



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Remarks by Chair Lina M. Khan
As Prepared for Delivery
Virtual Workshop on Private Equity in Health Care**

March 5, 2024

Good afternoon, everyone. I am so thrilled to be here with you all and to exchange knowledge and expertise on the important topic of private equity in health care. I want to start by thanking all the speakers you'll hear from today, spanning leaders from the Department of Justice and Department of Health and Human Services, respected academics, and health care workers who have seen firsthand the impact of private equity investment in health care. Thank you to our Office of Public Policy and Bureau of Economics for spearheading today's workshop and bringing together such a terrific group of speakers. And thank you as well to congressional leaders, particularly Senator Grassley and Senator Whitehouse, who are spearheading a congressional investigation into private equity buyouts of hospitals and bringing much-needed scrutiny to this key issue.¹

So much has changed in the provision of health care over the past several decades. One area that is top of mind for the FTC is private equity acquisitions of health care service providers such as outpatient clinics, nursing homes, and physician practices. In recent years, these private investments have soared.²

Private investments can sometimes be an important source of capital, especially for small to mid-sized companies that can benefit from the access that this financing provides. Some private equity firms take a more long-term view and focus on creating real operational improvements to generate value in ways that provide broader benefits. But we've also seen some private equity firms take a different approach, where they load up companies with enormous amounts of debt, strip valuable assets and sell them off to enrich the private equity owners, and

¹ News Release, Sen. Chuck Grassley, Senate Budget Committee Digs Into Impact Of Private Equity Ownership In America's Hospitals (Dec. 6, 2023), <https://www.grassley.senate.gov/news/news-releases/senate-budget-committee-digs-into-impact-of-private-equity-ownership-in-americas-hospitals>.

² Private equity acquired physician practices sites increased from 816 across 119 metropolitan areas in 2012 to 5,779 across 307 metropolitan areas in 2021. Ola Abdelhadi, et al., *Private-Equity Acquired Physician Practices and Market Penetration Increased Substantially, 2012-21*, 43 Health Affairs No. 3, 354-362 (2024). See also Erin C. Fuse Brown & Mark A. Hall, *Private Equity and the Corporatization of Healthcare*, 76 STAN. L. REV. ____, 13-14 (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4373557 ("Private equity investment in health care initially focused on facilities such as nursing homes and hospitals. In recent years, however, PE investment in physician practices has dramatically accelerated, as reduced returns from more conventional investment targets pushed private equity investors to seek more specialized providers. By one estimate, from 2013 to 2016, PE acquired 355 physician practices encompassing 1,426 locations and 5,714 physicians. The rate and volume of physician practice acquisitions have been increasing, from 75 deals in 2012 to 484 deals in 2021, a six-fold increase in that decade.").

pursue financial engineering tactics that leave the underlying firm weaker and worse off.³ This approach is focused on extracting value rather than generating it, and—as we’ve seen in health care—can have devastating consequences for patients, doctors, nurses, and the broader public.

Over the last two years, the FTC has heard an outpouring of concern about the ways that private equity buyouts in health care have worsened outcomes for workers and patients alike. One physician’s assistant told us that private equity entry into health care had led to punishing hours and sharp decline in patient care—including shortages of basic drugs and supplies.⁴ A doctor in Minnesota told us that years of consolidation in her field and the increasing focus on efficiency and profits have resulted in patients having to travel farther and farther distances for lower quality care.⁵ A registered nurse wrote to us about how she has seen mergers and private equity acquisitions in health care result in a “disenfranchisement” in the health care system that leads patients to forego care.⁶ A common theme across comments is that growing financialization in the health care industry can force medical professionals to subordinate their own medical judgement to corporate decision-makers’ profit motives at the expense of patient health.

A close look at recent deals bears that out, exposing a number of concerning extractive practices adopted by private equity in the health care space.

