Memo

To: Democratic Members, *Committee on Ways and Means*

From: Democratic Staff, Ways and Means Subcommittees on Health and Oversight

Date: March 19, 2021

Re: Hearing on ***Examining Private Equity's Expanded Role in the U.S. Health Care System***

The Committee on Ways and Means will hold a hearing on **March 25th, at 1 p.m. via Cisco WebEx**, entitled, "*Examining Private Equity's Expanded Role in the U.S. Health Care System*." This hearing will focus on the exponential growth of private equity (PE) investments across our health care system and its ramifications for patients and taxpayers. Recent trends have raised questions about the role of PE in the health care sector and potential negative consequences for patients and the health care workforce, particularly when taxpayer-funded public programs are largely responsible for footing the bill.

I. WITNESSES

There will be one panel of witnesses:

- **Sabrina Howell, Ph.D., Assistant Professor of Finance, New York University Stern School of Business.** Professor Howell will provide a general overview of PE, including examples of how PE operates in the health care industry. She will also discuss her recent academic article, which linked PE buy-outs of nursing homes to increased mortality rates.

- **Terris King, Sc.D., CEO, King Enterprise Group, LLC.** A former senior official at the Centers for Medicare & Medicaid Services (CMS) with experience across the health care industry, Dr. King will speak to the barriers CMS faces in conducting oversight of PE's impact on Medicare, as well as potential strategies to better promote transparency and improved quality of care. He will also describe how the expansion of PE in health care must be viewed in the context of health inequities.

- **Ernest Tosh, J.D., Trial Attorney, Tosh Law Firm, PLLC.** Mr. Tosh will discuss his experience examining data and bringing cases on behalf of clients that have experienced neglect and harm at nursing homes, as well as the need to promote transparency and root out health care fraud in the nursing home industry.

- **Milly Silva, Executive Vice President, 1199 SEIU United Healthcare Workers East.** Ms. Silva will discuss how the expansion of PE in health care is not just an abstract problem—it has a human face. She will detail stories from nurses in New Jersey and across the country to demonstrate the way PE's growth has placed a dangerous burden on the health care workforce and the patients whom providers serve.

- ***Republican Witness:*** To be provided.

II. DEMOCRATIC MESSAGES

The key Democratic messages of this hearing are:

- **PE investments have rapidly expanded across the health care industry.** In 2019, PE firms invested more than $190 billion across roughly 1,230 health care deals, representing 14 percent of all PE deals and a nearly nine percent increase since 2009.[1] In recent years, PE ownership of health care entities has been increasingly tied to poor patient outcomes, including higher mortality rates in nursing homes, hospital bankruptcies and subsequent closures, surprise medical billing, and Medicare fraud.

- **The profit motives driving PE investments pose unique concerns when applied to the health care system.** PE firms maximize profits by operationalizing efficiencies in a competitive market. As patients and families often have few options in where they receive care as well as scant information on which to base those decisions, the traditional free market forces do not exist to prevent business behaviors detrimental to patients.

- **The profit motive of PE can result in taxpayer dollars being siphoned away from patient care and the health care workforce.** Some health care providers, such as certain nursing homes, receive virtually 100 percent of their revenue from taxpayers through Medicare and Medicaid. These taxpayer dollars are intended to support patient care. Yet, business-oriented approaches to management from PE firms are often at odds with long-term investment in stable health care organizations and a commitment to boost the quality of care. This can result in staffing shortages, abuse or neglect of patients, and facility closures.

- **Congress must find ways to ensure greater accountability of PE owners to both protect taxpayer-funded programs and ensure patients receive the quality care they deserve.** Current systems do not provide CMS and other regulatory bodies with appropriate tools to hold owners accountable for patient safety violations tied to PE business practices across the health care system.

III. BACKGROUND

Under Democratic leadership during the 110th Congress, the Ways and Means Committee began exploring issues related to private equity ownership of nursing homes. In November 2007, the Committee held a hearing entitled, *Trends in Nursing Home Ownership and Quality*. In announcing the hearing, Committee Democrats specified that they were:

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[1] Data provided to Committee staff from Private Equity Stakeholder Project.

"concerned about quality issues and lack of accountability, particularly as more and more beneficiaries are now living in private equity-owned homes. While we must not prejudge anything, these changes provide ample reason for us to reinitiate close oversight of this industry to make sure that interests of beneficiaries are protected."[2]

The changes Committee Democrats alluded to in 2007 have come into even greater focus in 2021, as significant PE investment and de-regulation have come up against a deadly disease that targets the most vulnerable Americans among us.

a. *Private equity: An overview*

i. The PE investment model

A *private equity fund* is a pooled investment vehicle focused on private investments for clients (also called *limited partners*) that range from banks to wealthy individuals to pension funds. According to data provided to Committee staff, private and public pension funds made up about 50 percent of institutional investors in 2017. At its core, the PE investment model relies on using debt to acquire a controlling stake in companies (by substantially leveraging the company), quickly "increasing efficiencies" of those companies, and then selling them within 10 years (typically within four to seven) at a significant profit.[3,4] The purchase of a majority stake in companies (often called *portfolio companies*) through the use of debt is called a *leveraged buyout*, where the PE fund puts up, for example, one-fifth of the purchase price of a company with money raised from PE investors and then has the company take on the rest of the purchase price as debt.[5] This means that the company—not the PE fund, the general partners who run it, or the limited partners who invest in it—owe the money to the bank or creditor.[6]

