

Congress of the United States
House of Representatives
Washington, DC 20515-0545

May 21, 2021

Rebecca Slaughter
Acting Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

Dear Acting Chairwoman Slaughter and Secretary Becerra,

We are reaching out to you today to share concerns about the potential use of Provider Relief Fund dollars by hospitals and health care systems to finance mergers and acquisitions during the COVID-19 pandemic. These funds, expressly provided by Congress to help health care providers grapple with the increased costs and lost revenue of the COVID-19 pandemic, were disproportionately allocated to the largest providers. We are concerned, based on our review of mergers and acquisitions in 2020 and early 2021, that hospitals and health systems used these COVID-19 funds to finance mergers, rather than to care for patients or to maintain operations. We ask that the Federal Trade Commission (FTC) work with the Department of Health and Human Services (HHS) to conduct a review of these funds to determine whether or not this is the case. We also request that the FTC hold a public hearing with the Chief Executive Officers and Chief Financial Officers of the companies named in this letter. Congress, not to mention taxpayers, deserve to know if money intended to help frontline health care providers cover losses and expenses associated with COVID-19 was used for anticompetitive merger activity.

The Provider Relief Fund, established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), provided billions of dollars to hospitals and other health care entities on the front lines of the pandemic response.¹ The funds were intended to cover losses incurred by hospitals, doctor's offices, and other providers caring for individuals with COVID-19, as well as the loss in revenue due to patients delaying non-urgent care.^{2,3} Public and certain nonprofit hospitals that provide significant care for low income or un- or under-insured patients ("safety net providers") were the most likely to take care of COVID-19 patients because of the racial and economic disparities in those who had serious infections.⁴ These safety net hospitals often operate on razor thin margins: the poorest 25% of all U.S. hospitals

¹ "Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Paycheck Protection Program and Health Care Enhancement Act (PPPCHE), the federal government has allocated \$178 billion in payments to be distributed through the Provider Relief Fund (PRF). Qualified providers of health care, services, and support may receive Provider Relief Fund payments for healthcare-related expenses or lost revenue due to COVID-19. Separately, the COVID-19 Uninsured Program reimburses providers for testing and treating uninsured individuals with COVID-19." Funds have also been provided and disbursed through subsequent relief legislation. CARES Act Provider Relief Fund, Department of Health and Human Services, retrieved at: <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>

² Funding for Health Care Providers During the Pandemic: An Update, Kaiser Family Foundation, Retrieved at: <https://www.kff.org/policy-watch/funding-for-health-care-providers-during-the-pandemic-an-update/>

³ 2020 M&A in Review: COVID-19 as Catalyst for Transformation, Kauffman Hall, Retrieved at: <https://www.kauffmanhall.com/ideas-resources/research-report/2020-mergers-acquisitions-review-covid-19-catalyst-transformation>

⁴ Health Equity and the Allocation of COVID-19 Provider Relief Fund, American Journal of Public Health, Retrieved at: <https://ajph.aphapublications.org/doi/10.2105/AJPH.2020.306127>

(including public, nonprofit, and for-profit hospitals) have only enough cash on hand to pay for their operating expenses for 7.6 days.⁵ The Provider Relief Fund helped struggling hospitals keep their doors open for vulnerable patients.

At this time, the Provider Relief Fund has disbursed more than \$100 billion in taxpayer dollars to health care providers. This money went disproportionately to hospitals that were in the best financial condition before the pandemic, including the largest hospitals systems and for-profit companies with more cash on hand than safety net providers.^{6,7}

Consolidation in health care leads to increased prices and does not seem to improve the quality of patient care. Before the pandemic, consolidation was accelerating and competition was decreasing.⁸ Under the Herfindahl-Hirschman Index, 90% of metropolitan statistical areas were highly concentrated for hospitals, 65% were highly concentrated for specialists and 39% were highly concentrated for primary care physicians by 2016.⁹ This continued from 2016 to 2019.¹⁰ Early pandemic analysis indicated that “the financial strains of the pandemic could increase the pace of consolidation among hospitals and physicians.”^{11,12} We now know that these same systems who received larger Provider Relief Fund allocations continued mergers and acquisitions in 2020 at a similar pace as 2019, despite many claiming they faced the same financial difficulties as smaller systems or individual hospitals. Further, merger and acquisition activity by for-profit health systems increased as a percentage of total merger and acquisition transactions in 2020.¹³

