

Congress of the United States
Washington, DC 20515

June 6, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue,
NW
Washington, DC 20580

The Honorable Jonathan
Kanter
Assistant Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Xavier Becerra
Secretary
Department of Health and
Human Services
200 Independence Avenue,
SW
Washington, DC 20201

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

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

We commend the Federal Trade Commission (FTC), Department of Justice (DOJ), and Department of Health and Human Services (HHS) for launching this request for information to garner public comments regarding the effects of transactions involving health care providers, facilities, or ancillary products or services, and conducted by private equity funds or other alternative asset managers, health systems, or private payers. Although private equity has long been involved in health services,¹ we are concerned by the growing body of evidence demonstrating that private equity's increased role in health care is leading to more health complications for patients, lower quality of care, and higher prices for the health care system. As a result, the recent increase in private equity investments and the concurrent effects on patient care, health outcomes, and worker conditions require the concerted attention of our federal agencies.

Private Equity's Recent Rise and Associated Harms

Many private equity business models are focused on short term profit extraction, rather than investment.² We are concerned that when firms use a short-term, profit-driven business model in health care, there are severe consequences for patients, workers, and our nation's health as a whole. The need for 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."³ Private equity investments in health care have risen dramatically over the past decade. Estimated annual deals across the health care sector have

¹ Eileen Appelbaum and Rosemary Batt, *A Primer on Private Equity at Work: Management, Employment, and Sustainability*, Center for Economic and Policy Research (February 2012).

² Brandan Ballou, *Plunder: Private Equity's Plan to Pillage America* (2023).

³ AHIP, *Private Equity Issue Brief* (Sept. 15, 2022) (<https://www.ahip.org/resources/ahip-private-equity-issue-brief>).

increased from \$41.5 billion in 2010 to \$119.9 billion in 2019.⁴ Private equity firms view fee-for-service medical practices as particularly amenable to their short-term profit-driven model. Private equity acquisitions of physician practices rose six-fold over a decade from 75 deals in 2012 to 484 deals in 2021.⁵ Private equity's investment in local physician practice markets is especially stark. At the local level, individual private equity firms are acquiring competitively significant shares of physician practice markets. In 28 percent of metropolitan statistical areas, a single private equity firm has more than a 30 percent market share by 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.⁶

Private equity's growing investment in the health care and service market is associated with negative impacts on consumers and American families, including price increases for consumers and decreased quality of patient care and patient outcomes. According to one study, hospitals owned by private equity firms bring in nearly 30 percent more income than hospitals owned by other entities through revenue-boosting tactics like cutting staff and supplies, pressuring providers to bill for unnecessary services, and up-coding claims.⁷ Another study of more than 700 hospitals observed a \$407 average increase in total charge per inpatient day for those hospitals acquired by private equity.⁸ 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.⁹ Price increases associated with private equity acquisitions are "exceptionally high" where a private equity firm controls "a competitively significant share of the local market."¹⁰ 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%)."¹¹

We are also concerned that private equity firms investing in health care are driving up health care costs for consumers. For instance, private equity investments in health care were a

⁴ AHIP, *Private Equity Issue Brief* (Sept. 15, 2022) (<https://www.ahip.org/resources/ahip-private-equity-issue-brief>).

⁵ American Antitrust Institute, University of California at Berkeley, Washington Center for Equitable Growth, *Monetizing Medicine: Private Equity and Competition in Physician Practice Markets*, (July 10, 2023) (https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf).

⁶ See note 5.

⁷ See note 4.

⁸ Joseph D. Bruch, et al., *Changes in Hospital Income, Use, and Quality Associated With Private Equity Acquisition*, *JAMA Internal Medicine* (August 24, 2020).

⁹ See note 5.

¹⁰ See note 5.

¹¹ See note 5.

leading source of surprise medical bills, leading up to Congress's passage of the No Surprises Act in 2020. Private equity firms were increasingly acquiring physician staffing companies and private emergency transportation companies contracting with hospitals, and driving up the cost of health care.^{12, 13, 14} According to studies, these companies frequently engaged in practices that led to surprise medical bills, such as exiting a hospital's network and billing as out-of-network providers.^{15, 16} A study by researchers at Yale found that hospitals that contracted with private-equity owned physician staffing companies had higher rates of out-of-network billing, and out-of-network physicians charged, on average, 637 percent of Medicare for identical services.¹⁷ For too long, families were burdened with medical debt from unavoidable out-of-network procedures and surprise charges from providers. These staffing companies also used the credible threat of out-of-network status to significantly charge higher in-network rates than their counterparts, leading to higher reimbursement rates and increased costs for consumers.

