September 11, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: 2023-0106
7500 Security Blvd.
Baltimore, MD 21244-1850

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
Attention: 2023-0038
1700 G. St. NW
Washington, DC 20552

Thomas C. West
Deputy Assistant Secretary for Tax Policy
Department of the Treasury
Attention: 2023-0008
1500 Pennsylvania Ave., NW
Washington, DC 20220

Re: Request for Information Regarding Medical Payment Products (File Nos. CMS-2023-0106; CFPB-2023-0038; TREAS-DO-2023-0008)

Dear Administrator Brooks-LaSure, Director Chopra, Deputy Assistant Secretary West:

The American Investment Council ("AIC") appreciates the opportunity to submit these comments to the Centers for Medicare & Medicaid Services, the Consumer Financial Protection Bureau, and the Department of the Treasury, in response to the agencies' Request for Information Regarding Medical Payment Products ("RFI").

AIC is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. In this effort, AIC develops, analyzes, and distributes information about the private equity and private credit industry and its contributions to the U.S. and global economy. Established in 2007 and formerly known as the Private Equity Growth Capital Council, AIC is based in Washington, D.C. AIC's members are the world's leading private equity and private credit firms, united by their commitment to growing and strengthening the businesses in which they invest.[1]

As discussed further below, private equity has a long history of investing in health care companies in the United States to improve the delivery of quality health care. These investments yield innovative and effective treatments, increase access to high-quality health care, improve efficiency to lower costs, and ultimately save lives.[2] Furthermore, private equity-backed facilities are proactively bringing health care to lower income and underserved populations in rural areas by

[1] For further information about AIC and its members, please visit our website at www.investmentcouncil.org.

[2] As discussed in section III below, private equity firms have produced tests to assist the health care system during the COVID-19 pandemic, invested critical capital in financially distressed hospitals, helped physician practices expand their technology offerings, expanded health care access through urgent care centers and telehealth options, and funded critical pharmaceutical research.

investing in and expanding urgent care centers, which one study has shown effectively reduces patient costs.[3] The Medicare Payment Advisory Commission (MedPAC), a nonpartisan legislative branch agency that provides Congress with analysis and policy advice on the Medicare program, concluded that private equity investment plays an important role in providing a broad range of provider entities with capital and expertise to navigate an increasingly complex health care landscape.[4] While health care has changed dramatically over the last decade, there appears to be a new transformation driven by policies and advancing technology; we believe private equity's capital and expertise will be one of the key factors for expanding access, improving care, and providing solutions to reduce high costs for patients.

AIC supports the agencies' efforts to gather information and evaluate what impact medical payment products (e.g., medical credit cards, installment loans) may have on patients' health care costs. In support of that goal, private equity firms are committed to enhancing care quality and lowering health care costs. We believe, however, that the scope of the RFI may reflect a significant misperception of the degree to which private equity is involved specifically in the medical payment products industry.

The persistent lack of clear understanding as to the nature of what is "private equity," and in particular a private equity adviser, is a root cause of many misperceptions of this investment vehicle's role in health care in the United States. As explained in greater detail below: (i) private equity is markedly different from other types of investment vehicles, including with regard to governance and ownership structures, management and financial goals, and risk tolerance; (ii) private equity historically, and currently, represents a minor presence in the medical payment products industry, (it is notable that of the five companies identified in the RFI, only one has received any, albeit limited, private equity-backing);[5] and (iii) private equity investment is actively providing solutions to inefficiencies within the health care system more broadly that improve patient care.

Understanding the drivers of demand for and impact of the medical payment products market is important to further the agencies' work of lowering health care costs and reducing the burden of medical debt on patients. As the agencies progress in their analysis of the root cause of medical debt, AIC believes it is important to identify and focus the agencies' attention on entities actually involved in the area of interest, which generally does not include private equity.

I. Defining Private Equity.

The RFI states that many medical installment loan companies are "backed by private equity firms." The investors in these companies are typically not private equity funds, but in some instances are backed by Venture Capital ("VC") funds. While private equity funds and VC funds provide long-term investment into companies, private equity funds and VC funds take fundamentally different approaches to investing, governance, and management of their portfolio companies, as discussed in greater detail below.

