



Testimony in **Support of LD 743:**

“An Act to Increase the Availability and Affordability of Health Care by Eliminating Certificate of Need Requirements”

Senator Bailey, Representative Gramlich, and distinguished members of the Committee on Health Coverage, Insurance, and Financial Services, my name is Jacob Posik and I represent Maine Civic Action, a 501(c)(4) organization that, through education, issue advocacy and activism, engages all levels of Maine government to pursue solutions that promote free markets, fiscal responsibility, and accountable government. Thank you for the opportunity to testify in favor of LD 743 this session.

Certificate of Need (CON), first enacted in Maine in 1978, requires health care entities to obtain government approval—and navigate a lengthy and expensive process of bureaucratic review—before making large expenditures to expand services, build new facilities, or purchase additional equipment. These laws, which have been rejected by the federal government and numerous other states, limit competition in the health care system and increase costs by restricting the supply of available care.

A 2013 Maine Policy Institute analysis compared the 10 states with the fewest hospital beds per 1,000 residents to the 10 states with the most and found that expenses per inpatient day cost \$878 more in states with fewer hospital beds.¹

Some proponents argue that CON is necessary to constrain the growth in prices that health providers might charge for various services. The fact is, if hospitals thought increasing prices for any reason would make them more money, they would do it—with or without CON; they don’t need to build out extra beds, offer more services, or buy more expensive equipment to rationalize it.

The CON process allows established and incumbent providers to hide behind this faulty logic and use state regulation to protect their position in the industry. It restricts competition, capacity, and ultimately, health care options for Maine consumers.

The Federal Trade Commission and the Antitrust Division of The Department of Justice agreed in a 2016 statement, noting that “CON laws raise considerable competitive concerns and generally do not appear to have achieved their intended benefits for health care consumers.”²

A study by the Mercatus Center at George Mason University published in July 2020 showed that CON reform leads to more satisfaction and access to care, especially in rural areas. Researchers found, both before and after controlling for social risk factors such as race, education, and poverty status, that in counties with CON laws, “healthcare

¹ Joel Allumbaugh. “[Government Intrusion vs. Free Market Innovation: Understanding Maine’s Certificate of Need Law.](#)” Center for Health Reform Initiatives, The Maine Heritage Policy Center, September 2013

² [Joint Statement of the Federal Trade Commission and the Antitrust Division of the US Department of Justice on Certificate-of-Need Laws and South Carolina House Bill 3250](#), January 11, 2016



expenses per Medicare beneficiary are higher, as are utilization rates of ambulance services, emergency departments, and readmissions.”³

In 2016, Mercatus Center researchers also found that hospitals in non-CON states have significantly lower mortality rates for pneumonia, heart failure, and heart attack. These hospitals also have lower readmission rates for heart failure and heart attack, plus their patients are more likely to report a pleasant hospital experience.⁴

A study published in the *New England Journal of Medicine* during the 1980s, when many more states had CON laws than do today, noted that hospitals in states with the most stringent CON review procedures had significantly higher mortality rates, ranging from 6% to 10% higher.⁵

During the 15-month state of emergency, Governor Mills allowed the Division of Licensing (DLC) to implement an expedited CON process. According to a manager at DLC, this allowed 11 applications to sail through the office, each within a week, instead of the usual 3-4 months. When public health and care capacity is front of mind in healthcare regulation, we inherently understand that clearing away these unnecessary hurdles is the most prudent choice. Why not do it permanently?

Inertia is a strong force in public policy, but we must not let it get in the way of common sense reform. The status quo should never hold the benefit of the doubt. If a policy does not serve its intended purpose—or if it does, but its effects are counterproductive to its stated goals—it must be repealed.

Please deem LD 743 "Ought to Pass" and finally scrap this outdated and anti-competitive law which only serves to restrict the supply of care and hurt Maine consumers looking to access necessary healthcare services. Thank you for your time and consideration.

³ Thomas Stratmann and Matthew Baker. “[Examining Certificate-of-Need Laws in the Context of the Rural Health Crisis](#).” Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, July 2020.

⁴ Thomas Stratmann and David Wille. “[Certificate-of-Need Laws and Hospital Quality](#).” Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2016.

⁵ Shortell SM, Hughes EF. The effects of regulation, competition, and ownership on mortality rates among hospital inpatients. *N Engl J Med*. 1988;318(17):1100–7. <https://pubmed.ncbi.nlm.nih.gov/3127713/>