In theory, the managers of PE have the potential to take on failing companies, implement improved management techniques (*i.e.*, increasing efficiencies), and turn them around to be highly valuable.[7] The incentive structure, which often relies on a "2-20" fee structure – where the fund managers get a two percent management fee from the investors and a 20 percent performance fee on the profit they generate from the deals—means the fund managers have a lot of motivation to make quick and dramatic changes to the companies they have purchased.[8] Sometimes fund managers take out an additional loan against an existing portfolio company (*i.e.*,

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[2] *Hearing Before the Subcommittee on Health*, COMMITTEE ON WAYS AND MEANS (Nov. 15, 2007), https://www.govinfo.gov/content/pkg/CHRG-110hhrg46778/html/CHRG-110hhrg46778.htm.

[3] *Everything is Private Equity Now*, BLOOMBERG BUSINESSWEEK (Oct. 8, 2019), https://www.bloomberg.com/news/features/2019-10-03/how-private-equity-works-and-took-over-everything.

[4] Emily Stewart, *What is Private Equity, and Why is it Killing Everything You Love?*, VOX (Jan. 6, 2020), https://www.vox.com/the-goods/2020/1/6/21024740/private-equity-taylor-swift-toys-r-us-elizabeth-warren.

[5] *What is Private* Equity, PITCHBOOK (July 15, 2020), https://pitchbook.com/blog/what-is-private-equity.

[6] Emily Stewart, *supra* note 4. Experts suggest that, over time, this debt-to-equity ratio (i.e., the proportion of a leveraged buyout that is debt vs. actual equity) has grown, but there is limited data publicly available in this area.

[7] Felix Barber et al., *The Strategic Secret of Private* Equity, HARVARD BUSINESS REVIEW (Sept. 2007), https://hbr.org/2007/09/the-strategic-secret-of-private-equity.

[8] Emily Stewart, *supra* note 4.

adding more debt to the company) to pay themselves more while at this same time potentially hastening returns; this process is called *dividend recapitalization*.[9,10]

Because leveraged buyouts load debt onto individual companies, if those companies do not grow fast enough or earn enough money to keep up with projections, they can quickly end up bankrupt. Prime examples of this phenomenon are Toys R Us, Payless Shoes, and JCrew, Inc. In such instances, it is the workers, suppliers, communities, and other stakeholders that suffer from these bankruptcies—not the investors themselves.[11] In the case of Toys R Us, 30,000 workers lost their jobs following the bankruptcy. According to one study, an estimated 20 percent of public companies that go private through leveraged buyouts ultimately declare bankruptcy within 10 years, compared to two percent of a control group that did not experience this transition.[12] Bankruptcies not only yield significant job losses, but they also threaten pensions and severance, as was the case with Sun Capital and its investors, which drove all 115 Marsh Supermarkets into bankruptcy, leaving $80 million unpaid in debts to workers.[13] Even prior to such bankruptcies, workers can still suffer, with an estimated reduction in employment of more than four percent and a nearly two percent reduction in wages following PE involvement.[14]

Further context on PE is provided in Appendix A.

ii. **Tax treatment of PE**

While PE's approach to investing is inherently risky to the companies that are loaded with debt, it can create significant returns for the investors. The benefits are magnified because the *carried interest* portion of the compensation of PE fund managers (the "20" in the standard "2-20" fee structure) receives a preferential tax treatment.[15] Returns on carried interest are generally treated as long-term capital gains income and subject to tax at 20 percent rather than as compensation for work and subject to tax at ordinary income tax rates (top rate of 37 percent). Critics of the carried interest loophole argue that returns on carried interest should be taxed as wages rather than as return on capital.

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[9] *Dividend Recapitalization in Health Care: How Private Equity Raids Critical Health Care Infrastructure for Short Term Profit*, PRIVATE EQUITY STAKEHOLDER PROJECT (Oct. 2020), https://pestakeholder.org/wp-content/uploads/2020/10/PESP-HC-dividends-10-2020.pdf.

[10] David Snow, *Private Equity: A Brief* Overview, PEI MEDIA, https://www.law.du.edu/documents/registrar/adv-assign/Yoost_PrivateEquity%20Seminar_PEI%20Media's%20Private%20Equity%20-%20A%20Brief%20Overview_318.pdf.

[11] Briana Spegele et al., *Risky Loans Secure Private-Equity Payouts Despite Downturn*, THE WALL STREET JOURNAL (Dec. 17, 2020), https://www.wsj.com/articles/risky-loans-secure-private-equity-payouts-despite-downturn-11608216781?mod=hp_featst_pos3.

