

2021 – 2022 Legislative Memorandum

**Subject: Hospital Transparency
A.6334 (Rozić) / S.5400 (Hinchey)**

Position: SUPPORT

Since 2003, more than 40 community hospitals in New York state have closed.¹ As a result, large health care systems now control more than 70 percent of inpatient acute care hospital beds in the state, and hospital takeovers in New York state continue.²

Unfortunately, large hospital systems sometimes remove categories of care from local hospitals, leaving patients in regions of the state without access to types of care, including some types of emergency care.³ Worse still, patients often do not have the ability to determine whether the hospital, or hospitals, in their area provides the care they seek, because information about hospitals' restrictions is too difficult to obtain. Moreover, denials of care can lead to serious adverse health impacts that jeopardize individuals' lives and wellbeing, and in some cases, denials of care violate state and federal law.⁴

A.6334 (Rozić) / S.5400 (Hinchey) will give New York the tools to identify regions in the state where particular types of care are unavailable and to understand the impacts of such gaps on communities and individuals statewide. Moreover, it will offer prospective patients the tools they need to determine whether the hospital, or hospitals, in their area provides the care they seek prior to admission.

The NYCLU strongly supports the bill and urges its expedient passage.

Hospitals' policy-based exclusions of care – that is, denials of care not based on sound medical science or hospital capacity, but based instead on the bureaucratic decision-making of non-medical personnel – have real world impacts. For example, the ACLUs of Northern and Southern California represent Evan Minton, whose hysterectomy at

¹ David Robinson, *Dozens of NY's hospitals closed. Then COVID-19 hit. Now marginalized patients are dying. Here's why*, LOHUD, Apr 10, 2020, <https://www.lohud.com/story/news/coronavirus/2020/04/10/why-ny-hospital-closures-cutbacks-made-covid-19-pandemic-worse/5123619002/>.

² LOIS UTTLEY, ET. AL, EMPOWERING NEW YORK CONSUMERS IN AN ERA OF HOSPITAL CONSOLIDATION 4 (MergerWatch, 2018).

³ *Id.*

⁴ *E.g.* N.Y. Exec. Law § 296 (McKinney); 42 U.S.C. § 1395dd.

Dignity Health was canceled two days before the procedure when the hospital learned that he is transgender. Dignity Health regularly performs hysterectomies for patients who are not transgender.⁵ The ACLU of Michigan represented Tamesha Means, who sought care at Mercy Health Partners when her water broke at 18 weeks of pregnancy. The hospital sent her home twice even though she was in excruciating pain, there was almost no chance her pregnancy would survive, and continuing the pregnancy posed significant health risks. The hospital did not tell Ms. Means that ending her pregnancy was an option – or that it was the safest option in her situation. In fact, Ms. Means returned to the hospital a third time with an infection and in extreme distress, and the hospital was poised to send her home again when she began to deliver; only then did the hospital treat her miscarriage.⁶

We have heard anecdotal evidence of similar denials of care in New York. For example, according to conversations with providers, a hospital in upstate New York has a policy against treating miscarriages so long as there is a fetal heartbeat; patients who miscarry have languished without care, sometimes becoming septic, unless or until the provider on call transfers them to a hospital that does not have this policy-based exclusion.

In addition, because hospitals' policy-based exclusions are often shrouded in secrecy, communities facing hospital mergers have great difficulty learning which health care services may be lost in a transaction. This makes it hard for community members, like those facing a proposed merger between Ellis Medicine and St. Peter's Health Partners in Schenectady, to organize to preserve – or obtain – local access to needed health care.

A.6334/S.5400 will require the Department of Health to collect a list of policy-based exclusions from each general hospital and to publish that information, in a standardized and readily understandable form, on its website. It will seek to ensure that the information reaches patients' hands by adding information about policy-based exclusions and the Department's website to the existing disclosures regarding patients' rights and responsibilities required of both hospitals and insurers. In addition, the bill requires the Department of Health to report publicly and to the New York State Legislature about the impact of policy-based exclusions on patients' ability to access quality, comprehensive, affordable care near their residences and whether and how access to care varies by community, as well as by race, ethnicity, and socioeconomic status.

No one should be turned away from a hospital when they need health care.

A.6334/S.5400 will help ensure that people are aware of whether they can obtain care – particularly types of care that are often time-sensitive and stigmatized, like gender affirming care, miscarriage management, abortion, treatment of ectopic pregnancies, and end of life care – at their local hospital before they are in an emergency situation, and it will lay the groundwork to eliminate care deserts in the state.

Because access to this information is crucial and can often be lifesaving, the NYCLU urges the legislature to expeditiously pass A.6334/S.5400.

⁵ *Minton v. Dignity Health*, ACLU, Sept. 28, 2021, <https://www.aclu.org/cases/minton-v-dignity-health>.

⁶ *Tamesha Means v. United States Conference of Catholic Bishops*, ACLU, June 30, 2015, <https://www.aclu.org/cases/tamesha-means-v-united-states-conference-catholic-bishops>.