United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

April 1, 2024

Joseph Bae
Co-Chief Executive Officer
Scott Nuttall
Co-Chief Executive Officer
KKR & Co. Inc.
30 Hudson Yards
New York, NY 10001

Henry Howe
Interim Chief Executive Officer
and Chief Financial Officer
Envision Healthcare
20 Burton Hills Blvd., Suite 500
Nashville, TN 37215

Dear Mr. Bae, Mr. Nuttall, and Mr. Howe:

Pursuant to the authority under Senate Rule XXV of the Standing Rules of the Senate and Senate Resolution 59, Section 12, I am writing to request documents and information regarding KKR & Co. Inc.'s ("KKR") prior ownership of Tennessee-based physician staffing group Envision Healthcare ("Envision") and involvement in Envision's subsequent bankruptcy, Envision's contracts for and management of emergency department staffing at Tucson Medical Center's general emergency department and Chandler Regional Medical Center's Level I trauma emergency department in Arizona, and other practices impacting patient care and treatment at Envision-staffed emergency departments.

My staff have now spoken with more than 40 emergency medicine physicians across the country who have raised substantial concerns regarding patient safety, patient care, emergency department staffing, the corporate practice of medicine, restrictive contracting practices, physician clinical independence, unlawful retaliatory actions, improper billing, and anticompetitive practices at private equity-owned hospitals and private equity-owned contract management groups (commonly known as staffing companies).[1] I am concerned by the risks these physicians have raised and their potential impact on patients and families as well as the homeland security implications, such as the ability of emergency departments to respond to a

[1] Senate Committee on Homeland Security and Governmental Affairs Majority Staff interviews with emergency medicine physicians (Sept. 2023 – Mar. 2024) (on file with Committee).

mass casualty event, terrorist attack, pandemic, or other emergency that would require treating high volumes of patients. As such, I am seeking additional information regarding private equity ownership and control of hospital emergency departments across the country and the potential impacts on patient care and emergency preparedness.[2]

While these issues are not limited to private equity, they are exacerbated by the private equity business model, which hinges on highly leveraged debt, little equity, and the need to obtain outsized returns within a limited time.[3] Data on private equity ownership is largely nontransparent.[4] However, publicly available information suggests that private equity-owned or controlled physician staffing groups operate nearly one-third of all emergency departments across the country.[5]

Financial instability and bankruptcies by these private equity-owned companies have had devastating impacts on communities and patient care.[6] Compared to other for-profit companies, private equity-owned companies are saddled with debt and more likely to file for bankruptcy.[7] The four largest emergency medicine staffing companies are owned or controlled by private

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[2] Private equity ownership in emergency medicine can take different forms, including private equity firm ownership of the entire hospital, ownership of the contract management group that staffs the emergency department, or a combination of the two.

[3] *See, e.g.* Eileen Appelbaum and Rosemary Batt, *A Primer on Private Equity at Work: Management, Employment, and Sustainability*, Center for Economic and Policy Research (Feb. 2012); Joseph D. Bruch, et al., *Changes in Hospital Income, Use, and Quality Associated With Private Equity Acquisition*, JAMA Internal Medicine (Nov. 2020); Commonwealth Fund, *Private Equity's Role in Health Care* (Nov. 17, 2023) (https://www.commonwealthfund.org/publications/explainer/2023/nov/private-equity-role-health-care).

[4] *See, e.g.* The Medicare Payment Advisory Commission (MEDPAC), *Report to the Congress: Medicare and the Health Care Delivery System*, at 81 (June 2021) (finding that "understanding which individuals or entities own a Medicare provider and their track record of operations could help to improve oversight and safeguard patient care . . . [and] one particular obstacle is capturing accurate ownership data for providers (such as nursing homes and some hospitals) that are part of complex corporate structures with multiple levels and subsidiaries," noting "CMS's ownership data typically do not indicate a parent organization atop a hierarchy of legal entities"); Anaeze C. Offodile II, et al., *Private Equity Investments In Health Care: An Overview of Hospital And Health System Leveraged Buyouts, 2003-17*, Health Affairs (May 2021) (noting limitations in the study's data collection because "assets controlled by private equity firms are privately held and therefore do not have consistent reporting requirements over time").

[5] IvyClinicians, *2023 State of the Emergency Medicine Employer Market* (Feb. 2023).

