State of California
Office of the Attorney General

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Chairman
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RE: March 25, 2026, RFI Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form

The California Attorney General along with the Attorneys General of Connecticut, Rhode Island, Washington, and Washington D.C., submits the following comments in response to the March 25, 2026, Request for Information (RFI) issued jointly by the Federal Trade Commission ("FTC") and the Antitrust Division of the U.S. Department of Justice ("DOJ") (collectively "the Agencies"). The February 2026 court ruling in the Eastern District of Texas vacated[1] the overhauled HSR Form (the "Updated Form") that had been in effect since February 2025,[2] and the Fifth Circuit subsequently denied the FTC's emergency stay motion. The States submitting these comments applaud the Agencies' public comment invitation and their efforts to evaluate the effectiveness of having to return to the HSR premerger reporting requirements that were in effect prior to the 2026 court ruling. The Agencies' consideration of public comments in response to the RFI and possible new rulemaking should help to achieve the objective of detecting anticompetitive mergers without imposing unnecessary burdens for the reporting of transactions that are neutral or potentially beneficial to competition. Public comments, such as those offered here, may lead to disclosure of more granular information enabling the Agencies to

[1] Chamber of Com. of the U.S. v. Fed. Trade Comm'n, No. 6:25-cv-00009-JDK (E.D. Tex. Feb. 12, 2026).

[2] Chamber of Commerce v. Federal Trade Commission, No. 26-40094, ECF 44-2 (5th Cir. Mar. 19, 2026).

identify potentially anticompetitive mergers more efficiently and to swiftly determine the need for a Request for Additional Information and Documentary Material ("Second Request"). To that end, the California Attorney General, and joining states, recommend that in addition to reinstituting the Updated Form, the new rulemaking narrow the exemption for passive investments, eliminate the disclosure exemption for Real Estate Investment Trusts, and require that merging entities divulge more information up front as to acquihires and serial acquisitions. These recommendations for action are geared towards addressing potentially harmful impacts from consolidation in multiple industries such as healthcare, technology, and housing, including:

- de facto control of healthcare and other entities when minority shareholders gain control rights; or affiliates or subsidiaries that will have control are not disclosed because of deal structures that evade review;
- reduced choice and access and resulting price increases, due to serial acquisitions that lead to market dominance, in multiple industries, including healthcare; and
- negative impacts on quality when profits become paramount to maximize returns on investments in healthcare facilities and residential housing.

I. Introduction

These comments respond to specific questions in the RFI, identified below, with a focus on the areas that have proved most challenging in obtaining information necessary for meaningful pre-merger reviews. California otherwise wholly supports the updated HSR form that was vacated earlier this year and agrees with the Agencies that having to return to the use of the outdated, 50-year-old form will not capture the granularity needed to fairly evaluate transactions. In support of the Updated Form, these comments for further action are informed by the perspective and experience of the Antitrust Division and the Healthcare Rights and Access Section's Competition Unit of the California Attorney General's Office as to the benefits and costs of expanding the HSR form and submissions, both of which handle oversight and enforcement of California's various competition laws as well as federal antitrust laws. Questions 12, 13, and 17 are particularly germane to the challenges and concerns California continues to confront. However, these challenges are not unique to California but are ubiquitous across the nation:

- Question 12 – Clarification of the solely-for-the-purpose-of-investment exemption.
- Question 13 – Identification of investor strategies to evade HSR filing requirements for transactions that should be subject to pre-merger review.
- Question 17 – Re-evaluation of the Real Estate Investment Trust ("REIT") exemption.

II. Question 12 – Clarification of the solely-for-the-purpose-of-investment exemption.

12. Describe what changes, if any, the Agencies should make to the HSR rules to clarify the scope of the solely-for-the-purpose-of-investment exemption.

a. Explain how the Agencies should balance the efficient allocation of capital in such transactions against the risk of creating loopholes that facilitate potentially anticompetitive HSR evasion.

b. How often are investors taking significant stakes in the same entity using different investment vehicles? What impact, if any, does this approach have in hindering effective and efficient premerger review?

Suggestions Regarding the Solely-for-the-Purpose-of-Investment Exemption

Current HSR rules allow an exemption from HSR filing for acquisitions of 10% or less of voting securities of an issuer, if the acquirer has no intention of participating in the formulation, direction, or decision-making of the business of the issuer.[3] Based on California's experience with transaction reviews of acquisitions and investments in healthcare entities, we recommend the Agencies revise the solely-for-the purpose-of-investment exemption for clarity and to better address the ways that minority investors are exerting influence and control. Truly passive investments should remain exempt, but the exemption language should more precisely capture those seemingly passive investments of minority shareholders which actually result in de facto control.

Private equity ("PE") funding is often mistakenly viewed as passive investment because the investments are illiquid (not easily sold) with long holding periods, typically 5 to 10 years. Deal structures may portray the PE investor as meeting the requirements for the HSR exemption, with minimal voting securities and no intent to direct the business, but the reality is PE investors will strategically structure their investments in ways that allow them to reorganize management teams, change processes, restructure debt, and renegotiate leases.

