

Mitigating Risks Associated with Private Equity and Long-Term Care¹

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1. Introduction

In 2021, the Biden Administration unequivocally stated that “resident outcomes are significantly worse at private equity-owned nursing homes.”¹ The truth appears to be more nuanced, and the perception of the quality may, in part, be a product of whatever administration is in power.² But policymakers’ perception that private equity worsens patient outcomes has driven a host of measures intended to discourage or curb private equity investment in healthcare entities. Private equity firms, and those who advise them, must develop a working knowledge of recent developments and mitigating measures to be prepared for enforcement actions that have already become part of practice. Ultimately, private equity investors and patients benefit from high-quality long-term care facilities.

2. Federal Enforcement and Guidance

The Biden Administration expressed its skepticism towards private equity investment in skilled nursing facilities (“SNFs”) early and often. In 2021, the Biden Administration pursued an aggressive regulatory posture towards private equity, complaining that private equity firms “put profits before people.” This perspective drove specific policy outcomes, including a 2023 CMS Final Rule that requires private equity firms to disclose ownership of SNFs, which became effective on January 16, 2024.³ Furthermore, in February 2024, Principal Deputy Assistant Attorney General Brian M. Boynton showcased the Biden Administration’s scrutiny of this issue in his remarks at the Federal Bar Association’s annual Qui Tam Conference.⁴

The actual effect of private equity ownership on patient outcomes is likely more complex than the Biden Administration projected. However, under President Trump, the Executive Branch is quieter on private equity. Yet, private equity ownership still faces a real risk of liability. The first Trump Administration warned that private equity firms are not immune from enforcement.⁵ And the Justice Department’s aggressive stance towards healthcare fraud has increased scrutiny on SNFs.⁶

Nor is private equity immune from congressional attention. In 2023, the Senate Committee on the Budget launched a bipartisan investigation into the effects of private equity on healthcare, including long-term care facilities.⁷ Continuing the pressure, Democrats took aim at private equity generally with the 2024 proposed “Stop Wall Street Looting Act,” although the legislation has not been passed.⁸

3. State Level Enforcement and Guidance

Several states have passed laws that directly or indirectly address private equity ownership of healthcare companies, including SNFs. These recent statutes fall into several broad categories.

First, some states impose ownership disclosure and reporting requirements on healthcare entities.⁹ These laws are similar to the Final Rule published by CMS in 2023, and the laws direct SNFs and other healthcare facilities to report ownership information to the state. Some laws also require the state to publish annual reports concerning ownership. These laws, which are aimed at

heightening accountability, may increase private equity firms' exposure to liability for fraud perpetuated in facilities they own.

Many states have also recently increased state agency oversight of consolidation in the healthcare space. Some of these laws simply require reporting of material transactions,¹⁰ while others allow state agencies to block transactions if the resulting entity may fail to meet certain standards relating to cost and quality of care.¹¹ And at least one state has equipped the Attorney General with civil investigative authority to review the impact of healthcare transactions on market share.¹² Even if a state agency cannot block a merger outright, it can often impose costly and time-consuming additional reporting and steps. Consequently, these oversight consolidation laws are an effective vehicle for states that wish to restrict or discourage private equity ownership of SNFs and other healthcare entities.

Alongside these disclosure and reporting laws are those directed at identifying bad behavior. Some states have strengthened protections for whistleblowers and further restrained the use of restrictive covenants in employment contracts for healthcare providers.¹³ Others increase liability for owners and investors who know of healthcare fraud and fail to report it.¹⁴ These state-level carrots, sticks, and protections may lead to increased reporting of fraud and quality-of-care issues. Increased protections at the state level can only further spur federal False Claims Act suits.

In Michigan, according to a 2024 report by the Private Equity Stakeholder Project (PESP), only 1.6% of nursing homes are owned by private equity; however, that number is predicted to increase. To date, the legislature has not directly addressed private equity ownership of SNFs, but it has passed corporate practice of medicine ("CPOM") laws. CPOM laws restrict ownership of medical practices to medical professionals. SNFs, on the other hand, can be owned by non-physicians, but are often operated by Management Service Organizations (MSOs). Michigan law requires SNFs to disclose anyone with an ownership interest in the home when applying for a license. One 2025 study demonstrates that authorities in Michigan are continuing to monitor concerns regarding for-profit ownership of SNFs as well as related-party transactions, where money is moved away from the homes to third parties.¹⁵

Moreover, as elsewhere in the country, some state lawmakers are increasingly scrutinizing the role of private equity in certain sectors of the economy. For example, the "STOP Private Equity Act," introduced in December 2025, targets private equity investment in housing.¹⁶ Particularly if these measures are successful, legislation aimed at SNFs is a real possibility in Michigan.