[3] AIC, *US Health Care: How PE Is Filling the Gaps* (March 2021), available here. *See also*, Amir B. Ferreira Neto & Joshua Hall, *The Effect of Health Care Entrepreneurship on Local Health: The Case of MedExpress in Appalachia* (2017), available https://researchrepository.wvu.edu/econ_working-papers/30/.

[4] *June 2021 Report to the Congress: Medicare and the Health Care Delivery System* (June 2021), available https://www.medpac.gov/document/june-2021-report-to-the-congress-medicare-and-the-health-care-delivery-system/.

[5] Of the five companies, only AccessOne has private equity investors, and those investors do not exert control over the company.

For background, private equity sponsors manage closed-end pooled investment vehicles with 10-year fund lives for the purpose of investing and operating portfolio companies. They typically manage capital on behalf of large institutional investors such as pensions, endowments, sovereign wealth entities, insurance companies, and other investors. Certain investors, such as small family offices, may borrow the label of "private equity," but do not engage in the same type of institutional investment management that private equity sponsors do. Instead, small family offices are typically comprised of a single or several high-net-worth individuals or a small pool of wealthy individuals that invest their own capital directly into private companies. As such, small family offices are typically excluded from discussion of private equity investment and their investment practices should not implicate private equity sponsors.

While private equity firms can pursue a range of investment strategies, the predominant approach is a buyout transaction. In a buyout transaction, the private equity fund purchases all or a controlling interest in a mature, stable business with a combination of fund-contributed equity and third-party debt. The fund will typically hold a portfolio company for 3-6 years, with many companies held for much longer periods, and use their operational expertise to increase the value of the company before exiting the investment.

Private equity firms add value to the company before exiting the investment through (i) strengthening the portfolio company's management team and developing new business plans; (ii) providing operational and financial management assistance; and (iii) providing capital for R&D and other capital expenditures and acquisition-driven growth or organic expansion into new markets. Private equity investment can often be characterized by (i) the use of a mix of equity and debt to acquire all or the majority control of a portfolio company; (ii) investments with a focus on more mature and stable companies; and (iii) the production of consistent and sustainable cash flows to pay down debt and increase the overall value of the company.

By contrast, VC funds invest in early-stage companies with growth potential. While private equity focuses on investing in companies that have grown beyond the start-up/early-stage phase, VC funds typically support emerging companies and focus on substantial and rapid company growth in order to exit the investment (e.g., through initial public offerings or acquisitions) with substantial returns. Start-ups and other early-stage companies will typically receive numerous stages of funding (pre-seed, seed, and late stage) from a number of VC funds and investors who take only a passive minority stake in the company, typically in the form of preferred equity. While VC funds individually take a minority interest in a company, they derive value helping early-stage and start-up businesses to professionalize and grow providing guidance and insight to management.

It is worth noting that other agencies which routinely deal with these sophisticated investment entities have clearly distinguished private equity for regulatory purposes. The Securities and Exchange Commission ("SEC")—the primary regulator of private funds—has defined a "private equity fund" as "any 'private fund' that is not a 'hedge fund,' 'liquidity fund,' 'real estate fund,' 'securitized asset fund,' or '*venture capital fund*' and does not provide investors with redemption rights in the ordinary course," as such terms are defined in the Glossary of Terms for Form PF for purposes of private fund reporting as required by the Investment Advisers Act of 1940, as amended (the "Advisers Act").[6] The SEC's definition ***explicitly differentiates VC funds*** from the definition of private equity fund, as well as other funds that do not necessarily operate privately to make controlling investments in their portfolio companies. The SEC also regulates private equity advisers

[6] FORM PF Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors, available https://www.sec.gov/files/formpf.pdf (*italics* added).

differently with specific registration requirements. The SEC was required to adopt these different regulatory regimes pursuant to Congressional mandate when Congress notably drew a clear distinction between private equity advisers, VC advisers, and others when adopting the Dodd-Frank Act. (This mandate also served as the basis for the distinction between VC advisers and private equity advisers for Form PF purposes mentioned above.)

Regardless of the type of ownership—a minority or majority control position from a VC or private equity investment—neither inherently acts nefariously nor produces predatory results within the sectors in which they invest. Fundamentally, both sources of capital seek to insert competition and solutions into various markets—an aspect health care needs in order to deliver better outcomes, access, and lower prices for patients. From vaccine development to telehealth to urgent care facilities, VC and private equity should be looked upon by agencies as allies in finding private sector solutions to help patients.