Corporate investment deals in multiple industries, including healthcare, are often structured to stay below HSR reporting thresholds to evade regulatory review. Savvy investors will acquire material influence or de facto control with minority shareholder rights. The FTC's 2025 Statement of Interest in *Texas v. BlackRock* [4] and the American Bar Association's ("ABA") comments to South Africa regarding Draft Guidelines on Minority Shareholder Protections[5],

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[3] 16 C.F.R. § 802.9.

[4] *See* Statement of Interest of the U.S. Federal Trade Commission and the United States of America: State of Texas et al. v. BlackRock, Inc. et al. 6:24-cv-00437-JDK (May 22, 2025), at 19.

[5] *See* the ABA's January 16, 2026, comments to South Africa regarding Draft Guidelines on Minority Shareholder Protections distinguishing between ordinary minority shareholder rights and those extra-ordinary rights that confer the ability to influence the strategic commercial behavior of a target.
Joint Section Comment on the Draft Guidelines on Minority Shareholder Protections by the SACC.

both emphasize that percentage of ownership and stated intent of passive investment can shield the actual influence and control that minority investors acquire in multiple industries.

Indeed, minority shareholders can acquire extraordinary rights that confer the ability to influence the strategic commercial behavior of a target, including allowing minority investors to exert control, for example, over decisions that impact healthcare access, pricing, quality, and competition. The ABA highlighted that these rights translate to the ability to materially influence policy.

Recommendations for Government Action

These realities of minority investor influence and control will continue to remain undetectable unless changes are made to HSR reporting requirements for passive investors. We recommend that the Agencies consider these realities growing to be ever present in corporate investment to clarify and narrow the solely-for-the-purpose-of-investment exemption.

III. Question 13 – Identification of Investor Strategies to Evade HSR Filing Requirements for Transactions that Should be Subject to Pre-merger Review.

13. Please identify investment strategies that enable investors to evade HSR filing requirements for transactions that should be subject to premerger review.

a. What revisions, if any, should the Agencies make to clarify the HSR filing requirements and address such investment strategies that are exempt and should not be?

b. Do the current HSR rules adequately capture licensing agreements, acquihires, reverse acquihires, and other potential transaction structures? If yes, how so?

Whether Current HSR Rules Adequately Capture Licensing Agreements, Acquihires, Reverse Acquihires, and Other Potential Transaction Structures

Transaction structures involving licensing agreements, acquihires, reverse acquihires, and other potential structures have raised concerns in the technology industry. On February 4, 2026, Sen. Elizabeth Warren, Sen. Richard Blumenthal, and Sen. Ron Wyden sent a letter to the Agencies in which they identified multiple technology transactions that could be categorized as acquihires, structured to avoid HSR review in violation of Rule 801.90. One of the transactions involved NVIDIA's acquisition of a nonexclusive license to Groq Inc.'s technology (artificial intelligence accelerator application-specific integrated circuits) and hiring of Groq. Inc.'s key employees. On March 19, 2026, Sens. Warren and Blumenthal wrote to Jensen Huang, Chief Executive Officer of NVIDIA, suggesting NVIDIA's transaction with Groq Inc. may have violated the HSR premerger notification requirements. Whether these transaction structures are curated to avoid HSR review in violation of Rule 801.90 appears to be unresolved. Global law firm Herbert Smith, Freehills Kramer (HSF Kramer") recently opined there is no bright line rule,

and Rule 801.90 should not be invoked absent any showing of subterfuge and lack of economic substance.[6] HSF Kramer's pithy conclusion stated:

> The line between a legitimate structuring exercise so as not to require reporting under the HSR Act and a transaction for avoidance contemplated by Rule 801.90 is necessarily imprecise. In part, it may partake of Justice Potter Stewart's well-known dictum of 'I know it when I see it.' [*Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).] There have not been a multitude of cases brought by the antitrust agencies under Rule 801.90, but those that have been instituted offer some guidance. Principles extracted from those cases would seem to indicate that acquihire transactions, without more, do not offer good paradigms for enforcement under Rule 801.90.[7]

HSF Kramer's conclusion begs the question of the "more" needed to evaluate acquihire transactions. The "more" should look to and clarify considerations of the outcome and impact of multiple acquihires. Acquihires are not new and have their own prevalent form in healthcare as well. For example, the California Attorney General's Office has seen in its own experience how acquisitions of medical groups are carried out as acquihire transactions in which the buyer's objective is to acquire systematically the employees of the target entity. By hiring all (or nearly all) the employees of that entity, the buyer is not only acquiring the patients or customers of the medical group, but the acquirer is really seeking the talent and experience of the physicians as a group to expand and potentially improve its market share at the expense of competitors and payors putting together accessible and affordable provider networks. A recent notice of a material change transaction reported to the Office of Health Care Affordability ("OHCA"), within California's Department of Health Care Access and Information provides a good example of the problem.

