MASSACHUSETTS
HEALTH POLICY COMMISSION

The Increasing Role of Private Equity Investment in Massachusetts Health Care and the Need for Enhanced State Oversight

David Seltz, HPC Executive Director

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National Trends in Private Equity Investment in Health Care

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PRIVATE EQUITY EXPANSION

Research indicates significant growth of private equity (PE) investment in the U.S. health care market. For example, one analysis found a six-fold increase in physician practices (various specialties) acquired by PE firms from 2012 (75) to 2021 (484).[1] Similar increases have been seen in other areas of health care.[2]

CORPORATE STRUCTURES

Transactions with PE and other for-profit firms often use complex corporate structures, including using management services organizations (MSOs) to purchase providers' non-clinical assets and provide non-clinical services to health care practices. The use of MSOs avoids corporate practice of medicine prohibitions.

ONGOING CONSOLIDATION

PE and other for-profit firms often acquire multiple providers (sometimes merging firms through "roll-ups"), leading to increased market consolidation and increased prices.[3] Nationally, the health care market continues to consolidate, including through cross-market mergers (mergers or acquisitions involving providers that do not directly compete in the same geographic markets).[4]

[1] Scheffler R et al., Monetizing Medicine: Private Equity and Competition in Physician Practice Markets.
[2] See, e.g., the Private Equity Stakeholder Project, Private Equity Hospital Tracker, available at https://pestakeholder.org/private-equity-hospital-tracker/. The Private Equity Stakeholder Project also tracks private equity activity in other healthcare areas such as home health and urgent care.
[3] La Forgia A et al., Association of Physician Management Companies and Private Equity Investment with Commercial Health Care Prices Paid to Anesthesia Practitioners, 182 JAMA Internal Medicine 4 (April 2022).
[4] UC Law San Francisco, The Source on Healthcare Price and Competition, Cross-Market Systems, available at https://sourceonhealthcare.org.

The Role and Impact of Private Equity in Health Care

- Features that distinguish Private Equity (PE) deals from other for-profit investment in health care entities:
  - **Rapid and high expected return on investments**, which are difficult to achieve through efficiency gains alone
  - PE firms pursue a variety of unique strategies that are anticompetitive and destabilizing to the health care market: **leveraged buyouts, sale-leaseback of real estate, debt-funded dividends, and roll-ups**[1]
  - PE firms benefit from **certain tax privileges and operate under the regulatory radar**[2]
  - PE investors are "lay investors" who are not subject to professional or institutional norms keyed to the higher ethical goals of medical care"[3]
- PE investments in health care have increased substantially in recent years: **annual deal values have been estimated to grow from $41.5 billion in 2010 to $119.9 in 2019, totaling roughly $750 billion in the last decade**.[4]
- A growing body of research suggests that **PE ownership can affect health care spending, quality, and access**. For example, PE investments in nursing homes have been linked to **higher spending**, **lower quality of care**, and **higher mortality rates**.[5] In hospitals and specialty care such as anesthesiology, dermatology, ophthalmology, and emergency care where PE has concentrated, most studies have found that PE acquisitions are associated with higher prices and increased utilization.[6-9]

