HCA: HIGHER HEALTHCARE COSTS FOR AMERICA

Service Employees International Union (SEIU)

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HCA: HIGHER HEALTHCARE COSTS FOR AMERICA

New research indicates America's largest for-profit hospital system may be gaming the Medicare system and driving up healthcare costs for patients and citizens

HCA Healthcare, the nation's largest hospital system, is engaged in practices that maximize profits at the expense of patient care, working conditions, and responsible corporate behavior. HCA's hospital markups are in general more than twice the national average, and many HCA hospitals have markups as high as 12 or 13 times the cost of care — or even higher.[1] At the same time, staffing levels in HCA's hospitals lag the national average by about 30%,[2] despite the fact that higher staffing levels are associated with better patient care,[3] and the company pays tens of thousands of its employees poverty wages.[4]

It should be no surprise that HCA's profits are outrageously high—they made $3.75 billion in profit in 2020,[5] despite the pandemic—and the company has paid out more than $29 billion to its investors since 2010 in dividends and share repurchases.[6]

HCA is the largest health system in the US and one of the wealthiest health systems in the world, with a market capitalization of $78.1 billion as of November 1, 2021,[7] with unprecedented financial market dominance. In fact, HCA's financials are so strong that the company generates more revenue and twice as much profit as the three other leading publicly traded acute-care hospital systems combined.[8] *(See Figure 1 and Figure 2)*

Based on the new research contained in this report, these high profits and payments to investors may originate in part from Medicare fraud: HCA routinely admits patients for inpatient hospital stays apparently regardless of medical need, as shown by SEIU analysis of Medicare data and several unrefuted lawsuits filed against HCA. This analysis, described in our report, indicates that HCA's practice of overadmitting patients may have brought the company nearly $2 billion in excess Medicare payments since 2008.[9] This possibly illegal, unethical patient care practice pads the corporation's pockets while costing taxpayers and consumers billions in unnecessary procedures and services and exposing patients to unnecessary risk. These allegations hold particular weight given

This analysis, described in our report, indicates that HCA's practice of overadmitting patients may have brought the company nearly $2 billion in excess Medicare payments since 2008.

HCA Healthcare's history of Medicare fraud. The healthcare giant was the subject of the largest Medicare fraud settlement in the U.S. history in the early 2000s when the company agreed to pay a total of $1.7 billion dollars.[10]

These business practices—all of which preceded the pandemic—are extremely troubling in a moment when all of our nation's hospitals must be able to safely treat large numbers of COVID patients, as well as patients who require lifesaving procedures. In particular, HCA's dramatically low staffing levels left nurses and other healthcare workers over-worked and shorthanded even before the pandemic struck in March of 2020. The burden of these low staffing levels has only increased in the past year as the pandemic placed an increased strain on frontline healthcare workers nationwide. Moreover, HCA's over-admittance practice puts tens of thousands of HCA hospital patients at unnecessarily increased risk of hospital-acquired infections—potentially including exposure to COVID-19—and fills beds with patients who may not need to be there when those beds may be urgently needed to treat patients with a genuine need for medical care. SEIU nurses and other frontline healthcare workers have long demanded system-wide changes throughout HCA to improve patient care and job quality, but HCA's alarming corporate practices have made the need for immediate intervention clear from both governmental and non-governmental actors.

THIS REPORT WILL PRESENT A COMPREHENSIVE ANALYSIS OF HCA'S APPARENT MEDICARE FRAUD, INCLUDING THE FOLLOWING:

- Additional data analyses examining other possible explanations for HCA's high admissions levels and demonstrating that these possible explanations do not hold up.
- An analysis of an unsealed and unrebutted whistleblower lawsuit filed by a physician who provided hospitalist services to an HCA hospital in Florida. His allegations include data analysis similar to what is presented below as well as a detailed description of powerful incentives that HCA imposes on physicians to induce admissions.
- An analysis of several other lawsuits against HCA hospitals that make similar allegations.
- An analysis of investor communications and how top HCA executives have described the company's strategic approach to hospital emergency departments as one aimed at maximizing profits.
- An analysis of HCA's joint venture with the physician staffing firm EmCare — an arrangement that enables corporate pressure to be brought to bear on physicians to admit more patients, with the appearance of an arms-length business relationship.
- A recital of HCA's sustained profitability and its related practice of returning billions of dollars to shareholders in the form of dividends and share repurchases.
- A summary of how HCA's low staffing levels likely lead to patient care failures.
- A reminder that HCA has a long history of Medicare fraud settlements, including guilty pleas to criminal charges and what was at the time (1999-2000) the largest Medicare fraud settlement in US history at $1.7 billion.

FIGURE 1: HCA HAD HIGHER REVENUE IN 2020 THAN THE COMBINED REVENUE OF THE NEXT THREE LARGEST PUBLICLY TRADED ACUTE CARE HOSPITAL SYSTEMS IN AMERICA.