[12] *Id.*

[13] Peter Whorisky, *As a grocery chain is dismantled, investors recover their money. Worker pensions are short millions*, THE WASHINGTON POST (Dec. 28, 2018), https://www.washingtonpost.com/business/economy/as-a-grocery-chain-is-dismantled-investors-recover-their-money-worker-pensions-are-short-millions/2018/12/28/ea22e398-0a0e-11e9-85b6-41c0fe0c5b8f_story.html

[14] Briana Spegele et al., *supra* note 11.

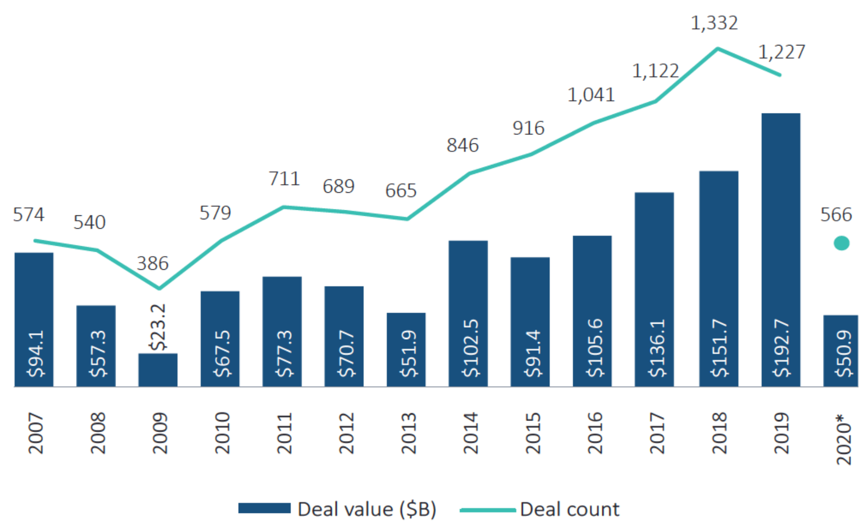
[15] *See* Congressional Research Service, Taxation of Carried Interest (July 9, 2020), https://crsreports.congress.gov/product/pdf/R/R46447.

Although the 2017 Tax Cuts and Jobs Act (TCJA) made modest changes to the tax treatment of carried interest, concerns remain about whether such changes affect the PE industry at all. Investors are now required to hold certain assets for at least three years to benefit from the lower tax rate (as compared with 12 months prior to TCJA); however, given that the PE industry customarily holds such assets between four to seven years, the TCJA changes may have minimal effect on PE investors and fund managers.[16] Various legislative proposals have been introduced in recent years to reform the tax treatment of carried interest, including the Carried Interest Fairness Act of 2021 (H.R. 1068, Pascrell) in the 117th Congress.

b. ***Private equity investments in health care***

PE investment in the U.S. health care system has grown significantly over the past decade, as health care offers the opportunity for significant returns from a vast, quickly expanding, and recession-proof market (see Figure 1 below). A summary of corporate growth across specific health care settings is shown in Appendix B, Table 2).

Figure 1. Private Equity Deals in Health Care, 2007-2020[17]



These deals include investments in health technology startups, addiction treatment facilities, and physician practices—with investors especially interested in opportunities in retail and behavioral health, home care, and physician groups.[18] Elder care has been a focal point for these investments, with nearly three-quarters of nursing homes in the United States (11,000 facilities) engaging in such business dealings, which accounted for $11 billion or a tenth of nursing home spending in 2015.[19] Recently, PE business practices have also been publicly

[16] *Id.*

[17] Data provided to Committee staff from Private Equity Stakeholder Project.

[18] Eileen Appelbaum et al., *Private Equity Buyouts in Healthcare: Who Wins, Who Loses?*, INSTITUTE FOR NEW ECONOMIC THINKING (2020, working paper 118) https://www.cepr.net/wp-content/uploads/2020/03/WP_118-Appelbaum-and-Batt.pdf.

[19] Jordan Rau, *Care Suffers as More Nursing Homes Feed Money into Corporate Webs*, KAISER HEALTH NEWS (Dec. 31, 2017), https://khn.org/news/care-suffers-as-more-nursing-homes-feed-money-into-corporate-webs/.

linked to surprise medical bills, particularly emergency care.[20,21,22] While promoting greater efficiencies could theoretically improve our health care system, PE business practices also have the potential to negatively affect patients, providers, and taxpayers.

Profit motive can harm patient care and even lead to increased death. The fundamental principle of PE—to acquire and sell assets for maximum profit within three to five years—is at odds with the goals of safeguarding taxpayer dollars in the Medicare program. The PE industry's focus on profit demands its efforts to reduce costs and increase revenues, pushing providers to increase the volume of patients seen, over-prescribe diagnostic tests or perform unnecessary procedures, and cut costs by reducing staffing or using shoddier supplies.[23] In the context of nursing homes, profit motives may lead to declines in nurse staffing and other vital care providers.[24] These staffing cuts are associated with lower quality care and even higher rates of mortality.[25,26] A study published by the National Bureau of Economic Research—co-authored by Dr. Howell—found PE nursing home ownership resulted in the premature deaths of 20,150 nursing home residents between 2012-2017, equaling 160,000 life-years lost.[27] The study authors also found PE ownership increased the use of antipsychotic medication by 50 percent (often a proxy for insufficient staffing), Medicare billing by 11 percent, and the chance of death by 10 percent.[28]

PE drives up consolidation and health care costs. PE acquisitions in the health care sector typically result in consolidation, where PE firms buy a series of similar enterprises to achieve market power, allowing these firms to avoid scrutiny from antitrust agencies.[29] This business model fuels concerns about the growth in monopoly power within the health care market, resulting in higher health care costs for patients and taxpayers.

