HOUSE COMMITTEE ON WAYS AND MEANS, SUBCOMMITTEE ON OVERSIGHT

# Examining Private Equity's Expanded Role in the U.S. Health Care System

Thursday, March 25, 2021 at 1 p.m. via Cisco WebEx

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## PURPOSE

The purpose of this hearing is to discuss the growing impact of privately held for-profit companies in U.S. Health Care and how it affects patient safety, costs, and jobs. This hearing specifically focused on private equity (PE) ownership of nursing homes and outcomes during the COVID-19 pandemic.

## KEY TAKEAWAYS

- A perceived lack of transparency and inadequate data collection by CMS hinders reform.
- Some Members believe that private equity owned nursing homes and long-term care facilities inadequately staff facilities, which compromises care to patients.
- Transparency measures, such as comprehensive and consolidated financial reporting that includes ownership, actual expenses, staffing practices and cash flow of nursing homes and all private equity-related entities could help increase accountability from taxpayers and the media.

***Sections relevant to key themes of interest are linked below:***


- **Private equity transparency** (pages 2, 3, 4, 5, 6)
- **Quality data** (pages 3, 4, 6)
- **Impact on health equity** (pages 2, 4, 5, 6)
- **COVID-19** (pages 2, 4, 5, 6)
- **Investigations** (pages 2, 3, 5, 6)
- **Workforce** (pages 3, 4, 6)
- **Non-nursing home entities** (page 6)


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## MEMBERS PRESENT

Subcommittee Chairman Bill Pascrell, Ranking Member Mike Kelly, Representatives Suozzi, Walorski, Chu, Wenstrup, Plaskett, Doggett, Evans

## WITNESSES

**Sabrina Howell, Ph.D.**
Assistant Professor of Finance
NYU Stern School of Business

**Terris King, Sc.D.**
Founder and CEO
King Enterprise Group, LLC

**Ernest Tosh, JD**
Trial Attorney
Tosh Law Firm, PLLC

**Milly Silva**
Executive Vice President
1199 SEIU United Healthcare Workers East

**Grace Colucci**
Co-founder
Voices for Seniors

## OPENING STATEMENTS

**Chairman Pascrell (D-NJ)** stated that there was a 21% increase in investment by private equity (PE) in the healthcare system. This is troubling because they are focused on profit, not quality. They saddle companies with debt, which leads to job loss. There is a lack of transparency in ownership that makes oversight by regulators impossible. COVID-19 exposed the inner sanctum of health care in the U.S. The impact of PE in health care is felt most by vulnerable communities, including people of color, seniors and the disabled. Recent studies on nursing homes have shown that PE owned facilities tend to deliver lower quality care, resulting in higher billing to Medicare and higher mortality rates. This was exacerbated during COVID-19. H.R. 5825 (Transparency in Health Care Investments Act), introduced last Congress by House Ways and Means Chairman Richie Neal (D-CA), and the recently introduced H.R. 1958 from Chairman Pascrell both seek to increase transparency in private-equity-backed health care.

**Ranking Member Kelly (R-PA)** said that we are all focused on nursing homes right now because of COVID-19. But many of the issues we've seen this year have nothing to do with the role of PE. All of us are willing to work more about the effects of ownership and consolidation on the cost and quality of healthcare. Republicans want a bipartisan investigation into COVID-19 in nursing home and data, but those requests have gone unheeded. We need to understand why states felt it was necessary to send these patients to nursing homes. Many states, including Pennsylvania and New York, seem to have unreported or underreported data. This is an American problem. We can solve some of these problems, but today is not the day to address issues related with PE ownership. We need to first address the missing data issues from nursing homes during the pandemic.

## TESTIMONY

**Dr. Sabrina Howell** said that PE in US health care has grown dramatically in the last decade. PE managers only want to own the target for three to six years. They have big upsides and low downsides. The PE firm does not borrow; rather the purchased company owns 80% of the debt. The PE firm does not owe lenders, but the company's other stakeholders bear the burden. Investors generate large, early cash flows by selling assets like real estate, which destabilizes the company. The company takes on more debt to pay investors strong returns, even if the company goes bankrupt. Data shows that some of the incentives of PE are good for consumers when there is quality transparency, when there are not government subsidies, and markets are competitive. The information asymmetry between provider and patient; separation of revenue from the consumer; and government subsidies not tied to quality mean that these incentives can harm patients. Provider can generate higher profits by cutting patient care costs. Going to a PE owned nursing home increases probability of death by 10%. The shift in costs away from patient-care-focused expenses shows that there is a systemic change—indicated by lower staff and higher use of pain medication and antipsychotics—that can cause these bad outcomes. There are probably areas in health care where PE is not as harmful, but in the aggregate, PE buyouts are detrimental to patients and taxpayers.

