The American Consumer Institute
Center for Citizen Research

Before Senator Edward Markey, Chairman of the Senate Committee on Health, Education, Labor, and Pensions.

In the Matter of "The Health Over Wealth Act"

Comments of the American Consumer Institute

The American Consumer Institute is an independent 501(c)(3) education and research organization. Its mission is to identify, analyze, and protect the interests of consumers in selected legislative and rulemaking proceedings in information technology, health care, insurance, and other matters.

While well intentioned, the recent bill proposed by Senator Ed Markey titled the "Health over Wealth Act" fails to address pertinent issues in the U.S. healthcare system.[1] It would establish a more onerous and costly reporting system for privately-owned hospitals than for other healthcare providers and empower federal micromanagement of ownership of healthcare facilities. The bill is not shy about hiding its antimarket stance since Section 3406 (1) requires research into "the impact of transitioning to a ban on for-profit corporate" involvement in healthcare.

Private equity ownership of healthcare providers offers improvements in the form of new services, technological upgrades, and expanded freestanding healthcare facilities and emergency satellite locations.[2] For-profit hospitals are also more likely to serve low-income communities and those experiencing high unemployment than nonprofit hospitals and are

[1] "The Health Over Wealth Act," United States Senate Office of Senator Edward Markey, accessed April 10, 2024, https://www.markey.senate.gov/healthoverwealth.
[2] Marcelo Cerullo, et. al., "Private Equity Acquisition And Responsiveness To Service-Line Profitability At Short-Term Acute Care Hospitals," *Health Affairs*, vol. 40, no. 11, November 2021, https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2021.00541.

frequently smaller and more rural.[3] Despite these improvements, there is no difference in how much for-profit hospitals make per discharged patient, charges per inpatient day, charge-to-cost ratio, or share of discharged patients that are using Medicare or Medicaid.[4] Such similarities in revenue rates would not be present in a system ripe with abuse.

While there are limited examples of private ownership increasing costs, it comes with improvements in the quality of care.[5] One study found that for heart attack victims, private equity hospitals had a lower mortality rate.[6] During COVID-19, nonprofit and government nursing homes had more total deaths per hundred residents than private care facilities.[7] Overall, private equity ownership improves hospital efficiency without lowering the quality of care.[8]

Additionally, the power this bill would grant the Department of Health and Human Services (HHS) to limit private ownership would lead to a revolving between the healthcare industry and the department regulating them. This would parallel the regulatory capture seen in other parts of the healthcare bureaucracy,[9] such as between the Food and Drug Administration (FDA) and the pharmaceutical industry.[10] Many HHS employees already have ties to the

[3] Cory Cronin, et. al., "For-profit hospitals have a unique opportunity to serve as anchor institutions in the U.S.," *Preventative Medicine Reports*, vol. 22, June 2021, https://www.sciencedirect.com/science/article/pii/S2211335521000620.
[4] Joseph Bruch, Dan Zeltzer, & Zirui Song, "Characteristics of Private Equity–Owned Hospitals in 2018," *Annals of Internal Medicine*, vol. 174, no. 2, September 29, 2020, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8299539/.
[5] Joseph Bruch, Suhas Gondi, & Zirui Song, "Changes in Hospital Income, Use, and Quality Associated With Private Equity Acquisition," *JAMA Internal Medicine*, vol. 180, no. 11, August 24, 2020, https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2769549.
[6] Marcelo Cerullo, et. al., "Association Between Hospital Private Equity Acquisition and Outcomes of Acute Medical Conditions Among Medicare Beneficiaries," *JAMA Network Open*, vol. 5, no. 4, April 29, 2022, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2791727.
[7] Vitor Melo, "Understanding Nonprofit and Government Ownership: Evidence from Nursing Homes in the COVID-19 Pandemic," The Mercatus Center at George Mason University, January 25, 2023, https://www.mercatus.org/research/working-papers/understanding-nonprofit-and-government-ownership-evidence-nursing-homes.
[8] Janet Gao, Merih Sevilir, & Yongseok Kim, "Private Equity in the Hospital Industry," European Corporate Governance Institute, working paper no. 787/2021, last revised April 12, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3924517.
[9] Laura Karas, "FDA's Revolving Door: Reckoning and Reform," *Stanford Law & Policy Review*, vol. 34, no. 1, February 28, 2023, https://law.stanford.edu/wp-content/uploads/2023/03/SLPR_Karas.pdf.
[10] Sydney Lupkin, "A Look At How The Revolving Door Spins From FDA To Industry," NPR WAMU, September 28, 2016, https://www.npr.org/sections/health-shots/2016/09/28/495694559/a-look-at-how-the-revolving-door-spins-from-fda-to-industry.

