



Episode 110: Rooting Out Bad Actors in Private Equity, With Lauren Makhoul

Episode Summary

[Lauren Makhoul](#) of Avalere Health returns for the second installment of The Corner Series Shorts to discuss rooting out bad actors in private equity. In this conversation with McGuireWoods partner and host [Geoff Cockrell](#), Lauren advocates for a “nuanced perspective” that addresses the loopholes allowing bad actors to exist. She explains how mechanisms such as single TIN-billing exploitation affect all healthcare providers, not just private equity-backed platforms, and why site-neutral payment policies could address underlying issues more effectively.

Tune in for her insights about how private equity-backed platforms often face heightened scrutiny while provider-owned businesses may engage in similar practices with less oversight.

A spinoff of The Corner Series, The Corner Series Shorts delivers quick, high-impact insights from dealmakers and thought leaders at the corner of healthcare and private equity. Each short episode — less than 10 minutes — offers a focused look at key trends, timely topics and expert perspectives.

Transcript

Voice over (00:00):

This is The Corner Series, a McGuireWoods series exploring business and legal issues prevalent in today's private equity industry. Tune in with McGuireWoods partner, Geoff Cockrell, as he and specialists share real-world insight to help enhance your knowledge.

Geoff Cockrell (00:19):

Thank you for joining another episode of The Corner Series. I'm your host, Geoff Cockrell. Today we're doing another short episode, so Corner Series short, with my friend, Lauren Makhoul. We've done a couple of discussions before where we talk about the impact of private equity investing in healthcare and trying to build a different narrative around that, kind of focusing on discrete aspects. Today I'm joined by a repeat guest, Lauren Makhoul from Avalere Health. Avalere Health does a lot of healthcare consulting, and Lauren has been a leading voice in really tackling some of the implications of private equity investing in healthcare. So Lauren, if you could give a quick introduction of yourself and Avalere, and then we'll jump into a quick discussion.

Lauren Makhoul (01:00):

Sure thing, Geoff, and thanks for having me back. It's great to be here. I'm Lauren Makhoul. I'm a principal at Avalere Health. We are a healthcare-only consulting firm, now global, but our policy team is based in the Washington, D.C. area. And my team specifically focuses on the intersection between the investment community, healthcare, and regulatory policy, and so we span everything from regulatory to reimbursement diligence, as well as helping our clients with some strategic and advocacy-adjacent work, as we like to call it, and making sure that some of the research that we'll hopefully talk about today gets into the public sphere. So, excited to dive in.

Geoff Cockrell (01:38):

Lauren, thanks for joining again. Today we're going to talk about policy directional choice that we think would be a better approach, and that is rather than focusing on the type of actor, focus on measures to root out bad actors. There certainly are bad actors in healthcare, investing and healthcare in general, but a better approach, we think, would be kind of focusing on measures that are rooting out those bad actors rather than making categorical determinations about types of investors. But Lauren, if you could introduce that topic a little bit and we'll hit on a couple versions of it.

Lauren Makhoul (02:12):

Yeah, sure thing, Geoff. I think we've all seen some of the policy movements, and certainly to your point, a lot of the rhetoric that's focused on private equity investment in healthcare, and that's for good reason. There are very public, high-profile, pretty bad scenarios that have occurred after some of these investments. And so, that has raised the profile of what happens after one of these investments, and therefore there's been interest in addressing that through policy, which again, I think makes sense. But the issue with addressing the business model or the actor is that it's not addressing the underlying root concern of why those actors are able to do that in the first place.

(02:53):

And so, some of the examples that we've seen here is that one maybe folks may be aware of is the No Surprises Act is an example where out-of-network billing is quite pervasive, or was, and patients are left often holding responsibility for a large out-of-network bill. And so in that policy, it went after the concept of being out-of-network rather than the entities that might exploit that loophole. Now, there's pros and cons about how that policy has been rolled out, and so I don't think we have time on this short to litigate that, but it's one example that we've seen of that happening. Whereas on the flip side of that, we've seen in some states in particular, there's been a focus on banning private equity investment in physician groups because of some of these bad cases. So, I think there's a lot of room in between those to really explore a more nuanced perspective on how to address some of these bad actors and the loopholes that exist.

Geoff Cockrell (03:54):

I also find the focus on private equity investing as the cause of bad acting to be a little perplexing, in that some of the worst instances of bad actors that I've seen have not been private equity-backed platform, but provider-owned businesses. And if anything, when you have a private equity-backed platform, they have a big target on their back and the stakes for them of being called on the carpet for something are really, really high, and I've found them to be very, very attentive to each of these mechanisms to not be on the bad actor side. Certainly there are examples and some highly-publicized examples of private equity-backed platforms themselves being the bad actor, but that's far from what has been the norm. What are some other mechanisms, Lauren, that you think that policy folks should focus on that can root out bad actor conduct rather than making categorical determinations?

Lauren Makhoul (04:49):

Yeah, so if we take a step back and think about, what is the business incentive here in terms of raising revenue to enhance profitability, the two typical levers are higher utilization and higher unit prices. So, if we start with higher unit prices, there's kind of a good way to do that and a bad way. What we've seen some of our private equity clients be able to do through an MSO or PPM structure is uniting independent providers who previously had no leverage against some of these massive insurance companies, or time, frankly. And together, these more independent providers may be able to have a bit more negotiating leverage to bring their payments up to par with their hospital competitors, not above, but typically on par with. And in the absence of this leverage, doctors may leave independent practice, as many would, for higher pay elsewhere, and the practices may struggle to run themselves just given a production margin, and ultimately have to sell and become an employed entity. And so in that case, creating a more stable reimbursement environment is a good thing.

(05:58):

On the potentially bad side of that is the exploitation of what's considered single TIN-billing. And this is something that you and I have talked about before, and it's a little bit nuanced, but happens pretty pervasively, in which a TIN is a tax ID number that typically has a negotiated contracted rate with the payer. If another entity is brought into that TIN, whether through full acquisition or a different contracting mechanism, they then have access to the reimbursement rates that had been negotiated for that TIN.

(06:34):

And that is an area that has been a clear criticism of how private equity has come in and used this mechanism. But in reality, as those of us who see it on the ground, it's a tactic that's used by everyone, in particular hospitals who operate under these large TINs that have quite high reimbursement rates in some cases. So, if you just regulate private equity, you're not fixing that underlying issue. Other reforms such as reducing the actual incentive to bill under that TIN through a

more site-neutral payment policy, which we've discussed previously as well, may actually address that, versus targeting specific business structures.

Geoff Cockrell (07:11):

Exactly, and kind of enabling provider businesses that are not just hospital-based is really important, because part of what gets lost in the discussion is you've got the private equity-backed model, but the question is always, okay, compared to what? And the what is consolidating employment under a hospital system, which reintroduces what we talked about on one of our earlier shorts, that once providers are moving to the hospital, those procedures are largely going to be done in the hospital, and you've reintroduced the highest-cost location of service that you could use. So, all of these questions have to be looked at more holistically.

(07:47):

And for today's short, the takeaway is, rather than focusing on the type of investor, it's much better to focus on the type of behavior, that you can often root out bad actor behavior in a way that is not discriminatory against different types of investors, especially when those types of investors are bringing a lot of other ancillary benefits. Lauren, thanks again for joining. These shorts are a ton of fun.

Lauren Makhoul (08:12):

Great, Geoff. Talk to you next time.

Voice over (08:15):

Thank you for joining us on this installment of The Corner Series. To learn more about today's discussion, please email host Geoff Cockrell at gcockrell@McGuireWoods.com. We look forward to hearing from you.

(08:28):

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