U.S. PIRG

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Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

June 5, 2024

Re: Request for Information on Consolidation in Health Care Markets, Docket No. ATR 102

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

Thank you for the opportunity to provide information as it relates to health care consolidation, particularly the increasing role of private equity (PE) in health care mergers and acquisitions. U.S. PIRG, with state affiliates in two dozen states, is an advocate for the public interest. We promote policies that protect consumers and support the delivery of the high value healthcare we deserve. We work to prevent fraud and abuse in health care payments and billing and seek policy reform that promotes a competitive market to contain health care costs.

Unfortunately, today's health care delivery and payment system is ripe for abuse due to consolidation and other anti-competitive practices. It is not a surprise that private equity firms and investors have entered the health care market. There is significant profit to be made through consolidated health care markets, fraudulent billing and anti-competitive behaviors. Combine those tactics with a private equity firm's willingness to shutter unprofitables service lines or sell off real estate, and we can see why private equity has increased interest in investing in health care entities.

PE investments in health care signals the root of the problem: the health care system operates with little to no market constraints on pricing and billing. Private equity is pervasive in the health care industry because most health care markets have little competition, and health systems operate with few cost constraints and limited accountability for quality outcomes.

We urge the tri-agencies to identify solutions to the payment incentives and anticompetitive market opportunities that allow health care providers (and in this case private equity firms) to extract maximum profit at the expense of consumers, insurers and our government-supported health programs. Addressing these abuses is the most effective way to deter private equity investment in health care.

Surprise billing by out-of-network providers.
Through the No Surprises Act, we have addressed some of most pervasive surprise billing practices - those in anesthesiology, radiology, emergency medicine and air ambulances. And as a result of the ban on balance billing, there is evidence that private equity is backing out of investments in emergency room staffing companies and air ambulances. We need to be ever-vigilant about other entities not covered by the No Surprises Act, which might be abusing the system by staying out-of-network to bilk as much profit as possible from insurers, employers and patients. First on that list are ground ambulances. We urge you to swiftly close the gap of consumer protections for all ambulances and other sites of service where patients cannot chose their providers.

Unclear and unreliable pricing in health care settings.
When patients have no ability to get reliable pricing before scheduling and receiving treatment, they are left vulnerable for pricing abuse. The No Surprises Act (NSA) created the right for uninsured or self-pay patients to get a reliable "good faith estimate" (GFE). Patients have the ability to challenge any bills more than $400 over their GFE. However, NSA provisions which give insured patients up-front pricing, an Advanced Explanation of Benefits (AEOB), has not been implemented. We urge you to swiftly propose rules to require plans and providers to help patients know their costs up front. The AEOB provision should be amended to also protect insured patients from over-charges, similar to the GFE for self-pay patients. Better enforcement of hospital price transparency law will also go a long way in helping patients find prices for care in their community and seek out lower costs services.

We commend the federal agencies issuance of this RFI but urge you to apply solutions not just to PE-related transactions and businesses but to all health care providers and corporations. Patients, employers and our federal and state health care programs are paying too much, and getting too little in return. Patient-centered care should emphasize prevention and treatment in exchange for a fair payment. Consolidation, fraudulent billing and anti-competitive behaviors drive up prices and diminish quality of care whether the health care company is a non-profit entity, a for-profit one or a PE-backed health care corporation.

Solutions should be aimed at improving competition, eliminating wasteful spending, preventing overtreatment and requiring evidence-based quality outcomes for all patients. We urge you to use this RFI to issue policies that protect patients and families from the effects of consolidation in health care - whether those behaviors are conducted by private equity actors or others.

There are a few immediate actions that federal agencies should take.

1. Promote and preserve competition by enforcing antitrust and other regulations in the health care markets.
2. Protect patients, health care professionals and employees, and health care programs by investigating fraud, wasteful spending, and dishonest billing, including harmful actions/tactics used by PE investors.
3. Increase transparency in health care ownership, with a special emphasis on private equity.

Thank you for your attention. We support your work to address the high cost of health care.

Sincerely,

Patricia Kelmar, JD
Senior Director, Health Care Campaigns