PE profiteering takes capital that could otherwise go to health system improvement. The PE business model of extracting maximum profit in a short time period means that the primary goal of financial gains trumps patient care. Thus, money—frequently taxpayer-funded dollars through Medicare and Medicaid—that would otherwise go into staffing or other capital improvements that improve patient care is often funneled into alternative schemes. PE buy-outs

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[20] Zack Cooper et al., *Surprise! Out-of-network billing for emergency care in the United States*, NATIONAL BUREAU OF ECONOMIC RESEARCH (2017 Working Paper 23623), https://www.nber.org/papers/w23623.pdf.

[21] Lovisa Gustafsson et al., *The Role of Private Equity in Driving Up Health Care Price*, HARVARD BUSINESS REVIEW (Oct. 29, 2019), https://hbr.org/2019/10/the-role-of-private-equity-in-driving-up-health-care-prices.

[22] Peter Whoriskey et al., *Overdoses, Bedsores, Broken Bones: What Happened when a Private-Equity Firm Sought to Care for Society's most Vulnerable*, WASHINGTON POST (Nov. 25, 2018), https://www.washingtonpost.com/business/economy/opioid-overdoses-bedsores-and-broken-bones-what-happened-when-a-private-equity-firm-sought-profits-in-caring-for-societys-most-vulnerable/2018/11/25/09089a4a-ed14-11e8-baac-2a674e91502b_story.html.

[23] Eileen Appelbaum, *supra* note 18.

[24] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3537612

[25] Atul Gupta et al., *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes*, NATIONAL BUREAU OF ECONOMIC RESEARCH (2021 working paper 28474), https://www.nber.org/papers/w28474.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] Eileen Appelbaum, *supra* note 18.

of health care organizations, particularly nursing homes, have resulted in increases in related-party transactions.[30,31,32]

i. **Related-party transactions**

The emergence of PE ownership of health care facilities relies heavily on related-party transactions as a means to achieve quick financial returns, which occur when PE firms outsource a wide variety of goods and services to companies they have a financial interest in or that they control. These relationships frequently result in Medicare dollars inappropriately spent on such transactions as overinflated rent rather than patient care, which has negative implications for both the Medicare Trust Fund and patient safety.

Typically, corporations that own health care facilities set up parent or shell corporations that also own the real estate, financial consultant companies the facility uses, medical supply companies, construction companies, and even internal banking systems that extend high-interest loans to the health care facilities the PE firm owns. The most common of these practices, called a *sale-leaseback*, occurs when a company (*e.g.*, a hospital owned by a PE firm) sells its real estate and then leases it back from the purchaser (*e.g.*, a real estate investment trust (REIT) the PE firm also manages) at inflated rates. While these practices may increase the financial liability of the PE-owned health care facility, it is also a quick way for the PE firm to monetize its assets.

When companies pay themselves, they are likely to overcharge. These arrangements often result in providers being charged inflated prices for these goods and services, compromising the resources available for facility upgrades and quality care while generating extremely high profits for the owners, which are not recorded on the facility's accounts. For example, a company (Brius) took over one nursing facility in California that had previously paid $152,535 in rent. Brius immediately created a middleman company to lease the facility from the property owner for more than $259,000 a year and then had that company sublease it to the nursing home for nearly $389,000 – a 50 percent mark-up.[33] *For examples of health care-specific PE deals, see Appendix C.*

Use of related-party transactions may deplete facilities of resources needed for patient care, resulting in poor quality of care and risk of insolvency. Health care providers that are part of these schemes may seem to struggle financially, while a parent organization is profiting – often from taxpayer dollars. For example, after a PE buyout, the 171-year-old Hahnemann

[30] Since 2003, when an article in the Journal of Health and Law encouraged owners to separate their nursing home business into detached entities to protect themselves if the government tried to recoup overpayments – what has become known as "related party transactions" (or "Corporate Webs") in the nursing home industry have become overwhelmingly common.

[31] Andy Marso, A, *Kansas Cracks Down on Nursing Home Operators With Shaky Finances*, THE KANSAS CITY STAR (Apr. 23, 2019), https://www.kansascity.com/news/business/health-care/article229387249.html.

[32] Anna Gorman, *Weak Oversight Blamed for Poor Care at California Nursing Homes Going Unchecked*, KAISER HEALTH NEWS (May 4, 2018), https://khn.org/news/weak-oversight-blamed-for-poor-care-at-california-nursing-homes-going-unchecked/.