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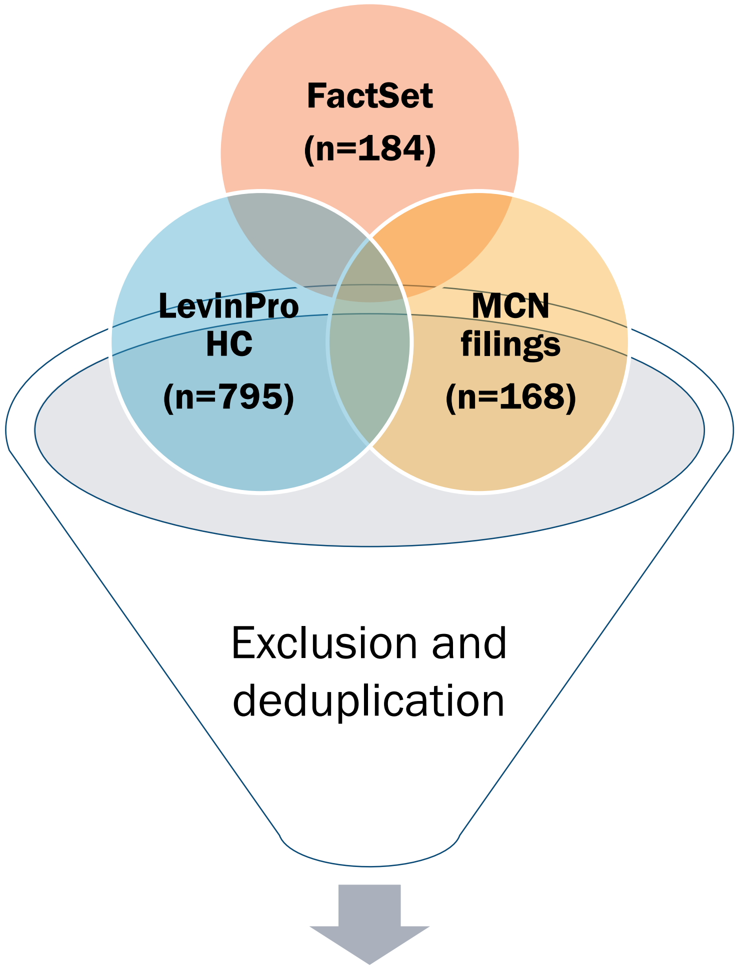
Singh Y, Song Z, Polsky D, Bruch JD, Zhu JM. Association of private equity acquisition of physician practices with changes in health care spending and utilization. JAMA Health Forum 2022 Sep 2 (Vol. 3, No. 9, pp. e222886-e222886).
Braun RT, Bond AM, Qian Y, Zhang M, Casalino LP. Private Equity In Dermatology: Effect On Price, Utilization, And Spending: Study examines the prevalence of private equity acquisitions and their impact on dermatology prices, spending, use, and volume of patients. Health Affairs. 2021 May 1;40(5):727-35.
La Forgia A, Bond AM, Braun RT, Yao LZ, Kjaer K, Zhang M, Casalino LP. Association of physician management companies and private equity investment with commercial health care prices paid to anesthesia practitioners. JAMA internal medicine. 2022 Apr 1;182(4):396-404.
Liu, Tong. Bargaining with Private Equity: Implications for Hospital Prices and Patient Welfare. SSRN. November 1, 2022.

