APPENDIX E

APPLYING VERMONT UPDATE TO NEW YORK STATE

NYS Bills Addressing For-Profit Ownership & Management of Facilities

2023-2024 Legislative Session

The LWVUS Privatization Position does not allow League support of any of these bills. The Vermont Update would change this so advocacy in support of these bills could be considered.

A05375 (Paulin)[302] *Corporate ownership & management of hospitals*

Sponsor's Justification: Under current provisions of the Public Health Law, a hospital cannot be established, or ownership changed, without the prior approval of the Public Health Council as part of an establishment process which includes a determination of public need.

These provisions do not apply to situations or arrangements in which a corporation exercises "passive" control over a hospital, but not direct day-to-day operational authority. Many of the recent, and pending, hospital merger, network and affiliation arrangements which have resulted in the reduction or elimination of certain health care services in a community are a result of these "passive" corporate arrangements.

This bill would clarify what constitutes operational authority over a hospital to include "passive" control corporate models. In so doing these arrangements, and their potential impact on the availability of health care services in a community, would be subject to an establishment review by the Public Health Council.

Jama Hospital Change in Ownership Associated with Adverse Events and Patient Outcomes December 26, 2023

[302] A05375 (Paulin) https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05375&term=2023&Summary=Y&Memo=Y

https://jamanetwork.com/journals/jama/article-abstract/2813379?guestAccessKey=92f16644-1af0-49be-a25c-eb82ee839c05&utm_source=silverchair&utm_medium=email&utm_campaign=article_alert-jama&utm_content=etoc&utm_term=122623&utm_adv= ama&utm_content=etoc&utm_t

Harvard Gazette: January 1, 2024 Healthcare Riskier for Patients at Private Equity Hospitals
https://news.harvard.edu/gazette/story/2024/01/healthcare-riskier-for-patients-at-private-equity-hospitals/

NY Times: Who Employs Your Doctor? July 2023
https://www.nytimes.com/2023/07/10/upshot/private-equity-doctors-offices.html

S6460/A6032 (Krueger /Paulin)[303] *Prohibits for-profit hospices*

Sponsor's Justification: An article recently published by *ProPublica* and digitally released in *The New Yorker*, titled "**Hospice Became a For-Profit Hustle**" shines a light on multiple instances of fraud targeting the Medicare hospice benefit. It illustrates how patient care suffers when bad actors are able to manipulate its original intent and purpose. An earlier article published in the *Journal of the American Medical Association** found that "for-profit compared with nonprofit hospices provide narrower ranges of services to patients, use less skilled clinical staff, care for patients with lower-skilled needs over longer enrollment periods, have higher rates of complaint allegations and deficiencies, and provide fewer community benefits, including training, research, and charity care. For-profit hospices are more likely than nonprofit hospices to discharge patients prior to death, to discharge patients with dementia, and to have higher rates of hospital and emergency department use."

For-profit organizations have a duty to their owners to generate as much profit as possible and distribute net income to the owners. Their obligations to the people they ostensibly serve are secondary. This is especially troubling in the case of hospice. The mission of hospice, providing compassionate end-of-life care, should not be subservient to providing profit to investors. New York is uniquely situated to prevent the deterioration of end-of-life care described above, as **currently only two of 41 hospices in New York** are for-profit, compared to a national average of two-thirds as of 2017. Now is the time to place the care and safety of persons who are dying first and foremost over profit.

In her 2022 veto message 149, Governor Hochul says she will direct the NYS Master Plan for the Aging (MPA) "to assess the services offered by for-profit hospices" and "to include a recommendation on their continued need." It is important for the MPA to consider these issues, however we already know from

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[303] S6460/A6032 (Krueger /Paulin) https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S6460&term=2023&Summary=Y&Memo=Y

the experience of patients, the advocates working on their behalf and the experiences described in the articles referenced above that New York should take the proactive step of prohibiting new for-profit hospices.*

The New Yorker, Nov 2022: How Hospice Became a For-Profit Hustle: https://www.madinamerica.com/2022/12/hospice-became-for-profit-hustle

