May 3, 2024

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Re: Connected Health Initiative Input on the Health Over Wealth Act

The Connected Health Initiative (CHI) respectfully submits the following comments on the Health Over Wealth Act, for which public comment is sought through May 3, 2024.[1] The CHI represents a wide range of stakeholders in digital health, from research universities to payors to patient groups. We come together to advocate for policies that will improve digital health access and affordability.

We share your interest in protecting patients and workers, as well as ensuring that short-term profits are not prioritized at the expense of the long-term public health goals. However, we believe that as drafted, the Health Over Wealth Act may impose unnecessary costs on the healthcare ecosystem by targeting a broader range of ownership structures than intended. We hope that these comments help inform your legislative efforts and welcome this opportunity to work with you on these issues.

Initially, we urge the sponsors to hone the scope of the Health Over Wealth Act. For example, the draft bill's provisions sweep in for-profit ownership generally, targeting a wide range of common ownership structures across the healthcare system. The problem in this instance may be narrower than the proposed solution. The incentive to turn a profit alone is unlikely to be the only factor explaining the declining conditions and worsening outcomes at for-profit owned facilities, as discussed by experts in hearings at the state and local level. The draft bill's provisions would micromanage healthcare providers' finances for any healthcare services with for-profit ownership, which is likely an unnecessarily costly intervention to address the specific issues that have arisen recently with an ownership entity in Massachusetts. In the healthcare sector where margins are thinner and thinner, the ability to seek investment is critical to support healthcare access and offerings. We also note that, in the Federal Trade Commission Act, the Sherman Act, and the Clayton Act, regulators today have the tools they need to address potential anticompetitive behavior by private equity firms (and others) in healthcare.[2]

Finally, we are concerned about Health Over Wealth Act's potential to discourage pro-competitive and pro-patient transactions in the marketplace. Very often, healthcare businesses

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[1] https://www.markey.senate.gov/HealthOverWealth.

[2] https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across.

are founded with the expectation that they will be acquired after their potential has been sufficiently developed and demonstrated. Such an acquisition can connect founders and entrepreneurs to the scale and resources needed to develop their innovation to its full potential, and also allow them to move on to develop new businesses equipped with the additional skills and resources from the successful exit. Patients and healthcare workers across the United States have benefited tremendously from the creativity of individuals when combined with the resources and institutional knowledge of businesses that acquire their innovations. A merger that helps produce better products or services for consumers is both a natural and beneficial end for some companies and is healthy from a competition policy perspective. Any changes to U.S. merger policy must retain rigorous economic analysis as a cornerstone of any review or enforcement to provide a transparent and objective method of evaluation in enforcements and allow our communities to predict when their actions will and will not create antitrust enforcement concerns.

Investments in healthcare services, whether in the form of acquisitions, mergers, or capital infusions, involve both parties agreeing to a legal structure. Physician groups, technology companies, and investors have actively chosen to partner in unique ways to innovate, build, and deploy new treatments and care delivery models. This collaboration helps address the worsening provider shortage and was vital during COVID-19. With the growing costs of healthcare and downward pressure from reimbursements, professional corporations (PCs) will likely continue to seek financial partners to continue serving patients. Partnering with business professional organizations and receiving capital from investors helps practices gain efficiencies, reduce overhead costs, and evaluate current practices for improvement without encroachment into clinical care decision-making.

As proposed, the net result of the Health Over Wealth Act's provisions would be to widely restrict access to capital and to discourage pro-patient and pro-worker healthcare transactions, neither of which serve our shared goals of protecting patients and workers. We welcome the opportunity to work with you to develop targeted policy changes to protect patients and healthcare workers and enhance competition across the healthcare ecosystem.

Sincerely,

Brian Scarpelli
Executive Director
Connected Health Initiative