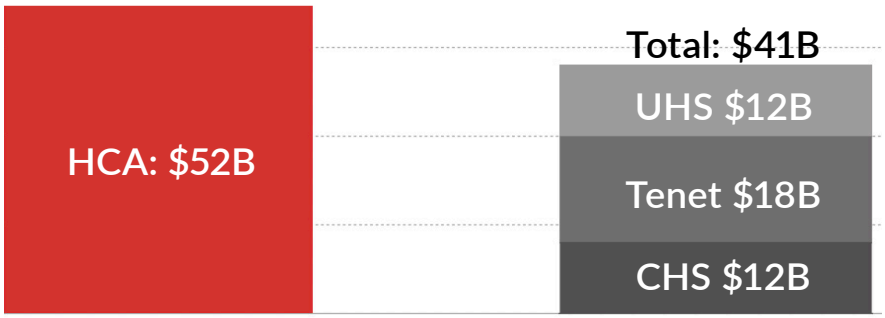
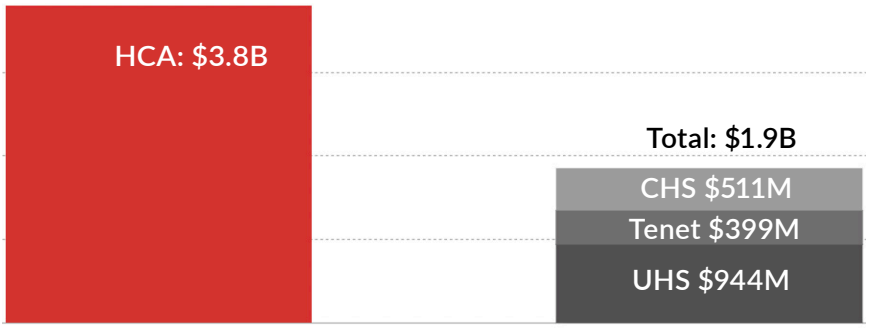


FIGURE 2: HCA HAD A HIGHER NET INCOME IN 2020 THAN THE NEXT THREE LARGEST PUBLICLY TRADED ACUTE CARE HOSPITAL SYSTEMS COMBINED



This report sets out a detailed analysis of how HCA accomplishes this profit scheme. Some of what is presented below has been aired publicly; most has not. In particular, two news outlets — *Modern Healthcare*[11] and *MedPage Today*[12] — published stories in March of 2021 describing some of the data patterns presented below. Those stories, based on a letter to the Chair of the Audit and Compliance Committee of HCA's board sent by the Change to Win Investment Group,[13] presented only part of the picture of how HCA approaches inpatient admissions from their hospital emergency departments. The articles published earlier this year in *Modern Healthcare* and *MedPage Today* also note that two of HCA's competitors — CHS and HMA — have previously entered into multi-million dollar fraud settlements over this very same issue of excess admissions from the emergency department.[14] The fact that past enforcement actions have not deterred HCA's conduct is a strong indication that Congress and other stakeholders need to engage in careful scrutiny of HCA's corporate practices nationally.

Clinics closed, dozens of doctors leave Mission Health since HCA takeover

"It's been two years since the Hospital Corporation of America (HCA) took over Mission Health in Western North Carolina. For the first time, News 13 is hearing from several doctors about how they've been treated and how your health care could be affected. News 13 has also confirmed that at least 55 doctors have left or plan to leave Mission Health."

HCA'S LONG, TROUBLED HISTORY OF FRAUD ALLEGATIONS

Any discussion of potential Medicare fraud in HCA hospitals must begin with a recounting of past fraud investigations and settlements involving the company.

These fraud investigations and settlements, dating back to the late 1990s, demonstrate that HCA has a history of engaging in alleged fraud to maximize profits and that federal and state governments and other stakeholders must take steps to increase scrutiny on for-profit healthcare corporations like HCA. Over the past two decades, HCA and its affiliated entities have had at least nine settlements to resolve fraud allegations with the U.S. Department of Justice (DOJ) and other regulatory enforcement authorities.[15]

In the early 2000s, HCA reached the **largest healthcare fraud settlement in history** at $1.7 billion.[16] In addition to the civil charges associated with this settlement, HCA and certain of its subsidiaries pleaded guilty to **14 felonies** and entered into an eight-year Corporate Integrity Agreement (CIA) with the federal government.[17] The allegations involved elaborate up-coding schemes, false billing and overcharging schemes, kickback schemes, billing for medically unnecessary procedures and services, and cost-report fraud, among others.

After HCA's 8-year CIA expired in 2009, HCA resumed many of the alleged fraudulent activities that the CIA was designed to prevent, as evidenced by subsequent DOJ settlements involving:

- kickback schemes (one settlement in 2012[18] and one in 2017,[19] with the 2012 settlement requiring the company to enter into a new CIA);
- false billing/overcharging schemes (two settlements in 2013[20]); and
- billing for medically unnecessary procedures and services (three settlements in 2015[21]).

Given HCA's track record and the timeline of DOJ settlements, we are worried that the company has seemingly only changed its behavior when it was forced to do so by legal regulatory enforcement agreements such as CIAs. As soon as the terms of such agreements expire, HCA appears to disregard the compliance mechanisms set forth by the CIAs and to revert to the alleged fraudulent conduct the CIAs were designed to prevent.

