May 24, 2024

RE: Docket No. ATR 102, *Request for Information on Consolidation in Health Care Markets*

The Emergency Department Practice Management Association (EDPMA) is the nation's only professional trade association focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups of all sizes, billing, coding, and other professional support organizations that assist healthcare clinicians in our nation's emergency departments. Together, EDPMA members see or support 60% of all annual emergency department visits in the country.

EDPMA thanks the Department of Justice, the Department of Health and Human Services, and the Federal Trade Commission for the above-referenced request for information (RFI). Consolidation and private equity in healthcare are complex issues that warrant thorough fact-finding prior to the promulgation of policy changes. We hope that our principles on private equity can help provide a valuable perspective on this issue for the agencies.

At the onset, we stress that consolidation and ownership structures are two distinct issues. Further, investment and funding sources of capital are also distinct issues. The most relevant inquiry should focus on *market power.* A recent paper examining equity investment in medical practices found that, *"public policy should neither encourage nor discourage such ownership conversions in healthcare. To us, the key issue is continuing consolidation which augments market power and prices, not the ownership form behind that consolidation."*[1] The ability to retain access to capital to allow the healthcare industry to evolve and innovate is critical. Additionally, private equity investment can serve as a viable source of capital that ensures patient access and efficiencies.

Thus, policy reforms related to consolidation and private equity should not focus exclusively on funding sources but should prioritize the following two goals. First and foremost, the **optimization of patient care**, both in terms of quality and in terms of ease of access, should be the goal of all healthcare policy reforms, including reforms focused on underlying market dynamics. Second, any reform should have as its goal protection of **clinicians' ability to practice medicine free of interference** from third parties. Third parties, whether insurers or investors, do not owe the same duty of care to the patient that a treating physician does. Thus, these entities

[1] Forthcoming in an issue of *Journal of Health Politics, Policy and Law*. *Journal of Health Politics, Policy and Law* is published by Duke University Press. DOI: 10.1215/03616878-11186103.

should never interfere in the patient-doctor relationship nor in the clinical judgment of the treatment team, regardless of whether the entity maintains an ownership stake in a particular practice.

It is worth noting that consolidation and private equity investment may be symptoms – not causes – of the inability of private practices to survive in the face of overwhelming financial strain and administrative burdens. Consistent, chronic under-reimbursement by health insurance programs, including Medicare, have created financial instability for all physician practices, which is exacerbated by ever-increasing administrative burdens by insurers. These impacts are compounded for emergency medicine due to the *Emergency Medical Treatment and Labor Act* (EMTALA), which requires that every emergency patient be treated, regardless of insurance status or ability to pay. As a result, emergency clinicians provide high levels of uncompensated and under-compensated care and are left with a high amount of "bad debt" to absorb on top of ongoing reimbursement reductions from payers, including Medicare.

Under-reimbursement is relevant to the topic of consolidation because it leaves physician practices in a weakened bargaining position vis-à-vis insurers and health systems – a situation that has intensified through the undue level of vertical consolidation in the insurance industry. Under-reimbursement may result in practices having no choice but to seek additional capital and liquidity from other sources, including private equity firms, or be forced to close. Additional capital and affiliation with a greater network can in turn empower providers with greater leverage to negotiate adequate reimbursement rates, which further illustrates the relationship between reimbursement levels and the questions raised by the RFI.

Delivery of healthcare in rural areas is more vulnerable to these pressures due to low volumes of patient encounters. In rural communities, the emergency department (ED) plays a critical role in community health. Often, keeping the ED open is the last hope for challenged rural facilities. Moreover, there are innovative strategies to optimize care and reimbursement that assist in a rural community's efforts to navigate those challenges. The Rural Emergency Hospital designation was thought to be an opportunity for a second (often last) chance for these facilities. Although there are certainly examples of aggressive outside investors taking advantage of desperate communities, there are cases where outside investment in rural facilities has enabled those facilities to stay open to serve the surrounding community. Some investor-funded physician groups take on struggling Critical Access Hospital contracts and engage in collaborative efforts to sustain the enterprise. However, no facility – regardless of its funding source – can survive for long if its revenues fall short of its expenses on an ongoing basis. That is why reimbursement of clinical care must be part of any conversation about consolidation and private equity in healthcare.

In closing, EDPMA thanks the agencies for the opportunity to provide our perspective on these complex issues. We hope that our feedback helps illustrate that consolidation and private equity are distinct issues that must be considered in the greater context of healthcare delivery and reimbursement. If you have any questions or would like additional information, please contact EDPMA's Executive Director, Cathey Wise, at cathey.wise@edpma.org.