



May 23, 2024

The Honorable Jonathan Kanter
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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

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

Re: FTC-2024-0022: Request for Information on Consolidation in Health Care Markets

Submitted electronically via <https://www.regulations.gov>

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

Thank you for the opportunity to respond to the request for information (RFI) on consolidation in health care markets. This response is submitted on behalf of the Center for American Progress (CAP), an independent, nonpartisan policy institute based in Washington, D.C. dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action. CAP's interconnected teams of policy experts and advocates have spearheaded and published research on anticompetitive behavior including consolidation, competition, and antitrust in health care as well as other markets. We welcome the opportunity to provide input on the effects of health care market transactions, specifically those conducted by private equity and private payers, on patients, providers, and employers.

Well-functioning health care markets rely on competition to lower prices, spur innovation, drive efficiency, and improve quality. When patients have choices between multiple providers, providers are incentivized to offer high quality care and competitive pricing to attract patients. When multiple insurers operate in a market, they compete for enrollees by designing plans with more comprehensive coverage at lower premiums. This incentive to differentiate also helps spur innovation as providers and payers seek to gain a competitive edge by offering novel and cutting-edge products and services that improve outcomes. However, trends of increasing levels of consolidation and vertical integration among both health care providers and health care payers are undermining competition and contributing to higher health care prices and reduced consumer choices. Furthermore, the rising influence of private equity in health care markets results in reduced visibility into management practices and a focus on profit over patient care, with the potential for life and death consequences.

In this letter, we outline the effects of health care consolidation, explore the misalignment between stated business objectives pre- and post-transactions between health care entities, provide examples of notable transactions, and offer recommendations for federal action to protect competition in health care markets.

I. Effects of Consolidation

Provider and private payer consolidation as well as significant private equity investments and acquisitions are reshaping U.S. health care markets, with implications for patients, providers, and employers. According to the Physicians Advocacy Institute, in 2023, four in five physicians were employed by hospitals, health systems, or other corporate entities.¹ Consolidation is occurring within and between health care industries; for example, Optum, an insurance subsidiary of insurance giant UnitedHealth Group, is now purportedly the largest employer of physicians, with roughly 90,000 employed and 40,000 affiliated physicians and advanced practice clinicians.²

Provider Consolidation

Consolidating transactions such as hospital mergers and acquisitions of physician practices by hospitals and health care systems have increased in the last three

¹ Physicians Advocacy Institute, “Updated Report: Hospital and Corporate Acquisition of Physician Practices and Physician Employment 2019-2023” (2024), available at <https://www.physiciansadvocacyinstitute.org/Portals/0/assets/docs/PAI-Research/PAI-Avalere%20Physician%20Employment%20Trends%20Study%202019-2023%20Final.pdf?ver=uGHF46u1GSeZqYXMKFyYvw%3d%3d>.

² Rylee Wilson, “Optum now has 90,000 physicians,” Becker’s Hospital Review, November 29th, 2023, available at <https://www.beckershospitalreview.com/legal-regulatory-issues/optum-added-nearly-20-000-physicians-in-2023.html>.

decades, resulting in more concentrated and less competitive markets.³ In 2021, most metropolitan areas in the United States had highly or very highly concentrated hospital markets.⁴ Physician-hospital integration is also rising, with physicians increasingly working at hospital-owned practices. Between 2012 and 2022, the share of physicians working in hospitals as employees or contractors increased from 5.6 to 9.6 percent.⁵

Patient Impacts

Provider consolidation contributes to higher health care costs and limits patients' choices of providers as well as access to care. Hospital consolidation enables health systems to leverage their increased market power to command higher prices paid by insurers.⁶ Evidence suggests that hospital mergers can result in price increases ranging from 6 to 17 percent.⁷ This often translates to higher premiums and cost-sharing for patients.⁸ Additionally, increased bargaining power held by consolidated health systems can result in exclusive network agreements (narrow networks) that leave patients with fewer in-network care options.⁹ Beyond the reduction in choice, narrow networks can also lead to delays in care since the remaining in-network providers face higher demand and longer wait times.¹⁰

In response to consolidated provider markets, insurers may attempt to reduce spending by employing utilization management techniques like prior authorization,

³ Zachary Levinson and others, "Ten Things to Know About Consolidation in Health Care Provider Markets," KFF, April 19, 2024, available at <https://www.kff.org/health-costs/issue-brief/ten-things-to-know-about-consolidation-in-health-care-provider-markets/>.

⁴ Health Care Cost Institute, "Hospital Concentration Index: An Analysis of U.S. Hospital Market Concentration," June, 2023, available at <https://healthcostinstitute.org/hcci-origins/hmi-interactive#HMI-Concentration-Index>.

⁵ Carol K. Kane, "Recent Changes in Physician Practice Arrangements: Shifts Away from Private Practice and Towards Larger Practice Size Continue Through 2022" (Chicago: American Medical Association, 2023), available at <https://www.ama-assn.org/system/files/2022-prp-practice-arrangement.pdf>.

⁶ Amy Phillips, "The consequences of U.S. hospital consolidation on local economies, healthcare providers, and patients," Washington Center for Equitable Growth, November 15, 2023, available at <https://equitablegrowth.org/research-paper/the-consequences-of-u-s-hospital-consolidation-on-local-economies-healthcare-providers-and-patients/>.

⁷ Ibid.

⁸ Emily Gee and Ethan Gurwitz, "Provider Consolidation Drives Up Health Care Costs" (Washington: Center for American Progress, 2018), available at <https://www.americanprogress.org/article/provider-consolidation-drives-health-care-costs/>.

⁹ Katherine L. Gudiksen, Alexandra D. Montague, and Jaime S. King, "Mitigating the Price Impacts of Health Care Provider Consolidation," Milbank Memorial Fund, September 23, 2021, available at <https://www.milbank.org/publications/mitigating-the-price-impacts-of-health-care-provider-consolidation/>.

¹⁰ Simon F. Haeder, "Inadequate in the Best of Times: Reevaluating Provider Networks in Light of the Coronavirus Pandemic," *World Medical and Health Policy* 12 (3) (2020): 282–290, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7436480>.

which can further delay and disrupt patient care.¹¹ A KFF study revealed that Medicare Advantage plans issued over 35 million prior authorization requests in 2021, an average of 1.5 per enrollee.¹² An American Medical Association survey of physicians found that 94 percent of physicians reported patient care delays due to prior authorization requirements, and one in three physicians reported that prior authorization led to “a serious adverse event” for a patient in their care, including nine percent reporting that prior authorization led to a patient’s “disability/permanent bodily damage, congenital anomaly/birth defect or death.”¹³

Provider consolidation impacts individuals not only as patients seeking care but also in their capacity as employed workers. One study by researchers at RAND found that hospital mergers led to a \$638 reduction in annual wages for employees with job-based insurance who were working in non-health care industries.¹⁴

Provider Impacts

Provider consolidation can confer substantial labor market power to health systems and hospitals, leaving health care workers few options for health care jobs, and resigning them to lower wages and limiting job mobility.¹⁵ For example, concentration in hospital labor markets can result in nurse wage suppression.¹⁶

Private Payer Consolidation

Private payers are increasingly vertically integrating with pharmacy benefit managers (PBMs) and also specializing in insurance market segments.¹⁷ Currently, four of the

¹¹ Nona Tepper, “Major insurers to ease prior authorizations ahead of federal crackdown,” *Modern Healthcare*, March 29, 2023, available at <https://www.modernhealthcare.com/insurance/unitedhealth-cigna-prior-authorization>.