[33] *Brius Healthcare's Insider Transactions: How California's Largest Nursing Home Chain Funnels Millions to Insider Companies*, NATIONAL UNION OF HEALTHCARE WORKERS (Aug. 2017), http://briuswatch.org/wp-content/uploads/2017/10/NUHW-Brius-Healthcare-Insider-Transactions-UPDATED-Oct2017.pdf.

University Hospital in downtown Philadelphian ultimately closed in a scheme to sell the underlying real estate at the expense of thousands of Medicare and Medicaid beneficiaries that were primarily people of color; this closure also halted 500 physician residents' education (*see Appendix C for more details*).[34] In another prominent example, Leonard Green's ownership of Prospect Medical Holdings Inc., which managed 17 hospitals—many of which were safety net hospitals—diverted millions of taxpayer-funded dollars away from patients and to shareholders.[35] In one instance, a hospital in Texas had to close as a result of mismanagement (*see Appendix C for more details)*.[36]

There is currently no transparency in reporting, rendering these practices virtually impossible to track. The Affordable Care Act tried to address this lack of transparency by improving reporting through the Provider Enrollment, Chain, and Ownership System (PECOS) database. But according to the Government Accountability Office: "The PECOS database did not provide any indication of the hierarchy or relationships among the numerous organizational owners listed for private investment (PI)-owned nursing homes."[37] Compounding these shortcomings, CMS's ability to determine the accuracy and completeness of the reported ownership data is limited. The only CMS division with routine access to PECOS data has been largely focused on populating the database and has not developed any standardized reports on ownership.[38]

ii. **Legislation Recently Considered**

In the 116th Congress, Chairman Neal introduced and the Ways and Means Committee marked up the *Transparency in Health Care Investments Act* (H.R. 5825). This legislation included a series of reporting requirements pertaining to PE investments, requiring certain individuals with a financial interest in specified medical care providers to annually file information returns to the Internal Revenue Service.

c. *Looking ahead*

Since the 2008/2009 financial crisis, PE has been on the rise, increasing from $1.5 trillion in assets managed before the financial crisis to $4.7 trillion as of June 2020.[39] During the first half of 2020, PE firms put borrowing on hold to focus on making sure their portfolios would survive the pandemic.[40] With the fear of economic disaster at bay and interest rates at historic lows, institutional investors began once again looking to reap significant returns.[41] The second

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[34] Mike Elk, *Private Equity's Latest Scheme: Closing Urban Hospitals and Selling Off the Real Estate*, PROSPECT (July 11, 2019), https://prospect.org/health/private-equity-s-latest-scheme-closing-urban-hospitals-selling-real-estate/.

[35] Briana Spegele et al., *supra* note 11.

[36] *Id.*

[37] *Nursing Homes: Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Oct. 27, 2010), https://www.gao.gov/products/GAO-10-710.

[38] *Id.*

[39] *Id.*

[40] Mathew Goldstein, *Private Equity Firms are Piling on Debt to Pay Dividends*, THE NEW YORK TIMES (Feb. 19, 2021), https://www.nytimes.com/2021/02/19/business/private-equity-dividend-loans.html.

[41] *Id.*

half of 2020 saw $27 billion in borrowing from PE-owned companies, which represented the most active period in the prior three years.[42] And that pace has not slowed, with $4.7 billion in borrowing in the first six weeks of 2021, representing the second-highest amount for any period since data tracking began in 2000.[43]

The influx of investments from PE firms over the last decade has been anecdotally associated with decreases in quality of care and increasing costs to consumers. But at the same time, there is no clear data on PE ownership interests, which involve a complex web of financial arrangements often masked behind nondisclosure agreements and noncompete clauses.[44,45] Researchers and academics have called for increased transparency in PE investments to increase sunlight in this area and allow for a broader assessment of PE's role in our health care system.[46] Increased transparency in ownership has the potential to save lives, inform patients regarding their health care choices, help shareholders understand their investments, and serve as a warning for looming bankruptcies.[47]

Attachments:

1. NBC News, Private equity firms now control many hospitals, ERs and nursing homes. Is it good for health care? (May 13, 2020)
2. Lovisa Gustafsson et al., Harvard Business Review, The Role of Private Equity in Driving Up Health Care Prices (Oct. 29, 2019)
3. Vox, Private equity ownership is killing people at nursing homes (Feb. 22, 2021)
4. Atul Gupta et al., National Bureau of Economic Research, Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes (Feb. 2021)

[42] *Id.*
[43] *Id.*
[44] Sushas Gondi et al., *Potential Implications of Private Equity Investments in Health Care Delivery*, 321:11 JAMA (2019).
[45] Heather Perlberg, *How Private Equity is Ruining American Health Care*, BLOOMBERG BUSINESSWEEK (May 20, 2020), https://www.bloomberg.com/news/features/2020-05-20/private-equity-is-ruining-health-care-covid-is-making-it-worse.
[46] Harry Gamble, *Is Private Equity Helping or Hurting Healthcare?*, MODERN HEALTHCARE (July 10, 2018), https://www.modernhealthcare.com/article/20180710/NEWS/180719998/is-private-equity-helping-or-hurting-healthcare.
[47] Sushas Gondi et al., *supra* note 44.

