

# Denterlein

To: Massachusetts Assisted Living Association  
From: Denterlein  
Re: Private Equity Legislation Messaging  
Date: May 28, 2024

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The saga of Steward Hospitals, mismanaged into bankruptcy while regulators seemingly turned a blind eye, has created a sudden interest in legislating private equity investment in health care. Some of the legislation, both at the federal and state levels, has lumped assisted living in with clinical health care settings. Mass-ALA faces the challenge of distancing private-pay assisted living from government-subsidized health care settings, without seeming indifferent to the negligence that led to Steward's bankruptcy.

## **Topline Message**

Assisted living residences are a vastly different setting than community hospitals. Limiting private equity investment in assisted living residences would result in reduced senior living options, at a time when demand is already outpacing supply. We urge legislators to remove assisted living residences from any legislation regulating private equity investment in health care.

## **Different from Steward**

- While we appreciate legislators' interest in addressing the crisis created by Steward Hospitals' bankruptcy, the residential setting of assisted living communities should not be lumped together with the clinical health care setting of community hospitals.
- Steward's community hospitals operate on a totally different financing model than assisted living. While 70% of Steward patients pay via Medicare or Medicaid, most Massachusetts assisted living residents pay privately, meaning assisted living residences bear no risk for taxpayers.
- The private pay, residential model of assisted living creates value for residents and the overall health system. Unlike community hospitals, Massachusetts assisted living residences are not reliant on Medicare or Medicaid reimbursement.

## **A Residential Model**

- Supporting assisted living residences is attractive to many investors because they see the chance to do well by doing good. Whether individuals, groups, or pooled investment

funds, investors see assisted living residences as stable, long-term real estate investments.

- Private equity ownership may mean new investment in facilities and expanded services, as a Congressional [report](#) showed.
- Overregulating private investment in assisted living will greatly deter investment in assisted living at a time when demand is expected to outpace supply.
- The consequences of eliminating private investment in assisted living will result in critical access shortages for our older adults over the next 20 years, and will almost certainly make assisted living less affordable.
- Capital partners, such as private equity investors and real estate investment trusts (REITs), are essential supporters of maintaining and expanding successful, high-quality assisted living communities.
- Massachusetts regulations recognize the primarily residential model of assisted living by correctly placing them under the purview of the Executive Office of Elder Affairs (not under the Department of Public Health).



**To:** Argentum Board of Directors, Argentum Member Owner/Operator CEOs, Argentum Member Industry Partner CEOs, Argentum State Partners, members of the Argentum Legal & Government Affairs and Public Policy Committees

**From:** James Balda, President & CEO

**Re:** Health Care Private Equity Reform Legislation Introduced

*\*You are encouraged to share this information with your peers and colleagues throughout the industry as you deem appropriate.\**

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As anticipated, yesterday Senators Elizabeth Warren (D-MA) and Ed Markey (D-MA) introduced [S. 4503](#), the [Corporate Crimes Against Health Care Act of 2024](#) to address alleged private equity and corporate abuse in health care (see [bill text](#) and [summary](#)). This legislation was expected due to the Steward Health Care bankruptcy affecting 8 hospitals in Massachusetts.

**Please note, this legislation is separate and distinct from the [Health Over Wealth Act](#), legislation expected to be introduced by Senator Markey in the coming weeks.**

Senator Warren's bill primarily targets hospitals, certain physician practices and nursing homes, but also includes **assisted living communities**, hospice programs, and home health agencies among other specified entities subject to the legislation. The bill also provides the Secretary of the Department of Health the authority to add other entities that "furnish health care items and services" and imposes a number of criminal, civil and financial sanctions and requirements on private equity and similar entities as well as executives.