**Milly Silva** stated that someone in most people's lives is supported by a nursing home. PE ownership has focused on maximizing profit. Workers on the frontline have experienced these effects. Staffing shortages that result from PE ownership harms patients, who suffer from lack of quality care. These workers have some of the most dangerous jobs in America and also some of the lowest wages. Most of them are women, and most of them people of color. The tragedy we have seen over the last year is the result of systemic failures that existed before COVID-19. These failures were driven in large part by PE ownership. The presence of unions is one check on poor outcomes in care, but legislative oversight is essential. Nursing home workers often cite low staffing levels as a key issue, which leads to poor outcomes for patients. In NJ, a law requiring CNA-to-nursing ratios should be a model law in the country.

**Dr. Terris King** said that he has committed his life to alleviating inequities. A number of questions arise. We must determine whether there is a way to balance patient care and PE investors and consider whether investors can actually impact patient quality. An inter-agency investigation must be conducted to address these issues. We need to ensure we are consistently collecting the right information in Provider Enrollment, Chain, and Ownership System (PECOS). CMS should establish a prior authorization process for changing ownership for nursing homes and require financial reporting and oversight.

**Ernest Tosh** stated that his primary interest is data regarding nursing homes. They have a massive problem with understaffing, which leads to preventable deaths and injuries. PE has made understaffing worse. The easiest solution appears to be an increase in staffing,

which has been shown to reduce negative outcomes. The hard part is figuring out whether current reimbursement rates support more staffing. Taxpayers can't figure that out because of a lack of transparency in the nursing home industry. We don't know how profitable any given nursing home is due to financial filings that are highly manipulated and do not provide an accurate financial picture. The annual cost report with CMS that nursing homes file are in theory great—but the manipulation by for-profit chains launder profits from nursing homes by overpaying related parties. Nursing homes are willingly overpaying rent to the PE holding company, and it looks like the nursing homes are not making as much money. There is no required reporting for the related parties, like the PE holding company. It makes it impossible to determine whether they could actually be employing more staff if they were paying fair market value. All chains should file audited, consolidated financial reports, including for related parties to offer.

**Grace Colucci** stated that her father was a devoted family man. He was in a facility during the COVID-19 outbreak in New York. He ended up in the hospital for a month and ultimately passed away. He contracted COVID-19 in the nursing home, but died at home, becoming one of the uncounted. Governor Cuomo's rule on nursing home admissions did not separate the vulnerable to protect them. We need accountability to understand what happened with nursing homes during COVID-19. An investigation seeking the truth, regardless of office, is called for.

## QUESTIONS AND ANSWERS

**Chairman Pascrell** asked how the burden on the workforce plays out day to day in the nursing home. **Ms. Silva** said that the way PE owners are driving the facilities, patient care cedes to profit. This results in lower staffing, particularly direct care staff. There is a decrease in quality of meals to residence. You also see that related parties of the PE entity are used to provide services and temporary staff. It is impacting workers and residents. **Chairman Pascrell** said that since 2013, 25 companies have paid settlements for allegedly violating False Claims Act while under PE ownership. He asked for more detail about the need for rooting out fraud. **Mr. Tosh** said CMS data, such as upcoding, is essential to uncovering fraud. We also look for length-of-stay fraud to milk Medicare system for more money. Finally, we look for "Five Star" fraud, which is manipulating staffing and quality data to get more patients. **Chairman Pascrell** asked if the Five Star System is a fraud. **Mr. Tosh** said he agreed. **Chairman Pascrell** asked how PE's grip is an issue of health equity. **Dr. King** said that we need to see how CMS has fallen behind with data collection. PE can look at market data and understand which populations and communities they target based on vulnerability of those communities and ability to make their voices heard. PE will then shut down hospitals in those communities, creating access issues. This increases existing disparities in minority communities.

**Ranking Member Kelly** said that a lot of people are looking for answers they cannot get because of missing data. He also noted that entities typically have to have certain capital requirements, but it sounds like the PE and public entities don't have those requirements.

**Dr. Howell** said there are not limits on ratio of debt-to-equity in a PE transaction. Shadow banks have entered during periods where there have been some regulation, but today it is very common for debt-to-equity ratio to be 7-to-1, which is extremely high.

