

118TH CONGRESS
2D SESSION

S. _____

To amend the Public Health Service Act to require the Secretary of Health and Human Services to enforce certain requirements with respect to for-profit corporations that own health care systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Public Health Service Act to require the Secretary of Health and Human Services to enforce certain requirements with respect to for-profit corporations that own health care systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Over Wealth
5 Act”.

1 **SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE**
2 **ACT.**

3 The Public Health Service Act (42 U.S.C. 201 et
4 seq.) is amended by adding at the end the following:

5 **“TITLE XXXIV—REQUIREMENTS**
6 **RELATING TO PRIVATE OWN-**
7 **ERSHIP IN HEALTH CARE**

8 **“SEC. 3401. DEFINITIONS.**

9 “In this title:

10 “(1) **AFFILIATE.**—The term ‘affiliate’ means—

11 “(A) a person that directly or indirectly
12 owns, controls, or holds with power to vote, 20
13 percent or more of the outstanding voting secu-
14 rities of another entity, other than a person
15 that holds such securities—

16 “(i) in a fiduciary or agency capacity
17 without sole discretionary power to vote
18 such securities; or

19 “(ii) solely to secure a debt, if such
20 entity has not in fact exercised such power
21 to vote;

22 “(B) a corporation 20 percent or more of
23 whose outstanding voting securities are directly
24 or indirectly owned, controlled, or held with
25 power to vote, by another entity (referred to in
26 this subparagraph as a ‘covered entity’), or by

1 an entity that directly or indirectly owns, con-
2 trols, or holds with power to vote, 20 percent or
3 more of the outstanding voting securities of the
4 covered entity, other than an entity that holds
5 such securities—

6 “(i) in a fiduciary or agency capacity
7 without sole discretionary power to vote
8 such securities; or

9 “(ii) solely to secure a debt, if such
10 entity has not in fact exercised such power
11 to vote;

12 “(C) a person whose business is operated
13 under a lease or operating agreement by an-
14 other entity, or person substantially all of whose
15 property is operated under an operating agree-
16 ment with that other entity; or

17 “(D) an entity that operates the business
18 or substantially all of the property of another
19 entity under a lease or operating agreement.

20 “(2) CORPORATION.—The term ‘corporation’
21 means—

22 “(A) a joint-stock company;

23 “(B) a company or partnership association
24 organized under a law that makes only the cap-
25 ital subscribed or callable up to a specified

1 amount responsible for the debts of the associa-
2 tion, including a limited partnership and a lim-
3 ited liability company;

4 “(C) a trust; or

5 “(D) an association having a power or
6 privilege that a private corporation, but not an
7 individual or a partnership, possesses.

8 “(3) COVERED FIRM.—The term ‘covered firm’
9 means a for-profit corporation that owns a health
10 care entity.

11 “(4) HEALTH CARE ENTITY.—The term ‘health
12 care entity’ means an entity that [owns/manages/in-
13 cludes/consists of] 1 or more of the following health
14 care providers:

15 “(A) A hospital.

16 “(B) A physician practice.

17 “(C) An assisted living or skilled nursing
18 facility.

19 “(D) A hospice facility.

20 “(E) A mental [or] behavioral health care
21 provider.

22 “(F) An opioid treatment program.

23 “(G) A provider of services (as defined in
24 section 1861(u) of the Social Security Act (42
25 U.S.C. 1395x(u)) or a supplier (as defined in

1 section 1861(d) of such Act (42 U.S.C.
2 1395(d)) enrolled in the Medicare program.

3 “(5) PRIVATE EQUITY FUND.—The term ‘pri-
4 vate equity fund’ means—

5 “(A)(i) a person that would be considered
6 an investment company under section 3 of the
7 Investment Company Act of 1940 (15 U.S.C.
8 80a–3) but for the application of paragraph (1)
9 or (7) of subsection (c) of such section 3;

10 “(ii) a venture capital fund, as defined in
11 section 275.203(l)–1of title 17, Code of Federal
12 Regulations (or successor regulations); or

13 “(iii) a sovereign wealth fund; and

14 “(B) directly, or through an affiliate, acts
15 as a control person.

16 **“SEC. 3402. HEALTH CARE OWNERSHIP TRANSPARENCY.**

17 “(a) REQUIRED REPORTING.—

18 “(1) IN GENERAL.—The Secretary shall require
19 each covered firm to submit to the Secretary, at
20 such times as the Secretary determines appropriate,
21 through the infrastructure established under para-
22 graph (2), a report containing—

23 “(A) for a covered firm with respect to
24 which there is a private equity fund that is a

1 control person of the covered firm, the informa-
2 tion described in subsection (b); and

3 “(B) for a covered firm not described in
4 subparagraph (A), the information described in
5 subsection (c).

6 “(2) REPORTING INFRASTRUCTURE.—The Sec-
7 retary, in consultation with the Secretary of the
8 Treasury and the Federal Trade Commission, shall
9 establish infrastructure to collect the data submitted
10 under paragraph (1).

11 “(3) PUBLIC AVAILABILITY.—The Secretary
12 shall make the data submitted under paragraph (1)
13 publicly available.

14 “(4) AUDITING.—The Secretary shall periodi-
15 cally conduct audits to verify the data submitted
16 under paragraph (1).

