***Assisted Living and the Law* — Private Equity Investment in Long-Term Care**
Hosts: Cal Stein and Emma Trivax
Guest: Joe Kadlec
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Cal Stein:

Hello, and welcome to *Assisted Living and the Law*. The podcast series that discusses legal considerations within the long-term care sector. I am your host, Cal Stein, and I'm a litigation partner in the health sciences department at Troutman Pepper. I work with a broad variety of clients in the healthcare space in matters involving litigation and government investigations. But I also do quite a bit of counseling work where I advise clients in advance so that issues can be avoided altogether or resolved so they do not ever ripen into litigation or an investigation. In my career, I have represented a number of nursing home and skilled nursing facility clients, as well as executives at both. I am joined by my co-host, Emma Trivax.

Emma Trivax:

Hello, all. And thank you for joining us today. I am a health sciences transactional and regulatory attorney here at Troutman Pepper. I also work with a wide range of clients including various long-term care facilities. Helping on the regulatory side of things, including licensure, internal investigations, and corporate practice matters to name a few.

In today's episode, we delve into the complexities of private equity in the healthcare sector. We are happy to welcome Joe Kadlec who will be shedding light on the intricacies of private equity. Joe, would you like to introduce yourself?

Joe Kadlec:

Thanks, Emma. I appreciate you and Cal having me on today. My corporate practice is primarily focused on investments and mergers and acquisitions work. And one of the areas where we are particularly focusing is private equity investments and healthcare services and tech. Thankfully, my experience spans both buy-side investments and sell-side transactions where a family business may be looking for a transition or investment. I say thankfully because that gives us a perspective on both sides.

Generally speaking, in my world, we have willing buyers and willing sellers. Though in a small number of cases, that willingness may be due to financial difficulties or simple necessity as owner's age. And that makes the collaborative nature of our efforts exciting and rewarding. I think it's a little bit different than what you two may sometimes be dealing with. But that's okay.

The breadth of the deals we do allows me the opportunity to get to work with colleagues across the firm given the importance of labor benefits, tax, and certainly real estate in this sector in particular. And, of course, my wonderful healthcare regulatory team members.

Cal Stein:

Great. Well, thanks, Emma. And, Joe, thank you for being here today. This is going to be a very interesting discussion because it concerns at least what I think is a very interesting topic, private equity in the assisted living industry. And we've all heard about private equity before. Even those of us who, like me, do not work in the corporate space the way Joe does. But today we're really going to dig in and discuss private equity investment and ownership in assisted living facilities.

And this is something that is certainly not new. But something that has perhaps received some renewed attention and renewed scrutiny lately for a host of reasons. This is a topic that either affects many assisted living facilities right now or will affect them in the future. Either because they have PE owners currently or one day may wish to be acquired by a PE owner.

Emma Trivax:

And I know we are all very anxious to get into the nitty-gritty of PE ownership and assisted living facilities like Cal just mentioned. But let's start with some fundamental concepts. We're not so much focusing today on corporate practice of medicine, which is often a consideration in physician practice group acquisitions. And is an area I am very familiar with. But instead, we are looking at the broader private equity. Or if you hear us saying PE, same thing, involvement in healthcare. Joe, can you give us a basic overview?

Joe Kadlec:

Absolutely. And admittedly, I'm giving a 10,000-foot view here. Private equity involves funds or individuals and families. And let's not forget institutional investors and pension plans focused on investing in businesses that are not publicly listed. We understand that the global market for private equity is around 10 trillion in assets and is continually growing. To your point about who this may affect, there's a lot of money out there. People should be aware of it.

More importantly for this topic than just how much money is already invested in private equity-backed businesses, we know from direct anecdotal and market evidence that there is a lot of money still available for investments. What we call and what the business calls dry powder. We may get into this more later. But part of the reason for there being so much dry powder, in my view at least, is an imbalance right now between the desire for investors to participate in private businesses creating the supply and the target companies and their aligned valuations. That makes the sale investment numbers. They have to work on both sides, right?

