HEALTH OVER WEALTH ACT DISCUSSION DRAFT
SECTION BY SECTION SUMMARY

To submit comments, please visit markey.senate.gov/HealthOverWealth.

Deadline for comments is May 3, 2024.

SECTION 1: SHORT TITLE

The title of this bill is the "Health over Wealth Act."

SECTION 2: TRANSPARENCY, ACCOUNTABILITY, ENFORCEMENT, RESEARCH

1. HEALTH CARE OWNERSHIP TRANSPARENCY

This section would require greater transparency of health care entity (including hospitals, nursing homes, mental and behavioral health care, and other health facilities covered under the definition of providers of services or supplier under 42 U.S.C. 1395(d)) ownership by requiring corporate entities reporting information to the United States Department of Health and Human Services (HHS), working in partnership with the United States Department of Treasury and Federal Trade Commission. The information gathered must be publicly reported and regular audits must be conducted to ensure the validity of the information gathered.

Based on Representative Jayapal's *Healthcare Ownership Transparency Act*, this section would require **health care entities owned by private equity** to report on: debt; fees collected by the private equity firm; dividends paid by the health care entity to the private equity fund; lobbying or political spending by the private equity fund and health care entity; sale leaseback agreements; real estate, mortgage, and lease payments; interest paid on lines of credit; transactions with vendors or service providers; staffing, disaggregated by position and ratio of staff to patients; number of job postings and vacancy rates by position; number of beds in use and capacity (for hospitals); number of health care facilities or providers owned by the private equity firm that have closed in the previous year; health care costs charged to patients and public and private health plans; conversion of non-patient care areas into patient care areas (i.e. providing care to patients in hallways or waiting rooms); health worker wage or benefit reductions; complaints of, or citations for, violations of state and federal antidiscrimination law, wage and hour law, and whistleblower complaints; and any other information that the Secretary deems relevant for evaluating the impact of private equity ownership on the provision of health care, health care quality, and safety.

For **for-profit health care entities** that are not owned by private equity, they would be required to report on: debt; leadership of the health care entity; political spending by the health care entity; assets purchased; real estate, mortgage and lease payments; number of payments to staffing firms; executive salaries and board membership of the for-profit owner and each health care entity; number of health care facilities owned by the for-profit company that have closed in the previous year; health care costs charged to patients and public and private health plans; conversion of non-patient care areas into patient care areas (i.e. providing care to patients in hallways or waiting rooms); health worker wage or benefit reductions; complaints of, or citations for, violations of state and federal antidiscrimination law, wage and hour law, and whistleblower complaints; and any other information that the Secretary deems relevant for evaluating the impact of for-profit ownership on the provision of health care, health care quality, and safety.

2. RISK MITIGATION AND ACCOUNTABILITY

This section requires that HHS establish mechanisms to **mitigate the risks related to for-profit ownership of health care entities**. These mechanisms may include, but are not limited to, requirements to:

- Establish an escrow account to cover operating and capital expenditures for 5 years in the event of a closure or reductions of essential health care services. The account should include enough funds to pay out contract obligations to health care providers and other staff and to provide supplemental funding to community health care or non-profit providers in the surrounding geographical areas impacted by such closures or service reductions.
- Require minimum investments in capital in any health care entity purchased; or
- Provide financial contributions sufficient to mitigate the impact of potential closure, reduction of essential health services, workforce understaffing, or reduction in quality or safety of care or health care access.

This section also would also set up additional **accountability mechanism** by requiring that:

- Each health care entity seeking to enter into an agreement to sell to, or lease from, a real estate investment trust must submit the sale or lease to HHS for review. HHS could block any agreement that would lead to a long-term weakened financial status of the health care entity or place the public health at risk; and
- Private equity firms obtain a license in order to invest, directly or indirectly, in a health care entity. If the firm fails to comply with the provisions of this bill or engages in price gauging, understaffing, access barriers, or other metrics as determined appropriate by HHS, HHS may revoke the license, requiring divestiture from health care entities that the firm already owns or invests in.

