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Catastrophe Claims: Insurance Coverage for Natural and Man-Made Disasters, May 2025 Update

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§ 18C:6.50. Private Equity and Medicare

By Dennis J. Wall

This is not a natural disaster. “We” are not responsible for this disaster. The business model of private equity firms, perhaps more than people, is responsible for an existing disaster the outline of which we have not seen before, as they say: Private equity firms (or funds) have vastly increased their involvement recently in healthcare services funded at least in part by Medicare and Medicaid, with disastrous results for many Medicare and Medicaid beneficiaries.¹

Without attempting to provide a more comprehensive analysis of private equity here than is necessary to understand the attraction that Medicare and Medicaid hold for private equity, it will be enough to start out by recognizing the two main driving factors of private equity. First, private equity requires a reliable source of funding.² Second, private equity often involves a vulnerable population. Areas of healthcare frequently targeted by private equity firms include:

- Physicians’ practices.³
- Hospitals.⁴
- Assisted living facilities,⁵ and
- Nursing homes.⁶

Each area depends for its existence, in whole or in part, on Medicare or Medicaid funding, or both.⁷

The changes in ownership of what might be called here, in a non-technical sense, ‘managing organizations,’ i.e., those businesses responsible for the operation of the particular healthcare service, are of course the result of price in all cases and of “outsourcing” the operational issues in other cases, such as physicians’ practices.⁸

The business model of private equity must be understood, at least in skeletal outlines, in order to understand the role that private equity firms are playing in the current state of healthcare—at least insofar as it is paid for by Medicare and Medicaid—in the United States.

Private equity depends on secrecy. The formation of its structures and the conduct of its affairs are not reported and they are not generally known. The simplest definition of Private Equity (PE) is “ownership of (or an interest in) an entity that is not publicly traded.”⁹

Private equity investors have access to large pools of money and seek the highest rate of return on their investments that is available in a short time frame, including “university endowment funds, pension funds, wealthy people, and other companies.”¹⁰

One of their tools consists of leveraged buyouts. The private equity firm investing for a pool of investors acquires a controlling or other interest in a business partly by using the investors' money and mostly by paying a much large share of the acquisition price through a loan. The loan (or "leverage") is ordinarily the lion's share of the acquisition funding, and the loan is assumed by the acquired business. Land and buildings owned by the acquired business are collateral for the loan used for leverage.¹¹

"The acquired hospital must then generate revenue to pay down that debt."¹² This is just as true of any other acquired business as it is of the acquired hospital.

It is in the nature of private equity's business model to invest other people's money, a process something on the order of 'maximizing profit while socializing risk.' For example, "nursing home operators tend to seek operating loans – often referred to as revolving lines of credit – because they don't want their money tied up in the business."¹³

"Lease backs" are another tool in the private equity investors' toolkit. The acquired business is made to pay off the loans it is forced to assume in the course of being bought out. The acquired business must sell its land and buildings to make the loan payments. The acquired business then replaces its ownership with a lease of the buildings and realty it formerly owned. "Lease back" refers to the resulting corporation which still operates the facility, as now generating income for its lessor, which is usually if not always the private equity firm which acquired it in the first place. The transaction may involve no change in location, only a change in ownership.¹⁴

Whenever private equity is involved, there are also many, many fees. The fees are set out in a Management Services Agreement or MSA. An MSA can include fees for services which the private equity firm never rendered to the acquired business. Fees have been charged "to extend the maturity date of loans," "float fees" have been assessed for immediate availability of funds, charges for "lending lines" have been applied that the operator did not use, and often there is "a minimum balance fee[.]"¹⁵

In sum, the business model of private equity is based on short-term profits, on immediate and high return on investment.¹⁶ This model results in the acquired corporation assuming debt and needing to raise money. The acquired business eventually if not immediately raises money by cutting costs.

An obvious way to cut costs is to cut jobs, or, in the parlance favored in finance, to reduce staff. Cost-cutting after acquisition by private equity is what happens with hospitals,¹⁷ assisted living facilities,¹⁸ and nursing homes.¹⁹

Cuts have also been made to protocols and processes after private equity firms have acquired businesses, including healthcare practices such as hospitals.²⁰

In addition, services have been reduced, including at nursing homes.²¹

The results in healthcare are particularly onerous. Many if not all private equity practices are a bad fit with healthcare. This is true of hospitals acquired by private equity, for a stark example.

"Patients are more likely to fall, get new infections, or experience other forms of harm during their stay in a hospital after it is acquired by a private equity firm, according to a new study led by researchers at Harvard Medical School."²²

The study referenced in the preceding quotation was published in the Journal of the American Medical Association (JAMA) on December 26, 2023. The study examined conditions that were acquired in the hospital by Medicare beneficiaries in the years between 2009 and 2019.

The researchers, physicians at Harvard Medical School, examined “662,095 hospitalizations at 51 private equity-acquired hospitals and 4,160,720 hospitalizations at 259 matched control hospitals using 100% Medicare Part A claims data[.]”²³

“[T]he individual conditions were defined by the US Centers for Medicare & Medicare Services”:

- 27.3% increase in **falls by Medicare patients** at private equity hospitals after the hospitals were acquired by private equity firms.
- 37.7% increase in “**central line-associated bloodstream infections**” for **Medicare patients** after private equity firms acquired the hospitals in which they were patients. This despite the fact that private equity hospitals placed 16.2% fewer central lines.
- Over all, a 25.4% increase in “**hospital-acquired conditions**” by **Medicare patients** in private equity hospitals “[a]fter private equity acquisition[.]”²⁴

In a study of 9,462 patients who had esophagectomy surgery,²⁵ 517 of whom were patients at hospitals acquired by private equity and 8,945 of whom were at hospitals that were not acquired by private equity, the surgical patients in the study who were patients at hospitals acquired by private equity had significantly higher rates of mortality in 30 days, and of any complications at all, as well as significantly higher rates of serious complications.²⁶

