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

The undersigned **83 organizations and individuals** represent a broad coalition of interests concerned about the harmful impacts of transactions that affect consolidation in health care. We thank the Department of Justice, the Department of Health and Human Services, and the Federal Trade Commission for raising the issue in this Request for Information and hope that our responses inform future strong actions by the agencies to curb practices that harm national and local economies and the nation's health.

Our responses focus on transactions conducted by private equity (PE) funds. The PE industry has grown dramatically in recent years. From less than \$1 trillion in assets under management in 2004, PE and other private funds firms now manage more than \$13.1 trillion and are growing quickly.¹ PE's reach across health care, in terms of both size and scope, has increased dramatically over the same period. There were more than 1,400 PE deals in health care in 2021, totaling \$209 billion.² These investments touch virtually every aspect of health care,

¹ "A routinely exceptional year," McKinsey, Feb 2017.

<https://www.mckinsey.com/~media/mckinsey/industries/private%20equity%20and%20principal%20investors/our%20insights/a%20routinely%20exceptional%20year%20for%20private%20equity/mckinsey-global-private-markets-review-february-2017.pdf> ; "Private markets: A slower era," McKinsey, February 20, 2024. <https://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/mckinseys-private-markets-annual-review>

² Kerry Dooley Young, "The Impact of Private Equity Ownership in Health Care," The Journalist's Resource (blog), citing data from PitchBook Data, Inc. November 2, 2022, <https://journalistsresource.org/home/private-equity-ownership-in-health-care-research/>.

including nursing facilities³, hospitals, physician specialties such as gastroenterology and anesthesiology, emergency medicine, dentistry, travel nursing, durable medical equipment, behavioral health, disability services, and [health care services for people in prisons and jails](#).⁴ They undermine the clinical relationship between professionals and their patients by stripping the professionals' autonomy and replacing it with a corporate structure concerned with profits rather than health. The typical results of PE inroads into a market – higher prices, closures of unprofitable services and facilities, reduced quality of care and outcomes – intersect with existing structural racism in the healthcare system to further harm people of color. The exacerbated racial and economic disparities resulting from private equity's inroads into health care create additional obstacles for federal and state governments to address health disparities in their communities. The racial justice implications of PE's large footprint in health care make PE's business model, which is fundamentally incompatible with good health care and a healthy, competitive market, worthy of special attention from regulators and policymakers. PE further exacerbates the structural racism present in our healthcare system.

Our organizations represent many groups with a strong interest in documenting and reducing the ill effects of consolidation that results from PE-driven transactions: patients and their families, clinicians, non-clinical health care workers, affected communities, and communities that suffer economic injustice as a result of the financialization of markets. We are pleased to offer our comments.

I. Effects of Consolidation

PE's tactic of "roll-ups" – acquiring a platform company and then buying up multiple other companies in the same industry segment – is designed to consolidate providers in a market and generate greater profits as a result. Many roll-ups skirt the Hart-Scott-Rodino Antitrust Improvements Act (HSR) because each individual transaction falls short of the threshold at which companies are required to notify the FTC and the Antitrust Division of the DOJ. Though each transaction is too small to trigger automatic antitrust review, serial roll-ups can create companies with enough market power to harm consumers, patients, and workers. These bulked-up PE-owned firms charge higher prices, charge consumers excessive fees by staying out-of-network (a surprise billing strategy), promote ancillary services that are uncovered by insurance coverage to drive up revenues, reduce staffing levels, and cut workers' wages and benefits.⁵ Abundant evidence shows that health care consolidation causes prices to rise, putting pressure on patients and insurers.⁶ Higher prices can hinder access to care for patients of

³ Taylor Lincoln, "Is It Private Equity? We Can't See." Public Citizen, September 2022. <https://www.citizen.org/article/nursing-home-transparency/>

⁴ The extent of PE's takeovers in these areas of health care, and their malignant effects, are documented at <https://pestakeholder.org/issues/healthcare/>.

⁵ https://ourfinancialsecurity.org/wp-content/uploads/2023/09/Letter-to-the-Regulators_FTC-DOJ-Draft-Merger-Review.pdf

⁶ Karyn Schwarz et al., "What We Know About Provider Consolidation," KFF (blog), Sept. 2, 2020. <https://www.kff.org/health-costs/issue-brief/what-we-know-about-provider-consolidation/>.

limited means, and increase their levels of medical debt.⁷ This can be especially damaging in rural areas, where hospital roll-ups have been common and there are often no alternative providers.⁸ In short, PE-backed roll-up acquisitions are worsening medical debt and exacerbating existing inequalities in health care.

Consolidation that evades regulatory scrutiny can also be dangerous, even life-threatening. A study of the dialysis industry found that acquisitions that were exempt from the pre-merger notification requirement resulted in higher hospitalization rates and lower survival rates. The study concluded that eliminating the notification exemption in the case of these dialysis transactions would have saved thousands of lives.⁹

II. Common Practices by Private Equity Firms

Private equity ownership of hospitals has drawn scrutiny in recent years as some private equity hospital acquisitions have produced troubling impacts for patients and workers across the country. We have seen private equity firms [aggressively loot safety net hospitals](#), [strip out valuable real estate](#), [cut critical but less profitable services](#), and [exploit government funding programs](#) designed to [support and stabilize healthcare access](#).

The consequences have been borne by healthcare workers and the communities they serve. Frequently, the communities hit hardest by these tactics, many with large numbers of Black and Hispanic residents,¹⁰ rely greatly on safety net providers and public programs, but have little power to alter the terms or outcomes of harmful transactions. Disadvantages born from structural racism are thus compounded when private equity's hospital profiteering results in dangerous conditions, closures and reduced access to services, declining quality, and fraud.

