United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

April 1, 2024

Marc Rowan
Chief Executive Officer
Apollo Global Management
9 West 57th Street, 42nd Floor
New York, NY 10019

Christopher Hummer
Chief Executive Officer
US Acute Care Solutions
4535 Dressler Road NW
Canton, OH 44718

Dear Mr. Rowan and Mr. Hummer:

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 Apollo Global Management's (Apollo) role in financing and control of Ohio-based physician staffing group US Acute Care Solutions (USACS), USACS' contract for and management of emergency department staffing for USACS' Pikes Peak Region in Colorado, and other practices impacting patient care and treatment at USACS-staffed emergency departments.[1]

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).[2] 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] USACS' Pikes Peak Region includes CommonSpirit St. Thomas More in Cañon City, Colorado; CommonSpirit St. Francis in Colorado Springs, Colorado; CommonSpirit St. Francis Interquest in Colorado Springs, Colorado; CommonSpirit Penrose in Colorado Springs, Colorado; and any other USACS-contracted emergency departments in this Region.

[2] 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.[3]

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.[4] Data on private equity ownership is largely nontransparent.[5] 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.[6]

Financial instability and bankruptcies by private equity-owned companies have had devastating impacts on communities and patient care.[7] Compared to other for-profit companies, private equity-owned companies are saddled with debt and more likely to file for bankruptcy.[8] The four largest emergency medicine staffing companies are owned or controlled by private

[3] 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.

[4] *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).

[5] *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").

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

[7] *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).

[8] 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.[9] 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 USACS itself is facing a forced sale if it is unable to pay its private equity investors by 2026.[10] 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.[11] 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 are often in 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.[12] In 2022, Congress responded to this tactic by banning surprise billing.[13] 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 2015, USACS launched its physician staffing company in partnership with private equity firm Welsh, Carson, Anderson & Stowe (WCAS).[14] In 2021, USACS bought out WCAS' minority ownership stake when it obtained an investment of up to $470 million from the private

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

[10] *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 up to $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.*

[11] *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).

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

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

[14] US Acute Care Solutions*, Emergency Medicine Physicians and Welsh, Carson, Anderson & Stowe Announce Formation of US Acute Care Solutions* (Oct. 19, 2015).

equity firm Apollo.[15] USACS is headquartered in Ohio and treats nearly 10 million patients annually in 26 states through "emergency, hospital, observation, post-acute, transitional and pulmonary, and critical care."[16] It currently operates nearly 300 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.[17]

Majority Committee staff have spoken to emergency medicine physicians who work for USACS, including in the Pikes Peak Region, who raised serious concerns about physician staffing levels and patient safety. For example, inadequate staffing has reportedly forced physicians to see over 20 patients at once, and advanced practice providers (APPs) such as nurse practitioners (NPs) and physician assistants (PAs) are reportedly left to diagnose and treat acute care patients on their own.[18]

While USACS is technically "a physician-owned company," its financial arrangement with Apollo is substantially different from traditional physician-owned emergency medicine groups and raises questions about physicians' clinical independence.[19] I am also concerned that USACS' restrictive contracting practices, such as non-interference clauses, may impede physicians' ability to raise patient safety concerns without fear of retaliation.[20]

These hospitals are an important part of Colorado's Pikes Peak region. However, I am concerned that these and related issues raise the risk that Apollo and USACS business decisions may compromise the ability of emergency departments in the Pikes Peak Region 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.

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[15] US Acute Care Solutions, *US Acute Care Solutions Physician-Owners to Buy Out Private Equity Partner WCAS* (Feb. 9, 2021); Apollo, *Apollo Hybrid Value Invests in US Acute Care Solutions* (Feb. 9, 2021).

[16] US Acute Care Solutions, *About Us* (https://www.usacs.com/about-us) (accessed Mar. 19, 2024); Moody's Investors Services, *Moody's downgrades U.S. Acute Care Solutions, LLC's CFR to B3 from B2, outlook stable* (Sept. 26, 2023).

[17] *See* 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).