II. There is No Material Link Between Private Equity and the Medical Payment Products Industry.

The agencies appear to be implicitly expressing concern around private equity ownership or backing of medical installment loan companies, but this concern is misplaced. To date, we are unaware of any of AIC's members, which include many of the largest private equity firms in the U.S. and approximately 75% of the assets under management in the industry, investing in the five medical payment product companies delineated in the RFI: AccessOne, PayZen, Prosper, Scratchpay and Walnut. Moreover, the few private equity firms that are involved in the medical payment products industry hold only a minority stake in these companies and have limited influence on the management decisions at these companies.

While we again appreciate the underlying policy objective of the RFI to further the transparency of ownership of medical billing products, it is important for the agencies to appropriately "label" the ownership structure. For example, the RFI states that many medical installment loan companies are backed by private equity, citing for support a Kaiser Family Foundation article titled "How Banks and Private Equity Cash In When Patients Can't Pay Their Medical Bills" ("KFF Article"). However, a closer examination of the financial support that the medical payment product companies discussed in the RFI have received makes clear that they are either not backed by private equity or have accepted only small ***non-controlling*** private equity investments. Of the various medical installment loans companies cited, our research shows that only AccessOne received any private equity investment: a small *non-controlling* investment, which was in addition to VC funding and third-party debt financing. None of the other medical installment loan companies cited in the RFI received *any* private equity investment. Thus, we disagree with the assertion that "[m]any medical installment loan companies, including the five previously mentioned, are backed by private equity firms," and the resulting implication that private equity firms are buying and controlling these companies seems to be unfounded.

Additionally, private equity is largely not involved in the medical credit card industry. The examples of medical credit card companies listed in the RFI are not owned by private equity funds, but rather are owned by other financial services companies: banks and other non-bank financial companies. This further affirms our understanding of a lack of a particularly strong connection between private equity and the medical payment products industry. As previously mentioned, in the rare circumstance that private equity investment is linked to medical debt, they appear to be minority investments and do not exert control over these companies.

III. Private Equity Investments Create Solutions for the Health Care System.

The health care system unfortunately suffers from a variety of inefficiencies that are detrimental to enhancing patient care. Although private equity plays almost no role in the medical payment products industry specifically, private equity can, and does, play a vital role in health care more generally. Private equity capital helps provide improvements and solutions benefiting patients.

As described above, private equity funds make long-term investments. Private equity investments in the health care sector, including investments in health care facilities, are no different. These investments are long-term propositions designed to improve performance of the capital receiving health care facility. That goal, improving performance, is fundamentally linked to improving patient care. As noted below, this alignment of interests between the fund and patient care drives improvements in the health care industry for the benefit of private equity investors and patients.

COVID-19. Private equity played an important role in the health system's response to the COVID-19 pandemic. For instance, private equity-backed companies played important roles in (1) developing robust COVID-19 antibody tests; (2) administering COVID-19 vaccine trials; and (3) sourcing critical personal protective equipment products.

Hospitals. Private equity can serve as a financial lifeline for some acute care hospitals in dire need of capital and expertise to continue delivering critical care in their areas.[7] Investments in these entities brings relief to at-risk hospitals, keeping facilities open and hospital staff employed while embracing the same care missions and economic commitments to communities that non-profit entities uphold. Private equity-backed hospitals tend to be located in more rural areas and serve lower income populations where investment is most needed to stay operational.[8] Private equity is also helping scale new solutions for these struggling hospitals.

Physician Practices. Private equity investment has helped physician practices invest in and maintain electronic health records, build technology platforms, acquire complementary practices, and handle the business side of the practice, making practices more sustainable over the long-term. The associated scaling also helps practices navigate the increasing administrative and financial difficulties associated with insurance reimbursement. Clinical leaders typically remain at the helm of management teams or governing boards, and private equity acquisition frees up physicians' time, allowing them to deliver quality care to patients rather than being bogged down with administrative and financial responsibilities.[9]

Telehealth and Digital Care. In recent years, telehealth has become a key resource for expanding access to care and increasing provider responsiveness. Private equity has also helped expand telehealth behavioral health services as a result of increasing demand and changing

[7] However, it's worth noting that of the 6,129 U.S. hospitals, only 1,235 are for profit and private equity only backs a subset of these hospitals. Fast Facts on U.S. Hospitals, 2023 (last updated May 2023), available https://www.aha.org/statistics/fast-facts-us-hospitals.

