

February 24, 2025

**Testimony of Pacific Legal Foundation before the House Health and Government Operations Committee in support of House Bill 0735—Exempting Psychiatric Health Care Facilities and Psychiatric and Mental Health Services from Certificate of Need**

Chair Pena-Melnyk and Members of the Committee:

My name is Jaimie, and I am Legal Policy Counsel at Pacific Legal Foundation (PLF). PLF is a nonprofit public interest law firm dedicated to defending Americans' civil liberties. Since its founding 50 years ago, PLF has been helping Americans fight for their constitutional rights in courthouses and legislatures across the country. PLF has 18 wins at the United States Supreme Court, and has helped enact more than three dozen laws in legislatures across the country.

I have been studying, writing about, and suing to challenge certificate of need (CON) laws around the country for the past several years. As a result, I have become a CON policy expert and have worked with legislators in more than a dozen states to reform CON laws.

**HB 0735**

Thank you for considering this important bill today. HB 0735 removes Maryland's certificate of need requirement for psychiatric facilities and psychiatric and mental health services. This bill would make it possible for new psychiatric facilities to open or for existing providers to add psychiatric and mental health services.

**The Problem**

Like many states, Maryland has a severe shortage of psychiatric facilities and services. Patients in need of psychiatric care are often forced to board in emergency departments as they wait for a psychiatric bed or other appropriate placement to open. Financially, this practice is harmful because emergency department stays are notoriously expensive. It is also harmful to providers and patients. Emergency department providers may not be trained in caring for patients with mental health needs and other users of the emergency department

are left with fewer open beds and longer wait times. This is bad for Maryland communities.

To be clear, certificate of need (CON) laws contribute to long wait times. In the words of Professor Ge Bai at Johns Hopkins School of Public Health: “The cause for [Maryland’s] ER traffic jam is not that we have too many patients going to the ER, but we allow too few roads to be built.”<sup>1</sup> In other words, allowing CON laws to artificially restrict the supply of healthcare facilities, as Maryland has been doing for decades, is causing healthcare bottlenecks.

Indeed, a 2021 study found that CON laws targeting psychiatric services were associated with 20% fewer psychiatric hospitals; 56% fewer psychiatric clients per 10,000 residents; and psychiatric hospitals in states with these CON laws are 5.35 percentage points less likely to accept Medicare.<sup>2</sup> These findings are aligned with the greater academic body of CON literature that shows that states with CON laws spend more on healthcare, while having lower quality and access to care.<sup>3</sup>

Another problem with having fewer healthcare facilities is that workers have fewer opportunities for clinical training. In fact, nursing schools reported turning away nearly 66,000 qualified applicants in 2023. One of the reasons cited was lack of clinical sites.<sup>4</sup> Fewer students may consider healthcare careers because of limited employment options.

CON laws also contribute to healthcare consolidation by making it too financially risky for smaller, niche, or novel facilities to open. In a field like healthcare, that is constantly evolving and improving, that simply means residents in Maryland miss out on innovation.

## **One Solution**

Healthcare providers, legislators, and researchers are in agreement that Maryland needs more psychiatric facilities and services. HB 0735 gives the state the opportunity to grow its psychiatric care infrastructure.

40% of the nation’s population live in states with zero or very limited healthcare CON laws. The states that have already repealed their CON laws have more facilities per capita.<sup>5</sup> Thus, real-life experience tells us that healthcare becomes more accessible following CON repeal.

Repealing CON laws is a bipartisan issue. Every presidential administration beginning with the Reagan administration has called on states to repeal their CON laws.

Since 2019, seven states have repealed CON for psychiatric facilities or services. Those states are Florida (2019, effective 2021), Tennessee (2021), Montana (2021), North Carolina (2023), South Carolina (2023), Georgia (2024), and Oklahoma (2024). Following South Carolina's sweeping CON repeal in 2023, a psychiatric treatment facility for youth was one of the first projects announced.<sup>6</sup>

Likewise, Florida has seen significant growth in psychiatric care beds following CON repeal. It is worth noting that recent research found that the growth in Florida's healthcare industry was needed to keep up with the state's growing population. This growth would not have been possible without CON repeal.

Maryland now has the chance to join these states in rethinking CON laws to ensure that psychiatric care needs are met.

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

Respectfully,



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<sup>1</sup> Meredith Cohn, "Maryland's emergency room wait times the worst in the nation," Baltimore Banner (Dec. 21, 2022),

<https://www.thebaltimorebanner.com/community/public-health/maryland-emergency-room-wait-times-E4L6LFRTBRCLPEXKXQILODOUY/>

<sup>2</sup> James Bailey and Elenor Lewin, *Certificate of Need and Inpatient Psychiatric Services*, J. Ment. Health Policy Economics 1;24(4):117–124 (2021), <https://pubmed.ncbi.nlm.nih.gov/34907901/>

<sup>3</sup> See Matthew D. Mitchell, *Certificate-of-Need laws in healthcare: A comprehensive review of the literature*, Southern Economic Association (May 2024), <https://doi.org/10.1002/soej.12698>

<sup>4</sup> American Ass'n of Colleges of Nursing, "Fact Sheet: Nursing Faculty Shortage," (May 2024), <https://www.aacnnursing.org/Portals/0/PDFs/Fact-Sheets/Faculty-Shortage-Factsheet.pdf>

<sup>5</sup> Jaimie Cavanaugh & Matthew D. Mitchell, *Striving for Better Care*, Institute for Justice (Aug. 2023), <https://ij.org/report/striving-for-better-care/> (summary of 80 academic tests of how CON laws affect access to healthcare found that 79% of tests associated CON laws with a lower availability of services).

<sup>6</sup> Mary Green, "SC leaders break ground on new mental health facility for DJJ youth," 5 WCSC (Sept. 16, 2024), <https://www.live5news.com/2024/09/16/sc-leaders-break-ground-new-mental-health-facility-djj-youth/>