

COALITION AGAINST
SURPRISE MEDICAL BILLING

June 5, 2024

Antitrust Division
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

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

We appreciate the opportunity to comment on the Department of Justice (DOJ), the Federal Trade Commission (FTC), and the Department of Health and Human Services' (HHS) request for information (RFI) on consolidation in health care markets, including the impact of private equity (PE) on the U.S. health care system. The Coalition Against Surprise Medical Billing (CASMB) and its members appreciate the agencies' efforts to help ensure competition, innovation, and fair dealing in the health care marketplace.

CASMB represents leading employer groups, unions, health plans, and the tens of millions of people they employ and serve each day. Formed prior to the passage of the *No Surprises Act*, our members championed reforms that would ban surprise medical bills when a patient was taken to an out-of-network emergency room or seen by certain out-of-network providers at in-network hospitals. Research showed many of the surprise bills plaguing patients were from PE-backed providers who were using a highly profitable business tactic designed to maximize reimbursement at the expense of American patients, employers, and the broader health system.¹ For example, HHS found third party staffing at hospitals contributed to surprise billing and that “[p]rivate equity plays a large role in third party staffing...Research shows that when private equity firms enter a market the rate of out-of-network billing increases by large percentages...”²

¹ <https://www.arnoldventures.org/stories/part-3-as-purveyors-of-surprise-medical-billing-private-equity-has-fought-lawmakers-attempts-to-protect-patients>

² <https://aspe.hhs.gov/reports/hhs-secretarys-report-addressing-surprise-medical-billing>

Private Equity’s Business Model Within Fee-for-Service Health Care

In some cases, PE firms have strategically targeted certain highly profitable medical specialties, such as anesthesiology, radiology, pathology, and emergency medicine, with the intention of acquiring and then taking these practices out of network. By moving these practices out of insurance networks, PE-backed providers can circumvent lower, negotiated in-network rates and charge significantly higher prices for their services.³ This is an intentional strategy to take advantage of the fact that patients, especially in emergencies, have little control over the choice of their provider. By increasing out-of-network charges, PE-owned practices drive up overall health care costs and insurance premiums.

In contrast with long-term strategic investments designed to create value in the private market for consumers, employers, and other stakeholders, the short-term profit-driven business model used by a prominent cohort of PE firms can have dire consequences for patients, consumers, and the availability of quality care.

A growing body of research has underscored certain cases where PE’s expansion into hospitals and other specialty care services – such as emergency care, anesthesiology, radiology, pathology, and air ambulances – has led to significant cost increases and quality concerns for consumers.^{4,5,6} Experts note in a recent *Health Affairs* article that “PE investments are associated with increased spending in acquired hospitals and physician practices in a number of ways, including higher prices, greater volume of profitable services without commensurate benefits nor quality, changes in billing to increase frequency of more expensive visits, and network exits that lead to high surprise bills.”⁷

Further, rather than incentivizing the most efficient and effective patient care, PE’s focus on maximizing returns can incentivize providers to prioritize often unnecessary, high-margin services and procedures, potentially at the expense of more affordable preventive and primary care services. This problem is most acute in certain specialties, and a review of average cost increases following PE acquisition found increases of 3 to 5 percent in dermatology, 13 to 26 percent in anesthesiology, and 11 percent across dermatology, gastroenterology, and ophthalmology.⁸

³ https://isps.yale.edu/sites/default/files/publication/2019/09/oon_doctors_sept2019.pdf

⁴ <https://aspe.hhs.gov/reports/hhs-secretarys-report-addressing-surprise-medical-billing>

⁵ <https://www.brookings.edu/articles/private-equity-investment-as-a-divining-rod-for-market-failure-policy-responses-to-harmful-physician-practice-acquisitions/>

⁶ <https://www.brookings.edu/articles/high-air-ambulance-charges-concentrated-in-private-equity-owned-carriers/>

⁷ <https://www.healthaffairs.org/content/forefront/evidence-private-equity-suggests-containing-costs-and-improving-outcomes-may-go-hand>

⁸ https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf

How Some Private Equity-Backed Providers Exploit the Independent Dispute Resolution (IDR) Process

These cost and quality concerns remain even following the passage of the landmark *No Surprises Act*, which established a ban on surprise medical bills in certain settings and circumstances and extended critical consumer protections to millions of patients. Early evidence from the implementation of the *No Surprises Act* has shown that some PE-backed providers who were previously able to balance bill patients may now be overutilizing the IDR process, leading to unintended cost increases.

To date, the number of disputes initiated through the federal IDR process is nearly 14 times greater than the initial federal estimate.⁹ According to recent data from the Centers for Medicare & Medicaid Services (CMS) and analyzed by researchers at the Brookings Institution, “investor-backed provider groups have accounted for a large and disproportionate share of IDR cases; practices affiliated with just four such companies...generated 74% of line items.”¹⁰ Researchers have also found that IDR overwhelmingly favors providers, with out-of-network providers, facilities, and air ambulance providers winning approximately 77 percent of resolved cases.¹¹ In instances where providers won, they received triple the typical in-network rate.¹²

As a recent *Health Affairs* article notes, “... PE has aggressively pursued strategies to increase payments for hospital-based out-of-network physician practices despite [*No Surprises Act*] curbs. In the second quarter of 2023, four PE-backed organizations accounted for two-thirds of independent dispute resolution cases lodged under the [*No Surprises Act*]. This evidence suggests that PE-practice owners may be using the independent dispute resolution process to skirt Congress’ intent for the [*No Surprises Act*], leading to higher overall commercial market spending.”¹³

The Coalition Against Surprise Medical Billing recommends the FTC examine practices that potentially undermine and impede the IDR process, such as an unwarranted volume of cases submitted, and how heavily these behaviors are being driven by PE. As part of this research, we urge the FTC to consider the long-term impacts to the cost of services for consumers if these practices are not addressed.

Looking Ahead

⁹ https://ahiporg-production.s3.amazonaws.com/documents/202401-AHIP_SurpriseBilling-v02.pdf

¹⁰ <https://www.brookings.edu/articles/a-first-look-at-outcomes-under-the-no-surprises-act-arbitration-process/>

¹¹ <https://www.commonwealthfund.org/blog/2024/report-shows-dispute-resolution-process-no-surprises-act-favors-providers>

¹² Ibid.

¹³ <https://www.healthaffairs.org/content/forefront/evidence-private-equity-suggests-containing-costs-and-improving-outcomes-may-go-hand>

PE's influence in advancing business models that are at odds with the goals of the *No Surprises Act* presents ongoing challenges to high-quality, accessible health care in the U.S. The Coalition Against Surprise Medical Billing recognizes the challenges some PE practices pose to successful implementation of the law and its consumer protections, and we stand ready to provide our support in protecting American patients from these misaligned incentives.

Sincerely,

The Coalition Against Surprise Medical Billing