Congress passed the No Surprises Act to protect patients from exorbitant surprise bills from out-of-network health care. However, private equity firms are still engaging in efforts to undermine the law and raise health care costs for consumers. The No Surprises Act protects patients from billing disputes and exorbitant surprise bills for out-of-network health care. The law limits what patients pay in surprise billing situations to their in-network cost-sharing and establishes a federal independent dispute resolution (IDR) process to fairly resolve payment disputes between health plans and providers. Since passage of the No Surprises Act, private equity-backed corporate entities and provider organizations have filed over 20 lawsuits in an attempt to undermine the law and its important consumer protections.¹⁸ Analysis of the IDR data released by federal agencies shows most IDR cases are being filed by private equity-backed entities and that private equity entities may be using the IDR process to increase revenue and

¹² Fierce Healthcare, *The outsourcing explosion: Hospitals turn to outside firms to provide more clinical services* (April 21, 2025) (<https://www.fiercehealthcare.com/finance/outsourcing-explosion-hospitals-turn-to-outside-firms-to-provide-more-clinical-services>).

¹³ Becker's Hospital Review, *Outsourcing is Exploding in Healthcare — Will the Trend Last?* (October 4, 2013) (<https://www.beckershospitalreview.com/hr/outsourcing-is-exploding-in-healthcare-will-the-trend-last.html>).

¹⁴ Revcycle Intelligence, *Half of private equity-owned physician practices are resold within 3 years*, (April 19, 2024) (<https://revcycleintelligence.com/news/half-of-private-equity-owned-physician-practices-are-resold-within-3-years#:~:text=Between%202016%20and%202020%2C%20807,sold%20to%20a%20secondary%20buyer>).

¹⁵ Zack Cooper, Fiona Scott Morton, Nathan Shekita, *Surprise! Out-of-Network Billing for Emergency Care in the United States*, University of Chicago Journal of Political Economy (September 2020)

¹⁶ Health Leaders Media, *Private Equity, Insurers, Physician Groups Have Acquired Most Physician Practices* (June 28, 2023) (<https://www.healthleadersmedia.com/finance/private-equity-insurers-physician-groups-have-acquired-most-physician-practices>).

¹⁷ See note 15.

¹⁸ Affordable Care Act Litigation, *No Surprises Act* (<https://affordablecareactlitigation.com/no-surprises-act/>) (accessed Oct. 26, 2023).

raise health care costs for consumers.¹⁹

We are also concerned that private equity firms investing in health care are decreasing the quality of care for patients. A review of more than 4.8 million hospitalizations found a 25 percent increase in hospital-acquired complications for Medicare patients following private equity acquisition.²⁰ For example, patients experienced 27 percent more falls, 38 percent more bloodstream infections, and double the amount of surgical site infections after hospitals were acquired by private equity firms. Other studies have documented higher mortality rates and lower quality of care in private-equity owned nursing homes.²¹ A 2021 National Bureau of Economic Research study found that mortality rates in private-equity owned nursing homes were 10 percent higher than average, while Medicare spending was 11 percent higher.²² 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.²³

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. A systematic review of five nursing home studies found that private equity ownership of nursing homes was associated with a reduction in nursing levels or skill mix to reduce labor costs.²⁴ One study found that staff at private equity-owned nursing homes experienced greater personal protective equipment (PPE) shortages during the COVID-19 pandemic.²⁵

Private equity acquisitions in the health care market are part of a larger trend towards consolidation, which 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.²⁶ Health care workers, especially pharmacy workers and nurses, are

¹⁹ Commonwealth Fund, *Report Shows Dispute Resolution Process in No Surprises Act Favors Providers* (March 1, 2024) (<https://www.commonwealthfund.org/blog/2024/report-shows-dispute-resolution-process-no-surprises-act-favors-providers>)

²⁰ Senha Kannan, et al., *Changes in Hospital Adverse Events and Patient Outcomes Associated with Private Equity Acquisition*, JAMA Internal Medicine (December 26, 2023).

²¹ Melea Atkins, *The Impact of Private Equity on Nursing Home Care: Recommendations for Policymakers* (Apr. 2021) (https://rooseveltinstitute.org/wp-content/uploads/2021/04/RI_NursingHomesandPE_IssueBrief_202104.pdf).