17 “(5) ANNUAL REPORTS.—The Secretary shall
18 submit **【to Congress】** annual reports describing
19 trends identified through analysis of the data sub-
20 mitted under paragraph (1) relating to—

21 “(A) the financial status of covered firms;
22 and

23 “(B) how the type of ownership of health
24 care entities impacts access to health care,
25 health care quality, and patient safety.

1 “(b) REPORTS SUBMITTED BY COVERED FIRMS
2 OWNED BY PRIVATE EQUITY.—For purposes of sub-
3 section (a), and with respect to a covered firm described
4 in subsection (a)(1)(A) and each private equity fund that
5 is a control person of the covered firm, the information
6 described in this subsection is the following information
7 with respect to each year of the previous 10-year period:

8 “(1) The percentage of the equity of the private
9 equity fund contributed by—

10 “(A) the general partners of the fund; and

11 “(B) the limited partners of the fund.

12 “(2) The level of debt of the covered firm at the
13 end of the applicable year.

14 “(3) Information on the debt held by the pri-
15 vate equity fund, including—

16 “(A) the dollar amount of total debt;

17 “(B) the percentage of debt for which the
18 creditor is a financial institution in the United
19 States;

20 “(C) the percentage of debt for which the
21 creditor is a financial institution outside of the
22 United States;

23 “(D) the percentage of debt for which the
24 creditor is an entity that is located in the

1 United States and is not a financial institution;
2 and

3 “(E) the percentage of debt for which the
4 creditor is an entity that is located outside of
5 the United States and is not a financial institu-
6 tion.

7 “(4) The total amount of debt held by the cov-
8 ered firm that is categorized as—

9 “(A) liabilities;

10 “(B) long-term liabilities; and

11 “(C) payment in kind or zero coupon debt.

12 “(5) The average debt-to-equity ratio of—

13 “(A) each covered firm with respect to the
14 private equity fund; and

15 “(B) the private equity fund.

16 “(6) The average debt-to-EBITDA (Earnings
17 Before Interest, Taxes, Depreciation, and Amortiza-
18 tion) of each covered firm with respect to the private
19 equity fund.

20 “(7) The total number of covered firms with re-
21 spect to the private equity fund that experienced a
22 default during the applicable year, and the name of
23 any such covered firm.

24 “(8) The total gross asset value of each covered
25 firm with respect to the private equity fund.

1 “(9) The gross performance of the private equity
2 fund during the applicable year.

3 “(10) The total dollar amount of aggregate fees
4 and expenses collected by the private equity fund,
5 the manager of the fund, or related parties from
6 covered firms with respect to the private equity
7 fund, which shall—

8 “(A) be categorized by the type of fee; and

9 “(B) include a description of the purpose
10 of the fees.

11 “(11) Any transaction, monitoring, management,
12 performance, or other fees collected by the
13 private equity fund from the covered firm.

14 “(12) In dollars, the total amount of regulatory
15 assets under management by the private equity
16 fund.

17 “(13) In dollars, the total amount of net assets
18 under management by the private equity fund.

19 “(14) With respect to the applicable year, the
20 difference obtained by subtracting the financial
21 gains of the private equity fund by the fees that the
22 general partners of the fund charged to the limited
23 partners of the fund (commonly referred to as the
24 ‘performance net of fees’).

1 “(15) Any management services agreements be-
2 tween the covered firm and the private equity fund,
3 including a disclosure of fees paid through manage-
4 ment services agreements.

5 “(16) Any other services procured by the cov-
6 ered firm from the private equity fund or any other
7 company owned by the private equity fund.

8 “(17) Dividends paid by the covered firm to the
9 private equity fund.

10 “(18) The names of—

11 “(A) the limited partners of the private eq-
12 uity fund;

13 “(B) the board members of the private eq-
14 uity fund; and

15 “(C) the leadership of the covered firm.

16 “(19) All political spending by the covered firm,
17 including contributions, lobbying spending, and con-
18 tributions to groups that do not share their donor
19 list.

20 “(20) All political spending by the private eq-
21 uity fund, an affiliate of the fund, or an investment
22 professional at the fund, with respect to—

23 “(A) health care related issues; or

24 “(B) members of congressional committees
25 with oversight of health care.

1 “(21) Information on the extent to which the
2 covered firm entered into any sale lease back trans-
3 actions with the private equity fund.

4 “(22) Every asset purchased by the covered
5 firm during the applicable year.

6 “(23) Information that is similar to the infor-
7 mation required to be contained in a notification
8 filed pursuant to the rules under subsection
9 7A(d)(1) of the Clayton Act (15 U.S.C. 18a(d)(1)).

10 “(24) Data related to real estate, mortgage,
11 and lease payments.

12 “(25) Interest expenses and payments made by
13 the private equity fund and each covered firm with
14 respect to the private equity fund to comply with tax
15 receivable agreements.

16 “(26) Average interest rate paid on secured and
17 unsecured lines of credit by the private equity fund
18 and each covered firm with respect to the private eq-
19 uity fund.

20 “(27) For the private equity fund and each cov-
21 ered firm with respect to the private equity fund, a
22 list of—

23 “(A) all transactions with the 10 largest
24 vendors or service providers; and

25 “(B) any new vendors or service providers.