APPENDIX A: SUPPLEMENTARY BACKGROUND

The asset management industry encompasses an array of asset management companies—also called asset managers or investment management companies—that oversee the development, maintenance, operation, and sale of assets with the goal of pooling money from individual or institutional investors to generate a financial return.[1] Assets can be invested through two major product categories—*public funds* or *private funds*. Public and private funds differ by the types of investors that can access the funds and the type of regulations the Securities and Exchange Commission (SEC) applies.[2,3] As the name implies, public funds are broadly available to all investor types (*i.e.*, through the stock market), with examples including: mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts.[4] On the other hand, private funds, also called alternative investments, are limited to particular institutional and retail investors and operate via certain exemptions through the SEC. Broadly, this means that ordinary people do not invest their money through private funds.[5] Examples of private funds include: hedge funds, venture capital funds, and private equity.[6] Table 1 provides a summary of the different types of funds, their main investor types, and their risk profiles.

Table 1. Summary Characteristics and Risk Profiles of Major Public and Private Funds[7]

	Fund Type	Net asset value ($ trillions)	Publicly Offered	Main Investors	Disclosure	Risk of Loss	Redemption /Exit	Leverage
Public Funds	Mutual Funds	17.7	Yes	Retail, institutional	High	Low	End of day	Yes with cap
	Closed-end Funds	0.3	Yes	Retail, institutional	High	Low	Intraday (secondary market)	Yes with cap
	Xchange-traded Funds	3.4	Yes	Retail, institutional	High	Low	Intraday (secondary market)	Yes with cap
Private Funds	Private Equity	2.8	No	Institutional, certain qualified retail	Low	High	Buyout/IPO	Yes
	Hege Funds	3.8	No	Institutional, certain qualified retail	Low	High	Quarterly + lock-up period	Yes and typically high
	Venture Capital	0.1	No	Institutional, certain qualified retail	Low	High	Buyout/IPO	No (unless limited short-term)

1 *Capital Markets: Asset Management and Related Policy Issues*, CONGRESSIONAL RESEARCH SERVICE (Oct. 11, 2019) at 11, https://crsreports.congress.gov/product/pdf/R/R45957.

2 *Id.*

3 According to CRS, the main statutes that govern the asset management industry at the federal level are: the Investment Company Act of 1940 (P.L. 76-768), the Investment Advisers Act of 1940 (P.L. 76-768), the Securities Act of 1933 (P.L. 73-22), and the Securities Exchange Act of 1934 (P.L. 73-291). Some argue the drafters of these laws never anticipated the use of private funds at the scale that is currently seen today.

4 *Capital Markets, supra* note 1.

5 Emily Stewart, *What is Private Equity, and Why is it Killing Everything You Love?*, VOX (Jan. 6, 2020), https://www.vox.com/the-goods/2020/1/6/21024740/private-equity-taylor-swift-toys-r-us-elizabeth-warren.

6 *Capital Markets, supra* note 1.

7 *Id.*

[8] *Id.*

As Table 1 shows, private funds tend to take on higher risk than public funds—with the promise of greater returns—and their use has increased substantially over the last several years, growing by more than 60 percent from the first quarter of 2013 to the fourth quarter of 2018.[8]

[8] *Id.*

APPENDIX B: CORPORATE OWNERSHIP IN HEALTH CARE

Table 2. Corporate Ownership in Health Care, by Industry, 2005, 2010, 2015[1]

	2005	2010	2015
Acute care hospital			
Number of facilities	3,638	3,512	3,388
With any corporate investor	28.9%	49.1%	59.9%
With a health company investor	26.1%	45.6%	56.9%
With a chain home office	16.2%	34.3%	47.3%
Skilled nursing facility			
Number of facilities	14,551	14,866	14,479
With any corporate investor	36.0%	51.9%	61.8%
With a health company investor	27.9%	40.7%	48.4%
With a chain home office	21.0%	37.0%	48.1%
Home health agency			
Number of agencies	8,200	12,055	12,205
With any corporate investor	19.5%	26.6%	31.9%
With a health company investor	16.2%	21.9%	26.6%
With a chain home office	7.1%	12.8%	16.5%
Long-term care hospital			
Number of facilities	433	447	426
With any corporate investor	55.9%	74.9%	83.1%
With a health company investor	51.7%	70.5%	77.0%
With a chain home office	33.0%	53.2%	70.2%
Inpatient rehabilitation facility			
Number of facilities	1,532	1,521	1,469
With any corporate investor	33.1%	51.0%	62.4%
With a health company investor	31.4%	48.0%	60.2%
With a chain home office	20.6%	35.2%	50.9%
Hospice agency			
Number of agencies	2,781	3,513	4,240
With any corporate investor	24.6%	37.6%	45.7%
With a health company investor	20.9%	31.9%	39.0%
With a chain home office	8.4%	19.0%	22.7%

[1] Annabelle C. Fowler, et al., *Corporate Investors Increased Common Ownership in Hospitals and The Postacute Care and Hospice Sectors*, HEALTH AFFAIRS (2017), 36:9, https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0591

