September 12, 2024

The Honorable Bernie Sanders
Chair
Committee on Health, Education, Labor
and Pensions (HELP)
United States Senate
Washington, D.C. 20510

The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor
and Pensions (HELP)
United States Senate
Washington, D.C. 20510

Re: Statement for the Record: Examining the Bankruptcy of Steward Health Care: How Management Decisions Have Impacted Patient Care

Dear Chair Sanders and Ranking Member Cassidy,

Thank you for holding the hearing entitled, "Examining the Bankruptcy of Steward Health Care: How Management Decisions Have Impacted Patient Care." Please accept the following statement for the record from the Consortium for Constituents with Disabilities (CCD) Long Term Services and Supports (LTSS) Task Force co-chairs. The Consortium for Constituents with Disabilities (CCD) is the largest coalition of national organizations working together to engage in concerted advocacy for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. The LTSS Task Force addresses the services and supports that enable individuals with disabilities of all ages to live in their homes and communities.

The CCD LTSS Task Force co-chairs have deep concerns regarding the impact of private equity investment in the LTSS system, including in residential settings. These impacts have been most prevalent in the nursing facility industry, but are also affecting providers of home- and community-based services (HCBS) for people with disabilities.

Private equity investment in LTSS is growing. Private equity firms have spent tens of billions in skilled nursing facilities, hospice, and assisted living since 2005.[1] Additionally, incursions of private equity into the HCBS space are an under-reported phenomenon and the Task Force has grave concerns about the possible implications of such transactions. Anecdotally, there appears to be strong interest in this area – disability advocates report being approached by private equity firms seeking information about HCBS. Indeed, private equity already has a growing presence in HCBS markets, with an analysis by the American Antitrust Institute and Americans for Financial Reform Education Fund finding that in 2020, 5.7% of CMS-registered home healthcare providers were backed by private equity, collecting at least $1.4 billion in Medicare payments in 2020 alone. Thirty-seven private-owned or backed companies acquired 330 individual home healthcare companies and consolidated them into only three dozen firms, and at the metropolitan-statistical area level, private equity owned or backed firms are operating in over 50% of home healthcare markets[2]. Between 2018 and 2019, nearly 50% of deals in the home health industry had private equity involvement.[3] However, the private equity investment model is not well calibrated to help providers achieve the goals of an HCBS system to provide person-centered supports sufficient to uphold the rights, autonomy, and dignity of individuals with disabilities.

The private equity model does not work well for LTSS. LTSS for people with disabilities must be person-centered, not profit driven. LTSS systems for people with disabilities are, for the most part, publicly funded, largely through Medicaid. Providers of disability services have an obligation to be good stewards of public funds and maximize the impact of these dollars on the lives of individuals with disabilities. Even more, they have a special responsibility, articulated and reinforced by the US Supreme Court in its *Olmstead V. L.C.* decision, Section 504 regulations, and Medicaid regulations, to support individuals with disabilities to live lives of full inclusion in their communities, with full choice of where they live, how they spend their time, and their life goals.

This responsibility must be at the center of service design and delivery. While there are certainly opportunities to maximize provider efficiency in meeting this obligation, there is simply not enough slack in the LTSS system to generate the kind of return on investment expected by private equity investors without deleteriously impacting the ability of service providers to uphold the rights and respect the choices of the individuals they serve.

Private equity ownership provides opportunities to maximize revenue by cutting costs, increasing control over prices by consolidating markets, and deploying financial engineering mechanisms such as fees and dividend recapitalization. This aligns closely with the private

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[1] California Health Care Foundation. (2024, May). Private equity in health care: prevalence, impact, and policy options for California and the US. https://www.chcf.org/wp-content/uploads/2024/05/PrivateEquityPrevalenceImpactPolicy.pdf

[2] Moss, D.L. & Viera, O.V. (2023, June) The growth of private equity ownership in the home healthcare market. https://ourfinancialsecurity.org/wp-content/uploads/2023/06/AFFR_AAI_PE-Home-Health_Complete_6.6.23-1.pdf

[3] Private Equity Stakeholder Project. (2022, March). Private equity at home: Wall Street's incursion into the home healthcare and hospice industries. https://pestakeholder.org/wp-content/uploads/2022/03/Home-Healthcare-and-Hospice-report.pdf

equity model of generating high short-term returns for investors. Many of these strategies are not available in a market made up almost entirely of publicly funded activity; others are in direct conflict with the obligations of the LTSS system to people with disabilities. In fact, it is difficult to conceive of any strategy in which private equity firms could invest in this sector, with razor thin margins and no income sources beyond public funding, and reap the level of return they typically seek in the time horizon they typically expect without jeopardizing the rights of individuals with disabilities. While the prospect of an infusion of private equity into our resource starved systems may be a tempting one, for such an infusion to strengthen the system's ability to meet the expectations and uphold the rights of people with disabilities would require a tremendous shift in private equity practices, including a commitment to long term investments for minimal monetary returns, a readiness to learn not just the practices but the values necessary to successful disability service delivery, and, above all, a willingness to place quality of life outcomes above profit margins.