In 2021, consolidation will likely continue. In fact, 44% of health care Chief Financial Officers say “the pandemic will drive an increase in partnerships across the health care ecosystem.”¹⁴ In 2021, 31% of Chief Financial Officers at health care companies plan to acquire physician practices, 30% plan to join a

⁵ COVID-19 and the financial health of US hospitals, *Journal of American Medicine*, Retrieved at: <https://doi.org/10.1001/jama.2020.6269>

⁶ COVID Stimulus Watch: Governmental Program Summary, PROGRAM: Provider Relief Fund - General Distribution, COVID-19 Stimulus Watch, Retrieved at: https://data.covidstimuluswatch.org/prog.php?program_sum=Provider-Relief-Fund-General-Distribution-50000-and-up&page=13

⁷ An analysis found that the first and most significant distribution of funds from the account, “awarded more provider relief funds, on average, to the most financially well-off hospitals.” Though subsequent distributions prioritized those hospitals that were less well-off, they “did not even out among hospitals with different levels of financial well-being. Instead, hospitals that were the most financially well-off before the pandemic were the same hospitals that received the largest payments per bed from the federal government.” Health Equity and the Allocation of COVID-19 Provider Relief Fund, *American Journal of Public Health*, Retrieved at: <https://ajph.aphapublications.org/doi/10.2105/AJPH.2020.306127>

⁸ What We Know About Provider Consolidation, Kaiser Family Foundation, Retrieved at: <https://www.kff.org/health-costs/issue-brief/what-we-know-about-provider-consolidation/>

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² More hospital consolidation is expected post-pandemic, *Healthcare Financial Management Association*, Retrieved at: <https://www.hfma.org/topics/news/2020/08/more-hospital-consolidation-is-expected-post-pandemic.html>

¹³ 2020 M&A in Review: COVID-19 as Catalyst for Transformation, *Kauffman Hall*, Retrieved at: <https://www.kauffmanhall.com/ideas-resources/research-report/2020-mergers-acquisitions-review-covid-19-catalyst-transformation>

¹⁴ Healthcare Finance News, Healthcare M&A's down in 2020 but analysts say COVID-19 is a catalyst for future deals, Retrieved at: <https://www.healthcarefinancenews.com/news/healthcare-mas-down-2020-analysts-say-covid-19-catalyst-future-deals>

clinically integrated network, 28% plan to merge with another organization, 24% plan to enter into a joint venture, and 17% plan to acquire another organization.¹⁵

Some health care systems prioritized boosting their own bottom line and expansion over patients and health care workers. That abstract description should not mask the very real human harms. Because taxpayer funds were misused to profit off the pandemic, the sick lost their lives and health care workers were traumatized.

Tenet Healthcare, a publicly traded company, received more than \$1 billion in CARES Act funds, half of which came from the Provider Relief Fund.¹⁶ After receiving these funds, Tenet spent \$1.1 billion acquiring 45 surgery centers from SurgCenter Development in December 2020, bringing its total to around 350 surgery centers.¹⁷ The company plans to spend \$150 million to acquire between 25 to 40 ambulatory surgery centers in 2021.¹⁸ During this time, Tenet failed to provide the care its patients needed or the protections its workers required. Tenet understaffed the emergency room and intensive care unit at Detroit Medical Center's Sinai Grace hospital so severely that single nurses were charged with treating as many as 20 COVID-19 patients at a time; the emergency room ran out of oxygen and beds and was forced to prop dead bodies upright in chairs; and dozens may have died for lack of basic attention from the overwhelmed staff.¹⁹ The company then fired the staffers who organized to ask for reinforcement and additional support.²⁰ Tenet also failed to isolate COVID-19 patients from non-COVID-19 patients or dedicate separate staff to each group during an outbreak at Fountain Valley Medical Center in California in July 2020.²¹ In the final quarter of 2020, Tenet posted a profit of \$414 million.²²