1 “(28) For the private equity fund and each cov-
2 ered firm with respect to the private equity fund, the
3 number of payments to staffing firms.

4 “(29) For the covered firm, the staffing of each
5 health care provider owned by such covered firm,
6 disaggregated by position and ratio of staff to pa-
7 tients.

8 “(30) For the covered firm, the staff retention
9 rates, number of job postings, and vacancy rates,
10 disaggregated by position, with respect to each
11 health care provider owned by such covered firm.

12 “(31) For a covered firm that owns 1 or more
13 hospitals, the number of beds in use and the capaci-
14 ty of each such hospital.

15 “(32) For the covered firm, the number of
16 health care facilities or providers owned by such cov-
17 ered firm that have closed during such year.

18 “(33) For the covered firm, health care costs
19 charged to patients and public and private health
20 plans.

21 “(34) For the covered firm, the **【percentage/
22 number】** of non-patient care areas in health care fa-
23 cilities owned by such covered firm that have been
24 converted into patient care areas.

1 “(35) For the covered firm, reductions in the
2 wages or benefits of health workers employed by
3 health care providers owned by such covered firm.

4 “(36) **【**For the private equity fund and each
5 covered firm with respect to the private equity
6 fund,**】** complaints of, or citations for violations of,
7 State or Federal worker protection laws, including
8 charges of unfair labor practices, complaints of vio-
9 lations of State or Federal antidiscrimination laws,
10 complaints of violations of wage and hour laws, and
11 whistleblower complaints.

12 “(37) Any other information that the Secretary
13 determines relevant for evaluating the impact of pri-
14 vate equity ownership of health care entities on the
15 provision of health care, health care quality, and
16 safety.

17 “(c) **INFORMATION SUBMITTED BY COVERED FIRMS**
18 **NOT OWNED BY PRIVATE EQUITY.**—For purposes of sub-
19 section (a) and with respect to a covered firm described
20 in subsection (a)(1)(B), the information described in this
21 subsection is the following information with respect to
22 each year of the previous 10-year period:

23 “(1) The level of debt of the covered firm at the
24 end of the applicable year.

1 “(2) The total amount of debt held by the cov-
2 ered firm that is categorized as—

3 “(A) liabilities;

4 “(B) long-term liabilities; and

5 “(C) payment in kind or zero coupon debt.

6 “(3) The average debt-to-equity ratio of the
7 covered firm.

8 “(4) The average debt-to-EBITDA (Earnings
9 Before Interest, Taxes, Depreciation, and Amortiza-
10 tion) of the covered firm.

11 “(5) Whether the covered firm experienced a
12 default during the applicable year.

13 “(6) The total gross asset value of the covered
14 firm.

15 “(7) Dividends paid by the covered firm.

16 “(8) The names of the leadership of the covered
17 firm.

18 “(9) All political spending by the covered firm,
19 including contributions, lobbying spending, and con-
20 tributions to groups that do not share their donor
21 list.

22 “(10) Every asset purchased by the covered
23 firm during the applicable year.

24 “(11) Information that is similar to the infor-
25 mation required to be included in a notification filed

1 pursuant to the rules under subsection 7A(d)(1) of
2 the Clayton Act (15 U.S.C. 18a(d)(1)).

3 “(12) Data related to real estate, mortgage,
4 and lease payments.

5 “(13) Interest expenses and payments made to
6 comply with tax receivable agreements.

7 “(14) Average interest rate paid on secured and
8 unsecured lines of credit.

9 “(15) A list of—

10 “(A) all transactions with the 10 largest
11 vendors or service providers; and

12 “(B) any new vendors or service pro-
13 viders.

14 “(16) The number of payments to staffing
15 firms.

16 “(17) The salaries of the executives of the cov-
17 ered firm and each health care entity owned by such
18 covered firm.

19 “(18) The board membership of the covered
20 firm and each health care entity owned by such cov-
21 ered firm.

22 “(19) For the covered firm, the staff retention
23 rates, number of job postings, and vacancy rates,
24 disaggregated by position, with respect to each
25 health care provider owned by such covered firm.

1 “(20) For the covered firm, the [percentage/
2 number] of non-patient care areas in health care fa-
3 cilities owned by such covered firm that have been
4 converted into patient care areas.

5 “(21) For the covered firm, reductions in the
6 wages or benefits of health workers employed by
7 health care providers owned by such covered firm.

8 “(22) Complaints of, or citations for violations
9 of, State or Federal worker protection laws, includ-
10 ing charges of unfair labor practices, complaints of
11 violations of State or Federal antidiscrimination
12 laws, complaints of violations of wage and hour laws,
13 and whistleblower complaints.

14 “(23) Any other information that the Secretary
15 determines relevant for evaluating the impact of for-
16 profit ownership of health care entities on the provi-
17 sion of health care, health care quality, and safety.