Private equity investments in LTSS negatively impacts service recipients. The growth of private equity ownership in nursing facilities has been especially damaging, to the detriment of residents with disabilities and direct care staff. Private equity firms frequently prioritize cost-saving measures over resident care to maximize profits, including staff reductions, cycling the money saved back to the firm through opaque and complex "related party transactions."[4] Related party transactions allow private equity firms to report minimal profits while shielding millions of Medicare and Medicaid dollars. One nursing facility chain owned by private equity received payments in excess of 40% higher than was reported on their cost reports by paying those excess funds through Real Estate Investment Trusts (REITS) and other related party transactions.[5] The facility owners did not provide any explanation as to why there was such a great disparity between the profits reported to CMS and their actual profits.

Nursing facilities run by private equity firms, due in part to these staff reductions, are 50% more likely to use antipsychotic drugs. In combination, these factors lead to a 10% higher mortality rate for residents in PE owned facilities.[6] Despite the ostensible cost cutting measures, taxpayer spending per Medicare resident at these facilities increased by 11%.[7]

There is no reason to expect that the impact of private equity on HCBS for individuals with disabilities will be more positive than that on nursing facilities. In fact, research documenting the impact of private equity on services for autistic individuals indicates similar disruption. A Center for Economic Policy and Research (CEPR) report on private equity in autism services published in 2023 finds that "the majority of PE activity in the autism sector…is in the buyout of existing

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[4] https://www.antitrustinstitute.org/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL-1.pdf

[5] Report: Where do the Billions of Dollars Go? A Look at Nursing Home Related Party Transactions. The National Consumer Voice for Quality Long term Care (2023). https://theconsumervoice.org/uploads/files/issues/2023-Related-Party-Report.pdf

[6] Gupta, A., Howell, S. T., Yannelis, C., & Gupta, A. (2021, February). Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes (No. w28474). National Bureau of Economic Research. https://doi.org/10.3386/w28474 (finding private equity ownership of nursing homes increases short-term mortality of Medicare patients by 10% while taxpayer spending per patient episode increases 11%).

[7] Ibid.

providers, which does not necessarily lead to the expansion of services or opening of new sites." As detailed in the report, these buyouts are more likely to lead to site closures and accompanying reductions in service availability. The researchers also found that "when PE firms buy out providers, they often load them with excessive debt that they did not previously have," and take over "decision-making control of care management practices, despite having little or no expertise."[8]

Federal action and oversight can curtail these negative impacts. Greater transparency is greatly needed to identify problematic practices. Private equity ownership and transactions in the nursing facility space are incredibly opaque. This minimal transparency poses many problems. First, regulators are unable to track how taxpayer funds are spent, thus jeopardizing the integrity of the Medicaid and Medicare programs. Second, private equity owners can conceal how much they are spending on related party transactions or similar practices, and manipulate cost reports to make it appear that the facility is operating at a loss. Often, private equity owners of nursing facilities will use manipulated cost reports to make arguments for increased reimbursements, while receiving significant profits at the expense of both nursing facility residents and taxpayers.[9] For example, one nursing facility chain owned by Steif-Koening in New York reported less than 1% in profits for 2020 across all their facilities. However, a deeper look into the related party transactions showed many transactions with other Steif-Koening owned businesses led to as much as 63% in profits for the owners.[10]

Additionally, minimal transparency allows nefarious nursing facility owners to open up new facilities, even if they were previously cited for safety or abuse issues. Typically, an owner of a facility in one state that has been cited as posing an immediate jeopardy to residents would be prohibited from operating another nursing facility without meeting certain state and federal standards. But private equity firms often have very complex business structures that include subsidiaries and affiliates, making it possible to open another facility, within the same state or across state lines, while avoiding identification as the owner of the cited facility. As a result, the government's ability to sanction and prohibit dangerous nursing facility owners is greatly diminished.

Particularly given the existent unmet need for LTSS and the expected growth in both need and the direct care workforce, with the anticipated significant increase in older adults that is projected to reach 88.8 million people by 2060[11] and the direct care workforce expected to add more than 1 million new jobs by 2031[12], it is critical to investigate and regulate this industry now. Because of these risks, we urge Congress to explore increasing reporting and transparency

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[8] Batt, R., Applebaum, E., & Nguyen, Q.T. (2023, June) Pocketing Money Meant for Kids: Private Equity in Autism Services. Center for Economic and Policy Research. https://cepr.net/report/pocketing-money-meant-for-kids-private-equity-in-autism-services/#link1

[9] Ghandi, A. & Olenski, A. (2024, March). Tunneling and Hidden Profits in Health Care. National Bureau of Economic Research https://www.nber.org/system/files/working_papers/w32258/w32258.pdf.

[10] https://www.empirecenter.org/publications/following-the-money-2/

[11] https://acl.gov/sites/default/files/Profile%20of%20OA/ACL_ProfileOlderAmericans2023_508.pdf

[12] https://www.phinational.org/wp-content/uploads/2023/09/PHI-Key-Facts-Report-2023.pdf

regarding ownership of HCBS providers and PE involvement, and to engage in careful oversight regarding any obstacles PE investments pose to achieving the goals of community living, integration, and access.

Thank you for your attention to this important issue. If you have questions or concerns, please feel free to contact Tory Cross at tory@caringacross.org.

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