LifePoint Health, owned by private equity firm Apollo Global Management, received \$1.5 billion in federal grants and loans.²³ Lifepoint has been widely reported to be closing in on a \$2 billion deal to purchase Ardent Health Network, a hospital chain co-owned by real estate investment trust company Ventas and a private equity firm.²⁴ Similar to Tenet, LifePoint Health failed to isolate COVID-19 patients

¹⁵ Healthcare Finance News, Healthcare M&A's down in 2020 but analysts say COVID-19 is a catalyst for future deals, Retrieved at: <https://www.healthcarefinancenews.com/news/healthcare-mas-down-2020-analysts-say-covid-19-catalyst-future-deals>

¹⁶ Billions in COVID relief go to biggest hospital chains as smaller rivals await aid, Reuters, Retrieved at: <https://www.reuters.com/article/us-health-coronavirus-hospital-billions/billions-in-covid-relief-go-to-biggest-hospital-chains-as-smaller-rivals-await-aid-idUSKBN23G1GI>

¹⁷ \$1.1B deal will give Tenet 45 SurgCenter ASCs, Beckers Hospital Review, Retrieved at: <https://www.beckersasc.com/asc-transactions-and-valuation-issues/1-1b-deal-will-give-tenet-45-surgcenter-asc.html>

¹⁸ JPM21: Tenet aims to acquire 25 to 40 surgical centers in 2021 as pivot away from urgent care continues, Fierce Healthcare, Retrieved at: <https://www.fiercehealthcare.com/hospitals/tenet-aims-to-acquire-25-to-40-surgical-centers-2021-as-pivot-away-from-urgent-care>

¹⁹ Sinai-Grace nurses file lawsuit, allege patients died because hospital was short-staffed, Detroit Free Press, Retrieved at: <https://www.freep.com/story/news/health/2020/06/11/sinai-grace-nurses-lawsuit-coronavirus-deaths-detroit/5332539002/>

²⁰ Ibid.

²¹ FOUNTAIN VALLEY REGIONAL HOSPITAL & MEDICAL CENTER -> Report No. 27962, Hospital Inspections, Retrieved at: <http://www.hospitalinspections.org/report/27962>

²² Tenet Healthcare posts \$414M profit in 4th quarter, Fierce Healthcare, Retrieved at: <https://www.fiercehealthcare.com/hospitals/tenet-healthcare-posts-414m-profit-its-fourth-quarter>

²³ LifePoint received \$1.5B in COVID-19 relief aid, Beckers Hospital Review, Retrieved at: <https://www.beckershospitalreview.com/finance/lifepoint-received-1-5b-in-covid-19-relief-aid.html>

²⁴ Purchase of Ardent Health Could Affect Network Hospitals, CJ Online, Retrieved at: <https://www.cjonline.com/story/business/2021/03/09/purchase-ardent-health-services-may-affect-network-hospitals-st-francis-hospital-lifepoint-health/6878752002/>

from those with other conditions.²⁵ LifePoint facilities have allegedly slashed mental health services and units in recent years not because they are unprofitable, but because they found that holding psychiatric patients in the Emergency Room is typically more profitable. In Wyoming, where Apollo shut down an essential psychiatric treatment facility in 2019, a psychiatric patient admitted to the emergency room during a COVID-19 surge in November gouged out the eyes of an elderly dementia patient who ultimately died.²⁶

CommonSpirit Health, formed in 2019 after a merger between mega-systems CHI Health and Dignity Health, is the largest Catholic health system in the U.S., with facilities in 21 states across the country.²⁷ CommonSpirit was the fourth largest recipient of Provider Relief Fund dollars, a total of \$1,047,402,816.²⁸ The system reported that it had suffered losses in 2020 due to the pandemic, but in the first year after its merger, “it had identified some \$2 billion in merger-related benefits and eventually projects it will have regular annual operating margins of 8%, along with an improvement to its balance sheet.”²⁹ Still, the system reported having 202 days cash on hand.³⁰ CommonSpirit’s CHI Franciscan began talks regarding acquiring Virginia-Mason in Washington state in July 2020. The acquisition was finalized in January 2021.³¹ The combined organization would operate 12 hospitals and more than 250 sites of care.³²