One issue we see is that short-term, high-risk, and low-consequence ownership can encourage a “flip and strip” approach. Often, private equity firms will “use large amounts of debt to acquire companies,” with the goal of increasing “profits quickly so they can resell” and reap returns a few years later.⁷ Health care workers report staffing cuts and increased hours that worsen patient care in a range of ways, from longer wait times before a nurse can bring a patient pain medicine or help them get to the bathroom to increased falls and accidents as a consequence of fewer staff available to assist patients.⁸

These short-term profit-extracting strategies can undercut long-term value, and, in the context of health care, have life-or-death consequences. For example, one study estimated that private equity takeovers of nursing homes and the staffing cuts that followed have led to increased mortality rates—specifically around 20,000 excess deaths among nursing home

³ See generally EILEEN APPELBAUM & ROSEMARY BATT, PRIVATE EQUITY AT WORK: WHEN WALL STREET MANAGES MAIN STREET (2014).

⁴ Comment Submitted by Barbara Gicking, Draft Merger Guidelines for Public Comment, *Regulations.gov* (July 19, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-0306>.

⁵ Comment Submitted by Elizabeth Slattery, Draft Merger Guidelines for Public Comment, *Regulations.gov* (July 19, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-0551>.

⁶ Comment Submitted by Sandy Whitley, Draft Merger Guidelines for Public Comment, *Regulations.gov* (July 19, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-0234>.

⁷ Gretchen Morgenson, *These ER Doctors Said Profit-Driven Company Officials Pressed Them To Work While They Had Covid Symptoms*, NBC NEWS (June 24, 2022), <https://www.nbcnews.com/health/health-care/er-doctors-said-profit-driven-company-officials-pressed-work-covid-sym-rcna33237>.

⁸ FTC-DOJ Listening Forum on Effects of Mergers in the Health Care Industry (Apr. 14, 2022) (transcript available at https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-DOJ-Listening-Forum-%20Health-Care-Transcript.pdf).

patients over the course of just 12 years.⁹ Later this morning we'll hear from CMS Principal Deputy Administrator Jon Blum and HHS Inspector General Christi Grimm about the steps they are taking to address this, and I applaud their effort to protect people in nursing homes from predatory tactics that endanger their safety and health.

We've also seen the harms of private equity acquisitions in emergency care. As of June 2022, more than 40 percent of the country's emergency rooms were "overseen by for-profit health care staffing companies owned by private equity firms."¹⁰ Under private equity ownership, emergency physicians have reported their experiences of "endless cuts to staffing and hours" that leave doctors with "significant patient safety concerns" and result in "poor patient experiences and outcomes."¹¹ One emergency room physician wrote that they felt as if their "medical license [was] being exploited by private equity to maximize profits to shareholders at the expense of . . . patients" and other health care workers.¹²

When extreme cuts fail to produce the desired profits, private equity owners can cut and run, leaving patients and health care workers in freefall. Just last year, two large private equity-owned medical staffing firms declared bankruptcy after they were unable to pay their debt obligations.¹³ When one of these groups suddenly closed its doors, thousands of emergency room physicians "continued serving patients [while] hospitals scrambled to sign new contracts with other physician groups."¹⁴ And because these firms are adept at exploiting payment loopholes,¹⁵ they can often turn a profit even as their acquired health care facilities fail.¹⁶

A second practice that we've seen private equity firms deploy is rolling up markets through serial acquisitions and a "buy-and-build" model that firms can use to consolidate power and undermine competition. By consolidating power gradually and incrementally, through a

⁹ Atul Gupta, et al., *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes* 20 (Becker Friedman Inst., Working Paper No. 2021-20, 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3537612; see also Maureen Tkacik, *Despite Pandemic Carnage, Predatory Nursing Home Financiers Keep Thriving*, THE AM. PROSPECT (Apr. 14, 2021), <https://prospect.org/health/despite-pandemic-carnage-predatory-nursing-home-financiers-thriving/>.

¹⁰ Morgenson, *supra* note 7.

