PRIVATE EQUITY STAKEHOLDER PROJECT

May 24, 2024

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

Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, DC 20580

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

**Request for Information on Consolidation in Health Care Markets**

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

The Private Equity Stakeholder Project (PESP) is a financial watchdog organization that seeks to bring transparency and accountability to the private equity industry for the benefit of impacted communities and investors.

We appreciate this opportunity to respond to this Request for Information on Consolidation in Health Care Markets (the "RFI") by the Department of Justice, Department of Health and Human Services and Federal Trade Commission (the "Agencies"). The publication of the RFI is timely as the private equity industry has grown dramatically in recent years, and its inroads into healthcare pose risks to patients and communities.

PRIVATE EQUITY STAKEHOLDER PROJECT

## I. Growth of Private Equity in Healthcare

Private equity and other private funds firms had less than $1 trillion in assets under management in 2004. They now manage more than $13.1 trillion and are growing quickly, including in their share of the healthcare sector.[1]

Private equity increasingly makes up a substantial portion of investment in U.S. healthcare companies and reached an all-time high in 2021 of 515 deals valued at $151 billion.[2] These investments touch virtually every aspect of the healthcare industry, including hospitals, physician specialties such as gastroenterology and anesthesiology, emergency medicine, dentistry, travel nursing, durable medical equipment, behavioral health, disability services, and healthcare services for people in prisons and jails.

## II. Effects of Private Equity Consolidation

The growing presence of private equity in healthcare raises concern. The private equity business model, which is characterized by the pursuit of outsized profits over short periods of time and a reliance on high levels of debt, is in many ways incompatible with providing quality, affordable healthcare.

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 private equity business plan can divert cash from operations – patient care and patient safety – to interest payments and dividends paid out to private equity owners.

Private equity's presence in the healthcare sector 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.

[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] "Healthcare Private Equity Market 2021: The Year in Review" (Bain & Company, March 16, 2022), bain.com/insights/year-in-review-global-healthcare-private-equity-and-ma-report-2022/.

The consequences have been borne by healthcare workers and the communities they serve. Private equity's healthcare profiteering has resulted in dangerous conditions, closures and reduced access to services, declining quality, and fraud. Below are some financial tactics characteristic of private equity investment:

- 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.[3]

- 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.[4]

- 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 healthcare 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.[5]

- 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.

[3] *Private Equity Healthcare Bankruptcies Are on The Rise*, Private Equity Stakeholder Project, 2024, pestakeholder.org/private-equity-healthcare-bankruptcies-are-on-the-rise/.
[4] 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.
[5] 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/.

However, a wide body of research has shown that provider consolidation can lead to higher prices for private insurance and public healthcare programs like Medicare.[6]

- 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 healthcare operations into the pockets of investors.[7]

**III. Notable Transactions and Emerging Trends**

Private equity has been expanding its reach into many healthcare sectors. The common private equity playbook is to rapidly extract excessive returns through consolidation, sale of assets, imposition of management fees, exploiting government payment systems, and more.

The following are descriptions of some notable private equity transactions and trends across various sectors in healthcare:

A. Durable Medical Equipment

Durable Medical Equipment (DME) refers to equipment and supplies ordered by a healthcare provider for everyday or extended use. It includes wheelchairs and other mobility aids, respiratory equipment, infusion pumps and supplies, blood sugar meters and test strips, and other equipment used to manage chronic health conditions or disabilities.