Private equity firms often seek to double or triple their investment over 4-7 years. The pursuit of outsized returns over relatively short time horizons can lead to cost-cutting that hurts care. In addition, the high levels of debt typical of a PE business plan can divert cash from operations – patient care and patient safety – to interest payments and dividends paid out to private equity owners. Complex corporate structures and vertical relationships that conceal anticompetitive tactics and run afoul of state corporate practice of medicine laws are damaging as well.

Below are some financial tactics characteristic of private equity investment, which, when applied to health care, favor fast profits at the expense of the public's health:

⁷ Americans for Financial Reform. Comment letter on Merger Guidelines 2023 of U.S. Department of Justice and the Federal Trade Commission. September 18, 2023. <https://ourfinancialsecurity.org/2023/09/letters-to-the-regulators-letter-in-support-of-proposed-merger-guideline/>

⁸ Eileen Appelbaum and Rosemary Batt, "Private Equity Buyouts in Healthcare: Who Wins, Who Loses?" Center for Economic and Policy Research, Working Paper No. 118, March 15, 2020. <https://papers.ssrn.com/abstract=3593887>.

⁹ Thomas G. Wollmann, "How to Get Away with Merger: Stealth Consolidation and Its Effects on US Healthcare," Working Paper, Working Paper Series (National Bureau of Economic Research, May 2020), <https://doi.org/10.3386/w27274>

¹⁰ *E.g.*, The New Yorker, "The Death of Hahnemann Hospital," May 31, 2021, <https://www.newyorker.com/magazine/2021/06/07/the-death-of-hahnemann-hospital> (at Hahnemann Hospital, which closed after it was sold to a private equity firm, two thirds of patients were Black or Hispanic).

- High leverage: Private equity firms typically acquire companies through leveraged buyouts, whereby a private equity firm finances a substantial portion of an acquisition by taking out a loan secured by the company it is buying. High leverage can divert cash away from operations to paying interest on debt and leave companies more at risk for restructuring or bankruptcy.
- Sale-leaseback of real estate: Private equity firms that own hospitals sometimes conduct sale-leaseback transactions, where the firm will sell the hospital's real estate to a third party and lease it back. While these transactions provide a quick way to monetize real estate and generate cash, they can leave hospitals with fewer assets and high monthly lease payments.¹¹
- Debt-Funded Dividends: Some private equity firms siphon money out of companies they own through dividend recapitalizations, where a private equity firm directs its portfolio company to take on new debt and use the proceeds to pay the private equity owner a cash payout. These transactions can unnecessarily load health care providers with debt. While the private equity firm in these situations makes money, the health care provider often does not receive proceeds from the loan and still must pay it back, leaving it more vulnerable to market conditions and with fewer resources to support operations as it makes its monthly debt service payments.¹²
- Roll-ups: Private equity companies often conduct "roll-ups" by buying up multiple companies in the same industry segment and merging them under one corporate umbrella. These transactions can allow firms to take advantage of economies of scale. However, as explained above, a wide body of research has shown that provider consolidation leads to higher prices, degraded access, and worse outcomes.¹³
- Fees: Private equity firms often charge management or advisory fees to the companies they own, which can cost companies millions of dollars each year. Fees are typically stipulated in a management services agreement between the private equity firm and a company that it controls. In some cases, companies must pay fees to the private equity firm even for services never rendered ("accelerated monitoring fees"). These fees can further drain a company's cash away from hospital operations into the pockets of investors.¹⁴

¹¹ Brian Spegele, "How a Small Alabama Company Fueled Private Equity's Push Into Hospitals," Wall Street Journal, February 14, 2022, sec. Markets, <https://www.wsj.com/articles/hospitals-private-equity-reit-mpt-steward-11644849598>.

¹² Eileen O'Grady, "Dividend Recapitalizations in Health Care: How Private Equity Raids Critical Health Care Infrastructure for Short Term Profit" (Private Equity Stakeholder Project, October 2020), <https://pestakeholder.org/reports/dividend-recapitalizations-in-health-care-how-private-equity-raids-critical-health-care-infrastructure-for-short-term-profit/>.

¹³ Erin Fuse Brown. "Private Equity Investment in Physician Practices: Legal and Policy Responses." Presented at: *Private Capital, Public Impact: An FTC Workshop on Private Equity in Health Care*. March 6, 2024. https://cahpr.sph.brown.edu/sites/default/files/documents/Private%20Equity%20Investment%20in%20Physician%20Practices_Fuse%20Brown%20Remarks%20to%20FTC.pdf

¹⁴ Eileen Appelbaum and Rosemary Batt, "Fees, Fees and More Fees: How Private Equity Abuses Its Limited Partners and U.S. Taxpayers" (Center for Economic and Policy Research), accessed March 24, 2023, <https://www.cepr.net/report/private-equity-fees-2016-05/>.

III. Notable Transactions

PE has been expanding its reach into many health care sectors. What they have in common is the opportunity to rapidly reap excessive returns by employing strategies from the PE playbook – consolidation, sale of assets, imposition of management fees, exploiting government payment systems, and more. Following are descriptions of some notable PE transactions – far from exhaustive – in disparate areas of health care.