The proposed transaction involved an agreement for California Cancer Associates for Research and Excellence, Inc. ("cCare") to employ the current clinical employees of California Urology, Inc. ("CU"). cCare's management service organization (MSO) would employ the non-clinical employees of CU. cCare is a 38-physician oncology practice owned by a single individual, with operations in 40 of the 58 counties in California. CU is a six-physician urology practice. There was no purchase price or asset sale, just an agreement to employ the clinical and non-clinical employees.

The transaction notice included a three-page list of the taxonomy of cancers and hematologic disorders cCare treats and the oncology services it provides. Also included was a full single page of the types of conditions and cancers CU treats. The notice explained the

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[6] *See Herbert Smith Freehills Kramer, When Is a Transaction That Avoids HSR a Transaction for Avoidance? (May 11, 2026), J.D. Supra,* J.D. Supra, [Opining on the NVIDIA/Groq Inc. transaction.] When is a transaction that avoids HSR a transaction for avoidance? | Herbert Smith Freehills Kramer - JDSupra.

[7] *Id.*

benefits of the employment arrangement to both parties, citing improved access to quality care and expanded resources and support for CU employees.[8]

What may be insightful to the Agencies about this transaction, to capture notices of potentially problematic acquihires up front for case-by-case review, is California's basis for requiring notice of the material change. Without a purchase price, there was no dollar threshold that required filing and even if there had been, it would not have met either California's or HSR existing thresholds. Instead, OHCA required notice based on its enabling statute and implementing regulations.[9] cCare met the revenue and geographic thresholds for filing which meant it would have to file if it met at least one of the eight circumstances for filing.[10] It met just one and that was all that was needed for OHCA to conduct a preliminary review:

> The transaction is more likely than not to increase annual California derived revenue of any health care entity that is a party to the transaction by either $10 million or more or 20% or more of annual California-derived revenue at normal or stabilized levels of utilization or operation.[11]

OHCA conducted a preliminary review of the transaction and determined that a full cost and market impact review ("CMIR") was unnecessary. Had it determined a CMIR was warranted, the parties would have had to wait for 60 days after the CMIR final report to close the transaction. Notably, OHCA could have referred the matter to the California Attorney General for further review and legal action to address anticompetitive or unfair business practice impacts.[12]

Serial Acquisitions that Evade HSR Filing Requirements

Serial acquisitions, including serial acquisitions of physician practices by health systems, health insurers, and PE groups have become a common investment strategy that typically evades HSR filing requirements for transactions that should be subject to premerger review. For example, the low revenue, low asset value, and low transaction amount for acquisitions of a single physician practice typically place these deals outside HSR review. The average number of doctors in acquired firms is only nine with a median of five.[13] Healthcare systems frequently engage in serial acquisitions purchasing one or a few physician practices at a time. This low burn

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[8] MCN Notice for cCare_Website Posting.pdf.

[9] California Health and Safety Code section 127500 et seq. California Code of Regulations, Title 22, Division 7, Chapter 11.5, sections 97431 et seq.

[10] 22 CCR 97435(a) and (b).

[11] 22 CCR 97435(c)(2).

[12] California Health and Safety Code section 127507.2(a)(3)(A) and (d)(1).

[13] Daniel Deibler, Daniel Hosken, Thomas Koch & Marshall Thomas, *Physician Mergers Involve 38% of Doctors, Substantial Health System Participation, and Frequent Serial Acquisition*, 3 *Health Affs. Scholar* 5, qxaf061 (May 2025), https://doi.org/10.1093/haschl/qxaf061.

approach to consolidation can lead to significant market power for serial acquirers and harm to competition.

A 2025 *Health Affairs Scholar* article documented widespread physician practice mergers across 15 states from 2015-2020 and identified 2,019 mergers in that period. From the specific data used for the article, 20% of physician firms were involved in a merger and 38% of doctors (sample of approximately 400,000) worked for a firm that had acquired at least one practice. The article highlighted that 40% of all mergers involved a health system. Many of the mergers involved practices that directly compete, which could lead to reduced competition and higher prices, a trend well-documented in hospital consolidation.[14] A clear example of this sequential strategy of physician practice acquisitions is UnitedHealth Group, which together with Optum, its healthcare services subsidiary, employs or has close contractual ties with more than 90,000 doctors (nearly 10% of the entire U.S. physician workforce) and commands 15% of the U.S. health insurance market.[15] Finally, the very recent, April 23, 2026, landmark settlement between the FTC and U.S. Anesthesia Partners, and the 2025 FTC settlement with Welsh, Carson, Anderson & Stowe ("WCAS") to fully resolve the case *Federal Trade Commission v. U.S. Anesthesia Partners, Inc.,* No. 4:23-cv-03560 (S.D. Tex. Sept. 21, 2023) highlights the need for further action by the Agencies to address serial acquisitions that evade HSR review.[16]