healthcare industry and often leave the HHS to work for it.[11] Over 10-years, from 2001 to 2010, 27 percent of FDA hematology-oncology reviewers left the FDA to work for, or consult with, industry firms. While the HHS, instead of the FDA, would be tasked with enforcement in this case, the same pattern would emerge given similar incentives.

Giving regulators the power to determine who is or is not allowed to invest in healthcare providers, instead of setting generally applicable rules, encourages lobbying by special interests for favorable rulings or special treatment.

Regulations tend to favor large industry players and increase burdens for small firms.[12] This is because only the largest firms have the resources necessary to afford the cost of compliance. Small providers with little influence must either consolidate or agree to be acquired by another company to afford the cost of new regulations by taking advantage of economies of scale and scope.

Instead of eliminating forms of competition, legislators would better serve the public by focusing on existing legislation and regulations that increase costs and are detrimental to patient outcomes, such as certain provisions of the Inflation Reduction Act (IRA).[13]

The IRA is currently driving investment away from less expensive medicines and towards more expensive pharmaceuticals by preferencing biologics over small molecule drugs.[14] By providing biologics technology with a regulatory advantage, investment in pharmaceutical research is distorted. Not only are biologics more expensive to develop and manufacture, but they are more difficult to develop biosimilar versions of and more expensive for patients than generic small-molecule drugs. This has a direct negative effect on the cost of medicine.

---

[11] Genevieve P. Kanter & Daniel Carpenter, "The Revolving Door In Health Care Regulation," Health Affairs, vol. 42, no. 9, September 2023, https://www.healthaffairs.org/doi/10.1377/hlthaff.2023.00418.
[12] Geoffrey James, "Government Regulation is Good for Business," CBS News, October 10, 2010, https://www.cbsnews.com/news/government-regulation-is-good-for-business/.
[13] Inflation Reduction Act of 2022, Public Law No: 117-169, August 16, 2022, https://www.congress.gov/bill/117th-congress/house-bill/5376/text.
[14] Greg Slabodkin, "IRA Drives Pfizer's Decision to Focus on Biologics, Not Small Molecules," *BioSpace*, March 4, 2024, https://www.biospace.com/article/ira-drives-pfizer-s-decision-to-focus-on-biologics-not-small-molecules/.

Drug manufacturers are already responding by shifting research investment.[15] A majority of companies expect to change research plans with 78 percent planning to cancel early-stage projects, 63 percent planning to shift away from small molecule drugs, and 95 percent planning to limit research on new uses for existing drugs.[16] Novartis, for example, intends to redirect research away from simpler small-molecule drugs to biologics.[17] Incentivizing companies to switch away from less expensive medicines will have a negative impact on the price of healthcare for years to come.