HPC Study to Identify Massachusetts Private Equity Transactions in Health Care

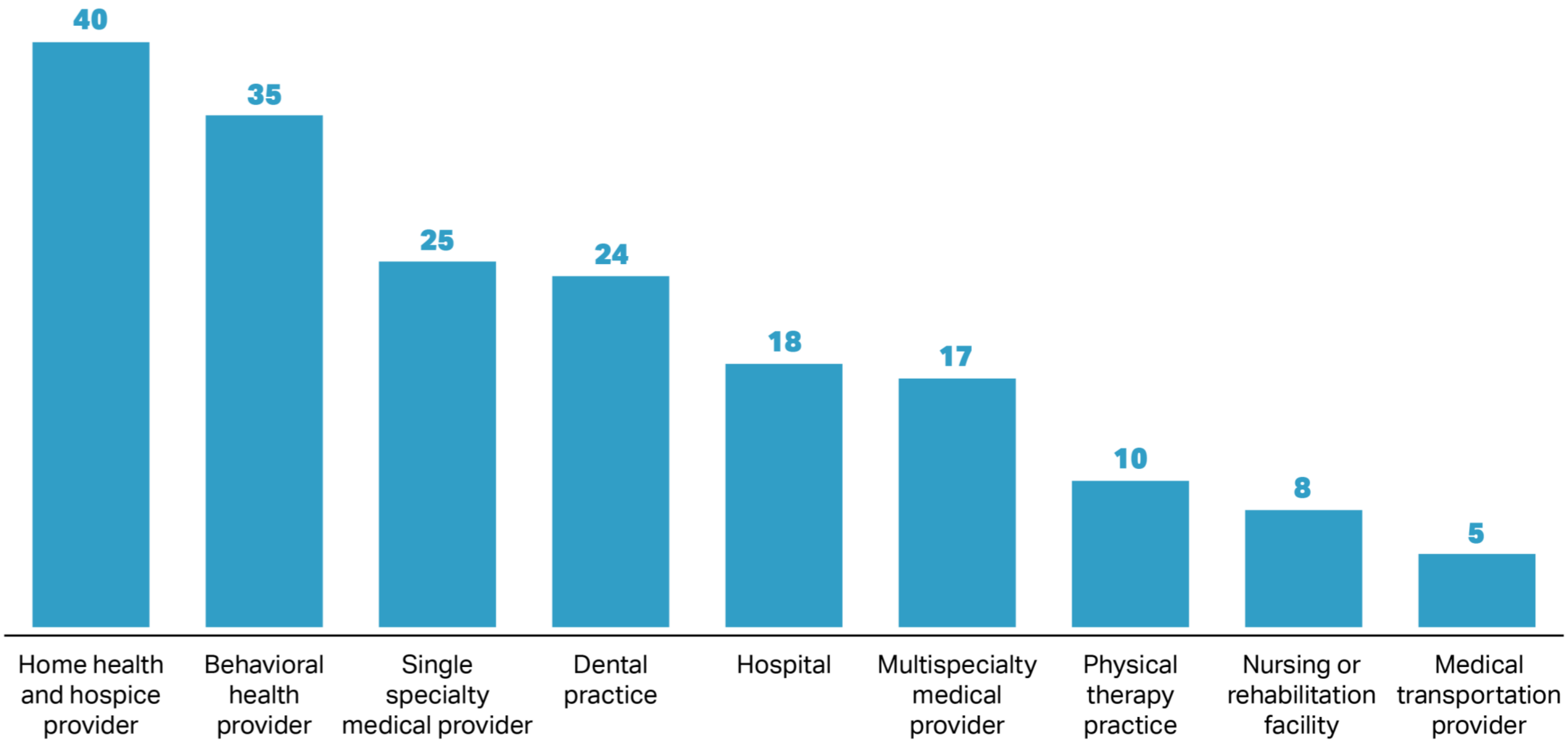
- **Inclusions:** Health care provider mergers and acquisitions from 2013-2023
- **Exclusions:**
  - Cancelled or pending transactions
  - Transactions of entities that are not patient-facing (e.g., labs, device manufacturers, biotech)
  - Transactions of entities that may be patient-facing but operate largely outside of insurance (e.g., e-health, cannabis dispensary)
  - Partnerships for joint contracting or changes in clinical or contracting affiliations
  - Transactions solely between payers
- Acquisitions of multiple entities announced together or which occurred on the same day were counted as one transaction



Unique transactions in the final sample: 182

Home health and behavioral health sectors saw the largest number of mergers and acquisitions from 2013 to 2023, including those with and without private equity investment.

