To Whom It May Concern:

I am separately submitting my testimony under SB 460. I did not previously realize that there needed to be two separate e-mails. My apologies for the last-minute submission, and thank you in advance for your consideration.

From: Gary Storrs
Sent: Tuesday, March 18, 2014 2:55 PM
To: 'phc.testimony@cga.ct.gov'
Subject: FW: Gary Storrs testimony on SB 460 and HB 5571

Dear Public Health Committee and Staff:

Attached please find my written testimony for tomorrow's Public Health hearing, as well as two attachments cited in my testimony.

Thank you for the opportunity to testify on these important bills. My testimony addresses the above-mentioned bills jointly.

If you have any questions, please contact me at (202) 429-1225 or (301) 704-7853.

Sincerely,

Gary Storrs
Labor Economist
American Federation of State, County and Municipal Employees (AFSCME) – affiliated with Connecticut Health Care Associates (CHCA)

The Incentives of For-Profit Health Care Make Community and Worker Protections Critically Necessary

Testimony of Gary Storrs, Labor Economist
Department of Research and Collective Bargaining Services
American Federation of State, County and Municipal Employees (AFSCME)
March 19, 2014 – Testimony before the Public Health Committee
S.B. 460, An Act Concerning Hospital Conversions and Other Matters Affecting Hospitals; H.B. 5571, An Act Concerning Certificate of Need Requirements, Hospital Conversions & Medical Foundations

My name is Gary Storrs, and I am a Labor Economist for AFSCME International in Washington, DC. Thank you for the opportunity to testify today on Senate Bill 460 and House Bill 5571 regarding hospital conversions and for your hard work addressing this difficult issue. Attached to my testimony is a white paper, news articles and other backup information. Today I want to address the critical need for this legislature to pass strong protection legislation that includes worker protections and covers any changes at Waterbury Hospital, before any conversions are allowed, if at all.

For-profit health care companies have an extremely checkered record. These providers, very much including Tenet Healthcare, have all too often put financial incentives ahead of patients' interests. A publisher's description of the book *Coronary: A True Story of Medicine Gone Awry*, by Stephen Klaidman, says it all: "In a scheme that placed the demands of Wall Street above the lives of its patients, Tenet Healthcare rewarded doctors based on how much revenue they generated for the corporation." This book is about Tenet doctors regularly performing lucrative, but not medically necessary, heart surgeries.

Tenet paid $395 million to settle litigation about these unnecessary surgeries, and $900 million to resolve billing issues. These billing issues involved high "outlier" payments for treating very sick patients.

Tenet's line is that their problems are all in the past – but this is far from the case. Just one month ago, on February 19, the US Department of Justice joined a previously-filed whistleblower lawsuit, which the State of Georgia joined in 2013. The Justice Department's press release says, "The lawsuit alleges that four Tenet hospitals... paid kickbacks to Hispanic Medical Management d/b/a Clinica de la Mama... and related entities in return for Clinica's agreement to send pregnant women to their facilities for deliveries paid for by Medicaid.... The kickbacks were disguised as payments for a variety of services allegedly provided by Clinica." A US Attorney involved in the case said, "Tenet and these hospitals plundered a system set up for those truly in need." Tenet denies the charges, but authorities clearly think they have solid evidence.

For-profit hospitals have a very different record from nonprofits. They have been shown to provide less care for the uninsured; to provide lower-quality care, measured by increased patient mortality; to charge higher prices; and to deliver profitable services at the expense of unprofitable ones. Further data on these findings and on Tenet's problems is attached.

The idea of protecting communities from the potentially dangerous incentives of for-profit healthcare is not a new one. Even the management law firm Jones Day, in a document providing guidance on changing hospital ownership, sets forth rigorous requirements for identifying and disclosing conflicts of interest, preserving and expanding access to care, properly valuing community assets, and reporting to the community. Protecting the community should include protecting hospital workers and their families, which we ask be included in any final legislation you consider, not only in separate legislation.

Worker protections are also not a new concept. As long ago as 1997, guidance on changing management of a federal Department of Energy lab required that employees "retain substantially equivalent base pay and employee benefits." This standard was stricter than the standard of offering "comparable" benefits.

Worker protections are not new to Connecticut, either. General Statutes Section 4d-47 provides that if state IT jobs are contracted out, and the contractor "does not provide the employee with fringe benefits which are equivalent to, or greater than, the fringe benefits that the employee would have received in state service," the state has to make up the difference for two years. Clearly, the state recognized a compelling governmental interest in protecting workers' terms of employment and preventing turnover.

Legislating strong protections for workers and citizens if a health care provider is converted to for-profit ownership is not an overreach. The history of for-profit health care shows that protections are necessary, including the recent experiences of nurses and other hospital workers in the difficult negotiations at Waterbury Hospital.

Thank you for your time.

CONTACT INFORMATION:
Gary Storrs
Labor Economist
Department of Research and Collective Bargaining Services
AFSCME International
1625 L Street, NW
Washington, DC 20036
202-429-1000
gstorrs@afscme.org

AFSCME affiliates also testifying today: CT Health Care Associates/AFSCME, AFSCME Council 4

A Tenet Healthcare Timeline: Excerpts of Critical Media Coverage and Reports from 2003 through 2013

Tenet to pay $54M to settle disputed surgery case

By Julie Appleby, USA TODAY, August 7, 2003

Tenet Healthcare (THC) will pay a $54 million fine, but will not face civil or criminal charges, to settle allegations that two doctors working in its Redding, Calif., hospital performed unnecessary cardiac procedures.