Provisions in the legislation include:

- Creates a new criminal penalty of up to 6 years in prison for executives who loot health care entities like nursing homes and hospitals, if that looting results in a patient's death.
- Provides state attorneys general and the DOJ with the power to claw back all compensation, including salaries, issued to private equity and portfolio company executives within a 10-year period before or after an acquired health care firm experiences serious, avoidable financial difficulties due to that looting.
- Authorizes an associated civil penalty of up to 5 times the clawback amount.
- Prohibits payments from federal health programs to entities that sell assets or use assets for a loan collateral made to a REIT, with an exemption for current arrangements; repeal a rule in the Tax Code that allows taxable REIT subsidiaries to exert influence on the operations of health care entities; and remove the 20 percent pass-through deduction, passed in the 2017 Trump tax cuts, for all REIT investors.
- Requires health care providers receiving federal funding to publicly report mergers, acquisitions, changes in ownership and control, and financial data, including debt and debt-to-earnings ratios.
- Mandates an HHS OIG report to Congress on the harms of corporatization in health care.

In addition to the Warren bill, we are continuing to anticipate the introduction of Senator Markey's Health over Wealth Act, which similarly would have extreme negative impacts on private equity's ability to finance health care and similar entities which also include **assisted living communities**. Argentum and ASHA submitted [joint comments](#) to Senator Markey last month outlining our concerns about including assisted living with clinical health care settings and specifically requested to be removed from the definition of health care entities. We believe that this legislation will be introduced sometime in July, although there is not a firm timetable.

We will be providing more detailed analysis of both pieces of legislation and any changes of status.

#### Next Steps:

- We plan to coordinate with ASHA on a joint response to Senator Warren's bill and a meeting as soon as possible.
- We are coordinating with our State Partner, the Massachusetts Assisted Living Association, on local outreach with both Senators Warren and Markey.
- We are planning a briefing for Congressional staff with industry experts to present on the nuances of private equity in assisted living.
- We are coordinating with other industry stakeholders on a response to Senator Warren.
- We are continuing to meet with Congressional offices to relay our concerns about increasing legislative proposals relating to private equity in health care and to exclude assisted living from those proposals.

We will continue to keep you updated on any developments relating to efforts to regulate private investment in health care and our actions to limit the impacts on assisted living. If you have any questions or concerns, please do not hesitate to reach out to me or Maggie Elehwany, senior vice president of public affairs, at [melehwany@argentum.org](mailto:melehwany@argentum.org).

**James R. Balda**

President & CEO

**ARGENTUM** | *Expanding Senior Living*

20 F Street NW, 7th Floor

Washington DC 20001

D: 703.562.1190 | C: 703.209.2601

[jbalda@argentum.org](mailto:jbalda@argentum.org) | [www.argentum.org](http://www.argentum.org)



# ‘Private equity abuse’ in long-term care is target of new federal bill



**LOIS A. BOWERS**  
[@LOIS BOWERS](#)

JUNE 13, 2024  
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Two Democratic senators from Massachusetts have introduced a bill they say is meant to “root out corporate greed and private equity abuse” in nursing homes, assisted living communities, home health agencies, hospices and other “healthcare entities.”

Post-acute and long-term care provider advocates, however, are calling the legislation “misguided,” “overly broad” and “concerning,” saying that it would threaten existing care models while serving as “a distraction from the real issues that impact the majority of providers.” Some also are questioning the inclusion of assisted living in the bill.

Sens. Ed Markey and Elizabeth Warren announced the [Corporate Crimes Against Health Care Act of 2024](#) on Wednesday.

“Over the last decade, private equity fund assets have more than doubled, totaling \$8.2 trillion in 2023,” according to a joint press release issued by the senators. “While private equity funds have purchased companies in nearly every sector of the economy, their aggressive deal-making in the healthcare sector poses grave risks to patient health and raises questions about potential abuse of taxpayer dollars, as private equity companies routinely load up portfolio companies with usurious debt, sell off valuable assets, and extract exorbitant dividends and fees — regardless of how their investments perform.”

The legislation, according to the text, would apply to entities such as nursing homes, assisted living communities, home health agencies, hospice programs, hospitals, independent freestanding emergency departments, health systems, physician practices, ambulatory surgical centers, behavioral health treatment facilities and renal dialysis facilities owned or controlled by entities such as real estate investment trusts, venture capital funds and private funds.