**Rep. Thomas Suozzi (D-NY)** said that he understands that 70 percent of the 15,000 nursing homes in the country are for-profit. He asked what percentage of that was PE-owned. **Dr. Howell** said they have been able to link at least 9 percent of them, but that data ended in 2015. Since then, deals in the senior care space have only increased. It is difficult to affirmatively determine because of lack of transparency in ownership. **Rep. Suozzi** said he does not have a PE bias and that Dr. Howell made a persuasive case about the way PE investors were manipulating cash flow. He noted that unionized nursing homes had better COVID outcomes.

**Rep. Jackie Walorski (R-IN)** said that COVID-19's impact has been disproportionately felt by seniors in nursing homes and long-term care. NY, NJ, MI and PA had to admit patients into nursing homes when they came from hospitals with confirmed cases of COVID-19 or a positive test themselves. Each of these cases were not equitably covered in the media and were politicized. **Rep. Walorski** called for bipartisan accountability and investigation.

**Rep. Judy Chu (D-CA)** stated she is concerned about the impact of PE on the health care system, including the practice of surprise medical billing. She was said she was proud to support Chairman Richie Neal's bill on transparency in healthcare investment. She asked how transparency can help at PE-owned facilities and what kinds of measures are needed. **Dr. Howell** said there is no good information on ownership of CMS-paid nursing homes. Ownership files should be publicly available for any health care provider regardless of ownership type if they take CMS payments. Debt, real estate sales, and other related party charges are in the Neal bill. **Rep. Chu** asked about the concerns of PE's impact on health outcomes on racial and ethnic minorities. **Dr. King** said we have to acknowledge the inequities that existed before PE's outpaced CMS's data collection. We also need to understand how PE exacerbated these. We need to know what is being done, where it is being done and how the profit motivations are impacting health care. We also need to understand whether minority communities are being targeted and if PE is creating an access issue.

**Rep. Stacey Plaskett (D-VI)** asked how we get all participants to fill gaps and find solutions, such as telehealth, and programs that expand access to care in underserved areas. **Dr. King** said that partnerships with community-based organizations, such as partnerships with hospitals and churches, could expand things a great deal in terms of quality. We could expand the role of Federally Qualified Health Centers so that places like churches could share in those services. We do not have to wait until a person is severely ill until we start caring for them in the community. **Rep. Plaskett** asked why it might be concerning that the Trump Administration made it more difficult to obtain facility financial data on nursing homes. **Mr. Tosh** said that the administration cut off all information about nursing homes, which we need to understand whether they could

actually afford more staffing. We cannot even make a Freedom of Information Act request for the cost reports, as they are considered trade secret now. **Rep. Plaskett** asked if there are any holistic policies that we can use to improve senior care in the for-profit sector. **Dr. King** said that we can use major CMS levers of incentives and penalties. We can postpone purchase, do a broad review, and then make corrections to the system.

**Rep. Brad Wenstrup (R-OH)** said he is always concerned with the impact of different ownership structures and consolidation. The main concern here is COVID-19, and he believes that a lot of leadership was not following medical recommendations and covered-up data. **Ms. Colucci** said COVID-19 has affected all Americans and we need to find out why cover-ups happened so we can prevent it from happening again.

**Rep. Lloyd Doggett (D-TX)** stated that this issue of PE in health care has not been looked at enough and extends beyond nursing homes. Air ambulance Medicare markets, hospital emergency departments and other practices have been similarly manipulative. He praised Chairman Neal's bill and hopes he will continue to lead on this. He asked whether the Transparency in health Care investments act would help this. **Dr. Howell** said that transparency on ownership, expenses and staffing would be helpful. It would also be helpful to include evidence of employment contracts to assess workforce impact. **Rep. Doggett** noted he would be introducing a nursing home oversight bill soon, and asked how a task force could best use appropriated funds. **Dr. King** said they could first assess safety and review clinical quality measures that already exist. Two critical pieces that need to be looked at is the leadership in clinical quality and health of the employees. Find out where the data is deficient that comes to CMS.

**Rep. Dwight Evans (D-PA)** asked how concerned we should be when safety net hospitals are bought and then closed by a PE firm. **Dr. King** said that we should be concerned, because the heart of the safety net hospital is there to look after vulnerable people who almost certainly cannot pay for care. **Rep. Evans** asked how concerned we should be about growth of PE in health care. **Dr. Howell** said the data indicates we should be worried, because data shows more spending at nursing homes and worse outcomes.