H.71: An act relating to health care entity transaction oversight and clinical decision making

Presented by

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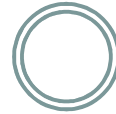
March 26, 2025

Why Do We Need This Bill?



- **VT's health care system is dealing with multiple crises of affordability, access, insolvency, and bankruptcy**

- **A crisis for one can be an opportunity for another: VT is acutely vulnerable to private equity interest**

- **Part of our collective response to these issues must also include protecting our system from future threats**

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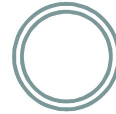

- **Corporatization + privatization of health care is increasing**
- **Federal regulatory power and oversight is decreasing**
- **Vermont lacks a sufficient, clear, and unified regulatory structure to protect our health care system from corporate exploitation**
- **Vermont's current statutes for regulating private equity in health care are weaker than Massachusetts regulations were *before* the Steward health care disaster**

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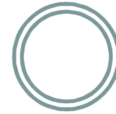
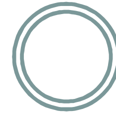
Why Is Current VT Law Insufficient?



Common PE Tactic	Currently Legal in VT?	If H.71 Passed
Finance the acquisition of a health care entity using debt that will become an obligation of the health care entity	Yes	No
Give dividends, stock-buybacks and/or management fees to executives financed by debt that will become an obligation of the health care entity	Yes	No
Eliminate essential service lines and/or cut staff, supplies and programs to make profit	Yes	No

Summary: What Does the H.71 Do?



- **Establishes regulatory process for private equity transactions**
  - Gives the Green Mountain Care Board authority to **review, modify, or deny private equity** transactions based on clearly defined criteria designed to **protect quality, affordability, and access and provider autonomy**
  - Requires PE firm to provide all plans to make profit (i.e. exit strategy) in plain language
- **Establishes Attorney General enforcement authority**
  - Provides AG with explicit powers to investigate and enforce potential violations with no limit fines (if necessary) with no sunset of review period
- **Bans corporate practice of medicine**
  - Prohibits corporations from controlling provider decision-making

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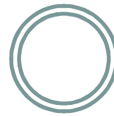
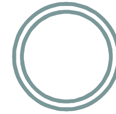
Call to Action for Next Session





Appendix

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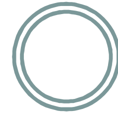
Known Concerns and Criticisms about H.71



- Current state regulations are sufficient
- PE firms cannot make money here, so we are not at risk
- Regulation would be too burdensome to providers
- GMCB & AG lacks resources to do the work
- Bill does not go far enough: just ban private equity

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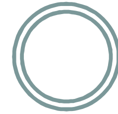
Areas of Improvement for H.71



- Clarify language related to regulatory review process to make clear burden of proof is on the PE firm rather than the provider
- Expand exemptions to GMCB review and approval of PE transactions, such as retirements and/or transfer to another provider network so long as PE is not involved
- Add additional providers to be covered in corporate practice of medicine section (nurses, social workers, etc.) and strengthen patient responsibility requirements

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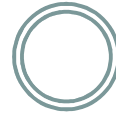
Doesn't CON Cover This?



- GMCB CON is designed as a process primarily to review, modify, approve, or deny new projects, it does not address material change transactions
- GMCB CON review <u>does not apply</u> to nursing homes, which are governed by a separate state review process led by AHS that uses different criteria
- GMCB CON conditions expire after final implementation reports are submitted.
- Current VT law does not explicitly prevent a hospital that currently offers home health services from injecting private equity financing into these existing services and significantly altering or reducing those services. Such changes would not require a CON review.

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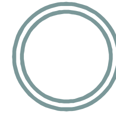
Don’t hospital regulation statutes cover this?



- **Current statute does not permit any regulating entity to modify the application – only approve or deny.**
- **The max fine for any violations of approval is $1 million – a rounding error for PE firms that is pennies compared to how much they can extract from the system.**
- **Current statute has minimal requirements of PE firms to disclose the true nature of their business plans.**
- **No common extractive activities of PE firms – which are widely considered to be detrimental to health outcomes and the financial health of providers - are defined or prohibited in current VT law.**
- **Many of the types of financial transactions used by PE firms to exert control and/or extract profit from hospitals are actually *explicitly exempt* from review under this statute**
  - “If the conversion involves a hospital system, and one or more of the hospitals in the system desire to convert charitable assets, the Attorney General, in consultation with the Board, **shall determine whether an application shall be required from the hospital system.**”

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