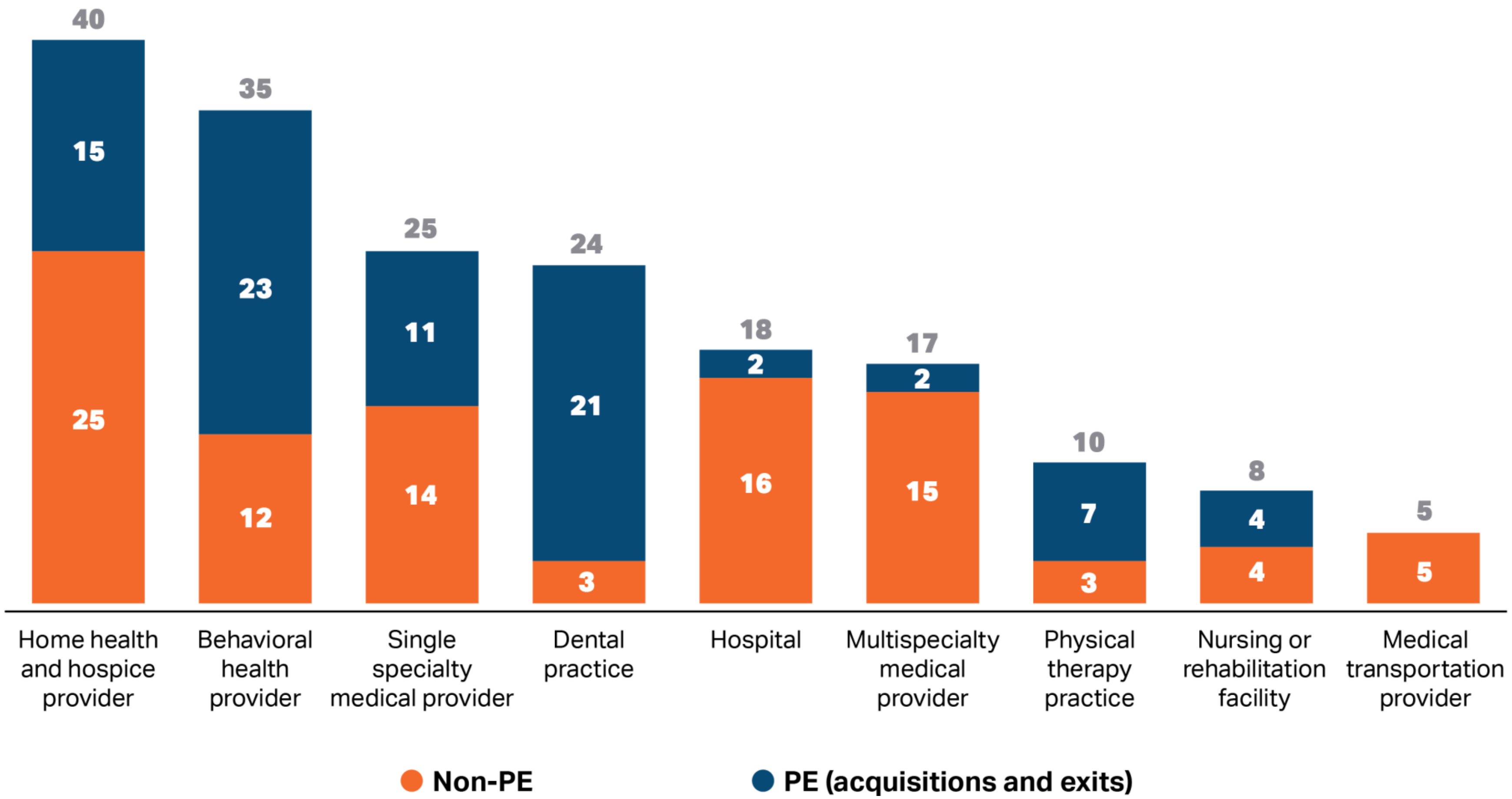
Number of health care provider transactions in Massachusetts, 2013-2023



Sources: HPC analysis of FactSet financial data and analytics; HPC Material Change Notice filings; LevinPro HC, Levin Associates, January 2024, levinassociates.com; and other publicly available information.

Private equity investments have been particularly active among behavioral health, dental, and home health providers, and certain specialty providers.

Number of provider transactions by health care sector in Massachusetts, 2013-2023



