PACIFIC LEGAL FOUNDATION

March 27, 2025

Testimony of Pacific Legal Foundation before the Rhode Island House Health & Humans Services Committee in support of House Bill 5355—Repealing certificate of need

Chair Donovan and members of the Committee:

My name is Jaimie Cavanaugh, and I am Legal Policy Counsel at Pacific Legal Foundation (PLF). PLF is a national public interest law firm dedicated to defending Americans' civil liberties. Since its founding more than 50 years ago, PLF has been helping Americans fight for their constitutional rights in courthouses and legislatures across the country.

Although PLF was initially founded on the West Coast, today we work in every state, including Rhode Island. Currently, PLF is representing property owners in Johnson, Rhode Island in a local eminent domain dispute.

Aside from protecting property rights, PLF also works to protect the right to earn a living in the occupation of one's choosing free from unreasonable government restrictions. Certificate of need (CON) laws are one of those unreasonable government restrictions that disadvantage small, niche, and startup providers.

For example, PLF currently represents a small midwifery group in Iowa that wants to open the state's first birth center.[1] Although the group's patients are desperate for access to a birth center, and our clients are trained to safely provide this care, Iowa's CON laws make it impossible to open. PLF has also worked with legislators in more than a dozen states to reform and repeal CON laws.

I have also represented immigrants from Nepal who wanted to offer culturally competent home health services to the Nepali-speaking community in the Louisville area. Although they personally knew their friends and neighbors couldn't find adequate and language-appropriate home health services, Kentucky told them there was no "need" for their services.

I mention these examples because CON laws harm small, niche, and innovative providers most. These are the providers that often know the most about their communities' needs, but don't have the financial or political capital to navigate the CON application process or the lawsuits that inevitably come from large healthcare systems.

In fact, on March 24, 2025, I testified to the Connecticut General Assembly Joint Public Health Committee about the urgent need for CON reform and the Chair of that Committee, a democrat and physician, raised this issue before I ever spoke. He was aware that smaller providers often give up without applying for a CON and explained that the existing CON law system advantages big healthcare systems. If Rhode Island is concerned about healthcare consolidation, it must seriously consider repealing its CON laws.

House Bill 5355

Thank you for considering this important bill today. House Bill 5355 would repeal Rhode Island's CON laws, benefiting your constituents by making healthcare more affordable, more available, and raising the quality.

This testimony proceeds in four parts. First, I'd like to briefly summarize the research on the harm caused by CON laws. Second, I want to explain why supporting CON reforms will positively impact healthcare costs. Third, I will explain that the research dispels the myth that hospitals or healthcare facilities shut down when states reform CON laws. Finally, I will mention some of the CON policy reforms enacted over the past few years.

I. Research Overwhelmingly Shows that CON Laws are Harmful

Approximately 40% of the nation's population live in a state with no CON laws or very limited CON laws, which makes it easy to compare outcomes. Unsurprisingly, the research overwhelmingly shows that CON laws fail to realize their intended benefits of decreasing healthcare costs, increasing access to care, or increasing healthcare quality. Just the opposite, patients in states with CON laws pay more for healthcare, drive farther and have longer wait times, and receive lower quality care than those who live in states that have already repealed their CON laws.

In one publication, my co-author, Ph.D. economist Matthew Mitchell, and I reviewed more than 400 academic tests of CON laws. We found that 89% of those tests associated CON laws with negative or neutral results.[1] In our research, we categorized results by effects on cost/price, access, quality of care, and care for vulnerable populations. CON laws fail to improve any of those categories.