¹² Jeannie Fuglesten Biniek and Nolan Sroczynski, “Over 35 Million Prior Authorization Requests Were Submitted to Medicare Advantage Plans in 2021,” KFF, February 02, 2023, available at <https://www.kff.org/medicare/issue-brief/over-35-million-prior-authorization-requests-were-submitted-to-medicare-advantage-plans-in-2021/>.

¹³ American Medical Association, “2022 AMA prior authorization (PA) physician survey,” 2023, available at <https://www.ama-assn.org/system/files/prior-authorization-survey.pdf>.

¹⁴ Daniel Arnold and Christopher M. Whaley, “Who Pays for Health Care Costs? The Effects of Health Care Prices on Wages” (Santa Monica, CA: RAND Health Care, 2020), available at https://www.rand.org/pubs/working_papers/WRA621-2.html.

¹⁵ Amy Phillips, “The consequences of U.S. hospital consolidation on local economies, healthcare providers, and patients.”

¹⁶ Elena Prager and Matt Schmitt, “Employer Consolidation and Wages: Evidence from Hospitals” *American Economic Review* 111(2) (2021):397-427, available at <https://www.aeaweb.org/articles?id=10.1257/aer.20190690>.

¹⁷ Matthew Fiedler, Loren Adler, and Richard G. Frank, “A brief look at current debates about pharmacy benefit managers,” Brookings, September 7, 2023, available at <https://www.brookings.edu/articles/a-brief-look-at-current-debates-about-pharmacy-benefit-managers>.

five largest PBMs are integrated with an insurer,¹⁸ and nearly 80 percent of PBM markets are concentrated. This is largely attributable to payer-PBM vertical integration, namely CVS Health's acquisition of Aetna in 2018.¹⁹

As insurers focus on specific lines of business (e.g. marketplace, Medicaid, Medicare Advantage), dominant players have also emerged by market segment. In 2022, three companies controlled 57 percent of the national Medicare Advantage market through their insurance arms—UnitedHealth Group, Humana, and CVS/Aetna—and 63 percent of the PBM market through their PBMs—OptumRX, Humana Pharmacy Solutions, and CVS Caremark, respectively.²⁰ In 2022, nationally, the largest private insurers by market segment were UnitedHealth Group and Centene each with 14 percent in the commercial and Affordable Care Act marketplace segments respectively.²¹ Five for-profit insurers—Centene, Elevance, UnitedHealth Group, Molina, and CVS Health—together accounted for 50 percent of national Medicaid managed care enrollment in 2020.²² These trends in insurer consolidation and market specialization impact how health care services are financed, managed, and delivered.

Patient Impacts

In 2023, 73 percent of the largest metropolitan areas had highly concentrated insurance markets, and among those, nearly half had commercial insurers with market shares of at least 50 percent.²³ This lack of competition impacts patient health care costs. Analyses exploring activity between 2005 and 2011 found correlation between insurer market concentration and lower provider prices.²⁴ This is because larger

¹⁸ Nicole Rapfogel, “5 Things To Know About Pharmacy Benefit Managers,” Center for American Progress, March 13, 2024, available at <https://www.americanprogress.org/article/5-things-to-know-about-pharmacy-benefit-managers/>.

¹⁹ José R. Guardado, “Competition in Commercial PBM Markets and Vertical Integration of Health Insurers with PBMs: 2023 Update” (Chicago: American Medical Association, 2023), available at <https://www.ama-assn.org/system/files/prp-pbm-shares-hhi.pdf>.

²⁰ American Medical Association, “Competition in health insurance: A comprehensive study of U.S. markets” (Chicago: 2023), available at <https://www.ama-assn.org/system/files/competition-health-insurance-us-markets.pdf>; Paige Twenter, “Top PBMs by 2022 market share,” Becker's Hospital Review, May 23, 2023, available at <https://www.beckershospitalreview.com/pharmacy/top-pbms-by-2022-market-share.html>.

²¹ American Medical Association, “AMA identifies market leaders in health insurance,” Press release, December 12, 2023, available at <https://www.ama-assn.org/press-center/press-releases/ama-identifies-market-leaders-health-insurance>.

²² Elizabeth Hinton and Jada Raphael, “A Closer Look at the Five Largest Publicly Traded Companies Operating Medicaid Managed Care Plans,” KFF, July 6, 2023, available at <https://www.kff.org/medicaid/issue-brief/a-closer-look-at-the-five-largest-publicly-traded-companies-operating-medicare-managed-care-plans/>.

²³ American Medical Association, “Competition in Health Insurance: A comprehensive study of U.S. markets” (Chicago: 2023), available at <https://www.ama-assn.org/system/files/competition-health-insurance-us-markets.pdf>.

²⁴ Seidu Dauda, “Hospital and Health Insurance Markets Concentration and Inpatient Hospital Transaction Prices in the U.S. Health Care Market,” Health Services Research 53 (2) (2018):

insurance companies have greater leverage to negotiate more favorable rates with providers and pharmaceutical companies, helping to drive down prices. However, evidence does not suggest that these lower prices are being passed onto patients in the form of lower insurance premiums and out-of-pocket costs.²⁵ Nor does this integration appear to lead to lower health care spending.

For example, between 2016 and 2019, 86 percent of Medicare Advantage beneficiaries were enrolled in plans issued by payers with parent companies that owned related businesses.²⁶ A 2023 report found that gross spending per Medicare Advantage beneficiary was 4.6 percent higher in plans issued by insurers that were vertically integrated with other businesses than in plans from insurers that were not vertically integrated.²⁷ As discussed in two recent CAP reports,²⁸ research does not indicate that Medicare Advantage delivers higher quality care than traditional Medicare.²⁹

Reduced payer competition also impacts patient access to care. As insurers consolidate within and across markets, patients may find themselves with fewer insurance options. Within a vertically integrated network, patients can find themselves restricted to certain in-network or preferred providers or retailers, further limiting their

1203–1226, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5867178/>; Zack Cooper and others, “The Price Ain’t Right? Hospital Prices and Health Spending and the Privately Insured” (Cambridge, MA: National Bureau of Economic Research, 2018), available at https://www.nber.org/system/files/working_papers/w21815/w21815.pdf.

²⁵ RAND Health Care, “Environmental Scan on Consolidation Trends and Impacts in Health Care Markets” (Washington: Office of the Assistant Secretary for Planning and Evaluation, 2022), available at <https://aspe.hhs.gov/sites/default/files/documents/8fd03ae99ed69fb20d6f286729cd921f/aspe-consolidation-landscape-summary-combined.pdf>.