[8] Joseph Bruch, Dan Zeltzer, Zirui Song, *Characteristics of private equity owned hospitals in 2018, Annals of Internal Medicine*, (September 29, 2020), available https://pubmed.ncbi.nlm.nih.gov/32986485/.

[9] Casalino et al., *Private Equity Acquisition of Physician Practices, Annals of Internal Medicine* (January 15, 2019), available here; Eloise May O'Donnell et al., *The Growth of Private Equity Investment In Health Care: Perspectives from Ophthalmology* (June 2020), available https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01419?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub++0pubmed.

reimbursement policies. According to PitchBook Data, private equity investment in HealthTech has grown from $1.8 billion invested in 36 companies in 2012 to $28.4 billion invested in 162 companies in 2022.[10]

Urgent Care Centers ("UCCs"). UCCs have an outsized positive impact on local communities in several ways: lower health care costs, emergency department decongestion, and improved access to medical information.[11] While shortages of primary care physicians have resulted in long waits for appointments, UCCs shorten wait times by employing more mid-level providers,[12] as well as increased hours of availability.[13] UCCs are also more physically-accessible nationwide, moving to locations like shopping centers.[14] They substitute emergency department treatment with a lower cost alternative, and played an active role in vaccine distribution and testing during the COVID-19 pandemic.[15] The rapid growth of UCCs has been fueled by private equity investment,[16] which made up 50% of all UCC transactions from 2012-2020.

Pharmaceuticals. Private equity firms have partnered with well-established pharmaceutical companies (e.g., Pfizer, Novartis) to help identify and support the development of de-prioritized drug candidates. For example, investments from private equity help propel vital research into drugs targeting Parkinson's Disease and thrombotic disorders. Thousands of patients across the country have benefited from drugs which received a capital boost from innovative private equity investors.

Conclusion

In sum, while we welcome the agencies' examination of the role financial instruments play in patient outcomes, we believe the RFI's examination of the medical payment product market is better focused on the root causes of consumer medical debt. Importantly, private equity's involvement in this medical debt space is *de minimis*. In limited instances where private equity firms do invest, they appear to take only a minority interest and thus cannot exert control over such companies. However, we do strongly believe private equity can offer solution capital to many of the problems plaguing the health care sector and harming patients more broadly—be it costs, access or outcomes. As the agencies continue their effort to become better informed about the medical payment product market, it is important to keep in mind the positive contributions that private equity firms, like AIC's members, have on the health care market as a whole. Private equity investments in the health care system have, in practice, led to rapid innovation, increased care quality and access, and lower costs across hospitals, physician practices, and telehealth and UCC options; additionally, private equity-backed companies were instrumental during the COVID-19 pandemic and are continuing to support pharmaceutical companies find new uses for de-prioritized drug candidates.

AIC appreciates the opportunity to comment on the RFI and would be pleased to answer any questions that you might have concerning our comments.

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[10] PitchBook Data, available at https://pitchbook.com/.

[11] *See* Amir B. Neto & Joshua C. Hall, *The Effect of Health Care Entrepreneurship on Local Health: The Case of MedExpress in Appalachia* (2017), available at: https://researchrepository.wvu.edu/econ_working-papers/30/.

[12] Ian Goldberger, *Private Equity Continues to Propel Urgent-Care Growth, But Some Markets Reaching Capacity*, available at: https://kaufmanrossin.com/news/private-equity-continues-to-propel-urgent-care-growth-but-some-markets-reaching-capacity/.

[13] Alan A. Ayers, *2023 Trends for Urgent Care* (December 30.2022), available at: https://www.jucm.com/2023-trends-for-urgent-care/.

[14] *Id.*

[15] *Id.*

[16] AIC, *US Health Care: How PE Is Filling the Gaps* (March 2021), available at: https://www.investmentcouncil.org/wp-content/uploads/2021/03/pitchbook-healthcare-report.pdf.

Respectfully submitted,

/S/ Rebekah Goshorn Jurata

Rebekah Goshorn Jurata
General Counsel
American Investment Council