3. TASK FORCE REVIEW OF THE ROLE OF PRIVATE EQUITY AND CONSOLIDATION IN HEALTH CARE

Based on Representative Jayapal's *Healthcare Ownership Transparency Act*, this section would establish a **task force** chaired by HHS to monitor changes in the health care marketplace; address and limit the role of private equity and consolidation in healthcare; and identify and address private equity or market consolidation patterns that may create, continue, or exacerbate health care disparities based on sex, sexuality, race, nationality, age, disability, immigration, socioeconomic status, or location of residence.

HHS may prohibit a private equity fund from purchasing voting securities of a health care entity and may prohibit any merger or acquisition that would result in a private equity fund gaining control of voting securities of a covered firm until the task force has had sufficient time to study and identify whether abuses are taking place in specific health care sectors or by health care entities related to price gauging, understaffing, access barriers, regulation compliance violations, or such other metrics as the Secretary may determinate appropriate.

4. ENFORCEMENT

This section would allow for state enforcement of this act. If a State fails to enforce the requirements, the Secretary may do so. Each violation would result in a civil monetary penalty of $10,000 per violation.

5. RESEARCH

HHS must conduct or support research on the following:

- The impact of transitioning to a complete ban of for-profit companies in the provision of health care;

- The impact of private equity investment in health care entities on health care costs; access to health care; clinical decision making; health care provider recruitment and retention; union density and collective bargaining power of health worker unions; health care worker pay, pensions, and other benefits; health outcomes; health disparities; and the effectiveness of state law and regulation and state enforcement on ensuring acquisition of health care entities by for-profit companies does not place access to care, health quality, or patient safety at risk.

SECTION 3: MAINTENANCE OF HEALTH CARE ACCESS RELATING TO HOSPITAL DISCONTINUATION OF SERVICE OR CLOSURE

This section would require **public notification and community input prior to hospital closures or service reductions**. This section requires hospitals that receive Medicare payments to notify the Secretary of HHS at least 180 days prior to the discontinuation of services or a full hospital closure. If a hospital must close due to unforeseen events such as a natural disaster, a hospital must notify the Secretary of the closure within 30 days of the event. The Secretary shall determine whether the stated discontinuation or closure would negatively impact access to essential services. If so, the hospital must submit a mitigation plan to the Secretary that outlines a plan to preserve access to essential services for the community via partnerships with surrounding facilities, including patient transportation plans, and a plan to support the transition of health care employees to other positions. There shall be a public comment period regarding the mitigation plan.

If the mitigation plan is deemed insufficient by the Secretary, an alternative mitigation plan must be developed, which may include delays to the discontinuation or closure plans. Hospitals that do not secure an approved mitigation plan or alternative mitigation plan may be prohibited from 1866(j) enrollment until the earliest of: restoration of the essential services, a satisfactory mitigation plan, or three years after discontinuation or closure.

This section also requires **biannual reports to Congress** on hospital closures trends and the capacity of the health care system to meet surge demands.

SECTION 4: TREATMENT OF RENTS FROM QUALIFIED HEALTH CARE PROPERTY

To discourage sales of health care property that would undermine the long term financial stability of a health care entity for short term profit, this section would close tax loopholes for Real Estate Investment Trusts (REITs) for rental income from health care properties. This section prevents health care facility rent payments from qualifying as untaxed income by excluding the rent income from both the 95 percent and the 75 percent income lists needed to qualify as a REIT. The term "qualified health care property" means a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility, or other licensed facility which extends medical or nursing or ancillary services to patients.

If a C corporation qualifies as a REIT, it can deduct the dividends that it pays to its shareholders in order to avoid an entity-level tax on its income. To qualify as a REIT for a taxable year, the corporation must satisfy various criteria, including two income tests: (a) in general, at least 95 percent of its gross income for the year must be derived from sources on one list, and (b) at least 75 percent of its gross income for the year must be derived from sources on a second list. Both lists include “rents from real property.”