²⁶ Victoria Bailey, “Vertical Integration Raises Spending for Medicare Advantage Plans,” Health Payer Intelligence, March 28, 2023, available at <https://healthpayerintelligence.com/news/vertical-integration-raises-spending-for-medicare-advantage-plans>.

²⁷ Ibid.

²⁸ Micah Johnson and others, “Medicare 2.0: Comprehensive Reform To Strengthen America’s Health Insurance Program for Older Adults” (Washington: Center for American Progress, 2024), available at <https://www.americanprogress.org/article/medicare-2-0-comprehensive-reform-to-strengthen-americas-health-insurance-program-for-older-adults/>; Micah Johnson and others, “Ending Overpayment in Medicare Advantage” (Washington: Center for American Progress, 2024), available at <https://www.americanprogress.org/article/ending-overpayment-in-medicare-advantage/>.

²⁹ Nancy Ochieng and Jeannie Fuglesten Biniek, “Beneficiary Experience, Affordability, Utilization, and Quality in Medicare Advantage and Traditional Medicare: A Review of the Literature,” KFF, September 16, 2022, available at <https://www.kff.org/medicare/report/beneficiary-experience-affordability-utilization-and-quality-in-medicare-advantage-and-traditional-medicare-a-review-of-the-literature/>; Laura Skopec and Robert A. Berenson, “The Medicare Advantage Quality Bonus Program: High Cost for Uncertain Gain” (Washington: Urban Institute, 2023), available at <https://www.urban.org/research/publication/medicare-advantage-quality-bonus-program>.

choice. There is some evidence, however, that this association may not hold true for networks in the large group, employer-based insurer market.³⁰

In 2015, when five insurers accounted for 72 percent of Medicare Advantage enrollment, and only *two* insurers accounted for nearly 40 percent of Medicare Advantage enrollment, an analysis by KFF found that more than a third of Medicare Advantage enrollees were in narrow-network plans (defined by KFF as those containing fewer than 30 percent of the physicians in the county).³¹ Meanwhile, the average Medicare Advantage plan at that time included only 46 percent of the physicians in a county.³² Between 2016 and 2019, 86 percent of Medicare Advantage beneficiaries were enrolled in plans issued by payers with parent companies that owned related businesses, yet a 2019 study found that half of all counties had no psychiatrists participating in a Medicare Advantage plan.³³

Beyond patient access, high market concentration means when security breaches arise for one entity, millions of people are potentially affected. Centralized failure points increase the whole health care system's vulnerability to information technology and cybersecurity infrastructure breakdowns. For example, a February 2024 cyberattack on Change Healthcare, a unit of UnitedHealth Group, resulted in data breaches exposing the personal health information of "a substantial portion of people in America" according to a company statement, and some providers report they are still not being compensated in a timely way for their services.³⁴ This attack had cascading impacts on patients, providers, and employers throughout the health care system. At a May 1, 2024 Senate Finance Committee hearing, UnitedHealth Group CEO Andrew Witty said

³⁰ John A. Graves and others, "Breadth and Exclusivity of Hospital and Physician Networks in US Insurance Markets," *Journal of American Medical Association*, December 17, 2020, available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2774285>.

³¹ Gretchen Jacobson and others, "Medicare Advantage 2015 Spotlight: Enrollment Market Update," KFF, Jun 30, 2015, available at <https://www.kff.org/medicare/issue-brief/medicare-advantage-2015-spotlight-enrollment-market-update/>; Gretchen Jacobson and others, "Medicare Advantage: How Robust Are Plans' Physician Networks?" KFF, October 5, 2017, available at <https://www.kff.org/report-section/medicare-advantage-how-robust-are-plans-physician-networks-report/>.

³² Ibid.

³³ Jane M. Zhu and others, "Psychiatrist Networks In Medicare Advantage Plans Are Substantially Narrower Than In Medicaid and ACA Markets," *Health Affairs* 42 (7) (2023), available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.01547>; Victoria Bailey, "Vertical Integration Raises Spending for Medicare Advantage Plans," *Health Payer Intelligence*, March 28, 2023, available at <https://healthpayerintelligence.com/news/vertical-integration-raises-spending-for-medicare-advantage-plans>.

³⁴ UnitedHealth Group, "UnitedHealth Group Updates on Change Healthcare Cyberattack," April 22, 2024, available at <https://www.unitedhealthgroup.com/newsroom/2024/2024-04-22-uhg-updates-on-change-healthcare-cyberattack.html>; Jaes Rundel and Catherine Stupp, "UnitedHealth Hack: What You Need to Know," *Wall Street Journal Pro*, May 2, 2024, available at <https://www.wsj.com/articles/change-healthcare-hack-what-you-need-to-know-45efc28c>.

that as many as one in three Americans could have had their protected health information and personally identifiable details compromised.³⁵ According to an April 2024 survey by the American Medical Association, 80 percent of physician respondents said they lost revenue due to the attack and more than one in three were unable to process or receive payments for claims.³⁶ Increased federal oversight and intervention of consolidating transactions in health care markets can help ensure consolidated organizations implement adequate protections against such threats.

Provider Impacts

Consolidated private payers are able to leverage their market power to apply downward pressure on provider prices, even in concentrated provider markets. An analysis by the Commonwealth Fund found that in highly concentrated provider and payer markets, the prices insurers paid were five percent lower for hospital admissions, seven percent lower for radiologist visits, and 19 percent lower for oncologist/hematologist visits.³⁷

While high health care prices are contributing to a growing affordability crisis for consumers overall, at the same time, providers in some specialties, such as primary and behavioral health care, are underpaid. Given the importance of insurance reimbursement as a source of revenue for underpaid providers, reduced rates can jeopardize their financial viability, especially for smaller practices or those in rural areas.³⁸ Further decreasing payments to these providers only stands to exacerbate access issues.³⁹ Health systems including AdventHealth, Allegiance Health

³⁵ Ashley Capoot, "UnitedHealth CEO estimates one-third of Americans could be impacted by Change Healthcare cyberattack," CNBC, May 1, 2024, available at <https://www.cnbc.com/2024/05/01/unitedhealth-ceo-one-third-of-americans-could-be-impacted-by-change-healthcare-cyberattack.html>; UnitedHealth Group, "Testimony of Andrew Witty Chief Executive Officer, UnitedHealth Group Before the Senate Finance Committee," May 1, 2024, available at https://www.finance.senate.gov/imo/media/doc/0501_witty_testimony.pdf.

³⁶ American Medical Association, "Change Healthcare cyberattack impact: Key takeaways from informal AMA survey," 2024, available at <https://www.ama-assn.org/system/files/change-healthcare-survey-results.pdf>.

³⁷ Richard M. Scheffler, "Insurer Market Power Lowers Prices in Numerous Concentrated Provider Markets," Commonwealth Fund, September 6, 2017, available at <https://www.commonwealthfund.org/publications/journal-article/2017/sep/insurer-market-power-lowers-prices-numerous-concentrated>.

