

Congress of the United States

Washington, DC 20515

September 29, 2024

Benson Sloan
Chief Executive Officer
Rural Healthcare Group
40 Burton Hills Blvd #370
Nashville, TN, 37215

Dear Mr. Sloan,

We write regarding our concerns with Rural Healthcare Group's (RHG's) proposed acquisition of Steward Health Care's (Steward's) physician group, Stewardship Health (Stewardship).¹ We are concerned about the risks to Massachusetts residents and health professionals, who are still suffering from the private equity-induced damage of Steward's collapse, if they were now at the mercy of another private equity firm intent on squeezing more profits out of our health care system.

Steward filed for bankruptcy on May 6, 2024, after corporate executives, private equity investors, and predatory landlords pillaged the company, putting patients and communities at risk and ultimately resulting in the closure of two Massachusetts hospitals.² On August 12, 2024, Steward announced it had entered into an agreement to sell Stewardship to your company, private equity-owned RHG.³ This agreement followed an attempted acquisition of Stewardship by UnitedHealth Group's (UnitedHealth's) subsidiary Optum, which Optum abandoned following congressional concerns related to competition and Department of Justice antitrust scrutiny.⁴

RHG's proposed acquisition now awaits regulatory review. However, we remain deeply concerned that this proposed transaction, if allowed to proceed, would empower yet another private equity firm to prey on Massachusetts patients and providers, sucking taxpayer dollars out of the system for the profit of a few corporate executives and shareholders. In fact, your company is a subsidiary of private equity firm Kinderhook, which has a history of predatory practices.⁵ And it has worrisome ties to a health software company, NaviHealth, which is the

¹ Fierce Healthcare, "Steward Health Care agrees to sell physician group to private equity affiliate in \$245M deal," Heather Landi, August 13, 2024, <https://www.fiercehealthcare.com/providers/steward-agrees-sell-physician-group-private-equity-affiliate-245m-deal>.

² Letter from Senator Elizabeth Warren to United States Trustee Director Twomey, June 3, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_warren_brown_letter_to_ustp_re_steward_bankruptcy1.pdf.

³ Fierce Healthcare, "Steward Health Care agrees to sell physician group to private equity affiliate in \$245M deal," Heather Landi, August 13, 2024, <https://www.fiercehealthcare.com/providers/steward-agrees-sell-physician-group-private-equity-affiliate-245m-deal>.

⁴ Letter from Senator Elizabeth Warren to FTC Chair Khan and DOJ Assistant Attorney General Kanter, April 5, 2024, https://www.warren.senate.gov/imo/media/doc/letter_to_ftc_and_doj_on_optum-stewardship_merger.pdf.

⁵ Private Equity Stakeholder Project, "Lost in Interpretation: Private Equity's Capture of a Vital Sign Language Translation Tool," August 7, 2024, <https://pestakeholder.org/reports/lost-in-interpretation-private-equitys-capture->

subject of a class action lawsuit stemming from its work to develop algorithms used by insurers to improperly deny health care for patients. We are also concerned that RHG may employ practices to shield it from state laws that are designed to protect patients and physicians.⁶

You, along with RHG's COO, and chief of staff spent nearly 14 years at NaviHealth building a product that put insurers' profits over the needs of patients and the clinical judgment of their doctors. An investigation by STAT found that patients were routinely discharged earlier or outright denied care at post-acute care facilities due to NaviHealth's algorithm, which had an alleged 90% error rate.⁷ However, insurers, including UnitedHealth, followed NaviHealth's recommendations to a tee – even when it went against the judgement of the patients' doctors – resulting in indiscriminate denials of care. According to documents reviewed by STAT, some of the decisions “had little or no basis in clinical evidence,” forcing patients with “open wounds” and “broken bones” to lose out on care that they were entitled to, in some cases resulting in otherwise preventable deaths.⁸ We are particularly alarmed that allowing the same executives that ran NaviHealth when these dangerous tools were developed and sold to control physicians in the Commonwealth will put Stewardship's patients and clinicians in harm's way. And more specifically, we are concerned that you – who spent two years at NaviHealth after it was acquired by UnitedHealth – may have played a direct role in the algorithm-driven denials of care at UnitedHealth, which is now the subject of a class action law suit and a DOJ investigation.⁹ In addition, we are troubled that RHG's pending acquisition may follow the same playbook that private equity firms and large insurers have deployed to aggressively acquire physician practices across the country and squeeze profits out of federal health programs.¹⁰ In just the last few years, private equity and for-profit insurers have invested roughly \$50 billion in primary care alone.¹¹ Once in control of these practices, the new owners pressure physicians to add more diagnoses to

of-a-vital-sign-language-translation-tool/.

⁶ Private Equity Stakeholder Project, “U.S. healthcare industry should be wary of private equity's acquisition of Steward Health Care physician network,” August 15, 2024, <https://pestakeholder.org/news/u-s-healthcare-industry-should-be-wary-of-private-equitys-acquisition-of-steward-health-care-physician-network/>.

