

September 27, 2023

Demetrios Kouzoukas
Board Member, Board of Directors
Clover Health Investments, Corp.
3401 Mallory Ln. Suite 210
Franklin, TN 37067

Dear Mr. Kouzoukas

I write today regarding my concerns about conflicts of interest that would arise if you are confirmed to serve as Public Trustee of the Social Security and Medicare trust funds. In particular, your extensive corporate ties and ongoing financial interest in the work of the Trustees appear to create irresolvable conflicts of interest.

You are scheduled to appear at a confirmation hearing before the Senate Finance Committee on September 28, 2023.¹ I intend to discuss these matters at that hearing and ask that you come prepared to do so.

The Public Trustees' responsibilities include "report[ing] to the Congress each year on past and future status [of the Medicare trust funds], report[ing] to the Congress immediately if the amount in either trust fund is too small, [and] review[ing] policies followed in managing [the Medicare] trust funds and recommend[ing] changes."² Trustees play an obvious and significant role in

¹ Senate Finance Committee, "Hearing to Consider the Nominations of Marjorie A. Rollinson, of Virginia, to be Chief Counsel for the Internal Revenue Service and an Assistant General Counsel in the Department of the Treasury, Patricia Hart Neuman, of the District of Columbia, to be a Member of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund; to be a Member of the Board of Trustees of the Federal Hospital Insurance Trust Fund; to be a Member of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and Demetrios L. Kouzoukas, of Virginia, to be a Member of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund; to be a Member of the Board of Trustees of the Federal Hospital Insurance Trust Fund; to be a Member of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund," September 28, 2023, <https://www.finance.senate.gov/hearings/hearing-to-consider-the-nominations-of-marjorie-a-rollinson-of-virginia-to-be-chief-counsel-for-the-internal-revenue-service-and-an-assistant-general-counsel-in-the-department-of-the-treasury-patricia-hart-neuman-of-the-district-of-columbia-to-be-a-member-of-the-board-of-trustees-of-the-federal-supplementary-medical-insurance-trust-fund-to-be-a-member-of-the-board-of-trustees-of-the-federal-hospital-insurance-trust-fund-to-be-a-member-of-the-board-of-trustees-of-the-federal-old-age-and-survivors-insurance-trust-fund-and-the-federal-disability-insurance-trust-fund-and-demetrios-l-kouzoukas-of-virginia-to-be-a-member-of-the-board-of-trustees-of-the-federal-supplementary-medical-insurance-trust-fund-to-be-a-member-of-the-board-of-trustees-of-the-federal-hospital-insurance-trust-fund-to-be-a-member-of-the-board-of-trustees-of-the-federal-old-age-and-survivors-insurance-trust-fund-and-the-federal-disability-insurance-trust-fund>.

² Social Security Administration, "Social Security/Medicare Trustees," <https://www.ssa.gov/history/reports/trustees/historypt.html>.

protecting the Medicare program — a role that, in your case, will be compromised by your financial conflicts of interest.

If you are confirmed, one of your most important roles will be to assist in the preparation of the annual Medicare Trustees Report — a report essential to the public’s knowledge and understanding of the solvency of the Medicare trust funds.³ This report, and its projections regarding the financial outlook of the trust funds, is an essential tool for Congress, the Centers for Medicare and Medicaid Services (CMS), and the public to evaluate the health of the program and the need for changes.⁴ However, your role on the board of directors for the for-profit health insurer Clover Health⁵ — a company that derives nearly all of its revenue from Medicare, including a substantial share of its total revenue from Medicare Advantage⁶ — gives you an inseparable personal financial stake in the Trustees’ Medicare projections and should disqualify you from the role of Public Trustee.

The Public Trustee positions were created in 1983 to “represent the public in the report development process,” and help establish the underlying assumptions of the Medicare Trustees Report,⁷ an important role in the context of the wide range of threats facing Medicare, including well-documented overpayments to Medicare Advantage plans.⁸ Previous Medicare Trustees Reports have repeatedly noted that costs for taxpayers were higher in Medicare Advantage than in traditional Medicare, due in large part to “higher risk scores for beneficiaries” in these plans.⁹ This should be an obvious concern for the Trustees and any other officials responsible for Medicare’s financial health.