³⁸ Kristin L. Reiter and Paula H. Song, *Gapenski's Healthcare Finance: An Introduction to Accounting and Financial Management*, Seventh Edition (Health Administration Press, 2021); American Medical Association, "Payment & Delivery in Rural Hospitals," 2024, available at <https://www.ama-assn.org/system/files/issue-brief-rural-hospital.pdf>.

³⁹ Nicole Rapfogel, "The Behavioral Health Care Affordability Problem" (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/the-behavioral-health-care-affordability-problem/>; Lynn Arditi, "More Patients Are Losing Their Doctors — And Trust in the Primary Care System," KFF Health News, April 2, 2024, available at

Management, and Community Health Systems filed lawsuits against MultiPlan, a private-equity backed data analytics firm for dominant insurers including Cigna, Aetna, Kaiser Permanente, and others, alleging that the firm's work led to plans underpaying providers.⁴⁰ Plaintiffs in the Allegiance Health Management suit allege that MultiPlan has been "forcing providers to accept 61-81% underpayments on their out-of-network reimbursement claims," resulting in nearly \$23 billion in alleged underpayments to providers in 2023.⁴¹ In response to a question regarding the impact of pending litigation on the company's market strategy, MultiPlan CEO stated "we're confident in the services we provide...We offer an array of solutions across providers, members employers and health systems. We're aligned with the goals of the [No Surprises Act] and otherwise."⁴²

Private Equity Investments and Acquisitions

Rising consolidation and declining competition in the health care industry has led to large firms amassing more market power, while smaller providers, insurance plans, and pharmacies struggle with profitability and operations.⁴³ Private equity has stepped

<https://kffhealthnews.org/news/article/primary-care-patients-lose-doctors-trust-rhode-island/>; Gino Vicci, "Michigan health experts say primary care doctor shortage will worsen if not addressed," CBS News, April 2, 2024, available at <https://www.cbsnews.com/detroit/news/michigan-health-experts-fear-primary-doctor-shortage-will-worsen-if-not-addressed/>.

⁴⁰ Chris Hamby, "Health Insurers' Lucrative, Little-Known Alliance: 5 Takeaways," New York Times, April 7, 2024, available at <https://www.nytimes.com/2024/04/07/us/health-insurance-medical-bills-takeaways.html>; Dave Muoio, "MultiPlan, major payers again accused of conspiring to limit provider reimbursement," Fierce Healthcare, Apr 29, 2024, available at <https://www.fiercehealthcare.com/payers/multiplan-major-payers-again-accused-colluding-new-provider-class-action>; Richard J. Pollack, "Following NYT Investigation, AHA Urges DOL to Investigate Actions of MultiPlan and Commercial Insurers," American Hospital Association, April 9, 2024, available at <https://www.aha.org/lettercomment/2024-04-09-following-nyt-investigation-aha-urges-dol-investigate-actions-multiplan-and-commercial-insurers>; Dave Muoio, "Community Health Systems adds another antitrust lawsuit to MultiPlan's collection," Fierce Healthcare, May 9, 2024, available at <https://www.fiercehealthcare.com/payers/community-health-systems-adds-another-antitrust-lawsuit-multiplans-collection>.

⁴¹ Dave Muoio, "MultiPlan, major payers again accused of conspiring to limit provider reimbursement."

⁴² Andrew Cass, "MultiPlan not changing strategy in face of lawsuits, CEO says," Becker's Hospital CFO Report, May 10, 2024, available at <https://www.beckershospitalreview.com/finance/multiplan-not-changing-strategy-in-face-of-lawsuits-ceo-says.html>.

⁴³ RAND Health Care, "Environmental Scan on Consolidation Trends and Impacts in Health Care Markets"; Praveen Suthrum, "Physician practice consolidation: It's only just begun," STAT, February 27, 2020, available at <https://www.statnews.com/2020/02/27/physician-practice-consolidation-its-only-just-begun/>; Elizabeth Seeley and Surya Singh, "Competition, Consolidation, and Evolution in the Pharmacy Market: Implications for Efforts to Contain Drug Prices and Spending," Commonwealth Fund, August 12, 2021, available at <https://www.commonwealthfund.org/publications/issue-briefs/2021/aug/competition-consolidation-evolution-pharmacy-market>.

in, buying up provider organizations and rapidly increasing their profitability, sometimes at the expense of patient access to quality care. From 2012 to 2021, private equity acquisitions of physician practices increased sixfold and created high levels of concentration in many geographic markets: single private equity firms held a majority market share for at least one specialty in 60 metropolitan statistical areas (MSAs), or nearly 16 percent of all MSAs.⁴⁴ In 2021 alone, private equity firms spent \$206 billion on more than 1,400 health care industry acquisitions.⁴⁵

Patient Impacts

As public health expert Ashish Jha stated in an op-ed earlier this year, private equity “efficiency” efforts can result in poorer nursing staffing ratios and rolling back safety protocols and processes that protect patients.⁴⁶ Private equity acquisitions of hospitals have been associated with a 25.4 percent increase in hospital-acquired conditions, largely attributed to falls and central line-associated bloodstream infections.⁴⁷ One 2021 study found that 90-day mortality for Medicare patients was 10 percent higher at private-equity owned skilled nursing facilities.⁴⁸ Another study found that private equity-owned hospitals served lower-risk Medicare patients who were younger and less likely to be dual-eligible for Medicare and Medicaid, and that those hospitals transferred patients to other acute care hospitals more frequently than other non-private equity-owned hospitals.⁴⁹

Some private equity-backed hospitals steer patients toward out-of-network services that can charge patients higher prices.⁵⁰ For example, by outsourcing emergency services to providers or staffing firms not covered by insurance can result in high out-of-network bills. Further, private equity-backed health care organizations lodged two-thirds of the independent dispute resolution cases made in 2023 under the No

⁴⁴ Ola Abdelhadi and others, “Private Equity–Acquired Physician Practices And Market Penetration Increased Substantially, 2012–21,” *Health Affairs* 43 (3) (2024): 354-362, available at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2023.00152>.

⁴⁵ Fred Schulte, “Sick Profit: Investigating Private Equity’s Stealthy Takeover of Health Care Across Cities and Specialties,” *KFF Health News*, November 14, 2022, available at <https://kffhealthnews.org/news/article/private-equity-takeover-health-care-cities-specialties/>.

⁴⁶ Ashish K. Jha, “Private equity firms are gnawing away at U.S. health care,” *New York Times*, January 10, 2024, available at <https://www.washingtonpost.com/opinions/2024/01/10/private-equity-health-care-costs-acquisitions/>.

⁴⁷ Sneha Kannan, “Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition,” *JAMA* 330 (24) (2023): 2365-2375, available at <https://jamanetwork.com/journals/jama/article-abstract/2813379>.