For companies that look like stellar investments, those transactions are happening and quickly still. For companies right now that have more of a story or a longer-term trajectory, those deals have been harder to close over the past years. And that is leaving money sitting there ready to be used.

The fundamental point here for investors is to buy, invest and then later sell that same business to make a profit on the investment. Very different than if it was a hospital acquisition. That, with the hospital is the acquirer. I mean, in most cases. Or an internal family succession plan. And the window for turning an investment like this is typically 3 to 6 years. Although that varies, of course.

Part of the value proposition could be add-on acquisitions. And the benefits there are operational leverage and efficiency. And, honestly, not typically price increases. And another important point here as an overarching concept, we're all going to use the term private equity here for ease of conversation. But there are many different types of investors, like venture, which focuses on earlier-stage businesses with greater risk but greater reward. Family office investors where the funds are generally from one or small number of family wealth pools. And where there is typic less time sensitivity to turn profit quickly.

Some PE investors may be interested in minority equity positions. Not full control, which obviously has a different dynamic if you're the owner-seller right now. And then also independent sponsors who generally go and find the deals first and then pull in co-investors or funds to help support. There also can be debt private equity investors in the space as well. Just generally speaking, we're going to use the term private equity or PE here today for ease.

Cal Stein:

Thanks, Joe. Look, I, more than perhaps anyone, appreciate that type of 10,000-foot view of the PE space. It makes good sense to me where the benefit is for the private equity fund itself. You talked about buying a business and then selling it for a profit in a three to six-year time period. I think we can all wrap our minds around that. But can you talk to us a little bit about what exactly the benefit is for a facility or the facility owners when they court and/or receive an investment from private equity?

Joe Kadlec:

Right. And that's why we're here today primarily. Look, to be fair, Cal, there are always pros and cons in a strategic transaction. The main positive for the owners is providing liquidity for a business that is inherently illiquid. You can't just lightly transfer ownership of a revenue-generating or highly profitable business and take cash out.

And sometimes there are not other options for a business without any clear succession plan, which certainly is happening more and more as owners are aging. A "typical PE transaction" would involve a sale of a majority of the equity of the business to an investor for cash proceeds or a promissory note at closing. It could be earnout elements for a greater payment post-closing. But that really depends on deal dynamics. They are coming back a bit. But that goes with the market economy.

Instead of X-numbers of dollars a year in profits going out to the owners as may currently exist with the business, in a transaction, they will get some healthy multiple on that immediately. That's the great part for the owners. But then the owners need to bear in mind that they're no longer in control or at least not total control of the business and will either be an employee or consultant going forward.

In most PE scenarios, the main sellers will be asked to reinvest a portion of their proceeds back into the business. We typically call that a rollover. So that they have skin in the game still. That's motivation to keep supporting and driving the business. It also has potential for the seller for the next transaction. 3 to 6 years down road, you could get even higher proceeds if everything works well.

Honestly, I don't want to gloss over one point that I mentioned. And that's about losing control. I'm on the sell side enough. We see that that is tough for a lot of sellers we work with who have run their businesses however they've wanted to for many years. Of course, within the bounds of law. But as they decide. And now they have different metrics post-closing. People need to be mentally prepared for that before we go down this path or as part of it at least.

Cal Stein:

Yeah. And a lot of what you're talking about there, Joe, are kind of the basic pros and basic cons that go into the sale of any business or any business owner transitioning out of a business that they've built. With private equity, particularly in the healthcare industry, we hear a lot about it not always in the most positive light. Can you talk to us a little bit about that perception? In my view, it's not always an accurate perception. But what goes into that dynamic at least from what you've seen?

Joe Kadlec:

Absolutely. And what I was mentioning just now, as you alluded to, is not wildly different in any type of family business or long-term owner selling in terms of the dynamics. In terms of this sector more specifically though, it is important to note, and I'm sure a lot of our listeners are aware of this, that Federal Trade Commission, the FTC, many state agencies are increasingly skeptical of private equity and healthcare.

Some of this is based on studies. At least some of what I've been reading in this space over the years are very old studies. It's kind of an interesting dynamic that so much is based on earlier work in the space. But I don't have a great sense if it's changed or not. But if you go back and listen to – I guess particularly at the national level politician speeches over the last 10 years, you'll hear a lot about private equity and its drawbacks.