¹¹ Comment Submitted by American College of Emergency Physicians, Draft Merger Guidelines for Public Comment, *Regulations.gov* (July 19, 2023) at 3, <https://www.regulations.gov/comment/FTC-2023-0043-1534>.

¹² *Id.* at 3.

¹³ Akanksha Khushi, *KKR-Backed Envision Healthcare Files for Bankruptcy*, REUTERS (May 15, 2023), <https://www.reuters.com/markets/deals/kkr-backed-envision-healthcare-files-bankruptcy-2023-05-15/>; Becky Yerak, *American Physician Partners Files for Bankruptcy After Shutdown*, WALL ST. J. (Sept. 19, 2023), <https://www.wsj.com/articles/american-physician-partners-files-for-bankruptcy-after-shutdown-5792e23c>.

¹⁴ American College of Emergency Physicians, *supra* note 11, at 6.

¹⁵ ERIN FUSE BROWN ET AL., PRIVATE EQUITY INVESTMENT AS A DIVINING ROD FOR MARKET FAILURE: POLICY RESPONSES TO HARMFUL PHYSICIAN PRACTICE ACQUISITIONS (2021) at 17-18, <https://www.brookings.edu/wp-content/uploads/2021/10/Private-Equity-Investment-As-A-Divining-Rod-For-Market-Failure-14.pdf>.

¹⁶ Brendan Ballou, *Private Equity Is Gutting America — and Getting Away With It*, NY TIMES (April 28, 2023), <https://www.nytimes.com/2023/04/28/opinion/private-equity.html> ("Why do private equity firms succeed when the companies they buy so often fail? In part, it's because firms are generally insulated from the consequences of their actions, and benefit from hard-fought tax benefits that allow many of their executives to often pay lower rates than you and I do. Together, this means that firms enjoy disproportionate benefits when their plans succeed, and suffer fewer consequences when they fail.").

series of smaller deals, firms have sometimes sidestepped antitrust review.¹⁷ In the aggregate, these roll-up plays can eliminate meaningful competition and allow new owners to jack up prices, degrade quality, and neutralize rivals without competitive checks.

Antitrust enforcers are taking action to stop these anticompetitive roll ups. The 2023 merger guidelines make clear that in order to faithfully enforce the Clayton Act, we cannot turn a blind eye to serial acquisitions and just look at each deal in isolation. As the guidelines note, we will “consider individual acquisitions in light of the cumulative effect of related patterns or business strategies.”¹⁸ Our proposed updates to the HSR form will help support this review by requiring firms to provide expanded information on business incentives and prior acquisitions, better equipping us to spot roll-ups at their inception.¹⁹

The Commission’s case against Welsh Carson and U.S. Anesthesia Partners illustrates what this roll-up strategy can look like in practice. As our complaint notes, private equity firm Welsh Carson created U.S. Anesthesia Partners to spearhead a multi-year roll-up strategy to buy nearly every large anesthesiology practice in Texas and stomp out independent providers. Their roll-up scheme involved over a dozen practices, 1,000 doctors, and 750 nurses, and resulted in a substantial mark-up for the same doctors and services as before, raking in tens of millions of extra dollars for the executives at the expense of Texas patients and businesses.²⁰

We’re also working with our colleagues across the federal government to ensure that illegal roll ups do not evade antitrust scrutiny. Recently, the Commission, the Department of Justice, and the Department of Health and Human Services committed to exchange data and information to help identify potentially unlawful transactions that might otherwise sidestep review.²¹ This type of collaboration between agencies can strengthen our respective individual efforts and ensure that we are deploying every resource at our disposal to protect Americans from predatory tactics in health care markets.

A third practice we’ve seen is private equity firms and other alternative asset investors buying up significant stakes in rival firms that compete within the same industry, reducing competition by softening firms’ incentives to compete.²²

¹⁷ BAIN & CO., GLOBAL HEALTHCARE PRIVATE EQUITY REPORT 2024 (2024),

https://www.bain.com/globalassets/noindex/2024/bain_report_global_healthcare_private_equity_2024.pdf.

