access to mental health services were raised following the Lewiston shooting in 2023. It also reported that the number of people on behavioral health waitlists for substance use treatment and mental health services

“skyrocketed from 561 in 2019 to 8,774 at the end of 2021.”³ This is bad for communities in Maine.

A lack of appropriate services or facilities can also result in long wait times in emergency departments. Patients in need of in-patient mental health services can sometimes be forced to board in emergency departments while they wait for a bed to open in a mental health facility. In the words of Professor Ge Bai at Johns Hopkins School of Public Health, emergency department “traffic jams” are not caused because there are too many users of emergency departments, but because CON laws “allow too few roads to be built.”⁴ In other words, allowing CON laws to artificially restrict the supply of healthcare facilities, as Maine has been doing for decades, is causing dangerous and expensive healthcare bottlenecks.

Another problem with having fewer healthcare facilities is that it limits opportunities for future healthcare providers to get clinical training. In fact, nursing schools reported turning away nearly 66,000 qualified applicants in 2023. One of the reasons cited was lack of clinical sites.⁵ Fewer students may consider healthcare careers because of limited employment options.

CON laws also contribute to healthcare consolidation by making it too financially risky for smaller, niche, or novel facilities to open. I have talked to mental health providers and substance use treatment providers that avoid states with CON laws because they do not have the time or financial resources to go through the CON process. In a field like healthcare, that is constantly evolving and improving, that simply means residents in Maine miss out on innovation.

This Bill Offers One Solution for this Problem

Healthcare providers, legislators, and researchers agree that Maine needs more mental health facilities and services and substance use treatment facilities and services. LD 189 gives the state the opportunity to grow this important healthcare infrastructure.

Research confirms that repealing CON laws enables more facilities to open. 40% of the nation’s population live in states with zero or very limited healthcare CON laws. Thus, we know from their experience that healthcare becomes more accessible following CON repeal.

Indeed, a 2021 study found that CON laws targeting psychiatric services were associated with 20% fewer psychiatric hospitals; psychiatric clients per 10,000 residents; and psychiatric hospitals in states with these CON laws are 5.35 percentage points less likely to accept Medicare.⁶ These findings are aligned with the greater academic body of CON literature that shows that states with CON laws spend more on healthcare, while having lower quality and access to care.⁷

Repealing CON laws is a bipartisan issue. Every presidential administration beginning with the Reagan administration has called on states to repeal their CON laws.

Since 2019, seven states have repealed CON for psychiatric facilities or services. Those states are Florida (2019 effective 2021), Tennessee (2021), Montana (2021), North Carolina (2023), South Carolina (2023), Georgia (2024), and Oklahoma (2024). Following South Carolina's sweeping CON repeal in 2023, a psychiatric treatment facility for youth was one of the first projects announced.⁸

Thank you for considering my testimony. I am happy to answer questions; my contact information is listed below.

Respectfully,



Jaimie Cavanaugh
Legal Policy Counsel
jcavanaugh@pacificlegal.org
248-895-1555

¹ See <https://www.pressherald.com/2024/05/12/wait-times-balloon-for-maine-mental-health-services-as-access-barriers-persist/>

² See note 1.

³ See note 1.

⁴ Meredith Cohn, "Maryland's emergency room wait times the worst in the nation," Baltimore Banner (Dec. 21, 2022), <https://www.thebaltimorebanner.com/community/public-health/maryland-emergency-room-wait-times-E4L6LFRTBRCLPEXKXQILOO DOUY/>

⁵ American Ass’n of Colleges of Nursing, “Fact Sheet: Nursing Faculty Shortage,” (May 2024), <https://www.aacnnursing.org/Portals/0/PDFs/Fact-Sheets/Faculty-Shortage-Factsheet.pdf>

⁶ James Bailey and Elenor Lewin, *Certificate of Need and Inpatient Psychiatric Services*, J. Ment. Health Policy Economics 1;24(4):117–124 (2021), <https://pubmed.ncbi.nlm.nih.gov/34907901/>

⁷ See Matthew D. Mitchell, *Certificate-of-Need laws in healthcare: A comprehensive review of the literature*, Southern Economic Association (May 2024), <https://doi.org/10.1002/soej.12698>

⁸ Mary Green, “SC leaders break ground on new mental health facility for DJJ youth,” 5 WCSC (Sept. 16, 2024), <https://www.live5news.com/2024/09/16/sc-leaders-break-ground-new-mental-health-facility-djj-youth/>

Jaimie Cavanaugh
Pacific Legal Foundation
LD 189
Please see attached testimony.