While reviewing the research, Dr. Mitchell and I identified ten tests of whether CON laws improve access to healthcare for vulnerable populations. Importantly, zero of those studies found that CON laws have any positive impact on access for vulnerable communities. The findings include:

- Uninsured patients are more likely to pay out of pocket in states with CON laws,[2]
- A large black-white disparity in the availability of coronary angiographies disappeared when New Jersey exempted the procedure from CON,[3] and
- There is no evidence that CON laws increase charity care.[4]

Reforming CON laws often gets painted as a partisan issue, but I can assure you it is not. Agencies in every presidential administration beginning with Reagan have agreed on this issue and publicly called on states to repeal CON laws. For example, during the Obama Administration, the U.S. Department of Justice (DOJ) and the U.S. Federal Trade Commission submitted comments supporting

---

[1] Cavanaugh, J & Mitchell, M. "Stiving for Better Care," Institute for Justice (Aug. 2023), https://ij.org/report/striving-for-better-care/; *see also* Mitchell, Matthew D. "Certificate-of-Need laws in healthcare: A comprehensive review of the literature." *Southern Economic Journal* (2024), https://doi.org/10.1002/soej.12698

[2] Custer, W. S., et al. (2006). Report of Data Analyses to the Georgia Commission on the Efficacy of the CON Program, https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1017&context=ghpc_reports

[3] Cantor, J. C., *et al.* (2009). Reducing racial disparities in coronary angiography. *Health Affairs*, 28(5), 1521–1531. https://doi.org/10.1377/hlthaff.28.5.1521; DeLia, D., *et al.* (2009). Effects of regulation and competition on health care disparities: the case of cardiac angiography in New Jersey. *Journal of health politics, policy and law*, 34(1), 63–91, https://doi.org/10.1215/03616878-2008-992.

[4] Stratmann, T., & Russ, J. (2014). Do Certificate-of-Need Laws Increase Indigent Care? *Mercatus Center at George Mason University.* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3211637

CON repeal or reform in Virginia.[5] And in 2023, DOJ submitted comments supporting a bill to fully repeal Alaska's CON laws.[6]

Other recent publications by the Kaiser Family Fund and Aspen Institute recommend states repeal or reform CON laws to increase access to healthcare.[7]

II. Reforming CON laws tends to lead to cost savings

The evidence is also clear that CON laws result in higher healthcare costs and higher healthcare spending.[8] Whether studying cost per service, cost per patient, or government expenditures, the results were the same. Healthcare costs in states with CON laws were higher per service and per patient, and overall government expenditures were higher. Notably:

- Hospital charges in states without CON laws are 5.5% lower five years after repeal;[9]
- CON laws are associated with 10% higher variable costs in general acute hospitals;[10]
- CON laws are associated with higher Medicaid costs for home health services,[11]

---

[5] *See* https://www.justice.gov/atr/case-document/file/788171/dl?inline

[6] *See* https://www.justice.gov/atr/file/1302691/dl?inline

[7] State Efforts to Control Healthcare Costs: Lessons Learned and Insights for the Future, 25–27 https://www.aspeninstitute.org/wp-content/uploads/2024/05/HMS-State-Efforts-to-Control-Healthcare-Costs-R3-1-1.pdf; https://www.kff.org/health-costs/issue-brief/ten-things-to-know-about-consolidation-in-health-care-provider-markets/

[8] *See* n.1, *supra*, https://ij.org/report/striving-for-better-care/overwhelming-evidence-shows-that-con-laws-lead-to-higher-health-care-spending/

[9] Bailey, J. B. (August 2016). Can Health Spending Be Reined In through Supply Constraints? An Evaluation of Certificate-of-Need Laws. (Working Paper). Mercatus Center at George Mason University. https://mercatus.org/research/working-papers/can-health-spending-be-reined-through-supply-constraints-evaluation.

[10] Anderson, K. B. (1991). Regulation, market structure, and hospital costs: comment. *Southern Economic Journal*, *58*(2),528–534. https://doi.org/10.2307/1060194.

[11] Custer, W. S., et al. (2006). Report of Data Analyses to the Georgia Commission on the Efficacy of the CON Program. https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article1017&context=ghpc_reports.

- Medicare reimbursements for total knee arthroplasty are 5 to 10% lower in states without CON laws;[12]
- CON laws are associated with higher per-capita Medicaid community-based care expenditures.[13]
- Nursing home CONs are associated with higher expenditures per resident.[14]

Healthcare spending and healthcare costs matter for many reasons. Of course, we want government healthcare spending to be efficient, but healthcare costs are unaffordable for the privately insured too. Many people with commercial insurance cannot afford the cost of their deductibles, copayments, or co-insurance.