Serial acquisitions are not just happening in health care, dentistry, and ophthalmology. They occur unnoticed in the business sectors that impact everyday life, such as childcare, veterinarian practices, collision repair shops, and even youth sports.[17] Indeed, the Agencies previously sought public input on serial acquisitions to understand the ways that roll-up acquisitions lead to consolidation, higher prices, lower quality, or fewer choices, for important products or services, that leave the American public worse off. [18]

Recommendations for Government Action

We recommend that the Agencies consider treating serial acquihires and serial acquisitions alike, and require a look back period for relevant prior transactions using

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[14] *Id.*

[15] Sunlight Report on UnitedHealth Group, Center for Health and Democracy and Arnold Ventures (2025). Read the Report | Sunlight Report on UnitedHealth Group.

[16] Complaint, *FTC v. U.S. Anesthesia Partners, Inc.*, No. 4:23-cv-03560 (S.D. Tex. Sept. 21, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2010031usapcomplaintpublic.pdf.

[17] https://www.urban.org/urban-wire/what-we-do-and-dont-know-about-private-equity-investment-early-childhood-education; R. Lester, *"Revealed: How Private Equity is Reshaping Veterinary Care"* (July 10, 2025), How Private Equity is Reshaping Veterinary Care; Collision Repair Shop Mergers and Acquisitions News - Autobody News; A.Lee *'"Let Kids Play Act' Seeks to Kick Private-Equity Investors Out of Youth Sports"*, (May 15, 2026) 'Let Kids Play Act' Seeks to Kick Private-Equity Investors Out of Youth Sports | Athletic Business.

[18] H. Liu, Director of the Bureau of Competition, *"Slow the Roll-Up: Help Shine the Light on Serial Acquisitions*," (May 23, 2024).

impact/outcome thresholds similar to those employed by OHCA in reviewing healthcare transactions.[19] Without the documented history of past systematic acquihires, determining the tipping point for potential harm to competition in a given transaction, such that a Second Request should issue, may be illusory. It may also deter systematic acquihire attempts to evade HSR notification requirements without chilling the ability of individual employees to seek employment elsewhere—an important policy interest of both California and the FTC. And it would not unduly burden the merging parties to provide such information up front.

We recommend that the Agencies revisit the Updated Form, and in particular the requirement that both parties to the proposed transaction report certain relevant prior acquisitions from within five years of the filing. The disclosure of relevant prior acquisitions in the last five years should not be subject to exemptions based on the size of the acquired entity (e.g., revenue, or number of physicians) or dollar amount of the transaction. Further, the required five-year look back should capture related transactions made by affiliates of the parties, including parents and subsidiaries, as well as investors (individual, PE, or hedge funds.) Look back information is exactly the kind of information that the California Attorney General's Office has had to request be produced to assess these transactions. These suggested changes in requiring the upfront production of this information would impose a relatively minimal burden on the merging parties. It would also improve transparency and oversight of a variety of roll-ups in all industries.

IV. Question 17 – Re-evaluation of the Real Estate Investment Trust ("REIT") Exemption.

17. Acquisitions involving real estate investment trusts ("REITs") are largely exempt under 7A(c)(1) of the statute. Should the REIT exemption be re-evaluated given their evolving operating structures? If so, how?

Proliferation of REITs in Healthcare and Housing Transactions, Harmful Impact, and Lack of Transparency

The real estate investment trust ("REIT") exemption reflects an outdated presumption that REITs are mainly passive forms of investment. The complex and evolving structures of REITs, especially their increasing infiltration into healthcare and residential real estate and their potential to negatively impact financial viability of healthcare facilities, affordability and quality of care, patient safety, and affordability and basic habitability of personal dwellings are compelling reasons for the Agencies to re-evaluate and eliminate the REIT exemption and require full disclosure in HSR filings of REIT involvement in transactions. Much needed transparency will improve the Agencies collection of pre-merger information to achieve effective oversight of consolidations that may lead to multiple harms.

[19] 22 CCR 97435; See also OHCA MCN Submission Flow Chart.

The Tax Code's Favorable Treatment of REITS as Pass-Through Entities

In 1960, the Real Estate Investment Trust Act established REITs as pass-through vehicles for investors to capitalize on stable returns from real estate. REITs pool capital from investors such as institutional investors (pension funds, endowments, insurance companies, and banks), individual investors (through mutual funds, 401ks, and thrift savings plans) and PE funds to acquire real estate properties for returns on investment.[20] The long-standing characterization of REITs as passive investments is rooted in the Internal Revenue Code. Tax laws treat REITs as "pass through entities." REITS pay no corporate taxes if they invest at least 75 percent of their assets into real estate, derive 75 percent of their gross income from real property, and pay out at least 90 percent of taxable income (excluding capital gains) as shareholder dividends each year.[21] REITs historically invested in retail and office buildings, but they have expanded into a range of real estate assets, including healthcare facilities and rental housing. REITs now facilitate consolidation in various industries such as housing and healthcare at both the property and commercial enterprise level—through the consolidation of REITs themselves[22] and through their consolidation of holdings in various industries that raise antitrust concerns, including through a plethora of subsidiaries, holding companies, related affiliates, spin-offs, and cross-managers, cross-owners, and cross-investors. [23]

