EVALUESERVE

Anticipating Regulatory Shifts for Private Equity in Healthcare

Jul 2024

Anticipating Regulatory Shifts for Private Equity in Healthcare

Introduction

As private equity investments in healthcare have expanded significantly over the past decade, the scrutiny surrounding them has also intensified among federal and state regulatory bodies. While such investments have long been under examination, their substantial growth has elevated concerns among regulators.

Contrasting Opinions on PE Investments in Healthcare

- Numerous studies have expressed worry that private equity investments in healthcare are prompting healthcare providers to compromise on quality in order to meet financial targets. Critics argue that private equity involvement in hospitals and healthcare providers can lead to inflated costs, unnecessary medical procedures, and subpar patient outcomes.

- On the other hand, supporters of private equity investments in healthcare argue that injecting capital is essential to sustain the commercial viability of the healthcare sector, especially amid tighter profit margins from payors and rising demands for technological upgrades, regulatory compliance, patient satisfaction, and quality of care metrics.

The FTC Workshop

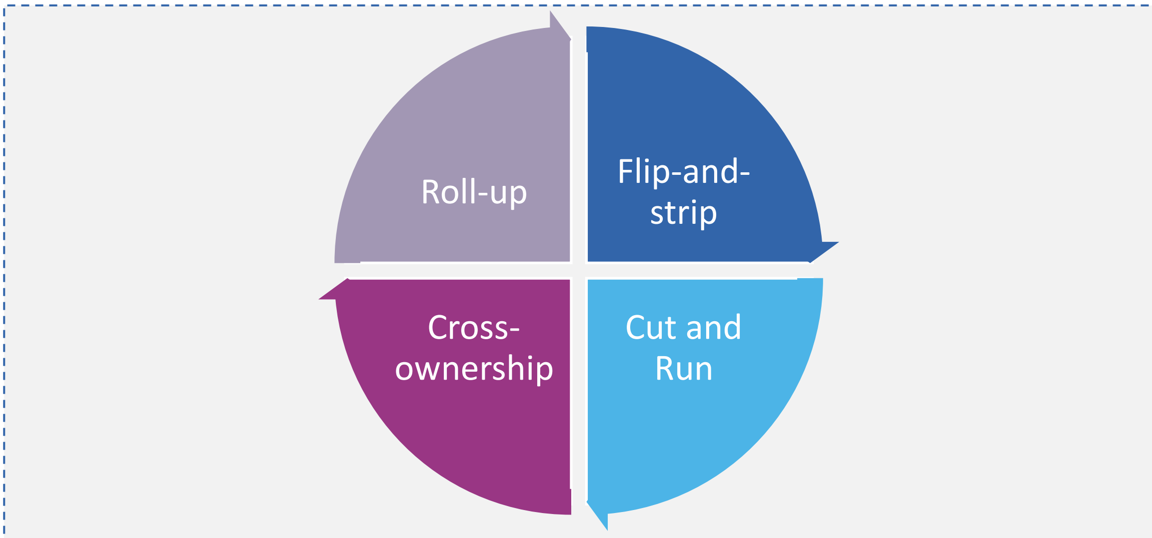
- On Mar 5, 2024, the Federal Trade Commission ("FTC") organized a workshop titled "Private Capital, Public Impact: An FTC Workshop on Private Equity in Healthcare".

- This event aligned with the revelation that the FTC, Department of Justice ("DOJ"), and Department of Health & Human Services ("HHS") would embark on a collaborative public investigation into the growing influence of private equity in the healthcare industry

Anticipating Regulatory Shifts for Private Equity in Healthcare

Government Focus Points

During the workshop, officials voiced concerns about certain private equity strategies and indicated that the FTC would actively challenge such behaviors:



- **Flip-and-strip:** Private equity firms raising significant debt to acquire companies, aiming to generate quick profits through prompt sales

- **Cut and Run:** Private equity firms selling off healthcare entities after they perform poorly

- **Cross-ownership:** Acquiring substantial ownership shares in rival firms operating in the same industry

- **Roll-up:** Private equity firms engaging in minor acquisitions in the healthcare sector that do not meet the reporting thresholds under the Hart-Scott-Rodino Act

Anticipating Regulatory Shifts for Private Equity in Healthcare

Expected Heightened PE Scrutiny

Policy makers expressed the need for heightened scrutiny of private equity investments in the sector and emphasized four tools to oversee such investments in healthcare:

Information sharing with regulators

Increased ownership transparency

Stronger oversight standards

Empowering Beneficiaries

- **Information sharing with regulators:** aiming to grasp the effects of consolidation and increased complexity on programs. Assessing impacts on care quality and overall costs through robust data systems

- **Increased ownership transparency:** Bolstering accountability, oversight, and understanding of the healthcare system's operations

- **Stronger oversight standards:** Implementing stronger standards and oversight of healthcare facilities like nursing homes to ensure consistency and quality of care amidst increasing private ownership and consolidation

- **Empowering Beneficiaries:** Ensuring that contracted entities provide clear, accurate, and fair information to empower beneficiaries in making informed healthcare choices

States also have increasingly taken a proactive role in regulating private equity involvement in healthcare. Nine states, including Connecticut, Illinois, Massachusetts, Minnesota, Nevada, New York, Oregon, Washington, and California, have implemented laws mandating state scrutiny and approval of healthcare transactions, along with disclosure requirements for direct and indirect owners of healthcare organizations. State legislatures argue that these laws aim to improve transparency regarding private equity ownership in healthcare entities

Anticipating Regulatory Shifts for Private Equity in Healthcare

Conclusion

In conclusion, private equity firms entering the healthcare sector should prepare for intensified antitrust scrutiny. This scrutiny will cover not only acquisitions but also extend to examining potential anticompetitive conduct within portfolio companies post-acquisition. The heightened regulatory environment means that deals will require more time and patience.

Much depends on the upcoming election outcome and its impact on regulation. After any regulatory bill is enforced, the market may experience an initial slowdown. However, activity is expected to rebound as processes stabilize. Additionally, private equity firms should be ready to disclose comprehensive financial data, including debt information, once the regulatory framework is enacted.

Reference: www.ftc.gov

Evalueserve Disclaimer

Although the information contained in this publication has been obtained from sources believed to be reliable, the author and Evalueserve disclaim all warranties as to the accuracy, completeness or adequacy of such information. Evalueserve shall have no liability for errors, omissions or inadequacies in the information contained herein or for interpretations thereof.

About the Authors:

SUPROVO SINHA

Manager
Private Equity Solution

- Suprovo has over 10 years of experience in Investment Banking and Private Equity

suprovo.sinha1@evalueserve.com

Thank You