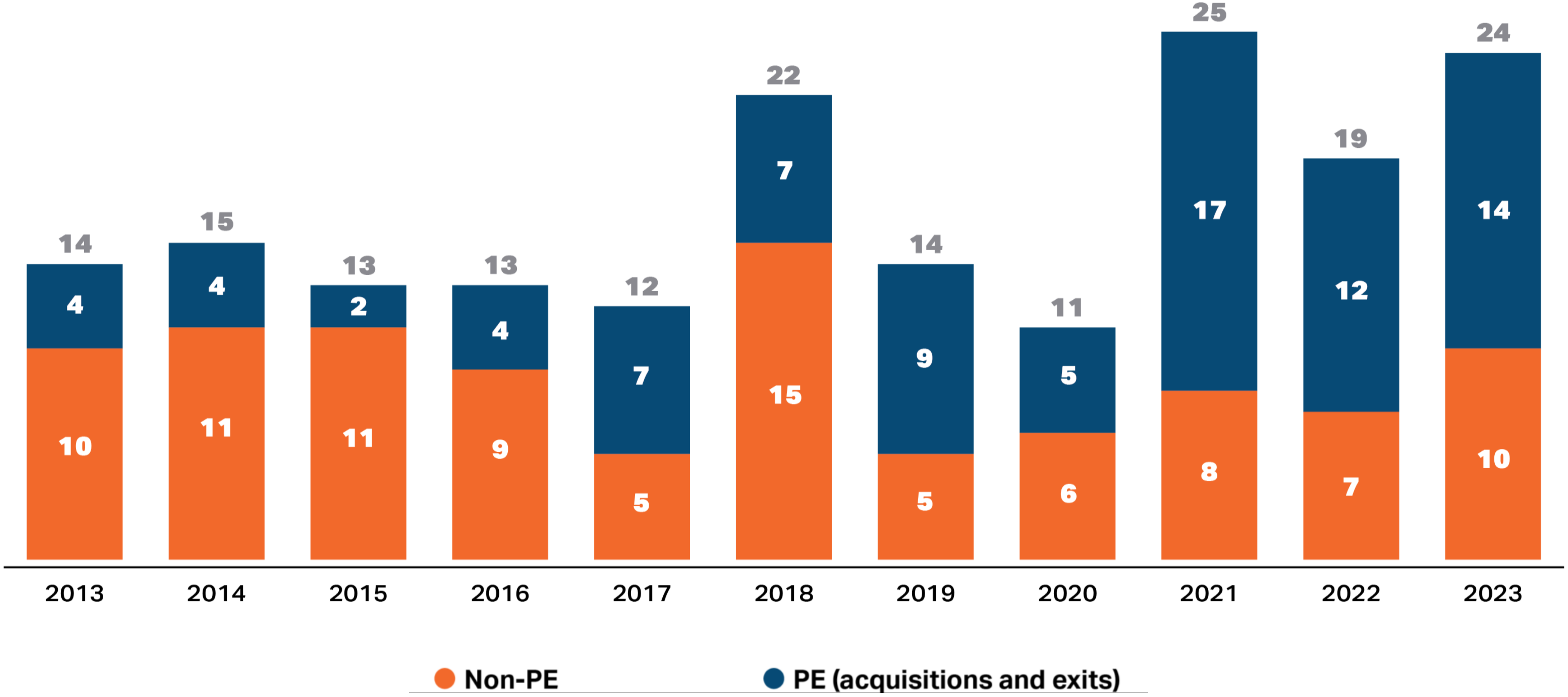
Notes: Of transactions that involved private equity, 74 were private equity acquisitions, 3 were private equity exits, and 8 were acquisitions and exits. One exit occurred in the behavioral health sector; 2 exits were rehabilitation facilities.

Sources: HPC analysis of FactSet financial data and analytics; HPC Material Change Notice filings; LevinPro HC, Levin Associates, January 2024, levinassociates.com; and other publicly available information.

- Of the 182 health care providers transactions in the HPC's analysis; **85 (47%)** involved PE firms.
- Of these, **74** were PE acquisitions, **3** were PE exits, and **8** were acquisitions *and* exits (i.e., PE firm selling to another PE firm)

Private equity investments in health care have accelerated in Massachusetts in recent years.

