

**Testimony of Suzanne Haviland**  
**CT Health Care Associates – AFSCME**  
**Bipartisan Round Table on Hospitals and Health Care; Informational Hearing on Connecticut’s**  
**Hospital Conversion Process – Statues, Regulation and Precedent, October 23, 2014**

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Hello, my name is Suzanne Haviland and I am an International Union Representative for AFSCME. CT Health Care Associates (CHCA), NUHHCE, AFSCME is the union representing 550 nurses and technical employees at Waterbury Hospital and 1400 members statewide. My remarks today were part our presentation at last week's Waterbury Hospital Certificate of Need (CON) hearing by Barbara Simonetta, President of CHCA.

Also reflected in my remarks and part of our presentation today are testimonies from Sal Luciano, the President of the AFL and Executive Director of AFSCME Council 4, Francis Padilla of the Universal Health Care Foundation, Lauren Bates, Health Care Policy Analyst at AFSCME International and Blair Bertaccini, an AFSCME member and member of a local community coalition on conversions. We are submitting our collective testimonies today as an addendum for your review.

CHCA was granted intervener status in the CON hearing last week regarding the acquisition and transfer of Waterbury Hospital, a public good created by and supported for a century by the citizens of Waterbury and Connecticut, to a private for-profit entity that buys and sells hospitals - Tenet. We intervened because based on the evidence and our experience, we strongly believe that there needs to be significant protections in place for the community, patients and hospital employees before any sale. The transfer of this public asset should only occur after thoughtful consideration determines that it is in the best interests of those citizens, not the shareholders of Tenet and its extremely well-compensated corporate leadership.

From the vantage point of our workers, there are serious questions regarding how this takeover will impact quality care, and costs to patients, taxpayers, and those who pay insurance premiums.

As many on this committee are well aware, CHCA, AFCME Council 4 and our other labor and community partners were strongly supportive of legislation in the past session that would strengthen the CON process and put public protections in the event of a conversion. The legislature passed several bills that we view as good initial steps towards this goal, and we look forward to working with you on companion legislation in the coming year. But right now, as the Attorney General and OHCA are faced with whether or not to approve Tenet’s presence in Connecticut, we are strongly suggesting that the regulators take immediate steps in their purview to protect the public where there are gaps in our laws, just as the Attorney General did during the purchase of Sharon Hospital. I will outline those protections shortly.

First, I would like to focus on the reasons we feel so strongly about these protections, including Tenet’s fitness to acquire Waterbury Hospital, the effects of private ownership of hospitals on care and access, the purchase of doctor practices, the total scope of proposed acquisitions that may lead to market dominance by Tenet and the effects on workers and possible solutions.

## **Tenet's fitness to acquire Waterbury Hospital**

Over the years Tenet has grown to be one of the largest owners of hospitals in the nation. But this growth has come with a price to taxpayers and patients. Over the last 12 years Tenet has:

- Paid nearly \$1 billion in fines for Medicare fraud
- Paid \$25 million for patients harmed or killed in their hospital during Katrina
- Been sued for Medicaid kickbacks

These are not just large fines, they are unprecedented, massive, game-changing fines. Tenet claims that this is old news, that it has changed, that there is a new leadership. While institutions can change, it is important to implement strong safeguards to prevent bad problems from re-appearing.

## **Effects of Private Ownership on Care and Access**

There are many studies that we have compiled in a white paper released by AFSCME that point to the many problems that have been identified with for-profit care. Some of these findings were reflected in a recent report by Senator Chris Murphy on the effects of a for-profit entity acquiring not-for-profit hospitals and establishing market share. The study demonstrated that Medicare billing goes up and services shift to more profitable product lines and away from less lucrative (but still essential) services. Key findings include:

- For-profit hospitals are more likely to offer financially profitable services.
- If Connecticut's per-enrollee spending was the same as for-profit spending, Medicare would have spent \$173 million more in that same year for Connecticut beneficiaries.
- Non-profit hospital behavior changes when for-profits are in the same market. Research has found that the more for-profit hospitals there are in a city, the more non-profit hospitals in that area: (1) respond aggressively to revenue-increasing opportunities, (2) adopt profitable services, (3) discourage admissions of unprofitable patients, and (4) reduce resources devoted to treating the patients they do admit.
- Tenet trumpets its ability through bulk purchasing to save money. It can buy goods at substantially cheaper rates than a standalone hospital can. This appears to be true, but Sen. Murphy's findings raise the question - where does that extra money go?