⁴⁸ Atul Gupta and others, “How Patients Fare When Private Equity Funds Acquire Nursing Homes” (Cambridge, MA: National Bureau of Economic Research, 2021), available at <https://www.nber.org/digest/202104/how-patients-fare-when-private-equity-funds-acquire-nursing-homes>.

⁴⁹ Sneha Kannan, “Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition.”

⁵⁰ <https://cepr.net/private-equity-in-healthcare-profits-before-patients-and-workers/>.

Surprises Act. The No Surprises Act was intended to protect *consumers* from surprise medical bills. Providers lodge cases when they consider their payments to be inadequate.⁵¹

Private equity firms that invest in health care entities can also maximize revenue by providing more, sometimes unnecessary, care and/or “gaming” insurance coding.⁵² While pushing more care certainly drives up costs, it can also be harmful for patients’ health. For example, one family sued a private equity-owned dental practice because their child died after receiving root canals and crowns on six baby teeth, which, according to KFF Health News, they argued were done unnecessarily and as part of “a corporate strategy to maximize profits by overtreating kids from lower-income families enrolled in Medicaid.”⁵³ While the case was settled confidentially and the defendants denied liability in the court filings,⁵⁴ this example raises concerns about the risk of increasing the volume of health care services provided to maximize revenue.

Provider Impacts

When private equity firms acquire hospitals and other practices, they immediately try to improve profitability. One way they increase profits is by cutting costs, reducing overall staffing levels and replacing doctors with less expensive, mid-level practitioners like nurse practitioners and physician assistants wherever possible.⁵⁵ A study of private-

⁵¹ Jack Hoadley and Kevin Lucia, “Report Shows Dispute Resolution Process in No Surprises Act Favors Providers,” Commonwealth Fund, March 1, 2024, available at <https://www.commonwealthfund.org/blog/2024/report-shows-dispute-resolution-process-no-surprises-act-favors-providers>; Linda J. Blumberg and Kennah Watts, “Evidence On Private Equity Suggests That Containing Costs And Improving Outcomes May Go Hand-In-Hand,” Health Affairs, April 23, 2024, available at <https://www.healthaffairs.org/content/forefront/evidence-private-equity-suggests-containing-costs-and-improving-outcomes-may-go-hand>.

⁵² Robert Pearl, “Private Equity and the Monopolization of Medical Care,” Forbes, February 20, 2023, available at <https://www.forbes.com/sites/robertpearl/2023/02/20/private-equity-and-the-monopolization-of-medical-care/?sh=564035892bad>.

⁵³ Fred Schulte, “Six Profit: Investigating Private Equity’s Stealthy Takeover of Health Care Across Cities and Specialties,” KFF Health News, November 14, 2022, available at <https://kffhealthnews.org/news/article/private-equity-takeover-health-care-cities-specialties/>; Eileen O’Grady, “Deceptive Marketing, Medicaid Fraud, and Unnecessary root canals on babies: Private Equity Drills into the Dental Care Industry,” Private Equity Stakeholder Project, July 2021, available at https://pestakeholder.org/wp-content/uploads/2021/08/PESP_DSO_July2021.pdf.

⁵⁴ U.S. Department of Justice, “Dental Management Company Benevis and Its Affiliated Kool Smiles Dental Clinics to Pay \$23.9 Million to Settle False Claims Act Allegations Relating to Medically Unnecessary Pediatric Dental Services,” January 10, 2018, available at <https://www.justice.gov/opa/pr/dental-management-company-benevis-and-its-affiliated-kool-smiles-dental-clinics-pay-239#>.

⁵⁵ Pearl, “Private Equity and the Monopolization of Medical Care;” Brett Kelman and Blake Farmer, “Doctors Are Disappearing From Emergency Rooms as Hospitals Look to Cut Costs,” KFF Health News, February 13, 2023, available at <https://kffhealthnews.org/news/article/doctors-are-disappearing-from-emergency-rooms-as-hospitals-look-to-cut-costs/>.

owned hospitals in 2018 found fewer employees per bed in private equity-owned hospitals compared to others.⁵⁶

Another way private equity drives profitability is through raising prices. In some markets with high private equity concentration, health care prices and costs to payers and patients increase substantially.⁵⁷ One 2023 analysis of private equity firms that dominated more than 30 percent of a local market found statistically significant price increases for gastroenterology (18 percent), obstetrics and gynecology (16 percent), and dermatology (13 percent).⁵⁸ For these specialties, private equity-acquired practices charged an average of \$71 more per claim.⁵⁹ Another 2021 study found that private equity hospital buyouts were associated with an 11 percent increase in total health care spending for privately insured individuals, mostly driven by higher prices.⁶⁰ Finally, another 2021 study found that private equity-acquired hospitals raised their total charge per inpatient day by \$407, and their overall charge-to-cost ratio for services increased by 0.31.⁶¹

Employer Impacts

Across industries, the Private Equity Stakeholder Project reports that private equity-owned companies have demonstrated a “pattern of labor issues,” including “high instances of health and safety violations, wage and hour violations, and layoffs.”⁶²

II. Claimed Business Objectives for Transactions

⁵⁶ Joseph Bruch, Dan Zeltzer, and Zirui Song, “Characteristics of Private Equity-Owned Hospitals in 2018,” *Annals of Internal Medicine* 174 (2) (2021): 277–279, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8299539/>.

⁵⁷ Alexander Borsa and others, “Evaluating Trends in Private Equity Ownership and Impacts on Health Outcomes, Costs, and Quality: Systemic Review,” *BMJ* 382 (2023), available at <https://www.bmj.com/content/382/bmj-2023-075244>.

⁵⁸ Richard M. Scheffler and others, “Monetizing Medicine: Private Equity and Competition in Physician Practice Markets” (Washington, Berkeley, CA, and Washington): American Antitrust Institute, Petris Center, and Washington Center for Equitable Growth, 2023), available at https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf.

⁵⁹ Yashaswini Singh and others, “Association of Private Equity Acquisition of Physician Practices With Changes in Health Care Spending and Utilization,” *JAMA Health Forum* 3(9) (2022), available at <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2795946>.

⁶⁰ Tong Liu, “Bargaining with Private Equity: Implications for Hospital prices and Patient Welfare,” (Philadelphia: The Wharton School, 2021), available at https://damore-mckim.northeastern.edu/wp-content/uploads/2022/05/6_PEHealthcare_v25.pdf.

⁶¹ Joseph D. Bruch, Suhas Gondi, and Zirui Song, “Changes in Hospital Income, Use, and Quality Associated With Private Equity Acquisitions,” *JAMA Internal Medicine* 180(11) (2020):1428-1435, available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2769549>.

⁶² Private Equity Labor Project, “Private Equity Labor Scorecard” (2023), available at https://pestakeholder.org/wp-content/uploads/2023/11/PESP_Report_Labor-Scorecard_2023.pdf.