Adverse results for Medicare and Medicaid beneficiaries, or the likelihood of adverse results in the future, have been reported and predicted since at least 2021 concerning “nursing facility quality,” which reportedly has declined after acquisition by private equity firms. There are approximately 15,000 nursing homes in the United States, serving more than 1.3 million residents; about 72% of them are owned by for-profit organizations. While there has not been a noticeable increase in the percentage of for-profit ownership of nursing homes, “the type of for-profit companies that own these facilities has shifted toward private equity, real estate investment trusts, and complicated ownership structures[.]”²⁷ As the Centers for Medicare and Medicaid Services wrote on November 17, 2023 while proposing a final rule:

A November 2021 analysis published in the *Journal of the American Medical Association* contained similar findings concerning PEC-owned [private equity company-owned] nursing facilities. Titled “Association of Private Equity Investment in US Nursing Homes with the Quality and Cost of Care for Long-Stay Residents,” the report stated that PECs seek annual returns of 20% or more; with this pressure to generate high short-term profits, private-equity-owned nursing homes might reduce staffing, services, supplies, or equipment, which could adversely affect quality of care. The analysis concluded that: (1) private equity acquisition of nursing facilities was associated with higher costs and increases in emergency department visits and hospitalizations for ambulatory sensitive conditions; and (2) per the study’s findings, more stringent oversight and reporting on private equity ownership of nursing homes may be warranted. The previously mentioned concerns about nursing home ownership are not limited to PECs. Other types of private ownership, such as REITs, have generated similar concerns.²⁸

In 2024, further research into nurse staffing models was published in the journal *Medical Care*. The *Medical Care* study emphatically confirmed the results of the earlier study published by the Journal of the American Medical Association, although confirmation was unnecessary in this case. “Decades of evidence document that models of care that reduce the role of RNs in direct patient care are associated with reductions in patient safety and satisfaction.”²⁹

“The final patient sample in the *Medical Care* study included 6,559,704 patients.”³⁰ Each patient in the study was a Medicare patient.³¹ Medicare beneficiaries represent “about half of the inpatient days in the typical US hospital.”³²

The *Medical Care* study found, in addition to results similar to the findings in the earlier JAMA study reflected in the above quotation, that even a 10 percentage point reduction in RNs caused significant reductions in patient care and measurable increases in additional Medicare costs; it extrapolated estimates of 10,947 annual avoidable deaths, and \$68.5 million in additional Medicare costs.³³ The outcomes would not be good business in the long run, either: “Hospitals would forgo nearly \$3 billion in cost savings annually because of patients requiring longer stays.”³⁴

“Taken together,” the *Medical Care* “analysis shows that replacing RNs with lower-wage nursing personnel is associated with poorer outcomes for patients, higher payments for Medicare, and a negative ROI for hospitals, suggesting an overall poor business case for substituting RNs with lower-wage nursing staff.”³⁵

In the face of all this evidence, it appears that private equity or nursing home operators, or both, struck back. In June, 2024, a trade association and several nursing homes filed suit in Amarillo, Texas. Their Amended Complaint appears to be the operative complaint in that case at this time. American Health Care Association v. Becerra, Amended Complaint, DE 26, filed 06.18.24 (N.D. Tex. Case No. 2:24-cv-00114).

The lead plaintiff led five other plaintiffs in filing suit in the Northern District of Texas, Amarillo Division. This is the courthouse of choice where, as in this case, plaintiffs oppose allegedly “onerous” rules like standards for nursing staff in Nursing Homes.

In the lawsuit to block the “onerous” nurse staffing standards in Nursing Homes, the American Health Care Association and its five co-plaintiffs alleged:

That rule exceeds CMS’s statutory authority, effects a baffling and unexplained departure from the agency’s longstanding position, and creates impossible-to-meet standards that will harm thousands of nursing homes and the vulnerable Americans they serve.

The rule is easy to understand to those who read it. It turns out that the “agency’s longstanding position” originated during the American Apocalypse, between the afternoon of January 20, 2017 and the morning of January 20, 2021. That is not so longstanding in the eyes of most reasonable persons.

The “impossible-to-meet standards that will harm thousands of nursing homes” depends on how much of a Return on Investment you were counting on when you invested in Nursing Homes. If you

expected to profit from the relative absence of nurses to whom you have to pay salaries, then that would be one thing which would make hiring nurses to staff Nursing Homes “impossible,” I suppose.

The “vulnerable Americans” the nurses serve are the people who live in the plaintiffs’ nursing homes. The plaintiffs actually allege that these “vulnerable Americans” will be harmed by having more nurses on staff. Not one resident of a nursing home is a plaintiff in *American Health Association v. Becerra*.

Outside of Amarillo, none of this seems especially plausible. Plausibility is of course the standard to measure whether an amended complaint like this one states a claim upon which relief can be granted.

Undeterred by questions of plausibility, the Department of Justice and the plaintiffs in this case have stipulated that the case should be resolved by both parties moving for the entry of judgment under a briefing schedule that runs into 2025. *American Health Care Ass’n v. Becerra*, Joint Motion for Briefing Schedule, DE 45, filed 08.09.24 (N.D. Tex. Case No. 2:24-cv-00114). A U.S. Magistrate Judge approved the stipulation.

In the meantime, there does not seem to be anything to prevent the standards for nurses to staff Nursing Homes in the Northern District of Texas. Or anywhere else in the United States, for that matter. I cannot find any Order on the electronic docket on PACER that says that the staffing standards are not in effect.³⁶

Onerous results following acquisition by private equity firms appear in relation to other healthcare providers as well.³⁷

To be sure, cases go to trial on allegations involving inadequate staffing at healthcare facilities for which private equity may or may not be responsible. In *Estate of Shea v. Meridian Senior Living, LLC*,³⁸ the estates and relatives of deceased residents of an assisted living facility managed by Meridian Senior Living, LLC filed suit against Meridian on account of the residents’ deaths. The case went to verdict on counts for alleged negligence and alleged violation of the Wisconsin Deceptive Trade Practices Act.

