



June 5, 2024

Jonathan Kanter
Assistant Attorney General
Antitrust Division
Department of Justice

Xavier Becerra
Secretary
Department of Health and Human Services

Lina M. Khan
Chair
Federal Trade Commission

RE: Request for Information on Consolidation in Health Care Markets (Docket No. ART 102)

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

On behalf of the American College of Physicians (ACP), I am pleased to share our response to the Justice Department’s Antitrust Division, Federal Trade Commission, and Department of Health and Human Services (the “agencies”) jointly launched public inquiry into private equity and other corporations’ increasing control over health care.¹ The College is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 161,000 internal medicine physicians, related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

ACP deeply appreciates the agencies' cross-government inquiry, which seeks to understand how private equity firms and other corporate owners’ involvement in health care markets may lead to maximizing profits at the expense of quality care. The potential consequences of private equity investment, consolidation, and the ultimate chilling of competition in markets are alarming, as they could negatively impact the health and well-being of patients. As the agencies have rightly pointed out, research has shown that competition in physician and payer markets can promote higher quality, lower cost health care, greater access to care, increased innovation, higher wages, and better benefits for health care workers. The potential for private equity to help reduce soaring costs in some subsectors of health care and emerging evidence showing that business practices have compromised patient care necessitate robust policy efforts to regulate these modern market realities. The College also appreciates the agencies’ efforts to build upon the Centers for Medicare & Medicaid Services’ recent request for

¹ DEPARTMENT of JUSTICE DEPARTMENT of HEALTH and HUMAN SERVICES FEDERAL TRADE COMMISSION Docket No. ATR 102 Request for Information on Consolidation in Health Care Markets. Accessed June 4, 2024. https://content.govdelivery.com/attachments/USDOJOPA/2024/03/05/file_attachments/2803589/DOJ-FTC-HHS%20HCC%20RFI%20-%2003.04.24%20-%20FINAL.pdf

information on Medicare Advantage. We hope the agencies will consider our response to that RFI in tandem with our response to this request.²

The College is greatly concerned about the recent trends demonstrating that the maximization of profits in the health care market is often achieved to the detriment of clinical care. For several years, ACP has cautioned against the steady growth of corporate interest and influence in the health care sector and the resulting business-oriented approach to medicine. Published in the *Annals of Internal Medicine*, our Financial Profit in Medicine position paper considers the effects of mergers, integration, private equity investment, non-profit hospital requirements, and conversions from non-profit to for-profit status on patients, physicians, and the health care system.³ This position paper makes several recommendations pertinent to the agencies' request, including the need to research and assess the influence of private equity and corporatization in the health care market. We also call on policymakers to enhance transparency, provide oversight of transactions, and increase scrutiny of mergers, acquisitions, and buyouts.

Private equity's investment in health care has increased drastically over the last decade. While exact numbers are hard to confirm given insufficient reporting requirements, reliable estimates point to a 189% increase in annual private equity deal value in the health care industry from 2010 to 2019, with the number of reported deals increasing from 352 in 2010 to 937 in 2020.⁴ These industry investments are wide-ranging and include everything from hospitals and physician practices to facilities and managed care plans.⁵ This investment, driven in part by the increasingly complex regulatory environment for health care delivery and reimbursement, has engendered speculation and studies on the effect private equity has on the pricing and quality of health care services. There has also been a chilling effect on competition, which has led to one-third of metropolitan areas in the U.S. having a private equity firm with greater than 30% market share in at least one specialty and price increases on the order of 10-20%.⁶ ACP is deeply concerned about the studied impact, which demonstrates that private equity makes health care more expensive and less effective. We strongly urge the agencies to strengthen regulatory reporting and review processes.

