



February 16, 2026

## **Statement of Support for House Bill 362—Repealing Certificate of Need for Psychiatric Health Care Facilities and Psychiatric and Mental Health Services**

Chair Bagnall and Members of the House Health Committee:

My name is Jaimie Cavanaugh, and I am Senior State Policy Counsel at Pacific Legal Foundation (PLF). PLF is a nonprofit public interest law firm dedicated to defending Americans' liberties when threatened by government overreach and abuse.

Since its founding more than 50 years ago, PLF has been helping Americans protect their constitutional rights in courthouses and legislatures across the country. We have won 18 cases at the United States Supreme Court, and worked to enact more than 60 laws across the country.

PLF's work includes representing healthcare entrepreneurs who want to provide needed services to their communities but are unable to do so because of government regulations. These regulations are not related to public health or safety. Instead, they are aimed at protecting some healthcare providers from competition.<sup>1</sup>

### **House Bill 632**

House Bill 632 repeals CON for psychiatric care facilities and mental health services. I am writing to urge you to advance House Bill 632 to increase access to needed care. A growing list of states, such as Michigan, New York, Vermont, and the District of Columbia have reformed their CON laws over the last two years. Another seven states have repealed CON for psychiatric facilities or services since 2019.<sup>2</sup>

### **The Problem**

As you may know, Maryland has a severe shortage of psychiatric facilities and services. For example, one article from September 2025 reports that over 200

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<sup>1</sup> *E.g.*, PLF challenging certificate of need for respite care provider: <https://pacificlegal.org/case/newell-davis-louisiana-con/>; PLF challenging restrictions preventing mental health nurse practitioners from working independently in California: <https://pacificlegal.org/case/california-nursing-mental-health-practitioners/>.

<sup>2</sup> 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.

inmates are awaiting court ordered mental health treatment.<sup>3</sup> Given the state's shortage in beds at psychiatric care facilities, these individuals are forced to sit in jails for months.

Patients in need of mental health treatment can also commonly be found boarding in emergency departments, waiting for an appropriate placement to open. This practice leads to backups in emergency departments around the state.

To be clear, CON laws contribute to long wait times for healthcare services. 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>4</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.

### **The Research**

This Committee can be confident that repealing CON for psychiatric facilities and mental health services will benefit constituents. For example, a 2021 study found that CON laws targeting psychiatric services were associated with 20% fewer psychiatric hospitals and psychiatric hospitals in states with these CON laws are 5.35 percentage points less likely to accept Medicare.<sup>5</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>6</sup>

Today, 40% of the U.S. population live in states with zero or very limited CON laws, making it easy for researchers to compare outcomes. Although they had CON laws at one time, states like California, Colorado, Pennsylvania, and New Hampshire have been leaders on this issue and repealed their CON laws.

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<sup>3</sup> Brad Bell, "Over 200 inmates await court-ordered mental health treatment due to hospital bed shortage," ABC (Sept. 4, 2025), <https://wjla.com/news/local/maryland-psychiatric-hospital-bed-shortage-court-ordered-behavioral-health-treatment-jail-prison-placement-law-montgomery-county-detention-center-state-hospital-department-of-health>

<sup>4</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>5</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>6</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>

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Finally, repealing CON laws is also a bipartisan issue. Every presidential administration beginning with the Reagan administration has called on states to repeal their CON laws.<sup>7</sup>

PLF supports House Bill 632 because it is a commonsense solution that will increase access to needed healthcare in Maryland.

Thank you for your consideration and please feel free to reach out with any questions.

Respectfully,



Jaimie Cavanaugh  
Senior State Policy Counsel  
[jcavanaugh@pacificlegal.org](mailto:jcavanaugh@pacificlegal.org)  
248-895-1555

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<sup>7</sup> See <https://americansforprosperityfoundation.org/wp-content/uploads/2024/04/AFP-CON-AdminQuotes.pdf>