¹⁸ U.S. Dep’t of Justice & Fed. Trade Comm’n, Merger Guidelines (Dec. 18, 2023) [hereinafter “2023 Merger Guidelines”], https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf, Guideline 8.

¹⁹ Premerger Notification; Reporting and Waiting Period Requirements, 88 Fed. Reg. 42178 (June 29, 2023) (to be codified at 16 C.F.R. pt. 801-803).

²⁰ Complaint, *FTC v. U.S. Anesthesia Partners* (S.D. Tex. Sept. 21, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2010031usapcomplaintpublic.pdf.

²¹ Press Release, Fed. Trade Comm’n, Federal Trade Commission, the Department of Justice and the Department of Health and Human Services Launch Cross-Government Inquiry on Impact of Corporate Greed in Health Care (Mar. 5, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/03/federal-trade-commission-department-justice-department-health-human-services-launch-cross-government>.

²² This is not to suggest that competition problems arising from common ownership are limited to just private equity and alternative asset investors. As many academic studies have demonstrated, institutional investors in public equities markets also raise such concerns. See e.g., Azar et al., *Anticompetitive Effects of Common Ownership*, 73 J.

This ownership structure can incentivize firm managers to consider their common ownership interests in decisions about pricing, output, and business strategy more generally. The problems of common ownership can be exacerbated by executive compensation structures; “common shareholders,” wanting to maximize the value of their stock, may back compensation structures that incentivize managers not to prioritize competition over profits.²³

The Commission is well positioned to challenge these types of ownership structures, and we are using our authority under Section 8 of the FTC Act to do so. The Commission has long held that Section 8 applies to corporations as well as to individual directors,²⁴ and our recent action against interlocking directorates in the EQT matter should provide further clarity and notice to the market.²⁵ We will continue reinvigorating the full scope of Section 8’s prohibition on interlocking directors as we work to faithfully enforce the antitrust laws and promote the rule of law.²⁶

FIN. 1513-1565 (2018); Einer Elhauge, *Horizontal Shareholding*, 109 HARV. L. REV. 1267 (2016); Edward B. Rock & Daniel L. Rubinfeld, *Antitrust for Institutional Investors*, NYU L. & ECON. RSCH. 17-23 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2998296; Eric A. Posner, et al., *A Proposal to Limit the Anticompetitive Power of Institutional Investors*, 81 ANTITRUST L.J. 669 (2017); Einer Elhauge, *How Horizontal Shareholding Harms Our Economy—And Why Antitrust Law Can Fix It*, 10 HARV. BUS. L. REV. 207 (2020).

²³ “Common Ownership by Institutional Investors and its Impact on Competition - Background Note by the Secretariat,” OECD (Nov. 29, 2017), [https://one.oecd.org/document/DAF/COMP\(2017\)10/en/pdf](https://one.oecd.org/document/DAF/COMP(2017)10/en/pdf).

²⁴ See *SCM Corp. v. FTC*, 565 F.2d 807, 811 (2d Cir. 1977) (“We believe that the Commission has the better of these arguments and that section 8 applies to corporations as well as to individual directors. It is true that if the language of the section is considered alone, the result is not clear. But the language of the section does not stand alone and should not be construed as though it did. Its prophylactic purpose was ‘to nip in the bud incipient violations of the antitrust laws by removing the opportunity or temptation to such violations through interlocking directorates.’ We agree with the Commission that SCM’s reading of the statute undermines it, since a corporation without fear of sanction could have the concededly prohibited ‘interlocking directorate and, if detected, simply replace the ousted director with another interlocking board member.’ Thus, policy supports a broad reading of section 8 and section 11 indicates that such a construction is reasonable.”) (quoting *U.S. v. Sears, Roebuck & Co.*, 111 F. Supp. 614, 616 (S.D.N.Y. 1953)); *In re Kraftco Corp., et al.*, 89 F.T.C. 46, 63 (1977), *rem’d on other grounds*, 565 F.2d 807 (2d Cir. 1977), *aff’d*, 92 F.T.C. 416 (Oct. 4, 1978), *order enforced*, 612 F.2d 707 (2d Cir. 1980) (“To absolve corporations of liability for sharing directors with competitors would, without question, severely undermine enforcement of the law, since any corporation could maintain such an interlocking directorate and, if detected, simply replace the ousted director with another interlocking board member, again without fear that detection could lead to anything more than the director’s resignation. Sanctions against individuals alone are likely to be of limited effect, because there are hundreds of thousands of potential corporate directors at any given time. Sanctions against a much smaller number of corporations are far likelier to effectuate the purposes of Section 8, since an order against a corporation will prevent a far larger number of potential interlocks than one against an individual.”).

