

# Congress of the United States

Washington, DC 20515

June 5, 2024

Department of Health and Human Services  
200 Independence Avenue, SW  
Washington DC 20201

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

***Re: Docket No. ATR 102, Request for Information on Consolidation in Health Care Markets***

Dear Secretary Becerra, Assistant Attorney General Kanter, and Chair Khan:

We commend your agencies for launching this request for public comment on deals conducted by health systems, private payers, private equity funds, and other alternative asset managers that involve health care providers, facilities, or ancillary products or services. Private equity has long been involved in health services, but their prevalence has increased dramatically in recent years.<sup>1</sup> We are therefore concerned by the growing body of evidence demonstrating that private equity's increased role in health care is leading to higher prices, poorer care, worse conditions for workers.

The Rise of Private Equity

Although private equity in health is not new, private equity investments in health care have risen dramatically over the past decade. Estimated annual deals across the health care sector have increased from \$41.5 billion in 2010 to \$119.9 billion in nine years later.<sup>2</sup> This is in part because private equity firms view medical practices as especially complementary to their short-term, profit-driven model. Private equity acquisitions of physician practices rose six-fold over a decade, from 2012 to 2021.<sup>3</sup> Individual private equity firms are acquiring competitively significant shares of physician practice markets across the country. According to one study, in 28 percent of metropolitan statistical areas in the U.S., a single private equity firm has more than a 30 percent market share of full-time equivalent physicians, and in 13 percent of metropolitan areas, a single private equity firm owns more than half of the physician market for certain specialties.<sup>4</sup>

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<sup>1</sup> Appelbaum E, Batt R. A primer on private equity at work: management, employment, and sustainability. *Challenge*. 2012;55(5): 5 – 38.

<sup>2</sup> *Id.*

<sup>3</sup> Richard M. Scheffler, et al., *Monetizing Medicine: Private Equity and Competition in Physician Practice Markets*, AMER. ANTITRUST INST. (July 10, 2023), [https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG\\_Private-Equity-I-Physician-Practice-Report\\_FINAL.pdf](https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf).

<sup>4</sup> *Id.*

## Associated Harms

Many private equity business models are focused on short term profit extraction, rather than investment.<sup>5</sup> When firms use a short-term, profit-driven business model in healthcare, there can be severe consequences for patients and workers. The need for most private equity firms to reap high returns on investment on a short time basis is in “direct conflict with the goal of lower health care costs for all Americans and greater investments in quality and safety.”<sup>6</sup>

### *Increased prices for consumers*

Private equity’s growing investment in the health care and service market is associated with price increases for consumers. Through revenue-boosting tactics, like cutting staff and supplies, pressuring providers to bill for unnecessary services, and up-coding claims, hospitals owned by private equity firms bring in nearly 30 percent more income than hospitals owned by other entities.<sup>7</sup> Another study found a \$407 average increase in total charge per inpatient day for those hospitals acquired by private equity.<sup>8</sup> A report by the American Antitrust Institute found statistically significant increases in both price and per-patient expenditures up to 16 percent for a majority of specialties that were acquired by private equity.<sup>9</sup>

Price increases associated with private equity acquisitions are “exceptionally high” where a private equity firm controls “a competitively significant share of the local market.”<sup>10</sup> In markets where a single private equity firm controls more than 30 percent of a market, there are “further elevated prices associated with [private equity] acquisitions in each of the three specialties with statistically significant results, for gastroenterology (18%), obstetrics and gynecology (16%), and dermatology (13%).”<sup>11</sup> Increased prices after private equity’s acquisition of nursing homes have also been documented. A 2021 National Bureau of Economic Research study found that Medicare spending at these homes was 11 percent higher than average.<sup>12</sup> Adding insult to injury, these increased prices resulted not in better quality care, but instead increased mortality of up to 10 percent higher than average.<sup>13</sup>

### *Poorer quality of care*

Private equity firms’ investments in health care providers can result in poorer quality of care. One study found a 25 percent increase in hospital-acquired complications for Medicare patients

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<sup>5</sup> Brandan Ballou, *PLUNDER: PRIVATE EQUITY’S PLAN TO PILLAGE AMERICA*, (1st ed. 2023) p. 3.