² Request for Information on Medicare Advantage Data (CMS-4207-NC). ACP Online. Published May 29, 2024. https://www.acponline.org/sites/default/files/acp-policy-library/upload/acp_response_to_cms_medicare_advantage_data_rfi_2024.pdf

³ Crowley R, Atiq O, Hilden D. Financial Profit in Medicine: A Position Paper From the American College of Physicians. *Annals of Internal Medicine*. 2021;174(10). doi:<https://doi.org/10.7326/m21-1178>

⁴ Scheffler RM, Alexander LM, Godwin JC. Soaring Private Equity Investment in the Healthcare Sector: Consolidation Accelerated, Competition Undermined, and Patients at Risk. *Social Science Research Network*. Published online January 1, 2023. doi:<https://doi.org/10.2139/ssrn.3860353>

⁵ Kona M. Private Equity in Health Care Trends & Impact. Georgetown University. Published March 17, 2024. https://content.naic.org/sites/default/files/national_meeting/hi-chir-slides-3.17.pdf

⁶ Scheffler R, Alexander L, Fulton B, Arnold D, Abdelhadi O. *MONETIZING MEDICINE: PRIVATE EQUITY and COMPETITION in PHYSICIAN PRACTICE MARKETS*.; 2023. https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf

The impact on the physician workforce is equally as concerning as the impact on patient health outcomes.⁷ The private equity business model puts physicians and the clinical workforce in a compromising position as acquisition and merger terms favor private equity funds and leverage strip-and-flip tactics that replace management, reduce operating costs, and use debt to finance the deal. Concerns about private equity ownership also come at a time when there are vast physician shortages and physicians in the workforce are experiencing historically high levels of burnout.⁸ Though the long-term implications for the workforce at private equity-acquired practice sites remain unclear, a stable workforce is associated with better patient health outcomes and reduced health care resource use. The ownership structure of private equity firms and associated financial pressures have the potential to reduce clinical autonomy and contribute to physician burnout and poor clinical retention. Researchers have already observed greater physician replacement at private equity-acquired practices compared with non-private equity-acquired practices, suggesting that private equity's business strategy may differ from that of traditional practice owners.⁹ Previous studies have also suggested that patient care suffers from a more transitory workforce.¹⁰ ACP strongly recommends the agencies specifically examine the effect of the changes in workforce composition on health outcomes or patient care.

In March of this year, ACP conducted a survey to examine the impact of private equity in health care, particularly concerns about buying up an increasing number of physician practices and spinning those into for-profit entities.¹¹ To date, there are limited surveys of medical trainees that document these concerns, and our survey assesses the views of internal medicine physicians more broadly. Published in *JAMA Internal Medicine*, the findings indicate that nearly 61% of physician respondents said they have a pessimistic outlook toward private equity. Those surveyed also carried negative news about private equity as it pertains to physician well-being (58%), health care prices or spending (57%), and health equity (51%).

Notably, the survey findings also indicate that respondents were more likely to view innovations as a positive aspect of private equity ownership. As emphasized in our *Financial Profit in Medicine* position paper, proponents of private equity investment say this trend makes the health care system more

⁷ Zhu J. *CONVERSATION with the RESEARCHERS Q: How Does Private Equity Involvement Impact Health Care Consumers?* <https://nihcm.org/assets/articles/NIHCM-ExpertVoices-052023.pdf>

⁸ *The Complexities of Physician Supply and Demand: Projections the Complexities of Physician Supply and Demand: Projections from 2021 to 2036.*; 2024. <https://www.aamc.org/media/75236/download?attachment>

⁹ Bruch JD, Foot C, Singh Y, Song Z, Polsky D, Zhu JM. Workforce Composition In Private Equity–Acquired Versus Non–Private Equity–Acquired Physician Practices. *Health Affairs*. 2023;42(1):121-129. doi:<https://doi.org/10.1377/hlthaff.2022.00308>

¹⁰ Robinson E. Study raises red flags about corporatization of health care, OHSU investigator says. OHSU News. <https://news.ohsu.edu/2022/09/02/study-raises-red-flags-about-corporatization-of-health-care-ohsu-investigator-says>