The act, [according to the senators](#) and bill text, would:

- Create a new criminal penalty of a minimum of one year and a maximum of six years in prison for executives if their actions create a “triggering event” that results in someone’s injury or death.
- Provide state attorneys general and the Department of Justice with the power to claw back all compensation, including salaries, issued to private equity and portfolio company executives within a 10-year period before or after an acquired healthcare firm experiences “serious, avoidable financial difficulties” due to the triggering event.
- Authorize an associated civil penalty of up to five times the clawback amount.
- Prohibit payments from federal health programs to entities that sell assets or use assets for a loan collateral made to a REIT, with an exemption for current arrangements; repeal a rule in the tax code that allows taxable REIT subsidiaries to exert influence on the operations of healthcare entities; and remove the 20% pass-through deduction, passed in 2017, for all REIT investors.
- Require healthcare providers receiving federal funding to publicly report mergers, acquisitions, changes in ownership and control, and financial data, including debt and debt-to-earnings ratios.
- Require the Health and Human Services Office of Inspector General to produce a report for Congress within three years of enactment that “evaluates profit-driven practices, including cost-cutting practices and revenue-enhancing practices, in healthcare delivery,” including overbilling or up-coding, inflated patient/resident assessments, executive and provider compensation “designed to increase revenue or profits, such as bonuses based on productivity, relative value units or service volume,” staff reductions, the substitution of caregivers with technology, service mix changes to maximize revenue, and more.

‘Misguided in its accusations’

Clif Porter, senior vice president of government relations at the American Health Care Association/National Center for Assisted Living,

told *McKnight's* that the groups “fully support financial transparency and reporting” but that the legislation is “misguided in its accusations against nursing homes and long-term care providers.”

“Less than 5% of nursing homes are owned by private equity firms,” he said. “These investments largely happened a decade ago but were unsuccessful, and many of the larger private equity firms have since left the nursing home industry.”

Since 2015, Porter said, nursing homes have accounted for less than 10% of private equity capital and deals in healthcare. “The reality is that owners of long-term care facilities are extremely diverse and are often run by Main Street, not Wall Street,” he said.

Porter said that rather than focus on private equity in long-term care, which he said is “a distraction from the real issues that impact the majority of providers, like Medicaid underfunding and workforce shortages,” policymakers should “find a proper balance of oversight while still encouraging more investments.”

Given the right incentives, Porter said, investors will enter the healthcare sector “for the right reasons, producing great outcomes for residents and patients, modernizing our services and buildings, and expanding access to care.”

‘A number of concerning provisions’

The American Seniors Housing Association told *McKnight's* that it has “serious concerns” about the bill, which the association described as “overly broad” and “punitive.”

“The legislation calls for a number of concerning provisions, including imposing both civil and criminal penalties, including prison time, for bad outcomes in healthcare entities financed with private equity and other private investment,” Vice President of Government Affairs Jeanne McGlynn Delgado said. “The bill largely targets REITs by prohibiting Medicare-funded entities from engaging with REITs, repeals the special rule for the RIDEA structures and eliminates the 20% deduction for REIT dividends. It also includes a section calling for mandatory reporting of health-related ownership information and includes assisted living as a ‘specified entity,’ which doesn’t make much sense but yet has attached to it a noncompliance penalty of \$5 million.”



Delgado said that ASHA “will work to ensure this and other similar initiatives do not deter the much-needed investment in senior living required to serve the aging population.”

Assisted living ‘fundamentally different’

The inclusion of assisted living in the bill also is a concern for Argentum, said Argentum Senior Vice President of Public Affairs Maggie Elehwany.

“Assisted living communities are fundamentally different from the healthcare entities included in the legislation,” she said. “Assisted living communities provide access to healthcare services but primarily offer supportive housing and personalized care designed to promote independence and quality of life for older adults.”

Unlike the healthcare entities defined in the proposed legislation, she said, assisted living does not depend on Medicare and Medicaid reimbursement or private health insurance. Rather, Elehwany added, it primarily is a market-driven, private-pay residential environment.

“Including assisted living in this bill could have enormous consequences for the 1.4 million Americans who today call assisted living home and the millions of seniors who will need care in the future,” she said, adding that inclusion “would threaten a model of care that improves the lives of seniors.”

The regulatory environment should support the growth and sustainability of assisted living, Elehwany said.

“Private capital investment in assisted living is needed to meet rapidly growing demand, and legislation that seeks to curtail these vital investments will likely result in access shortages for millions of seniors for decades to come and almost certainly make assisted living less affordable,” she said.