<sup>6</sup> *Private Equity Issue Brief*, AHIP (Sept. 15, 2022), <https://www.ahip.org/resources/ahip-private-equity-issue-brief>.

<sup>7</sup> *Private Equity Issue Brief*, *supra* note 3.

<sup>8</sup> Bruch JD, Gondi S, Song Z. *Changes in Hospital Income, Use, and Quality Associated With Private Equity Acquisition*, *JAMA INTERNAL MED.* (2020);180(11):1428–1435, <https://doi.org/10.1001/jamainternmed.2020.3552>.

<sup>9</sup> *Monetizing Medicine*, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Atul Gupta, et al., *Owners Incentives and Performance in Healthcare: Private Equity Investment in Nursing Homes*, *NAT’L BUREAU OF ECON. RES.* (2021), <http://www.nber.org/papers/w28474>.

<sup>13</sup> *Id.*

following private equity acquisition.<sup>14</sup> These complications included a 27 percent increase in falls, a 38 percent increase in bloodstream infections, and double the number of surgical site infections.<sup>15</sup> These harms extend to other health care centers like private-equity owned nursing homes, where studies have documented higher mortality rates and lower quality of care.<sup>16</sup> IN addition, these poor health outcomes can further exacerbate health disparities. A 2020 study of New Jersey nursing home facilities found that private equity ownership was associated with substantially larger racial disparities in COVID-19 fatalities for both staff and residents.<sup>17</sup>

### *Worse conditions for workers*

We are also concerned that private equity's increased role in health care is leading to suppressed wages, decreased mobility, and unsafe working conditions for health care workers. There is less available evidence for all health care service sites, but the harm is well documented in the nursing home context. Private equity ownership in nursing homes has been associated with a reduction in nursing levels or skill mix to reduce labor costs.<sup>18</sup> One study found that staff at private equity-owned nursing homes experienced greater personal protective equipment (PPE) shortages during the COVID-19 pandemic.<sup>19</sup>

Although we lack sufficient transparency for how workers have been affected by private equity ownership of health care providers, there is evidence that consolidation in the market generally has negative impacts on worker wages. Following horizontal hospital mergers, wages for nurses and skilled workers often stagnate, with wage growth 1.7 percent below the national average.<sup>20</sup>

### Conclusion

We applaud the launch of this inquiry into consolidation in health care markets and look forward to the final report. However, we urge your agencies to find ways of increasing transparency, enforcing existing merger guidelines, and enforcing our antitrust laws in the near term to ensure our constituents, consumers and workers alike, are protected.

We encourage your agencies to explore ways to immediately provide consumers, health providers, state and local agencies, and the public more information about the funding and

<sup>14</sup> Senha Kannan, et al., *Changes in Hospital Adverse Events and Patient Outcomes Associated with Private Equity Acquisition*, JAMA (2023), 2365-2375, <https://doi.org/10.1001/jama.2023.23147>.

<sup>15</sup> *Id.*

<sup>16</sup> Melea Atkins, *The Impact of Private Equity on Nursing Home Care: Recommendations for Policymakers*, ROOSEVELT INST. (Apr. 2021), [https://rooseveltinstitute.org/wp-content/uploads/2021/04/RI\\_NursingHomesandPE\\_IssueBrief\\_202104.pdf](https://rooseveltinstitute.org/wp-content/uploads/2021/04/RI_NursingHomesandPE_IssueBrief_202104.pdf).

<sup>17</sup> *The Deadly Combination of Private Equity and Nursing Homes During a Pandemic*, AMERICANS FOR FINANCIAL REFORM (2020), <https://ourfinancialsecurity.org/wp-content/uploads/2020/08/AFREF-NJ-Private-Equity-Nursing-Homes-Covid.pdf>.

<sup>18</sup> Borsa A, et al., *Evaluating trends in private equity ownership and impacts on health outcomes, costs, and quality: systematic review*, BMJ (2023), <https://doi.org/10.1136/bmj-2023-075244>.

<sup>19</sup> Braun RT, et al., *Comparative Performance of Private Equity-Owned US Nursing Homes During the COVID-19 Pandemic*, JAMA (Oct. 1, 2020), <https://doi.org/10.1001/jamanetworkopen.2020.26702>.