⁷ STAT, “UnitedHealth faces class action lawsuit over algorithmic care denials in Medicare Advantage plans,” Casey Ross and Bob Herman, November 14, 2023, <https://www.statnews.com/2023/11/14/unitedhealth-class-action-lawsuit-algorithm-medicare-advantage/>.

⁸ STAT, “UnitedHealth used secret rules to restrict rehab care for seriously ill Medicare Advantage patients,” Bob Herman and Casey Ross, December 28, 2023, <https://www.statnews.com/2023/12/28/medicare-advantage-united-health-navihealth-rehab-care-restrictions/>; STAT, “UnitedHealth discontinues a controversial brand amid scrutiny of algorithmic care denials,” Bob Herman and Casey Ross, October 23, 2023, <https://www.statnews.com/2023/10/23/unitedhealth-optum-navihealth-rebranding-algorithm/>; Letter from Senator Elizabeth Warren to FTC Chair Khan, DOJ Assistant Attorney General Kanter, and HHS Secretary Becerra, June 5, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_warren_response_to_hhsdojftcrfioncorporategreedrfti.pdf; STAT, “UnitedHealth argues algorithm lawsuit should be dismissed because patients didn't spend years appealing denials,” Bob Herman and Casey Ross, May 22, 2024, <https://www.statnews.com/2024/05/22/unitedhealth-class-action-lawsuit-algorithm-motion-to-dismiss/>.

⁹ STAT, “UnitedHealth faces class action lawsuit over algorithmic care denials in Medicare Advantage plans,” Casey Ross and Bob Herman, November 14, 2023, <https://www.statnews.com/2023/11/14/unitedhealth-class-action-lawsuit-algorithm-medicare-advantage/>.

¹⁰ JAMA Network, “Value-Based Payment and Vanishing Small Independent Practices,” Hayden Rooke-Ley, JD, Zirui Song, MD, PhD, Jane M. Zhu, MD, MPP, August 22, 2024, <https://jamanetwork.com/journals/jama/article-abstract/2822764>.

¹¹ American Economic Liberties Project, “Medicare Advantage and Vertical Consolidation in Health Care,” Hayden Rooke-Ley, April 2024, <https://www.economicliberties.us/wp-content/uploads/2024/04/Medicare-Advantage-AELP.pdf>.

patients' records to secure higher government payments, while also cutting staff and shortening the duration of appointments to boost profits, among other tactics.¹² These profit-driven strategies raise costs,¹³ degrade quality of care,¹⁴ and increase physician turnover.¹⁵

Today, most states, including Massachusetts, have laws on the books banning the corporate practice of medicine in order to prevent corporate entities from owning physicians and interfering with their clinical judgment.¹⁶ However, corporate entities – including private equity firms – have developed sophisticated ways to circumvent these laws. One common tactic involves entering into “management services agreements,” which allow the corporate entity to manage and operate the physician practice, while preserving physicians as nominal owners.¹⁷ Indeed, it appears that RHG – which boasts 14 primary care clinics in Tennessee and North Carolina¹⁸ – has structured its health care business in this way, raising important questions about compliance with state law and the future of Stewardship’s physicians and their clinical autonomy should this deal proceed.¹⁹

A recent STAT investigation revealed the consequences of this strategy on one primary care practice in Connecticut that was taken over by UnitedHealth subsidiary Optum:

Optum ... initially promised the doctors some agency over the delivery of care. On paper, it looked like control of ... offices would remain in the hands of physicians. Optum bought the overarching management organization, while the practices were owned by a couple of physician shareholders. The behemoth used this fact to its advantage, touting that the group would be “physician-owned” in the press and to a regulatory body in Connecticut, which then applied less scrutiny to the deal.

In reality, Optum came to control major aspects of the practice. The company’s creeping influence morphed into a full takeover.... Corporate managers filled

¹² *Id.*; Letter from Senator Elizabeth Warren to FTC Chair Khan, DOJ Assistant Attorney General Kanter, and HHS Secretary Becerra, June 5, 2024, https://www.warren.senate.gov/imo/media/doc/final_warren_response_to_hhsdojftcrfioncorporategreedrfi.pdf.

¹³ STAT, “Extensive review finds private equity owners jack up the cost of medical care,” Tara Bannow, July 20, 2023, https://www.statnews.com/2023/07/20/private-equity-spikes-prices/?matchtype=&keyword=&cid=20897764032&agid=&device=c&placement=&creative=&target=&adposition=&utm_source=google&utm_medium=cpc&utm_campaign=pmax-competitors&utm_term=&utm_content=&hsa_acc=5862992171&hsa_cam=20897764032&hsa_grp=&hsa_ad=&hsa_src=x&hsa_tgt=&hsa_kw=&hsa_mt=&hsa_net=adwords&hsa_ver=3&gad_source=1&gclid=CjwKCAjwufq2BhAmEiwAnZqw8oUFw_rZR7m47l8rkIsqdzGmQuk9sr8caWI9Gr5jdYIdov4XgOTDhhoCGogQAvD_BwE.