[6] *See, e.g.*, *Massachusetts Wakes Up to a Hospital Nightmare*, The American Prospect (Jan. 26, 2024) (https://prospect.org/health/2024-01-26-massachusetts-hospital-nightmare-steward-health/); *Private Equity Is No Longer a Reliable Last Resort for Troubled Hospitals*, Bloomberg (Sept. 12, 2023) (https://www.bloomberg.com/news/articles/2023-09-12/troubled-pennsylvania-hospital-reveals-failure-of-private-equity-deals?embedded-checkout=true).

[7] Brian Ayash and Mahdi Rastad, *Leveraged Buyouts and Financial Distress* (July 22, 2019). In a 2022 report, Moody's Investor Service found that nearly 90 percent of health care companies rated at higher risk of default are owned by private equity, noting financial sponsors have aggressively consolidated the emergency medicine sector, among others. *See* Moody's Investors Service, *Credit stress is rising, setting the stage for more downgrades and defaults* (Dec. 12, 2022) (stating "nearly 90 percent of healthcare companies rated B3 negative or below are owned by private equity").

equity firms.[8] Of these companies, Envision Healthcare has filed for bankruptcy within the past year, TeamHealth has a payment of over a billion dollars due this year, and US Acute Care Solutions (USACS) is facing a forced sale if it is unable to pay its private equity investors by 2026.[9] An additional private equity-owned staffing company, American Physician Partners, which had over 150 contracts with emergency departments across the country, abruptly ceased operations in July 2023 and subsequently filed for bankruptcy two months later.[10] These issues present particular concern with respect to private equity-owned emergency department staffing companies throughout the country. While private equity firms that are publicly traded have an obligation to their investors, physicians have a duty to serve the best interest of their patients, and these two duties may conflict.

For years, private equity-owned physician staffing companies such as Envision and TeamHealth engaged in widespread "balance billing" (also known as surprise billing), a predatory financial tactic to purposefully charge high out-of-network rates to patients who were unknowingly treated by emergency physicians or other providers outside their network.[11] In 2022, Congress responded to this tactic by banning surprise billing.[12] While Congress rightfully banned this harmful practice, I am concerned companies that previously engaged in surprise billing may now consider other cost cutting efforts that more directly risk negatively impacting patient safety and care.

In 2018, KKR acquired Envision for $9.9 billion through a leveraged buyout that imposed approximately $7 billion of debt onto Envision as part of the acquisition.[13] Envision

[8] IvyClinicians, *2023 State of the Emergency Medicine Employer Market* (Feb. 2023).

[9] *See Envision Healthcare officially files for Chapter 11 bankruptcy,* Fierce Healthcare (May 15, 2023) (https://www.fiercehealthcare.com/providers/envision-healthcare-likely-file-chapter-11-bankruptcy-wsj); *Blackstone's TeamHealth Weighs Debt Proposals, With $1 Billion in Loans Coming Due*, Wall Street Journal (June 7, 2023) (https://www.wsj.com/articles/blackstones-teamhealth-weighs-debt-proposals-with-1-billion-in-loans-coming-due-6959cec5); Moody's Investors Services, *Moody's downgrades U.S. Acute Care Solutions, LLC's CFR to B3* Report from *B2, outlook stable* (Sept. 23, 2023); Moody's Investors Services, *Moody's affirms U.S. Acute Care Solutions, LLC's B2 CFR, outlook stable* (Jan. 19, 2022). In 2021, Apollo Global Management invested $470 million in USACS, a physician staffing company; however, if USACS is "unable to redeem the preferred shares" by March 1, 2026, Apollo "has the right to request full redemption of its preferred share investment" and "can force the sale of the company." *Id.*

[10] *Hospital, ED staffer American Physician Partners files for Chapter 11 bankruptcy,* Fierce Healthcare (Sept. 20, 2023) (https://www.fiercehealthcare.com/providers/hospital-ed-staffer-american-physician-partners-files-chapter-11-bankruptcy).

[11] Zack Cooper, et al., *Surprise! Out-of-Network Billing for Emergency Care in the United States*, National Bureau of Economic Research (July 2017).

[12] No Surprises Act of the 2021 Consolidated Appropriations Act, Pub. L.116-260.