A jury returned a verdict for the plaintiffs based on allegations of inadequate staffing and false advertising. The trial court entered judgment for the plaintiffs which was affirmed.³⁹

In what has been reported to be the only case of its kind, in 2022 the American Academy of Emergency Medicine Physician Group, Inc. sued Envision Healthcare Corporation after the plaintiff, “a corporation that provides business and administrative services to physician groups, .. lost out on business to” Envision. The emergency physicians’ lawsuit was removed to federal court by Envision.⁴⁰ The alleged creature of a private equity firm, Envision allegedly “violates California’s ban on the corporate practice of medicine”⁴¹ by following the private equity acquisitions and takeover model including by:

- Requiring the acquired companies, in this case “professional medical groups,” to sign a Management Services Agreement which in this case gave Envision control over decisions implicating “the practice of medicine, by rendering physicians as mere employees, and diminishing physician independence and freedom from commercial interests.”⁴²
- Entering into contracts with third parties and billing for services unknown to the physicians.⁴³

- Requiring employment agreements to contain restrictive covenants against replacing Envision with any other emergency medical practice, including nondisclosure agreements to keep the employment agreements a secret.⁴⁴
- Acquiring competing corporations with “exclusive contracts” including by providing kickbacks to the persons in control of the competing businesses.⁴⁵

On the basis of such allegations, the District Court denied Envision’s motion to dismiss.⁴⁶ Envision filed a Suggestion of Bankruptcy,⁴⁷ which would ordinarily and automatically stay the proceedings against Envision under Bankruptcy Law. Envision filed for Bankruptcy in Texas.

Two months after Envision filed its Suggestion of Bankruptcy in the District Court in California, the Bankruptcy Judge in Texas entered an Order on July 13, 2023.⁴⁸ This would effectively prevent the emergency medicine physicians’ group from prosecuting the civil lawsuit in California.

Thereafter, in November 2023, an intermediate appellate court in Louisiana in pertinent part affirmed a trial court ruling sometime in late 2022 holding under state law that allegations of inadequate nursing home staffing and oversubscribing the resident population caused damages to the plaintiffs’ decedent, constituted “malpractice” by a “health care provider” and that the alleged failure to provide care was “the very essence of the LMMA [Louisiana Medical Malpractice Act].”⁴⁹

“An action against health care providers, which includes nursing homes and long-term rehabilitation centers such as [one of the defendants in this case], is subject to the LMMA.”⁵⁰ All this meant that these particular claims had to be “reviewed through a medical review panel before proceeding to any other court.”⁵¹

This is the context in which the Federal Trade Commission turned to litigation in this area after a long history of federal inactivity. Private equity firms have not been the target of lawsuits by the federal government for their involvement in the adverse results of their increasing investment in healthcare providers. That changed at the end of 2023. It changed in the context of physicians’ practice groups.

In the first case of its kind, *Federal Trade Commission v. U.S. Anesthesia Partners, Inc.*,⁵² the FTC brought an antitrust lawsuit against a private equity firm. The private equity firm involved in that case is Welsh Carson. It allegedly controlled U.S. Anesthesia Partners, Inc. (USAP). The claims alleged in the complaint all come back to a central allegation that the private equity firm and its associated entities hiked the cost of reimbursement rates for anesthesia services in Texas through a conspiracy based on the acquisition of competitors.

USAP filed a motion to dismiss the FTC’s lawsuit against it. USAP predictably argued that it was not violating antitrust laws, but it also argued that Section 13(b) of the FTC Act did not support the FTC’s lawsuit where the FTC did not file a simultaneous administrative proceeding against USAP, and it argued for good measure that the FTC is unconstitutional. USAP also raised the issue in its motion to dismiss that the FTC based its claims on an impermissible market definition.

USAP’s motion to dismiss was denied by the District Court, and USAP filed an appeal from the District Court’s denial of its motion to dismiss.⁵³ In the course of denying USAP’s motion to dismiss, the District Court quoted several of the FTC’s allegations, including this one:

The FTC quotes an insurance executive describing USAP’s consolidation strategy as “tak[ing] the highest rate of all ... and then peanut butter spread that across the entire state of

Texas.”⁵⁴

The District Court granted Welsh Carson’s motion to dismiss, in contrast.⁵⁵ Welsh Carson successfully argued that it, the private equity financier, did not violate and was not about to violate antitrust laws based on the allegations in the FTC’s complaint.

Schemes based on the elimination or the winnowing of competitors are part of the private equity business model. These schemes are known as “roll-ups,” and among other things, roll-ups have been alleged by the FTC in its lawsuit.⁵⁶

Although large swaths of the Federal Trade Commission’s allegations were blacked out or redacted in the version of the FTC complaint that was filed at the inception of the lawsuit in September 2023, a “Redacted Public Version” of the complaint has since been made available to the public.⁵⁷ The amounts by which the defendant private equity firm increased its profits or received in revenues remain blacked out, for some reason.⁵⁸

Given the adverse effects on Medicare and Medicaid beneficiaries reported in hospitals, physicians’ practices, assisted living facilities, and nursing homes, various solutions have been proposed to counter the adverse effects associated with private equity acquisition of healthcare services for Medicare and Medicaid recipients.

The Department of Health and Human Services proposed Minimum Staffing Standards to Enhance Safety and Quality in Nursing Homes in September 2023,⁵⁹ and in November 2023 the Centers for Medicare and Medicaid Services proposed a final rule concerning Disclosures of Ownership which would include disclosures concerning newly defined “private-equity companies” or PECs.⁶⁰

As of December 20, 2024 CMS issued its Guidance for SNF (Skilled Nursing Facility) Attachment on Form CMS-855A, i.e., regarding disclosure of various ownership and managerial information under the Disclosures of Ownership Rule.⁶¹ Among other things, the CMS Guidance effectively extended completion of the Disclosures of Ownership for all SNFs to May 1, 2025.⁶²

Some States regulate conversions of not-for-profit hospitals to for-profit hospitals.⁶³

Other solutions include recommendations for restitution,⁶⁴ enhanced antitrust scrutiny,⁶⁵ which is apparently already under way at least in the FTC,⁶⁶ and that “regulators – particularly Medicare⁶⁷ – need to provide a lot more oversight over private equity acquisitions and similar purchases of health-care practices. This should include making sure these transactions don’t raise prices or affect quality of care.”⁶⁸ It should be noted here that the Department of Justice has recently put greater focus on “health care investors, including through the widely used health care anti-fraud tool, the federal False Claims Act (‘FCA’).”⁶⁹

“Medicare and other payers – as well as regulators – need to be far more forceful in ensuring that providers don’t shirk their duty to keep patients safe. This is especially true of private-equity-owned practices, but it extends beyond them as well.”⁷⁰

That brings up a problem with regulation of the role of private equity firms in the acquisition and operation of healthcare practices. Private equity firms defend themselves from allegations of liability for the operation of healthcare facilities, and from allegations of liability for the operation of businesses of all kinds for that matter, by distancing themselves from the corporations which actually operate the

business in question, be it a hospital or a factory. Private equity firms acquire such businesses, but they do not tend to operate them. Instead, they (ostensibly) tend to leave the operation of the business in question to the acquired corporation.⁷¹

A final proposed solution to mention here is to cap profits. “By preventing the siphoning off of Medicare and Medicaid dollars to excessive profits, we would drive out people who look at this as an investment and are less focused on resident care.”⁷²

Until and unless one or more of these proposals is adopted, private equity will continue to acquire healthcare providers and the results will continue to be much the same as they are now.