I think that at a national level, industry agnostic, that has cooled a bit over the past eight years. That said, the focus from agencies and in this healthcare sector, it has not gone away. And the federal and state levels seem to be – and they've even said this. They're starting to coordinate and work together more closely.

Private equity often becomes the scapegoat for various industry issues. And I don't mean that to say that private equity is perfect. But it's crucial to understand the broader contexts. I'm not here to extol or fight the virtues. But the point is that there are some cycles to this. And it can sometimes be an easy excuse to ignore broader issues in an industry. I will leave two others, whether the healthcare industry and long-term is being perfectly run right now or if this system could handle some improvements. I'm not daring to discount those earlier studies or whatnot. But I have to think there have been some real shifts as we all know in both private equity and healthcare since those studies.

From an investor perspective, really does matter for PE interest in various sectors beyond just general market dynamics is whether there will be a market when they're looking to sell. What does that market look like when a PE investor has a platform?

Emma Trivax:

That's really interesting, Joe. And I like what you said about how maybe it's not as in the forefront politically these days. But me working in the regulatory space, I do see all of these changes that the agencies at both state and federal levels are making. And I would say in the last five years, we have seen large sweeps that are looking at the healthcare sector generally, but as well as PE, which we'll dig into a little more later. But first, how has PE investment in healthcare evolved over the years?

Joe Kadlec:

PE investment, and we'll talk about long-term care more specifically here, it grew significantly through around 2018 but has since leveled out a bit. It seems it's not as hot of an area right now. But deals certainly still happen. Investments in hospitals and skilled nursing facilities are very low right now due to poor growth outlooks and the complexity that comes with those platforms.

However, areas more broadly in healthcare, adjacent services, med spas, lower acuity sites of care, home health are more attractive. And, of course, I really am speaking by sectors here. Not healthcare broadly. There are a lot of opportunities and a lot of interest in healthcare. Generally, healthcare tech, healthcare services. And it's such an industry looking for innovation and investment that's not going away anytime soon.

The point for PE though is their needs – and this is important for people who may be on the sell-side or thinking about the dynamics here. The point for PE is there needs to be an investment thesis. These deals are not happening on whims or bets. If the profit margins or future expected growth just aren't there, then the deal probably won't happen for an investor.

I mentioned this before. Or the price will be at a low enough price that isn't so attractive to the sellers. And that can be where there's a mismatch. Those deals just don't happen so easily. And absent other factors that will drive people to close the deal when they need to.

Emma Trivax:

What about the impact on staffing and costs in PE-owned facilities?

Joe Kadlec:

Private equity firms, of course, often are looking at costs very closely. But in the healthcare staffing sector in this long-term care space, as we all know, the pressure to maintain adequate staffing levels is intense right now. Employees can easily switch jobs just for an additional small increase per hour making it really challenging to reduce labor costs. And new regulations in the space, which I suspect we'll all be talking about, are placing quite a burden to not only maintain but increase staffing when the people just may not be there for it.

And, honestly, that impacts all facilities, whether they're private equity-backed or not. It might be an interesting byproduct of the focus on private equity in the space that impacts everyone. Given the reimbursement model and given the incredibly tight margins, I think anyone listening

to this already knows that there's not a ton of additional profit to extract without massively impacting care, which in turn would of course impact the bottom line anyway.

This is a hard industry. Physically, emotionally demanding. And it's still suffered. And we all know it's still suffering from how bad COVID was for everyone in the space. Honestly, I'm not in it day-to-day. I can't imagine what it was like for folks and even hearing from my friends in the space working as EMTs. I know it left scars. This industry, when we're talking about employees and staffing, it's just not the same calculus in terms of employees, incentive, management, et cetera, as many other industries.

Cal Stein:

Yeah. Joe, that's a really good point and a really true point at least in my experience. I want to go back to something that you mentioned earlier. First, you had said that state and federal agencies are increasingly skeptical of private equity in health care. And that sometimes that can result in private equity becoming the scapegoat for various industry issues.