The fine — $51.3 million to the federal government and $2.65 million to the state — covers allegations that the hospital billed Medicare, Medicaid and the military's Tricare program for unnecessary procedures from 1997 to 2002.[1]

Tenet Healthcare Agrees to Sell Redding, Calif., Medical Center

April 17, 2004 | The Sacramento Bee, Calif. Knight Ridder/Tribune Business News

Apr. 17--Tenet Healthcare Corp. announced Friday that it has reached agreement to sell Redding Medical Center, its hospital at the center of numerous surgery and billing probes, to Hospital Partners of America Inc.

Under the terms of the deal, HPA, a privately held company based in Charlotte, N.C., would purchase the Redding hospital for approximately $60 million.

The sale, ordered by federal regulators in December as a condition for the Redding hospital to keep billing Medicare and other government health programs, is expected to be completed by June 30, Tenet officials said. ...

$395 Million Payment to Settle Unnecessary-Surgeries Suits

Published: December 22, 2004 (New York Times)

Tenet Healthcare said yesterday that it would pay $395 million to settle litigation with patients who are accusing one of its hospitals of performing unnecessary heart surgeries.

Tenet, which also faces a government investigation into Medicare billing, among other inquiries, said it would set up a $395 million fund to be distributed among at least 750 patients who were treated at the hospital, Redding Medical Center in California.

The company said the fund would cause Tenet to breach certain covenants of its bank line of credit, which is undrawn. That will cause the company to terminate its credit line before the end of the year.

[1] http://usatoday30.usatoday.com/money/industries/health/2003-08-06-tenet-settlement_x.htm.

Although putting the lawsuits to rest removes some uncertainty, the hospital operator faces bigger hurdles before its legal woes are under control, Robert M. Mains, an analyst at Advest, said.

"Some of the other stuff they are being sued for are more systemic issues," like Medicare payments and litigation in San Diego over physician relocation agreements, Mr. Mains said.

"Is Tenet over the hump? They have to get some of the others settled first," he said.

The company settled a federal investigation of the Redding center for $54 million last year. The company was essentially forced to sell the Redding operation because the government threatened to exclude the hospital from the Medicare program.[2]

Tenet Healthcare To Sell 11 Hospitals To Help Cover Cost Of Settlement

Article Date: 04 Jul 2006 - 17:00 PDT – Medical News Today

Tenet Healthcare on Thursday said it will sell 11 hospitals to raise money for a $900 million settlement with the Department of Justice announced earlier this week and to improve the hospital network's efficiency, the *Miami Herald* reports (Dorschner, *Miami Herald*, 6/30). The settlement covers a DOJ investigation into inflated outliers -- payments hospitals receive from Medicare for treating the sickest patients -- that were first questioned in October 2002. The settlement also resolves a DOJ civil suit that accused Tenet of improper Medicare coding, as well as allegations from U.S. attorneys of improper physician recruitment in El Paso, Texas; Los Angeles; Memphis, Tenn.; New Orleans; St. Louis; and San Francisco. Tenet will pay $725 million over four years and also will waive its claim on $175 million in past Medicare payments (*Kaiser Daily Health Policy Report*, 6/29). Among the hospitals for sale are four of Tenet's five New Orleans-area hospitals and three of its five Philadelphia-area hospitals (Appleby, *USA Today*, 6/30). Tenet also plans to sell three Florida hospitals (*Miami Herald*, 6/30). San Diego-based Alvarado Hospital, where Tenet previously settled charges of improper physician kickbacks, has been on the market since May (Yi, *Los Angeles Times*, 6/30). Tenet said it expects to find buyers for the hospitals despite some financial problems at the facilities (Goldstein, *Philadelphia Inquirer*, 6/30). Tenet CEO Trevor Fetter told analysts that the company will immediately pay $470 million to the government. The company then will pay a total of $275 million plus interest in 12 quarterly payments from November 2007 to August 2010. Company officials said spending for new technology at some of Tenet's remaining 57 hospitals will rise by nearly $800 million this year. The higher spending is "aimed at attracting doctors back to Tenet hospitals," which have had difficulty remaining competitive in recent years because of the company's legal problems, *USA Today* reports. A Securities and Exchange Commission inquiry into Tenet's Medicare billing practices is still unresolved.[3]

[Tenet signed a related corporate integrity agreement with the Justice Department in the fall of 2006.][4]

O.C. hospital owner to pay $85M to settle OT dispute

Tenet Healthcare will settle with workers who say they were systematically denied overtime.

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[2] http://query.nytimes.com/gst/fullpage.html?sec=health&res=9E05E4DE1030F931A15751C1A9629C8B63.
[3] http://www.medicalnewstoday.com/releases/46409.php.
[4] http://oig.hhs.gov/fraud/cia/agreements/TenetCIAFinal.pdf. See also DOJ news release at http://www.justice.gov/opa/pr/2006/June/06_civ_406.html.