Private equity firms have bought up and consolidated DME manufacturers and suppliers. Through aggressive, debt-funded growth strategies, a handful of private equity-owned DME companies have grown from nonexistence to industry giants over the last decade. For example, 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

[6] Karyn Schwartz et al., "What We Know About Provider Consolidation," KFF (blog), September 2, 2020, https://www.kff.org/health-costs/issue-brief/what-we-know-about-provider-consolidation/.
[7] 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/.

time.[8] Platinum Equity bought LifeScan, which supplies blood glucose monitoring products for people with diabetes, from Johnson & Johnson in a $2.1 billion buyout in 2018.[9]

One of the clearest examples of private equity's outsized impact on DME is its stranglehold on the customized wheelchair industry. 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. Delays in wheelchair repairs can leave wheelchair users stranded or isolated. In some cases, delays can lead to injuries, hospitalizations, and even death.[10] Repairs can also be very expensive; a recent survey of wheelchair users with spinal cord injuries found that out-of-pocket costs to repair wheelchairs ranged from $50 to $620, with a median cost of $150.[11]

Compounding the inadequate reimbursement policy for preventative maintenance is Medicare's policy on labor time. While labor and parts are reimbursed, technicians' travel time – including time to meet clients at their homes, examine wheelchairs, and return them – is not reimbursed.[12]

Consequently, cost-cutting by private equity investors, exacerbated by Medicare and private insurance reimbursement policies, can mean reducing resources spent on those aspects of repair services that are made less profitable by reimbursement policy. For example, a former field service technician for AEA-owned Numotion told *Mother Jones* "I think Numotion tries to run a skeleton crew to minimize costs." He said that he was responsible for about 1,500 to 2,000 customers, which meant having as many as 10 appointments a day.[13]

---

[8] 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.

[9] "Platinum Equity Completes $2.1 Billion Acquisition of LifeScan from Johnson & Johnson," Platinum Equity, October 1, 2018, https://www.platinumequity.com/news/platinum-equity-completes-2-1-billion-acquisition-of-lifescan/.

[10] 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.

[11] Lynn A. Worobey et al., "Factors Influencing Incidence of Wheelchair Repairs and Consequences Among Individuals with Spinal Cord Injury," Archives of Physical Medicine and Rehabilitation 103, no. 4 (April 2022): 779–89, https://doi.org/10.1016/j.apmr.2021.01.094.

[12] Markian Hawryluk, "Despite a First-Ever 'Right-to-Repair' Law, There's No Easy Fix for Wheelchair Users," KFF Health News, June 2, 2022, https://kffhealthnews.org/news/article/power-wheelchair-users-right-to-repair-law-no-easy-fix/.

[13] Paul Roberts, "Two Behemoths Dominate the Motorized Wheelchair Industry. Disabled Customers Pay the Price. – Mother Jones," Mother Jones, May 2022, https://www.motherjones.com/politics/2022/05/motorized-wheelchairs-numotion-national-seating-mobility/.

Additionally, private equity-owned DME companies have paid millions of dollars in recent years to settle allegations of fraud that occurred while under private equity ownership:

- **December 2020:** Respiratory equipment supplier Apria Healthcare, owned by Blackstone Group, agreed to pay $40.5 million to settle allegations of fraudulent billing practices, including overbilling for non-invasive ventilators (NIVs).[14]

- **March 2023:** Wheelchair supplier Numotion, owned by AEA Investors, agreed to pay $7 million to settle claims of Medicaid fraud in Kentucky, Missouri, and Washington, D.C.[15]

- **April 2023:** DME supplier AdaptHealth (fka QMES and Tri-County Medical Equipment and Supply LLC), owned by Quadrant Management during the period of alleged fraud, agreed to pay $5.3 million to settle allegations that it defrauded federal healthcare programs.[16]

For more on private equity in durable medical equipment please see our report, Private Equity in Durable Medical Equipment: How Private Equity Profits Off of Disabled and Chronically Ill Americans.

B. Dental Care

In recent years, private equity has increasingly carved out a substantial portion of the US dental industry, primarily through ownership of Dental Services Organizations (DSOs). In most states, dentists are legally required to own their practices. To circumvent laws regulating dental practice ownership, investors create separate entities that provide related practice management and business services. This is sometimes referred to as "corporate dentistry."

DSOs may provide human resources and administrative services, accounting services, marketing and advertising services, procurement services, and other business-related services. Dentists

[14] "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.
[15] "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.
[16] "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.

who contract with DSOs are legally responsible for all clinical decisions, though in practice the delineation of these responsibilities is sometimes murky.