Now, like you, I don't think any of us are necessarily in a position to evaluate how correct or incorrect any given scapegoat might be. But with that said, this is definitely something that I have seen and definitely something that I have heard in the healthcare setting, including as it relates to nursing homes and skilled nursing facilities that have been purchased by private equity in particular.

And it really comes down to the issue you just mentioned. The profit margins are tight already. And I think there can be a perception out there that when private equity comes in, they are focused on maximizing those profits especially when they're tight. And, again, I think the perception can be that with private equity so focused on profits, perhaps a private equity owned facility will be more willing to allow a negative impact on patient care if it results in higher profits.

Again, I don't think we're here to assess the accuracy of that perception. Like everything, my strong sense is that it really depends on a host of factors. The specific facility, the PE firm involved, the type of deal, things like that. But as someone who deals with litigation and investigations for a living, I think, in many ways, the reality of the situation is subordinate to the perception of the situation. If individuals have that perception of private equity, it may make litigation more likely.

For example, because a potential plaintiff feels a level of righteousness going after a defendant it believes is more likely to skirt the quality of care. Or because a potential plaintiff believes others have a similar view of private equity and therefore might make a more sympathetic jury. The same could be said about the government.

I guess one thing I think about is whether private equity owned healthcare facilities are, for lack of a better term, bigger targets for litigation and investigations. Or whether they will be bigger targets for those things in the future. And if so, what can really be done about it if anything?

Joe Kadlec:

The best things that can be done if you are already invested is leaving the care decisions to the professionals. Focus on helping them manage the admin side and the business side of things,

which is usually why we particularly see this in physician group transactions. They may want to take on private equity investment so they can focus on the care decisions and not so much of the other things.

Yes, I suppose there could be some bigger target on PE. And like you mentioned, Cal, I appreciate the dynamics in front of a jury can be what they are. I don't know how much that is shaken out in terms of litigation. There's definitely a current focus on PE in terms of the FTC and antitrust and regulatory review, as I mentioned, when an acquisition happens. Either buying or selling.

But I really do hope and expect that if a government investigation comes to pass that the decision is based on the merits and not who the owners are. And certainly not based on how deep their pockets might be. I'm not completely naive to that point. But I hope that's the case. Once a PE investor buys, I do think having the legacy owners. Like I mentioned, a rollover. Having them keep a material stake in the game post-closing helps mitigate maybe the perception but also the practical reality of the risks here and helping everyone focus on the care for the individuals, which hopefully the goal is that good care leads to good financial results.

Cal Stein:

Yeah. Certainly. That's certainly the hope. Well, let me ask you about this. What about strategies or potential strategies for investing in training programs for staff members? I mean, I can see the long-term benefits of a strategy like that to help with staffing, which we talked about earlier. And I suppose my question for you is, with the benefit of such Investments potentially not being realized for several years on a PE front, would that type of strategy align well with a typical private equity model?

Joe Kadlec:

That's a great question, Cal. And in terms of training to produce more of the care professionals that we need, the answer may not be that's the case. There's an inherent gating issue in this world that we're talking about in terms of staffing. I've heard some wonderful discussions at state long-term care trade associations about ideas for states and businesses investing in people and growing the type of professionals that are needed to satisfy these federal mandates that are coming in addition to the needs that they already have independent of obligations.

And there are very few quick fixes here. Some broader fixes that we've talked about, and we've heard people talk about may even involve federal strategy like immigration visas for workers in the space. These are not the types of fixes that any one owner or investor can implement.

On the other hand, areas where value-based care can lead to a greater result and profitability through coordinated efforts and negotiations with third parties, that's a more suitable target for private equity investment to make a real difference. They can definitely leverage their strengths in those areas to drive value hopefully.

Cal Stein:

And let's not forget about the regulatory landscape. That in and of itself is complex and demanding, which can cause difficulties in getting a deal closed. It's a heavy lift to ensure

complete compliance in such a heavily regulated industry. And some things I know you have a lot of experience in like rep and warranty insurance for deals that work well in other industries may not be enough protection here.

