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TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE PUBLIC HEALTH COMMITTEE
MARCH 19, 2014

Good morning, Senator Gerratana, Representative Johnson, and distinguished members of the Public Health Committee. I appreciate the opportunity to testify about Senate Bill 460, *An Act Concerning Hospital Conversions and Other Matters Affecting Hospitals.*

This bill would revise the regulatory process for approving sales of nonprofit hospitals to for-profit entities. I applaud the Committee for taking up this important issue. The healthcare market and the means by which healthcare is delivered in this State are undergoing rapid and unprecedented change. The current laws governing the hospital conversion process have not been amended for more than a decade and simply do not address this changing landscape.

In particular, and as I recently pointed out in an Op-Ed to The Hartford Courant (copy attached) and in testimony before multiple legislative committees on other bills currently before the legislature, the healthcare industry in Connecticut is undergoing rapid consolidation. Connecticut hospitals have recently merged and other mergers are likely. In addition, national for-profit corporations are looking to acquire existing, nonprofit Connecticut community hospitals. Both for-profit and nonprofit hospitals also appear increasingly intent on acquiring previously independent doctors' practices. The consequences for competition and consumers are potentially significant, and our laws are simply outdated and ill-equipped to address these trends.

In light of these trends, it is crucial to carefully consider the current laws governing the hospital conversion process and the for-profit hospital model generally. This bill takes important steps towards addressing some of the ongoing transformations of the healthcare industry. Among other things, it requires for-profit hospitals to demonstrate a serious, ongoing commitment to the communities they serve. It also provides for more direct oversight of for-profit hospitals after a conversion takes place. Other aspects of the bill require additional consideration and input from affected constituencies and policymakers.

While I look forward to working with the Committee and other stakeholders on the current proposal, I would be remiss if I did not point out that neither this bill nor any others currently pending before the legislature directly address the question of whether for-profit hospitals should be permitted to employ physicians and engage in the corporate practice of medicine. Some for-profit hospitals have indicated that they will not do business in this State at all if they cannot employ physicians, as nonprofit hospitals currently do, and thus vertically integrate through the acquisition of group medical practices. In the last legislative session, the

legislature passed a bill that would have permitted certain for-profit hospitals to engage in the corporate practice of medicine. Governor Malloy vetoed that bill, appropriately in my view, because it had been passed without sufficient consideration of the potential impacts it may have on health care delivery in Connecticut.

As I did in my recent Op-Ed, I urge the legislature to consider carefully this threshold issue as part of its current deliberations over the hospital conversion process. Failing to do so may render many of the other important aspects of the current bill an academic exercise because for-profit hospitals may decide not to pursue acquisitions in Connecticut absent a law permitting them to engage in the corporate practice of medicine.

Thank you once again for your work on this important issue. I look forward to working with you.

OP-ED

Caution On For-Profit Hospital Trend In CT

By GEORGE JEPSEN | OP-ED

6:49 PM EST, November 25, 2013

Rapid changes are transforming the way health care is paid for and delivered in Connecticut. Nonprofit hospitals have merged and other mergers are likely. National for-profit corporations are looking to Connecticut to acquire nonprofit community hospitals. And both for-profit and nonprofit hospitals appear increasingly intent on acquiring previously independent doctors' practices.

Although predicting where these changes may lead is impossible, two facts are alarmingly clear: The consequences for competition and consumers are potentially significant, and our laws are simply outdated and ill-equipped to address these trends.

Before our health care landscape is irrevocably altered, now is the time to carefully consider new regulatory approaches to foster patient care and access, preserve competition, and protect health care jobs and the communities they support.

One law meriting scrutiny is Connecticut's prohibition on for-profit hospitals employing physicians — the so-called "corporate practice of medicine ban." The chief rationale for this prohibition was that only trained medical professionals, unfettered by financial considerations, should exercise judgment over patient care. This prohibition creates a substantial obstacle to the business model for-profit hospitals intend to pursue.

In 2009, the General Assembly modified the law to permit nonprofit hospitals to form medical foundations that, in turn, could directly employ physicians, apparently believing that non-profit entities lacked financial incentives to interfere with proper medical judgments. In the last legislative session, the legislature passed a further modification to permit certain for-profit hospitals to engage in the corporate practice of medicine in the same fashion nonprofit hospitals do under the 2009 law. Gov. Dannel P. Malloy, appropriately in my view, vetoed that law because it had been passed without sufficient consideration of the potential impacts it may have on health care delivery in Connecticut.

Although it may be too early to judge the impact the 2009 law has had on quality of care, the corporate practice of medicine by for-profit hospitals would, by definition, not include the same safeguards the legislature deemed adequate under the nonprofit model.

Moreover, the 2009 law has resulted in the aggressive acquisition of physician practices by nonprofit hospitals. Although some of these acquisitions may result from the Affordable Care Act, most have been driven by other financial incentives. Hospital-affiliated practices can negotiate higher rates than independent physician practices, charge separate "facility

fees," drive out competition in particular markets and provide care in areas where more patients are covered by higher-paying commercial health insurance policies. These trends undoubtedly have resulted in higher health care costs.

If financial incentives are driving nonprofit hospitals to acquire physician practices, those incentives will be even greater in the for-profit model. Indeed, some for-profit hospitals have stated they will not do business in Connecticut unless they are permitted to employ physicians and thus profitably acquire physician practice groups.

These considerations make clear that Connecticut must proceed cautiously when considering whether to repeal the prohibition against the corporate practice of medicine.

Should legislators go forward with such repeal, they should also adopt meaningful safeguards. Connecticut's current laws simply did not contemplate the realities of today's marketplace.

My role under Connecticut's Hospital Conversion Act, for instance, is quite narrow: It is limited to protecting the charitable assets of the nonprofit hospitals acquired by for-profit hospitals, and examining the financial viability of any acquisition. The Office of Health Care Access has some authority to ensure continued quality care and access, but those tools may prove insufficient and outdated.

Other states go further in reviewing hospital mergers and acquisitions: Tennessee requires more stringent conditions to ensure health care access and quality. Massachusetts permits regulators to require for-profit hospitals to fund independent monitors who periodically report on community health care access. And Rhode Island empowers regulators to consider issues of workforce retention and collective bargaining rights.

Connecticut lawmakers should consider these and other measures, such as requiring all hospitals, nonprofits and for-profits alike, to notify the attorney general's office whenever they acquire a physician practice so my lawyers can monitor competition and better enforce Connecticut's antitrust laws.

Time is short. Our current laws simply do not address the rapid transformation of health care delivery. Difficult choices must be made. We must have a coherent vision for the future of health care in Connecticut and enact laws to achieve those goals.

George Jepsen is Connecticut's state attorney general.