JAMA May 2021 Hospice Tax Status and Ownership Matters to Patients and Families https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2779070

S2929/A7186 (Rivera/Hermelyn)[304] *Prohibits for-profit nursing homes*

Sponsor's Justification: In recent years, **for-profit nursing homes in New York** have grown from about one-third of the market to two-thirds. National data shows that for-profit nursing homes score worse on staffing, infection control and other quality indicators. They have higher rates of patient deaths and cost more. The State Attorney General's 2021 report documents that dubious real-estate and service-contract transactions divert funds from patient care and had a hand in increasing COVID-19 risks to patients. This bill prohibits granting of new for-profit nursing home licenses or expanding the capacity of existing for-profit nursing homes.

Public Citizen: **For-profit Nursing Homes**. September 2022
https://www.citizen.org/news/nursing-homes-often-do-not-report-private-equity-firms-among-their-owners

Public Citizen: Private Equity: lapses in safety, price-gouging across a dozen kinds of health care March 2023
https://www.citizen.org/news/action-on-predatory-private-equity-in-health-care-needed-stat-says-public-citizen

S7800/A8470 (Rivera /Paulin)[305] *Repeals MLTC provisions for Medicaid recipients*

Sponsor's Justification: New York State transitioned home care from a traditional fee-for-service model to a Medicaid managed care program or MLTC Plans in 2011, under direction from then Governor Andrew Cuomo's Medicaid Redesign Team. Under this model, New York State began paying for-profit insurance companies to manage and coordinate healthcare for

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[304] S2929/A7186 (Rivera/Hermelyn) https://www.nysenate.gov/legislation/bills/2023/S2929

[305] S7800/A8470 (Rivera /Paulin). https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S7800&term=2023&Summary=Y&Memo=Y

several Medicaid services, in an attempt to improve care by coordinating between doctors and to save money by creating financial incentives to keep patients healthy and out of high-cost hospitals and nursing homes. The original intent was that MLTC plans would develop into fully capacitated plans over time. This has not happened.

Instead, the majority of the services for-profit insurance companies currently provide are solely home care. Because of this "care coordination" is limited, and the insurance companies' administrative costs and profit are a drain on the Medicaid system. These resources could be reinvested to support the delivery of care through fee-for-service and fully capitated models ensuring more uniform care for residents of the state, as well as more adequate reimbursement to providers to support wage increases. This will help to assist providers in addressing health- care workforce challenges facing the state.

In the past 3.75 years, New York State has **given $5.9 billion to the 24 for-profit insurance** companies managing home care in administrative costs and profit. In 2021 alone, the latest full year of data available, **private insurance companies posted $722 million in profits, twice the national average**.

To address this, the "Home Care Savings & Reinvestment Act" would repeal the partially capitated MLTC program and instead provide appropriate long term care benefits under a fee-for-service model or through a fully capitated model where appropriate.

This bill is estimated to generate significant annual savings, which can be used to reinvest and support the Medicaid program while addressing healthcare workforce issues.

Politico: Managed Care hasn't lived up to its promise

https://www.politico.com/newsletters/weekly-new-york-health-care/2023/12/11/home-care-coalition-pitches-major-medicaid-payment-reform-00131026

A7393/ S7477 (Darling /Rivera)[306] *Redeployment of excess reserves of certain not-for-profit HMOs*

Sponsor's Justification: This bill is necessary to ensure the continuation of specific laws of critical importance to the Commissioner of Health relating to not-for-profit managed care organizations in order to avoid the expiration of those laws. Through

[306] A7393/ S7477 (Darling /Rivera. https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S7477&term=2023&Summary=Y&Memo=Y

these sections, the Commissioner is able to check the organization's reserves and ensure that they are in operating order and authorizes the Commissioner to make regulations related to an organizations reserves.

Health Affairs, June 2023: Nonprofit hospitals: Profits and Cash Reserves Grow, Charity Care Does Not

https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.01542