By COURTNEY PERKES / The Orange County Register – August 21, 2013
Tenet Healthcare, the owner of three Orange County hospitals, has agreed to pay $85 million to settle claims that nurses and other 12-hour-shift employees were denied extra pay after a change in California law entitled them to overtime.

Statewide, roughly 23,000 current and former Tenet hospital employees qualify for cash payments. Attorneys declined to disclose amounts, but Pagaduan said he's heard the ranges are from $150 to $30,000.

The case centered on Tenet's "California differential" pay scale, according to court documents. The suit alleged that to avoid overtime costs, Tenet lowered the hourly pay rate for employees when they worked more than eight hours a day. That meant that while technically earning overtime, their net wages remained the same as before.[5]

For Hire: Lobbyists or the 99%? How Corporations Pay More for Lobbyists Than in Taxes

A report by Public Campaign, December 2011

[This report showed that for 2008-2010, Tenet realized $415 million in profits, paid a *negative* 12% tax rate (i.e., received refunds) totaling $48 million, and spent $3.4 million lobbying the federal government.

The report also documented that in 2008, Tenet paid its top five executives $20,209,305, an average of over $4 million each. Two years later, in 2010, Tenet paid its top five executives 19% more, or $24,053,996, an average of $4.8 million.[6] Note: More updated information shows continuing excessive pay. For example, CEO Trevor Fetter's total compensation was $34.1 million for the years 2010-2012. Tenet's top executives have a defined benefit pension plan, which the firm justifies as a recruitment and retention tool.][7]

Department of Justice

Office of Public Affairs -- FOR IMMEDIATE RELEASE, Tuesday, April 10, 2012
Dallas-based Tenet Healthcare Pays More Than $42 Million to Settle Allegations of Improperly Billing Medicare; Settlement Related to Company's Inpatient Rehabilitation Facilities

Tenet Healthcare Corporation has agreed to pay the United States $42.75 million to settle allegations that it violated the False Claims Act by overbilling the federal Medicare program, the Justice Department announced today.

The settlement resolves allegations pertaining to the various inpatient rehabilitation facilities (IRFs) that Dallas-based Tenet has owned and operated throughout the country. IRFs are designed for patients who need an intense rehabilitation program that requires a multidisciplinary, coordinated team approach to improve their ability to function. Because the patients treated at these facilities require

[5] http://www.ocregister.com/articles/tenet-39472-overtime-pay.html.
[6] http://publicampaign.org/sites/default/files/ReportTaxDodgerLobbyingDec6Final_rev.pdf.
[7] http://www.tenethealth.com/Investors/Documents/Proxy,%2010-K%20and%2010-Q/FINAL%20Proxy%20Statement.pdf.

more intensive rehabilitation therapy and closer medical supervision than is provided in other settings, such as acute care hospitals or skilled nursing facilities, Medicare generally pays IRFs at a higher rate for rehabilitation care than it pays for such care in other settings.

The Justice Department alleged that, between May 15, 2005, and Dec. 31, 2007, Tenet improperly billed Medicare for the treatment of patients at its IRFs when, in fact, these patient stays did not meet the standards to qualify for an IRF admission. Today's settlement is the United States' single largest recovery pertaining to inappropriate admissions to IRFs.[8]

PRESS ADVISORY – Georgia Attorney General

August 1, 2013

Attorney General Sam Olens has intervened in a whistleblower lawsuit against Health Management Associates, Inc. (HMA, Inc.); HMA Monroe, LLC; Tenet Healthcare Corporation and its subsidiaries Atlanta Medical Center, North Fulton Hospital, Sylvan Grove Hospital and Spalding Regional Medical Center; and Clinica de la Mama (Clinica) involving a massive Medicaid fraud scheme related to illegal kickbacks.

Beginning as early as 2000, the defendant hospitals entered into written contracts with Clinca for translation and other services. In reality, the true aim of the Clinica agreements was to achieve increased Medicaid patient referrals by using Clinica to recruit emergency Medicaid patients and steer them to the hospitals. The hospitals would then bill Georgia Medicaid for the associated services.

"These hospitals allegedly paid Clinica kickbacks camouflaged as interpreter service payments to funnel emergency Medicaid patients their way and increase their bottom line," said Olens.

In order to obtain Medicaid funds for the patients recruited by Clinica, the hospitals made numerous false statements testifying that they did not violate the Anti-Kickback Statute. As a result, the defendants received Medicaid funds to which they were not entitled based on the false statements.[9]

Whistleblower suit: Hospitals defrauded Medicaid (*USA Today*)

Kate Brumback, AP Business Writer 2:18 p.m. EDT August 1, 2013

ATLANTA (AP) — Two large hospital operators paid kickbacks to clinics that directed expectant mothers living in the U.S. illegally to their hospitals and filed fraudulent Medicaid claims on those patients, a federal whistleblower lawsuit unsealed late Wednesday said. Naples, Fla.-based Health Management Associates and Dallas-based Tenet Healthcare and their affiliates entered into contracts with clinics operated by Hispanic Medical Management and *Clinica de la Mama* and their affiliates, the lawsuit says. The clinics then referred pregnant women living in the country without authorization to for-profit hospitals operated by HMA and Tenet in exchange for kickbacks from fraudulent Medicaid claims, the lawsuit says.[10]

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[8] http://www.justice.gov/opa/pr/2012/April/12-civ-446.html.