18 **“SEC. 3403. RISK MITIGATION AND ACCOUNTABILITY.**

19 “(a) RISK MITIGATION.—

20 “(1) DEFINITION OF ESSENTIAL SERVICES.—In
21 this subsection, the term ‘essential services’, with re-
22 spect to a health care provider owned by a covered
23 firm, means services that are necessary for pre-
24 serving health care access, health care quality, and
25 patient safety, as determined by the Secretary, in-

1 including services for which the Secretary deter-
2 mines—

3 “(A) there are no equivalent services avail-
4 able within the same travel time;

5 “(B) that loss of the services would result
6 in meaningful reductions in surge capacity that
7 will negatively impact access to services, health
8 care quality, and patient safety;

9 “(C) that loss of the services would limit
10 health care access, health care quality, and pa-
11 tient safety for specific demographics of individ-
12 uals based on sex, sexuality, race, nationality,
13 age, or disability status; or

14 “(D) that loss of the services would have
15 a meaningful impact on the ability of health
16 care entities to provide care in the surrounding
17 geographical area of the health care provider.

18 “(2) MECHANISM TO ENSURE RISK MITIGA-
19 TION.—The Secretary shall establish a mechanism
20 to ensure that the risks of covered firms are miti-
21 gated. Such mechanism may require each covered
22 firm—

23 “(A) to establish an escrow account with
24 sufficient funding to cover operating and capital
25 expenditures for not less than 5 years, includ-

1 ing, in the case of the closure of a health care
2 provider owned by such covered firm or if there
3 are reductions of essential health services at a
4 health care provider owned by such covered
5 firm, sufficient funding—

6 “(i) to pay out contract obligations to
7 health care providers and other staff of
8 such covered firm; and

9 “(ii) to provide supplemental funding
10 to community health care or non-profit
11 health care providers in the surrounding
12 geographical area impacted by such closure
13 or service reductions;

14 “(B) to obligate a minimum capital invest-
15 ment in any health care entity that is owned by
16 the covered firm; and

17 “(C) to carry out such other activities as
18 the Secretary determines appropriate to ensure
19 that the covered firm provides a financial con-
20 tribution sufficient to mitigate the impact of a
21 potential closure, reduction of essential health
22 services, workforce shortage, or reduction in
23 quality or safety of care or health care access.

24 “(b) LIMITATION ON THE USE OF REAL ESTATE IN-
25 VESTMENT TRUSTS IN HEALTH CARE.—

1 “(1) PROHIBITION.—No health care entity [or
2 covered firm] may enter into agreement to sell to,
3 or lease from, a real estate investment trust (as de-
4 fined in section 856 of the Internal Revenue Code of
5 1986) an interest in real property if the terms of
6 such sale or lease would lead to long-term weakened
7 financial status of the health care entity or place the
8 public health at risk.

9 “(2) REVIEW OF SALE OR LEASE TERMS.—

10 “(A) IN GENERAL.—The Secretary shall
11 require each health care entity, or the covered
12 firm that owns such health care entity, seeking
13 to enter into an agreement described in para-
14 graph (1) to submit to the Secretary for review
15 the terms of the sale or lease, as applicable.

16 “(B) STANDARD.—In conducting a review
17 of a sale or lease under subparagraph (A), the
18 Secretary shall determine whether the terms of
19 such sale or lease would lead to long-term
20 weakened financial status of the health care en-
21 tity or place the public health at risk.

22 “(C) CONSULTATION.—The Secretary may
23 consult with the relevant State attorney general
24 in conducting a review under subparagraph (A).

1 “(3) LITIGATION AUTHORITY.—Except as pro-
2 vided in section 518 of title 28, United States Code
3 (relating to litigation before the Supreme Court), at-
4 torneys designated by the Secretary may appear for
5 the Department of Health and Human Services and
6 represent the Department in any civil action brought
7 in connection with a violation of paragraph (1).

8 “(c) LICENSURE.—

9 “(1) DEFINITION OF PRIVATE EQUITY FIRM.—
10 In this subsection, the term ‘private equity firm’
11 means a for-profit corporation with respect to which
12 there is a private equity fund that is a control per-
13 son of the corporation.

14 “(2) LICENSES.—The Secretary shall issue li-
15 censes for private equity firms to invest, directly or
16 indirectly, in or purchase a health care entity.

17 “(3) FEES.—The Secretary may charge a fee
18 for applications for licenses under paragraph (1),
19 which shall be deposited into a special account, the
20 amounts in which shall remain available to the Sec-
21 retary, until expended and without further appro-
22 priation, for funding for the National Health Service
23 Corps, the community health centers program under
24 section 330, teaching health centers that operate
25 graduate medical education programs under section

1 340H, and other health workforce programs carried
2 out by the Health Resources and Services Adminis-
3 tration, and hospitals that have received dispropor-
4 tionate share hospital payments under section 1886
5 of the Social Security Act or section 1923 of such
6 Act.

7 “(4) DENIAL; REVOCATION.—

8 “(A) IN GENERAL.—The Secretary may
9 deny or revoke a license under this subsection—

10 “(i) in cases in which [the Secretary
11 determines that] the private equity firm—

12 “(I) has failed to comply with
13 any of the provisions of this title; or

14 “(II) has engaged in price gaug-
15 ing, understaffing, access barriers, or
16 such other metrics as the Secretary
17 determines appropriate, with respect
18 to the private equity firm’s ownership
19 of health care entities; or

20 “(ii) for such other reason involving
21 actions or practices of the private equity
22 firm that may impact or interfere with ac-
23 cess to, or quality of, health care, as the
24 Secretary determines appropriate.

