

# Written Testimony

## Maine's Certificate of Need (CON) Process

Submitted to the Commission to Evaluate the Scope of Regulatory Review and Oversight of Health Care Transactions That Impact the Delivery of Health Care Services in the State

**Submitted by:** Dr. Brien C. Walton

**Date:** January 6, 2026

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### I. Purpose of This Testimony

Thank you for the opportunity to submit written testimony on Maine's Certificate of Need (CON) process. I am submitting this testimony as the author of a recent research paper that examines how CON oversight affects healthcare access and costs, particularly for outpatient services.

My goal is to share information and observations that may be helpful to the Commission's work. I am not offering policy recommendations or advocating for a specific outcome.

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### II. Background on CON and Outpatient Care

Maine's CON law was created to manage healthcare growth, control costs, and ensure access to services. Over time, CON has influenced where facilities are built and what services are offered.

Since CON was first enacted, healthcare delivery has changed significantly. Many procedures that once required hospital stays are now performed on an outpatient basis. Ambulatory Surgery Centers, or ASCs, are one setting where these procedures take place. They typically focus on same-day, lower-complexity surgeries.

As outpatient care has grown, many states have revisited how CON applies to these facilities. Maine continues to require CON review for ASCs, which has prompted discussion about how this affects access, cost, and system stability.

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### III. What We See in Other States

States handle CON oversight in different ways. Some have repealed CON requirements for certain outpatient services, others have created exemptions or faster review pathways, and some maintain full review.

From reviewing data across multiple states, a few general observations stand out:

- Outcomes vary widely depending on local conditions such as population size, rural geography, and hospital structure.
- In some states, changes to CON oversight were followed by more outpatient facilities in areas that previously lacked them.
- In other states, changes had little impact or were limited to certain regions.

These examples suggest that CON outcomes depend heavily on context rather than following a single pattern.

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#### **IV. Cost Differences Between Care Settings**

One reason outpatient services are often discussed in the CON context is cost. For the same outpatient procedure, payment rates are usually lower at ASCs than at hospital outpatient departments, particularly under Medicare. This reflects differences in facility size, staffing, and overhead.

Using conservative assumptions, modeling shows that shifting a modest share of eligible outpatient procedures to lower-cost settings can reduce overall healthcare spending. At the same time, these models also show that changes should be considered carefully, especially in states like Maine that rely heavily on rural and critical access hospitals.

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#### **V. Considerations for Rural Communities**

Access to care is a major concern in rural Maine. Long travel distances, limited transportation options, and workforce shortages all affect how residents experience the healthcare system.

Outpatient facilities may help reduce travel for some services, but regulatory changes alone are unlikely to solve rural access challenges. Location decisions, staffing availability, and payer participation all play important roles. These factors should be considered alongside any discussion of CON oversight.

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#### **VI. Importance of Data and Gradual Review**

One consistent takeaway from other states is the value of gradual, data-driven evaluation. Pilot programs, limited exemptions, or time-bound reviews allow policymakers to observe real-world effects before making permanent changes.

Modeling and sensitivity analysis can help anticipate possible outcomes, but ongoing data collection is necessary to confirm whether those expectations are met over time.

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## **VII. Closing Thoughts**

CON is a policy tool designed to balance access, cost, and system stability. As healthcare continues to shift toward outpatient and community-based care, it is reasonable to periodically review whether current oversight aligns with today's delivery models.

My research is intended to support informed discussion by providing data, comparisons, and analysis—not to promote a specific policy direction. I appreciate the Commission's careful consideration of these issues. My research is intended to contribute factual analysis and comparative context to that reassessment.

Respectfully submitted,

Dr. Brien C. Walton