Durable Medical Equipment (DME)

Private equity firms have bought up and consolidated durable medical equipment (DME) manufacturers and suppliers. Through aggressive, debt-funded growth strategies, a handful of PE-owned DME companies have grown from nonexistence to industry giants over the last decade. Blackstone, Carlyle, and Hellman & Freidman’s \$30 billion acquisition of medical supplies and equipment company Medline Industries in 2021 was one of the biggest leveraged buyouts of all time.¹⁵

One of the clearest examples of private equity’s outsized impact on DME is its stranglehold on the customized wheelchair industry.¹⁶ A profit maximization strategy in this industry is to prioritize profitable service lines, such as sales, while cutting spending on less profitable service lines, like technician staffing and training. Such practices can leave wheelchair users stranded or isolated while waiting for repairs. In some cases, delays can lead to injuries, hospitalizations, and even death.¹⁷ And the risk of fraud is high in DME companies, which have paid millions of dollars in recent years to settle allegations of fraud that occurred while under private equity ownership.¹⁸

Dental

Private equity dominates a substantial portion of the US dental industry, primarily through ownership of Dental Services Organizations (DSOs). To circumvent laws that many states have requiring dentists to own their practices, investors create separate entities that provide related practice management and business services, sometimes referred to as “corporate dentistry.” Some analysts expect DSO market penetration to increase by up to 35% over the

¹⁵ Cara Lombardo and Miriam Gottfried, “Private-Equity Group Reaches Deal to Buy Medline for Over \$30 Billion,” Wall Street Journal, June 5, 2021, <https://www.wsj.com/articles/group-including-blackstone-nears-deal-to-buy-medline-for-over-30-billion-11622910788>.

¹⁶ Two PE-owned wheelchair suppliers have gobbled up competitors and achieved dominant positions in the market: Numotion, owned by AEA Investors, and National Seating & Mobility (NSM), owned by Cinven.

¹⁷ Paul Roberts, “Stranded: Repair Restrictions Immobilize Wheelchair Users,” US PIRG Education Fund, May 2022. https://pirg.org/wp-content/uploads/2022/05/USPIRGEF_Stranded_June2022.pdf Pg. 4.

¹⁸ “Acting Manhattan U.S. Attorney Announces \$40.5 Million Settlement With Durable Medical Equipment Provider Apria Healthcare For Fraudulent Billing Practices,” United States Department of Justice, December 21, 2020, <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-405-million-settlement-durable-medical-equipment>; “Medical Equipment Company Pays \$7 Million to Resolve False Claims Act Allegations,” United States Department of Justice, March 1, 2023, <https://www.justice.gov/usao-edky/pr/medical-equipment-company-pays-7-million-resolve-false-claims-act-allegations>; “Plymouth Meeting, Pa Company to Pay \$5.3 Million to Resolve False Claims Act Allegations Related to False Billing For Respiratory Devices,” United States Department of Justice, April 21, 2023, <https://www.justice.gov/usao-edpa/pr/plymouth-meeting-pa-company-pay-53-million-resolve-false-claims-act-allegations>.

next five to ten years.¹⁹ Industry publication Dentistry IQ estimates that DSOs will make up nearly 50% of the dental market by 2030.²⁰

A critical concern is that the DSO emphasizes quantity of care over quality. Investigations by regulators have found that, in some cases, the owners of DSOs (often private equity firms) exert undue influence over practices to increase profits. DSOs may pay dentists based on a percentage of payments received for dental services and also may offer productivity or profitability bonuses.²¹ Pressure to meet revenue targets may drive overbooking and understaffing, rushing treatments to maximize volume, and pushing unnecessary or expensive procedures, such as drilling into healthy teeth, conducting unnecessary and costly x-rays or screenings, and performing medically unnecessary root canals.

Fertility Treatment

Market research estimates the fertility clinic market was an estimated \$7.9 billion in 2022 and is forecast to grow at a rate of 13.6% annually, to reach \$16.8 billion by the end of 2028.²² PE firms are capitalizing on this growing and lucrative industry, which remains relatively fragmented and offers opportunities to profit through consolidation.²³ A [study](#) published in October 2021 found that private equity-owned providers made up 29.3 percent of all Assisted Reproductive Technology (ART) cycles performed in the US in 2018; the authors noted that they were not aware of any other health care specialty where PE held such a pronounced market share.²⁴

Additionally, patients at private equity-owned clinics were found to be 10.6% more likely to use preimplantation genetic testing, an elective and costly add-on. Private equity-affiliated practices also tended to be in wealthier geographic areas, raising additional questions about PE's role in exacerbating class discrepancies in access to fertility services.²⁵

Methadone Treatment

The behavioral health sector has seen immense growth over the last decade, with a substantial portion of that growth driven by private equity investment. Methadone clinics in particular have seen significant concentration by private equity investors.

¹⁹ Kat Eschner, "Inside American dentistry's identity crisis," *Fortune*, October 27, 2020.

<https://fortune.com/2020/10/27/dentists-covid-dental-industry-dentistry-coronavirus/>

²⁰ Liese Klein, "Robotics, virtual technology guide dentistry into high-tech future," *Hartford Business Journal*, May 31, 2021. <https://www.hartfordbusiness.com/article/robotics-virtual-technology-guide-dentistry-into-high-tech-future>

²¹ "Dental Service Organizations Informational Report," Texas Health and Human Services Commission Inspector General, May 31, 2017. OIG Report No. AUD-17-013.

<https://oig.hhs.texas.gov/sites/default/files/documents/reports/dso-informational-final-5-31-17.pdf>. Pg. 11.

²² "US Fertility Clinics Market Report 2023: Sector Is Expected to Reach \$16.8 Billion by 2028 at a CAGR of 13.6% - ResearchAndMarkets.Com," *Business Wire*, July 13, 2023,

<https://www.businesswire.com/news/home/20230713777238/en/US-Fertility-Clinics-Market-Report-2023-Sector-Is-Expected-to-Reach-16.8-Billion-by-2028-at-a-CAGR-of-13.6---ResearchAndMarkets.com>.

²³ Bella North and Hamid Yunis, "Spotlight on Private Equity in the Fertility Sector," *McDermott Will & Emery* (blog), May 22, 2019, <https://www.mwe.com/insights/spotlight-on-private-equity-in-the-fertility-sector/>.

