

# HBS

HUSCH BLACKWELL STRATEGIES

## HBSREPORT

# PRIVATE EQUITY INVESTMENT IN HEALTHCARE

AUGUST 22, 2024



Scrutiny of private equity (PE) activity in healthcare is at an all-time high and will continue increasing into 2025, regardless of election outcomes. PE investments in healthcare have steadily increased throughout the last decade; firms have purchased over 6,000 physician practices, 460 hospitals, and 5% of nursing homes. Healthcare companies face multifaceted and growing risks across federal and state governments, with distinct and emerging risks in specific state capitals.

The HBS team has conducted an analysis of legislative and regulatory action across the country and by Congress to assess current risks to private equity investments in healthcare. Our report outlines obstacles impacting private equity and provides a proactive blueprint to safeguard innovative investments in healthcare.



THE **HBS** TEAM FOUND THE FOLLOWING:

**Legislative and administrative challenges are comprehensive in scope across all levels of government. In the current environment, critics are driving the message.**

#### **INDUSTRY NEEDS INNOVATION**

- Both sides agree on one point: our healthcare system needs improvement.
- US healthcare spending is 2.5x times more than the average OECD country.
- Healthcare spending accounts for approximately 20% of US GDP.
- These two data points are unsustainable, especially after inflationary pressures.
- Stakeholders desire more effective and consumer-friendly care at a better cost.

#### **INNOVATION IN HEALTHCARE REQUIRES INVESTMENT**

- Patients, providers, and advocates agree that innovation should focus on emerging technologies, reducing costs, and expanding care for all.
- However, in-house solutions lack the specialized skills, expertise, and resources needed to achieve the full potential of innovation in healthcare.

#### **INVESTMENT SOLVES**

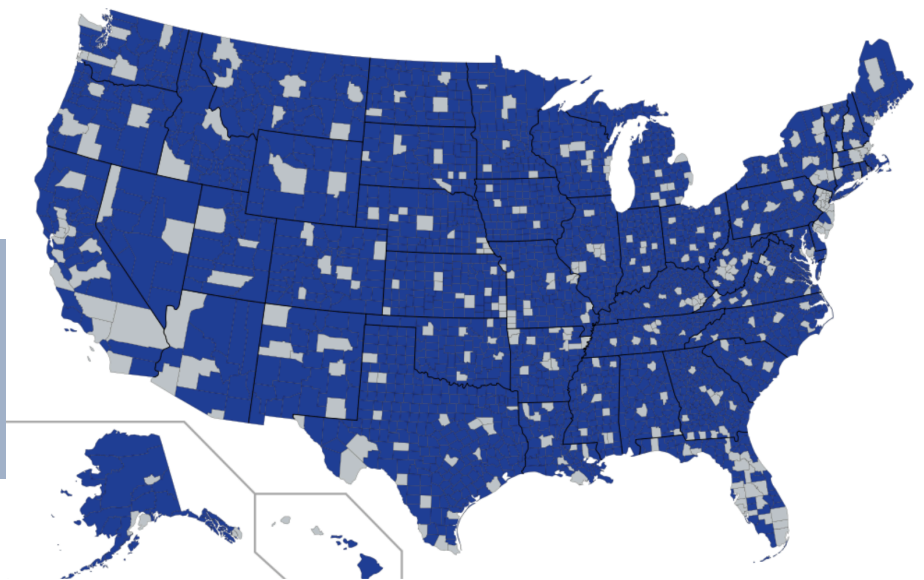
- Outside partners fill the gap, bringing the expertise and specialized skills to lead the development and implementation of new technologies and the capital to support those efforts.
- Innovation Investments bring thought leaders across industries together, fueling medical advancements.
- Innovation Investments can deliver long-term cost reductions and quality of care improvements.

# SITUATIONAL AWARENESS

Proponents argue that PE investments save shuttering healthcare facilities, expand healthcare access, and power medical advancements. PE engagement delivers more than just cashflow: managerial, turnaround, and back-room operations support allow practitioners to focus on their patients while PE delivers needed business acumen to struggling hospitals. Research denotes that investments in healthcare increase the quality of care provided, accelerate medical innovation, and boost efficiency. Investments fund research into diseases like Alzheimer's and Parkinson's, expand and renovate facilities, and modernize medical records and data to improve patient experiences and outcomes.

Critics argue that PE investment derives from corporate greed and that PE-controlled facilities charge more, cost more to operate, and compromise the quality of care practiced. Critics cite research from Harvard Medical School and the University of Chicago, stating that at PE-acquired hospitals, the rate of adverse events was 25% greater, there were 38% more central-line associated bloodstream infections, a 27% increase in falls, and a 100% increase in surgical site infections. Their talking points generally attribute the quality of care compromises to cost-cutting associated with profit motives, arguing the high costs associated with staffing levels and adherence to patient safety protocols are overlooked and cut by PE firms.