²⁵ Press Release, Fed. Trade Comm’n, *FTC Acts to Prevent Interlocking Directorate Arrangement, Anticompetitive Information Exchange in EQT, Quantum Energy Deal* (Aug. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/08/ftc-acts-prevent-interlocking-directorate-arrangement-anticompetitive-information-exchange-eqt>.

²⁶ See *Reading Int’l, Inc. v. Oaktree Cap. Mgmt. LLC*, 317 F. Supp. 2d 301, 326 (S.D.N.Y. 2003) (citations omitted) (“In enacting section 8, Congress did not refer to ‘individuals’ or incorporate any conceptual distinction between ‘direct’ and ‘indirect’ interlocks – nor indeed, did it use the word ‘interlock’ at all. It simply provided that ‘no person shall, at the same time, serve as a director or officer in any two [competing] corporations.’ At the outset, it must be recognized that the Clayton Act, by its own terms, defines a ‘person’ as including corporations. There is thus no ground for disputing that corporations are subject to the prohibitions of section 8”); *id.* at 330 (“Indeed, the paucity of explicit discussion of this question in the debates surrounding the bill’s passage indicates that it was not

Bolstering and modernizing enforcement tools is just one way the Commission is working to tackle modern market realities and the strategies that some firms deploy in efforts to sidestep the antitrust laws.

We're taking new action to take on corporate profiteering in health care, and we're asking for the public's help. Today the FTC, the Department of Justice, and the Department of Health and Human Services are launching a public inquiry to examine the role of private equity in health care, as well as corporate profiteering in health care. We're eager for public input and encourage comments from practitioners, researchers, and anyone who has experience with acquisitions involving health care providers, facilities, and services, that have been acquired by private equity funds or other alternative asset managers, health systems, or private payers.

When Congress passed the antitrust laws, lawmakers made them flexible precisely because they knew that they could not predict the constantly new and evolving ways in which firms can undermine free and fair competition. Private equity acquisitions in health care are just one example of this type of evolution. Today we're discussing just some of the extractive tactics we see at the intersection of private equity and health care, but firms of all types should know that we're on the lookout for these strategies and will continue to deploy the full scope of our authority to fully protect the American public.

The FTC will continue to use all of our tools and authorities to protect people's access to affordable, high-quality health care. Doing so requires that we keep pace with how firms are acquiring and deploying monopoly power or undermining competition in the modern economy.

Thanks again to all our speakers for sharing their expertise with us today. I look forward to learning from you all and continuing to work together on these important issues.

the particular form that interlocks might take, but rather their result, that was the primary concern of Congress in 1914. As Congress warned in 1914, '[t]he concentration of wealth, money, and property in the United states under the control and in the hands of a few individuals or great corporations has grown to such an enormous extent that unless checked it will ultimately threaten the perpetuity of our institutions.' It was thus not solely the power of individuals, but of the corporations behind them that motivated Congress: prohibiting interlocking directorates was one means to achieving that goal.") (quoting H. R. Rep. No. 63-627 at 19; S. Rep. No. 63-698 at 16).