Joe Kadlec:

Right. Absolutely. An investment thesis in this sector is only viable if the business model of course demonstrates profitability. But also, if it's a well-run and compliant business. Because the next buyer is going to care a whole lot too. This is not a sector where you can lightly take a risk when you're buying a business in the hopes that it'll work out, right?

Investors in this sector need to be prepared for the possibility of investigations and disputes, which just are inherent in this industry. And not to be scared off of that. As you both especially know, those investigations take time and patience to work through with a lot of cost even if no one did anything materially wrong. This field is exceptionally challenging with physically demanding work, as I mentioned before. Mentally taxing interactions with clients' families.

I think it's why there's so many firms that invest in very targeted ways in healthcare because they're familiar with it. And they know what goes into it and how they can add value. And I think that we've seen over the years less dabbling from firms that aren't really in this space. When the acquisition is going, you really need regulatory council like yourselves. And sometimes even hyper-technical specialists looking at billing as well to be comfortable in your deal. If you are on the sell side, I can't stress that enough as well. You want to be out ahead of issues that may be coming up or that buyer asks you about. You want to have a thoughtful and reason-reason for the way you've been approaching things.

Cal, you mentioned rep and warranty insurance. If people are not familiar with that listening here, it's an insurance protection in mergers and acquisitions work. That buyers can purchase to protect really both sides in a deal from unintentional and unknown breaches of the representations and warranties that sellers make in deals about their business. I do not mean to suggest that buyers shouldn't use rep and warranty in this world. There's a lot of value in that.

But getting millions of dollars of coverage when there is potential for some catastrophic investigation or lawsuit based on poor compliance or that impacts the basic permits to run a business, those millions of dollars of coverage won't be of much comfort if you don't have a viable business afterwards. I think, Cal, to your point, that has to be thought of in the calculus here.

Cal Stein:

Yeah. Joe, before we leave this topic, you mentioned just now the importance of running a compliant business, especially in the health care setting. Can you expand on the importance of that just a bit for us? And I ask, because you as corporate counsel and I as litigation investigation council are actually working on a potential deal right now in the health care space where the issue of compliance is at the forefront. And the buyer and the seller are in the process of trying to iron out a deal structure.

And I think it's taking a little bit longer than it normally would because of some compliance concerns, which are in turn leading the buyer to have some concerns about potential successor

liability. That is one way I have seen a compliance issue materially impact a potential M&A deal. Can you explain your perspective on this issue and maybe some other compliance issues you've seen?

Joe Kadlec:

Sure. Any buyer would love to acquire a business as free and clear from its history as possible except where maybe that history is helpful. But there are sometimes tax or corporate reasons why the whole entity goes across in a deal. And so, if you buy the equity of a business or it's a merger, everything goes along with that, including the history. As opposed to a deal is structured as an asset purchase where you can pick and choose the assets that are going and pick and choose the liabilities that are going, if any. But that is a deal structuring point and often guided by tax concepts.

But, Cal, you mentioned successor liability. And that's a bit of a different concept entirely. Even if you structure a deal a certain way so that known or unknown liabilities "stay behind", there are cases where a buyer may well not be free of them. In any M&A deal that we're dealing with not just in this space, employee compensation obligations are usually forefront on this. Those cannot be left behind. Sellers need to pay their employees. And if a buyer takes on those obligations, they will need to pay their employees.

In terms of healthcare, though, particularly in the space, buyers need to be talking very closely with the regulatory council, just as sellers should in terms of what obligations may go with the business in a deal, no matter what the legal documents between the two parties say. If there's an investigation either threatened or ongoing, there could be either regulatory obligations or even strategic reasons for the government to know what is happening and get their buy-in. I have done deals like that where we had to get government sign-off for a transaction. But this is really very fact-intensive. There may be reasons not to do that.

On a more going-forward basis, once the deal is done, PE firms should constantly be considering and managing how much day control they're actually exercising. They're leaving decisions to the healthcare teams concerning care. That will better provide protection than if they're the ones day-to-day driving certain strategies of decisions in granular and pointed ways. That's where the risk can get more elevated for them.