Footnotes

* Professor Gerard Anderson of Johns Hopkins, quoted by Margot Sanger-Katz, Warren’s Plan Targets Insurers. Buttigieg Aims at Hospitals, New York Times, Saturday, November 9, 2019, p. B4, accessible at <https://www.nytimes.com/2019/11/06/upshot/buttigieg-health-care-plan.html?searchResultPosition=14>.

¹ Cf. Daniel R. Martin, Kenneth V. Iserson, and John C. Moskop, Business-Centric Healthcare’s Effects on the Doctor-Patient Relationship in the Emergency Department, 2 JEM REPORTS 1, Table 2, Practices Undermining Optimal Emergency Physician-Patient Relationships, at p. 2 (2023) (listing Practice “1,” “For profit health care systems and private equity investor groups that buy hospitals and physician practices, directly employ physicians, and then impose profit-generating practices that my harm patients”), www.journals.elsevier.com/jem-reports. See generally Alexander Borsa, Geronimo Bejarano, Moriah Ellen and Joseph Dov Bruch, Evaluating Trends in Private Equity Ownership and Impacts on Health Outcomes, Costs, and Quality: Systematic Review, THEBMJ (formerly The British Medical Journal), online July 19, 2023, 382 doi: <https://doi.org/10.1136/bmj-2023-075244>; Brown and Hall, [Private Equity and the Corporatization of Health Care](#), 76 Stan. L. Rev. 527, 527 (2024) (“Private equity’s incursion into health care is especially concerning.... While it remains unclear whether private equity investment is fundamentally more threatening to health policy than other forms of acquisition and financial investment ... private equity presents a heightened threat of commercialization.”); Sajith Matthews and Renato Roxas, Private Equity and its Effect on Patients: A Window Into the Future, INT. J. HEALTH ECON. MGT. (online May 23, 2022), <https://doi.org/10.1007/s10754-022-09331-y>.

See generally Brendan Ballou, PLUNDER / PRIVATE EQUITY’S PLAN TO PILLAGE AMERICA (2023). This book explores the world of private equity which may not be familiar to many people. The author explains that complex world in terms that readers can understand and process the information, terms that even the author of the book you are reading can understand, and that is an achievement. With particular emphasis on private equity and the health care industry, see generally *id.*, Ch. 5, “Making it All Worse / Private Equity in Health Care,” at pp. 100-18.

² Private equity has invested \$1 Trillion in U.S. healthcare in the past decade. Jake Miller, What Happens When Private Equity Takes Over a Hospital, HARVARD MEDICAL SCHOOL, online Dec. 26, 2023, <https://hms.harvard.edu/news/what-happens-when-private-equity-takes-over-hospital>.

³ See Ashish K. Jha, Private Equity Firms Are Gnawing Away at U.S. Health Care, WASHINGTON POST, online Jan. 10, 2024, <https://www.washingtonpost.com/opinions/2024/01/10/private-equity-health-care-costs-acquisitions/>. Dr. Jha is the Dean of Brown University’s School of Public Health. He was a coordinator of COVID-19

response for the Administration of President Joe Biden.

See, in addition, Richard M. Scheffler, Laura Alexander, Brent D. Fulton, Daniel R. Arnold and Ola A. Abdelhadi, Report / Monetizing Medicine: Private Equity and Competition in Physician Practice Markets (Am. Antitrust Inst.; Nicholas C. Petris Ctr. On Health Care Mkts. And Consumer Welfare, School of Pub. Health, U.C., Berkeley; and Wash. Ctr. For Equitable Growth, July 10, 2023) (Table of Contents lists, among other headings, “Private Equity Acquisitions of Physician Practices,” “Private Equity’s Market Share in Many Local Physician Practice Markets is High and Increasing,” and “The Impact of Private Equity on Prices in Physician Markets Suggests Anticompetitive Effects”). *Cf.* Kenneth V. Iserson, James H. Paxton, Daniel R. Martin, and Evie Marcolini, Emergency Physicians’ Ethical Issues With Hospital Business Models, 67 J. Emergency Med. 99, 99 (July 2024) (“Private equity investors, who now own many for-profit hospitals, focus on short-term financial gains, leading to cost-cutting measures and pressure on EPs to prioritize financial goals over patient welfare.”).

⁴ *E.g.*, Sneha Kanna and Zirui Song, Research Letter / Financial and Clinical Characteristics of Hospitals Targeted by Private Equity Firms, JAMA INTERN. MED. (online July 29, 2024). Private equity firms own some “30% of all proprietary for-profit hospitals[.]” PESP (Private Equity Stakeholder Project) Private Equity Hospital Tracker, undated, last accessed on Friday, Dec. 29, 2023, <https://pestakeholder.org/private-equity-hospital-tracker/>.

⁵ Douglas MacMillan and Christopher Rowland, Understaffed and Neglected: How Real Estate Investors Reshaped Assisted Living, WASHINGTON POST, online Dec. 17, 2023, <https://www.washingtonpost.com/business/2023/12/17/assisted-living-industry-real-estate/>.

⁶ “Private-equity investment in nursing homes, to take just one example, has grown from about \$5 billion at the turn of the century to more than \$100 billion today.” Roge Karma, The Secretive Industry Devouring the U.S. Economy / Private Equity has Made One-fifth of the Market Effectively Invisible to Investors, the Media, and Regulators, THE ATLANTIC, online Oct. 20, 2023, <https://www.theatlantic.com/ideas/archive/2023/10/private-equity-publicly-traded-companies/675788/>.