While the exact number of DSO-affiliated practices is unknown, the rapid growth of the dental services industry in recent years—which was virtually non-existent 20 years ago—is unquestionable. In 2020, some analysts predicted DSO market penetration to increase by 30% to 35% over the next five to ten years.[17] In 2021, industry publication Dentistry IQ estimated that DSOs will make up nearly 50% of the dental market by 2030.[18]

Private equity firms dominate the DSO market; at the time of publication of [our 2021 report on private equity in the DSO industry](), nine of the top ten DSOs in the US were owned by private equity firms. 27 of the top 30 DSOs by number of affiliated locations were owned by private equity firms, accounting for 84% of practice locations affiliated with the top 30 firms.

A critical concern is that the DSO model may emphasize 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 may also offer productivity or profitability bonuses.[19] 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.

The potentially harmful impact on patients especially raises concern given that a significant portion of patients receiving care at DSO-affiliated practices are Medicaid eligible, which may exacerbate problems of inequity in oral health for low-income people. While DSOs' scale may allow for expanded access for underserved communities, it is critical that access does not come at the expense of quality for these communities in the service of maximizing profit for private equity investors.

---

[17] Kat Eschner, "Inside American dentistry's identity crisis," Fortune, October 27, 2020. https://fortune.com/2020/10/27/dentists-covid-dental-industry-dentistry-coronavirus/

[18] 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

[19] "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.

PRIVATE EQUITY STAKEHOLDER PROJECT

*Case Study: Benevis/Kool Smiles*

The case study of Benevis exemplifies the potential risks of private equity investment to dental patients. Formerly known as Kool Smiles, Benevis has been owned by various private equity firms since 2004.

Benevis has had a troubled history including Medicaid fraud and significant medical malpractice suits, leading to the company's bankruptcy and subsequent restructuring in 2020. In 2021, Benevis had 150 affiliates in 17 states and has 3,500 employees.[20]

In January 2018, Benevis paid $23.9 million to settle a federal lawsuit alleging that it performed and billed for medically unnecessary dental services performed on children insured by Medicaid.[21] The alleged activity took place entirely under the ownership of private equity firm Friedman Fleischer & Lowe (FFL), which first invested in Benevis in 2004.[22] The settlement was the second largest False Claims Act dental settlement in history.[23]

The US Department of Justice (DOJ) alleged that Benevis facilities submitted claims for performing medically unnecessary tooth extractions and root canals on babies, and sought payments for baby root canals that were never performed. The DOJ also alleged that Benevis "routinely pressured and incentivized dentists to meet production goals through a system that disciplined 'unproductive' dentists and awarded 'productive' dentists with substantial cash bonuses based on the revenue generated by the procedures they performed."[24]

The DOJ found that the alleged fraudulent activity took place at 130 Benevis-affiliated clinics, which submitted false claims to 17 different state Medicaid programs.[25]

---

[20] Gabrielle Masson and Katie Adams, "31 DSOs to know in 2020," Becker's Dental & DSO Review, April 9, 2021. https://www.beckersdental.com/dso-dpms/35984-30-dsos-to-know-in-2020.html ; Pitchbook, accessed June 2021.

[21] 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. https://www.justice.gov/opa/pr/dental-management-company-benevis-and-its-affiliated-kool-smiles-dental-clinics-pay-239

[22] FFL Partners website: https://www.fflpartners.com/investments/benevis, accessed June 2021.

[23] "Berger & Montague, P.C. Whistleblower Team Leads Second Largest Ever False Claims Act Dental Case, Recovering More Than $23.9 Million," press release, January 10, 2018. https://www.prnewswire.com/news-releases/berger--montague-pc-whistleblower-team-leads-second-largest-ever-false-claims-act-dental-case-recovering-more-than-239-million-300581018.html

[24] 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. https://www.justice.gov/opa/pr/dental-management-company-benevis-and-its-affiliated-kool-smiles-dental-clinics-pay-239

[25] Ibid.