Further, systems who were already engaged in anticompetitive behavior used the pandemic as an opportunity to try to delay the implementation of policies to reduce their stranglehold on local markets. Sutter Health, which received \$821,656,791 in Provider Relief Fund dollars,³³ agreed in 2019 to settle an antitrust lawsuit by reimbursing \$575 million for overcharges and by ending certain anticompetitive practices to restore price competition to the Northern California health care market.³⁴ However, in 2020, Sutter asked the trial judge to delay the settlement, arguing that COVID-19 caused financial losses for the system such that they could no longer agree to the previously agreed to settlement terms.³⁵ This included limitations on out-of-network prices for emergency care and on “all or none contracting,” a practice that

²⁵ Kershaw Health nurses call for stricter COVID-19 protocols, WISTV, Retrieved at:

<https://www.wistv.com/2020/04/04/kershaw-health-nurses-call-stricter-covid-protocols/>

²⁶ A City’s Only Hospital Cut Services. How Locals Fought Back., Wall Street Journal, Retrieved at:

<https://www.wsj.com/articles/a-citys-only-hospital-cut-services-how-locals-fought-back-11618133400>

²⁷ Essentia Health in works to acquire CommonSpirit CHI facilities, Duluth News Tribune, Retrieved at:

<https://www.duluthnewstribune.com/newsmd/health-news/6832864-Essentia-Health-in-works-to-acquire-CommonSpirit-CHI-facilities>

²⁸ COVID Stimulus Watch: Governmental Program Summary, PROGRAM: Provider Relief Fund - General Distribution, COVID-19 Stimulus Watch, Retrieved at: https://data.covidstimuluswatch.org/prog.php?program_sum=Provider-Relief-Fund-General-Distribution-50000-and-up&page=13

²⁹ COVID-19 drags CommonSpirit into red for first full fiscal year, Health Care Dive, Retrieved at:

<https://www.healthcaredive.com/news/covid-19-commonspirit-into-red-first-full-fiscal-year/586374/>

³⁰ Ibid.

³¹ CHI Franciscan and Virginia Mason Finalize Agreement To Form Virginia Mason Franciscan Health, Virginia Mason, Retrieved at: <https://www.virginiamason.org/chi-franciscan-and-virginia-mason-form-virginia-mason-franciscan-health>

³² Virginia Mason in acquisition talks with CommonSpirit’s CHI Franciscan, Fierce Healthcare, Retrieved at:

<https://www.fiercehealthcare.com/hospitals/virginia-mason-acquisition-talks-commonspirit-s-chi-franciscan>

³³ COVID Stimulus Watch: Governmental Program Summary, PROGRAM: Provider Relief Fund - General Distribution, COVID-19 Stimulus Watch, Retrieved at: https://data.covidstimuluswatch.org/prog.php?program_sum=Provider-Relief-Fund-General-Distribution-50000-and-up&page=13

³⁴ Congress Should Restore Health Care Competition, Not Let Providers Exploit COVID-19 To Raise Prices, Health Affairs, Retrieved at: <https://www.healthaffairs.org/doi/10.1377/hblog20200929.911444/full/>

³⁵ Ibid.

forces insurers to to contract with all hospitals in a system or accept the hospital's rate or lose the ability to offer coverage in a region.³⁶

In light of this considerable evidence of harmful actions, we ask that the FTC and HHS work together to identify if any CARES Act funds were used to engage in consolidation, and if any were used to finance potentially anticompetitive behavior. We ask that you provide a report to Congress on this investigation and provide recommendations for Congress on how to safeguard disbursement of funds in future public health emergencies from any such abuse. We also request that Secretary Becerra address the inequity in distribution when he disburses the remaining Provider Relief Funds. Finally, we request that the FTC hold a public hearing with the Chief Executive Officers and Chief Financial Officers of the companies named in this letter, as well as any other companies you feel should be included. We ask that this hearing be held by August 30, 2021.

Thank you for your consideration of this request, and we look forward to your response.

Very truly yours,



KATIE PORTER
Member of Congress



ROSA DeLAURO
Member of Congress

³⁶ Ibid.