[9] http://law.ga.gov/press-releases/2013-08-01/attorney-general-olens-intervenes-medicaid-fraud-lawsuit-involving-massive.

A billion dollars paid (Journal Inquirer) (Full Article reprinted below)[11]

By Don Michak Journal Inquirer | Posted: Tuesday, November 12, 2013 10:13 am

The big for-profit hospital chain from Texas negotiating to buy Eastern Connecticut Health Network has paid more than $1 billion over the last decade to settle a series of fraud, overbilling, kickback and other allegations by its biggest customer: the federal government.

Tenet Healthcare Corp. also agreed to pay more than half as much - $641 million – to settle hundreds of civil lawsuits as well as an additional $80 million to pay back taxes after an IRS audit.

The payments included $395 million to settle unnecessary surgery complaints involving 769 cardiac patients at a California hospital, $215 million to settle federal class-action lawsuits by investors, and $31 million to end lawsuits on behalf of 106 heart surgery patients at a Florida hospital.

The latter said they suffered severe post-operative infections at the hospital that Florida regulators fined $95,000 for improper infection control after 20 patients died.

The six settlements Tenet made since 2003 with the U.S. Justice Department, the Department of Health and Human Services, and the Securities and Exchange Commission pre-empted civil or criminal charges against the company and stopped its facilities from being excluded from the federal Medicare program.

On at least two of those occasions, Tenet made the agreements without admitting liability or wrongdoing.

But while the first of those deals mandated that Tenet follow a strict "compliance program," the company in a subsequent settlement signed a formal Corporate Integrity Agreement subjecting it to five years of heightened reporting requirements and increased government oversight between 2006 and 2011.

That arrangement led Tenet, now the owner of 77 hospitals in 15 states, to report that it had overbilled Medicare at inpatient facilities it owned or operated. The disclosure led to the company's most recent multimillion-dollar settlement in 2012.

Tenet last year also figured in a study by Citizens for Tax Justice, a nonprofit advocacy and lobbying group in Washington, D.C. The group reported that the company didn't pay federal income tax between 2008 and 2011, when Tenet had a negative 8.2 percent tax rate after collecting a total of $252 million in tax subsidies.

Trip Pilgrim, Tenet's senior vice president for corporate development, said today that nearly all of the settlements were made "prior to the current management team and were resolved more than seven years ago."

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[10] http://www.usatoday.com/story/money/business/2013/07/31/whistleblower-suit-hospitals-defrauded-medicaid/2607219/.

[11] http://www.journalinquirer.com/page_one/a-billion-dollars-paid/article_0a23e19a-4bad-11e3-a118-0019bb2963f4.html

"Today, Tenet is a much different company," he added. "Under our current leadership, the company has implemented strong clinical quality and compliance programs that are widely recognized in the hospital industry."

Pilgrim said Tenet has been "completely open" with the leadership of ECHN and other hospitals the company is seeking to buy in Connecticut, and that Tenet officials stand "behind our strong track record for providing quality care in communities we serve across the country."

ECHN, the nonprofit that owns Manchester Memorial and Rockville General hospitals, originally proposed its sale to Vanguard Health Systems, a Tennessee company that Tenet Healthcare purchased last month.

Morally bankrupt?

Tenet was created in 1995 by reorganizing National Medical Enterprises, a company established in Los Angeles in 1967 that over the next two decades had become embroiled in a series of costly scandals.

In 1994, for example, NME paid $380 million to settle fraud charges lodged by the federal government and 28 states. Two NME units pleaded guilty to eight criminal charges. NME agreed as well to a five-year Corporate Integrity Agreement.

The company also agreed to pay $2.5 million to settle lawsuits filed by 23 former psychiatric patients who alleged they were physically mistreated and falsely imprisoned until their insurance expired.

Stephen Klaidman, a health care expert, ethicist, and former editor and reporter at the New York Times and Washington Post, suggested in a book about a subsequent scandal at a Tenet hospital in California that NME had changed its name "in an attempt to shed its tainted reputation after the psychiatric hospital debacle."

Tenet by 2003, however, still was dealing with a bad reputation. That September U.S. Sen. Charles Grassley, the Iowa Republican who then chaired the Senate Finance Committee, wrote in a letter demanding documents from the company that "in the annals of corporate fraud, Tenet (formerly National Medical Enterprises) ... more than holds its own among the worst corporate wrongdoers."

"Tenet," the senator added, "appears to be a corporation that is ethically and morally bankrupt."

Grassley mounted an investigation of Tenet after the Justice Department in January alleged that the company had fraudulently "upcoded" inpatient claims by manipulating Medicare coding practices to enhance revenue — at the same time the company was under a Corporate Integrity Agreement.

Tenet that August agreed to pay $54 million to resolve the allegations that between 1997 and 2002 doctors at a Redding, Calif., hospital had billed Medicare for unnecessary tests and treatments. The FBI had raided the hospital, and Tenet didn't admit wrongdoing but agreed to a compliance program.