APPENDIX C: EXAMPLES OF PE OWNERSHIP NEGATIVELY IMPACTING PATIENT SAFETY, HEALTH CARE WORKERS, AND COMMUNITIES

Urban examples

- Hospitals
  - **Philadelphia, PA**: In 2019, a private equity firm closed the 171-year-old Hahnemann University Hospital in downtown Philadelphia in a scheme to sell the underlying real estate. The safety net hospital served as a staple of care for Medicare and Medicaid beneficiaries and patients of color.[1] Closing Hahnemann Hospital resulted in the loss of over 2,500 jobs, halted the education of 500 physician residents, and shuttered care for tens of thousands of patients.[2]

  - Leonard Green & Partners, a PE firm based in Los Angeles bought control of the hospital company **Prospect Medical Holdings** and extracted $400 million in dividends and fees for itself and investors by loading up the company with an overwhelming amount of debt.[3] This PE firm has a record of buying out safety-net hospitals. Since 2010, CMS has deemed Prospect hospitals to pose "immediate jeopardy" to their patients 14 times.

    - **Los Angeles, CA:** Since the PE leveraged buyout, Prospect hospitals in Los Angeles have had persistent problems. Issues include: broken elevators that require nursing staff to wheel patients across public streets, bedbugs in patient rooms, and water leaks from the ceiling resembling feces.

    - **East Orange, NJ:** Dr. Frank Gabrin, an emergency room physician at East Orange General Hospital (owned by Prospect), was the first U.S. ER doctor to die of COVID-19 in March of 2020, just a week after contracting the disease. Reportedly, his death likely stemmed from being forced to reuse a single mask for four days due to the lack of adequate PPE supplies.

- Nursing Homes
  - **Takoma Park, MD:** The Peak Healthcare Facility was recently bought by the PE firm Portopiccolo, which purchased more than 20 nursing homes during the onset of the COVID-19 pandemic. Portopiccolo had numerous safety record violations related to patient safety and infection control in existing facilities, which were only made worse during the pandemic. Upon acquisition, the Maryland facility

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[1] Aimee Picchi, *Private Equity Rushed into Health Care—Now, a Nurse Warns: "Be Scared"*, CBS NEWS (July 29, 2019).

[2] Mike Elk, *Private Equity's Latest Scheme: Closing Urban Hospitals and Selling Off the Real Estate*, PROSPECT (July 11, 2019), https://prospect.org/health/private-equity-s-latest-scheme-closing-urban-hospitals-selling-real-estate/.

[3] Peter Elkind et al., *Investors Extracted $400 Million from a Hospital Chain that Sometimes Couldn't Pay for Medical Supplies or Gas for Ambulances*, PROPUBLICA (Sept, 30, 2020), https://www.propublica.org/article/investors-extracted-400-million-from-a-hospital-chain-that-sometimes-couldnt-pay-for-medical-supplies-or-gas-for-ambulances.

immediately cut insurance and time-off benefits for employees, failed to buy enough PPE, and asked at least 14 employees to keep working after testing positive for COVID-19.[4]

- Physician Groups
  - **Bellingham, WA:** Dr. Ming Lin, an emergency room physician who practiced at St. Joseph Medical Center for 17 years, was abruptly fired by his employer TeamHealth (a physician staffing group owned by Blackstone) for raising the alarm that the group severely understaffed and understocked critical supplies as the first wave of the COVID-19 pandemic surged in Washington state.[5]

  - **Austin, TX:** A 40-year-old school teacher was admitted to St. David's HealthCare (a hospital owned by a PE firm tied to HCA Healthcare), an in-network hospital that was supposed to ensure his insurance would be accepted, after suffering a heart attack. He was subsequently billed for nearly $110,000 by a PE-owned out-of-network provider.[6]

Rural examples

- Hospitals
  - **Quorum**, a rural PE-backed hospital operator saddled with debt from its leveraged buy-out, divested from 14 rural hospitals out of their original 38 properties, 32 of which were sole providers of acute-care hospital services in their local area.[7] Quorum generated $1.6 billion in annual revenue by owning hospitals that have monopoly power or near-monopoly power in their markets.[8] Quorum financially restructured in July 2020 after filing for Chapter 11 bankruptcy in April 2020.[9]

    - **Sunbury, PA:** Two years after Quorum offloaded Sunbury Community Hospital, the hospital shut its doors, leaving Sunbury without a hospital for the first time since 1895. The hospital stopped operating on

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4 Rebecca Tan et al., *An Investment Firm Snapped Up Nursing Homes During the Pandemic. Employees Say Care Suffered.*, THE WASHINGTON POST (Dec. 21, 2020), https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html.

5 Gretchen Morgenson et al., *Private Equity firms now Control Many Hospitals, ERs and Nursing Homes. Is it Good for Health Care?*, NBC NEWS (May 13, 2020), https://www.nbcnews.com/health/health-care/private-equity-firms-now-control-many-hospitals-ers-nursing-homes-n1203161.