<sup>20</sup> Darbin Wofford, *Hospital Consolidation Suppresses Workers' Wages*, THIRD WAY (Sept. 5, 2023), <https://www.jstor.org/stable/resrep53054>.

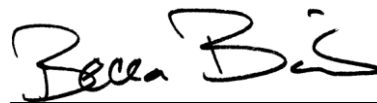
ownership structures of health care service centers. We believe increased transparency of ownership will provide greater insight into health care provider consolidation and the impact it has on health care costs, quality of care, and worker conditions.

We also commend the Department of Justice and the Federal Trade Commission for proposing changes to the premerger filings under the Hart-Scott-Rodino Act to require more information from private equity buyers in its Notice of Proposed Rulemaking<sup>21</sup> and for including roll-up acquisitions strategies by private equity in its finalized Merger Guidelines<sup>22</sup> to ensure these acquisitions will receive proper oversight. Finally, we encourage the Federal Trade Commission and Department of Justice to continue to robustly enforce our antitrust laws to protect health care competition<sup>23</sup> even while conducting this investigation.

Sincerely,



Peter Welch  
United States Senator



Becca Balint  
Member of Congress



Summer L. Lee  
Member of Congress



Mary Gay Scanlon  
Member of Congress

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<sup>21</sup> *FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review*, FED. TRADE COMM’N (June 27, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

<sup>22</sup> *Merger Guidelines*, U.S. DEP’T OF JUSTICE & THE FED. TRADE COMM’N (Dec. 18, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf).

<sup>23</sup> *See, e.g., FTC Challenges Private Equity Firm’s Scheme to Suppress Competition in Anesthesiology Practices Across Texas*, FED. TRADE COMM’N (Sept. 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across>.



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Pramila Jayapal  
Member of Congress



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Chris Deluzio  
Member of Congress



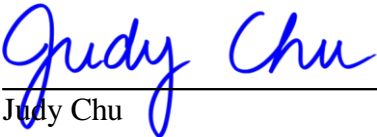
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Jerrold Nadler  
Member of Congress



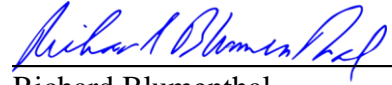
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United States Senator



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Member of Congress



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United States Senator



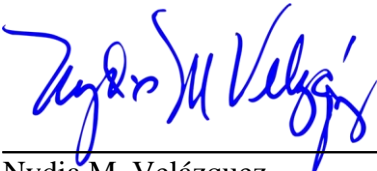
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Henry C. "Hank" Johnson, Jr.  
Member of Congress



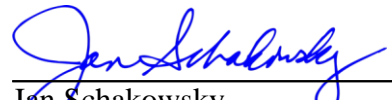
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Alexandria Ocasio-Cortez  
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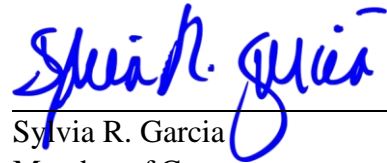
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Jan Schakowsky  
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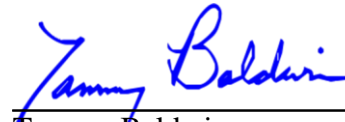
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United States Senator



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Bernard Sanders  
United States Senator



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Lloyd Doggett  
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Jamaal Bowman, Ed.D.  
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Sheila Jackson Lee  
Member of Congress



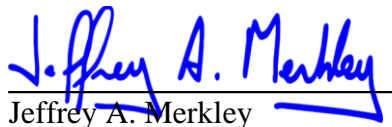
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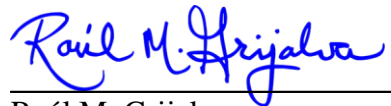
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Member of Congress

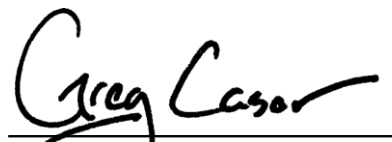
  
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Ted W. Lieu  
Member of Congress



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Barbara Lee  
Member of Congress



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Jack Reed  
United States Senator