REITS in Healthcare Real Estate

In the past ten years, REITs have acquired thousands of health care real estate assets that include SNFs, hospitals, assisted living facilities, and medical offices.[24] PE firms may partner with healthcare REITs to create separate property and operating subsidiary entities (commonly known as "propcos" and "opcos") for a specific acquisition. The propco purchases the real estate and the opco takes over operations of healthcare facilities. REITs finance the purchase, consolidation, and expansion of PE-owned skilled nursing homes and hospitals into mega-chains that acquire local, regional, and sometimes national market power.[25]

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[20] Health Care REITs | Information on Investing & More | Nareit REITs.

[21] 26 U.S. Code § 857; Rosemary Batt and Eileen Appelbaum, with Tamar Katz, The Role of Public REITs in Financialization and Industry Restructuring, at 4, Institute for New Economic Thinking, Working Paper No. 189 (2022). https://www.ineteconomics.org/uploads/papers/WP_189-Batt-Appelbaum-Public-REITS-2.pdf.

[22] *E.g.*, Kroll Bond Rating Agency businesswire, KBRA Releases Research – REIT Consolidation: Structural Drivers, Deal Activity, and Credit Implications (Mar. 30, 2026), KBRA Releases Research – REIT Consolidation: Structural Drivers, Deal Activity, and Credit Implications.

[23] *See*, *e.g.*, Renee Tapp and Richard Peiser, An Antitrust Framework for Housing, 55 Environment. & Planning A. Economy and Space, 562, 566-67, 570, 573-77 (May. 2023), *available at* An antitrust framework for housing.

[24] Jordan Rau, "Real estate investitures are buying up long-term care facilities. Residents can suffer," NPR (Apr. 19, 2026), https://www.npr.org/2026/04/19/nx-s1-5786242/profit-landlord-real-estate-investment-trust-nursing-homes-safety.

[25] *Id.* at 4-5.

REITs are an attractive option for investors due to their relatively stable cash flow tied to long-term leases that REITs impose on the acquired entity to lease back the property post-transaction.[26] When a REIT acquires a hospital, for example, the hospital often leases back the hospital building and real property in a "sale-leaseback" arrangement. These sale-leaseback agreements often include "triple net leases," which make the hospital operator responsible for rent, taxes, insurance premiums, and maintenance costs.[27] Through these transactions, REITs effectively become landlords with control over critical healthcare real estate assets and sometimes quiet control over operations. Public health researchers have observed, as has the California Attorney General's Office in its matters, that REITs in healthcare may "create perverse incentives to profit from the healthcare system by stripping away its real estate assets," prompting concerns "that profit motivated hospital owners and investors, such as PE firms, have been using REITs to extract short term value from hospitals to maximize returns to investors, instead of reinvesting capital into providing clinical care or improving hospital finances."[28] Below, we discuss the rise and effects of REIT acquisitions, followed by suggestions for government action.

REITs in Skilled Nursing Facilities Transactions

The use of REITs in acquisitions of SNFs is prolific. In 2021, REITs owned approximately 12% (equal to 1,870) of SNFs in the United States.[29] Using a REIT to purchase the real property of a SNF (or any health facility) helps the investor avoid corporate double taxation.[30]

California requires reporting and disclosures for SNF acquisitions.[31] Increasingly, California is seeing the use of REITs or an LLC investor with direct or indirect involvement whose potential negative effects on the transaction now must be assessed.

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[26] *See* Ashvin Gandhi and Andrew Olenski, "Tunneling and Hidden Profits in Health Care," NBER Working Paper 32258 (2024), https://doi.org/10.3386/w32258. Full list of Healthcare REITs - Updated Daily.

[27] Bruch J D, Ramesh T, Yu E B, Zheng J, Phelan J, Orav E J et al. Changes in hospital financial performance and quality of care after real estate investment trust acquisition: quasi-experimental difference-in-differences study *BMJ* 2025; 391 :e086226 doi:10.1136/bmj-2025-086226, https://www.bmj.com/content/391/bmj-2025-086226.

[28] *Id.*

[29] Bruch JD, Katz T, Ramesh T, Appelbaum E, Batt R, Tsai TC. Trends in Real Estate Investment Trust Ownership of US Health Care Properties. JAMA Health Forum. 2022 May 13;3(5):e221012. Trends in Real Estate Investment Trust Ownership of US Health Care Properties - PMC. Skilled Nursing and Senior Living REITs Emerge Stronger, But Headwinds Remain, Fitch Reports - Skilled Care Journal.