But according to your personal financial disclosure, you have served on the Board of Directors of Clover Health since July 2021.¹⁰ Clover Health is a provider of Medicare Advantage plans, and Medicare Advantage premiums “account[] for a significant portion of [Clover’s] [t]otal

³ *Id.*; Centers for Medicare & Medicaid Services, “Trustees Report & Trust Funds,” <https://www.cms.gov/data-research/statistics-trends-and-reports/trustees-report-trust-funds>.

⁴ Government Accountability Office, “Social Security and Medicare: Improved Schedule Management Needed for More Timely Trust Fund Reports,” July 2019, p. 3, https://www.finance.senate.gov/imo/media/doc/social_security_and_medicare_improved_schedule_management_needed_for_more_timely_trust_fund_reports.pdf.

⁵ Clover Health, “Board of Directors,” <https://investors.cloverhealth.com/governance/board-of-directors>.

⁶ Clover Health, “Clover Health Reports Strong Second Quarter 2023 Results; Highlights Improved Financial Performance and Guidance Ranges,” press release, August 8, 2023, <https://investors.cloverhealth.com/static-files/23b381f6-142e-4653-8834-4823d022adf2>.

⁷ Government Accountability Office, “Social Security and Medicare: Improved Schedule Management Needed for More Timely Trust Fund Reports,” July 2019, p. 4, https://www.finance.senate.gov/imo/media/doc/social_security_and_medicare_improved_schedule_management_needed_for_more_timely_trust_fund_reports.pdf.

⁸ USC Schaeffer Center, “Medicare Advantage Enrolls Lower-Spending People, Leading to Large Overpayments,” Steven M. Lieberman, Paul Ginsburg, and Samuel Valdez, June 13, 2023, <https://healthpolicy.usc.edu/research/ma-enrolls-lower-spending-people-leading-to-large-overpayments/>.

⁹ Center for Medicare and Medicaid Services, “2018 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds,” June 5, 2018, p. 26, <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/reporttrustfunds/downloads/tr2018.pdf>.

¹⁰ Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) for Demetrios Kouzoukas, January 5, 2023, [On File with the Office of U.S. Senator Elizabeth Warren].

revenues.”¹¹ In 2022, Clover made more than \$1 billion in revenue from Medicare Advantage, which was approximately one-third of the company’s total revenue for the year.¹² Your disclosure stated that not only do you actively hold more than 25,000 shares in the company (worth approximately \$25,000 as of today),¹³ but you plan to remain on Clover’s Board for the duration of your service in government.¹⁴ In 2022 alone, you received compensation of more than \$100,000 from Clover Health for your role.¹⁵

As I have repeatedly warned, rampant profiteering in the Medicare Advantage program costs American taxpayers billions of dollars each year, including through a practice called “upcoding,” which involves adding diagnosis codes to a patient’s medical record to make a patient appear sicker on paper.¹⁶ Insurers can collect more money from the government to provide coverage for sicker beneficiaries, and whatever the insurance company does not pay out in claims, it gets to pocket.¹⁷ Clover Health faced an inquiry from the Department of Justice (DOJ) regarding this exact practice.¹⁸ DOJ has alleged that Clover’s proprietary software, Clover Assistant, is used to “identify opportunities to increase a patient’s Medicare risk score and ‘nudge’ physicians to update a patient’s chronic conditions.”¹⁹

In addition, a “significant” portion of Clover’s revenue — and its health as a business — is dependent on the federal government continuing to fund Medicare Advantage programs at current or higher levels, presenting an inherent conflict of interest should you be confirmed as a Public Trustee.²⁰ In its most recent SEC filing, Clover Health warned that “changes or developments in Medicare or the health insurance system and laws and regulations governing the health insurance markets in the United States could materially adversely affect [Clover’s] business, results of operations, financial condition, and prospects.”²¹ The Medicare Trustees Report informs and impacts those decisions, which could directly affect Clover’s bottom line.

