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Insights from the Healing American Healthcare Coalition™

The Sorry State of American Healthcare!

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From the Editor: After 8 issues in 9 weeks tracking the Change cyberattack, **TMR** took a time out to reflect on the sorry state of American healthcare today. This issue focuses on failings resulting from ineffective regulation. Click on the headline to read the full article. If you enjoy **TMR's** coverage of emerging issues, please upgrade to a paid subscription [here](#).

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[Private Equity Impacts On Health Care: Federal and State Legislative and Regulatory Actions, Will It Matter?](#), by Richard M. Scheff

ler and David Blumenthal, Milbank Quarterly, 4/29/24
TMR Topline – Private equity's expanding health care presence has attracted growing interest and concern in the [media](#) and among health policy experts and policy-makers. Over the last decade, private equity (PE) firms have purchased 6,000 physician practices and [460 US hospitals](#). Studies suggest that this results in [higher prices](#) with worse quality. About [5% of nursing homes](#) are now PE owned with [serious negative impacts](#) including higher mortality rates. PE acquisitions also can lead to reduced access to services as the acquired practice or facility struggles to pay the increased costs of servicing the loans that financed the transaction. Recently, the Steward Health Care System bankruptcy has highlighted the threat to the availability of healthcare services in Massachusetts communities including Boston.

Congress and the executive branch have also become interested in this issue. The Senate Budget Committee, has launched an inquiry into the [role of PE in health care](#). Reacting to the Steward Health Care System collapse,

Senator Markey (D-MA) introduced the [Health Over Wealth Act](#), a comprehensive national effort to regulate private, investor-owned activities in healthcare. It is expected to come up for a vote in the next Congress. In a precedent setting action, the FTC sued [United States Anesthesia Partners \(USAP\)](#) for allegedly violating antitrust statutes by "rolling up" anesthesia practices in Texas. Over a dozen states have passed laws that require PE to notify the state about a planned transaction, [with some requiring state approval](#).



Globe, 5/6/24

TMR Topline – Steward's bankruptcy filing marks the end of a long, sad tale that began in 2010 when, backed by PE firm Cerberus Capital Management, Steward acquired six Caritas Christi hospitals, promising to make its community hospital system a low-cost alternative to Boston's medical goliaths. It converted them to for-profit institutions and launched a nationwide expansion. While Steward blamed "insufficient reimbursement" from Medicare and Medicaid, [a recent analysis showed](#) that Steward hospitals are paid the same as if not better than many Massachusetts hospitals. Governor Maura Healy said she hoped the bankruptcy filing would clear the way "to get Steward out of Massachusetts" while offering transparency about the company's debts and liabilities. "One of the good things about bankruptcy is that Steward and its CEO and its management team will no longer be able to lie," Healey said, calling out the "greed and mismanagement" of Steward's leader. The bankruptcy filing will also shine a spotlight on the multimillion-dollar rent obligations Steward hospitals have had to pay to MPT, the real estate investment trust that bought the Massachusetts hospital buildings in 2016 for \$1.2 billion. In 2021, Steward paid out a \$111 million dividend to equity owners, including chief executive [Ralph de la Torre](#). Before the bankruptcy, Steward had been count-

[Steward files for bankruptcy, leaving its eight Massachusetts hospitals in limbo](#), by Robert Weisman and Jessica Bartlett, Boston

ing on its plan to sell its doctors network to [UHG's Optum Health](#) to help pay off lenders.

TMR's Take: Steward's failure is fodder for future business school case studies demonstrating that private equity involvement in healthcare is rarely positive for providers and the communities they serve. In Connecticut, [Yale New Haven Health](#) plans to sue for-profit Prospect Medical Holdings to be released from an October 2022 three-hospital [acquisition agreement](#) because Prospect allegedly violated the terms of the contract by failing to pay clinicians and vendors, and letting the state of its facilities decline



[The Time Is Now For Federal Reform Of Direct-To-Consumer Advertising Of Prescription Drugs](#), by Patrick Masseo and Sherene Sharath, Health Affairs, 5/1/24

TMR Topline – The US and New Zealand are the only two developed countries that permit direct to consumer advertising ([DTCA](#)) of prescription drugs. Responsibility for regulating DTCA rests with the resource-limited FDA. The [FDA's DTCA webpage](#) was last updated nine years ago and contains links to webpages that no longer exist. It lacks the authority to impose meaningful restrictions, significantly handicapping its effectiveness. In 2020, a mere \$4.6 billion of [televised DTCA](#) content was reviewed by the FDA. In pursuing a company for inaccurate advertising, its power is limited to a warning letter. PhRMA's position is that raising consumer awareness of drugs is a significant driver of better health and [spends more on advertising than on research](#). If so, why does US life expectancy rank 40th [relative to other nations](#)? Physicians oppose DTCA – the AMA issued a [policy statement](#) in 2015 supporting a ban on DTCA. Purdue Pharma's 1990s [Oxycontin advertising blitz](#) that downplayed addiction risk bears blame for the opioid epidemic that has cost [1.2 million American lives](#). Patient and consumer protection is desperately needed. Reform measures must consider the unlimited resources of pharmaceutical companies compared to the scarcity of federal resources.



Lyngaa, CNN, 5/10/24

TMR Topline – With 140 hospitals in 19 states, nonprofit Ascension said that it is diverting ambulances from

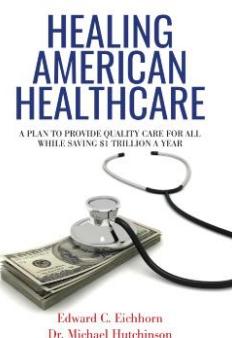
“several” of its hospitals following a cyberattack this week that has disrupted access to electronic health records, some phone systems and “various systems utilized to order certain tests, procedures and medications.” Ascension has notified federal authorities of the incident, hired cybersecurity firm Mandiant to recover from the incident and shut down systems to try to keep the incident under control. It will be using “downtime procedure for some time,” because of the cyberattack. Sources briefed on the investigation said that the type of ransomware used in the attack is known as Black Basta.



[Change Healthcare lacked safeguards even as it gave security advice](#), by Gopal Ratnam, Roll Call, 5/7/24

TMR Topline – Prior to its acquisition by UnitedHealth Group (UHG), Change Healthcare's website featured articles calling for establishing “a culture of health IT security” and advising that “leaders must rally around data security as a corporate value. (August 2021)” and warning that “Healthcare providers face a tsunami of cybersecurity threats. (August 2022)” It went on to list the potential damages, ranging from millions in financial costs to the loss of personally identifiable information that could be stolen by hackers. However, one of Change's web portals used to provide remote access was not equipped with one of the most basic cybersecurity features it extolled: multi-factor authentication. In his testimony before Congress, UHG CEO Andrew Witty stated that Change's compliance with standard cybersecurity practices couldn't be verified prior to the deal closing.

TMR's Take: The \$13 billion deal closed in October 2022, leaving UHG more than 15 months to bring its acquisition into compliance with corporate policy. It's a tale as old as time: “*For-profit entities operate to benefit their stockholders/partners. Not-for-profit enterprises operate to benefit their stakeholders/communities.*” It's



time for the US to adopt systems that produce better outcomes at lower cost like those in France and Germany. The Allcare Plan detailed in [“Healing American Healthcare: A Plan to Provide Quality Care for All, While Saving \\$1 Trillion a Year”](#) describes such a plan for the US. It's available in both soft-cover and eBook versions. Click [here](#) to buy it.