²⁴ Joseph Bruch and Alex Borsa, "Explainer: Our New Paper Exploring the Implications of Private Equity Acquisitions in Fertility Industry for Patients," *GenderSci Lab*, October 25, 2021, <https://www.genderscilab.org/blog/private-equity-acquisitions-in-fertility-industry>.

²⁵ Alexander Borsa and Joseph Dov Bruch, "Prevalence and Performance of Private Equity-Affiliated Fertility Practices in the United States," *Fertility and Sterility* 117, no. 1 (January 2022): 124–30, <https://doi.org/10.1016/j.fertnstert.2021.08.035>.

According to a 2024 investigation by STAT News, “In 21 states, at least 50% of all methadone clinics are owned either by private equity firms or by Acadia Healthcare, a publicly traded company founded by Waud Capital Partners, a private equity firm, whose founder serves as chairman of Acadia’s board. In Louisiana, Nebraska, New Hampshire, and Montana, 100% of all clinics are owned either by Acadia or by private equity firms.”²⁶

Methadone clinics currently hold the sole right to distribute methadone as an addiction medication. PE-owned methadone chains in recent years have launched a lobbying blitz aimed at preserving this exclusive franchise to dispensing methadone, as lawmakers attempt to expand access.

Autism Services

In the last several years private equity investment in autism services, particularly in providers of Applied Behavior Analysis (ABA) therapy, has substantially increased.²⁷ According to a [2023 report](#) by the Center for Economic and Policy Research (CEPR), “Between 2017 and 2022, private equity firms completed 85 percent of all mergers and acquisitions in autism services – a rate not found in any other segment.”

For example, in 2018 The Blackstone Group acquired the Center for Autism and Related Disorders, with close to 2,000 employees, for a reported \$700 million. It was reportedly the largest single autism provider deal in history.²⁸ The year before, FFL Partners bought Autism Learning Partners (3,600 employees) for \$270 million.²⁹ In 2019 Gryphon Investors acquired LEARN Behavioral, (3,400 employees),³⁰ and in July 2021 Cerberus Capital Management acquired Lighthouse Autism Center from Abry Partners for over \$400 million.³¹

The CEPR report found that private equity-driven consolidation in the ABA market has given some companies the leverage to extract higher reimbursement by threatening to close down in states where they do not get the rates they prefer.³² The report also found that private equity-owned ABA companies have lower levels of staffing, training, and supervision – leading to heightened management and staff turnover. Employees at private equity-owned companies

²⁶ Lev Facher, “The methadone clinic monopoly: Opioid treatment chains backed by private equity are fighting calls for reform,” STAT News, March 19, 2024. <https://www.statnews.com/2024/03/19/methadone-clinics-opioid-addiction-private-equity/>

²⁷ Pitchbook, accessed November 2021.

²⁸ Bailey Bryant, “Bolstered by Recent Tech Investments, CARD Gears Up for Growth in 2021,” Behavioral Health Business, October 22, 2020. <https://bhbusiness.com/2020/10/22/bolstered-by-recent-tech-investments-card-gears-up-for-growth-in-2021/>

²⁹ “FFL Partners seals \$270M SBO,” Pitchbook, December 22, 2017. <https://pitchbook.com/newsletter/ffl-partners-seals-270m-sbo>

³⁰ Aimen Hakim, “Gryphon Investors acquires majority stake in LEARN Behavioral,” S&P Global Market Intelligence, March 20, 2019. <https://www.spglobal.com/marketintelligence/en/news-insights/trending/ifu2YjUfC-Y8bqIYXsJIUA2>

³¹ Sarah Pringle, “Cerberus buys Abry’s Lighthouse Autism Center in \$200m-plus deal,” PEHub, July 22, 2021. <https://webcache.googleusercontent.com/search?q=cache:kpxncoJPWC4J:https://www.pehub.com/cerberus-buys-abrys-lighthouse-autism-center-in-400m-plus-deal/+&cd=3&hl=en&ct=clnk&gl=us>

³² Rose Batt, Eileen Appelbaum, and Quynh Trang Nguyen, “Pocketing Money Meant for Kids: Private Equity in Autism Services,” Center for Economic and Policy Research June 21, 2023. <https://cepr.net/report/pocketing-money-meant-for-kids-private-equity-in-autism-services/>

reported pressure to standardize treatment plans and to bill for more hours per patient than is medically necessary – leading in some instances to fraud and large financial settlements.³³

Hospice

Private equity firms have been very active in the hospice industry. In 2019, approximately 113,000 (8%) of the nation’s 1.46 million Medicare hospice beneficiaries were cared for by private equity-owned hospices – a 327 percent increase from 2012.³⁴ In 2020, private equity acquisitions of hospice agencies surged, [according to a report by the Center for Economic and Policy Research](#). By the end of 2021, private equity accounted for 18 out of a total of 23 deals involving hospice providers. While the hospice industry in 2022 saw a relative lull in dealmaking compared to previous years, PE firms continue to be leading players in the market.³⁵

Research comparing patient outcomes and other indicators at for-profit vs non-profit hospice companies raises red flags about the growing presence of private equity in the hospice industry. For example, for-profit hospices were more likely than their non-profit counterparts to have low rates of home visits in the last days of life by health professionals and high rates of live discharge from hospice.³⁶ A [2023 study by RAND Corporation](#) published in *JAMA Internal Medicine* found that “family members reported worse care experiences on average from for-profit hospices across all of the domains assessed, including help for pain and other symptoms and getting timely care.”

