



MergerWatch Project

Protecting Patients' Rights
When Hospitals Merge

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Public Comment on the proposed 2018 Executive Budget, Section L, Article 29-H, creation of the Health Care Regulation Modernization Team

MergerWatch would like to thank the chairs and members of the Assembly Ways and Means Committee and the Senate Finance Committee for the opportunity to submit testimony on the 2016-2017 New York State Executive Budget proposal.

Organizational Background and Qualifications to Provide Comments

MergerWatch is a non-profit health policy and advocacy organization focused on improving health coverage, access, quality and affordability for diverse women, LGBTQ people and our families. For 20 years, we have provided technical assistance to people in communities facing the potential loss of access to vital health care services due to proposed hospital mergers. In 2016, we published a nationwide study of state Certificate of Need (CON) laws, which concluded that CON oversight needs to be updated for the current era of hospital consolidation and creation of integrated delivery systems. We gave New York's CON laws an overall grade of B, but noted several aspects that were especially weak or outdated, compared to CON processes in other states. You can find our report on that study at www.WhenHospitalsMerge.org

With support from the New York State Health Foundation, MergerWatch is currently conducting a more intensive study of New York's CON oversight of hospital mergers, consolidations and closures. We will be producing a set of recommendations to increase the transparency of the CON process, improve engagement of consumers who would be affected by a proposed transaction and better protect community access to timely, affordable health care. One of the areas we are examining is how New York's regulatory oversight of health industry transactions could be better grounded in up-to-date community health needs assessments and more integrated with state health planning and reform processes that presently are taking place in separate arenas of action.

Comments on Structure and Powers of Proposed Health Care Regulation Modernization Team

The Governor's Executive Budget proposes the creation of a Health Care Regulation Modernization Team that would provide guidance to the Governor on *"a fundamental restructuring of the statutes, policies and regulation that govern the licensure and oversight of health care facilities and home care to better align with recent and ongoing changes in the health care delivery system."*

We welcome the impetus to better align state oversight of health care facilities with ongoing changes in New York's health care delivery system. We especially appreciate the provision in section 5(k) that the Modernization Team's recommendations address matters such as *"increasing the opportunities for public*

notification, consumer education and community engagement prior to major community health system changes.”

In recent years, major hospitals have created large regional systems and taken over active management of many of the remaining independent hospitals across New York State, as well as physician practices and outpatient services. Requests for Certificate of Need approval of such hospital transactions come to the Public Health and Health Planning Council without any public hearings in the communities that would be affected. Moreover, CON decisions are made without any formal community health needs assessments, such as those once performed by the Health Systems Agencies (HSAs), and without any metrics to determine the potential impact of a transaction on patients’ access to timely, affordable health care. Some proposed hospital changes – such as closing of hospital units or entire hospitals – do not even receive full CON review by the PHHPC and are instead handled through notifications to the NYS Department of Health. Moreover, there is no provision for post-CON review of the impact of a transaction or enforcement of any contingencies that are attached to a hospital CON approval.

In order to ensure that reform of state health industry regulation and oversight is truly transparent, consumer-friendly and protective of community health needs, we suggest changes to the following aspects of the proposed structure and powers of the Modernization Team:

1. Ensure adequate consumer representation among voting members of the Modernization Team.

The proposed Modernization Team includes 25 voting members, yet not a single seat is specifically designated for a health care consumer or a representative of a consumer health advocacy organization. In order to develop recommendations that meaningfully address the needs of health care consumers, they must be represented at the decision-making table to provide insight and expertise that other stakeholders will not have. We recommend that at least five of the 25 voting members of the team be representatives of diverse constituencies of health consumers, including people with disabilities and chronic diseases, women, immigrants, members of the LGBTQ people and people from different regions of the state, with both urban and rural perspectives. No subcommittee or working group of the Modernization Team should be formed without a consumer representative.

2. Ensure transparency of the Team’s deliberations and meaningful engagement of health care consumers around the state.

All meetings of the Team should be open to the public and live-streamed to maximize transparency and encourage consumer involvement. The Team should not just “attempt to” but should be required to engage and solicit the input of a broad and diverse range of groups, organizations and individuals in developing their recommendations, as outlined in Section 3(g) of Article 29-H of the proposed budget. These groups, organizations and individuals should include health care consumers and advocacy groups from all regions of the state and from rural, as well as urban, communities. The Team should engage with groups that represent the concerns of immigrants, women, LGBT individuals, the disabled, Medicaid recipients and other health care consumer constituencies.

3. Require Legislative approval for any proposals to waive existing laws or regulations.

MergerWatch is concerned that the Governor’s proposal (section 5(i)) includes a recommendation to consider potentially waiving health facility regulations for activity in areas of the state that are isolated or otherwise underserved. Many existing laws and regulations are in place precisely to protect health care consumers and ensure adequate access to services. Applying these laws and regulations differently in different parts of the state or to different populations cannot achieve equality in health care access. It is crucial that laws and regulations that can affect access to services

be applied equally throughout the state to ensure that communities with significant barriers to health care have the same access afforded to more affluent communities.

Of even great concern to us is section 5(m), which would appear to give the Modernization Team the power to authorize state agency commissioners to *“implement time-limited demonstration programs to test and evaluate new and innovative procedures and processes for organizing, financing and delivering health care services that are not permissible under current statute or regulation.”* The proposal for *“prior public notice and a thirty day period of comment”* is inadequate to ensure that the potential consequences of a demonstration program for consumers are thoroughly explored.

MergerWatch recommends altering the Governor’s proposal by limiting the Modernization Team’s role to developing recommendations for areas where waiver opportunities might be the most useful in encouraging innovation in health care policies and procedures. These recommendations can then be applied to relevant statutes after going through the legislative process. The legislative process offers an important level of accountability to the public and can ensure that any waiver to existing law is not implemented at the expense of accessible, quality health care for communities with significant barriers to accessing care.

Thank you for your consideration of our recommendations and concerns. Please do not hesitate to contact us with any questions.

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