Private payers justify horizontal and vertical integration as a means to achieve multiple strategic business goals, including increased efficiency, reduced cost, and enhanced consumer experience. Through horizontal integration, payers can increase their market share and geographic presence, enhancing their competitive position and increasing their bargaining power with providers, ideally reducing prices and generating cost savings for members as a result.⁶³ By acquiring health care providers, payers can gain control over both the financing and delivery of health care.⁶⁴ Integrating insurers contend that this dual access to a full care continuum facilitates better care coordination and fosters clinical innovation.⁶⁵ Payers assert that integration with PBMs allows them to harness their combined data capabilities and insights to better identify trends and predict costs, while also better coordinating a plan's medical and drug benefits.⁶⁶

The evidence, however, does not support these purported claims. Retrospective analyses from 2007 to 2010 found that premiums increased in certain markets post insurance mergers.⁶⁷ Studies have also found that health insurance mergers do not improve efficiency or generate administrative cost reductions that meaningfully reduce prices.⁶⁸ Furthermore, vertical payer-PBM relationships incentivize higher prices. While insurers generally seek to minimize their drug expenses, when an insurer owns a PBM,

⁶³ Leemore S. Dafny, "Evaluating the Impact of Health Insurance Industry Consolidation: Learning from Experience" (New York: Commonwealth Fund, 2015), available at <https://www.commonwealthfund.org/publications/issue-briefs/2015/nov/evaluating-impact-health-insurance-industry-consolidation>.

⁶⁴ Nona Tepper, "Vertically Integrated Payer-Provider Groups Raise Antitrust Concerns," *Modern Healthcare*, March 22, 2022, available at <https://www.modernhealthcare.com/operations/insurers-pave-new-vertically-integrated-provider-model>.

⁶⁵ Humana, "Humana Completes Acquisition of Kindred at Home," Press release, August 17, 2021, available at <https://press.humana.com/news/news-details/2021/Humana-Completes-Acquisition-of-Kindred-at-Home/default.aspx#gsc.tab=0>.

⁶⁶ The Cigna Group, "Cigna Completes Combination with Express Scripts, Establishing a Blueprint to Transform the Health Care System," Press release, December 1, 2018, available at <https://newsroom.thecignagroup.com/Cigna-Completes-Combination-with-Express-Scripts-Establishing-a-Blueprint-to-Transform-the-Health-Care-System>; Matthew Fielder, Loren Adler, and Richard G. Frank, "A Brief Look at Current Debates About Pharmacy Benefit Managers" (Washington: Brookings, 2023), available at <https://www.brookings.edu/articles/a-brief-look-at-current-debates-about-pharmacy-benefit-managers/>; CMS Health, "CVS Health Completes Acquisition of Aetna, Making Start of Transforming Consumer Health Experience," Press release, November 28, 2018, available at <https://www.cvshealth.com/news/company-news/cvs-health-completes-acquisition-of-aetna-marking-start-of.html>.

⁶⁷ Leemore Dafny, Mark Duggan, and Subramaniam Ramanarayanan, "Paying a Premium on Your Premium? Consolidation in the US Health Insurance Industry," *American Economic Review* 102(2) (2012):1161-1185, available at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.102.2.1161>

⁶⁸ José R. Guardado, David W. Emmons, and Carol K. Kane, "The Price Effects of a Large Merger of Health Insurers: A Case Study of UnitedHealth-Sierra," *Health Management, Policy and Innovation* 1(3) (2013):16-35, available at <https://hmpi.org/wp-content/uploads/2017/02/HMPI-Guardado-Emmons-Kane-Price-Effects-of-a-Larger-Merger-of-Health-Insurers.pdf>; Paul von Ebers, "Megan Health Insurance Mergers: Is Bigger Really Better?" *Health Affairs Forefront*, January 22, 2016, available at <https://www.healthaffairs.org/content/forefront/mega-health-insurance-mergers-bigger-really-better>.

raising drug prices increases the entity's combined profit.⁶⁹ Accordingly, the evidence suggests that private payers are the primary beneficiaries of these transactions.

Consolidation has contributed to revenue growth for some of the nation's largest insurers. A recent Axios analysis found that six of the largest for-profit health insurers comprised 30 percent of total U.S. health spending in 2023, and the stock price for these insurers has vastly increased in the past two decades.⁷⁰ CAP recommends that the Federal Trade Commission, Department of Justice (DOJ), and Department of Health and Human Services (HHS) conduct regular quantitative, retrospective analyses to further understand the relationship between payer profits and premiums.

Health system financialization

Beyond spurring consolidation transactions, health systems are also participating in their own venture capital, private equity, or other financialization efforts, which can run counter to either their missions or stated objectives to provide quality health care to the community. Health system leaders are frequently from this world as well: In 2023, nearly half (44 percent) of board members at top-ranked hospitals were from the financial sector.⁷¹

Even some nonprofit systems are associated with these sorts of for-profit investments; in 2023, 23 health nonprofit systems had private investment arms.⁷² Since April 2022, for example, Memorial Hermann Health system has invested in several health tech startups including cloud analytics firm Clarify Health, and revenue management company EnableComp.⁷³ Outside of investment arms, STAT News has reported that other nonprofit hospitals are “dabbling” in private equity investment.⁷⁴

Investments by nonprofit health systems may also be used as a source of unrelated investment profits, which can reduce focus on health care outcomes. For example, Ascension, the largest nonprofit and Catholic hospital system in the country, partnered with private equity firm TowerBrook Capital Partners, becoming directly involved in

⁶⁹ Nicole Rapfogel, “5 Things To Know About Pharmacy Benefit Managers,” Center for American Progress, March 13 2024, available at <https://www.americanprogress.org/article/5-things-to-know-about-pharmacy-benefit-managers/>.

⁷⁰ Caitlin Owens, “Axios Future of Health Care,” Axios, April 19, 2024, available at https://www.axios.com/newsletters/axios-future-of-health-care-b973c755-7d1c-4f4d-9c94-5e0a91d2dd09.html?chunk=2&utm_term=lisocialshare#story2.

⁷¹ Judith Garber, “The Rising Danger of Private Equity in Healthcare,” The Lown Institute, January 23, 2024, available at <https://lowninstitute.org/the-rising-danger-of-private-equity-in-healthcare/>.

⁷² Naomi Diaz, “23 Health Systems with Investment Arms,” Becker's Health IT, September 7, 2023, available at <https://www.beckershospitalreview.com/innovation/22-health-systems-with-investment-arms.html>.

⁷³ Katie Adams, “Why Startups Are Seeking Out Health Systems' VC Arms,” MedCity News, January 28, 2024, available at <https://medcitynews.com/2024/01/startups-vc-capital-healthcare/#:~:text=Over%20the%20past%20couple%20years.and%20nursing%20software%20Vendor%20Laudio>; Noah Schwartz, “7 companies Memorial Hermann is investing in,” Beckers Health IT, January 25, 2023, available at <https://www.beckershospitalreview.com/innovation/4-companies-memorial-hermann-is-investing-in.html>.

