



Maine Health Care Association

Testimony of Angela Cole Westhoff, President and CEO Maine Health Care Association
To the Joint Standing Committee on Health Coverage, Insurance and Financial Services

Neither For Nor Against
**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**

Wednesday, February 18th, 2026 at 10:00 AM

Good morning, Chair Bailey and Chair Mathieson, esteemed members of the Committee on Health Coverage, Insurance and Financial Services, I am Angela Westhoff, President and CEO of the Maine Health Care Association (MHCA).

The MHCA represents more than 200 nursing homes and assisted living/residential care facilities across Maine. Our mission is to empower our members to ensure the integrity, quality, and sustainability of long term care in Maine.

I am pleased to testify before you today on LD 2190. MHCA takes the position of neither for nor against with the goal of providing additional information and raising several suggestions for potential amendments to the bill language.

First, I would like to note that I was a member of the *Commission to Evaluate the Scope of Regularity Review and Oversight over Health Care Transactions That Impact the Delivery of Health Care Services in the State*. The Commission's work was important and timely. It was an honor to serve and we made a great start; however, with the Commission's compressed timeline of meeting five times between October and December we ran out of time to fully vet all concepts and proposals. Some of the bills that you will hear today that resulted from the Commission's report are deep in scope. The impact of some of these proposed changes could not only be profound, but also potentially dangerous with unintended consequences, if not carefully and thoughtfully explored.

Turning my attention to LD 2190, I want to first address **Sections 1 and 2** of the bill which define the terms "private equity company" and "real estate investment trust." These definitions are too broad and should be amended to exempt small, local investors who specialize in offering financial relief to Maine's nursing facilities.

The Committee is likely to be aware that Maine has experienced a significant loss of capacity in the long term care sector. Since 2014, there have been over 50 facilities that have either closed their doors or converted to a lower acuity model of care. The primary drivers of these closures are 1.) inadequate MaineCare rates that do not cover the cost of providing care, and 2.) a historic workforce crisis.

Further complicating the financial landscape is the fact that Maine has experienced 29 nursing home closures over the last decade. The state of the sector is fragile. Banking institutions are not keen on loaning to long term care facilities in light of the instability and cash flow challenges. I am aware of one facility that met with nine different banks to attempt to refinance the mortgage on a current facility, not even a new construction project.

The game changer for nursing homes in Maine are investor groups. These local groups and individuals step up with capital to help nursing facilities with the funding necessary to upgrade equipment, seed building renovations and improvements, and build new facilities.

Furthermore, Maine nursing homes are held to principle called “net neutrality” meaning that any new projects cannot expand the total number of MaineCare beds as described in Title 22, §334-A: Nursing facility projects. To summarize:

- Nursing homes are subject to Certificate of Need Review.
- If a project is seeking to expand the number of nursing home beds in the state, there either has to be funds available in the MaineCare funding pool, or the Legislature may act to provide funding to the pool. The legislature has not added additional resources to this pool in many years. The current balance in this MaineCare funding pool is only \$147,665.¹
- If a project seeks to reopen beds previously reserved through voluntary reduction (commonly known as banked beds) it may only do so if the total annual amount of reopened beds approved does not exceed 100.

This means that even with access to capital, the existing Certificate of Need rules prevent any rampant expansion of nursing homes around the state. It also means that outside investors do not find Maine a particularly attractive setting.

Therefore, we implore the committee to consider the definitions of “private equity company” and “real estate investment trust” in Section 1 of LD 2190 as well as several other bills coming out of the Commission report. As drafted, the definition of private equity company is far too broad and would encompass the very individuals and often Maine family-owned businesses who for a multitude of reasons have chosen to invest their resources in Maine’s long term care sector, largely because they believe that older and disabled adults should have access to quality long term care services as they age in our state. That doesn’t seem like the kind of nefarious activity that is what I suspect some policy makers are trying to limit.

Next, we would recommend an amendment to **Section 3**, dealing with 22 MRSA §331 which, basically, establishes the criteria associated with CON when there are changes to established projects. As already mentioned, it would be prudent to add carve out language to the definition of private equity to reduce the incident of blocking local investor groups or we would strongly

recommend exempting nursing homes entirely from the proposed changes as drafted in **Sec. 3. 22 MRSA §331, sub-§1, ¶A-1** of the bill.

