

Congress of the United States

Washington, DC 20515

December 19, 2019

Christopher A. Holden
President and CEO
Envision Healthcare
1A Burton Hills Boulevard
Nashville, TN 37215

Dear Mr. Holden:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is investigating practices surrounding surprise billing. Our investigation is joined by the U.S. Senate Committee on Health, Education, Labor and Pensions. We write to request information Envision Healthcare's billing policies and practices. We are particularly interested in your company's billing policies and practices when a provider is not in-network with a patient's insurance company, including your company's policies and practices as they relate to sending surprise bills, and your company's relationship with KKR & Co. Inc. In recent years, the Committee has heard countless heart-wrenching stories from individuals who have received thousands of dollars in medical bills after inadvertently receiving care from out-of-network providers. These surprise medical bills have led to patient confusion and financial hardship, and have inspired the Committee to act through bipartisan legislation.

Over the past year, the Committee has taken several bipartisan steps to hold patients harmless in situations where they, through no fault of their own, receive a surprise bill from an out-of-network health care provider. On July 17, 2019, we demonstrated this commitment by unanimously passing H.R. 3630, the No Surprises Act, out of the full Committee.¹ Among other things, our bill protects consumers with all types of private insurance plans from surprise bills by increasing transparency and empowering patient choice, establishing benchmarks to resolve out-of-network billing disputes, creating an independent dispute resolution process, and encouraging the development of an all-payer claims database.² Similarly, on June 26, the HELP Committee reported S.1895, the Lower Health Care Costs Act, 20-3. The HELP Committee also protected consumers with all types of insurance from surprise bills, established a benchmark to resolve out-of-network billing disputes, and created a federal all-payer claims database.

Surprise billing has devastated the finances of households across America and this practice is increasing at an alarming rate.³ Every day we hear stories about families who have

¹ H. Comm. on Energy and Commerce, *Pallone & Walden on Committee Passage of No Surprises Act* (Jul. 17, 2019), available at energycommerce.house.gov/newsroom/press-releases/pallone-walden-on-committee-passage-of-no-surprises-act.

² *Id.*

³ *No More Surprises: Protecting Patients from Surprise Medical Bills: Hearing Before the Subcomm. On Health of the H. Comm. on Energy and Commerce*, 116th Cong., Testimony of

endured financial and emotional devastation as a result of surprise bills. For example, Sonji Wilkes carefully confirmed before giving birth that the hospital where she delivered her son was covered by her insurance plan. Yet, after her son required emergency care in the hospital's neonatal intensive care unit (NICU) shortly after birth, she received a \$50,000 surprise bill for his NICU stay. Unbeknownst to Ms. Wilkes, the hospital had subcontracted the NICU out to a third-party provider that was not part of any insurance company's network.⁴ Stefania Kappes-Rocha from California went to the emergency room for a kidney infection at Zuckerberg San Francisco General Hospital. After spending the night in the emergency room and being sent home a day later with ibuprofen, she received a surprise bill for more than \$27,000. Drew Calver from Dallas, Texas received emergency treatment at St. David's Medical Center for a heart attack. To Mr. Calver's astonishment, he subsequently received a \$108,000 surprise medical bill. Unfortunately, these stories are far too common. Research has found that around one in five emergency department visits and about nine percent of elective inpatient care at in-network facilities result in a surprise bill.⁵

Surprise bills occur primarily in two scenarios—when an individual receives emergency services and has no ability to ensure they are treated by in-network providers, or when an individual goes to an in-network hospital, but certain providers at that same hospital, that the patient may not have been aware would be involved in their care, are out-of-network. According to the American Enterprise Institute and the Brookings Institution, surprise bills are most likely associated with services provided by an out-of-network emergency physician or ancillary clinician—such as a radiologist, anesthesiologist, pathologist, hospitalist, or assistant consulting surgeon—at an in-network facility.⁶

Many of the services that are often associated with surprise bills are also areas where hospitals have increasingly outsourced patient care.⁷ This occurs because physician staffing

Jeanette Thornton, Senior Vice President, Product, Employer, and Commercial Policy, America's Health Insurance Plans (June 12, 2019).