4. False Claims Act

As alluded to above, federal and state false claims statutes are a potent tool for governments looking to discourage or hold accountable private equity investors in SNFs. The False Claims Act ("FCA") is a federal law designed to deter fraud against the government and to recover damages and penalties from violators. It permits whistleblowers, also called qui tam plaintiffs or relators, to bring claims on behalf of the government and recover a portion of the damages.¹⁷

The FCA, with its per-violation penalties and treble damages, is a potent source of recovery for the government. Claims filed and amounts obtained through settlement or judgment continue

to rise. In 2024, a year with the highest number of qui tam claims filed in history, settlements and judgments exceeded \$2.9 billion.¹⁸ The Trump Administration aggressively enforces the FCA, and there is no indication that private equity is immune from those efforts.

Healthcare-related fraud represents a significant portion of the government’s overall FCA recovery. Through the FCA, the Department of Justice recovered \$1.6 billion from healthcare defendants in 2024.¹⁹ And SNFs hold a significant share of total recoveries. For example, one entity recently paid \$6.6 million to resolve FCA allegations involving 44 of its SNFs.²⁰

Consequently, private equity firms must be aware of potential FCA liability.²¹ Often, the key question is whether the private equity firm is sufficiently involved in day-to-day operations such that they knew or should have known of the alleged fraud. Facts that may tend to show knowledge include the influence of the firm on the entity’s board; policies related to licensure and staffing; and deficiencies in staffing levels or qualifications.

To ensure patient care and reduce liability, private equity firms looking to acquire SNFs must be particularly aware of the “worthless service claim.” A facility may offer “worthless service” if “the performance of the service is so deficient that for all practical purposes it is the equivalent of no performance at all.”²² Common bases for “worthless service claims” include inadequate staffing, unusually high numbers of pressure sores and infection, and poor resident hygiene or unkempt facilities. Investors who acquire struggling facilities should be particularly cognizant of these issues.

5. Mitigating Risks

Unlike the Biden Administration, President Trump has not expressly targeted private equity; however, the Trump Administration’s aggressive FCA enforcement is likely to sweep up at least some private equity defendants, and the Trump Administration has shown an interest in expanding recovery through health care enforcement.²³ Further, state Attorneys General are rushing to fill a perceived gap in federal oversight in this area. Fortunately, private equity investors can encourage adequate patient care and reduce liability through concrete due diligence steps. The below commentary is intended to be general in nature, but can be adapted to each circumstance.

First, investors should ensure that referral and marketing agreements comply with state and federal regulations, and that admissions criteria are clear and well-established. Investors should also carefully examine policies to ensure adequate patient care, particularly as it relates to facility staffing and supplier contracts. Billing practices should comply with regulations and best practices, and taxes and other financials should be in good order. The facility or facilities should have a robust compliance training program in place, with adequate documentation. Such a program should include not only licensure, certification, training, and accreditation, but also HIPAA, privacy, and cybersecurity programs. And of course, any private equity firm considering an investment in SNFs should review the facilities’ audit history, as well as identify any ongoing federal or state investigations. Below is a sample checklist for due diligence relating to a transaction involving a long-term care facility:

I. Getting the Patients

- a. Marketing and third-party agreements consistent with regulations
- b. Review of primary referral sources for irregularities
- c. Look for any common/close ownership between the marketing companies and the care providers
- d. Clear and established admission requirements

II. Caring for the Patients

- a. Employment agreements are consistent with regulatory standards
- b. Compensation is fair market value and not tied to referrals
- c. Consider material and related party/supplier contracts for compliance and ensure usage is supported by medical necessity
 - i. DME
 - ii. Wound Care
 - iii. Therapists
 - iv. Specialty Therapy
 - v. Staffing Agency
- d. Look for common/close ownership between the suppliers and the care provider
- e. Who are budget decisions makers?
 - i. Staffing
 - ii. Supplies/material

III. Billing for the Patients

- a. Cost submissions/audits
- b. Billing practices/regularity of audits
- c. In-house or third party

IV. Government Investigations/Interactions

- a. Are there on-going investigations?
 - i. Federal: DOJ, OIG, CMS, DOL, IRS
 - ii. State: AG, MFCU

V. Audit History/Compliance

- a. Review 5-star ratings
- b. Any immediate jeopardies?
- c. History of citations/responses
- d. Any voluntary disclosures/repayments?

VI. Compliance with Licensure, Certifications, Training, Accreditations

- a. What is the status of the compliance training programs?
- b. Any compliance effectiveness reviews on file?
- c. Are certifications/licenses up to date?

VII. HIPAA/Privacy/Cybersecurity

- a. Risk assessments
- b. Reported breaches/notifications
- c. Status of systems

VIII. Tax and other Financials

- a. Current compliance with withholdings
- b. Non-for-profit jeopardy
- c. Relationships with management companies: what is the history of “management fees” and other distributions by ownership and management

While this is just an example checklist, and would need to be tailored to a particular matter, these due diligence steps have the dual benefits of reducing liability and ensuring patient care.

6. Conclusion

While the array of regulatory hurdles and the potential exposure to liability may seem daunting, skilled nursing remains an attractive investment opportunity. Private equity firms interested in this type of investment can benefit themselves and patients through adequate due diligence under the advisement of an experienced practitioner.

¹ Protecting Seniors and People with Disabilities, White House Press Release, February 28, 2022, <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/> (accessed February 3, 2026).