Nursing homes should be exempt from this additional review and scrutiny. In existing CON law and in state rule (*10-149 C.M.R. ch. 5, § 71 – Certificate of Need for Nursing Facility Level of Care Projects*), the Division of Licensing and Certification (DLC) and the Commissioner of DHHS already have the authority to:

- **Review transfer of ownership, acquisition by lease, donation, transfer, or acquisition of control.** This includes any “transfer of ownership or acquisition of a nursing facility under lease, or comparable arrangement or through donation or any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the transfer or acquisition has been my purchase...”ⁱⁱ
- Further, after CON has been issued, changes occurring in an approved project may require subsequent review. “A subsequent review is required if any of the following changes occur within three years after the approved activity is commenced:
 - **1. There is a significant change in the operating and capital financing...**ⁱⁱⁱ
- And under “Review following approval” the Commissioner may conduct a review to **ensure compliance with any terms or conditions of the approval within three years** after the approved activity is undertaken.”^{iv} This would include changes in financing.
- Also, CON applications for nursing facilities include: “disclosure of identities of interested and related parties, **a list of facilities in which the applicant, either directly or indirectly, has ownership or management interests**, statements of deficiencies and plans of correction from licensing/ certification activities, financial statements and financial projections, etc.”^v

If the goal of all of these bills being proposed is to identify who private investors are and what their management interests and finances are then these types of disclosure requirements should meet that intent.

Furthermore, the Centers for Medicare and Medicaid Services 42 CFR Parts 424 and 455 addresses *Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities; Medicare Providers’ and Suppliers’ Disclosure of Private Equity Companies and Real Estate Investment Trusts*. This rule will require the disclosure of certain ownership, managerial, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing homes. It will also finalize definitions of private equity company and real estate investment trust for Medicare provider enrollment purposes.^{vi} Maine should follow what CMS determines for nursing facilities. Otherwise, we risk having two different sets of criteria, definitions, and guidelines.

In **Section 6** of the bill, we would ask how the terms “affordability” and ‘accessibility’ are being defined. Related to accessibility, the Commission recommended that the Legislature consider the creation of a **task force to study the demand for long-term care to determine the appropriate number of long-term care beds and to increase nursing home bed capacity statewide**. This committee sent a memo to the HHS Committee to consider addressing this

recommendation. I would reiterate my support for that recommendation and note that to date no action has been taken on it.

As the oldest state in the nation, with the fewest nursing home beds per capita of any state in the Northeast, we should be focusing our time and attention on increasing capacity knowing that a significant increase in the older adult population needing these services is coming. That is the conversation policy makers should be having and investment the Legislature should be contemplating.

Lastly, I would like to comment on **Section 9**, which addresses 22 MRSA §335, the section of CON statute that essentially lays out the rules for the Department when deciding if a proposed project is good for the state or not. We would recommend that this section be amended to set parameters, including analysis and decision timelines, as well as establishing reasonable costs to the applicant. CON applicants should receive an itemized, preliminary cost estimate which could be calculated at no more than 0.1% of the total transactional value, prior to signing the analysis contract. The due diligence review and analysis should take no more than 90 days to complete, with the results being delivered to the Department and the applicant no more than 30 days after the analysis is completed.

Thank you for your consideration of the proposed amendments. Without these modifications to the bill, I am deeply concerned that there will be unintended consequences and long term care providers will continue to struggle, and without access to capital more will undoubtedly close. I would be pleased to answer any questions.

ⁱ Certificate of Need Act 2025 Annual Report, Maine DHHS, Division of Licensing and Certification, Page 3.

ⁱⁱ 10-149 C.M.R. ch. 5, § 71 - CERTIFICATE OF NEED FOR NURSING FACILITY LEVEL OF CARE PROJECTS, Page 7: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.maine.gov%2Fdhhs%2Fsites%2Fmaine.gov.dhhs%2Ffiles%2Finline-files%2F149c5-71.doc&wdOrigin=BROWSELINK>.

Accessed February 16, 2026.

ⁱⁱⁱ Ibid. Page 10.

^{iv} Ibid. Page 10.

^v Ibid. Page 14.

^{vi} Federal Register, Vol. 88, No. 221, Nov. 17, 2023. Rules and Regulations. DHHS, Centers for Medicare & Medicaid Services 42 CFR Parts 424 and 455. <https://www.govinfo.gov/content/pkg/FR-2023-11-17/pdf/2023-25408.pdf>. Accessed February 17, 2026.