²² Atul Gupta, et al., *Owners Incentives and Performance in Healthcare: Private Equity Investment in Nursing Homes*, National Bureau of Economic Research (February 2021).

²³ Americans for Financial Reform, *The Deadly Combination of Private Equity and Nursing Homes During a Pandemic* (Aug. 2020).

²⁴ Alexander Borsa, et al., *Evaluating trends in private equity ownership and impacts on health outcomes, costs, and quality: systematic review*, British Medical Journal (Jul. 19, 2023).

²⁵ Robert Tyler Braun, et al., *Comparative Performance of Private Equity-Owned US Nursing Homes During the COVID-19 Pandemic*, JAMA Network Open (Oct. 2020).

²⁶ Darbin Wofford, *Hospital Consolidation Suppresses Workers' Wages*, Third Way (Sept. 5, 2023).

often subjected to the negative effects of monopsony power, resulting in decreased job mobility and suppressed wages. Four years post-merger, wages for nurses and pharmacy workers might be 6.8 percent lower and four percent lower for other skilled workers, compared to what their wages could have been without the merger.²⁷

Congress's Oversight and Inquiry into Private Equity's Impact on Health

In response to the increased investment of private equity in health and the concurrent harms, Congress has led inquiries into our health care system with a particular focus on the mismatch between the high prices consumers pay for care and the poor health outcomes that result from this expensive care. At least since the 116th Congress, lawmakers sought more information on the issue,²⁸ investigated private equity firms' roles in billing practices,²⁹ and proposed legislative solutions to address loopholes in our health care industries that entities, including private equity firms, exploit.³⁰

But as private equity investments in health care have grown, so has Congressional oversight. Committees including the House Energy and Commerce Committee,^{31, 32, 33} House Judiciary Committee,³⁴ House Ways and Means Committee,³⁵ Senate Committee on Health, Education, Labor and Pensions,³⁶ Senate Judiciary Committee,³⁷ and Senate Finance

²⁷ Elena Prager and Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, American Economic Association (Feb. 2021).

²⁸ Medicare Payment Advisory Commission, *June 2021 Report to the Congress: Medicare and the Health Care Delivery System*, (June 15, 2021).

²⁹ House Committee on Energy and Commerce, *Pallone and Walden Launch Bipartisan Investigation into Private Equity Firms' Role in Surprise Billing Practices* (Sept. 16, 2019) (press release).

³⁰ House Committee on Energy and Commerce, *Hearing on Lowering Unaffordable Costs: Examining Transparency and Competition in Health Care*, 118th Cong. (Mar. 28, 2023) .

³¹ House Committee on Energy and Commerce, *Hearing on Lowering Unaffordable Costs: Examining Transparency and Competition in Health Care*, 118th Cong. (Mar. 28, 2023) .

³² House Committee on Energy and Commerce, *Hearing on Health Care Spending in the United States: Unsustainable for Patients, Employers, and Taxpayers*, 118th Cong. (Jan. 31, 2024).

³³ House Committee on Energy and Commerce, *Hearing on Legislative Proposals to Support Patients and Caregivers*, 118th Cong. (Feb. 14, 2024).

³⁴ House Committee on the Judiciary *Hearing on Diagnosing the Problem: Exploring the Effects of Consolidation and Anticompetitive Conduct in Health Care Markets*, 117th Cong. (Mar. 7, 2019).

³⁵ House Committee on Ways & Means, *Hearing on Examining Private Equity's Expanded Role in the U.S. Health Care System*, 117th Cong. (Mar. 25, 2021) and see U.S. Representative Bill Pascrell, *Opening Statement at Oversight Subcommittee Hearing on Private Equity's Expanded Role in the U.S. Health Care System*, (Mar. 25, 2021).

³⁶ Senate Committee on Health, Education, Labor & Pensions, *Hearing on When Health Care Becomes Wealth Care: How Corporate Greed Puts Patient Care and Health Workers at Risk*, 118th Cong. (Apr. 3, 2024).

³⁷ Senate Committee on the Judiciary, *Hearing on Antitrust Applied: Hospital Consolidation Concerns and*

Committee,³⁸ to name a few, have held hearings on the impact of private equity investments on the health care market. Testimony from these hearings support the findings reported above, that private equity investment in health services across the market has continued to increase while patient costs have risen, patient outcomes have worsened, and worker conditions have stagnated or worsened.