An estimated 5.2% of adults in Rhode Island report having medical debt. In fact, high amounts of medical debt led the Office of the General Treasurer to create a medical debt relief program in 2024.[15] While forgiving medical debt is a laudable goal and can be lifechanging for many people, it doesn't get at the root of the problem—high healthcare costs.

But allowing more providers to open is a proven way to decrease healthcare spending. Yale economist, Zack Cooper has been studying healthcare pricing for several years. He finds that "[p]rices at monopoly hospitals are 12% higher than

---

[12] see Mitchell, M. D.(2016). Do Certificate-of-Need Laws Limit Spending?, Mercatus Center at Georgia Washington University. https://www.mercatus.org/system/files/mercatus-mitchell-con-healthcare-spending-v3.pdf; Bailey, J. (2018). The effect of certificate of need laws on all-cause mortality. Health Services Research, 53(1), 49–62; Bailey, J., Hamami, T., & McCorry, D. (2016). Certificate of need laws and health care prices. Journal of Health Care Finance, 43(4).

[13] Miller, N. A., Harrington, C., & Goldstein, E. (2002). Access to community-based long-term care: Medicaid's role. Journal of Aging and Health, 14(1), 138–159. https://doi.org/10.1177/089826430201400108

[14] Ettner, S. L., et al. (2020). Certificate of need and the cost of competition in home healthcare markets. Home Health Care Services Quarterly, 39(2), 51–64. https://doi.org/10.1080/01621424.2020.1728464

[15] *See* Treasurer Diosssa Announce Medical Debt Relief Program for Rhode Islanders (Oct. 29, 2024), https://treasury.ri.gov/press-releases/treasurer-diossa-announces-medical-debt-relief-program-rhode-islanders

those in markets with four or more rivals."[16] Thus, allowing more providers to open will positively impact healthcare prices.

III. Research also shows that repealing CON laws does not result in reductions in services or facilities

One common argument for keeping CON laws is they are necessary to keep existing providers from closing. The argument goes that if new facilities open, privately insured patients will leave struggling hospitals and the hospitals will be left with only the uninsured or under-insured patients. Some call this cream-skimming or cherry-picking. Economists call it cost-shifting.

If cost-shifting existed, when Medicare and Medicaid reimbursement rates decrease, hospitals would be forced to negotiate higher rates from private insurance providers. Instead, economists find that when states lower Medicaid reimbursement rates, rates for privately insured patients also *decline*.[17]

In a 2020 review, the Congressional Budget Office found no evidence of cost-shifting, stating:

> The share of providers' patients who are covered by Medicare and Medicaid is not related to higher prices paid by commercial insurers. That finding suggests that providers do not raise the prices they negotiate with commercial insurers to offset lower prices paid by government programs[.][18]

---

[16] *See* Cooper, Z., Craig, S. V., Gaynor, M., & Van Reenen, J. (2019). The price ain't right? Hospital prices and health spending on the privately insured. The quarterly journal of economics, 134(1), 51-107, https://healthcarepricingproject.org/sites/default/files/Updated_the_price_aint_right_qje.pdf

10 Thom Walsh, Don't Blame Medicare for Rising Medical Bills,

[17] Clemens, J., & Gottlieb, J. D. (2017). In the shadow of a giant: Medicare's influence on private physician payments. *Journal of Political Economy*, *125*(1), 1-39 https://www.journals.uchicago.edu/doi/full/10.1086/689772

[18] *See* https://www.cbo.gov/system/files/2022-01/57422-medical-prices.pdf

Just the opposite, having a low number of Medicare patients is associated with *higher* hospitals prices.[19] But if cost-shifting existed, hospitals with a lower number of Medicare patients would not need to charge higher prices.