Other policies instituted by the IRA are worth Congress' time to investigate as well, such as the ability of Medicare to institute price controls on some medicines. These controls will only continue to climb.[18] This will likely result in consumers outside Medicare paying higher insurance premiums and higher prices for new medicines due to their limited availability.[19]

Congress could also help shed light on Pharmacy Benefit Managers (PBMs), industry middlemen who use their unique access to information to profit by increasing patient and insurer prices.[20] Currently, three PBMs make up 80 percent of the market.[21] They stand accused of restricting access to over a thousand generic or biosimilar medicines that would be less expensive than name brand equivalents,[22] profiting from savings intended for safety net

---

[15] Deena Beasley, "Focus: Drug companies favor biotech meds over pills, citing new U.S. law," *Reuters*, January 13, 2023, https://www.reuters.com/business/healthcare-pharmaceuticals/drug-companies-favor-biotech-meds-over-pills-citing-new-us-law-2023-01-13/.

[16] Nicole Longo, "WTAS: Inflation Reduction Act already impacting R&D decisions," PhRMA, January 17, 2023, https://phrma.org/blog/wtas-inflation-reduction-act-already-impacting-rd-decisions.

[17] Ludwig Burger, "Novartis warns U.S. plan to curb drug prices could hit key research," *Reuters*, January 20, 2023, https://www.reuters.com/business/healthcare-pharmaceuticals/novartis-warns-us-plan-curb-drug-prices-could-hit-key-research-2023-01-20/.

[18] Justin Leventhal, "Price Controls Aren't the Cure for High Medicare Drug Prices," The American Consumer Institute, September 11, 2023, https://www.theamericanconsumer.org/2023/09/price-controls-arent-the-cure-for-high-medicare-drug-prices/.

[19] Justin Leventhal, "The Limitations of the Inflation Reduction Act's Healthcare Provisions," *Open Health Policy*, October 7, 2022, https://www.openhealthpolicy.com/p/inflation-reduction-act-healthcare-negotiation.

[20] Steve Pociask, "Pharmacy Benefit Managers: Market Power and Lack of Transparency," The American Consumer institute, 2017, https://www.theamericanconsumer.org/wp-content/uploads/2017/03/ACI-PBM-CG-Final.pdf.

[21] Adam J. Fein, "The Top Pharmacy Benefit Managers of 2022: Market Share and Trends for the Biggest Companies," *Drug Channels*, May 23, 2023, https://www.drugchannels.net/2023/05/the-top-pharmacy-benefit-managers-of.html.

[22] "New Report Finds Largest PBMs Restrict Access to More Than 1,150 Medicines," PhRMA, May 25, 2022, https://phrma.org/en/resource-center/Topics/Access-to-Medicines/New-Report-Finds-Largest-PBMs-Restrict-Access-to-More-Than-1150-Medicines.

hospitals in the 340B program,[23] adding or increasing fees on other parts of the healthcare system,[24] and engaging in spread pricing -- siphoning rebates and discounts on medicines by paying the discounted rate but charging the insurer, often Medicare, the full cost.[25]

It is difficult to know the extent to which this is taking place, as there is little transparency. If Congress wants to lower healthcare costs for patients, implementing transparency requirements for PBMs regarding fees and rebates would be a good first step.

While many steps can help bring down costs and improve patient outcomes in the U.S. healthcare system, vilifying private investment and increasing the costs of healthcare with onerous reporting requirements are not among them. Focusing on existing the results of legislation and shedding light on the PBM market are two more effective ways of lowering healthcare costs while increasing access.

Respectfully,

Justin Leventhal
Senior Policy Analyst
The American Consumer Institute
4350 N. Fairfax Drive
Suite 725
Arlington, VA 222
www.TheAmericanConsumer.org

[23] Justin Leventhal, "Corporate Welfare and the 340B Drug Program," *RealClear Policy*, September 19, 2023, https://www.realclearpolicy.com/articles/2023/09/19/corporate_welfare_and_the_340b_drug_program_980561.html.
[24] Eric Percher, "Trends in Profitability and Compensation of PBMs and PBM Contracting Entities," Nephron Research, September 18, 2023, https://nephronresearch.com/trends-in-profitability-and-compensation-of-pbms-and-pbm-contracting-entities/.
[25] "Spread Pricing 101," National Community Pharmacists Association, accessed 4/12/2024, https://ncpa.org/spread-pricing-101.