The role of private equity in Nursing Homes is more closely examined than time and space are permitted here, in Brendan Ballou, PLUNDERED, *supra*, at 80-99.

⁷ For example, “Medicare and Medicaid spend more than \$100 billion a year on nursing homes and continuing care retirement communities[.]” Anita Raghavan, “They Were Traumatized”: How a Private-Equity Associated Lender Helped Precipitate a Nursing-Home Implosion, POLITICO, online Dec. 24, 2023, <https://subscriber.politicopro.com/article/2023/12/nursing-homes-private-equity-fraud-00132001>. *See*, in addition, Jessie Hellman, Data Shows Nursing Home Closure Often Linked to Care Issues, TRIBUNE NEWS SERV. / ORLANDO SENTINEL online Jan. 19, 2024, <https://www.orlandosentinel.com/2024/01/19/data-shows-nursing-home-closure-often-linked-to-care-issue/s/>.

[T]he [nursing home] industry continues to demand funding from taxpayers....

* * *

It’s infamously opaque how nursing homes spend Medicaid funds. Experts say facilities cut staffing to the bone to increase profits or channel funding into related-party transactions.

* * *

One of the most powerful tools CMS [the Centers for Medicare and Medicaid Services] has to enforce nursing home regulations is Medicare payment denials. That tool is typically used as a last resort when facilities have otherwise failed to fix deficiencies.

8 See Dr. Ashish Jha, *Private Equity Firms Gnawing U.S. Health Care*, *supra*.

9 Lisa Lilliott Rydin, Guide / Private Equity, Venture Capital, and Hedge Funds, HARVARD LAW SCHOOL LIBRARY, last updated Oct. 2, 2023, https://guides.library.harvard.edu/law/private_equity. See Fred Schulte, Sick Profit: Investigating Private Equity’s Stealthy Takeover of Health Care Across Cities and Specialties, KFF HEALTH NEWS (online Nov. 14, 2022), <https://kffhealthnews.org/news/article/private-equity-takeover-health-care-cities-specialties/>.

See also David Blumenthal, Explainer / Private Equity’s Role in Health Care, COMMONWEALTH FUND (online Nov. 17, 2023), <https://doi.org/10.26099/3kcn-8j78>, <https://www.commonwealthfund.org/publications/explainer/2023/nov/private-equity-health-care>:

In general, for-profit health care organizations can take two forms: private or public.

- *Public, investor-owned* organizations sell shares to the public that trade on a stock exchange. UnitedHealth Group, which now owns thousands of physician practices, is one example. Another is Hospital Corporation of America. These organizations are regulated by multiple federal laws and agencies, including the U.S. Securities and Exchange Commission.
- Shares of *private, investor-owned* organizations—such as private equity—owned firms—are not traded on public markets. As such, they aren’t required to follow the same regulations as public companies.

(Emphasis in original.)

10 HARVARD LAW SCHOOL LIBRARY GUIDE, *supra*. This source also describes these investors as persons “who are better able to understand and financially handle the risks of such investments.” Perhaps this description unintentionally translates that either private equity investors are in a good position to foresee the results of their actions, or that they intend them. See Markian Hawryluk, Hospices Have Become Big Business for Private Equity Firms, Raising Concerns About End-of-Life Care, KFF HEALTH NEWS (online July 29, 2022), <https://kffhealthnews.org/news/article/hospices-private-equity-firms-end-of-life-care/>.

11 HARVARD MEDICAL SCHOOL, *supra*.

12 HARVARD MEDICAL SCHOOL, *supra*.

13 ‘They Were Traumatized,’ POLITICO, *supra* (focus on Nursing Homes).

14 See *Understaffed and Neglected*, WASHINGTON POST, *supra* (examining Assisted Living Facilities in particular). The sale of buildings followed by leasing the same buildings happens whether the operator of

senior-living homes is the *original* owner or a corporation invented by the private-equity firm that acquired the business. See *Understaffed and Neglected*, WASHINGTON POST, *supra*.

15 ‘They Were Traumatized,’ POLITICO, *supra* (focus on Nursing Homes).

Private equity’s employment of loans, lease backs, and fees are all examined in HARVARD MEDICAL SCHOOL, *supra*, and in PESP PRIVATE EQUITY TRACKER, *supra*.

16 Reed Abelson and Margot Sanger-Katz, Serious Medical Errors Rose After Private Equity Firms Bought Hospitals, NEW YORK TIMES, online Dec. 26, 2023, <https://www.nytimes.com/2023/12/26/upshot/hospitals-medical-errors.html?searchResultPosition=1>.

17 Dr. Ashish Jha, *Private Equity Firms Gnawing U.S. Health Care*, *supra*.

18 “About 43 percent of assisted-living workers, excluding new hires, left their jobs in 2022[.]” *Understaffed and Neglected*, WASHINGTON POST, *supra*.

19 The private equity “industry” is improving profit margins “by cutting back on staffing while relying more on psychoactive medication.” Roge Karma, *The Secretive Industry*, THE ATLANTIC, *supra* (specifically addressing the example of nursing homes acquired by private equity firms).

20 Dr. Ashish Jha, *Private Equity Firms Gnawing U.S. Health Care*, *supra*.

21 Roge Karma, *The Secretive Industry*, THE ATLANTIC, *supra* (specifically addressing the example of nursing homes acquired by private equity firms).

22 HARVARD MEDICAL SCHOOL, *supra*. See Furrow, [The Future of Behavioral Health: Can Private Equity and Telehealth Improve Access?](#), 49 Am. J. L. & Med. 314, 314 (From the Abstract: “The problem is that private equity has a poor track record in both nursing home care and behavioral care for teens.”), doi:10.1017/amj.2023.34.

23 Sneha Kannan, MD, Joseph Dov Bruch, PhD, and Zirui Song, MD, PhD, Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition, Key Points / Findings, JAMA, online Dec. 26, 2023, <https://jamanetwork.com/journals/jama/article-abstract/2813379> (abstract; the full article is behind a paywall).

24 JAMA, Abstract / Design, Setting, and Participants; Main Outcomes and Measures; and Results, *supra*. In addition, see PESP PRIVATE EQUITY TRACKER, *supra*.