Over 80% of rural counties are considered "medical deserts." Nearly 30% of all rural hospitals are at risk of closing in the immediate or near future, creating a rural medical crisis that PE solves: offering a lifeline to rural healthcare facilities.



■ Representation of Medical Desert

# RISK ASSESSMENT

## FEDERAL

While federal activity is increasing, action on Capitol Hill or by the Administration is unlikely to have an immediate impact. We have identified the following as potential areas of risk for the industry:

### Corporate Crimes Against Health Care Act of 2024

Draft of Bill (June 12, 2024) Summary of Bill

Introduced by Warren & Markey as a response to Steward's collapse, the legislation would create a criminal penalty of up to six years in prison for executives who "loot health care entities," allow state AGs and DOJ to claw back all compensation, including salaries, issued to PE executives within a ten year period before/after an acquired healthcare firm experiences financial difficulties (plus civil penalty up to 5x clawback amount), requires reporting for healthcare entities receiving federal funding, and mandates an HHS OIG report. The Private Equity Stakeholder Project is a key advisor to the Senators on this issue.

The bill is endorsed by: Americans for Financial Reform, Private Equity Stakeholder Project, American Federation of Teachers, Take Medicine Back, Massachusetts Nurses Association, American Economic Liberties Project, Groundwork Collaborative, and the Community Catalyst. HBS expects initial PE battles to unfold in state capitals. We are monitoring the state actions of these advocacy groups, anticipating state and local chapters will start pushing legislative frameworks similar to Warren's.

### Health Over Wealth Act

Draft of Bill (May 11, 2024)

Draft of legislative text that would establish licensure requirements to invest in healthcare entities, where a denial of licensure would require immediate divestiture. HHS would be able to block any deal, regardless of licensure status. The bill also establishes board financial and outcome reporting requirements.

### Senate Budget Committee

*Investigation into PE Ownership of Hospitals*

Broad bipartisan (Grassley & Whitehouse) investigation into the quality of care administered in PE-acquired hospitals. At the center of this inquiry is the Ottumwa Regional Health Center, a facility with a myriad of practice issues. Grassley previously inquired about Ottumwa in 2023.

### Senate Homeland Security and Government Affairs Committee

*Investigation into PE Ownership of Emergency Departments*

Chair Peters is interested in four emergency department staffing firms owned by three private equity companies requesting information on their business practices, with an increased focus on rural populations.






### Administrative Action








*FTC, DOJ, HHS: Investigation into PE Trends in Healthcare*

The Biden Administration has been heavily focused on healthcare antitrust as a vehicle to drive down consumer costs. In March 2024, the DOJ's Antitrust Division, FTC, and HHS launched a broad cross-government public inquiry into PE's "control over healthcare". An RFI was issued with comments due on June 5th following a 30-day extension. The RFI requests comments from all market participants, including patients, advocates, doctors, nurses, providers and administrators, employers, and insurers. FTC, DOJ, and HHS have entered a post-RFI review period to analyze the information they gathered. During this review period, HBS expects the agencies to conduct economic and market analysis and may request supplemental RFIs. The agencies will then announce further action. Note: Further action is likely to be antitrust-focused. In a recent federal court decision, *FTC v. U.S. Anesthesia Partners*, the Texas Southern District Court ruled that PE investments are not inherent antitrust violations.

## STATES

The greatest risk to PE investments is legislative and regulatory action at the state level. Three main components of these measures are: 1) reporting and transparency, 2) Attorney General (AG) authority, and 3) prohibition of non-competes. State actions impacting risk to PE are summarized below:

State	Leg Action	Status	Impact
<b>California</b> 	<u>AB 3129</u>	House passed on 5/21/24.  Senate: At Health/Judiciary as of 5/29/24.	Requires all PE entities to submit notice and obtain approval from AG before acquisition of health care entities. Prohibits non-competes and non-disparagement clauses. Threshold: Increases annual CA-derived revenue of either party by \$10 million.
<b>Connecticut</b> 	<u>HB 5419</u> <u>SB 440</u>	HB: Passed committee on 4/8/24.  SB: Passed committee on 4/11/24.	<b>HB 5319:</b> Requires the Office of Healthcare Strategy (OHS) to develop a plan concerning PE firms owning or acquiring healthcare facilities. The Senate President and the AG are collaborating on what will be in this plan. It has yet to be put together. The broad definitions of PE and healthcare facilities imply sweeping impacts across healthcare investments and corporate ownership. <b>SB 440:</b> Reforms the current approval mechanism for transactions: the Certificate of Need. Would impact new facilities, transfers of ownership, changes of services, etc.
<b>Illinois</b> 	<u>HB 2222</u>	<b>Enacted</b> on 1/1/24. Passed on 8/15/23.	Amends the IL Antitrust Act, now requiring AG notification of any merger, acquisition, or contact between any healthcare facilities that would produce at least \$10 million in annual revenue from IL residents. The AG has the power to investigate.
<b>Indiana</b> 	<u>SB 09</u>	<b>Enacted</b> on 3/13/24. Passed on 3/4/24.	Requires AG notification of any transaction where at least one party is a healthcare entity and at least one party has \$10 million or more in assets. The AG has the power to investigate.
<b>Massachusetts</b> 	JC on <u>Healthcare Financing</u>	Pending legislation	3/25 hearing following intense political interest in Steward Health. Speaker Mariano has expressed a desire to establish guardrails on PE investment.