⁷⁴ Rachel Cohrs Zhang, “The Catholic Hospital System Ascension Is Running a Wall Street-Style Private Equity Fund,” STAT, November 16, 2021, available at <https://www.statnews.com/2021/11/16/ascension-running-wall-street-style-private-equity-fund/>.

private equity dealings, including investments in a debt collection company that has reportedly engaged in aggressive medical debt collection.⁷⁵ While Ascension has said its investments fund its charitable activities, according to STAT News, as of 2021, it was unclear if the increased investment income had been used to provide more charity care and the health system had shuttered safety-net hospital services.⁷⁶

This type of activity by nonprofit health systems is notable given the FTC’s commentary on nonprofit hospitals issued as part of its April 2024 FTC rule banning noncompete clauses.⁷⁷ We were glad to see the FTC clarify that “not all entities claiming tax-exempt status as nonprofits fall outside the Commission’s jurisdiction.” We appreciated that the Commission laid out the two-part test to evaluate and determine whether a nonprofit entity is “organized for profit” and as such falls under the agency’s authority.⁷⁸ As with noncompetes, CAP encourages the FTC to exert the full power of its authority over nonprofit entities as it considers ways to counteract corporate greed and anticompetitive behavior in health care.

III. Notable Transactions

The Private Equity Stakeholder Project determined that in 2023, private equity firms owned 130 rural hospitals.⁷⁹ Because rural hospitals often struggle financially, with nearly 30 percent at risk of closing in 2023, they may be more willing to accept private equity ownership and private equity firms can buy them at lower prices.⁸⁰ As a result, some private equity firms have taken over a substantial portion of the rural hospital market: For example, Apollo Global Management is a private equity firm that owns 220 hospitals in 36 states, 71 of which are rural hospitals. Even when rural hospitals obtain federal investments, private equity ownership can mean that these funds do not go toward services that benefit patients. For example, one Apollo-owned health system,

⁷⁵ Ibid; Rachel Cohrs Zhang, “How America’s Largest Catholic Hospital System Is Moonlighting as a Private Equity Firm,” STAT, November 16, 2021, available at <https://www.statnews.com/2021/11/16/ascension-investigation-moonlighting-private-equity-firm/>.

⁷⁶ Zhang, “The Catholic Hospital System Ascension Is Running a Wall Street-Style Private Equity Fund.”

⁷⁷ Federal Trade Commission, “FTC Announces Rule Banning Noncompetes,” April 23, 2024, available at <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.

⁷⁸ Ibid.

⁷⁹ Eileen O’Grady, Mary Bugbee, and Michael Fenne, “Private Equity Descends on Rural Health Care” (Private Equity Stakeholder Project, 2023), available at https://pestakeholder.org/wp-content/uploads/2023/02/PE_Rural_Health_Jan2023-compressed.pdf; <https://pestakeholder.org/private-equity-hospital-tracker/>.

⁸⁰ Advisory Board, “Why Are 600+ Rural Hospitals At Risk Of Closing?” March 22, 2023, available at <https://www.advisory.com/daily-briefing/2023/03/22/rural-hospitals>; Anastassia Gliadkovskaya, “Private Equity Owns At Least 130 Rural Hospitals, and Other Revelations in a Sweeping New Report on PE in Rural Healthcare,” Fierce Healthcare, January 26, 2023, available at <https://www.fiercehealthcare.com/finance/new-report-private-equity-stakeholder-project-ownership-rural-healthcare>.

Lifepoint, received an influx of \$1.6 billion in COVID-19 stimulus funding; in spite of this, the health system cut charity care by 21 percent in 2020.⁸¹

Some private equity firms buy unprofitable rural hospitals, extract profits however they can, and close them, leaving communities without access to care. For example, private equity firm Lateral Investment Management bought Arizona hospital Santa Cruz Valley Regional Hospital out of bankruptcy for \$26 million in 2018, received nearly \$18 million in COVID-19 pandemic relief funds, and then, in 2021, sold the hospital's real estate for \$60 million.⁸² When a private equity-owned rural hospital in Missouri closed suddenly in 2022, about 500 patients had to travel 40 miles or more to obtain cancer care.⁸³ Rural hospital closures have ripple effects on communities: one 2006 study estimated that the closure of the only hospital in a community results in a \$703 (4 percent) reduction in per-capita income and a 1.6 percentage point increase in unemployment.⁸⁴

Private equity firms have also gained a foothold in other critical rural health services, including medical staffing companies and air ambulance businesses, which are often out-of-network, resulting in higher patient costs.⁸⁵ Given shortages and access concerns in rural areas, growing private equity acquisitions of behavioral health practices is another newer, major concern.⁸⁶

IV. Need for Government Action in Private Markets

The private equity model and its incentives, and private markets in general, are not suited to high-quality or high-value health care. To begin with, private markets are largely opaque, which reduces their efficiency. When raising capital from investors,

⁸¹ Private Equity Stakeholder Project, "Apollo's Stranglehold on Hospitals Harms Patients and Healthcare Workers" (2024), available at https://pestakeholder.org/wp-content/uploads/2024/01/PESP_Report_Apollo_Lifepoint_2024.pdf; Alan Condon, "Apollo's 220-Hospital 'Stranglehold' Harms Patients and Workers, Report Alleges," January 17, 2024, available at <https://www.beckershospitalreview.com/finance/apollos-hospital-stranglehold-harms-patients-and-workers-report-alleges.html>; O'Grady, "Private Equity Descends on Rural Health Care;" Gliadkovskaya, "Private Equity Owns At Least 130 Rural Hospitals, and Other Revelations in a Sweeping New Report on PE in Rural Healthcare."

⁸² O'Grady, "Private Equity Descends on Rural Health Care;" Gliadkovskaya, "Private Equity Owns At Least 130 Rural Hospitals, and Other Revelations in a Sweeping New Report on PE in Rural Healthcare."

⁸³ Sarah Jane Tribble, "Buy and Bust: When Private Equity Comes for Rural Hospitals," KFF Health News, June 15, 2022, available at <https://kffhealthnews.org/news/article/private-equity-rural-hospitals-closure-missouri-noble-health/>.

⁸⁴ George M. Holmes and others, "The Effect of Rural Hospital Closures on Community Economic Health," *Health Services Research* 41(2) (2006), available at <https://onlinelibrary.wiley.com/doi/10.1111/j.1475-6773.2005.00497.x>.

⁸⁵ Gliadkovskaya, "Private Equity Owns At Least 130 Rural Hospitals, and Other Revelations in a Sweeping New Report on PE in Rural Healthcare."

⁸⁶ Ibid.

private market companies and funds are not subject to Securities and Exchange Commission mandated disclosure rules and other rules of fair and efficient competition that apply in the public markets, where essential information about a company's operations, management, risks, and financials is shared publicly for investors and other market participants to assess.⁸⁷ This lack of mandated disclosure in private markets may benefit the owners of private companies and funds, but it is likely to raise the cost and lower the quality of health care facilities they manage or control. While some private companies may voluntarily make some disclosures, the disclosures are not standardized for investors and other market participants to compare, and often the disclosures are not reliable or subject to independent third-party audit. This overall lack of mandated disclosure prevents adequate oversight by investors, market participants, and government regulators, obscuring the very data needed to analyze the potential links between problems with the quality and affordability of health care and efforts to boost returns for wealthy private investors.