¹¹ Zhu JM, Zeveney A, Read S, Crowley R. Physician Perspectives on Private Equity Investment in Health Care. *JAMA internal medicine*. Published online March 11, 2024. doi:<https://doi.org/10.1001/jamainternmed.2024.0062>

efficient, encourages innovation, and provides financial stability to ensure access and improve care.¹² Technology-based services that lower unit costs and AI-based solutions that enable standardization and workforce efficiency will garner higher valuations and greater private equity interest than traditional services. ACP, in theory, agrees that private equity could help to keep struggling hospitals or physician practices open and maintain access for the community, especially for a rural community without other options. However, the overwhelming amount of evidence suggests that patients in hospitals owned by private equity firms suffered significantly more hospital-acquired adverse events than those being cared for in similar hospitals with no such investor participation.¹³ ACP strongly believes that investing in a hospital does not necessitate cutting expenses, reducing the staff, and potentially harming patients.

ACP urges the agencies to enhance oversight and transparency requirements for private equity deals. A revised regulatory framework must consider how policymakers and regulators can focus on serial transactions and those that fall below the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Most private equity acquisitions, especially of physician practices, are well below the \$119.5 million threshold, so they never get reported.¹⁴ States must also better enforce existing regulations designed to prevent the commercial exploitation of physicians, such as the corporate practice of medicine laws. Certain states have already enacted additional oversight concerning corporate health care transactions and arrangements. In February 2024, New York enacted Article 45-A, which would dramatically increase transparency and scrutiny of private equity purchases in health care.¹⁵ Oregon's HB 4130 is set to be reintroduced in the 2025 legislative session and would strengthen the law on the corporate practice of medicine.¹⁶ California's AB 3129 is by far the most extensive proposed legislation and focuses on health care consolidation, emphasizing transactions that involve private equity or hedge funds with health care facilities or physician groups.¹⁷ In enforcing these regulations and policies, Colorado represents the first example of a specific state action to address the market power of private equity firms.¹⁸ Attorney General Phil Weiser settled with US Anesthesia Partners of Colorado Inc. to resolve an investigation of alleged anti-competitive practices that raised prices for patients. Colorado has required the group to pay

¹² Crowley R, Atiq O, Hilden D. Financial Profit in Medicine: A Position Paper From the American College of Physicians. *Annals of Internal Medicine*. 2021;174(10). doi:<https://doi.org/10.7326/m21-1178>

¹³ Kannan S, Bruch JD, Song Z. Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition. *JAMA*. 2023;330(24):2365-2375. doi:<https://doi.org/10.1001/jama.2023.23147>

¹⁴ *PE Breakdown Q1 2023 2*. Accessed June 4, 2024.

https://files.pitchbook.com/website/files/pdf/Q1_2023_US_PE_Breakdown.pdf

¹⁵ Required Reporting of Material Transactions. www.health.ny.gov. Accessed June 4, 2024.

https://www.health.ny.gov/facilities/material_transactions/

¹⁶ HB4130 2024 Regular Session - Oregon Legislative Information System. olis.oregonlegislature.gov.

<https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4130>

¹⁷ Bill Text - AB-3129 Health care system consolidation. leginfo.legislature.ca.gov.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB3129

¹⁸ Goldbaum E. Private equity-run U.S. Anesthesia Partners to end Colorado health care monopoly under agreement with Attorney General Phil Weiser. Colorado Attorney General. Published February 27, 2024. Accessed June 4, 2024. <https://coag.gov/press-releases/usap-health-care-monopoly-attorney-general-phil-weiser-2-27-2024/>

in monetary relief and to release and modify non-compete agreements with physicians. ACP strongly urges the agencies to engage in significant efforts to regulate private equity and align federal efforts with state-level reforms.