Access is directly related to costs: when costs rise, access is diminished.

Another troubling development is that Tenet is proposing to outsource its doctors in California. According to a Modesto Bee article, dated June 12, 2014:

I am sure some accountant in Dallas told the company they could save a lot of money if they do this," said Dr. Robert Barandica, chief of the medical staff and emergency department at Doctors of Modesto. "On paper, it may sound like a good idea, but they are not realizing what the impact is on the local level.

Tenet floated similar schemes in other California hospitals, but physician and patient outcries caused them to discard this plan. But Doctor Barandica's remarks bear repeating - a Dallas accountant, who has no idea of the impact on care, probably *did* think it was a good idea to save money (and reap additional profits). It raises the question: will similar profit-centered decisions be made here in Waterbury even at the detriment to patient care?

### **Purchase of Doctors' Practices**

Tenet's partner in the takeover bid, Yale-New Haven (YNH), has been buying up individual doctor practices in the New Haven area. This has caused billings to increase. The same procedures performed in the same office by the same personnel can be billed at a much higher rate because it is now deemed to be a hospital facility instead of a doctor's office.

AFSCME Council 4's Sal Luciano, Executive Director of AFSCME Council 4, President of the CT AFL-CIO and a member of the state's Health Care Cost Containment Committee, also testified at the CON hearing. He stated that due to the implementation of the recent HEP plan for state employees, the number of procedures are decreasing, yet total costs for services are going up. Sal Luciano and other committee members have considered that this may be due to increased utilization of hospital facility fees. As a result, the law this legislature passed this year will require the State Comptroller to study and issue recommendations on this issue to control state employee costs – including the outright prohibition of such fees.

### **Total Scope of Tenet's Activities**

The CON process that OHCA and the Attorney General are pursuing includes holding separate hearings for each purchase. While this process may be technically correct, we have serious concerns about the piecemeal consideration of Tenet's purchases of Waterbury Hospital, St Mary's, Bristol and ECHN, coupled with its alliance with Yale New Haven's system. This may result in establishing Tenet's market dominance in the state in a short period of time -- with scant thought given to what will happen when we allow such a development. As studies have shown, for-profits raise costs, and when costs rise, access is diminished. And the acquisitions are likely to continue.

Several developments in other states offer some guidance on what the future may hold for Connecticut if Tenet is allowed such market dominance. In Idaho, for example, the Federal Trade Commission is investigating whether purchases similar to Tenet's will create a monopoly. Connecticut's Attorney General has joined in those proceedings. According to Edith Ramirez, the Chairwoman of the Federal Trade Commission: "The combination of St. Luke's and Saltzer would have given the merged hospital system the market power to demand higher rates for health care services, ultimately leading to higher costs for both employers and consumers." CHCA believes it is crucially important for Attorney General George Jepsen to continue to fight for Connecticut health care consumers, as he has in Idaho, to ensure that our antitrust laws are not being trampled in the name of "corporate investment" in Connecticut.

In Massachusetts, a settlement is being floated between the AG and Partners Health Care that will cap the amount of rate increases that can occur after more hospitals are acquired. The issue of monopoly power and antitrust violations is an issue the Federal Trade Commission (FTC) also has responsibility

for, along with the states Attorneys General. A Forbes article from August 2011 discusses the FTC concerns around a Toledo merger:

The Toledo hospital executives are offering bromides about how consolidation will lead to “more efficient and cost-effective care.” But the long history of hospital mergers shows no evidence that consolidation leads to either. Indeed, according to FTC lawyer [Matthew J. Reilly](#), the merged Toledo hospitals immediately went to work jacking up rates... Soon after the acquisition was consummated,” Mr. Reilly said, “ProMedica approached certain health plans to obtain higher reimbursement rates.” The higher rates, he said, are typically passed on to consumers in the form of higher premiums, co-payments and other costs.”