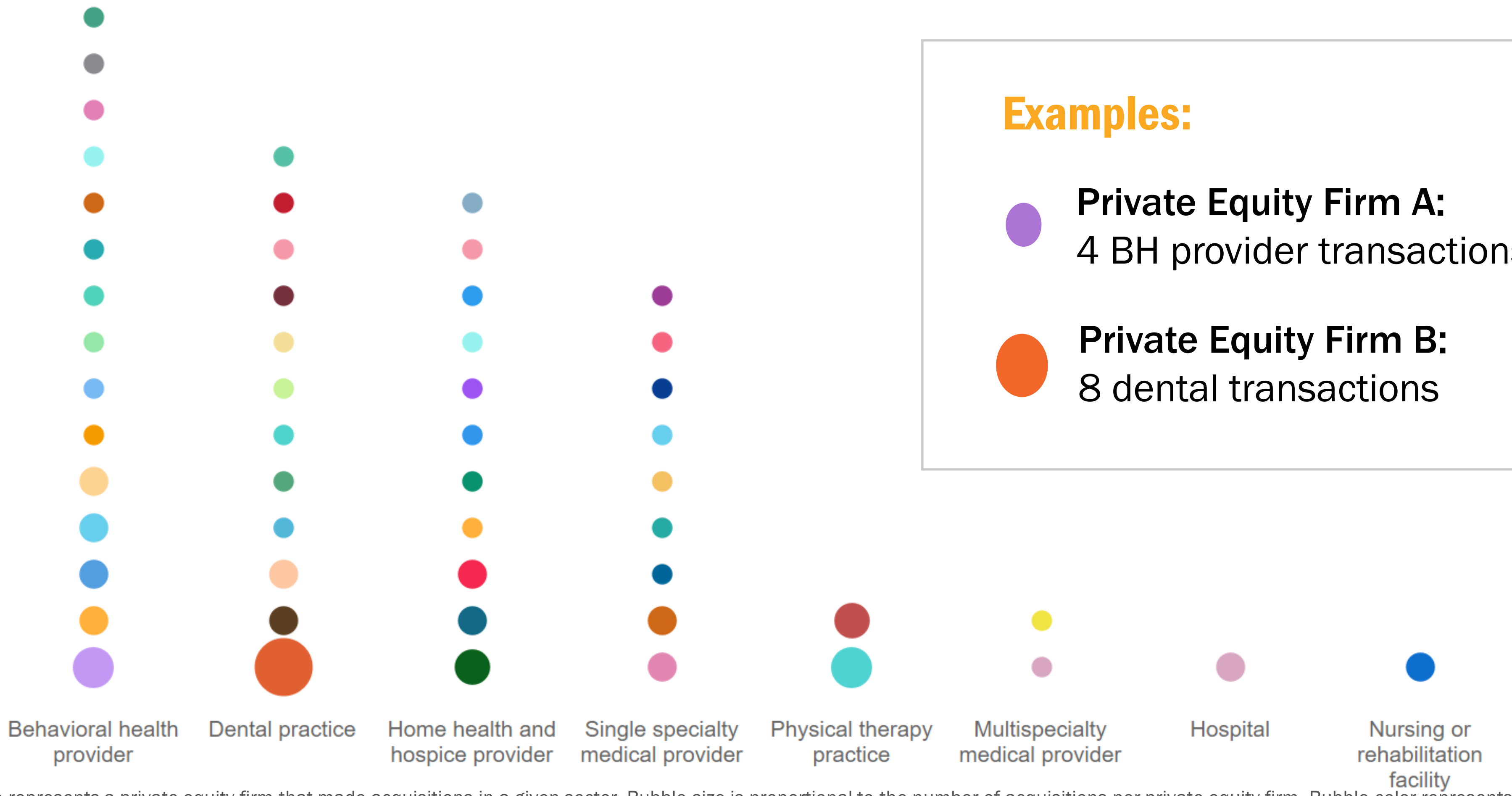
Number of health care provider transactions by year in Massachusetts, 2013-2023



Sources: HPC analysis of FactSet financial data and analytics; HPC Material Change Notice filings; LevinPro HC, Levin Associates, January 2024, levinassociates.com; and other publicly available information.

Many private equity transactions in Massachusetts have been one-offs, although there are some instances of the individual PE firms acquiring multiple practices in the same sector.