Physician Practices

A July 2023 study published by the American Antitrust Institute examined the prevalence and consequences of private equity market consolidation in physician practices. The authors made the following conclusions:³⁷

- **Private equity acquisitions of physician practices are increasing, and private equity firms are amassing high market shares in local physician practice markets.** In 28% of metropolitan statistical areas (MSAs), a single private equity firm has more than 30% market share by full-time-equivalent physicians, and in 13% of MSAs, the single private equity firm market share exceeds 50%.
- **Private equity acquisitions are associated with price and expenditure increases,** as much as a 16% price increase in oncology practices, for example. The price increases were exceptionally high where a private equity firm controls more than 30% of the local market.

³³ Rose Batt, Eileen Appelbaum, and Quynh Trang Nguyen, "Pocketing Money Meant for Kids: Private Equity in Autism Services," Center for Economic and Policy Research June 21, 2023.

<https://cepr.net/report/pocketing-money-meant-for-kids-private-equity-in-autism-services/>

³⁴ Pg. 26; Appelbaum, Eileen, Rosemary Batt, and Emma Curchin. “Preying on the Dying: Private Equity Gets Rich in Hospice Care.” Center for Economic and Policy Research, April 25, 2023. <https://cepr.net/wp-content/uploads/2023/04/2023-05-Preying-on-the-Dying-Appelbaum-Batt-and-Curchin.pdf>.

³⁵ Pg. 23; Appelbaum, Eileen, Rosemary Batt, and Emma Curchin. “Preying on the Dying: Private Equity Gets Rich in Hospice Care.” Center for Economic and Policy Research, April 25, 2023. <https://cepr.net/wp-content/uploads/2023/04/2023-05-Preying-on-the-Dying-Appelbaum-Batt-and-Curchin.pdf>.

³⁶ *MEDICARE HOSPICE CARE: Opportunities Exist to Strengthen CMS Oversight of Hospice Providers*, United States Government Accountability Office, Oct. 2019. <https://www.gao.gov/assets/gao-20-10.pdf>. Pg. 18-19.

³⁷ https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG-Private-Equity-I-Physician-Practice-Report_FINAL.pdf

Emergency Departments

As of June 2022, more than 40 percent of the country's emergency rooms were overseen by PE-backed staffing firms.³⁸ Emergency physicians have raised significant concerns about patient care at PE-owned staffing companies and PE-owned hospitals.³⁹ One PE-backed staffing company, American Physician Partners, employed fewer doctors in its emergency rooms as a cost-saving initiative.⁴⁰ A common PE strategy is to replace emergency physicians with other medical staff, which a recent study found puts patients at a greater risk of being admitted to the hospital for preventable reasons.⁴¹ Patients who are facing medical emergencies should not be further endangered because of PE's focus on profits.

These accounts of market and price changes resulting from PE activity across a range of health care providers indicate that regulatory scrutiny of PE's anticompetitive practices and degradation of health care quality are warranted. The pace at which private equity is entering markets and monetizing medicine makes a quick response imperative.

IV. Needed government action

PE and health care are incompatible. Current trends of PE acquisition in many health care sectors point to spiraling prices, diminished access, and declining quality, including unnecessary illness, injury, and death. Further, the essence of health care — an ethical commitment by autonomous, highly trained professionals to the improvement and well-being of their patients and clients — is undermined by PE's financialization strategies that emphasize maximizing profits above all. The United States already trails peer nations in the quality and outcomes produced by its health care system, while simultaneously leading the world in the cost of its care. Further consolidation, exemplified by PE firms' activities, will make this worse. The three agencies must use the full extent of their regulatory and enforcement authority to meet this challenge by changing the incentives that attract PE to health care and making a grim future less likely.

HHS should increase transparency

We applaud HHS's new reporting requirements for private equity and real estate investment trusts for institutional providers. The opacity of PE's ownership and control of health care

³⁸ FTC, Testimony at the FTC Workshop on Private Equity in Healthcare, March 5, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/final-transcript-ftc-opp-be-private-equity-healthcare-workshop-3-5-24.pdf.

³⁹ Senate Committee on Homeland Security and Governmental Affairs, "Peters Seeks Information About Private Equity Run Emergency Departments and Impact on Patient Care," April 1, 2024, <https://www.hsgac.senate.gov/media/dems/peters-seeks-information-about-private-equity-run-emergency-departments-and-impact-on-patient-care/>.

⁴⁰ NPR, "ERs Staffed by Private Equity Firms Aim to Cut Costs by Hiring Fewer Doctors," Feb. 11, 2023, <https://www.npr.org/sections/health-shots/2023/02/11/1154962356/ers-hiring-fewer-doctors>.

⁴¹ David C. Chan Jr and Yiqun Chen, "The Productivity of Professionals: Evidence from the Emergency Department." National Bureau of Economic Research, Working Paper 30608, Revised June 2023, https://www.nber.org/system/files/working_papers/w30608/w30608.pdf.

entities has abetted its harmful practices, and shining a brighter light on ownership is an important corrective step. Effective December 2023, all Medicare institutional providers⁴² must report ownership and managing control by private equity companies and real estate investment trusts on their Medicare enrollment form, CMS-855A. In addition, Medicare skilled nursing facilities (SNFs) must disclose more detailed information to CMS, including people or entities that exercise financial control over the SNF or lease real property to the SNF.⁴³

To ensure that the public benefits from these disclosures, we urge HHS to present the reported information in a user-friendly manner. For instance, the public should be able to look up in one place whether an institutional provider is owned or managed by a private equity company or real estate investment trust. This should be searchable by the provider's name, without requiring the National Provider Identification (NPI) number. Results should be available in a user-friendly format, in addition to tabular downloads. We also recommend that this information be included in Care Compare, where the public is most likely to research health care entities.