State	Leg Action	Status	Impact
<b>Minnesota</b> 	<a href="#">HF 4206</a> <a href="#">SF 4392</a>	Referred to committee on 2/24	Total ban on PE or Real Estate Investment Trusts (REITs) from increasing or gaining new ownership in a provider group. <a href="#">HF 402</a> , which passed in 2023, requires notification of transactions between \$10 million and \$80 million in average revenue.
<b>New Mexico</b> 	<a href="#">SB 15</a>	<b>Enacted</b> on 3/1/24. Passed on 3/1/24.	Requires notice to the Office of Superintendent of Insurance. That office has the authority to review and approve, conditionally approve, or disapprove <u>any transaction</u> involving New Mexico hospitals.
<b>New York</b> 	<a href="#">Public Health Law Article 45</a>	<b>Enacted</b> on 8/1/23.	Requires notice of any material transactions (+ \$25 million in gross in-state revenues) in healthcare to the Department of Health. Approval authority was included in Gov. Hochul's proposed budget but not in the finalized version.
<b>North Carolina</b> 	<a href="#">SB 16</a>	Referred to Senate Rules Committee on 1/26/24.	Requires notice and approval for any merger/ <u>transaction</u> . AG would have the authority to investigate any transaction. Requires a public hearing in the county of merging parties.
<b>Oregon</b> 	<a href="#">HB 4130</a>	Stalled.	Would restrict PPM by prohibiting non-professional businesses with revenue exceeding \$10 million from owning or investing in healthcare entities.
<b>Pennsylvania</b> 	<a href="#">SB 546</a> <a href="#">SB 548</a>	Stalled.	<b>SB 546:</b> prohibits for-profit entities from owning or managing healthcare entities. Referred to the Senate Health and Human Services Committee. <b>SB 548:</b> prohibits for-profit entities from owning or managing healthcare entities. Additionally, a regulatory framework for healthcare oversight, certification requirements for providers, and penalties for non-compliance are all established.
<b>Washington</b> 	<a href="#">SB 5241</a> <a href="#">HB 1263</a>	Stalled.	Establishes a public review process targeting hospital consolidation when an out-of-state entity produces $\geq$ \$10 million or more in patient revenue from WA residents. Driven by the AG's office. Would require specific commentary regarding any impact to access of reproductive or gender-affirming care over the next ten years.

# THE HBS ADVANTAGE

## ENGAGING WASHINGTON

Industry leaders should be a natural resource to lawmakers as they consider legislation impacting investment activity. It is difficult to develop relationships and become a trusted resource while under scrutiny. Our team has the trusted relationships needed to engage directly with lawmakers during this debate. When decisions are made, we know who makes them and the HBS Federal team can craft an approach that engages in the conversation and helps safeguard innovation and investment in healthcare.

## WINNING EARLY BATTLES

Legislative scrutiny is unfolding across state capitals. The HBS 50 STATE team can serve as a client's legislative hub for its national objectives and provide access to trusted personal networks across state governments. State legislative strategies and challenges will vary from state to state; our team of experts will advocate for and protect innovation and investment in healthcare throughout every environment.