[13] *Envision U.S.$5.45bn TLB sinks as US healthcare debate rages,* Reuters (Aug. 28, 2019) (https://www.reuters.com/article/envision-us545bn-tlb-sinks-as-us-healthc-idCNL2N25O14W/). Envision Healthcare and KKR, Envision Healthcare to be Acquired by KKR for $46.00 Per Share in All-Cash Transaction, (June 11, 2018) (https://www.sec.gov/Archives/edgar/data/1678531/000119312518188699/d606502dex991.htm); The Debt Deal That Shows How Ugly Things Are Getting For Lenders, Bloomberg (Oct. 5, 2022) (https://www.bloomberg.com/news/articles/2022-10-05/kkr-s-envision-deal-shows-how-ugly-creditor-battles-are-

employs over 20,000 medical professionals throughout the U.S. in a number of practice areas, including emergency medicine, and reported seeing approximately 29 million patients, with 12 million emergency department encounters.[14] Envision is the second-largest emergency medicine staffing company, operating approximately 440 emergency departments around the country and is responsible for staffing these emergency departments and implementing policies and protocols that can affect the quality of clinical care.[15]

In May 2023, Envision filed for Chapter 11 bankruptcy with more debt (approximately $7.7 billion) than it had at the time of KKR's acquisition (approximately $7 billion).[16] As part of the bankruptcy filing and financial restructuring, KKR ceded ownership of Envision to its creditors, and according to public reporting Envision had $5.6 billion of its debt cancelled.[17] Although KKR no longer owns Envision, Envision's bankruptcy and financial restructuring raise questions about its impact on patient care.

Majority Committee staff have learned of serious concerns regarding patient safety and physician staffing levels, including at Tucson Medical Center and Chandler Regional Medical Center in Arizona. For example, inadequate physician staffing has reportedly resulted in no overlap between physician shifts to safely transition patient care. Physicians told my staff that Envision has increased its reliance on less experienced advanced practice providers (APPs) such as nurse practitioners (NPs) and physician assistants (PAs) to diagnose and treat acute care patients.[18] I am also concerned that Envision's business operations, including its restrictive

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getting). KKR's 2018 acquisition of Envision marks its third iteration of private equity ownership. *See Onex Partners Acquires Envision Healthcare*, Mergr (Dec. 7, 2004) (https://mergr.com/onex-partners-acquires-envision-healthcare); Clayton, Dubilier & Rice Completes $3.2 Billion Acquisition of Emergency Medical Services Corporation (May 25, 2011) (https://www.cdr-inc.com/news/press-release/clayton-dubilier-rice-completes-3.2-billion-acquisition-emergency-medical). In 2013, Emergency Medical Services ("EmCare") changed its name to Envision Healthcare Corporation. *EMSC Announces New Company Name, Unveils New Company Logo*, Business Wire (June 11, 2013) (https://www.businesswire.com/news/home/20130611006668/en/EMSC-Announces-New-Company-Name-Unveils-New-Company-Logo).

[14] Envision Healthcare, *Clinical Impact Report* (Apr. 2023) (https://impactreport.envisionhealth.com/documents/envisionhealthcareclinicalimpactreport2022.pdf).

[15] Dr. Leon Adelman, *State of the US Emergency Medicine Employer Market, Sept. 2023: Analysis based on Ivy Clinicians data*, Emergency Medicine Workforce Newsletter (blog) (Sept. 12, 2023) (https://emworkforce.substack.com/p/state-of-the-us-emergency-medicine).

[16] *See, e.g. KKR-Backed Envision Healthcare Hits Ch. 11 Bankruptcy*, Law360 (May 15, 2023); *Envision Healthcare Gets OK For Ch. 11 Reorganization Plans*, Law360 (Oct. 11, 2023); *Envision Healthcare files for bankruptcy*, STAT News (May 15, 2023) (https://www.statnews.com/2023/05/15/envision-healthcare-bankruptcy/). As part of its bankruptcy restructuring, Envision Healthcare split into two companies: Envision Physician Services (EVPS) (which staffs emergency departments) and AMSURG (which operates outpatient surgery). *Bankrupt Envision Healthcare approved to split in two, cut debt*, Reuters (Oct. 11, 2023) (https://www.reuters.com/business/healthcare-pharmaceuticals/bankrupt-envision-healthcare-gets-ok-split-two-cut-7-bln-debt-2023-10-11/).