Emma Trivax:

That brings me to an interesting point because as we've touched on already, there are perceptual differences to consider from the parties in a transaction. But there are also those perceptual differences that the general public or long-term care facility clients have as well, right? So, placing elderly patients in a for-profit family business versus a for-profit private equity-backed business can evoke different reactions. These considerations, as far as I'm understanding, are really different from those in other industries like software, for example.

Joe Kadlec:

Right. I have to imagine that has some impact. But firms factored that into the extent relevant in a particular space. I'm not sure. Some people, depending on the perspective, might see it as a virtue. But I acknowledge, I suspect that's a bit of a – that's not a majority view. But despite

these challenges, this particular healthcare sector presents significant opportunities. Due to this, it's a severely aging population. We're just beginning to see the next generation entering this space and the needs that they will have.

I'm certainly thinking about it personally in my end, and that will escalate both the problem and the opportunity. That's usually where there's some alignment about doing things in a different way. There's a pressing need, I think, for more flexibility in long-term care, staffing and care management, including increased hiring nurses and patient care assistants who may not necessarily be nurses. But look, we all acknowledge the current trends are moving towards more stringent rules, requirements, and regulations which could complicate efforts to address staffing shortages, effectively short-term and long-term.

Emma Trivax:

That is a valid concern. I see this a lot in my practice. But balancing the need for flexibility with regulatory compliance will be crucial for any private equity firm looking to invest in this sector. It's tough but necessary to get right. While ordinarily private litigants or government enforcement agencies cannot pursue parent entities, subsidiaries, or affiliates just by virtue of their corporate structure, this is not necessarily true for private equity firms whose portfolio companies submit claims to federal healthcare programs like Medicare, Medicaid, or TRICARE under the Federal False Claims Act, which is the government's primary means of pursuing healthcare fraud.

Entities that submit or cause the submission of false claims to federal programs can be held liable and face serious consequences like trouble damages and per-claim civil penalties. This is all to say there are a lot of compliance considerations for private equity firms to consider. Speaking of which, let's talk a little bit more about the regulatory landscape. What recent changes should we be aware of?

Joe Kadlec:

Right. There's one in particular. On November 17th, 2023, CMS issued a final rule requiring nursing facilities to disclose detailed information about their ownership and management structures. This includes information about each of the member facilities governing body, officers, directors, and any additional disclosable parties. The rule aims to increase transparency, particularly focusing on PE ownership, and that's described broadly. There seems to have been a perception that people didn't know who owned what, and the government is certainly aiming to rectify that. This and other regulatory compliance measures are just part of the additional cost that any PE firm needs to be thinking of when they're looking at investment in the space.

Emma Trivax:

It's important to note that this final rule is not in a vacuum, but rather it's part of a much broader effort put out by CMS to change the long-term care landscape. For example, although we aren't discussing it today, CMS also put out a final rule setting forth staffing mandates for long-term care facilities. But to go back to the private equity final rule, are there any enforcement mechanisms in place for non-compliance with these new regulations?

Joe Kadlec:

Very stringent ones. CMS can deny or revoke Medicare enrollment if a facility provides false information regarding ownership. Of course, everyone should take the filing and notice it. Notice requirements seriously as that's the first stage of issues that an investor or owner could face. Penalties can include fines or imprisonment or both in accordance with current law and regulations.

Those words that I just mentioned are not something every private equity investment faces, right? The risks of fines or imprisonment. It's important to factor that in and, again, take it seriously. Moreover, CMS can as applicably deny, revoke, or deactivate enrollment, or even reject an enrollment application in certain instances. The provider should be providing complete information to CMS here.

Cal Stein:

Yes. That's a really important point, Joe. I mean, CMS has the authority to deny or revoke enrollment if the provider certified as true anything that is misleading or false in the enrollment application. A provider that is denied enrollment on that basis is subject to a reapplication bar for up to three years. If an enrollment is revoked, the facility faces a reapplication bar of up to 10 years. This is, to state the obvious, a large issue for facilities as any kind of waiting period to reapply can cause a real significant negative impact on business operations.