25

The Mayo Clinic offers the following definition of an esophagectomy:

Esophagectomy is a surgical procedure to remove some or all of the tube connecting the mouth to the stomach, called the esophagus. The esophagus is then reconstructed using part of another organ, usually the stomach.

Terms & Procedures, “Esophagectomy” (Mayo Clinic Sept. 10, 2024), https://www.mayoclinic.org/tests-procedures/esophagectomy/about/pac-20385084_

26

Jonathan E. Williams, Sara L. Schaefer, and Ryan C. Jacobs, and unnamed others, Esophagectomy Trends and Postoperative Outcomes at Private Equity-Acquired Health Centers, JAMA SURG. (online Jan. 2, 2025), doi:10.1001/jamasurg.2024.5920.

27

Harris Meyer, Concerns Grow Over Quality of Care as Investor Groups Buy Not-for-Profit Nursing Homes, KFF HEALTH NEWS (online March 13, 2024), attributing this information to David Grabowski, Professor of Health Care Policy at Harvard Medical School, <https://kffhealthnews.org/news/article/investors-private-equity-nonprofit-nursing-homes-quality-of-care/>.

28

Medicare and Medicaid Programs: Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities; Medicare Providers’ and Suppliers’ Disclosure of Private Equity Companies and Real Estate Investment Trusts, “A Rule by the Centers for Medicare & Medicaid Services [published] on 11/17/2023,” <https://www.federalregister.gov/documents/2023/11/17/2023-25408/medicare-and-medicaid-programs-disclosures-of-ownership-and-additional-disclosable-parties>. See Meyer, *Concerns Grow Over Quality of Care as Investor Groups Buy Not-for-Profit Nursing Homes*, KFF, *supra*.

29

Karen B. Lasater, K. Jane Muir, Douglas M. Sloane, Matthew D. McHugh, and Linda H. Aiken, Alternative Models of Nurse Staffing May Be Dangerous in High-Stakes Hospital Care, 62 MEDICAL CARE 434 (July 2024), <https://kffhealthnews.org/news/article/hospices-private-equity-firms-end-of-life-care/>.

30

Moreover, the patient sample of 6,559,704 Medicare patients included 2,676 general acute care hospitals. *Id.*

31

Alternative Models of Nurse Staffing, MEDICAL CARE study, *supra*.

32

Alternative Models of Nurse Staffing, MEDICAL CARE study, *supra*.

33

“Our projected additional deaths and cost estimates are likely underestimates[.]” *Id.*

34 *Alternative Models of Nurse Staffing*, MEDICAL CARE study, *supra*.

35 *Id.*

36 However I do find several Orders granting leave to foreign lawyers to put in their appearances in the case. But so far I have not found any Orders enjoining the enforcement of the staffing standards for nurses in Nursing Homes, wherever they are located. And as yet, I have not found stipulations either.

37 *See, e.g.*, Phil Galewitz, Florida Allows Doctors to Perform C-Sections Outside of Hospitals, KFF Health News (online May 28, 2024) (outlining efforts of “a private equity-owned physicians group” to change Florida laws to authorize “advanced birth centers” such as those owned by the private equity firm, to perform Cesarean sections), <https://kffhealthnews.org/news/article/florida-c-sections-outside-hospitals-advanced-birth-centers-obstetrics/>; Dr. Ashish Jha, *Private Equity Firms Gnawing U.S. Health Care*, *supra*.

38 *Estate of Shea v. Meridian Senior Living, LLC*, No. 2023AP1462, 2025 WL 18229 (Wis. Ct. App. Jan. 2, 2025).

39 The essential facts supporting the verdict and judgment are outlined by the Wisconsin Court of Appeals in *Meridian Senior Living*, 2025 WL 18229, at ¶¶ 1-39, at pages *1-*10. For reasons unknown, the appellate panel wrote that “[t]his opinion will not be published,” *Meridian Senior Living*, 2025 WL 18229, ¶ 60, at page *14, although the caption bears a NOTICE that a final publication decision is pending.

40 *Am. Acad. of Emergency Med. Phys. Grp., Inc. v. Envision Healthcare Corp.*, No. 22-cv-00421-CRB, 2022 WL 2037950, at *1 (N.D. Cal. May 27, 2022).

41 *American Academy of Emergency Medicine Physician Group*, 2022 WL 2037950, at *1.

42 *American Academy of Emergency Medicine Physician Group*, 2022 WL 2037950, at *4 (quoting the complaint).

43 *American Academy of Emergency Medicine Physician Group*, 2022 WL 2037950, at *4 (quoting the complaint).

44 *American Academy of Emergency Medicine Physician Group*, 2022 WL 2037950, at *4-*5 (quoting the complaint).

45 *American Academy of Emergency Medicine Physician Group*, 2022 WL 2037950, at *5 (quoting the complaint).

46

American Academy of Emergency Medicine Physician Group, 2022 WL 2037950, at *12.

47

Am. Acad. of Emergency Med. Phys. Grp., Inc. v. Envision Healthcare Corp., Suggestion of Bankruptcy filed by Envision, DE 83, filed May 16, 2023 (N.D. Cal. No. 3:2022cv00421).

48

In re: *Envision Healthcare Corp.*, Order Denying Motion for Relief From Stay, Doc. 1035, filed July 13, 2023 (S.D. Tex. Bankr. No. 23-90342). This Order is not included in the PACER record for the *Emergency Medicine Physician Group's* lawsuit in the Northern District of California, and subsequent reports about the California lawsuit in the media do not mention the outcome. It is safe to say that the outcome is known to the healthcare industry, among others. The Bankruptcy Judge who entered the Order in Texas was appointed by the Fifth Circuit Court of Appeals in 2019.

49

Patterson v. Claiborne Operator Grp., L.L.C., 374 So. 3d 299, 307-09 (La. Ct. App., 2d Cir., 2023). The date of the trial court's order is never stated in the appellate opinion, apparently, although the appellate court did write that a defendant's "exception of prematurity" or defense that the plaintiff's claims would first have to be presented to a medical review panel, was filed on June 8, 2022. *Patterson*, 374 So. 3d at 302.

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Patterson, 374 So. 3d at 306-07.