[17] *Id.*

[18] Last year, the Arizona State Senate enacted H.B. 2043, permitting physician assistants who have at least 8,000 hours of clinical practice certified by the Arizona Regulatory Board of Physician Assistants to practice

contracting practices such as non-interference clauses, may impede physicians' ability to raise patient safety concerns without fear of retaliation.[19]

Tucson Medical Center and Chandler Regional Medical Center are important to the communities they serve in Arizona. However, I am concerned that these and related issues raise the risk that KKR and Envision business decisions may have compromised the ability of these emergency departments to provide quality patient care and respond to a mass casualty event, pandemic, or other event that would require the treatment of high volumes of patients.

In light of these issues, and to better understand KKR, Envision, and Envision-owned or controlled entities, subsidiaries, or affiliates' current and past actions with respect to management, control, staffing, and care at emergency departments in Tucson Medical Center and Chandler Regional Medical Center in Arizona, please provide the following documents and information. Many physicians also told the Committee they could not voluntarily discuss their patient safety and staffing concerns out of fear for their livelihoods. As such, additional areas of focus may be necessary in the near future.

<u>KKR</u>

1. Please provide KKR's acquisition agreement of Envision and the following information.

    a. List the amount of equity invested and the amount of debt placed on Envision as part of KKR's 2018 acquisition of Envision.

    b. For each year since January 1, 2018, list the amount of dividends or share buybacks Envision, or an Envision-affiliate, paid to KKR.

    c. For each year since January 1, 2018, list the amount of debt placed on Envision.

    d. Please indicate whether KKR has ever received any fees, including management fees, from Envision. If yes, for each year since 2018, please list the fees received and the reason for those fees.

2. For each year from 2018 through October 2023, please identify the number of seats and the names and job titles of individuals associated with KKR on Envision's Board of Directors. If no individual at or associated with KKR sat on Envision's Board of Directors in any given year, please indicate so.

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without supervision effective January 1, 2024. *See* Arizona State Senate, *Fact Sheet for H.B. 2043* (Mar. 24, 2023) (https://www.azleg.gov/legtext/56leg/1R/summary/S.2043HHS.DOCX.htm).

[19] *See* Senate Committee on Homeland Security and Governmental Affairs Majority Staff interviews with emergency medicine physicians (Sept. 2023 – Mar. 2024) (on file with Committee).

3. For the period January 1, 2021 through October 2023, please provide:

    a. Any KKR Board of Directors meeting agenda and minutes discussing or related to Envision, including any attachments, exhibits, or supplemental material.

    b. Any KKR Board of Directors' committee or subcommittee meeting agenda and minutes discussing or related to Envision, including any attachments, exhibits, or supplemental material.

    c. A list of KKR senior employees, senior consultants, experts, managers, or individuals who advise or advised KKR on matters relating to Envision's emergency medicine staffing, including corporate strategy, growth, debt management, or operational efficiencies.

    d. Any final reports or presentations (including pitch decks, slide decks, or playbooks) discussing or relating to Envision's emergency medicine staffing, including corporate strategy, growth, debt management, or operational efficiencies.

4. For the period January 1, 2022 through October 2023, please provide all communications between KKR and its creditors regarding bankruptcy negotiations and reorganization plans related to Envision's emergency medicine staffing operations.

<u>Envision</u>

5. Please provide all communications related to the emergency departments at Tucson Medical Center (for the period September 1, 2020, through January 1, 2022) and Chandler Regional Medical Center (for the period January 1, 2022, through January 1, 2024) in Arizona for the topics listed below and for the following custodians: Envision-affiliated emergency medicine professionals,[20] Envision Executive Leadership, Envision Medical Group Leadership, Medical Directors, Regional Vice Presidents, Chief Medical Officers, or Members of Envision's Board of Directors.

    a. Physician or advanced practice provider (APP) staffing, including: requests for additional staffing, lack of physician shift overlap, single physician coverage, lean or efficient staffing models, removing physicians from a schedule, or removing APPs from a schedule.

[20] "Emergency medicine professionals" includes physicians, nurse practitioners, physician assistants, and physician associates who staff emergency departments at Tucson Medical Center or Chandler Regional Medical Center in Arizona.

b. Patient safety, including APP scope and care, treating patients in hallways or waiting rooms, emergency room wait times, or "near misses."

c. Physician performance or discipline, including any performance improvement plans or counseling documents.

d. Code trauma, code sepsis, geri trauma, cardiac arrest, stroke activation, trauma activation charge, sepsis (or other activation) power plan, or patient critical care levels (1-5).

e. Downcoding, clinical queries to physicians regarding billing or coding, critical care attestation, patient counseling on smoking cessation or other preventative care measures, or inclusion of protein calorie malnutrition diagnoses.

f. Physician productivity or efficiency, Relative Value Units (RVUs) including RVUs generated per hour, performance incentives, or compensation, such as metric-based compensation, bonus compensation, or related calculations.

g. Time-related metrics, including Left Without Being Seen (LWBS), Greet to First Clinical Orders, Door to Doctor, Door to Disposition, or Door to Discharge.

h. Billing targets or loss of revenue.