FFL's high return expectations allegedly played a key role in incentivizing fraud. In particular, the amended complaint highlights FFL's desire to boost returns in order to attract investors to subsequent private equity funds:

> "Not only did FFL's interest in the profits of portfolio companies provide a significant incentive to maximize those profits, FFL also intended to sponsor additional private equity funds, and its success in attracting investors in subsequent funds would depend greatly on the returns earned by investors in existing funds managed by it."[26]

The complaint further alleges that FFL's requirements pressured staff to commit Medicaid fraud:

> "FFL…established the business requirements necessary to attain the desired rate of return from the Kool Smiles clinics and directed [Benevis] to undertake these steps necessary to achieve those returns knowing that those returns would and did include the submission of false Medicaid claims. Accordingly, FFL and Capital Partners II are liable for the submission of those false claims as detailed herein."[27]

Two months after settling the federal lawsuit, FFL sold Benevis to private equity firms Littlejohn & Co and Tailwind Capital.[28] Littlejohn and Tailwind held on to Benevis for less than 2.5 years before taking the company into bankruptcy in August 2020.[29]

Private equity firm New Mountain Capital acquired Benevis out of bankruptcy in October 2020. New Mountain also owns Western Dental, a California-based DSO with 175 dental offices in California, Arizona, Nevada and Texas. New Mountain acquired Western Dental in 2012 and has

---

[26] Benevis/Kool Smiles: United States of America et. al. v NCDR LLC et al. Third Amended Complaint Pursuant to the Federal False Claims Act. Civil Action No. 4:11-cv-792. https://bergermontague.com/wp-content/uploads/2018/01/Kool-Smiles-Third-Amended-Complaint.pdf pg. 16.
[27] Benevis/Kool Smiles: United States of America et. al. v NCDR LLC et al. Third Amended Complaint Pursuant to the Federal False Claims Act. Civil Action No. 4:11-cv-792. https://bergermontague.com/wp-content/uploads/2018/01/Kool-Smiles-Third-Amended-Complaint.pdf pg. 20.
[28] "Benevis Appoints Industry Veteran Rich Beckman as Chief Executive Officer," Benevis press release, April 12, 2019. https://www.businesswire.com/news/home/20190412005087/en/Benevis-Appoints-Industry-Veteran-Rich-Beckman-as-Chief-Executive-Officer
[29] "Benevis Enters Voluntary Chapter 11 Reorganization," Benevis press release, August 3, 2020. https://www.businesswire.com/news/home/20200803005461/en/Benevis-Enters-Voluntary-Chapter-11-Reorganization

tried to sell the company at least twice—in 2018 and 2019—but was unsuccessful.[30] New Mountain Finance Corporation lists Benevis as a portfolio company on its website as of April 2024.[31]

Benevis and FFL Partners faced litigation for allegations of medical malpractice related to the death of a 2-year-old boy who became unresponsive after a dental procedure at a Kool Smiles clinic and died four days later. The lawsuit alleged that the company's business model is to "maximize the productivity of each clinic by scheduling the child-patients back-to-back, resulting in an insufficient amount of time between each child-patient for cleaning of the stations, monitoring of children who are recovering from various forms of anesthesia, and even to allow time for staff members to use the bathroom facilities."[32] Kool Smiles denied liability in court filings and the case was settled in December 2021 under confidential terms.[33]

For more on private equity's role in dental care, please see our 2021 report Deceptive Marketing, Medicare Fraud, and Root Canals on Babies: Private Equity Drills into the Dental Care Industry.