⁴ *No More Surprises: Protecting Patients from Surprise Medical Bills: Hearing Before the Subcomm. On Health of the H. Comm. on Energy and Commerce*, 116th Cong., Testimony of Ms. Sonji Wilkes, Patient Advocate (June 12, 2019).

⁵ Christopher Garmon and Benjamin Chartock, *One in Five Inpatient Emergency Department Cases May Lead to Surprise Bills*, HEALTH AFFAIRS (Jan. 2017), www.healthaffairs.org/doi/abs/10.1377/hlthaff.2016.0970.

⁶ Loren Adler, et al., *Network matching: An attractive solution to surprise billing*, American Enterprise Institute (May 23, 2019), www.aei.org/publication/network-matching-an-attractive-solution-to-surprise-billing/.

⁷ Press reports discussing areas where hospitals have outsourced clinical services include: *Outsourcing is Exploding in Healthcare – Will the Trend Last?*, *Becker's Hospital Review* (Oct. 4, 2013), available at www.beckershospitalreview.com/human-capital-and-risk/outourcing-is-exploding-in-healthcare-will-the-trend-last.html; Ron Shinkman, *The outsourcing explosion: Hospitals turn to outside firms to provide more clinical services [Special Report]*,

companies and hospitals independently negotiate contracts with insurers—at times, a hospital may have negotiated rates with major health insurers while the physicians associated with the physician staffing company are not part of those networks.⁸ Indeed, a study by researchers at Yale found that hospitals that contract with physician staffing companies have higher rates of out-of-network billing.⁹

The researchers analyzed the behavior of the two largest emergency department outsourcing firms in the United States—TeamHealth and EmCare—and found that:

[B]oth firms use the power of their outside option to raise revenues when they take over new contracts with hospitals, albeit in very different ways. When EmCare enters into a new contract to manage a hospital's [emergency department] services, they immediately exit networks, bill as out-of-network providers, and seek to collect their charges (which they also raise by 96 percent relative to the charges billed by the prior physician group in that hospital). By contrast, when TeamHealth receives a new hospital contract, physicians working for the firm go out-of-network for several months and then rejoin the networks while using the now credible threat of out-of-network status to secure higher in-network payments.¹⁰

Evidence indicates that these physician staffing firms charge significantly higher in-network rates than their counterparts, thereby driving reimbursement upwards as they enter into staffing arrangements with hospitals.¹¹ In recent years, some physician staffing companies have been acquired by private equity firms. EmCare was acquired by KKR & Co. Inc., in 2018.¹² Similarly, TeamHealth was acquired by the Blackstone Group in 2016.¹³

We are concerned about the impact of surprise billing on the nation's rising healthcare costs and the devastating effect that the practice is having on Americans. Therefore, we request your assistance to better understand why surprise billing occurs, the revenue generated by

FIERCEHEALTHCARE (Apr. 21, 2015), *available at* www.fiercehealthcare.com/finance/outsourcing-explosion-hospitals-turn-to-outside-firms-to-provide-more-clinical-services.

⁸ Zack Cooper, et al., *Surprise! Out-of-Network Billing for Emergency Care in the United States*, THE NATIONAL BUREAU OF ECONOMIC RESEARCH WORKING PAPER (last revised Jan. 2019), *available at* www.nber.org/papers/w23623.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 8.

surprise billing, and the current incentives behind the negotiations between providers and insurers.