¹⁴ *Id.*

¹⁵ Health Affairs, “Workforce Composition in Private Equity-Acquired Versus Non-Private Equity-Acquired Physician Practices,” Joseph Dov Bruch et. al., January 2023, https://www.yashaswinisingh.com/files/PE_workforce.pdf.

¹⁶ The New England Journal of Medicine, “A Doctrine in Name Only — Strengthening Prohibitions against the Corporate Practice of Medicine,” Jane M. Zhu, Hayden Rooke-Ley, and Erin Fuse Brown, September 9, 2023, <https://www.nejm.org/doi/full/10.1056/NEJMp2306904>.

¹⁷ *Id.*

¹⁸ Rural Healthcare Group, “Our Clinic Locations,” <https://www.ruralhealthcaregroup.com/locations>.

¹⁹ Private Equity Stakeholder Project, “U.S. healthcare industry should be wary of private equity’s acquisition of Steward Health Care physician network,” August 15, 2024, <https://pestakeholder.org/news/u-s-healthcare-industry-should-be-wary-of-private-equitys-acquisition-of-steward-health-care-physician-network/>.

doctors' days with endless physicals and coding seminars — pushing them to add questionable diagnoses to patient medical records that would make them look sicker than they were, and justify higher payments from Medicare.²⁰

Ultimately, RHG's executives' ties to NaviHealth and the potential for the transaction to evade state corporate practice of medicine laws raise serious concerns that the proposed acquisition may negatively impact the standard of care and clinical autonomy of Stewardship's patients and providers. This comes at a particularly difficult time because all of these patients and providers have already suffered greatly at the hands of private equity. Accordingly, we request answers to the following questions by no later than October 15, 2024.

1. If allowed to proceed, how will Kinderhook structure its acquisition of Stewardship?
 - a. Will Kinderhook purchase Stewardship with cash or debt? Please provide a breakdown.
2. Massachusetts law requires that for-profit medical practices are owned by licensed clinicians in the state. Accordingly, how will Kinderhook, a private equity company, acquire this physician group and remain compliant with Massachusetts state law?
 - a. Will Kinderhook establish a separate professional corporation, owned by a Kinderhook-installed physician, to be the nominal owner of Stewardship's medical group?
 - b. Please provide the name(s) and National Provider Identifier(s) of all persons who will have an ownership interest in the Stewardship medical group.
 - c. What will be the relationship between the owner or owners of the professional corporation and RHG? Will the physician/owner receive compensation from RHG? Will RHG enter into a management service agreement with Stewardship's medical group?
3. Please provide Kinderhook's and RHG's organizational structure.
4. Please provide a list of the health care organizations that Kinderhook or RHG owns, manages, or controls, detailing where these entities are based and where they operate.
5. Please provide the name(s) and National Provider Identifier(s) of the owners of all medical practices or provider organizations owned, managed, or controlled by Kinderhook or RHG.
6. For each market with more than one Kinderhook or RHG health care organization, please detail the combined market share of the Kinderhook or RHG entities.
7. Please provide details for acquisitions of health care entities that occurred in the previous five years that required Kinderhook or RHG, or any companies owned by Kinderhook or RHG, to submit filings to the DOJ or FTC under the Hart-Scott-Rodino (HSR) Act.
8. Has Kinderhook or RHG submitted an HSR filing for the proposed acquisition of Stewardship? If so, on what date was the filing submitted, and what was the outcome? If not, is Kinderhook or RHG planning to submit an HSR filing for the proposed acquisition of Stewardship and what is the approximate planned date for such filing?
9. How will patient data be protected if this proposed acquisition is finalized?

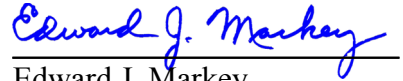
²⁰ STAT, "UnitedHealth pledged a hands-off approach after buying a Connecticut medical group. Then it upended how doctors practice," Lizzy Lawrence, Casey Ross, Bob Herman, and Tara Bannow, August 28, 2024, <https://www.statnews.com/2024/08/28/unitedhealth-optum-prohealth-physicians-care-squeezed-for-profit-doctors-say/>.

10. If this acquisition is finalized, will RHG change which networks Stewardship physicians participate in? If so, how far in advance will RHG tell patients, doctors, and Steward hospitals of those changes?

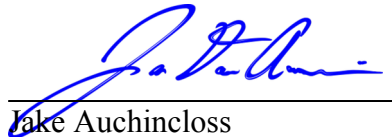
Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator



Jake Auchincloss
Member of Congress



Stephen F. Lynch
Member of Congress

CC:

Kinderhook Industries, LLC
Massachusetts Health Policy Commission