Private market firms are likely to be more ruthless than public companies in generating profit at the expense of patient care. In many cases where profits and quality of care diverge, private firms may choose actions that maximize profits for investors, rather than health care quality, as described earlier. The private equity model of raising large sums from wealthy investors, using that capital to invest in companies, reducing costs and squeezing more profits from those companies, and selling them necessitates a relentless focus on profit.⁸⁸ A private equity fund may own more than a dozen companies at a time, and fund managers are not concerned if one or more of those companies fail as long as the fund's other companies yield sufficiently high profits and can be sold at a high price in order to pay handsome returns to the early investors and interest them or new investors in the next round of capital raising.⁸⁹ Fund managers are accountable to their largest investors and need not be concerned if the health care facilities that fail then cease providing services in otherwise un- or under-served communities.⁹⁰

In private markets, fees, prices, and other costs are not required to be disclosed to anyone, and companies owned by private funds usually have no choice but to pay the fees that private fund owners charge them purportedly for their services. These may

⁸⁷ See, generally, Tyler Gellasch, Alexandra Thornton, and Crystal Weise, "How Exemptions From Securities Laws Put Investors and the Economy at Risk," Center for American Progress, March 22, 2024, available at <https://www.americanprogress.org/article/how-exemptions-from-securities-laws-put-investors-and-the-economy-at-risk/>.

⁸⁸ Matt Wirz, "Move Aside, Big Banks: Giant Funds Now Rule Wall Street," The Wall Street Journal, April 22, 2024, available at https://www.wsj.com/finance/investing/investment-funds-new-financial-supermarkets-9b8187d7?mod=hp_lead_pos1.

⁸⁹ See, Jeffrey C. Hooke, *The Myth of Private Equity*, Columbia Business School Publishing, 2021.

⁹⁰ Yvonne Abraham, "Profiting Off Prisons," The Boston Globe, March 13, 2024, available at <https://www.bostonglobe.com/2024/03/13/metro/profitting-off-prisons/>.

include transaction fees, exit fees, monitoring fees, directors' fees, and breakup fees.⁹¹ There are no rules mandating that fees and other hidden costs be disclosed or even be reasonable. In some cases, a particularly wealthy investor may have the power to require certain information in return for their investment, but the information need not be disclosed to other investors or anyone else.⁹² Importantly, fees are often substantial in private funds, and they represent guaranteed income to the fund managers, who receive the fee income regardless of the success or failure of the companies the fund owns.⁹³

The lack of disclosure and drive to profit from buying and selling companies are particularly concerning in the health care context. There is no playbook or set of regulations guiding, much less requiring, private fund managers and owners to cut costs and increase profits in ways that ensure patient care. Private funds are free to seek increased revenue by any means possible. For example, as illustrated earlier, they can and often do sell the property a hospital sits on in order to gain back what they paid to buy the hospital, forcing the hospital to incur additional costs to lease the property.⁹⁴ This may drain the hospital (or other health care facility) of cash needed for patient care. As discussed, this can have deadly consequences for patients and dramatically alter the working environment.

While private market players are subject to laws against fraud and manipulation, such cases are difficult to prove in the context of limited disclosure. As a result, conflicts of interest abound in private markets—conflicts that would not be permitted under the rules applicable to public companies.⁹⁵ For example, an early investor in a private firm may sit on the board of one or more of the companies the firm purchases, enabling that investor to influence board decisions that may improve investor returns even while jeopardizing hospital revenues critical for funding essential medical equipment and supplies or patient care. And, in many cases, even though private fund managers may

⁹¹ StepStone, “Uncovering the Costs and Benefits of Private Equity,” April 2016, available at https://www.stepstonegroup.com/wp-content/uploads/2021/07/StepStone_Uncovering_the_Costs_and_Benefits_of_PE.pdf

⁹² Allison Herren Lee, “Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy,” U.S. Securities and Exchange Commission, October 12, 2021, available at <https://www.sec.gov/news/speech/lee-sec-speaks-2021-10-12>.

⁹³ See, generally, Tyler Gellasch, Alexandra Thornton, and Crystal Weise, “How Exemptions From Securities Laws Put Investors and the Economy at Risk,” Center for American Progress, March 22, 2024, available at <https://www.americanprogress.org/article/how-exemptions-from-securities-laws-put-investors-and-the-economy-at-risk/>.

⁹⁴ Anna Claire Vollers, “When Private Equity Comes to Town, Hospitals Can See Cutbacks, Closures,” New Jersey Monitor, January 18, 2024, available at <https://newjerseymonitor.com/2024/01/18/shell-game-when-private-equity-comes-to-town-hospitals-can-see-cutbacks-closures/>.

⁹⁵ See, generally, Tyler Gellasch, Alexandra Thornton, and Crystal Weise, “How Exemptions From Securities Laws Put Investors and the Economy at Risk,” Center for American Progress, March 22, 2024, available at <https://www.americanprogress.org/article/how-exemptions-from-securities-laws-put-investors-and-the-economy-at-risk/>.

have experience investing in health care entities, they may lack professional health care expertise to ensure basic concerns for the patients and their caretakers are met.

The enactment of increasingly broad exemptions from the rules that govern public companies since the 1980s are at the core of this problem, and the harms of the private markets extend far beyond health care.⁹⁶ Exemptions now enable private funds and companies to access capital either directly or indirectly from nearly any investor, including workers whose savings may be held in pensions and other retirement plans. The lack of information about these funds and companies poses risks for those investors, as well as for the companies that are purchased by private funds. One solution is to roll back the exemptions through regulation or legislation, if necessary, so that more funds and companies are required to comply with the public disclosure framework. While such action is beyond the scope of the FTC, DOJ, and HHS authorities, those agencies could exert pressure on Congress and the SEC to act.

Alternatively, Congress may need to halt the private market acquisition of health care entities or call for enhanced disclosures and data gathering from them on grounds that such entities and the services they provide involve heightened public policy concerns.

Conclusion

Provider consolidation, private payer consolidation, and increasing levels of vertical integration have reduced competition, increased health care costs, and contributed to a proliferation of private equity in health care, leading to an acceleration of the prioritization of profits over patient care.

CAP applauds recent action to promote competition, including the FTC's rule banning noncompetes and the DOJ Antitrust Division's newly-announced Task Force on Health Care Monopolies and Collusion. We appreciate the opportunity to provide comments and thank the agencies for considering our recommendations. For any questions regarding this comment letter, please contact Andrea Ducas at aducas@americanprogress.org.

Sincerely,

Center for American Progress

⁹⁶ Tyler Gellasch, Alexandra Thornton, and Crystal Weise, "How Exemptions From Securities Laws Put Investors and the Economy at Risk," Center for American Progress, March 22, 2024, available at <https://www.americanprogress.org/article/how-exemptions-from-securities-laws-put-investors-and-the-economy-at-risk/>.