[30] Robert Tyler Braun et al., The Role of Real Estate Investment Trusts in Staffing US Nursing Homes (2023), The Role of Real Estate Investment Trusts in Staffing US Nursing Homes | Health Affairs.

[31] *See* Cal. Corp. Code § 5913 (for nonprofit public benefit corporations); Cal. Corp. Code § 7913 (for nonprofit mutual benefit corporations); Cal. Health & Safety Code § 127500 et seq.

REITs in Hospital Transactions

California has had the same experience as to hospital transactions in which it is seeing the increasing use of REITs with negative effects. This use of REITs in hospital acquisitions is now widely known after the bipartisan United States Senate Budget Committee's investigation and report in January 2025, which revealed ways in which PE investment in healthcare has negative consequences for patients and providers.[32] The report highlighted the impact of PE ownership of U.S. hospitals on quality of care, patient safety, and financial stability.[33] Among other investment firms, the report discussed Medical Properties Trust ("MPT"), now a familiar name, a REIT formed in 2003 to acquire and develop net-leased hospital facilities. MPT has grown to become one of the world's largest owners of hospital real estate with 435 facilities and approximately 42,000 licensed beds in nine countries and across three continents as of June 30, 2024.[34]

In 2016, Steward Health Care ("Steward"), a Massachusetts hospital system owned by the PE firm Cerberus Capital Management ("Cerberus") in Massachusetts, sold its real estate to MPT for $1.2 billion and an additional $50 million for a five percent equity stake in Steward. The sale agreement required Steward to lease back the properties from MPT, essentially its landlord. This sale paid back Cerberus's initial investment in Steward and provided a return on investment for Cerberus and its investors. MPT used funds from the lease backs, took mortgages out on the properties, and brought in additional investors to finance Steward's expansion through serial purchases of struggling hospitals. Meanwhile, the acquired hospitals cut services, reduced staffing, and incurred further debt to pay exorbitant rents to MPT, and to ensure that Cerberus and its investors would see continued return on investments. The cycle proved unsustainable.

By 2024, at the time it filed for Chapter 11 bankruptcy, Steward had expanded to 10 states with 31 hospitals, employed approximately 30,000 workers, and served over two million patients annually. Its bankruptcy made national news and is one of the largest bankruptcies in decades. In approximately eight years, Steward had amassed $9 billion in liabilities, including $6.6 billion in long-term rent obligations to MPT. Cerberus made $800 million and MPT remained unscathed.[35]

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[32] Profits over Patients Budget Staff Report.

[33] *Id*.

[34] MPT - Medical Properties Trust Takes Control of Its Real Estate from Steward Health Care.

[35] Private Equity Stakeholder Project, "The Pillaging of Steward Health Care: How a private equity firm and hospital landlord contributed to Steward's bankruptcy" (2024), The Pillaging of Steward Health Care;"Everyone Wondered How a Private Equity Firm Would Make Money in a Leveraged Buyout of a Struggling Non-Profit Hospital Chain - Now We Know," E. Appelbaum (September 1, 2016); Khadije Sharife, How Private Equity and an Ambitious Landlord Put Steward Health Care on Life Support, Boston Globe & OCCRP (Oct. 9, 2024), https://www.occrp.org/en/investigation/how-private-equity-and-an-ambitious-landlord-put-steward-healthcare-on-life-support;"Private equity's appetite for hospitals may put patients at risk," M. Brownstein (2024); Private equity's appetite for hospitals may put patients at risk | Harvard T.H. Chan School of Public Health.

Not long after the Steward bankruptcy, Prospect Medical Holdings ("Prospect") filed for Chapter 11 bankruptcy in 2025. California-based Prospect owned 16 facilities in southern California, Pennsylvania, Rhode Island, New Jersey, and Connecticut: along with medical groups in California, Arizona, Texas, and Rhode Island, and a health care service plan in California. In 2019, already heavily leveraged, PE owned Prospect entered into a $1.55 billion sale lease-back with MPT. Prospect sold all its hospitals to MPT except two in Rhode Island and one in California. The total yearly rent was approximately $112 million. Eventually debt-fueled growth, unpaid taxes, underfunding of pension plans, underinvestment in facilities, reductions in services, hospital closures, exorbitant rents, and continued large payouts to investors led to Prospect' bankruptcy filing.

As these examples illustrate, REITs may exploit hospital assets to profit investors rather than reinvest capital to improve clinical care. Literature reviews in both industry and academic contexts provide evidence that sale-leaseback arrangements with REITS strip hospitals and skilled nursing facilities of fixed assets and shift ongoing costs such as taxes, insurance, and maintenance back onto the hospitals. This financial pressure has been linked to a five-fold increase in hospital closure or bankruptcy risk, without improvements in financial performance, staffing, or quality of care.[36] These findings challenge the presumption that REITs are passive investors and suggest that their role has evolved into one with substantial operational influence and risk.