In his 2007 book about the Redding scandal, "Coronary, A True Story of Medicine Gone Awry," Klaidman suggested that Tenet "was bottom line like most corporations — the message was delivered from corporate to the hospitals." There was an "inordinate volume of cardiac procedures" at Redding, he said, "most of which would generate excessive and undeserved outlier income." He also wrote that people like the two doctors at the center of the controversy "generated very high and escalating revenues and became golden boys."

Klaidman further reported that when the FBI raided the hospital, Tenet was "facing 26 lawsuits relating to the corrupt business practices and unsanitary conditions at seven of its hospitals in various states" and that between 1994 and 2003 Tenet was "the subject of 53 federal investigations."

Tenet in September 2003 announced the resignation of CEO Jeffrey Barbakow. Trevor Fettor took over the job, and today remains in that post. Fettor called the Redding settlement a "strategic business decision" made "to put this matter behind us," the New York Times reported.

Tenet that year also had paid a $95,000 fine in Florida in connection with high infection rates at its Palm Beach Medical Center, the Sun Sentinel newspaper in Florida reported. The penalty covered the hospital's improper control of infection problems as well as its failure to notify health officials when patients with post-operative infections required more surgery.

Meanwhile, the Orange County Register in California reported that Tenet, then the largest hospital owner in that county, had two hospitals with the highest death rates and another with the highest percentage of doctors with disciplinary records. It gave five of Tenet's nine hospitals one- or two–star rankings, but none got its highest four-star ranking. The newspaper also reported that Tenet hospitals submitted the biggest bills for many of the most frequent types of medical cases.

An 'appropriate' settlement

Tenet moved its corporate headquarters to suburban Dallas in 2004.

The company that spring agreed to pay a total of $30.75 million to resolve allegations raised by a whistleblower who was a former Tenet executive. Most of that, $22.5 million, settled allegations by the Justice Department that Tenet's North Ridge Medical Center in Fort Lauderdale in the 1990s had improperly billed Medicare for millions of dollars in referrals from doctors with whom it had financial relationships. The remaining $8.2 million settled allegations that the hospital requested improper reimbursements on its cost reports between 1992 and 2000. Tenet also agreed to meet the conditions of another Corporate Integrity Agreement.

Just before Christmas in 2004, Tenet moved to resolve hundreds of civil lawsuits involving its Redding Hospital and another Florida hospital.

The company said it would establish a $395 million fund to settle lawsuits brought by the 769 Redding patients and their families, a move Fettor reportedly described as a "fair and honorable way to conclude this very sad chapter."

Tenet also said it had agreed to pay $31 million to settle 106 individual lawsuits brought against Palm Beach Medical Center between 1997 and 2002. The plaintiffs — heart surgery patients who complained that they had suffered severe post-operative bacterial infections — had alleged that the infection rate the cardiac unit spiked after Tenet bought the hospital in 1995. They agreed to maintain confidentiality and not comment on the outcome, according to the Sun Sentinel, which reported that 20 patients had died from infections.

The Department of Health and Human Services' office of the inspector general notified Tenet in May 2006 that it had proposed to exclude from the Medicare program a hospital in California owned by the company based on its alleged payment of kickbacks to physicians.

Tenet promptly agreed not only to sell its Alvarado Hospital Medical Center in San Diego but to pay $21 million in a deal with federal prosecutors in California to resolve criminal charges over the alleged kickbacks. It admitted no wrongdoing in the civil settlement.

Three weeks later, Tenet said it had agreed to pay $215 million in cash to settle federal class-action lawsuits brought on behalf of stockholders. Investors asserted the company had misled them about its Medicare claims, and some argued that Tenet had failed to disclose that the FBI had executed search warrants when agents raided the Redding hospital. Tenet said its insurance would cover about $75 million of the settlement, leaving a net cost of $140 million.

Tenet in June then made its biggest settlement with the government, agreeing to pay more than $900 million over the next four years for "alleged unlawful billing practices" in the 1990s. The Justice Department said that in exchange for a release from liability, Tenet would pay:

• More than $788 million to resolve claims that it collected excessive "outlier" payments, higher-than-usual Medicare reimbursements for expensive procedures.

• More than $47 million to resolve claims that it paid kickbacks to physicians to get Medicare patients referred to its facilities and that Tenet billed Medicare for the services ordered or referred by physicians who had a financial relationship with the company.

• More than $46 million to resolve claims that the company engaged in "upcoding," using diagnosis codes it was unable to support or were otherwise improper to get higher Medicare reimbursements.

Fettor in a statement said Tenet had "made mistakes in its conduct before 2003," and in an interview with the Bloomberg news service called the deal "an appropriate and fair settlement we can afford."

Federal regulators step in

To finance the settlement, however, Tenet sold 11 hospitals in four states, including two in New Orleans that had been flooded by Hurricane Katrina. At one of the latter, Memorial Hospital Center, a doctor and two nurses had been charged with second-degree murder of four patients during the storm but a grand jury refused to indict them.