Emma Trivax:

Of course, the False Claims Act allows for whistleblower actions to address fraudulent claims which, as I mentioned above, is another enforcement mechanism against facilities that provide false information. Just as an added note, violations of applicable laws and regulations at the facility level are a risk not only to the PE firm's bottom line, which is based on the facility being financially impaired, but can also pose a direct threat to the private equity firm.

Even prior to this final rule, I've seen this a lot. I'm sure you both have as well. The federal government and private whistleblowers have been alleging with increasing frequency and success that facilities' non-compliance with healthcare laws and resulting submission of false claims to federal payers were "caused" by private equity investors. How might this final rule impact private equity investment in nursing facilities?

Joe Kadlec:

It causes some concern, right, because anybody that's investing is mindful of the exit strategy, at least from this PE lens. If there's uncertainty about the exit strategy, that could impact people's decisions when they're going in. The final rule that you're talking about defined PE very broadly, so it includes both direct and indirect ownership interests. That will cover many PE firms, but that's not a surprise because there are very often holding companies in between for benign reasons that have zero to do with hiding ownership. They're there for debt or co-invest structures.

Further, beyond what we're talking about with CMS, states are taking a very active role in this, and we're tracking very closely state-by-state actions or the legislative measures in looking at

ownership in healthcare transactions and what disclosures are required. This is rapidly evolving during 2024. Also, this is not related to healthcare specifically, but many of you may have heard or I hope you've heard of the new federal Corporate Transparency Act that went into effect this year with FinCEN. That requires disclosure filings for all types of businesses, not just healthcare, with only limited exceptions. Those are disclosures about basic ownership information, so there's plenty of information that will be out there.

The final CMS rule also will create a new database to track and identify nursing homeowners and operators across the states. That registry will use information collected through provider enrollment and health and safety inspections to provide more information about prospective owners and operators to the states. A lot of information will be out there, and that likely could lead to increased scrutiny and regulatory requirements which, as I mentioned, may deter some PE investment. However, it will also enhance incentives for PE firms to conduct thorough due diligence on acquisition targets when they're going in to ensure there's compliance with the new disclosure requirements.

It's an interesting dynamic right now. There are a lot of facilities that need financial investment or support, and it's an interesting dichotomy of what goes into this right now.

Cal Stein:

I'd like to now pivot to another consideration on the regulatory landscape as we wind down our discussion today. Joe, Senators Warren and Markey have proposed the corporate crimes against Health Care Act. Can you talk a little bit about this legislation and how it might affect private equity-backed facilities if it is ultimately enacted? I also pose the question of whether this act or this potential legislation is really just an outgrowth of the perception about private equity-owned facilities that we talked a little bit about earlier. I would love to get your perspective.

Joe Kadlec:

Right. Well, the proposed legislation includes provisions for unjust enrichment claw-backs, criminal penalties, civil penalties. Those are scary words for investors. It aims to hold the corporate entities accountable for actions that result in patient harm. Yes, this could further chill the investment in long-term care specifically, but it also certainly pushes for more rigorous due diligence and compliance efforts, both leading into a transaction and once somebody is an owner.

Like I said earlier, Cal, investors really need to be eyes wide open when moving into the space. This is important to know, both for current laws and looking forward at the future regulatory landscape. I've always appreciated working with you two and your regulatory team but also our state attorneys general practice and our federal and state antitrust colleagues because they are really watching and reading the tea leaves here about where things are going in the future. That's critically important if somebody's making investment or looking to sell down the road. People should be thinking about the dynamics about whether now versus five years from now is a better time to sell if that's something you're thinking of doing. Keeping those forward-looking trends at the forefront is important.

Cal Stein:

Thanks, Joe. This has been a really insightful discussion. I mean, it's clear to me that the intersection of private equity and healthcare is complex and evolving. We will continue to monitor these developments and their impact on the industry.

Joe Kadlec:

Thanks, Cal. Thanks, Emma. Looking forward to our next discussion.

Emma Trivax:

Thank you, Joe. It's been a pleasure.

Cal Stein:

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