Barley Snyder

More Government Scrutiny of Private Equity&

OVERVIEW:

On March 5, 2024, the U.S. Department of Health and Human Services (HHS), Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) announced a joint agency inquiry into the increased role of private equity in health care, including nursing facilities in particular.

Within hours of this announcement, the FTC conducted a workshop with representatives from all three agencies who listed certain negative consequences resulting from private equity ownership of healthcare facilities, including: lower quality of care, reduced staffing, over-leveraging with debt, less competition and ultimately, higher costs for federal healthcare programs. According to the FTC's Chair, Lina Khan, the consequences for nursing facilities have been particularly adverse, resulting in significantly higher mortality rates. She cited one study estimating that private equity acquisitions of nursing homes, and the staffing cuts that followed, led to "20,000 excess deaths among nursing home patients over the course of just 12 years." At the same time, she acknowledged that private equity investments sometimes can provide an important source of capital and operational improvements.

In January of this year, we reported on the new ownership disclosure requirements for nursing facilities participating in the Medicare and Medicaid programs, with a significant focus on private equity ownership. This additional agency focus on private equity ownership of nursing homes signals even more government scrutiny in the years to come. The FTC has promised more restrictive antitrust policy with respect to private equity roll-ups and various anti-competitive practices. DHHS has promised to share nursing home ownership data with other agencies and to monitor private-equity owned facilities more closely.

Some experts question whether the increased focus on private equity ownership of nursing homes, based perhaps upon the worst cases, will discourage private investment in an industry that is plagued by financial problems and may be inadequate to meet the growing demands of an aging population. Regardless of these concerns, this increased government scrutiny must be considered in structuring any transaction involving, or resulting in, private equity ownership of nursing homes or other healthcare facilities.

If you have any questions regarding this joint federal agency inquiry, please contact partner Christopher J. Churchill or any member of Barley Snyder's Senior Living Industry Group.

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