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Maine Hospital Association

MAINE'S LEADING
VOICE FOR HEALTHCARE

TESTIMONY OF THE MAINE HOSPITAL ASSOCIATION

In 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*

May 20, 2025

Senator Bailey, Representative Mathieson and members of the Health Coverage, Insurance and Financial Services Committee, I am Jeffrey Austin and I present this testimony on behalf of the Maine Hospital Association in opposition to LD 1972.

This legislation is unprecedented in many ways. It is very difficult to understand and reconcile with existing law. It is simply too big and substantial a change to work in the next 48 hours and we would recommend either its rejection or carryover.

I: Background

Maine has a Certificate of Need law (CON) that allows the government (DHHS) to review certain healthcare investment proposals including mergers. Many states had CON laws in the 70s and 80s as a method to review investment in healthcare. This was the era of "planning" (e.g, urban planning) and having government agencies review private investment decisions was in vogue. Since then, CON-type reviews have waned in popularity. There is some partisan divide in this. Maine is not alone in having a CON statute, but some states have repealed theirs.

II: MHA Position

MHA supports a reasonable CON review process. Larger investments by private health care entities can have a meaningful impact on the state budget (Medicaid) and some public input is defensible policy, as long as it's a reasonable review.

Our perspective is that LD 1972 is anything but a reasonable review policy. It is unnecessarily bureaucratic, secretive and unworkable in its current form.

III: Current Law

The current CON law is in 22 MRSA Chapter 103-A. It is 32 pages of statute.

22 §326. Short title
22 §327. Declaration of findings and purposes
22 §328. Definitions
22 §329. Certificate of need required
22 §330. Exceptions
22 §331. Subsequent review following changes in project
22 §332. Subsequent review
22 §333. Procedures after voluntary nursing facility reductions
22 §333-A. Procedures for allowing reallocation of nursing facility capacity
22 §334. Nursing facility projects (REPEALED)
22 §334-A. Nursing facility projects
22 §335. Approval; record
22 §336. Simplified review and approval process
22 §337. Application process for certificate of need
22 §338. Consultation
22 §339. Review process; public hearing
22 §340. Reconsideration
22 §341. Remedy
22 §342. Rules
22 §343. Public information
22 §344. Conflict of interest
22 §345. Division of project to evade cost limitation prohibited
22 §346. Scope of certificate of need
22 §347. Withholding of license
22 §348. Withholding of funds
22 §349. Injunction
22 §349-A. Compliance investigation
22 §350. Penalty
22 §350-A. Cost-of-living adjustment (REPEALED) (REALLOCATED FROM TITLE 22, SECTION 351)
22 §350-B. Federal funding (REALLOCATED FROM TITLE 22, SECTION 352)
22 §350-C. Implementation reports (REALLOCATED FROM TITLE 22, SECTION 353)

IV: Current Rule

The current CON rule, Chapter 503, (DHHS-adopted) is 37 pages; the definitions alone comprise five pages.

V: LD 1972

This legislation removes mergers from the CON statute for all transactions but nursing homes.

It proposes a new, parallel, but substantially different, review process.

It lacks many of the necessary elements found in the CON law today and has several provisions we find objectionable.

VI: Little Stakeholder Input

This legislation is not the product of a work group, task force or other multi-stakeholder input.

Our understanding is that it is simply a national model being promoted by a national special interest group.

Notably, this bill is not coming from DHHS which is the agency that oversees CON. It is from the Office of Affordable Health Care (OAHC). My understanding is that OAHC has no role in CON currently, OAHC was not established as a regulatory agency and from our perspective is ill-suited to be given the task it is assigned in LD 1972.

OAHC has an advisory committee which includes stakeholders like hospitals. The advisory committee was advised that this legislation was being filed. They were not asked for their advice on the legislation.

There are attorneys and consultants in Maine who have worked on CON applications for years.

VII: CON Review of Mergers – Current Law

Current law, 22 MRSA §335, outlines the standards and criteria for approving transactions. There are basically 6 standards with a total of 9 subparts.

"***Basis for decision.*** *Based* ***solely on a review of the record maintained under subsection 6,*** *the commissioner shall approve an application for a certificate of need if the commissioner determines that:*

1. ***The applicant is fit, willing and able.***
2. ***The economic feasibility of the proposed services*** *is demonstrated in terms of the:*
    - ***Capacity of the applicant to support the project financially over its useful life;***

- ***Applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules;***

3. *There is a* ***public need*** *for the proposed services as demonstrated by certain factors, including, but not limited to:*
   - *Whether, and the extent to which, the project will substantially* ***address specific health problems*** *as measured by health needs in the area to be served by the project;*
   - *Whether the project will have* ***a positive impact on the health status indicators of the population*** *to be served;*
   - *Whether the services affected by the project will be* ***accessible to all residents*** *of the area proposed to be served; and*
   - *Whether the project will provide* ***demonstrable improvements in quality and outcome measures*** *applicable to the services proposed in the project;*
4. *The proposed services are consistent with the* ***orderly and economic development of health facilities and health resources for the State*** *as demonstrated by:*
   - ***The impact of the project on total health care expenditures;***
   - *The* ***availability of state funds to cover any increase in state costs*** *associated with utilization of the project's services; and*
   - *The* ***likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available;*** *and*
5. ***Ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers;*** *[PL 2003, c. 469, Pt. C, §8 (NEW).]*
6. ***Does not result in inappropriate increases in service utilization****, according to the principles of evidence-based medicine adopted by the Maine Quality Forum, as established in Title 24-A, section 6951, when the principles adopted by the Maine Quality Forum are directly applicable to the application;*

Transactions such as mergers are not unregulated now.

Reductions in service are unregulated.

VIII: Other Law

The Maine CON statute is not the only statute relevant to healthcare mergers and acquisitions. Both state and federal law prohibit antitrust behavior and they each review mergers and activities for their antitrust risk. I will not outline those reviews in this testimony.

IX: Does Maine Need Change?

The CON law has been around for decades. It is well understood by both regulators and the regulated.

CON is the province of lawyers and consultants. Accordingly, meaningful changes will be expensive to the regulated community and to the regulator (DHHS).

We don't oppose changes.

We understand that there is an increasing desire, nationally as well as locally, for additional government review of mergers and acquisitions. This is true in healthcare and beyond.

We acknowledge this reality and are sincerely willing to work with interested parties on amendments to the current CON law.

No one has asked us. No such invitation to discuss changes was ever made.

LD 1972, however, is a bit of a Frankenstein that is crudely attached to the existing statute and we believe unworkable.

X: Conclusion.

LD 1972 has 12 pages of new law. There is a lot to unpack and attempt to cross-reference to existing law, especially in the timeframes available to us here at the end of session. My apologies if I made any mistakes in this testimony.

This legislation is not ready for enactment. We don't believe it will ever be necessary, but we are willing to discuss changes to reviews of larger transactions.

Thank you for accepting this testimony from the Maine Hospital Association.