Harmful Effects of REITs in Healthcare Facilities

The investment strategy of splitting a SNF or hospital into an opco that runs the business and a propco that owns the real estate and then sells it to a REIT or investment company can have dire impacts on quality of care and even patient safety. Income from sale-leaseback flows as dividends to the PE firm shareholders, while the REIT capitalizes on continued rent payments and equity in the real estate to fund more acquisitions. These arrangements prioritize profits over patient care. And the profits are stunning. In 2024, healthcare REITs distributed more than $7 billion in dividends.[37]

This over-monetization of healthcare facilities has resulted in REITs exerting quiet control over their health facility tenants. For example, court records in a wrongful death lawsuit

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[36] Bruch J D, Ramesh T, Yu E B, Zheng J, Phelan J, Orav E J et al. Changes in hospital financial performance and quality of care after real estate investment trust acquisition: quasi-experimental difference-in-differences study *BMJ* 2025; 391 :e086226 doi:10.1136/bmj-2025-086226, *https://www.bmj.com/content/391/bmj-2025-086226*; *see also, e.g.*, Real estate investment trust acquisition associated with hospital closure and bankruptcy | Biological Sciences Division | The University of Chicago (describing study finding that "hospitals that sold their buildings to REITs were more than five times as likely to close or file for bankruptcy as similar hospitals that kept their real estate").

[37] REITs Gain Quiet Control Over Nursing Homes as Oversight Lags, KFF Analysis Shows - Skilled Nursing News.

revealed that CareTRUST REIT selected the nursing home's management, required at least 80 percent occupancy, and closely monitored finances — including spending on nurses and food – along with safety inspections and Medicare quality ratings.[38] REITs often insist they are just owners, not operators. However, this type of quiet control suggests otherwise.

In some instances, REIT executives have direct ties to the companies that manage the facilities, which blurs the line between owner and operator. Strawberry Fields REIT is an example where individual shareholders of the REIT also own Infinity Healthcare Management which manages 66 of the 131 nursing homes whose real estate is owned by Strawberry Fields. According to a recent article, the Infinity-managed nursing homes provided about 1.25 fewer nursing care hours per resident per day compared to the national average. And these affiliated facilities and operator have faced extensive litigation, including 30 death and injury settlements exceeding $4 million and a $12 million jury award in a related case.[39]

Academic research further confirms harm suffered by patients in PE-owned SNFs. One research study that examined 18,000 nursing home facilities over a 17-year period found that PE ownership was associated with increased excess mortality for residents by 10 percent, increased prescription of antipsychotic drugs for residents by 50 percent, decreased hours of frontline nursing staffing by 3 percent, and increased taxpayer spending per resident by 11 percent.[40]

The competitive impact of these transactions clearly diminishes the quality of skilled nursing services. The burdens of high rent and profit for investors not only affects price but also limits improvements. Finally, the trend of PE/REIT arrangements used by for-profit entities to acquire and harvest profits from numerous SNFs throughout the country limits consumer choice to what has become mega-chains of SNFs that provide mediocre and sometimes substandard care.

REITs tin Residential Rental Properties

REITS as an investment vehicle are not just popular investments in healthcare, they are marketed as a convenient and profitable tool for investment ownership in residential rental properties such as apartment buildings, multifamily complexes, manufactured housing communities, and even single-family homes. The U.S. Government Accountability Office reported that as of 2022, 450,000 single-family rental homes were owned by institutional investors. The Urban Institute estimated an even larger number at 574,000.[41]

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[38] *Ibid*.

[39] *Ibid*.

[40] Inside PE's 'Financial Gamesmanship': PE-Owned Nursing Homes Face 10 Times Greater Bankruptcy Risk, Higher Mortality - Skilled Nursing News.

[41] *"Who Really Owns the U.S. Housing Market? The Complete Roadmap,"* Rutgers (September 30, 2024). Who Really Owns The U.S. Housing Market? The Complete Roadmap | Edward J. Bloustein School of Planning & Public Policy.

Because REITS must pay out 90% of taxable income as dividends to investors, they can serve as a steady income vehicle. Owning rental housing was historically out of reach for many, but REITs allow a return on investment for individuals and funds seeking partial ownership stakes of residential properties. While REITs as a way to "own" property, along with property management efficiencies, may be an upside to residential REITs, there are also downsides. The REIT model to produce steady, high returns on investment can lead to untenable living conditions when profit becomes paramount. For example, after a PE firm acquired 66 properties with 5,800 apartment units in San Diego in 2021, tenants complained of mold, cockroaches, rats, and other unresolved maintenance issues, aggressive evictions, undisclosed add-on fees, and large rent hikes.[42] REIT exemptions should be eliminated to address these types of alarming impacts where market power may be present.[43]

Transparency Challenges with REITs

It is often challenging for regulators and the public to discern whether REITs are part of a transaction. First, as highlighted in the RFI, REITs are exempt from initial HSR notice requirements. Second, even states that have enacted mini-HSR notice requirements for health care transactions face challenges to obtain disclosure regarding the REITs or Limited Liability Companies ("LLCs") that will ultimately own the acquired real estate. REITs and LLCs are typically not direct parties to the healthcare transaction and therefore generally do not have to submit transaction notices. Instead, there are layers of subsidiaries, related affiliates, holding companies, and spin-offs, existing and new, with entities created for the sole purpose of the transaction(s), to own and manage the real estate investment such that it is California's experience that it must spend considerable time with voluntary follow-up requests to unearth these entities. And as far as the parties may claim it is burdensome to track down and provide this information, the parties cannot use the opaqueness of their corporate structures to claim burden in providing information, as to that structure, up front which is essential to evaluate these transactions.