1 “(B) DIVESTMENT.—A private equity firm
2 the license of which is revoked under subpara-
3 graph (A) shall be required to divest from any
4 investments in any health care entity.

5 “(5) CIVIL MONETARY PENALTIES.—Any per-
6 son who violates a requirement of this subsection
7 shall be liable for a civil monetary penalty of
8 【\$_____】, which shall be deposited in the account
9 described in paragraph (2).

10 **“SEC. 3404. TASK FORCE REVIEW OF THE ROLE OF PRIVATE**
11 **EQUITY AND CONSOLIDATION IN HEALTH**
12 **CARE.**

13 “(a) ESTABLISHMENT.—The Secretary shall estab-
14 lish and operate a task force to monitor changes in the
15 health care marketplace, to address and limit the role of
16 private equity and consolidation in health care, and to ad-
17 dress changes to the health care marketplace and private
18 equity or market consolidation patterns that may create,
19 continue, or exacerbate health care disparities based on
20 sex, sexuality, race, nationality, age, disability, immigra-
21 tion 【status】, socioeconomic status, or location of resi-
22 dence (referred to in this section as the ‘Task Force’).

23 “(b) COMPOSITION.—

24 “(1) CHAIR.—The Secretary shall chair the
25 Task Force.

1 “(2) MEMBERS.—The Secretary shall appoint
2 the members of the Task Force from among the fol-
3 lowing:

4 “(A) Academic experts and researchers
5 with expertise on—

6 “(i) the role of private equity in
7 healthcare; and

8 “(ii) the impact of mergers and acqui-
9 sitions in healthcare on costs and patients.

10 “(B) Representatives from organizations
11 focused on consumer protection, antitrust,
12 health care equity, patient advocacy, and work-
13 er advocacy.

14 “(C) Hospital and health care staff (and
15 the labor organizations representing such staff).

16 “(D) Patients.

17 “(3) ADVISORY MEMBERS.—In addition to the
18 members described in paragraph (2), the Chair of
19 the Federal Trade Commission and the Attorney
20 General shall serve as advisory members of the Task
21 Force.

22 “(4) MEMBER APPOINTMENT.—Not later than
23 180 days after the date of enactment of this Act, the
24 Secretary shall appoint the members of the Task
25 Force—

1 “(A) in accordance with paragraph (2);

2 and

3 “(B) using a competitive application proc-

4 ess.

5 “(c) RECOMMENDATIONS.—The Task Force shall—

6 “(1) identify best practices and, for purposes of

7 subsection (d), develop recommendations, for lim-

8 iting the role of private equity in health care, taking

9 into account the implications on health outcomes,

10 and staff working conditions; and

11 “(2) identify emerging trends within the health

12 care marketplace that may undermine access to

13 health care, quality of care, or patient safety or cre-

14 ate financial instability and risk for health providers.

15 “(d) REPORT.—The Secretary shall submit to Con-

16 gress annually a report—

17 “(1) on the recommendations developed sub-

18 section (c); and

19 “(2) that includes regulatory and legislative rec-

20 ommendations to address any adverse effects of

21 health care consolidation, private equity’s involve-

22 ment in health care, or any other change or emerg-

23 ing trend in the health care marketplace.

24 “(e) MORATORIUM.—The Secretary may prohibit a

25 private equity fund from purchasing voting securities of

1 a covered firm, and may prohibit any merger or acquisi-
2 tion that would result in a private equity fund gaining con-
3 trol of voting securities of a covered firm, until the date
4 on which the Secretary determines that the Task Force
5 has had sufficient time to study and identify whether
6 abuses are taking place in specific health care sectors or
7 by health care entities related to price gauging, under-
8 staffing, access barriers, or such other metrics as the Sec-
9 retary determines appropriate.

10 **“SEC. 3405. ENFORCEMENT.**

11 “(a) STATE ENFORCEMENT.—

12 “(1) STATE AUTHORITY.—Each State may re-
13 quire a person subject to the requirements of this
14 title to satisfy such requirements applicable to the
15 person.

16 “(2) FAILURE TO IMPLEMENT REQUIRE-
17 MENTS.—In the case of a State that fails to sub-
18 stantially enforce the requirements of this title with
19 respect to applicable persons in the State, the Sec-
20 retary shall enforce the requirements of this title
21 under subsection (b) to the extent that such require-
22 ments relate to actions prohibited under this title oc-
23 ccurring in such State.

24 “(b) SECRETARIAL ENFORCEMENT AUTHORITY.—

1 “(1) IN GENERAL.—If a person is found by the
2 Secretary to be in violation of this title, the Sec-
3 retary may apply a civil monetary penalty with re-
4 spect to such person in an amount not to exceed
5 \$10,000 per violation.

6 “(2) LICENSURE PENALTIES.—A civil monetary
7 penalty under paragraph (1) shall be in addition to
8 any civil monetary penalty assessed under section
9 3403(c)(4).

10 “(c) CONTINUED APPLICABILITY OF STATE LAW.—
11 This title shall not be construed to supersede any provision
12 of State law that establishes, implements, or continues in
13 effect any requirement or prohibition except to the extent
14 that such requirement or prohibition prevents the applica-
15 tion of a requirement or prohibition of this title.