To assist the Committee in its efforts, we request you answer the following questions:

1. Please provide the following information about your company:

- a. The type of providers who are employed or contracted by your staffing company;
- b. The size of your staffing company and the states in which your company currently operates; please also provide year over year growth in terms of the number of providers employed over the last 10 years.
- c. The number of contracts and a comprehensive list of hospitals or hospital systems your staffing company has contracted with to provide services over the past ten years. In your response, please provide a description of the services your company is providing each hospital or health system, and the date your company contracted to provide these services:
 - i. For each hospital or health system, are billed charges and in-network rates determined or negotiated exclusively by Envision Healthcare, or does the hospital provide input into out-of-network and in-network rates charged to commercial insurers? Does the hospital require your physician staffing company to be in-network with the same insurers as the hospital? If so, when was this requirement included in your contract with the hospital?
 - ii. For each hospital or health system, please provide the average in-network rate charged to commercial insurers for each of the physician services provided by your company—listing each service provided and the average in-network rate charged to commercial insurers for that service, and the out-of-network rate charged to commercial insurers for these services. Is the out-of-network rate charged to commercial insurers always the same, or does it depend on different factors? If so, please describe.
 - iii. For each hospital or health system, please provide the percentage of total provided physician services that are billed at an in-network rate to commercial insurers and the percentage of total provided physician services that are billed at an out-of-network rate to commercial insurers—listing each type of service and the corresponding information separately; and
- d. The number of hospitals that your company contracts with where your company has the same commercial insurance networks as the hospital.

2. Please provide the following information about composition and ownership and/or management interest in your company:
 - a. In addition to KKR & Co. Inc, please provide, if applicable, a comprehensive list of entities and/or individuals that have, or previously had, an ownership and/or management interest in your company;
 - b. The date in which each entity and/or individual listed in your response to subpart (a) acquired an ownership and/or management interest in Envision Healthcare the amount paid for such ownership and/or management interest, and whether that entity and/or individual continues to have an ownership and/or management interest;
 - c. If applicable, the date each entity and/or individual listed in your response to subpart (a) sold the ownership and/or management interest of Envision Healthcare, the amount received for the sale, and the purchaser of the ownership and/or management interest.
3. Has the management team at Envision Healthcare and/or Board of Directors of Envision Healthcare discussed the impact of out-of-network billing to commercial insurers on revenue and/or profit? Please provide copies of all Board of Directors meeting minutes over the last ten years where out-of-network billing to and/or out-of-network reimbursement by commercial insurers were discussed at the meeting.
4. What role, if any, does KKR & Co. Inc play in the strategy, management, and operations of your company?
 - a. Please list all individuals affiliated with or designated by KKR & Co. Inc that currently or previously have sat on the Board of Directors of Envision Healthcare and/or the management team of Envision Healthcare? In your response, please also include a list of each current member of your Board or Directors.
 - b. Please describe the relationship between your company and any individuals employed by or affiliated with KKR & Co. Inc, including any compensation agreements or performance-based financial incentives. Please provide copies of all such agreements or arrangements.
 - c. Please list any fees your company paid KKR & Co. Inc for each of the past five years, if applicable. Please describe the role and responsibilities of individuals employed by or affiliated with KKR & Co. Inc in exchange for these fees.
5. What role, if any, do any members, directors, principals, or other individuals employed by or affiliated with KKR & Co. Inc have in negotiations between your company, hospitals, and insurers? In addition, please provide the following information, if

applicable:

- a. Whether any individuals employed by or affiliated with KKR & Co. Inc have ever provided recommendations, advice, guidance, or instructions on whether to negotiate an in-network agreement with a commercial insurer, and the terms of any in-network agreement, and if so, the recommendations, advice, guidance, or instructions provided to your company. Please provide copies of all documents and/or communications pertaining to any such recommendations, advice, guidance, or instructions.
 - b. Do any contractual terms imposed by individuals employed by or affiliated with KKR & Co. Inc refer or relate to your company's negotiations with insurers and/or hospitals? If yes, please provide copies of all documents and communications pertaining to such contracts or contractual terms.
6. Please provide the profits and revenues that your company has earned from out-of-network billing to commercial insurers for each year of ownership and/or management under KKR & Co. Inc and include overall revenue for each year. In your response, please provide your company's annual out-of-network profits and revenues from commercial insurers for each of the three years prior to the sale of your company to or investment in your company by KKR & Co. Inc. For each of these three years prior to the sale to or investment in your company by KKR & Co. Inc, please also include overall profits and revenues.
7. Please provide the profits and revenues your company has earned from in-network billing to commercial insurers for each year of ownership and/or management under KKR & Co. Inc. In your response, please provide your company's annual in-network profits and revenues from commercial insurers for each of the three years prior to the sale of your company to or investment in your company by KKR & Co. Inc.
8. Please provide the average in-network rate reimbursed by commercial insurers for each physician service provided by your company across all hospitals your company contracts with: (1) for each year of ownership and/or management under KKR & Co. Inc; and (2) for each of the three years prior to the sale of your company to or investment in your company by KKR & Co. Inc. If the average in-network rate reimbursed by commercial insurers changed significantly between two years or over time, please explain.
9. Please provide the average out-of-network rate reimbursed by commercial insurers for each physician service provided by your company across all hospitals your company contracts with: (1) for each year of ownership and/or management under KKR & Co. Inc; and (2) for each of the three years prior to the sale of your company to or investment in your company by KKR & Co. Inc. If the average out-of-network rate reimbursed by commercial insurers changed significantly between two years or over time, please explain.