Private equity transactions by health care sector and acquiring private equity firm in Massachusetts, 2013-2023



Examples:

Private Equity Firm A:
4 BH provider transactions

Private Equity Firm B:
8 dental transactions

Notes: Each bubble represents a private equity firm that made acquisitions in a given sector. Bubble size is proportional to the number of acquisitions per private equity firm. Bubble color represents a distinct firm or distinct group of firms.
Sources: HPC analysis of FactSet financial data and analytics; HPC Material Change Notice filings; LevinPro HC, Levin Associates, January 2024, levinassociates.com; and other publicly available information.

Additional Detail on Private Equity Transactions in Select Sectors

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BEHAVIORAL HEALTH PROVIDERS (23)

- **10** pediatric behavioral and developmental disorder provider transactions
- **8** substance use treatment and/or mental health provider transactions
- **2** transactions involving providers specializing in treating eating disorders
- **1** psychiatric hospital
- **1 transaction of provider that works** with individuals with intellectual, developmental, physical or behavioral disabilities
- **1** transaction was a PE exit

SINGLE SPECIALTY MEDICAL PROVIDER (11)

- **5** ophthalmology provider transactions
- **2** orthopedics transactions
- **1** gastroenterology transaction
- **1** urology transaction
- **1** plastic surgery transaction
- **1** fertility medicine transaction

NURSING AND REHABILITATION FACILITY (4)

- **2** acquisitions of inpatient rehabilitation facilities
- **2** transactions were PE exits

Sources: HPC analysis of FactSet financial data and analytics; HPC Material Change Notice filings; LevinPro HC, Levin Associates, January 2024, levinassociates.com; and other publicly available information.

Summary of Current HPC Market Oversight Process

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- Changes in provider organizations and market structure, including **consolidations and affiliations**, have been shown to impact health care system **performance** and total medical **spending.**
- Chapter 224 directs the HPC to track "material change[s] to [the] operations or governance structure" of provider organizations and to engage in a more **comprehensive review of transactions anticipated to have a significant impact on health care costs or market functioning.**
- Providers and Provider Organizations must submit notice to HPC not fewer than **60 days** before the effective date of any proposed "Material Change" to their operations or governance structure.
  - Only proposed transactions that meet certain thresholds will trigger a Material Change Notice (MCN) filing.
- For most affiliation types, **only those transactions involving two or more providers, or a provider and payer**, will trigger MCN filing.
  - HPC does ***not*** receive notice of transactions between a provider and, for example, an investment firm not previously in the business of health care.

The HPC tracks five different transaction types, many of which have not typically been monitored by states.

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1. Merger, Affiliation or Acquisition by a Carrier
2. Merger or Acquisition with/by hospital or hospital system
3. Clinical Affiliation between 2 or more providers (NPSR >25M)
4. Partnership, joint venture, etc. contracting on behalf of one or more providers
5. Acquisition, Merger, or Affiliation (corporate, contracting or employment) by or with another Provider resulting in an NPSR increase of 10M or more, or near-majority market share

Benefits of HPC's Reviews of Provider Affiliations

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The Material Change Notice (MCN) and Cost and Market Impact Review (CMIR) process, in addition to increasing public awareness of provider affiliations, has produced the following benefits for consumers in Massachusetts:

FUTURE ACCOUNTABILITY: Requiring entities to disclose goals for a transaction allows the HPC and others to assess whether those goals have been achieved in the future.

VOLUNTARY COMMITMENTS: Some entities have addressed concerns raised by the HPC by making certain public commitments (e.g., increasing access for Medicaid patients, not implementing facility fees at acquired physician clinics).

SUPPORT FOR ENFORCEMENT ACTIONS: Findings in CMIR reports have been used by the Massachusetts Attorney General and Department of Public Health to negotiate enforceable commitments to address cost, market, quality, and access concerns.

- CMIR findings may be considered as evidence in Massachusetts antitrust or consumer protection actions, and in Determination of Need reviews.

IMPACTS ON TRANSACTION PLANS: In some cases, entities have planned affiliations in part based on the likelihood of a CMIR, and in other cases have decided not to pursue an affiliation after the HPC raised concerns in the MCN or CMIR process.