C. 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.[34] Private equity firms are capitalizing on this growing and lucrative industry, which remains relatively fragmented and offers opportunities to profit through consolidation.[35]

According to a 2020 study published in JAMA Internal Medicine, the years 2010 to 2016 saw very little private equity investment in women's health and fertility clinics "followed by a rapid influx

[30] Sarah Pringle, "New Mountain's Western Dental returns to auction block," PE Hub, November 26, 2019. https://webcache.googleusercontent.com/search?q=cache:-2NJHEtjX60J:https://www.pehub.com/new-mountains-western-dental-returns-to-auction-block/+&cd=3&hl=en&ct=clnk&gl=us

[31] New Mountain Finance Corporation, "Portfolio Names by Fair Value," https://www.newmountainfinance.com/about/portfolio . Accessed April 2024.

[32] Mike Pelton, "Lawsuit alleges major red flags in Yuma boy's death following dental visit," ABC 15 Arizona, January 7, 2019. https://www.abc15.com/news/region-central-southern-az/yuma/lawsuit-alleges-major-red-flags-in-yuma-boys-death-following-dental-visit

[33] Docket, *Gastelum v. Kool Smiles PC et al.*, No. CV2018-011975, Arizona Superior Court, Maricopa County.

[34] "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.

[35] 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/.

of private equity activity in both OB-GYN and fertility clinics, with more than twice as many affiliations from 2017 through 2019 as seen as the previous seven years."[36]

In a follow up study published in October 2021, the authors studied the influence of private equity in fertility treatment using data reported by the Centers for Disease Control and Prevention (CDC) on the rate of Assisted Reproductive Technology (ART) cycles. ART includes all fertility treatments in which either eggs or embryos are handled. The authors found that private equity-owned providers made up 29.3% of all ART cycles performed in the US in 2018, and noted that they were not aware of any healthcare specialty with such a pronounced market share.[37]

In addition, patients at private equity-owned clinics were found to be 10.6% more likely to use preimplantation genetic testing, which raises questions about whether these clinics more actively push elective and costly add-ons. 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.[38]

These concerns are heightened by the fact that regulation of the fertility industry is fragmented. The CDC tracks ART cycles, the FDA oversees devices and drugs used in fertility treatments, and states oversee physician medical licenses – but there is no central regulatory body with oversight over fertility centers.[39]

D. Methadone Treatment

The behavioral health industry—including methadone clinics—has seen immense growth over the last decade, with a substantial portion of that growth driven by private equity investment.[40]. Methadone clinics in particular have seen significant concentration by private equity investors.

---

[36] Alexander Borsa Richardson Joseph Bruch, Sarah S., "When Private Equity Firms Invest in Women's Health Clinics, Who Benefits?," STAT News, September 14, 2020, https://www.statnews.com/2020/09/14/private-equity-firms-invest-womens-health-clinics-who-benefits/.
[37] 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.
[38] 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.
[39] Naomi Cahn, "When Fertility Clinics Get It Wrong," Forbes, August 8, 2019, https://www.forbes.com/sites/naomicahn/2019/08/08/when-fertility-clinics-get-it-wrong/?sh=4cd552281f4a.
[40] O'Grady, Eileen. *Understaffed, Unlicensed, and Untrained: Behavioral Health Under Private Equity*, Private Equity Stakeholder Project, 28 Sept. 2020, pestakeholder.org/reports/understaffed-unlicensed-and-untrained-behavioral-health-under-private-equity/.

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."[41]

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

For more on private equity's role in behavioral health, please see our report Understaffed, Unlicensed and Untrained: Behavioral Health under Private Equity.

E. 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. While a handful of private equity investments in autism occurred earlier, 2017 and onwards have seen a flurry of private equity acquisitions.[42]

According to a 2023 report by the Center for Economic and Policy Research (CEPR), "Between 2017 and 2022, private equity firms completed 85% 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.[43] The year before, FFL Partners bought Autism Learning Partners (3,600 employees) for $270 million.[44] In 2019 Gryphon Investors acquired

[41] 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/

[42] Pitchbook, accessed November 2021.