Tenet that fall also signed a Corporate Integrity Agreement, committing to a five-year annual training and compliance contract monitored by independent organizations that would expire in 2011. Under the agreement, the government agreed to release and refrain from instituting any administrative action seeking to exclude Tenet from Medicare, Medicaid, and other federal health care programs for the "investigated conduct."

Near the end of 2006, Tenet also announced that in a settlement with the IRS, following an audit of its tax returns for 1995, 1996, and 1997. The company said would pay $80 million in unpaid taxes and interest.

Federal regulators cost Tenet considerably more money in April 2007, when Tenet agreed to pay a $10 million civil penalty to settle fraud charges against the business and its former president, CEO, general counsel, and chief compliance officer. At issue again was Tenet's use of Medicare "outlier" payments, which the Securities and Exchange Commission said the company's management had realized they could use to inflate revenue "by simply increasing the gross charges set by its hospitals."

The SEC alleged that Tenet had failed to disclose to investors that the company's "strong earnings growth from 1999 to 2002 was driven largely by its exploitation of a loophole in the Medicare reimbursement system" and that once its scheme was revealed, the market value of Tenet stock plunged by more than $11 billion.

The SEC also said that the five-year Corporate Integrity Agreement that National Medical Enterprises had signed in 1994 expired in June 1999, or "about the same time" the outlier scheme was first implemented.

Tenet didn't admit or deny the allegations but agreed to be "permanently enjoined" from violating anti-fraud, reporting, and record-keeping laws.

Ten days after the SEC imposed the $10 million penalty, Tenet announced a new director, John Ellis "Jeb" Bush, who had left his job as governor of Florida three months before. The company "created a special board seat" for the brother of then-President George W. Bush, according to the Associated Press, which reported that he would serve on Tenet board's ethics and nominating committees.

Tenet's most recent settlement came last year, when it agreed to pay the government $42.75 million to settle more Medicare fraud allegations resulting from its own disclosure of "overpayments."

The Justice Department said Medicare generally pays for care at "inpatient rehabilitation facilities" at a higher rate than for less intensive care in other settings, and that between 2005 and 2007 Tenet had improperly billed for "inappropriate admissions" to such facilities it owned or operated across the country.

Tenet said it identified the overpayments in an "internal review" in 2007, and the Justice Department said the company had reported the matter under its Corporate Integrity Agreement.

Allegations that Tenet 'plundered' Medicaid mirror previous case against Dallas hospital giant

[The *Dallas Morning News* covered the US Justice Department joining a lawsuit against Tenet (the same lawsuit described at the bottom of page 4 above) in an article on February 20, 2014. See excerpt below.]

"Schemes such as this one corrupt the health care system and take advantage of vulnerable patients," said Suart F. Delery, assistant attorney general for the Justice Department's civil division. "My office has made the investigation of health care fraud a priority," said Michael Moore, US attorney for the Middle District of Georgia. "In a time when too many people were struggling to get health care for themselves and their children, Tenet and these hospitals plundered a system set up for those truly in need."[12]

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[12] http://watchdogblog.dallasnews.com/2014/02/allegations-that-tenet-plundered-medicaid-mirror-previous-case-against-dallas-hospital-giant.html/#more-11902.

For-Profit Hospitals Provide Less Accountability (Except to Shareholders) and Less Community Benefits

For-profit hospitals spend less on uncompensated care, provide lower-quality care, charge higher prices, provide fewer unprofitable services, and are less accountable to the public than non-profit hospitals. For-profit hospitals are in business to make money, and have engaged in dubious business practices to do so.

<ins>Executive Summary</ins>

- Comparative data from several states indicates that for-profit hospitals spend less on care for the uninsured, as a ratio of their expenses, than non-profit hospitals.

- Conversion to for-profit status is associated with higher mortality (i.e., lower quality), increased profitability, and declining staffing. For-profit hospitals have lower average staffing than non-profits.

- For-profit hospitals often charge higher prices, especially to the uninsured, than non-profit hospitals.

- For-profit hospitals were more likely than non-profits to provide consistently profitable services (and possibly to provide them more than necessary), but were less likely to provide unprofitable services.

- For-profit hospitals are accountable to shareholders and management, not to the public. If hospitals convert to for-profit status, community benefit agreements, careful regulatory oversight, and state legislation may be necessary to guarantee that high-quality services are available to the community.

- For-profit hospitals have a sordid history, and have frequently paid millions of dollars to settle claims that they overbilled Medicare or provided unnecessary surgeries. Recently, the State of Georgia joined a lawsuit against one for-profit firm, Tenet Healthcare, alleging Medicaid fraud and kickbacks.