51

Patterson, 374 So. 3d at 307. The plaintiffs in this case also presented "custodial claims" which would be returned to the trial court to determine whether the plaintiffs could "cure" them from the defendants' objections, while the claims based on allegations of an understaffed and over-subscribed nursing home would require review by a medical review panel. *Patterson*, 374 So. 3d at 310-11.

52

Federal Trade Commission v. U.S. Anesthesia Ptrs., Inc. (S.D. Tex. No. 4:23-cv-03560). Download *Federal Trade Commission v. U.S. Anesthesia Ptrs., Inc.* Complaint DE 1 filed Sept. 21 2023 (S.D. Tex. No. 4:23.cv.03560), a 106-page complaint which the FTC originally filed on September 21, 2023.

As is mentioned in the text, the defendants in this case, U.S. Anesthesia Partners, Inc. (USAP) and Welsh Carson, both subsequently filed motions to dismiss. The District Court denied USAP's motion to dismiss and granted Welsh Carson's motion. USAP appealed the denial of its motion to dismiss to the Fifth Circuit. *Fed. Trade Comm'n v. U.S. Anesthesia Ptrs., Inc.*, No. 4:23-CV-03560, 2024 WL 2137649 (S.D. Tex. May 13, 2024), app. dismissed, No. 24-20270, 2024 WL 5003580 (5th Cir. Aug. 15, 2024).

53

FTC v. Anesthesia Ptrs., Inc., No. 4:23-cv-03560, 2024 WL 2137649, at *6-*9 (S.D. Tex. May 13, 2024), app. dismissed, No. 24-20270, 2024 WL 5003580 (5th Cir. Aug. 15, 2024).

54

FTC v. Anesthesia Partners, 2024 WL 2137649, at *9.

55

FTC v. Anesthesia Partners, 2024 WL 2137649 at *4-*6.

56 A clear and understandable definition of “roll-up schemes” is found, for example, in *FTC v. U.S. Anesthesia Ptrs., Inc.*, “Redacted Public Version” of Complaint, DE 69, ¶ 4, at p. 3, filed Oct. 26, 2023 (S.D. Tex. Case No. 4:23-cv-03560), Download *FTC v. U.S. Anesthesia Ptrs., Inc.* Redacted Public Version (of FTC Complaint) DE 69 filed Oct. 26 2023 (S.D. Tex. No. 4.23-cv-03560).

57 *FTC v. U.S. Anesthesia Ptrs., Inc.*, “Redacted Public Version” of Complaint, DE 69, filed Oct. 26, 2023 (S.D. Tex. Case No. 4:23-cv-03560), Download *FTC v. U.S. Anesthesia Ptrs., Inc.* Redacted Public Version (of FTC Complaint) DE 69 filed Oct. 26 2023 (S.D. Tex. No. 4.23-cv-03560).

58 For example, *see* Paragraph 21, page 11 of Download *FTC v. U.S. Anesthesia Ptrs., Inc.*, Redacted Public Version (of FTC Complaint) DE 69 filed Oct. 26 2023 (S.D. Tex. No. 4.23-cv-03560).

It is worth noting that a group called The American Investment Council was permitted to file an amicus brief. The Federal Rules of course require the issues and Argument on each issue to be stated on the Table of Contents page of briefs. In this case, the AIC’s very first stated Argument is that “private equity greatly benefits the American economy.” *FTC v. U.S. Anesthesia Ptrs., Inc.*, Brief of the American Investment Council as Amicus Curiae, p. iii, DE 117, filed Jan. 3, 2024 (S.D. Tex. No. 4:23-cv-03560), Download *FTC v. U.S. Anesthesia Ptrs., Inc.*, Brief of American Investment Council as Amicus Curiae DE 117 filed Jan. 3, 2024 (S.D. Tex. No. 4.23-cv-03560). Whether private equity benefits the American economy was never at issue in the case.

This case is significant. The author addressed it in articles published on his Claims and Bad Faith Law Blog from the time the lawsuit was first filed, starting on September 29, 2023 and continuing on October 2, 2023 and on October 4, 2023 about the complaint filed in September 2023 by the Federal Trade Commission against U.S. Anesthesia Partners, Inc., et al. As noted in the text, this was the first time that the FTC sued a private equity firm for allegedly increasing the price and thereby restricting the availability of patients’ care.

59 Press Release, Dep’t of Health & Human Serv’s, HHS Proposes Minimum Staffing Standards to Enhance Safety and Quality in Nursing Homes (Sept. 1, 2023), <https://www.hhs.gov/about/news/2023/09/01/hhs-proposes-minimum-staffing-standards-enhance-safety-q-uality-in-nursing-homes.html>.

60 Medicare and Medicaid Programs: Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities; Medicare Providers’ and Suppliers’ Disclosure of Private Equity Companies and Real Estate Investment Trusts, “A Rule by the Centers for Medicare & Medicaid Services [published] on 11/17/2023,” <https://www.federalregister.gov/documents/2023/11/17/2023-25408/medicare-and-medicaid-programs-disclosures-of-ownership-and-additional-disclosable-parties>. This final rule was scheduled to take effect on January 16, 2024, which is the day on which I am writing about it.

61 Guidance, CMS, Guidance for SNF Attachment on Form CMS-855A (Dec. 20, 2024), <https://www.cms.gov/files/document/guidance-snf-attachment-855a.pdf>.

62 *See* Guidance Section I.C, at p. 2, titled “Due Dates for All SNFs[.]” It is unclear at this time whether that date will remain intact.

63

For example, Connecticut and Rhode Island provide for review of proposed conversions of not-for-profit hospitals to for-profit hospitals, by their respective State Attorneys General and Public Health Departments: [Conn. Gen. Stat. §§ 19a-486a to 19a-486i](#), current with all enactments of the 2024 Regular Session and the 2024 June Special Session; Tit. 23, R.I. GEN. LAWS 1956 Ch. 17.14 and in particular § 23- 17.14- 7, current with effective legislation through Chapter 457 of the 2024 Regular Session of the Rhode Island Legislature.