Further, we recommend that HHS make the data available in a format that allows research on trends. For instance, users should be able to identify: (1) all the institutional providers that are owned or managed by the same private equity company; and (2) all of the institutional providers in a geographic area that are owned or managed by a private equity company. We also recommend that CMS integrate data on private equity with quality ratings data to facilitate research on the relationship between private equity and quality.

In addition, CMS should require states to collect information on private equity companies and real estate investment trusts from Medicaid nursing facilities. To date, CMS has only "encouraged" states to collect this information.⁴⁴ Respectfully, we remind CMS that this may be a matter of life and death for patients; indeed, CMS cited a finding that private equity ownership increases the short-term mortality of Medicare patients by 10 percent.⁴⁵ CMS should require that

⁴² Institutional providers subject to this reporting requirement include: Community Mental Health Centers; Comprehensive Outpatient Rehabilitation Facilities; Critical Access Hospitals; End-Stage Renal Disease Facilities; Federally Qualified Health Centers; Histocompatibility Laboratories; Home Health Agencies; Hospices; Hospitals; Indian Health Services Facilities; Organ Procurement Organizations; Outpatient Physical Therapy/Occupational Therapy/Speech-Language Pathology Services; Religious Non-Medical Health Care Institutions; and Rural Health Clinics, and Skilled Nursing Facilities. Medicare Learning Network, "New Ownership Reporting Requirements for Providers Using the Form CMS-855A," at 1 n.1, Nov. 2023, <https://www.cms.gov/files/document/mln9340578-new-ownership-reporting-requirements-providers-using-form-cms-855a.pdf>.

⁴³ CMS, "Fact Sheet: Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities; Definitions of Private Equity Companies and Real Estate Investment Trusts for Medicare Providers and Suppliers," Nov. 15, 2023, <https://www.cms.gov/newsroom/fact-sheets/disclosures-ownership-and-additional-disclosable-parties-information-skilled-nursing-facilities-and-0>.

⁴⁴ CMS, "Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities; Medicare Providers' and Suppliers' Disclosure of Private Equity Companies and Real Estate Investment Trusts," Final Rule, 88 Fed. Reg. 221 at 80149 (Nov. 17, 2023).

⁴⁵ *Id.* at 80144.

states collect information on private equity and real estate investment trusts from Medicaid nursing facilities so that trends and risks to patient safety may be addressed.

We urge HHS to make the information on all providers filing the CMS-855A public as soon as possible. We further ask that HHS pursue additional avenues to require equivalent information from Medicare's non-institutional providers. The public should know which providers are owned or managed by private equity, and the information will allow important research on the impact of private equity on health care.

HHS (CMS) should change incentives by better aligning Medicare Advantage payments and quality

More than half of the nation's Medicare beneficiaries are enrolled in Medicare Advantage (MA) plans. MA plans are paid through a value-based payment arrangement, which is intended to reward value, quality, and efficiency. However, the methodology for calculating MA's payment rates results in overpayments to MA plans; at the same time, the current system for quality measurement and reporting does not provide a reliable basis for evaluating an MA plan's quality, according to the Medicare Payment Advisory Commission (MedPAC).⁴⁶ This combination has turned MA into what former CMS Administrator Dr. Donald Berwick calls the "Medicare Money Machine,"⁴⁷ while failing to ensure that members receive high quality care.

MA has attracted profit seekers and especially private equity companies, which seek such opportunities to exploit through vertical integration of physician practices and MA plans, joint ventures, and other strategies. CMS can use its current authority to weaken these incentives, by tying payment more securely to quality, as the concept of value-based payment intends. MedPAC has repeatedly recommended that CMS replace the current quality bonus program with an incentive program that uses population-based measures, evaluates quality at the local market level, accounts for differences in members' social risk factors, and distributes rewards and penalties at a local market level.⁴⁸ We urge HHS and CMS to adopt this recommendation, which would shift the incentive that PE firms encounter in MA by requiring value in return for what they are paid.

Additionally, some Medicare Advantage plans are increasing their profits by improperly limiting coverage. The Government Accountability Office (GAO) has found that some Medicare advantage plans delayed or denied Medicare beneficiaries' access to services, even though the requests met Medicare coverage rules.⁴⁹ Significantly, one recent study found that, when prior

⁴⁶ MedPAC, Report to the Congress: Medicare Payment Policy. March 2024.

⁴⁷ Richard Gilfillan and Donald M. Berwick, "Medicare Advantage, Direct Contracting, And The Medicare 'Money Machine,' Part 1: The Risk-Score Game," Health Affairs Forefront (blog), accessed April 12, 2023, <https://www.healthaffairs.org/doi/10.1377/forefront.20210927.6239/full/>.

⁴⁸ MedPAC, Report to the Congress: Medicare Payment Policy. March 2024.

⁴⁹ GAO, "Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care," April 27, 2022, <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.asp>.

authorization denials by Medicare Advantage are appealed, 82 percent are overturned.⁵⁰ This suggests that the vast majority of these denials are improper.

Medicare Advantage denials have a significant impact on health equity because communities of color are much more likely to enroll in Medicare Advantage plans. In 2021, 59% of Black Medicare beneficiaries, 67% of Hispanic beneficiaries, and 55% of Asian and Pacific Islander beneficiaries were enrolled in a Medicare Advantage plan, as compared with 43% of White beneficiaries.⁵¹ We urge CMS to exercise greater oversight over improper Medicare Advantage denials.