<ins>For-Profit Hospitals Provide Less Care for the Uninsured in Many States</ins>

A 2005 study by the federal Government Accountability Office (GAO) looked at five states and found differences between for-profit and non-profit hospitals as far as charity care (also called uncompensated care, i.e., care for the uninsured and the poor). The following chart, using 2003 data, shows ratios of uncompensated care costs to total patient operating expenses, by hospital ownership category:

State	Non-profit	For-profit
California	3.2	3.4
Florida	5.5	4.3
Georgia	6.9	5.4
Indiana	4.3	2.0
Texas	6.7	4.8

Thus, while non-profits and for-profits in California allocated substantially equal shares of operating expenses to uncompensated care, in Florida, Georgia, Indiana, and Texas, non-profits allocated 28%, 28%, 215%, and 40%, respectively, more of expenses toward charity care than did their for-profit peers.[1]

The Congressional Budget Office (CBO) also examined this five-state data set. The CBO assessed the effect of the observed difference between non-profits and for-profits in providing uncompensated care:

> That estimated difference corresponds to non-profit hospitals in the five selected states providing between $100 million and $700 million more in uncompensated care than would have been provided if they had been for-profits.[2]

Other data, although anecdotal, backs up this finding. In Oregon, the Lund Report headlined an April 2013 article, "For-Profit Hospitals Skimp on Charity Care." The story examined hospitals in Oregon:

> Oregon's two for-profit hospitals are among the stingiest hospitals in the state when it comes to providing care for the poor.
>
> Willamette Valley Medical Center spent less than 1 percent of patient revenue on charity care in 2011, a tenth the average of its peers, according to a Lund Report review of the state's major hospitals. And McKenzie-Willamette Medical Center, the only other major for-profit hospital in Oregon, spent 3.2 percent of patient revenue on charity care.
>
> Every other sizable hospital spent at least 5 percent of patient revenue on charity care, with spending averaging 9 percent across the state.[3]

<u>For-Profit Hospitals Provide Lower-Quality Care</u>

In a 2002 study, "Are for-profit hospital conversions harmful to patients and to Medicare?," scholars answered in the affirmative:

> We find that 1-2 years after conversion to for-profit status, *mortality of patients, which is difficult for outsiders to monitor, increases while hospital profitability rises markedly and staffing decreases*.[4] (Emphasis added.)

A 2006 Harvard Medical School study examined quality by ownership, for three common conditions. A press release on the study was titled "Not-for-profit hospitals, more nurses, and greater availability of technology services mean better care for patients." One of the study's authors observed, "Our study supports the importance of adequate nursing care to the quality of treatment patients receive."[5] The study itself concludes, "Patients are more likely to receive high-quality care in not-for-profit hospitals and in hospitals with high registered nurse staffing ratios and more investment in technology."[6]

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[1] http://www.gao.gov/new.items/d05743t.pdf.; data from Figure 3.
[2] http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/76xx/doc7695/12-06-nonprofit.pdf.
[3] http://www.thelundreport.org/resource/for_profit_hospitals_skimp_on_charity_care.
[4] http://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/2632/out.pdf (abstract).
[5] http://web.med.harvard.edu/sites/RELEASES/html/12_11Landon.htm.
[6] http://www.ncbi.nlm.nih.gov/pubmed/17159018.

A 2013 study, "Hospital Performance Differences by Ownership," cited the following findings:

> Not-for-profit church-owned hospitals save more lives, release patients from the hospital sooner, and have better overall patient satisfaction ratings.
>
> All not-for-profit hospitals combined (both church-owned and other) performed significantly better than for-profit hospitals... in HCAHPS [Hospital Consumer Assessment of Healthcare Providers and Systems] score, risk-adjusted patient safety, [and] 30-day mortality.
>
> For-profit hospitals significantly outperformed other ownership categories in core measures, expense control, and profit from operations....
>
> The for-profits, however, performed significantly worse than peers on HCAHPS.[7]

Becker's Hospital Review cited 2010 data showing that at every quartile of the staffing distribution (from highest to lowest staffing), for-profit hospitals had fewer full-time employees per adjusted occupied bed than non-profit hospitals. The differences were significant, from 12% to 17% depending on the quartile.[8]

For-Profit Hospitals Often Charge Higher Prices

A 2004 study discussed both quality and cost distinctions between for-profit and non-profit hospitals:

> It has been shown that patients cared for at private for-profit hospitals have higher risk-adjusted mortality rates than those cared for at private not-for-profit hospitals. Private for-profit hospitals result in higher payments for care than private not-for-profit hospitals.[9]

Becker's Hospital Review also commented on the high pricing, and lack of restrictions on pricing, at for-profit hospitals (which are not covered by the federal Affordable Care Act's limits on non-profit pricing):

> Rapid growth in hospital markups for uninsured patients at for-profit hospitals is driving up medical bills across the country, drawing criticism as low-income patients land bills they struggle to pay, according to an *Atlanta Journal-Constitution* report.[10]

Many researchers have criticized huge hospital markups, in both the non-profit and for-profit context, for uninsured patients. Commenting on a 2007 *Health Affairs* study, a health care law firm's blog noted, "Predictably, for-profit hospitals had a higher mark-up rate than their non-profit counterparts."[11]

Referring to the same *Health Affairs* study, the *Washington Post* observed, "The charge-to-cost (markup) ratio at for-profit hospitals was 4.10, compared to 2.49 for public hospitals." [12] The study shows markups

[7] http://www.100tophospitals.com/assets/HOSP_12678_0513_100TopHopPerfOwnershipPaper_RB_WEB.PDF.
[8] http://www.beckershospitalreview.com/lists/200-hospital-benchmarks-october-2012.html, questions 89 and 90.
[9] http://www.pnhp.org/news/care.pdf.
[10] http://www.beckershospitalreview.com/hospital-management-administration/lack-of-restrictions-on-for-profit-hospital-markups-draw-criticism.html.
[11] http://www.poppelawfirm.com/library/study-shows-unfair-billing-practice-for-uninsured-patients.cfm.
[12] http://www.washingtonpost.com/wp-dyn/content/article/2007/05/08/AR2007050800576.html.

at non-profits averaging 2.99. Thus, for-profit hospital markups were 37% higher than non-profit markups.[13] (The CBO analysis cited above also found that "non-profits charge lower prices or markups.")