California was considering similar legislation, which would among other things require “private equity groups and hedge funds” to provide advance notice to California officials when purchasing or taking control of healthcare facilities and healthcare providers, and give authority to the California Attorney General “to permit or block such transactions, depending on whether they serve the public interest.” California State Senators Umberg and Wilk asked for input from the Federal Trade Commission, which was favorable. Letter from Lina M. Khan, Chair, Federal Trade Commission, to Senators Thomas Umberg and Scott Wilk (July 2, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-07-02-chair-khan-letter-to-sens-umberg-wilk-re-ab-3129.pdf. The legislation, AB 3129, passed both houses of the California legislature. It was vetoed by Governor Gavin Newsom on September 28, 2024. https://leginfo.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240AB3129.

64

Robert Kuttner, *Dealing With the Bad Stewards*, THE AM. PROSPECT (online Feb. 20, 2024), <https://prospect.org/health/2024-02-20-dealing-with-bad-stewards/>. The subject of this article is the management of several hospitals in Massachusetts by Steward Health Care. In Florida, Steward Health Care announced that it was discontinuing North Shore Medical Center’s behavioral health unit, its NICU or Natal Intensive Care Unit, and maternity services. North Shore has been operating “for seven decades [and] could be on the brink of shutting down.” It is located in unincorporated Miami-Dade County, Florida, serving a population that is “an immigrant, North Miami, Haitian, Black population’[.]” The reporting of these Florida developments has mentioned the events in Massachusetts involving Steward. Layron Livingston, *South Florida Hospital Could be on Brink of Shutdown, Workers Fear*, LOCAL 10.COM (online Feb. 28, 2024, updated March 1, 2024), <https://www.local10.com/news/local/2024/02/28/this-south-florida-hospital-could-be-on-brink-of-shutdown-workers-fear/>.

65

Dr. Ashish Jha, *Private Equity Firms Gnawing U.S. Health Care*, *supra*. Antitrust scrutiny is sometimes provided by the filing of private litigation. On August 1, 2024, many lawsuits against Multiplan, Inc. were consolidated in a Multidistrict Litigation because they “share factual questions arising from an alleged conspiracy to fix, suppress, and stabilize reimbursement rates paid to healthcare providers for out-of-network healthcare services in the U.S. in violation of the Sherman Act.” In re: Multiplan Health Ins. Provider Litig., ___ F. Supp. 3d ___, MDL No. 3121, [2024 WL 3629070](#), at *1 (J.P.M.L. Aug. 1, 2024). A review of the electronic docket of this litigation on PACER on Thursday, January 16, 2025 revealed that this litigation is apparently still in the process of consolidation as no substantive or discovery motions are listed on the docket.

66

See the discussion, *supra*, of the antitrust lawsuit filed by the FTC, *FTC v. U.S. Anesthesia Ptrs., Inc.*, “Redacted Public Version” of Complaint, DE 69, filed Oct. 26, 2023 (S.D. Tex. Case No. 4:23-cv-03560), Download *FTC v. U.S. Anesthesia Ptrs., Inc. Redacted Public Version (of FTC Complaint)* DE 69 filed Oct. 26 2023 (S.D. Tex. No. 4.23-cv-03560).

67

Medicare is not itself a regulator, but Medicare is administered by a regulator, the Centers for Medicare and Medicaid Services or CMS. The intent of the quoted recommendation is, in context, clearly meant as a recommendation for greater CMS regulation. The following quotation in the text also clarifies this

recommendation, if any further clarification should be needed.

68

Dr. Ashish Jha, *Private Equity Firms Gnawing U.S. Health Care*, *supra*. The need for regulatory bodies to be enabled and outfitted for regulation which will protect patients is not limited to the Medicare or Medicaid Programs or to CMS, of course. See Allie Gross, Still Unprotected: Senior Care Homes Skate by With Few Fines, ATLANTA JOURNAL-CONSTITUTION (online Nov. 22, 2024) (newspaper’s investigation of Georgia Department of Community Services regulation of “assisted living and personal care home operators” with augmented powers and disappointing results), <https://www.ajc.com/news/georgia-news/georgia-senior-care-homes-still-skate-by-with-few-fines-despite-reforms-an-ajc-investigation/VGVZIORN4RDEVMVHD5KTKCYJNI/>.

69

Jaime L.M. Jones, Brenna E. Jenny and Lauren McBride, DOJ Ramps Up Scrutiny of Health Care Investors, REUTERS (online June 14, 2024), <https://www.reuters.com/legal/legalindustry/doj-ramps-up-scrutiny-health-care-investors-2024-06-14/>.

70

Dr. Ashish Jha, *Private Equity Firms Gnawing U.S. Health Care*, *supra*. See generally Erin Fuse Brown, Loren Adler, Erin Duffy, Paul B. Ginsburg, Mark Hall and Samuel Valdez, *Report / Private Equity Investment as a Divining Rod for Market Failure: Policy Responses to Harmful Physician Practice Acquisitions* (USC-Brookings Schaeffer Initiative for Health Policy, Oct. 2021), <https://www.brookings.edu/essay/private-equity-investment-as-a-divining-rod-for-market-failure-policy-responses-to-harmful-physician-practice-acquisitions/> (presenting proposed reforms for market failures generally and those resulting from private equity investment in physicians’ practices in particular).

A panel of the Eleventh Circuit Court of Appeals provided what appears to be a comprehensive review of investing and of reasons for a recent increase in predatory lending, in *Sec. & Exch. Comm’n v. Almagarby*, 92 F.4th 1306, 1312-14 (11th Cir. 2024).

71

What has been reported about the acquisition of assisted living facilities by private equity firms, is as true about many other healthcare acquisitions as well: “Investors prefer to buy the buildings that house senior homes – instead of buying equity in the businesses – because they gain rental income and valuable property portfolios without being directly exposed to the legal risks of caring for a fragile population.” *Understaffed and Neglected*, WASHINGTON POST, *supra*.

72

‘*They Were Traumatized*,’ POLITICO, *supra*, quoting Sam Brooks, Director of Public Policy at National Consumer Voice for Quality Long-Term Care. As a first step in this proposed solution, there would be greater transparency “in how nursing homes spend the billions of dollars they get each year from Medicare and Medicaid.” ‘*They Were Traumatized*,’ POLITICO, *supra*.

These and other potentially rewarding solutions are outlined in, for example, Brendan Ballou, *PLUNDERED*, at pp. 98-99.