6 Sheelah Kolhatkar, *How Private-Equity Firms Squeeze Hospital Patients for Profits*, THE NEW YORKER (Apr. 9, 2020), https://www.newyorker.com/business/currency/how-private-equity-firms-squeeze-hospital-patients-for-profits.

7 Max Fraser, *Public Health, Private Equity, and the Pandemic*, CUNY NEW LABOR FORUM (Sept. 2020), https://newlaborforum.cuny.edu/2020/09/04/public-health-private-equity-and-the-pandemic/.

8 Bob Herman, *Private Equity Eyes Another Rural Hospital Chain*, AXIOS (Oct. 4, 2019), https://www.axios.com/private-equity-quorum-health-kkr-a374fda1-9214-4d9a-92e9-cf750ae46379.html

9 Hailey Mensik, *Quorum Completes Bankruptcy Process, Taps New CEO*, HEALTHCAREDIVE (July 8, 2020), https://www.healthcaredive.com/news/quorum-bankruptcy-approval-emerging-in-july/580805/#:~:text=UPDATE%3A%20July%208%2C%202020%3A,Healthcare%2C%20as%20Quorum's%20new%20CEO.

January 31, 2020, just before the onset of the COVID-19 pandemic, removing 63 inpatient beds and eliminating over 150 jobs from the community.[10]

  - **McKenzie, TN:** Quorum shut down McKenzie Regional Hospital in 2018, resulting in this rural community losing its 45-bed hospital and closing one of the largest employers in the region in a town where one-in-five were already living below the federal poverty line.

- **Ayer, MA:** The Nashoba Valley Medical Center in rural northeastern Massachusetts is operated by Steward Health Care, a for-profit company owned by the PE firm Cerberus Capital. On April 2, 2020, Steward Health Care unilaterally suspended intensive care unit admissions and redistributed supplies to other facilities without notifying relevant state authorities and community members. A longtime nurse at the facility noted that patient safety and employee treatment had worsened since the PE takeover.[11]

- Nursing Homes
  - **Pottsville PA:** The HCR ManorCare nursing home chain, owned by the Carlyle Group PE firm, repeatedly endangered patient safety by severely understaffing nursing care homes. This resulted in broken hips, brain hemorrhages, bed sores, and premature death. Health code violations increased 26 percent each year between 2013-2017 under Carlyle's ownership. Former residents at the Postville location recall being left naked in wheelchairs, being bathed infrequently and left in soiled clothing, and crying daily due to the abhorrent conditions.[12]

National examples

- Mobile Laboratory and Diagnostics
  - **Horsham, PA**: Trident USA Health Services LLC, headquartered in Pennsylvania, is a PE-backed mobile laboratory and diagnostic services company operating in 36 states. Trident allegedly preyed on nursing home residents in violation of the False Claims Act by defrauding Medicare and Medicaid through a kickback scheme that adjusted prices in exchange of referrals for over a decade.

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[10] Francis Scarcella, *Sunbury Hospital closing Emergency Room, Several other Departments by End of Month*, THE DAILY ITEM (Jan. 16, 2020), https://www.dailyitem.com/news/sunbury-hospital-closing-emergency-room-several-other-departments-by-end-of-month/article_0272e64c-37fd-11ea-bdba-b748e7bebef6.html.

[11] Gretchen Morgenson et al., *supra* note 5.

[12] Peter Whoriskey et al., *Overdoses, Bedsores, Broken Bones: What Happened when a Private-Equity Firm Sought to Care for Society's most Vulnerable*, WASHINGTON POST (Nov. 25, 2018), https://www.washingtonpost.com/business/economy/opioid-overdoses-bedsores-and-broken-bones-what-happened-when-a-private-equity-firm-sought-profits-in-caring-for-societys-most-vulnerable/2018/11/25/09089a4a-ed14-11e8-baac-2a674e91502b_story.html.

The U.S. Attorney's Office argued that Trident intentionally filed for Chapter 11 bankruptcy to avoid paying damages in connection to the kickbacks.[13]

- Durable Medical Equipment (DME)
  - **Lake Forest, CA**: Apria Healthcare, headquartered in California, is a national durable medical equipment company backed by Blackstone that rents out at-home ventilators and other respiratory products. Apria delivered its investors $460 million in dividends immediately after settling thousands of False Claims Act violations and taking on $410 million in new debt. The false ventilator claims cost the federal government millions and were coupled with respiratory specialist layoffs just prior to the COVID-19 pandemic.[14]

[13] Morgan Eichensehr, *TridentUSA Health Services to Pay $8.5M to Settle Whistleblower Lawsuits*, BALTIMORE BUSINESS JOURNAL (Sept. 26, 2019), https://www.bizjournals.com/baltimore/news/2019/09/26/tridentusa-health-services-to-pay-8-5m-to-settle.html.

[14] Yeganeh Torbati, *How Private Equity Extracted Hundreds of Millions of Dollars form a Firm Accused of Medicare Fraud*, THE WASHINGTON POST (March 1, 2021), https://www.washingtonpost.com/business/2021/03/01/blackstone-healthcare-private-equity-dividend-apria/.