10. Since the date of acquisition by or investment by KKR & Co. Inc, has your company opted out of an insurance company's network in the commercial market? If yes, please provide which insurance companies' network your company opted out of, the date your company opted out, and the underlying reason why your company opted out of the network.
11. Since the date of acquisition by or investment by KKR & Co. Inc, has your company entered in to any new insurance company networks in the commercial market? If yes, please provide which insurance company's network your company opted in to, the date your company opted in, and the underlying reason why your company opted in to the network.
12. If applicable, please also answer Questions #3 through #11 with respect to any other entities and/or individuals your company lists in your response to Question #2 as having, or previously having had, an ownership and/or management interest in your company.
13. Has Envision Healthcare opted out of an insurance company's network in the commercial market only to re-contract again with the same insurance company? If yes, please provide the following:
 - a. The date Envision Healthcare opted out, the reason for opting out, and the rate charged to the network at the time your company opted out of the contract.
 - b. The date Envision Healthcare rejoined the same insurance company's network, the underlying reason for rejoining the same network, and the rate charged to the network after rejoining.
14. Do you have profit sharing or subsidy agreements with hospitals or hospital systems? Such agreements could include any contractual arrangement by which Envision Healthcare shares any portion of the revenue generated by its employed or contracted physicians with the hospital or hospital system. If yes, please provide a copy of any such agreements.
15. Please describe any other financial provisions included in the contractual agreements between your staffing company and any hospital or hospital system with which you contract.
16. Do any providers who are employed or contracted by your staffing company receive any additional compensation or payment when a patient is admitted to a hospital, or when the provider performs certain services at such hospital?

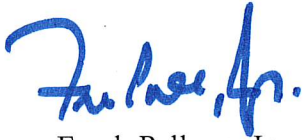
Mr. Christopher A. Holden

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Please provide the requested information as soon as possible, but no later than January 9, 2020. An attachment to this letter provides additional information about responding to the Committee's request. If you have any questions, please contact Kevin McAloon with the Energy and Commerce Majority staff at (202) 225-2927, Natalie Sohn with the Energy and Commerce Minority staff at (202) 225-3641, Kristin Spiridon at (202) 224-6770 with the Senate HELP Majority Staff, or Elizabeth Letter at (202) 224-0767 with the Senate HELP Minority Staff. Thank you in advance for your cooperation.

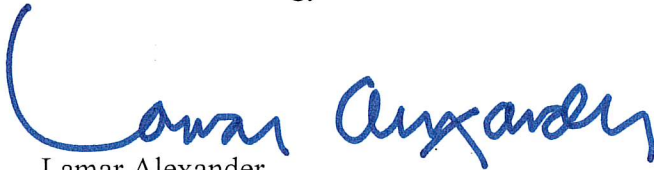
Sincerely,



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce



Greg Walden
Ranking Member
Committee on Energy and Commerce



Lamar Alexander
Chairman
Committee on Health, Education,
Labor, and Pensions



Patty Murray
Ranking Member
Committee on Health, Education,
Labor, and Pensions