16 **“SEC. 3406. RESEARCH.**

17 “The Secretary shall conduct or support research
18 on—

19 “(1) the impact of transitioning to a ban on
20 for-profit corporations owning or investing in health
21 care entities;

22 “(2) the impact of private equity investment in
23 health care entities on—

24 “(A) health care costs;

25 “(B) access to health care;

1 “(C) clinical decision making;

2 “(D) health care provider recruitment and
3 retention;

4 “(E) labor organization membership rates
5 and collective bargaining power of health work-
6 er labor organizations;

7 “(F) health care worker pay, pensions, and
8 other benefits;

9 “(G) health outcomes; and

10 “(H) health disparities; and

11 “(3) the effectiveness of State law (including
12 regulations) and State enforcement on ensuring ac-
13 quisition of health care entities by covered firms
14 does not place access to health care, health care
15 quality, or patient safety at risk.”.

16 **SEC. 3. MAINTENANCE OF HEALTH CARE ACCESS RELAT-**
17 **ING TO HOSPITAL DISCONTINUATION OF**
18 **SERVICES OR CLOSURE.**

19 Section 1866 of the Social Security Act (42 U.S.C.
20 1395cc) is amended—

21 (1) in subsection (a)(1)—

22 (A) in subparagraph (X), by striking
23 “and” at the end;

24 (B) in subparagraph (Y)(ii)(V), by striking
25 the period and inserting “, and”; and

1 (C) by inserting after subparagraph (Y)
2 the following new subparagraph:

3 “(Z) beginning 60 days after the date of the en-
4 actment of this subparagraph, in the case of a hos-
5 pital, to comply with the requirements of subsection
6 (l) (relating to discontinuation of services or clo-
7 sure).”; and

8 (2) by adding at the end the following new sub-
9 section:

10 “(l) REQUIREMENTS FOR HOSPITALS RELATING TO
11 DISCONTINUATION OF SERVICES OR CLOSURE.—

12 “(1) REQUIREMENTS.—

13 “(A) IN GENERAL.—For purposes of sub-
14 section (a)(1)(Z), except as provided in sub-
15 paragraph (B), the requirements described in
16 this subsection are that a hospital—

17 “(i) notify the Secretary, in accord-
18 ance with paragraph (2), not less than 90
19 days prior to the discontinuation of serv-
20 ices or full hospital closure;

21 “(ii) prohibit the discontinuation of
22 essential services (as defined in paragraph
23 (6)) during the notification period (as de-
24 fined in such paragraph) unless there is a
25 clear harm posed to patient or employee

1 health or safety in the hospital continuing
2 to furnish such services;

3 “(iii) respond to any inquiries by the
4 Secretary relating to the implementation of
5 this subsection, including the determina-
6 tion of essential services under paragraph
7 (6)(C); and

8 “(iv) if applicable—

9 “(I) submit a mitigation plan
10 and related information as described
11 in paragraph (3); and

12 “(II) participate in the public
13 comment and review process (includ-
14 ing, if applicable, the alternative miti-
15 gation plan) described in paragraph
16 (4).

17 “(B) APPLICATION IN CASE OF CATA-
18 STROPHIC EVENTS.—In the case where a dis-
19 continuation of services or closure of a hospital
20 is due to an unforeseen catastrophic event (as
21 defined by the Secretary), the requirements de-
22 scribed in subparagraph (A) shall apply, ex-
23 cept—

24 “(i) the hospital shall provide the no-
25 tification under clause (i) of such subpara-

1 graph not later than 30 days after the cat-
2 astrophic event or as soon as feasible as
3 determined by the Secretary; and

4 “(ii) clause (ii) of such subparagraph
5 (relating to prohibiting the discontinuation
6 of services) shall not apply.

7 “(2) NOTIFICATION INFORMATION.—For pur-
8 poses of paragraph (1)(A)(i), the notification under
9 such paragraph shall include the following informa-
10 tion with respect to a hospital:

11 “(A) DISCONTINUATION OF SERVICES.—In
12 the case where the hospital is discontinuing
13 services (without full hospital closure):

14 “(i) The services that will be discon-
15 tinued and number of hospital beds im-
16 pacted.

17 “(ii) The number of individuals fur-
18 nished such services annually and a break-
19 down of the type of insurance used by such
20 individuals for such services.

21 “(iii) The number of impacted em-
22 ployees and what labor organization rep-
23 resents them (and the contact information
24 for such organization).

1 “(iv) The names and addresses of any
2 organized health care coalitions and com-
3 munity groups that represent the commu-
4 nities impacted by the discontinuation of
5 such services.

6 “(v) Alternative providers of such
7 services, including provider type, contact
8 information, and distance and transpor-
9 tation time by car and public transit from
10 the hospital.

11 “(B) FULL HOSPITAL CLOSURE.—In the
12 case of full hospital closure:

13 “(i) Hospital ownership entities.

14 “(ii) The full extent of services that
15 will no longer be furnished by the hospital.

16 “(iii) The number of individuals fur-
17 nished services annually by the hospital, a
18 description of the services furnished, and a
19 breakdown of the type of insurance used
20 by such individuals for such services.

21 “(iv) The number of impacted employ-
22 ees and, if applicable, what labor organiza-
23 tions represent them (and the contact in-
24 formation for each such organization).

