



Testimony in Support of LD 1890:

“An Act to Facilitate the Development of Ambulatory Surgical Facilities by Exempting Certain Facilities from the Requirement to Obtain a Certificate of Need”

Senator Bailey, Representative Mathieson, and the distinguished members of the Committee on Health Coverage, Insurance and Financial Services, my name is Harris Van Pate and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine.

Thank you for the opportunity to testify in support of LD 1890, “An Act to Facilitate the Development of Ambulatory Surgical Facilities by Exempting Certain Facilities from the Requirement to Obtain a Certificate of Need.”

Certificate of Need Laws Create Artificial Barriers to Investment and Competition

Maine’s Certificate of Need (CON) laws create artificial barriers to healthcare expansion, preventing new providers from entering the market and limiting competition.¹ By requiring healthcare facilities to obtain government approval before expanding services, adding equipment, or establishing new facilities, CON laws empower bureaucratic review and incumbent providers rather than patients. The result is a regulatory framework that discourages investment, delays innovation, and restricts patient choice.

LD 1890 directly addresses these barriers by exempting certain ambulatory surgical facilities from CON review, while maintaining targeted safeguards for hospital-owned or co-located facilities. This approach reduces unnecessary regulatory friction while preserving oversight where it is most justified.

CON Laws Fail at Their Stated Cost-Control Purpose

The original justification for CON laws was to control healthcare costs by preventing unnecessary duplication of services.² However, decades of evidence demonstrate that CON laws do not achieve this goal. Instead, they protect incumbent providers from competition, restrict the supply of healthcare services, and drive up prices for patients.³

Ambulatory surgical facilities frequently deliver routine procedures at lower cost than hospital-based settings. By subjecting these facilities to CON review, the state limits the

¹ <https://ascnews.com/2024/10/study-con-laws-stifle-asc-growth-raise-health-care-costs-and-limit-access/>

² <https://www.ncsl.org/health/certificate-of-need-state-laws>

³ <https://standtogether.org/stories/health-care/certificates-need-hidden-harms-health-care>



very forms of competition most likely to reduce costs. LD 1890 advances cost containment through market competition rather than centralized planning.

CON Suppresses Supply and Drives Up Prices

By limiting the number of facilities that can enter or expand in the healthcare market, CON laws suppress supply and contribute to higher prices. Studies have shown that CON restrictions reduce the growth of ambulatory surgical centers and other outpatient facilities, limiting patient access and increasing costs.⁴

Exempting stand-alone ambulatory surgical facilities from CON review allows providers to respond to patient demand, expand capacity, and deliver care more efficiently. Increased supply and competition place downward pressure on prices while improving service availability.

Disproportionate Harm to Rural and Underserved Areas

The negative effects of CON laws are particularly acute in rural states like Maine. Geographic barriers, thinner operating margins, and limited capital access already make healthcare investment difficult in rural areas. CON delays and compliance costs further deter providers from establishing or expanding facilities that could serve underserved populations. These populations already have trouble with access to healthcare and emergency services, we shouldn't let CON make it worse.⁵

Ambulatory surgical facilities can play an important role in improving access to timely care in rural and low-income communities. LD 1890 lowers regulatory barriers that disproportionately harm these areas while retaining protections for critical access hospitals.

Providers Should Respond to Patient Demand Without State Permission

Healthcare providers should be able to respond to patient demand without unnecessary government interference. CON laws substitute administrative judgment for patient choice, determining where and when care may be delivered. By reducing CON burdens for certain facilities, LD 1890 promotes a more patient-centered healthcare system—one in which access is driven by demand rather than regulatory approval.

CON Is an Outdated Regulatory Model Other States Are Abandoning

⁴ <https://ascnews.com/2024/10/study-con-laws-stifle-asc-growth-raise-health-care-costs-and-limit-access/>

⁵ <https://www.wabi.tv/2025/02/28/investigatetv-weekend-alarming-ambulance-delays-put-patients-risk/>



CON is an outdated regulatory model that many states are actively reforming or abandoning. States that have repealed or significantly curtailed CON requirements have seen increased investment in healthcare infrastructure, greater capacity, and improved access to care.⁶

Vermont recently modernized its CON framework by raising expenditure thresholds that trigger review, ensuring that only genuinely large or complex projects remain subject to oversight.⁷ ⁸ Under these reforms, routine hospital expansions are no longer automatically reviewed, while regulatory scrutiny is preserved for major capital investments. LD 1890 reflects this same pragmatic approach—modernizing CON without eliminating oversight entirely.

Conclusion

For these reasons, we respectfully urge the Committee to vote “ought to pass” on LD 1890. Maine must remain focused on fostering a climate of opportunity, innovation, and growth. This proposal would move us in the opposite direction. Thank you for your time and consideration.

⁶ <https://www.healthcaredive.com/news/states-curb-certificate-of-need-con-laws-boost-bed-capacity/736306/>

⁷ https://www.campaignforvermont.org/h96_2025

⁸ <https://pacificlegal.org/vermont-just-took-a-step-toward-better-healthcare-other-states-should-follow/>