[18] While there are not national standards that govern the number of patients per hour an emergency medicine physician can safely treat at a time due to a number of variables, such as patient acuity and support from advanced practice providers, a 2023 survey found that the average number of patients per hour seen by emergency medicine physicians without assistance from nurse practitioners or resident physicians was 2.1 patients per hour. *See* Kraftin E. Schreyer et al., *Physician Productivity and Supervision*, The Western Journal of Emergency Medicine (May 2023).

[19] US Acute Care Solutions, *Ownership at USACS* (https://www.usacs.com/about-us/usacs-ownership) (accessed Mar. 19, 2024).

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

In light of the issues identified above and to better understand Apollo's role in USACS with respect to management, control, and care at USACS-contracted emergency departments in the Pikes Peak Region, 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.

Apollo

1. Please provide Apollo's investment agreement with USACS, including the terms of the investment, any subsequent modifications/amendments, and the following information.

    a. For each year from 2021 through the present, please provide the amount of preferred shares Apollo offered, the corresponding price of each share Apollo paid, and any payouts, such as dividends, that Apollo or its affiliates received as part of its investment in USACS.

    b. List each Apollo-affiliated fund that has invested in USACS since 2021.

2. For each year from 2021 through the present, please identify the number of seats and the names and job titles of individuals associated with Apollo on USACS' Board of Directors. If no individual at or associated with Apollo sat on USACS' Board of Directors in any given year, please indicate so.

3. For the period January 1, 2021 through January 1, 2024, please provide:

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

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

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

USACS

4. For each year from 2015 through the present, please list all emergency medicine physician staffing companies USACS has acquired in Colorado, the date of the acquisition, and the value of each acquisition.

5. For the period January 1, 2022 through March 1, 2024, please provide all communications related to emergency departments in the Pikes Peak Region[21] for the topics listed below and for the following custodians: USACS-affiliated emergency medicine professionals,[22] USACS Executive Leadership, USACS Physician Leadership, Medical Directors, Regional Vice Presidents, Chief Medical Officers, or Members of USACS' 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.

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

    c. 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).

    d. 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.

    e. 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.

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

    g. Billing targets or loss of revenue.

[21] The "Pikes Peak Region" includes CommonSpirit St. Thomas More in Cañon City, Colorado; CommonSpirit St. Francis in Colorado Springs, Colorado; CommonSpirit St. Francis Interquest in Colorado Springs, Colorado; CommonSpirit Penrose in Colorado Springs, Colorado; and any other USACS-contracted emergency departments in this Region.

[22] "Emergency medicine professionals" includes physicians, nurse practitioners, physician assistants, and physician associates who staff USACS-contracted emergency departments in the Pikes Peak Region.

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

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

    b. Any compensation any member of USACS' Board of Directors received from Apollo (or an Apollo affiliate), the name of the Board Member, and the amount of compensation received.

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

    d. Any USACS meeting minutes or other documents from meetings held by USACS with USACS-affiliated emergency medicine physicians who work in the Pikes Peak Region.

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

    f. Any new debt USACS has raised and the corresponding financing agreements.

7. Please provide any written USACS 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

8. Please provide the following contracts:

    a. USACS' (or any affiliate entities') contract with hospitals in the Pikes Peak Region to staff its emergency department.

b. USACS' (or any affiliate entities') 2023 contracts, including any addenda, with emergency medicine physicians who worked in emergency departments in the Pikes Peak Region, with any personal information redacted.

9. For the period January 1, 2024, through present, please provide:

   a. The emergency medicine physician and APP staffing schedules for the emergency departments in the Pikes Peak Region, showing the number of emergency medicine physician and APP coverage hours for each day.

   b. The daily patient volumes in the emergency departments in the Pikes Peak Region.

10. For the period January 1, 2023 through March 1, 2024, please provide physician productivity reports, or related physician metric-based feedback, for any USACS-affiliated emergency medicine physicians who worked in emergency departments in the Pikes Peak Region.

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."[23] 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."[24]

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.

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

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

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