² Gregory N. Orewa et al., *The effects of private equity ownership in U.S. nursing homes*, HEALTH POLICY, Vol. 161 (November 1 2025).

³ 88 Fed Reg 80141 (November 17, 2023).

⁴ U.S. Dept. Justice, *Remarks of Principal Deputy Assistant Attorney General Brian M. Boynton*, February 22, 2024, <https://www.justice.gov/archives/opa/speech/principal-deputy-assistant-attorney-general-brian-m-boynton-delivers-remarks-2024> (accessed February 3, 2026). The annual Qui Tam Conference is typically a platform for the administration to project its False Claims Act enforcement priorities.

⁵ U.S. Department of Justice, *Principal Deputy Assistant Attorney General Ethan P. Davis delivers remarks on the False Claims Act*, June 26, 2020, <https://www.justice.gov/civil/speech/principal-deputy-assistant-attorney-general-ethan-p-davis-delivers-remarks-false-claims> (accessed February 3, 2026).

⁶ U.S. Department of Justice, *National Health Care Fraud Takedown Results in 324 Defendants Charged in Connection with Over \$14.6 Billion in Alleged Fraud*, June 30, 2025, <https://www.justice.gov/opa/pr/national-health-care-fraud-takedown-results-324-defendants-charged-connection-over-146> (accessed February 3, 2026); U.S. Department of Justice, *DOJ-HHS False Claims Act Working Group*, July 2, 2025, <https://www.justice.gov/opa/pr/doj-hhs-false-claims-act-working-group> (accessed February 3, 2026).

⁷ Senate Budget Committee, *Profits Over Patients*, January 2025, https://www.budget.senate.gov/imo/media/doc/profits_over_patients_the_harmful_effects_of_private_equity_on_the_ushealthcaresystem1.pdf (accessed February 3, 2026).

⁸ HR 9985, 118 Cong. (2024).

⁹ Ind. HB 1666 (2025).

¹⁰ Mass. HB 5159 (2023-2024).

¹¹ Or. Laws 2021 § 615.

¹² Ind. HB 1666 (2025).

¹³ N.M. HB 586 (2025); Cal. S.B. 351 (2025).

¹⁴ Mass. HB 5159 (2023-2024).

¹⁵ [New Report on How Nursing Homes May Be Hiding Profits and Depriving Residents of Care and Quality - The Consumer Voice](https://www.theconsumervoices.com/news/new-report-on-how-nursing-homes-may-be-hiding-profits-and-depriving-residents-of-care-and-quality/), June 4, 2025, <https://theconsumervoices.com/news/new-report-on-how-nursing-homes-may-be-hiding-profits-and-depriving-residents-of-care-and-quality/> (accessed February 17, 2026).

¹⁶ Mich. H.B. 5365-5367 (2025).

¹⁷ 31 U.S.C. §§ 3729-3733.

¹⁸ U.S. Department of Justice, *False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024*, January 15, 2025, <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024> (accessed February 3, 2026).

¹⁹ *Id.*

²⁰ U.S. Department of Justice, *Centers Healthcare Pays Over \$6 Million for False Statements on Medicare Cost Reports*, July 1, 2025, <https://www.justice.gov/usao-ndny/pr/centers-healthcare-pays-over-6-million-false-statements-medicare-cost-reports> (accessed February 3, 2026).

²¹ U.S. Department of Health and Human Services, *Private Equity Firm and Former Mental Health Center Executives Pay \$25 Million Over Alleged False Claims Submitted for Unlicensed and Unsupervised Patient Care*, October 14, 2021, <https://oig.hhs.gov/fraud/enforcement/private-equity-firm-and-former-mental-health-center-executives-pay-25-million-over-alleged-false-claims-submitted-for-unlicensed-and-unsupervised-patient-care/> (accessed February 3, 2026); U.S.A.O. Ed. Pa., *Former Owners of Therakos, Inc. Pay \$11.5 Million to Resolve False Claims Act Allegations of Promotion of Drug-Device System for Unapproved Uses to Pediatric Patients*, November 19, 2020, <https://www.justice.gov/usao-edpa/pr/former-owners-therakos-inc-pay-115-million-resolve-false-claims-act-allegations> (accessed February 3, 2026); U.S. Department of Justice, *EEG Testing and Private Investment Companies Pay \$15.3 Million to Resolve Kickback and False Billing Allegations*, July 21, 2021, <https://www.justice.gov/archives/opa/pr/eeg-testing-and-private-investment-companies-pay-153-million-resolve-kickback-and-false> (accessed February 3, 2026).

²² *Mikes v. Straus*, 274 F3d 687, 703 (2d Cir. 2001).

²³ U.S. Department of Justice, *National Health Care Fraud Takedown Results in 324 Defendants Charged in Connection with Over \$14.6 Billion in Alleged Fraud*, June 30, 2025, <https://www.justice.gov/opa/pr/national-health-care-fraud-takedown-results-324-defendants-charged-connection-over-146> (accessed February 3, 2026).