COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

November 12, 2021

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan,

I write concerning the troubling exponential growth of private equity (PE) ownership across the health care sector and the adverse impact on patient care and cost. Evidence suggests that the increased role of PE in health care jeopardizes patient safety and weakens competition.[1] I was encouraged by your recent memorandum highlighting, among other things, the need for greater examination of the PE business model and associated practices.[2] Accordingly, I urge the Federal Trade Commission (FTC) to exercise its full range of oversight and enforcement tools to track and curtail anticompetitive PE business practices, particularly in the health care sector.

PE health care investments have rapidly expanded over the last decade, now totaling hundreds of billions of dollars. According to publicly available financial data, in 2019 alone, PE firms invested more than $190 billion across more than 1,200 health care deals, representing 14 percent of all PE deals – a nearly nine percent increase since 2009.[3] The COVID-19 pandemic has placed additional financial stresses on our health care system, which experts believe could result in more PE firm investments.[4] The dire consequences for patients of increased PE investment cannot be overstated. For example, a National Bureau of Economic Research study

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[1] Richard M. Scheffler et al., *Soaring Private Equity Investment In The Healthcare Sector: Consolidation Accelerated, Competition Undermined, And Patients At Risk*, AMERICAN ANTIRUST INSTITUTE AND THE NICHOLAS C. PETRIS CENTER ON HEALTH CARE MARKETS AND CONSUMER WELFARE IN THE SCHOOL OF PUBLIC HEALTH AT UC BERKELEY (May 18, 2021).

[2] Memorandum from FTC Chair Lina M. Khan to Commission Staff and Commissioners, "Vision and Priorities for the FTC" (Sept. 22, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf.

[3] *Analyst Note: The Healthcare PE Investment Landscape*, PITCHBOOK (Sept. 24, 2020), https://pitchbook.com/news/reports/q3-2020-pitchbook-analyst-note-the-healthcare-pe-investment-landscape.

[4] Joseph Bruch et al., *COVID-19 and Private Equity Investment in Health Care Delivery*, JAMA HEALTH FORUM (Mar. 1, 2021), https://jamanetwork.com/journals/jama-health-forum/fullarticle/2777170.

published earlier this year found that PE nursing home ownership resulted in the premature deaths of 20,150 residents over a 12-year period, equaling 160,000 life-years lost.[5]

As a result of increasing market distortion and patient safety concerns, experts have urged regulators, including the FTC, to place a greater focus on PE transactions in health care markets. Specifically, the UC Berkeley School of Public Health and the American Antitrust Institute produced a detailed white paper earlier this year highlighting significant implications of PE investments on competition across virtually the entire health care industry.[6] And, an October 2021 white paper from the USC Brookings Schaeffer Initiative for Health Policy suggested the surge in PE acquisitions of physician practices may be accelerating horizontal consolidation in certain office-based specialties, which can lead to higher prices and worse outcomes for patients, particularly those who have been historically marginalized.[7]

I was pleased to see you acknowledge these worrying trends in your September 22, 2021, memorandum to FTC staff and Commissioners. As you explained:

> [T]he growing role of private equity and other investment vehicles invites us to examine how these business models may distort ordinary incentives in ways that strip productive capacity and may facilitate unfair methods of competition and consumer protection violations. Evidence suggests that many of these abuses target marginalized communities, and combatting practices that prey on these communities will be a key priority.[8]

The Committee on Ways and Means, Subcommittee on Oversight (Subcommittee) has already been examining various issues associated with PE's expanded role in our health care system. The incentives driving the PE industry's business operations pose unique concerns with respect to taxpayer-funded health care programs and the patients they support. At a Subcommittee hearing on March 25, 2021, one witness warned that the lack of oversight regarding PE's actions across the nursing home sector stands in tension with "a system that fosters competition among providers to provide the best care."[9]

As you know, certain forms of FTC oversight related to PE firm conduct can be challenging due to transaction size. In its recent discussion of PE and the Medicare program, the Medicare Payment Advisory Commission stated: "Many acquisitions in health care are relatively small and fall below the threshold where parties to a merger or acquisition must report their plans

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[5] Atul Gupta et al., *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes*, NATIONAL BUREAU OF ECONOMIC RESEARCH (2021 working paper 28474), https://www.nber.org/papers/w28474.
[6] Richard M. Scheffler et al., *supra* note 1.
[7] Erin Fuse Brown et al., *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).
[8] Memorandum from FTC Chair Lina M. Khan, *supra* note 2.
[9] *Examining Private Equity's Expanded Role in the U.S. Health Care System, Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 117th Cong. (2021) (written testimony of Milly Silva, Executive Vice President 1199SEIU United Healthcare Workers East), M. Silva Testimony.pdf (house.gov).

to federal antitrust authorities before completing the transaction."[10] Nevertheless, while the individual transactions themselves may be small, the impact on health care market competition as a whole – and, ultimately, patient health outcomes – should not be underestimated. In light of this, I believe appropriate and rigorous oversight is critical.

Therefore, I request an update regarding how the FTC plans to exercise its existing authority to respond to the exponential growth of PE firm activity across the health care system. I also welcome any legislative recommendations that either would assist the FTC in better oversight and enforcement with respect to such activity or would better protect patients from increased costs and decreased quality as a result of such transactions. Finally, I would like to receive a briefing for my staff within two weeks on what the FTC can do in response to this growing problem.

I look forward to working with the FTC as you continue advancing an ambitious agenda to vigorously promote competition and protect consumers. Thank you for your prompt attention to and consideration of this urgent matter. If you have any questions about this request, please contact Zachary Baron at Zach.Baron@mail.house.gov of the Committee on Ways and Means Majority staff.

Sincerely,

Bill Pascrell Jr

Bill Pascrell, Jr., *Chair*
Subcommittee on Oversight

[10] *Report to Congress: Medicare and the Health Care Delivery System*, THE MEDICARE PAYMENT ADVISORY COMMISSION (June 2021).