1 “(v) The names and addresses of any
2 organized health care coalitions and com-
3 munity groups that represent the commu-
4 nities impacted by the closure.

5 “(vi) Alternative providers, including
6 provider type, contact information, and
7 distance and transportation time by car
8 and public transit from the hospital.

9 “(vii) Steps taken prior to the deci-
10 sion to close in order to avoid closure.

11 “(viii) Distribution of liquidation pro-
12 ceeds (cash or assets) or any payments
13 (cash or assets) made to employees, own-
14 ers, or contractors related to the closure.

15 “(3) SUBMISSION OF MITIGATION PLAN AND
16 RELATED INFORMATION FOR ESSENTIAL SERV-
17 ICES.—

18 “(A) NOTIFICATION BY SECRETARY.—If
19 the Secretary determines that the discontinu-
20 ation of services or closure of an applicable hos-
21 pital would negatively impact access to essential
22 services, the Secretary shall notify the applica-
23 ble hospital of such determination.

24 “(B) SUBMISSION OF MITIGATION PLAN
25 AND RELATED INFORMATION.—If an applicable

1 hospital receives a notification under subpara-
2 graph (A), the applicable hospital shall, not
3 later than 15 days after receiving such notifica-
4 tion, submit to the Secretary—

5 “(i) a plan to—

6 “(I) preserve access to essential
7 services for impacted communities
8 through partnerships, commitments
9 from surrounding facilities, transpor-
10 tation plan access, and preparation
11 for surge response; and

12 “(II) support employees in
13 transitioning to new positions within
14 health care;

15 “(ii) information on workforce and
16 public engagement to ensure awareness of
17 the discontinuation of services or closure;
18 and

19 “(iii) a description of potential alter-
20 natives to the discontinuation of services or
21 closure that the hospital considered and an
22 explanation of why those alternatives are
23 not a viable option.

24 “(C) PUBLIC AVAILABILITY.—The Sec-
25 retary shall make a mitigation plan and related

1 information submitted by an applicable hospital
2 under this paragraph available to the public on
3 the internet website of the Centers for Medicare
4 & Medicaid Services.

5 “(4) PUBLIC COMMENT AND REVIEW PROCESS;
6 ALTERNATIVE MITIGATION PLAN.—

7 “(A) PUBLIC COMMENT PERIOD.—

8 “(i) IN GENERAL.—The Secretary
9 shall provide a public comment period of
10 not less than 45 days with the opportunity
11 to submit written comments regarding the
12 impact of the potential discontinuation of
13 services or closure of an applicable hos-
14 pital.

15 “(ii) NOTICE.—Notice of the oppor-
16 tunity to submit comments shall be pub-
17 lished in the Federal Register and distrib-
18 uted to—

19 “(I) providers of services and
20 suppliers that may be impacted by the
21 discontinuation of services or closure
22 of the applicable hospital;

23 “(II) any labor organization that
24 represents any subdivision of employ-
25 ees of the applicable hospital;

1 “(III) organized health care coa-
2 litions and community groups that
3 represent the communities impacted
4 by the discontinuation of services or
5 closure;

6 “(IV) the State health agency;
7 and

8 “(V) the local department of pub-
9 lic health.

10 “(B) ALTERNATIVE MITIGATION PLAN.—

11 “(i) IN GENERAL.—If, after reviewing
12 the mitigation plan submitted by an appli-
13 cable hospital under paragraph (3) and the
14 comments submitted during the public
15 comment period under subparagraph (A)
16 with respect to the discontinuation of serv-
17 ices or closure of the applicable hospital,
18 the Secretary finds that the discontinu-
19 ation of services or closure of the applica-
20 ble hospital would have a significant im-
21 pact on access to essential services, the
22 Secretary shall work with the applicable
23 hospital or other providers of services and
24 suppliers in the area, as appropriate, to de-
25 velop and implement an alternative plan to

1 the plan submitted by the applicable hos-
2 pital under paragraph (3) (referred to in
3 this subsection as the ‘alternative mitiga-
4 tion plan’) in order to ensure continued ac-
5 cess to essential services, which may in-
6 clude an agreement to delay the dis-
7 continuation of services or closure of the
8 applicable hospital until the alternative
9 mitigation plan is complete.

10 “(ii) TECHNICAL ASSISTANCE.—An
11 alternative mitigation plan under clause (i)
12 may include technical assistance or infor-
13 mation on available funding mechanisms to
14 support the furnishing of essential services.

15 “(iii) COLLABORATION.—The Sec-
16 retary should, to the extent practicable,
17 collaborate with State and municipal gov-
18 ernment officials in the development of an
19 alternative mitigation plan under clause
20 (i).

21 “(iv) PUBLIC AVAILABILITY.—The
22 Secretary shall make any information sub-
23 mitted and the alternative mitigation plan
24 developed under this paragraph available

1 to the public on the internet website of the
2 Centers for Medicare & Medicaid Services.

3 “(C) IMPLEMENTATION.—The Secretary
4 shall promulgate regulations to detail the re-
5 quired response time by an applicable hospital
6 and the speed of the review process under this
7 paragraph in order to ensure that such process
8 can be completed with respect to an applicable
9 hospital prior to the proposed service dis-
10 continuation date or closure date of the applica-
11 ble hospital.