FTC should investigate, regulate, and enforce

The Federal Trade Commission (FTC) should use its investigative, enforcement, and regulatory powers to minimize the damage that private equity inflicts on health care. We appreciate the new merger review guidelines' attention to PE strategies and urge the FTC to take additional steps to police the unique harms private equity can impose on the health care system. First, the FTC has broad authority to demand information from market participants to prepare reports on issues of concern, even without a specific law enforcement purpose.⁵² The FTC should use this authority to investigate the impact of private equity on health care, including: (1) billing practices by health care entities owned or managed by private equity companies; (2) the impact of private equity-backed company MultiPlan on payment amounts for out-of-network providers, including the impact on smaller providers and out-of-pocket costs for patients;⁵³ (3) collection actions against patients by health care practices owned or managed by private equity; (4) quality of care at health care entities owned or managed by private equity companies; (5) the use of affiliated PE-owned providers of services or products; (6) the impacts and prevalence of PE-investors' use of sale-leaseback arrangements with health care facilities; (7) the reliance of PE-owned health care entities on federal health programs including Medicare, Medicaid, and Indian Health Services; and (8) the ownership structures and interrelation with medical real estate investment trusts. The FTC should also make recommendations to Congress for legislative action to address the risks of private equity in health care.⁵⁴

⁵⁰ Gondi S, Kadakia KT, Tsai TC. Coverage Denials in Medicare Advantage—Balancing Access and Efficiency. *JAMA Health Forum*. 2024;5(3):e240028. doi:10.1001/jamahealthforum.2024.0028.

⁵¹ KFF, “Disparities in Health Measures By Race and Ethnicity Among Beneficiaries in Medicare Advantage: A Review of the Literature,” Dec. 13, 2022, <https://www.kff.org/medicare/report/disparities-in-health-measures-by-race-and-ethnicity-among-beneficiaries-in-medicare-advantage-a-review-of-the-literature/#:~:>

⁵² 15 U.S.C. § 46(b).

⁵³ The New York Times, “In Battle Over Health Care Costs, Private Equity Plays Both Sides,” April 7, 2024, <https://www.nytimes.com/2024/04/07/us/health-insurance-medical-bills-private-equity.html>.

⁵⁴ See 15 U.S.C. § 46(f).

Second, the FTC should bring enforcement actions and issue rules regarding unfair practices⁵⁵ by health care entities owned or managed by private equity companies. The FTC should consider whether the following practices are unfair to patients and providers: sale-leaseback transactions that strip hospitals, nursing homes, and other health care facilities of valuable assets and require exorbitant rent payments; understaffing at nursing homes, hospitals and other health care entities owned or managed by private equity companies; upcoding by health care entities owned or managed by private equity companies; the payment of management or advisory fees to private equity firms for minimal or nonexistent services that siphons money away from patient care; the use of affiliate providers of goods or services; and any other practice that undermines quality of care, reduces workers' wages or benefits, or threatens the solvency of federal health programs.

Third, the FTC should take enforcement action and issue rules to prevent "unfair methods of competition" in health care by private equity companies.⁵⁶ We applaud that the revised 2023 merger guidelines recognize that a series of smaller acquisitions can have anticompetitive effects, that amassing portfolios of sectoral or related conglomerates can undermine competition, that partial ownership stakes can facilitate tacit coordination that can undermine competitive markets, and that these conglomerates can exercise market power over workers that reduces wages, benefits, and job quality.⁵⁷ In addition, the FTC has confirmed that its authority on unfair methods of competition reaches beyond antitrust law to encompass "various types of unfair conduct that tend to negatively affect competitive conditions."⁵⁸ The FTC should continue to apply this authority to challenge "roll-up" acquisitions by private equity companies.⁵⁹ We applaud the FTC's recently-finalized rule against non-competition agreements and urge the agency to take enforcement against covered health care entities that impose these restrictions on health care providers.⁶⁰

The DOJ should prosecute health care fraud and cease contracting with private equity companies for health care in correctional facilities.

First, the DOJ should investigate and prosecute health care fraud by private equity companies. To address quality of care concerns in health care entities owned or managed by private equity companies, the DOJ should continue to pursue False Claims Act (FCA) cases for substandard

⁵⁵ 45 U.S.C. § 45(n). Acts or practices are "unfair" if: (1) they cause or are likely to cause substantial injury to consumers; (2) that consumers cannot reasonably avoid themselves; and (3) and that is not outweighed by countervailing benefits to consumers or competition.

⁵⁶ See 15 U.S.C. 45(a)(1).

⁵⁷ U.S. Dep't of Justice and Fed. Trade Comm'n, Merger Guidelines at Sec. 8 (Dec. 18, 2023), <https://www.ftc.gov/reports/merger-guidelines-2023>.

⁵⁸ Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act at 2 (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

⁵⁹ *E.g.*, *Fed. Trade Comm'n v. U.S. Anesthesia Partners, et al.*, 4:23-cv-03560 (S.D. Tex.).

⁶⁰ FTC, Final Rule, "Non-Compete Clause Rule," April 23, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete-rule.pdf (Federal Register publication forthcoming)

care (e.g., “worthless services”).⁶¹ To address concerns about higher billing by health care entities owned or managed by private equity companies, the DOJ should continue to pursue FCA cases for upcoding and other inflated claims, including inflated billing related to affiliated service providers.⁶² The DOJ should use HHS data on ownership or management by private equity companies to investigate patterns of substandard care or improper billing across multiple providers owned or managed by the same private equity firm.

Second, the DOJ should encourage providers and other staff at health care entities to come forward with allegations of substandard care or improper billing and establish a portal for whistleblowers to report these claims. The DOJ should make public statements about protections and incentives for whistleblowers with knowledge of health care fraud.⁶³ The DOJ should target this message toward employees and contractors at health care entities owned or managed by private equity.