In response to these concerns, lawmakers just in this Congress have:

- proposed and passed out of committee bipartisan bills that would provide more transparency into consolidation in the health care market;^{39, 40}
- launched bipartisan investigations into the effects of private equity ownership on the nation's hospitals⁴¹ and the role of private equity in restricting access to methadone treatment for opioid use disorder;⁴²
- required private equity companies to answer for their role in creating financial challenges at critical community hospitals⁴³ and providing inadequate health care services in prisons and jails nationwide;⁴⁴ and
- sought information about private equity firms' involvement in hospital emergency departments and potential impacts on patient care.⁴⁵

The above list, however, is far from exhaustive, and Congress's efforts to unveil harms and propose solutions will continue as patient outcomes and community health is a high priority for us and our constituents.

Solutions, 117th Cong. (May 19, 2021).

³⁸ Senate Committee on Finance, *Hearing on Consolidation and Corporate Ownership in Healthcare: Trends and Impacts on Access, Quality, and Costs*, 118th Cong. (June 8, 2023).

³⁹ Politico, 'Life and death situations': Lawmakers battle Wall Street over health care (Sept. 11, 2023) (<https://www.politico.com/news/2023/09/10/lawmakers-battle-wall-street-over-health-care-00113626>)

⁴⁰ House Committee on Energy and Commerce, *E&C Advances Six Bills to Lower Health Care Costs and Increase Price Transparency Out of Committee*, (May 24, 2023) (<https://energycommerce.house.gov/posts/e-and-c-advances-six-bills-to-lower-health-care-costs-and-increase-price-transparency-out-of-committee>)

⁴¹ Senate Committee on the Budget, *Senate Budget Committee Digs into Impact of Private Equity Ownership in America's Hospitals* (Dec. 7, 2023) (press release).

⁴² Sen. Ed Markey (D-MA), *Senator Markey Leads Colleagues in Bipartisan Investigation into the Role of Private Equity in Restricting Access to Methadone Treatment for Opioid Use Disorder* (Mar. 13, 2024) (press release).

⁴³ Sen. Ed Markey (D-MA), *Markey, Warren, to Steward Health CEO: Years of Mismanagement, Scheming, and Profiteering Now Pose Urgent Threat to Hospitals in Massachusetts* (Mar. 8, 2024) (press release).

⁴⁴ Sen. Ed Markey (D-MA), *Senators Markey, Warren, Durbin, Ossoff, Lawmakers Raise Concerns with Wellpath over Inadequate HealthCare Services in Prisons and Jails Nationwide* (Dec. 19, 2023) (press release).

⁴⁵ Sen. Gary Peters (D-MI), *Peters Seeks Information About Private Equity Run Emergency Departments and Impact on Patient Care* (Apr. 1, 2024) (press release).

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We, therefore, respectfully submit this comment, to encourage a thorough inquiry under this request for information. As demonstrated by the breadth of committees investigating the role of private equity in the health care market, private equity has dramatically increased its reach to affect hospitals, physician practices, staffing companies, nursing homes, prisons, jails, dental practices, and dialysis providers and the employees who staff these firms, the communities these practices serve, and the prices patients pay and the care they receive.

We applaud the launch of this inquiry into consolidation in health care markets and look forward to the final report. We encourage HHS to require providers participating in Medicare to disclose ownership information and data, including for entities owned by private equity firms and venture capital firms. We believe increased transparency of hospital ownership will provide greater insight into hospital and provider consolidation and the impact it has on access to care and health care costs. We also encourage HHS to examine the role of private equity in the No Surprises Act implementation, and to determine whether private equity is using the IDR process to raise health care costs for American families.

We also commend the FTC and DOJ 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 Rulemaking⁴⁶ and for including roll-up acquisitions strategies by private equity in its finalized Merger Guidelines⁴⁷ to ensure these acquisitions will receive proper oversight. We encourage the FTC and DOJ to continue to robustly enforce our antitrust laws to protect health care competition⁴⁸ even while conducting this investigation.

Sincerely,



Jerrold Nadler
Ranking Member
Committee on the Judiciary



Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce

⁴⁶ Federal Trade Commission, *FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review* (Apr. 1, 2024) (press release).

⁴⁷ U.S. Department of Justice and Federal Trade Commission, *Merger Guidelines* (Dec. 18, 2023).

⁴⁸ Federal Trade Commission, *FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas* (Sept. 21, 2023) (press release).