12 “(D) PROHIBITION.—In the case where
13 the Secretary finds that a hospital has violated
14 the requirements of this subsection, the Sec-
15 retary may prohibit the hospital and any hos-
16 pital under the same hospital ownership entity
17 from being eligible to enroll or reenroll under
18 the program under this title under section
19 1866(j) until the earlier of—

20 “(i) the date that is 3 years after the
21 date on which the hospital discontinues
22 services or closes;

23 “(ii) the date on which the Secretary
24 determines essential health services that
25 were negatively impacted by the dis-

1 continuation or closure have been restored;

2 or

3 “(iii) such time as the Secretary is
4 satisfied with the mitigation plan sub-
5 mitted by the hospital under paragraph (3)
6 or the alternative mitigation plan under
7 paragraph (4).

8 “(5) ANNUAL REPORTS.—The Secretary shall
9 submit an annual report to Congress on the dis-
10 continuation of services and full closure of hospitals.
11 Each report submitted under the preceding sentence
12 shall include—

13 “(A) a description of trends in the dis-
14 continuation of services and closures of hos-
15 pitals, including hospital ownership type, geo-
16 graphic location, types of services furnished, de-
17 mographic served, and insurance type;

18 “(B) an analysis of the impact of the dis-
19 continuation of services and closures on health
20 care access and ability to meet surge demand
21 due to emergency (such as a pandemic or cli-
22 mate disaster);

23 “(C) recommendations for such adminis-
24 trative or legislative changes as the Secretary

1 determines appropriate to preserve access to es-
2 sential services nationwide.

3 “(6) DEFINITIONS.—In this subsection:

4 “(A) APPLICABLE HOSPITAL.—The term
5 ‘applicable hospital’ means a hospital that sub-
6 mits a notification under paragraph (1)(A)(i) of
7 a discontinuation of services or full hospital clo-
8 sure.

9 “(B) DISCONTINUATION.—The term ‘dis-
10 continuation’ may include any reduction or dis-
11 continuation of services furnished by an appli-
12 cable hospital, including those that occur as
13 part of a merger or acquisition agreement.

14 “(C) ESSENTIAL SERVICES.—The term ‘es-
15 sential services’ means, with respect to an ap-
16 plicable hospital, services that are necessary for
17 preserving health care access (as determined by
18 the Secretary), including services for which the
19 Secretary determines—

20 “(i) there are no equivalent services
21 available within the same travel time;

22 “(ii) that loss of the services would re-
23 sult in meaningful reductions in surge ca-
24 pacity that will negatively impact access to
25 services;

1 “(iii) that loss of the services would
2 limit health care access for specific demo-
3 graphics of individuals based on sex, sexu-
4 ality, race, nationality, age, or disability
5 status;

6 “(iv) that loss of the services would
7 have a meaningful impact on the ability of
8 health systems to respond to impacts of
9 climate change; or

10 “(v) there is a health or health care-
11 related emergency declaration status appli-
12 cable to the surrounding geographical area
13 of the hospital on the date on which the
14 hospital submits notification under para-
15 graph (1)(A)(i) of a discontinuation of
16 services or full hospital closure.

17 “(D) NOTIFICATION PERIOD.—The term
18 ‘notification period’ means, with respect to an
19 applicable hospital, the period beginning on the
20 date on which the hospital submits notification
21 under paragraph (1)(A)(i) of a discontinuation
22 of services or full hospital closure and ending
23 on the date of such discontinuation of services
24 or closure.

1 “(7) NO PREEMPTION OF STATE LAW.—Noth-
2 ing in subsection (a)(1)(Z) or this subsection shall
3 be construed to limit any rights or remedies under
4 State or local law relating to protecting access to es-
5 sential services or reviewing proposed hospital clo-
6 sures or reduction of services.”.

7 **SEC. 4. TREATMENT OF RENTS FROM QUALIFIED HEALTH**
8 **CARE PROPERTY.**

9 (a) IN GENERAL.—Section 856(d)(2) of the Internal
10 Revenue Code of 1986 is amended by striking “and” at
11 the end of subparagraph (B), by striking the period and
12 inserting “, and” at the end of subparagraph (C), and by
13 adding at the end the following new subparagraph:

14 “(D) notwithstanding paragraphs (4), (6),
15 and (8), any amount received or accrued di-
16 rectly or indirectly from qualified health care
17 property (as defined in subsection
18 (e)(6)(D)(i)).”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 856(d)(8)(B) of the Internal Rev-
21 enue Code of 1986 is amended—

22 (A) by striking “or a qualified health care
23 property (as defined in subsection
24 (e)(6)(D)(i))”, and

1 (B) by striking “qualified health care prop-
2 erty or”.

3 (2) Section 856(d)(9) of such Code is amend-
4 ed—

5 (A) by striking “or a qualified health care
6 property (as defined in subsection
7 (e)(6)(D)(i))” in subparagraph (A),

8 (B) by striking “or qualified health care
9 property” each place it appears in subpara-
10 graph (A) and (B), and

11 (C) by striking “or qualified health care
12 properties” in subparagraph (A).

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 the date of the enactment of this Act.