



Testimony of Sarah Calder
MaineHealth
In Strong Opposition to LD 1972
“An Act to Enhance Transparency and Value in Substantial Health Care
Transactions by Changing the Review and Approval Process for Those
Transactions”
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Senator Bailey, Representative Mathieson and distinguished members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services, I am Sarah Calder from MaineHealth, and I am here to testify in strong opposition to LD 1972, “An Act to Enhance Transparency and Value in Substantial Health Care Transactions by Changing the Review and Approval Process for Those Transactions.”

This bill would create a lengthy, cumbersome, expensive, and highly subjective process for reviewing transactions between health care entities. We find it particularly ironic that the Office of Affordable Health Care is promoting this bill, as it will add additional cost to an already stressed system. In fact, we spoke with a health care economist who would have the qualifications to do the comprehensive review required by LD 1972 and they estimated that the cost of such a review would be approximately \$1 million – all which would be borne by health care providers.

The bill also uses the same process to opine upon the closure or reduction of services at health care facilities, though without clarity about what outcome might occur after such a review is complete. It also duplicates processes overseen by the Federal Trade Commission and the Attorney General, who currently have oversight over such transactions, along with the Department of Health and Human Services. Our current CON requirements take into account both the public need for services and the cost of delivering those services – a much more balanced approach than what is offered under this bill. In addition, the bill has entirely different definitions of key terms from the law governing the Certificate of Need process, such as the definitions of health care facilities and health care services. These differences are unclear in their intent, and they would make it very difficult

for health care providers to follow. There are also numerous technical issues with the bill that we will address in written testimony, but I will use my three minutes to speak to the fundamental flaws behind the bill's intent.

If It Ain't Broke, Don't Fix It.

As a long-time MaineHealth employee, I have watched the evolving landscape of Maine's health care providers over the years. I know that it is no surprise to you that our hospitals, nursing homes, and behavioral health services are under extreme financial strain right now as they navigate increased demand for life-saving services while payment structures continue to erode and evolve. Our health systems continue to be nonprofit, mission-based organizations that put the needs of our communities and Maine people first. This bill is a one-size fits all approach to addressing an issue that does not exist in Maine: the corporatization of health care providers.

I think we can all agree that Maine is well served by our nonprofit and mission-based hospital systems. The current Certificate of Need (CON) process was substantially updated in 2011 in a process led by the Governor's Office, and, importantly, it requires a thorough review and Certificate of Need for transactions that involve transfers of ownership, acquisition by lease or acquisition of control of a health care facility (Title 22, Ch. 103-A, sec. 329, 1). That is the very issue that LD 1972 seeks to address, yet it is already covered by Maine's CON Statute. This bill would greatly expand the scope of the State's oversight, and it would create an exceptionally burdensome and subjective process over such transactions.

Current Law

Maine's current CON process is rigorous, generally fair, and focused on ensuring that the best interests of Maine people are served by changes to health care infrastructure or governance. Its criteria and intent are well-defined in statute, and, though we do not always fully agree with a decision or requirements, we do believe that, overall, it has served the state well. For example, when Southern Maine Medical Center joined MaineHealth, the State conducted a thorough review and mandated a series of conditions, including a requirement that patients be provided with primary care providers.

This bill would create an entirely new bureaucracy and dramatically expand the scope of oversight – and the costs associated with it – without a compelling rationale to do so. In doing so, it would result in a loss of services, particularly in our rural areas.

For example, MaineHealth contracted with a local independent medical group to provide orthopedic services at one of our rural critical access hospitals. The group informed us that they were not going to renew their lease. We scrambled, but were able to pivot, hire their staff and provider, expand the service under our own medical group, and better meet the needs of the community as a result. These types of transactions are critical to supporting access to health care across the state, and there is no public value in creating a burdensome approval process for them.

If LD 1972 had been the law at the end of 2023 when we were notified of the contract expiration, it could have taken a full year and hundreds of thousands of dollars for the State to review the transaction. In the meantime, the communities served by this hospital would have lost access to orthopedic services.

A significant burden within the bill is the creation of a “comprehensive review process” to be conducted by the Office of Affordable Health Care. Though taken directly from model language, we cannot find another state in the nation that has adopted anything similar to this highly subjective, lengthy, and extremely expensive review.

More importantly, the current CON statute requires a review of any project or relevant transaction and its impact on our communities, including cost to deliver services regardless of the patients’ ability to pay. This bill has no such provisions, yet it includes such broad criteria as “health care provider cost trends and containment of total state health care spending” and “rectifying historical problems and contemporary factors contributing to a lack of health equity or access to health care services.” It is difficult to envision how we, as a health system that would be subject to these provisions, would be able to interpret what the intent is or how we would meet whatever goals are intended.

Opportunities

Compliance with laws requires clear and objective criteria. This bill includes neither. There are numerous areas in which the Department and Office of Affordable Health Care are given “sole discretion” for making decisions. The offices are provided with unlimited opportunities to ask for extensive information from the applicants, who then have only 21 days to comply, or the process gets dragged out beyond a year. There are references to “likely impacts” and “material impacts” but without clearly defined criteria. There is no clarity in this bill about what the Department or the Office of Affordable Health Care are looking to review – or how they will determine whether to approve a project.

I will end with two points:

1. The State once had both a State Health Planning process and a resultant State Health Plan to guide decisions related to health care infrastructure. Though not

perfect, it provided a roadmap for policymakers, including the CON unit. We would be supportive of revisiting such a process, including convening the key stakeholders, to guide decisions related to health care infrastructure across our state.

2. There have been numerous bills on the Certificate of Need process this Session. While we are comfortable with the current statute, we would not be averse to participating in discussions that included legislators and other stakeholders about opportunities to update it. That would be a far more reasonable answer to address concerns that people may have than creating an entirely new and very expensive bureaucracy to fix a problem that does not exist in Maine.

I urge you to reject this model one-size-fits-all legislation that does not take into account the state of health care in Maine, or the fact that our state does not have the problem it is looking to solve – the corporatization of health care. This legislation will, however, create a very expensive and burdensome bureaucracy that will only serve to reduce access and increase costs. Thank you and I would be happy to answer any questions that you may have.