Further complicating these structures is the fact that a REIT cannot be an LLC. However, an LLC may be treated as a "pass through entity" like a REIT, if the LLC opts to be taxed as a corporation and meets all the tax laws pertaining to REITs.[44] In that respect, submitting only pre and post transaction organization charts with the required notices can be chaotic and can obscure the identity of the new owners and the investors who may profit from the REIT, or REIT-like LLC. A newly created propco may be identified in the merger notice and organization chart, but whether a REIT is an investor remains opaque.

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[42] *"Private Equity Mult-Family Housing Tracker,"* (May 20, 2026). Private Equity Stakeholder Project. Private Equity Multi-Family Housing Tracker.

[43] *See* note 23, *supra*.

[44] Can an LLC Really Be a REIT for Taxes? - Yes But Avoid This Mistake + FAQs. REIT or LLC? Should You Form a Real Estate Investment Trust (REIT) or an LLC | Axis Legal Counsel.

Recommendations for Government Action

To preserve competition, any changes by the Agencies should prioritize transparency, oversight of transactions, post-transaction monitoring, accountability for financial harm, protection for patients and healthcare workers, and resilience of healthcare delivery systems. These suggested changes apply equally to housing acquisitions through REITs, including oversight, post-transaction monitoring, and protection of renters and their communities. We therefore recommend that the Agencies eliminate the REIT exemption. REITs and REIT-like LLCs are essentially gaming the tax code to be treated as pass through entities, without any meaningful and timely oversight to prevent or even mitigate harm to competition. REITs already receive the benefit of avoiding corporate taxes, but they should not continue to also avoid initial disclosures as part of an initial HSR notice and submission process at the expense of patients and residents. In revisiting the exemption for REITs, the Agencies should consider revising requirements for full disclosure of beneficial ownership to capture and identify with granularity all owners and ownership interests in these entities.

In the context of REITs in healthcare, increased transparency and reporting requirements for disclosure of lease terms and beneficial ownership at the initial submission, would improve oversight of consolidation that can lead to harmful effects and as such outstrips the burdens involved. More specifically, expanding the pre-merger notice requirements and the HSR Form to include this information would help the Agencies more effectively scrutinize sale-leaseback arrangements involving healthcare facilities to ensure that the transactions will not leave the target healthcare facilities in financial turmoil or harm patients' access to crucial healthcare services. Additionally, assessments of financial and operational impacts on hospitals, and SNFs would strengthen reviews to assess the impact before the transacting parties can close the deal—that, of necessity, requires up-front disclosure. Specifically, the Agencies should consider requiring baseline financial resilience reports for the acquiring and acquired entities.[45] Finally, to prevent asset stripping and ensure reasonable reinvestment in clinical operations, the Agencies should impose conditional approvals or restrictions on sale-leasebacks for hospitals and SNFs.

And in the context of REITs in residential properties, disclosures of all owners and percentage of ownership as well as the entities responsible for maintaining the properties in compliance with building and health codes to insure habitability is critical. This granularity is

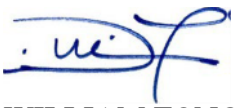
[45] Requiring such disclosures up front—as opposed to requiring the Agencies to try to cram in voluntary requests in the initial period or engage in a post-transaction closing snipe hunt—is not an exercise in futility. The Agencies can issue a Second Request and if appropriate block transactions in which piercing the opaque corporate structures discussed above as part of the initial HSR notice and submission process reveals actual market power. The Agencies also can and should, to prevent asset stripping and ensure reasonable reinvestment in clinical operations as part of their review of transactions, be prepared to obtain in settlement or to litigate for conditional approvals or restrictions on sale-leasebacks for hospitals and SNFs where competitive impact issues otherwise exist. The same is true for residential properties. And the availability of such solutions adds further benefits that exceed the costs involved.

needed for adequate review and that need far outstrips any burden, which at the end of the day is self-imposed, by eliminating the HSR exemption for REITs. Investments with anticompetitive impact should not harm people in their very own homes.

We thank you for consideration of our comments.

Sincerely,

ROB BONTA
California Attorney General



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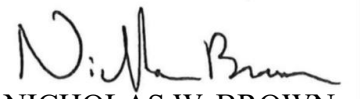

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