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Office of the Chair

Remarks by Chair Lina M. Khan
As Prepared for Delivery
Private Capital, Public Impact Workshop on Private Equity in Healthcare

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-

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), RIVATE

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]

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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 st can3-nond 28 Tw

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 system