[43] 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/

[44] "FFL Partners seals $270M SBO," Pitchbook, December 22, 2017. https://pitchbook.com/newsletter/ffl-partners-seals-270m-sbo

LEARN Behavioral, (3,400 employees),[45] and in July 2021 Cerberus Capital Management acquired Lighthouse Autism Center from Abry Partners for over $400 million.[46]

The CEPR report found that private equity-driven consolidation in the ABA market has given some companies the leverage to extract higher reimbursement for themselves under threat of closing down in states where they do not get the rates they prefer. 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.[47]

Employees at private equity-owned companies also reported pressure to standardize treatment plans and to bill for more hours per patient than were medically necessary – leading in some instances to fraud and large financial settlements.[48]

F. Hospice

Private equity firms increasingly make up a disproportionate share of the hospice industry, particularly through acquisitions of non-profit providers in recent years. 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% increase from 2012.[49]

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

[45] 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-Y8bqIYXsJlUA2

[46] Sarah Pringle, "Cerberys 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

[47] 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/

[48] 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/

[49] 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.

relative lull in dealmaking compared to previous years, "Private equity firms continue to be leading players in the market" wrote the report's authors.[50]

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. A 2019 report from the Government Accountability Office (GAO) found that hospices with the lowest quality ratings were most likely to be for-profit, although average quality remained similar.[51] 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.[52]

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."

Private equity, with its characteristic focus on increasing short term profits sometimes at the cost of patient care, may amplify the concerns raised about for-profit ownership of hospice providers.[53]

For more on private equity's role in hospice care, please see our report Private Equity at Home: Wall Street's Incursion into the Home Healthcare and Hospice Industries.

G. Physicians 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 drew the following conclusions:[54]

---

[50] 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.

[51] *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. 15.

[52] *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.

[53] Noble, Chris. *Private Equity at Home: Wall Street's Incursion into the Home Healthcare and Hospice Industries*, Private Equity Stakeholder Project, Mar. 2022, pestakeholder.org/wp-content/uploads/2022/03/Home-Healthcare-and-Hospice-report.pdf.

[54] *Schleffler, Robert M., et. al. "Monetizing Medicine: Private Equity and Competition in Physician Practice Markets." American Antitrust Institute, July 10, 2023, https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAIUCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf*

- **Private equity acquisitions of physician practices are increasing.** The authors found that private equity firms have been increasingly acquiring physician practices across a number of physician specialties since 2012, increasing from 75 deals in 2012 to 484 deals in 2021, or more than six-fold increase in only 10 years.

- **Private equity firms are amassing high market shares in local physician practice markets.** At the local level, the authors found that individual private equity firms are acquiring competitively significant shares of physician practice markets. In particular, in 28% of metropolitan statistical areas (MSAs), a single private equity firm had more than 30% market share by full-time-equivalent physicians, and in 13% of MSAs, the single private equity firm market share exceeded 50%.

- **Private equity acquisitions are associated with price and expenditure increases.** In 8 of the 10 physician practice specialties they studied, the authors found statistically significant price increases associated with private equity's acquisition of a practice. These price increases ranged from 16% in oncology to 4% in primary care and dermatology. Private equity acquisitions were also associated with per-patient expenditure increases for 6 of 10 specialties, ranging from 4% to 16% depending on the specialty.

- **Price increases associated with private equity acquisitions are exceptionally high where a private equity firm controls a competitively significant share of the local market.** When they focused their analysis on markets where a single private equity firm controls more than 30% of the market, they found further elevated prices associated with private equity acquisitions in each of the 3 specialties with statistically significant results, for gastroenterology (18%), obstetrics and gynecology (16%), and dermatology (13%).

- **Increased attention to the competition impacts of private equity in physician markets is urgently needed.** The vast majority of the private equity acquisitions studied in this report took place without federal antitrust scrutiny and with limited state antitrust scrutiny. The market share and price results reported indicate that more scrutiny is warranted on private equity's impact on competition. The pace at which private equity is entering these markets and monetizing medicine makes a quick response imperative.

