Testimony in Opposition to LD 2190:
"An Act to Implement Certain Changes in the Certificate of Need Laws Recommended by the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State"

Senator Bailey, Representative Mathieson, and distinguished members of the Joint Standing Committee on Health Coverage, Insurance, and Financial Services, my name is Montana Towers, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free market think tank, a nonpartisan, nonprofit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to submit testimony in opposition to LD 2190, "An Act to Implement Certain Changes in the Certificate of Need Laws Recommended by the Commission to Evaluate the Scope of Regulatory Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State."

We are testifying in strong opposition to LD 2190, which proposes to further entrench and expand Maine's Certificate of Need (CON) regime, a regulatory relic that serves as a barrier to health care access, competition, and innovation.

Certificate of Need Is an Outdated, Anti-Competitive Policy

In 1974, Congress passed a law which required states to establish CON programs for certain types of health care facilities if they wanted to receive federal funds. Though the federal requirement was repealed in 1987, many states, including Maine, still maintain their CON programs.[1] CON laws are a vestige of 1970s federal policy, originally intended to control health care costs by restricting the duplication of medical services and facilities. But experience and data have shown that CON laws do not lower costs, they raise them. Similarly, CON laws limit access and do not protect patients, but instead protect entrenched entities from facing competition.

Maine's current CON law is already among the more restrictive in the country. Rather than reversing this failed experiment, LD 2190 doubles down by expanding criteria under which health care providers must submit to CON review. It includes new regulatory hurdles triggered by changes in ownership involving private equity or real estate investment trusts, broadens affordability assessments, and expands bureaucratic review processes.

[1] https://www.ncsl.org/health/certificate-of-need-state-laws

These measures will not make health care more affordable or accessible. Instead, they will delay or prevent needed investments in care, particularly in rural and underserved communities.

A Barrier to Access and Innovation

Far from protecting consumers, CON laws protect incumbent providers from competition. Under the current regime, a health care provider must seek government permission, and often defend their proposal from objections by competitors, before building a facility, acquiring new equipment, or expanding services. This process can take months and requires significant legal and administrative costs. According to the Institute for Justice, the application fee for a CON is nonrefundable and ranges from $5,000 to $250,000, calculated at $1,000 per $1 million in proposed capital expenditures.[2]

These delays and barriers have a chilling effect on private investment and disproportionately harm rural communities, where attracting new providers is already difficult. They also limit patient choice and restrict access to timely, high-quality care. If a provider is willing to invest in expanding care to an underserved area or population, they should be allowed to proceed without having to prove to the government that the expansion is "needed," or that it won't hurt the bottom line of an existing provider.

LD 2190 simply expands this barrier by adding new layers of discretionary review and political oversight to decisions that should be driven by patient need and market demand, not by incumbent interests or regulatory gatekeeping. Rather than modernizing Maine's health care system, the bill would cement a structure that discourages innovation, suppresses competition, and ultimately leaves patients with fewer choices, higher costs, and longer waits for care.

Time to Repeal, Not Expand

Since 1987 a dozen states have repealed their CON laws entirely, with New Hampshire being the most recent in 2016. These states are recognizing that CON laws serve primarily as obstacles to care and competition and Maine should follow their lead. Rather than expanding the scope and complexity of CON, the Legislature should move toward reducing and ultimately repealing it. At a minimum, the state should not impose additional reporting requirements that only serve to delay care and discourage investment.

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[2] https://ij.org/report/conning-the-competition/state-profile/maine/#:~:text=Application%20Process,1)%E2%80%93(4).

Conclusion

LD 2190 is a step in the wrong direction. It increases bureaucratic control over health care decisions that should be made by providers and patients, not regulators. It will slow innovation, reduce access, and entrench the failed status quo.

For these reasons, Maine Policy Institute strongly urges this committee to vote “Ought Not to Pass” on LD 2190. Thank you for your time and consideration.