A member of the Board that oversees CON in Vermont has explained that the cost-shifting myth exists even though research finds no evidence of it:

> Because it serves the interests of some very powerful forces in health care. First, it provides monopolistic hospitals and other profit-maximizing providers with a way to shift blame onto the government for their price gouging . . . . And remarkably, many state governments not only accept this lie but help enable it.[20]

If cost-shifting existed, we would also have plenty of real-world examples of facility closures following CON repeal. Instead, when states repeal CON laws, more facilities open, and more facilities stay open. One recent 2024 paper found a 92%–112% increase in surgery centers per capita in rural areas following CON repeal and found "no evidence that CON repeal is associated with hospital closures in rural areas. Rather, some regression models show that repeal is associated with fewer medical service reductions."[21]

Legislators should follow the research and feel confident that repealing CON laws will not harm existing hospitals or force them to close. For example, following repeal of CON in Pennsylvania in 1996, the Pennsylvania Hospital Association opposed legislation to reinstate CON laws. In 2015, the Pennsylvania Hospital Association publicly opposed a bill to renew CON laws testifying that: "Reinstating an administratively cumbersome and costly process will result in unintended consequences, including stifling innovation in healthcare delivery

---

[19] *See* https://healthcarepricingproject.org/sites/default/files/pricing_variation_exec_summary.pdf

[20] Thom Walsh, "Don't Blame Medicare for Rising Medical Bills, Blame Monopolies," Washington Monthly (July/Aug. 2023). https://washingtonmonthly.com/2023/06/19/dont-blame-medicare-for-rising-medical-bills-blame-monopolies/

[21] Stratmann, T. *et. al*, The causal effect of repealing Certificate-of-Need laws for ambulatory surgical centers: Does access to medical services increase?, supra n. 19.

in hospital settings and potentially preventing the appropriate availability of services within communities."[22]

IV. States around the country are reforming CON laws

The trend around the country has been reforming and repealing CON laws. Here are some notable bills enacted over the past few years:

1. In 2021, Montana repealed CON for everything except nursing homes.
2. In 2023, South Carolina repealed CON for everything except nursing homes.
3. In 2023, North Carolina made significant reforms and repealed CON for things like psychiatric care facilities, rehab facilities, MRI equipment in counties above a certain size, and increased the dollar thresholds that trigger a CON requirement.
4. In 2023, West Virginia repealed CON for birth centers and now allows hospitals to expand services without a CON.
5. In 2023, Connecticut repealed CON for birth centers.
6. In 2024, Georgia repealed CON for many facilities and services including birth centers, inpatient psychiatric programs, inpatient substance use treatment facilities, rural hospital services, and replacement of equipment.
7. In 2024, Oklahoma repealed CON for everything except nursing homes.
8. In 2024, Tennessee enacted another significant reform, excluding the following from CON: hospitals in counties without an acute care hospital, burn units, neo-natal intensive care, linear accelerator service, MRI/PET (in certain counties), adult care homes, traumatic brain injury residential homes, and open-heart surgery.
9. In 2024, Michigan repealed CON for birth centers.
10. In 2024, Washington extended an exemption for CON on psych beds/facilities through 2029.
11. In 2025, Wyoming repealed CON for nursing homes (its only healthcare CON)

Bills to reform CON laws are currently pending inArizona, Connecticut, D.C., Florida, Hawaii, Kentucky, Maine, Mississippi, Nebraska, Oregon, Tennessee,

[22] Michael W. Thompson, "Certificate of Need by Michael Thompson: Reform for better care," Richmond.com (July 11, 2015).

Washington, and West Virginia. Notably, a number of states in the Northeast are also taking a serious look at CON reform.

* * *

In short, I urge you to support House Bill 5355. This Committee should feel confident following the data and repealing CON laws. Doing so will ensure that small business owners and niche service providers are not shut out of the healthcare market.

Thank you for the opportunity to testify. I am happy to answer any questions; my contact information is listed below.

Respectfully,

JC

Jaimie Cavanaugh
Legal Policy Counsel
jcavanaugh@pacificlegal.org
248-895-1555