## IV. Policy Recommendations

Given the risks posed by private equity to our healthcare systems, we encourage the Agencies to explore and adopt policies that will strengthen their enforcement capacities, as well as continue their scrutiny of healthcare transactions.

A. Transparency

The Department of Health and Human Services' (HHS's) new reporting requirements for private equity and real estate investment trusts for institutional providers is a major step in creating greater healthcare ownership transparency. The opacity of PE's ownership and control of health care entities has abetted its harmful practices, and shining a brighter light on ownership is an important corrective step.

Effective December 2023, all Medicare institutional providers[55] 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.[56]

To ensure it benefits from these disclosures, we urge HHS to make the information on all providers filing the CMS-855A public as soon as possible. Additionally, CMS should require, rather than "encourage," states to collect information on private equity companies and real estate investment trusts from Medicaid-reimbursed nursing facilities.

B. Merger Review and Enforcement

The Federal Trade Commission (FTC) should use its investigative, enforcement, and regulatory powers to minimize the damage that private equity inflicts on health care.

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.[57] 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) collection

---

[55] 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.

[56] 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.

[57] 15 U.S.C. § 46(b).

actions against patients by health care practices owned or managed by private equity; and (3) quality of care at health care entities owned or managed by private equity companies. The FTC should also make recommendations to Congress for legislative action to address the risks of private equity in health care.[58]

Second, the FTC should bring enforcement actions and issue rules regarding unfair practices[59] by healthcare 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 healthcare companies of valuable assets and require exorbitant rent payments; understaffing at hospitals and other health care entities owned or managed by private equity companies; upcoding by healthcare entities owned or managed by private equity companies; and the payment of management or advisory fees to private equity firms for minimal or nonexistent services that siphon money away from patient care.

Third, the FTC should take enforcement action and issue rules to prevent "unfair methods of competition" in healthcare by private equity companies.[60] We support that the revised Merger Guidelines recognize that a series of smaller acquisitions may have anticompetitive effects.[61] 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."[62] The FTC should continue to apply this authority to challenge "roll-up" acquisitions by private equity companies.

C. <u>False Claims Act Enforcement and Joint Liability</u>

We applaud the DOJ's enforcement efforts against private equity firms that violate the False Claims Act (FCA) through their healthcare portfolio companies,[63] and we encourage the agency to continue to investigate and prosecute healthcare fraud by such companies. Specifically, to address quality of care and overbilling concerns, the DOJ should continue to pursue FCA

---

[58] See 15 U.S.C. § 46(f).

[59] 15 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.

[60] See 15 U.S.C. 45(a)(1).

[61] 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.

[62] 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.

[63] O'Grady, Eileen. *H.I.G. Capital Agrees to Pay $20 Million Settlement in Federal Medicaid Fraud Case*, Private Equity Stakeholder Project, 14 Oct. 2021, pestakeholder.org/news/h-i-g-capital-agrees-to-pay-20-million-settlement-in-federal-medicaid-fraud-case/.

enforcement for substandard care (e.g., worthless services)[64] and upcoding and other inflated claims,[65] respectively.

Additionally, reviewing HHS data on ownership or management by private equity companies could help the DOJ investigate patterns of substandard care or improper billing across multiple providers owned or managed by the same private equity company.

**V. Conclusion**

We appreciate the opportunity to respond to the RFI. The public policy interest of ensuring access to quality healthcare for everyone is fundamentally incompatible with private equity strategies that focus on wealth extraction above all other concerns. To protect vulnerable patients and communities, the federal government must continue to take action to guarantee transparency and competition across the healthcare industry's various sectors. It must also continue enforcing laws against fraud to protect taxpayers and the integrity of publicly funded health insurance programs.

If you have any questions about this RFI response, please contact PESP's Policy Director, Chris Noble, at chris.noble@pestakeholder.org.

Best,

Chris Noble, Esq.
Policy Director
Private Equity Stakeholder Project

[64] *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).

[65] *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).