Third, the DOJ should forbid private equity-owned companies from providing health care and other services to those incarcerated in the federal prison system and provide incentives for state prison systems to eliminate private equity from their correctional health systems as well. Wellpath, which is owned by a private equity firm, is the largest prison health contractor in the country, serving patients in at least 34 states.⁶⁴ Wellpath has been accused of routinely denying care, and monitors at one California jail found that 18 of the 19 deaths reviewed at the facility could have been prevented if Wellpath had provided timely and adequate treatment.⁶⁵ Incarcerated individuals have no choice of health care providers. Given Wellpath’s record and the widespread concerns about private equity in health care, the DOJ should immediately cease contracting with private equity companies to provide health care at correctional facilities.

Finally, we applaud that the revised Merger Guidelines recognize that a series of smaller acquisitions may have anticompetitive effects.⁶⁶ We urge the DOJ to challenge roll-up transactions and other anticompetitive conduct by private equity companies. These actions

⁶¹ See, e.g., *United States v. Am. Health Found. Inc.*, No. 22-02344, 2023 U.S. Dist. LEXIS 56071 (E.D. Pa. Mar. 31, 2023) (the government stated an FCA claim based on grossly negligent and worthless services at nursing homes where residents frequently did not receive adequate medical, dental, or psychiatric treatment).

⁶² E.g., DOJ Press Release, “Philadelphia Psychiatrist to Pay \$3 Million to Resolve Allegations of False Workers’ Compensation Claims,” March 28, 2022, <https://www.justice.gov/usao-edpa/pr/philadelphia-psychiatrist-pay-3-million-resolve-allegations-false-workers-compensation> (announcing a settlement to resolve FCA allegations of billing for psychiatric services not provided, upcoding, and double-billing patient claims).

⁶³ E.g., 31 U.S.C. § 3730(h) (relief available for retaliation because of efforts to stop FCA violations); § 3730(d) (*qui tam* plaintiffs in FCA actions are generally entitled to 15-25 percent of the proceeds of the action or settlement).

⁶⁴ Letter from Senators Warren, Durbin, et al. to Wellpath at 1, Dec. 18, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.12.18%20Wellpath%20letter1.pdf>.

⁶⁵ *Id.* at 1-2.

⁶⁶ U.S. Dep’t of Justice and Fed. Trade Comm’n, Merger Guidelines at Sec. 8 (Dec. 18, 2023), <https://www.ftc.gov/reports/merger-guidelines-2023>.

would complement and reinforce state-level efforts to reduce the harm of consolidation through enforcement of state antitrust and corporate practice of medicine laws.

Conclusion

Markets function best with competition and a free flow of information about prices and quality. The health care system functions best when everyone has adequate access to care and decisions are made in the best interest of patients and communities, rather than owners and investors seeking to maximize financial return. PE tactics as owners of health care entities thwart effective functioning of markets *and* health care, creating barriers to community and government efforts to close racial gaps in access and health. The unfettered pursuit of profit is unhealthy for the American economy and for the communities that suffer when PE owners strip their properties of whatever has value, endangering the public's health. We thank the FTC, DOJ, and HHS for their interest, and urge them to act forcefully on the information that we and others offer.

Signed,

4 Positive Choices 501(c)3 [PC]
ACA Consumer Advocacy
African American Clergy Collective of Tennessee (ACCT)
American Academy of Emergency Medicine
American Federation of State, County and Municipal Employees (AFSCME)
Americans for Financial Reform
Appleseed Foundation
Arkansas Appleseed
Be A Hero
Ben Curran Wills
Black Clergy Collaborative of Memphis
Boston Center for Independent Living (BCIL)
Center for Economic and Policy Research
Center for Elder Law & Justice
Center for Medicare Advocacy
Colorado Consumer Health Initiative
Community Catalyst
Consumers for Affordable Health Care
Direct Advocacy & Resource Center
Disability Law Center (MA)
Disability Law Center of Alaska
Disability Law Center of Utah
Disability Policy Consortium
Disability Rights Arizona
Disability Rights Education and Defense Fund (DREDF)

Disability Rights North Carolina
Disability Rights Oregon
Disability Rights Pennsylvania
Disability Rights Wisconsin
Explorers Guild
Family Voices
Fayetteville Police Accountability Community Taskforce
Friends Economic Integrity Project
Georgia Watch
Georgians for a Healthy Future
Health Access California
Health Care for All MN
Health Care Voices
Hoosier Action
Indiana Disability Rights
Just Care USA
Kelinson&Lerner, PLC
Kentucky Voices for Health
Labor Campaign for Single Payer
League of Women Voters of the United States
Legal Council for Health Justice
Long Term Care Community Coalition
Matthew Donlan
Metro New York Health Care for All
Michigan Elder Justice Initiative
MomsRising
National Association of Social Workers (NASW)
National Committee to Preserve Social Security and Medicare
National Consumer Law Center (on behalf of its low-income clients)
National Consumer Voice for Quality Long-Term Care
National Disability Rights Network (NDRN)
National Employment Law Project
National Partnership for Women & Families
Next100
North Carolina Council of Churches
North Carolina Justice Center
North Dakota Protection & Advocacy Project
Open Markets Institute
Pennsylvania Health Access Network
People's Action
People's Health Movement - North America
Physicians for a National Health Program - Minnesota
Private Equity Stakeholder Project
Protect Our Healthcare Coalition Rhode Island

Public Citizen
Rachel Oberg
Ray Nabors
Refreshments & Resistance, a member of Indivisible
Service Employees International Union
South Carolina Appleseed Legal Justice Center
SOWEGA Rising
Tennessee Disability Coalition
Tennessee Health Care Campaign
Tennessee Justice Center
United for Respect
Universal Health Care Foundation of Connecticut
Washington ADAPT
West Virginians for Affordable Healthcare