¹¹ Securities and Exchange Commission, “Clover Health Investments, Corp.,” Form 10-K, pp. 58 and 39, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1801170/000180117023000015/clov-20221231.htm>.

¹² *Id.*

¹³ Nasdaq, “Clover Health Investments, Corp. Class A Common Stock (CLOV),” accessed September 25, 2023, <https://www.nasdaq.com/market-activity/stocks/clov>.

¹⁴ Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e) for Demetrios Kouzoukas, January 5, 2023, [On File with the Office of U.S. Senator Elizabeth Warren].

¹⁵ *Id.*

¹⁶ NPR, “Medicare Advantage’s cost to taxpayers has soared in recent years, research finds,” Fred Schulte, November 11, 2021, <https://www.npr.org/sections/health-shots/2021/11/11/1054281885/medicare-advantage-overcharges-exploding>.

¹⁷ Stat News, “Upcoding: one reason Medicare Advantage companies pay clinicians to make home health checkups,” Robert M. Kaplan and Paul Tang, January 19, 2023, <https://www.statnews.com/2023/01/19/rein-in-upcoding-medicare-advantage-companies/>.

¹⁸ Fierce Healthcare, “Clover Health settles lawsuits alleging that it hid a federal probe from investors,” Frank Diamond, June 23, 2023, <https://www.fiercehealthcare.com/payers/clover-health-settles-lawsuits-alleging-it-hid-federal-probe-investors>.

¹⁹ Becker’s Payer Issues, “Clover Health settles accusations of misleading investors for \$22M,” Jakob Emerson, April 24, 2023, <https://www.beckerspayer.com/payer/home-page/clover-health-settles-accusations-of-misleading-investors-for-22m.html>.

²⁰ Securities and Exchange Commission, “Clover Health Investments, Corp.,” Form 10-K, p. 39, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1801170/000180117023000015/clov-20221231.htm>.

²¹ *Id.*

Federal ethics law bars any government official, “including a special Government employee” such as a Public Trustee, from “participat[ing] personally and substantially” in any “particular matter in which ... he [or an] ... organization in which he is serving as ... director ... has a financial interest.”²² Given your stock holdings and retainer from Clover Health, this would appear to require recusal from many actions by the Trustees.²³ These recusal requirements could be waived — but only if Clover’s financial interest in the matter were “not so substantial as to be deemed likely to affect the integrity” of your services.²⁴ But Clover has a clear and direct financial interest in the Trustees’ projections and recommendations, so a recusal waiver would not be appropriate. And recusing from these actions would gut your ability to contribute substantively to the Boards. In short, it will be impossible for you to serve as a full member of the Boards of Trustees while also complying with federal ethics law.

While I am supportive of President Biden’s efforts to fill the roles of Public Trustees, which have been vacant since 2015,²⁵ I believe your service on Clover Health’s Board of Directors presents an unavoidable conflict of interest that would prevent you from effectively serving as a Public Trustee. I ask that you come prepared to discuss these conflicts at your September 28, 2023 nomination hearing before the Senate Finance Committee.

Sincerely,



Elizabeth Warren
United States Senator

²² 18 U.S.C. § 208(a).

²³ Cf. Office of Government Ethics Summit, “THE NETTLESOME QUESTION OF PARTICULAR MATTERS OF GENERAL APPLICABILITY,” September 19, 2014, https://extapps2.oge.gov/Training/OGETraining.nsf/xsp/.ibmmodes/domino/OpenAttachment/training/ogetraining.nsf/EA815D87E644D14A852581F000536046/Body/HO_Eisner_Nettlesome.pdf.

²⁴ 18 U.S.C. § 208(b)(1).

²⁵ Social Security Administration, “Status of the Social Security and Medicare Programs,” 2023, <https://www.ssa.gov/oact/trsum/>.