We would also be remiss not to draw the agencies' attention to the recent debilitating cyberattack that struck Change Healthcare, a massive healthcare company that, among other services, handles over half the medical claims in the country. The College has sent several letters to the Department of Health and Human Services^{19 20} and the National Governors Association²¹ addressing the significant impact on health care operations, the magnitude of the disruption to payment processes, and the harm to patients. We have also joined a broad range of physician and clinician organizations to write to the Department of Health and Human Services' Office for Civil Rights regarding the Health Insurance Portability and Accountability Act (HIPAA)-related reporting requirements.²² As physicians wait for Change Healthcare's systems to be fully restored, ACP is deeply concerned about the drawbacks of the level of consolidation in today's medical world. UnitedHealth Group is one of the country's top three largest health insurers, and it should ideally have some of the best cybersecurity in the world. The Change Healthcare cyberattack illustrates how dire it is that federal regulation keeps pace with the growing involvement of private equity in health care and consolidation in the market. It has been an unfortunate awakening for the physician community and partners in the health care system to realize that a single cyberattack on a highly centralized system could have such wide-ranging effects. ACP is pleased that Congressional officials have conducted hearings on this issue. Still, the high level of interconnectivity because of market consolidation will lead to considerable risks – as demonstrated by this attack – if not managed correctly and consistently.

Private equity firms must be held responsible for their business activities. There is potential for private equity to be part of health care's solution to its poorly structured, perpetually inadequate, and mal-distributed funding. However, creating a level playing field through meaningful regulatory reform is necessary. ACP greatly appreciates the agencies issuing this request to seek public comment regarding the consolidation in health care markets. Fully understanding how private equity ownership impacts the

¹⁹ ACP Follow-up Letter to HHS on Change Healthcare Cyberattack. ACP Online. Published May 1, 2024.

https://www.acponline.org/sites/default/files/acp-policy-library/letters/acp_follow_up_letter_to_hhs_on_change_healthcare_cyberattack_2024.pdf

²⁰ ACP Letter to HHS on Change Healthcare Cyberattack. ACP Online. Published March 12, 2024.

https://www.acponline.org/sites/default/files/acp-policy-library/letters/acp_letter_to_hhs_regarding_change_healthcare_cyber_attack_2024.pdf?_gl=1*12r03jp*_ga*MjE2M2DUzNDQyLjE2NzExNTM2MzE.*_ga_PM4F5HBGFQ*MTcxNzQ2MDc0Ny4zODluMC4xNzE3NDYwNzQ3LjYwLjAuMA..&_ga=2.198498604.249602613.1717421672-216053442.1671153631

²¹ ACP Letter to National Governors Association on Change Healthcare Cyberattack. ACP Online. Published May 1, 2024. https://www.acponline.org/sites/default/files/acp-policy-library/letters/acp_letter_to_national_governors_association_on_change_healthcare_cyber_attack_2024.pdf

²² Joint Letter to HHS on Change Healthcare Cyberattack and Reporting Requirements. ACP Online. Published May 20, 2024. https://www.acponline.org/sites/default/files/acp-policy-library/upload/joint_letter_to_hhs_on_change_cyberattack_and_reporting_responsibilities_2024.pdf



access to and quality of care received and the extent to which it impacts local health care markets is essential for policymakers and practices. The College welcomes additional opportunities to engage with regulators and inform Congressional discussions, reinforcing the Biden administration's commitment to scrutinizing anticompetitive acquisitions and anticompetitive practices that often lead to higher costs, worse quality, and less access to care.²³

We appreciate the opportunity to respond to this request for information. We look forward to working with the agencies in additional proceedings, including workshops or other public engagement, to address these and/or other related issues to this request. Please contact Dejah Johnson, JD, MPA, Manager, Regulatory Affairs for the American College of Physicians, at djohnson@acponline.org or (202) 261-4506 with questions or comments about this response.

Sincerely,

A handwritten signature in blue ink that reads "Leslie F. Algase MD, FACP".

Leslie F. Algase, MD, FACP
Chair, Medical Practice and Quality Committee
American College of Physicians

²³ The White House. FACT SHEET: Biden-Harris Administration Announces New Actions to Lower Health Care and Prescription Drug Costs by Promoting Competition. The White House. Published December 7, 2023. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/07/fact-sheet-biden-harris-administration-announces-new-actions-to-lower-health-care-and-prescription-drug-costs-by-promoting-competition/>