Similar “bromides” are the basis for Tenet’s proposal to purchase hospitals in Connecticut.

Like Tenet, Partners is trying to stifle discussion on the impacts of its acquisition on costs. From a Boston Globe article on Oct 5, 2014:

Saying she needs more time to weigh the consequences, [Judge Sanders] expressed serious concerns about the impact of the settlement on the state’s overall health care system and the ultimate cost to consumers. “This is the wrong venue for that,” Bruce D. Sokler, one of Partners’ lawyers, told the judge. “Your job is not to fix the health care policy system in Massachusetts.” To his suggestion that she is overstepping her bounds, [Sanders replied](#), “I don’t think that market impact can be ignored.”

Judge Sanders is correct - market impact of mergers should not be ignored. Similar considerations should be taken here in Connecticut.

At the hearing concerning St Mary's acquisition, Tenet declined to put details of its alliance with Yale New Haven on the public record, citing trade secrets. But in a public filing for CHEFA dated June 23<sup>rd</sup>, 2014, Yale described the details of the partnership, how the joint venture would be owned 80% by Tenet, 20% by YNH, how YNH must receive permission from Tenet if it wishes to acquire more hospitals, and how the geographic area of their joint venture is not limited to Waterbury Hospital, or the I-84 corridor -- but all of Southern New England. Tenet is clearly looking to establish not just statewide but regional market dominance.

### **Effects on CHCA members**

As the representative for collective bargaining for nurses and technical employees at Waterbury Hospital, we have already seen the effects of Tenet’s involvement at Waterbury Hospital. Having Tenet in the back room during our contract renewal threw us into a year and a half of intensely difficult negotiations. It has cost us our pension. We testified in detail before the Public Health and Labor Committees on this process earlier this year.

More ominously, though, is the potential long-term effects of for-profits’ entry into Connecticut’s market on quality staffing and retention of qualified nurses and technical staff. Waterbury Hospital’s greatest asset is its qualified, long-term personnel. Most of our bedside nurses have been part of the Waterbury Hospital care team for a decade and much longer. We fear that there will be increased pressure on us to pay more for our health care, reduce wages or consolidate jobs in order to ensure Tenet’s profits, especially if prices increase as has been a factor in other states. Also, if major staffing

or other changes occur at Waterbury Hospitals that put shareholder interests above patients' needs, it is likely that experienced staff will leave.

### **Proposed Solutions**

If the State deems that it is appropriate for for-profit entities to greatly expand in Connecticut, CHCA recommends as a precondition to any approval that strong, enforceable, and clear conditions for Tenet or any other for-profit to abide by are established. These community benefits should include protections the AG and OHCA requires immediately, including that you:

1. Require, as a floor, similar protections to those required by the AG and OHCA in the Sharon Hospital/Essent purchase. Key items based on Sharon deal (several of which go farther than that deal) include:

- Creation of a completely independent community advisory board chosen by OHCA with oversight responsibilities.
- Appointment of an independent monitor through OHCA for at least 5 years, funded by the purchaser.
- Require staffing cuts or changes in at least the next 5 years to be subject to OHCA review.
- No reduction in transparency or information required of non-profit hospitals, Creation of a self-funded board by the hospital to ensure compliance and perform audits.
- Maintenance of a charitable foundation from the charitable assets that is of an appropriate and considerable size. The new Foundation should have right of first refusal to buy the hospital if Tenet leaves.

2. Ban or strictly limit hospital facility fees, at minimum for public employees and public programs funded by taxpayers.

3. Protect against price inflation and monopoly power, such as establishing a cap on price increases.

4. Require a "community benefits agreement" between community and purchasers that would further protect the community, patients and hospital employees around shared issues of concern in specific communities and workplaces.

### **Conclusion**

Thank you for this opportunity to participate in this important hearing. It is our hope that you will support the Attorney General and OHCA to inject strong controls over this process and mitigate the damage for our members, patients, consumers and taxpayers.