6. For the period January 1, 2021 through present, please provide:

   a. A list of the members of Envision's Board of Directors each year.

   b. Any compensation any member of Envision's Board of Directors received from KKR (or a KKR affiliate), the name of the Board Member, and the amount of compensation received.

   c. Any Envision Board of Directors meeting agenda and minutes discussing or related to emergency medicine staffing, including any attachment, exhibit, or supplemental material.

   d. Any Envision meeting minutes or other documents from meetings held by Envision with Envision-affiliated emergency medicine physicians who work at the emergency departments at Tucson Medical Center or Chandler Regional Medical Center in Arizona.

   e. Any final reports or presentations (including pitch decks, slide decks, or playbooks) discussing or relating to Envision's emergency medicine staffing corporate strategy, growth, debt management, or operational efficiencies.

7. For the period January 1, 2018 through January 1, 2023, list and provide the corresponding contracts/management services agreements for any subsidiaries, entities, or other affiliates owned or controlled by Envision or any Envision-controlled subsidiary, entity, or other affiliate used to staff, manage, contract, or otherwise do business with Envision-staffed emergency departments in Arizona.

8. Please provide any written Envision policies related to the following topics. If no such policies exist, please indicate that.

    a. Physician staffing

    b. Physician clinical autonomy

    c. Raising and reporting patient safety or care concerns

    d. Evaluation of physician performance

    e. Clinical protocols (such as what tests, codes, or treatments to initiate)

    f. Billing, including physicians' ability (or lack thereof) to access data and information on billing associated with their National Provider Identifier

9. Please provide the following contracts:

    a. Envision's (or any affiliate entities') contracts with Tucson Medical Center and Chandler Regional Medical Center to staff their emergency departments for the period January 1, 2021 through the present.

    b. Envision's (or any affiliate entities') 2021 contracts, including any addenda, with the emergency medicine physicians who worked in the Tucson Medical Center emergency department, and 2023 contracts, including any addenda, with the emergency medicine physicians who worked in the Chandler Regional Medical Center emergency department, with any personal information redacted.

10. Please provide the emergency medicine physician and APP staffing schedules for the Tucson Medical Center emergency department from January 1, 2021 through March 31, 2021, and for the Chandler Regional Medical Center emergency department from January 1, 2024 through present, showing the number of emergency medicine physician and APP coverage hours for each day.

11. Please provide the daily patient volumes in the Tucson Medical Center emergency department from January 1, 2021 through March 31, 2021, and the Chandler Regional Medical Center emergency department from January 1, 2024 through present.

12. Please provide physician productivity reports, or related physician metric-based feedback, for any Envision-affiliated emergency medicine physicians who worked in the Tucson Medical Center emergency department from January 1, 2021 through January 1, 2022, and for any Envision-affiliated emergency medicine physicians who worked in the Chandler Regional Medical Center emergency department from January 1, 2023 through January 1, 2024.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV (k)(2)(B) of the Standing Rules of the Senate to investigate matters that aid the Committee in "studying the efficiency, economy, and effectiveness of all agencies and departments of the Government."[21] Under Senate Resolution 59, Sec. 12(e)(2), of the 118th Congress, the Committee's investigative duties "shall not be construed to be limited to the records, functions, and operations of any particular branch of the Government and may extend to the records and activities of any persons, corporation, or other entity."[22]

Please provide responsive documents and information as soon as possible, but no later than April 17, 2024. Additionally, please arrange to meet with the Committee as soon as possible, but no later than May 3, 2024. Please see attachment A to this letter for a description of the documents and information covered by this request.

Thank you for your attention to this matter. Should you have any questions, please contact Megan Petry Edgette and Kevin McAloon of Chairman Peters' staff at (202) 224-2627.

Sincerely,

Gary C. Peters
Chairman
Committee on Homeland Security
and Governmental Affairs

[21] S. Rule XXV(k)(2)(B).

[22] S. Res. 59, Sec. 12(e)(2).