HPC Market Oversight Process and Private Equity in Health Care

- The HPC has reviewed some transactions involving private equity firms already in the business of health care. Examples include:
  - Acquisition of the non-clinical assets of **Greater Boston Urology**, a MA-based urology practice, by **U.S. Urology Partners**, a national management services organization that is a portfolio company of **NMS capital** (2023).
  - Acquisition of the private equity-affiliated corporate parent **Monte Nido**, a national provider of eating disorder treatment programs that operates several facilities in MA, including Walden Behavioral Care, by affiliates of **Revelstoke Capital Partners** (2022).
- The HPC does not receive notice of transactions between health care entities and PE firms that do not qualify as a “provider” or insurance “carrier” under MA law.
  - For example, the HPC did not review the acquisition of **Steward’s hospital real estate by Medical Properties Trust** (MPT) – which were then leased back to the hospitals - and MPT’s concurrent acquisition of limited equity stake in Steward (2016).
- HPC also does not receive notice of smaller transactions involving private equity firms that do not meet financial thresholds for filing (e.g., acquisition of a provider with less than $10 million in NPSR).

HPC Authority to Enhance Public Transparency of Provider Structure and Financial Performance

- Separately, HPC and CHIA jointly administer the Massachusetts Registration of Provider Organizations (RPO) Program. RPO annually collects and publishes standardized information from provider organizations on **corporate structure**, **governance**, **contracting and clinical affiliations**, and **financial performance**. HPC is required by law to make all information available to be public.
  - RPO requires the submission of comprehensive financial statements, including **audited financial statements at the system-level**, consolidating schedules and standardized filings that shall include a balance sheet, a statement of operations, and a cash flow statement.
  - **Steward Healthcare has refused** to produce its audited, parent-level financial statements to CHIA/HPC and has engaged in over six years of (ongoing) litigation to challenge the state's transparency requirements.
- State law requires all provider organizations with **more than $25 million in commercial revenue** to register and submit all required information to the HPC.
  - The unintended consequence of this threshold is that excludes many significant provider organizations that primarily rely on public payers (e.g., behavioral health providers, skilled nursing facilities, home health).

HPC Policy Recommendations

ENHANCE HEALTH CARE MARKET TRANSPARENCY AND OVERSIGHT THROUGH THE HPC'S CURRENT AUTHORITIES

- Enhance **public transparency** and **oversight** by amending the HPC's Material Change Notice process to capture a broader range of transactions, reflecting emerging market trends, including:
  - Substantial **changes in capacity;**
  - Significant **investment by private equity or for-profit** in an existing health care provider;
  - Substantial **sale of assets for an ownership share** or for the purposes of a lease-back arrangement.
- Amend the HPC's **Registration of Provider Organization** (RPO) program to:
  - Include public payer revenue in the reporting threshold. This change will expand the type of entities that must file with the RPO program to include sectors frequently targeted by PE firms and provide more **public insight** into the **structure and financial health** of provider organizations.
  - Establish **enforceable penalties** for non-compliance to ensure all required information is provided in timely manner.

HPC Policy Recommendations

ALIGN STATE REGULATORY TOOLS AND ENHANCE MONITORING OF HEALTH CARE RESOURCES

Recent health care market activity, implicating both access and cost, have highlighted the opportunity to better align the range of state agency oversight processes and the need for a better understanding of the allocation of health care resources across the Commonwealth. The HPC recommends the Commonwealth should conduct **data-driven assessments of service supply and distribution based on identified needs**.

CONSIDER ADDITIONAL STATE AUTHORITY TO APPROVE OR DENY TRANSACTIONS, OR IMPOSE CONDITIONS, TO MITIGATE POTENTIAL HARMS

Similar to other states such as Oregon, further empower state oversight authorities (e.g., HPC, DPH, AGO) to ensure all proposed transactions are consistent with state goals on cost, quality, access, and equity (not limited to PE transactions). Potential conditions of approval could include:

- efforts to maintain or enhance **access to needed services**,
- **quality standards** and improvements,
- **ongoing financial and compliance monitoring** including on **staffing**, and,
- conditions on **exit** or **sale**.