For-Profit Hospitals Focus on Profitable Services at the Expense of Unprofitable Services

A 2007 study examined differences in ownership in a more granular fashion, comparing the probability that for-profit, non-profit, and government hospitals would provide a profitable service (open heart surgery) and an unprofitable service (emergency psychiatric care). The study found that for-profit hospitals were more likely to offer the profitable service, but less likely to offer the unprofitable service:

> In direct contrast to the provision of open-heart surgery, for-profits are less likely than nonprofits, which in turn are less likely than government hospitals, to offer the unprofitable service of psychiatric emergency care. Therefore, once again, corporate ownership plays a role in service offerings. On average from 1988 to 2000, 41% of for-profit hospitals were predicted to offer psychiatric emergency services, compared to 48% of nonprofit hospitals and 56% of government hospitals. Again, these are large differences. For-profits are 15 percentage points less likely than government hospitals to offer psychiatric emergency services.[14]

The advocacy group California Watch offers recent data supporting this insight about profitable services:

> A database compiled from state birthing records revealed that, all factors considered, women are at least 17 percent more likely to have a Cesarean section at a for-profit hospital than at one that operates as a non-profit. *A surgical birth can bring in twice the revenue of a vaginal delivery*.... Women, whose pregnancies were deemed to be low-risk, had a nine percent chance of giving birth by C-section at the nonprofit Kaiser Permanente Redwood City Medical Center, for example, while at the for-profit Los Angeles Community Hospital, women had a 47 percent chance of undergoing a surgical birth.[15] (Emphasis added.)

For-Profit Hospitals Are Not Accountable to the Public

Local community control would be lost, or at a minimum severely undermined, by the transition of a hospital from a non-profit to a for-profit entity. Non-profit entities typically have governing boards with community representatives. Moreover, in return for their tax-exempt status, they are expected to provide certain benefits to the community. By contrast, for-profit entities are in business to turn a profit.

This is why strong protections for the community need to be negotiated in formal agreements, provided in legislation, or guaranteed by careful government oversight in cases where non-profit entities become for-profit entities. Converting non-profit hospitals to for-profit entities without protections is a bad idea.

A chart from Health First, an integrated non-profit provider in Florida, shows major governance distinctions between the two forms of ownership, and how these distinctions may affect communities:[16]

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[13] http://content.healthaffairs.org/content/26/3/780/T1.expansion.html.
[14] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=964961.
[15] http://www.blogher.com/forprofit-hospitals-performing-more-csections.
[16] http://www.health-first.org/about_us/not_for_profit.cfm.

Not-for-profit/community-minded	Investor-owned
Assets stay in the community.	Assets belong to investors/owners.
Local board of trustees serve without pay and balance financial decisions with community concerns.	Major decisions are often made by individuals outside the community who emphasize creating profits for the stockholders.
Not for "private" profit; no private person or corporation makes any profit.	Stockholders might be physicians who practice at the hospital; community members are generally not allowed to purchase stock.
All income above expenses is used to improve the health of the community.	Profits often leave the community.
Provides a full spectrum of care — education, prevention, and treatment — that benefits all members of the community.	Provides a full range of care that benefits the community they serve; however, focus is also placed on how to best serve their investors.

For-Profit Hospitals Have a Troubled History (see separate document for source material covering Tenet)

Tenet Healthcare, a large for-profit hospital chain, is a case in point. In 2003, Tenet paid $54 million to government authorities to settle charges that doctors at a Tenet hospital in Redding, CA diagnosed and performed unnecessary cardiac surgeries. Tenet later paid $395 million to settle lawsuits by patients who had the surgeries. (In settlements, Tenet generally neither officially admits nor denies wrongdoing.)

In 2006, Tenet settled a case involving overbilling Medicare, for $900 million. In 2009, it paid $85 million to settle claims that it cheated California workers out of overtime pay. In August 2013, the Attorney General of Georgia joined a suit against the firm, alleging a "massive kickback scheme." The US Department of Justice joined this lawsuit in February 2014. In a press release, a US Attorney described the allegations as follows: "Tenet and these hospitals plundered a system set up for those truly in need."

Summary

- State-level data indicates that for-profit hospitals provide less charity care than non-profit hospitals.
- For-profit hospitals tend to have lower staffing and to provide lower-quality care than non-profits.
- Not surprisingly, for-profit hospitals perform well on financial metrics, partly by charging high prices.
- For-profits are more likely to offer profitable services, and less likely to offer unprofitable ones, than non-profits. There is strong evidence that some for-profit hospitals provide unnecessary procedures.
- For-profits owe their first duty to shareholders. The community should insist on specific protections.
- For-profit hospital firms have paid huge amounts to settle allegations about their business practices.