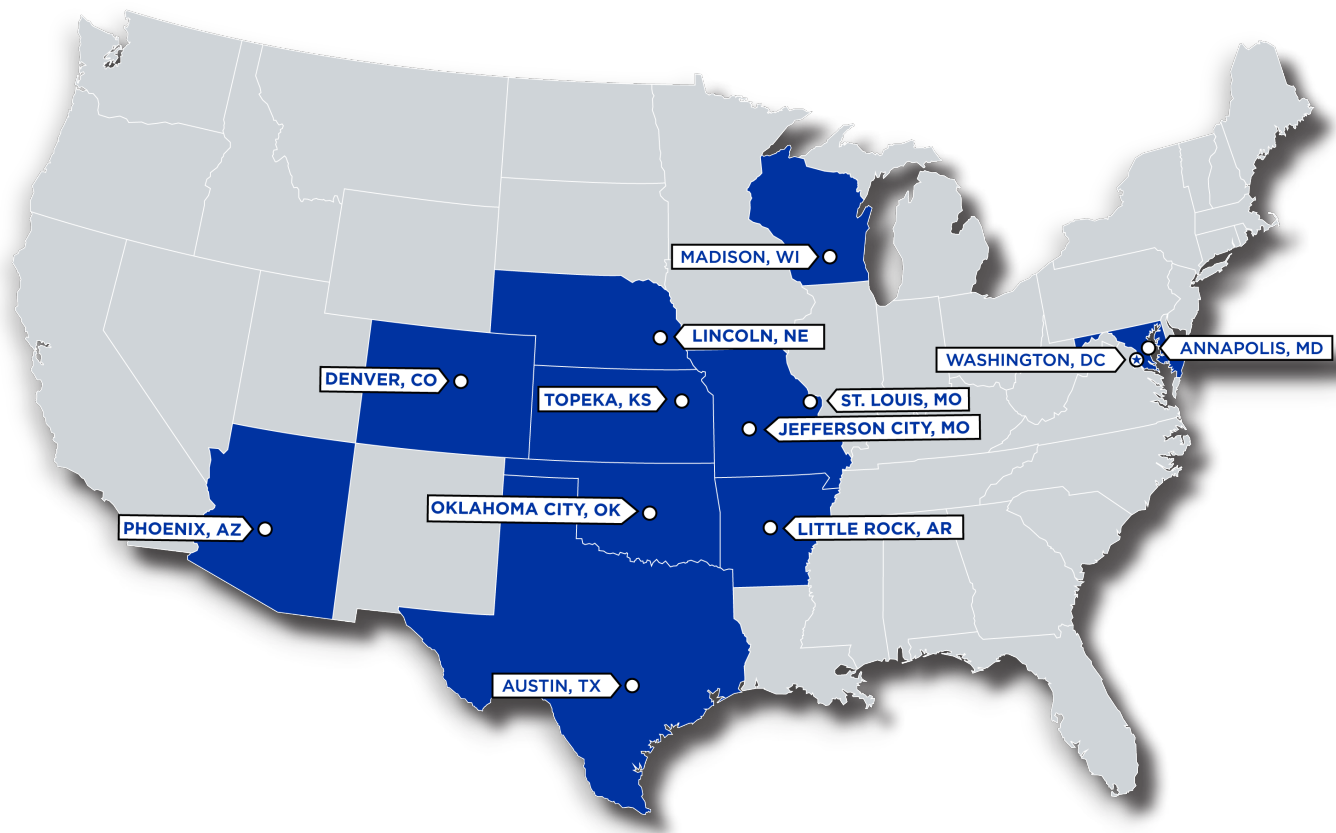
## PREPARING EXECUTIVE LEADERSHIP

In a changing and high-profile dynamic, industry executives require the best legislative and policy intelligence gathering and analysis interwoven into executive advice and counsel. Our Leadership Strategies Advisory Services team, led by Senator Roy Blunt, can be a trusted partner in designing and implementing large-scale internal and external action plans to navigate the now and forge a path ahead.

## INFLUENCING THE NARRATIVE

Innovation and investment in healthcare are unifying and winning messages. From the local to the national level, our Public Affairs team moves the needle of public opinion with tailored strategies that engage key audiences and deliver measurable results.

# ABOUT HBS



Husch Blackwell Strategies was established in 2018 with the merger of three government affairs practices of Husch Blackwell LLP, Statehouse Strategies LLC, and Cloakroom Advisors LLC, to form a multi-jurisdiction state and federal legislative government affairs firm. HBS Chief Executive Officer Andy Blunt and HBS Chief Operating Officer Gregg Hartley are co-founders of the firm. Today, HBS moves the needle of public opinion and guides decisions of public officials through its integrated services of state and federal lobbying, executive-level strategic counsel, and public affairs. With one of the largest networks of state lobbyists in the country, HBS has twelve offices nationwide - in Arizona, Arkansas, Colorado, Kansas, Maryland, Missouri, Nebraska, Oklahoma, Texas, Wisconsin, a federal practice group that ranks as one of Washington's top performing lobbying firms, and the HBS Public Affairs group based in St. Louis. U.S. Senator Roy Blunt chairs the firm's Leadership Strategies Advisory Services group in Washington - a specialized executive team that provides a comprehensive whole-of-government advisory service that is tailored to the needs of a specific organization.



# HBS

HUSCH BLACKWELL STRATEGIES



  
@H\_B\_Strategies

  
company/husch-blackwell-strategies/