2000

NASHVILLE POST: COLUMBIA/HCA TO SETTLE MEDICARE CIVIL CLAIMS FOR $745 MLN

The $745 million pre-tax payment to the government, if it represents the bulk of the ultimate total settlement, would be considerably less than many people had expected.

2002

THE NEW YORK TIMES: HCA IS SAID TO REACH DEAL ON SETTLEMENT OF FRAUD CASE

Combined with previous settlements HCA has negotiated with the government involving fraud accusations -- including its agreement in 2000 to plead guilty to 14 felonies -- the company will be paying a total of more than $1.7 billion in civil and criminal penalties, by far the largest amount ever secured by federal prosecutors in a health care fraud case.

2012

DEPARTMENT OF JUSTICE: HCA INC TO PAY $16.5 MILLION TO RESOLVE FEDERAL & STATE HEALTH CARE FRAUD INVESTIGATION

HCA Inc., one of the nation's largest private hospital chains, has agreed to pay $16.5 million to settle alleged violations of the Ethics in Patient Referrals Act, the False Claims Act, and other federal and state laws and regulations in connection with the operation of its subsidiary, Parkridge Medical Center, Inc., in Chattanooga.

2021

MODERN HEALTHCARE: HCA-OWNED HOSPITAL TOLD TO PAY $23M IN MEDICARE OVERPAYMENTS

"HHS' Office of Inspector General conducted a routine audit of Sunrise Hospital and Medical Center in Las Vegas and claimed the hospital did not "fully comply with Medicare billing requirements" in 54 of the 100 reviewed inpatient and outpatient claims."

MEDICARE DATA REVEALS POTENTIALLY UNNECESSARY HCA ADMISSIONS

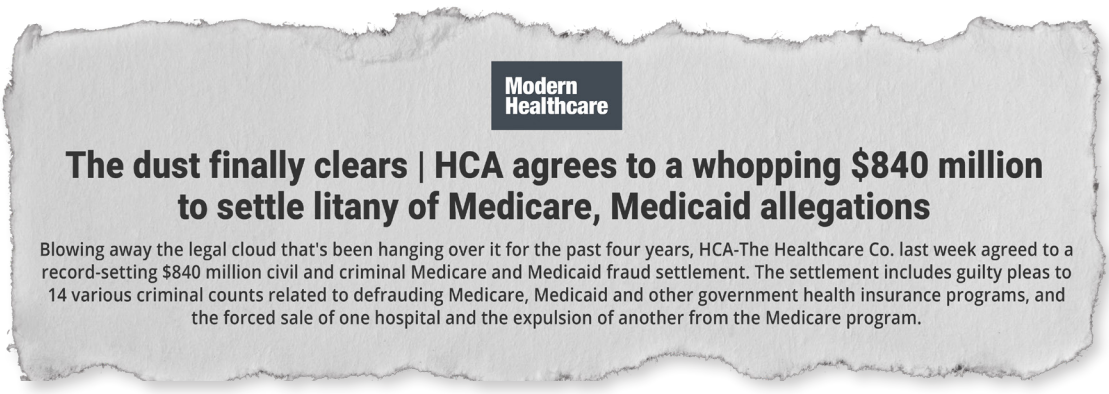
While HCA has a lengthy history of defrauding the Medicare system, Medicare claims data continue to tell a larger and more recent story about HCA's practices.

SEIU conducted a multi-year analysis of Medicare data which shows that the average emergency department ("ED") admission rate among HCA hospitals has been substantially above the national average rate in recent years.[22] After rigorous exploration of this data, we have not found any reasons that we believe could justify this difference — leading to concerns that it is the result of HCA corporate efforts to increase admissions without medical need. By our calculations, this widespread, seemingly unethical practice could be leading to tens of thousands of Medicare patients being admitted unnecessarily as inpatients every year, with an estimated **overpayment to HCA of $1.8B by the Medicare program since 2008.[23]**

In our analysis of Medicare claims data, we find that:

- HCA hospitals commonly show ED admission rates that are well above the rates we would expect them to have, given the patients they are seeing.[24] Many of their hospitals rank among the worst nationally and in their respective states by this metric — especially in Florida and Texas.
- HCA's average one-day stay rates among their ED admissions have increased in recent years, and many of their hospitals stand out as outliers nationally and in their states. One-day stay rates have been a key hospital industry metric in detecting unnecessary admissions for decades.[25]
- HCA hospitals show remarkably low rates of ED outpatient observation services, suggesting that they may be shifting high-acuity outpatient discharges to low-acuity (and more lucrative) inpatient admissions.[26]

Our data findings for HCA are worthy of investigation on their own, but what is most concerning is that HCA's alarming behavior here largely became noticeable after two of the system's peers – Community Health Systems, Inc. ("CHS") and Health Management Associates, Inc. ("HMA") – were publicly called out for doing the same thing.[27] Each of those systems endured federal investigations and eventual multi-million dollar settlements with the DOJ.[28] The fact that HCA is showing similar patterns, together with the company's past history, indicates the need for broader government investigation into their practices now.

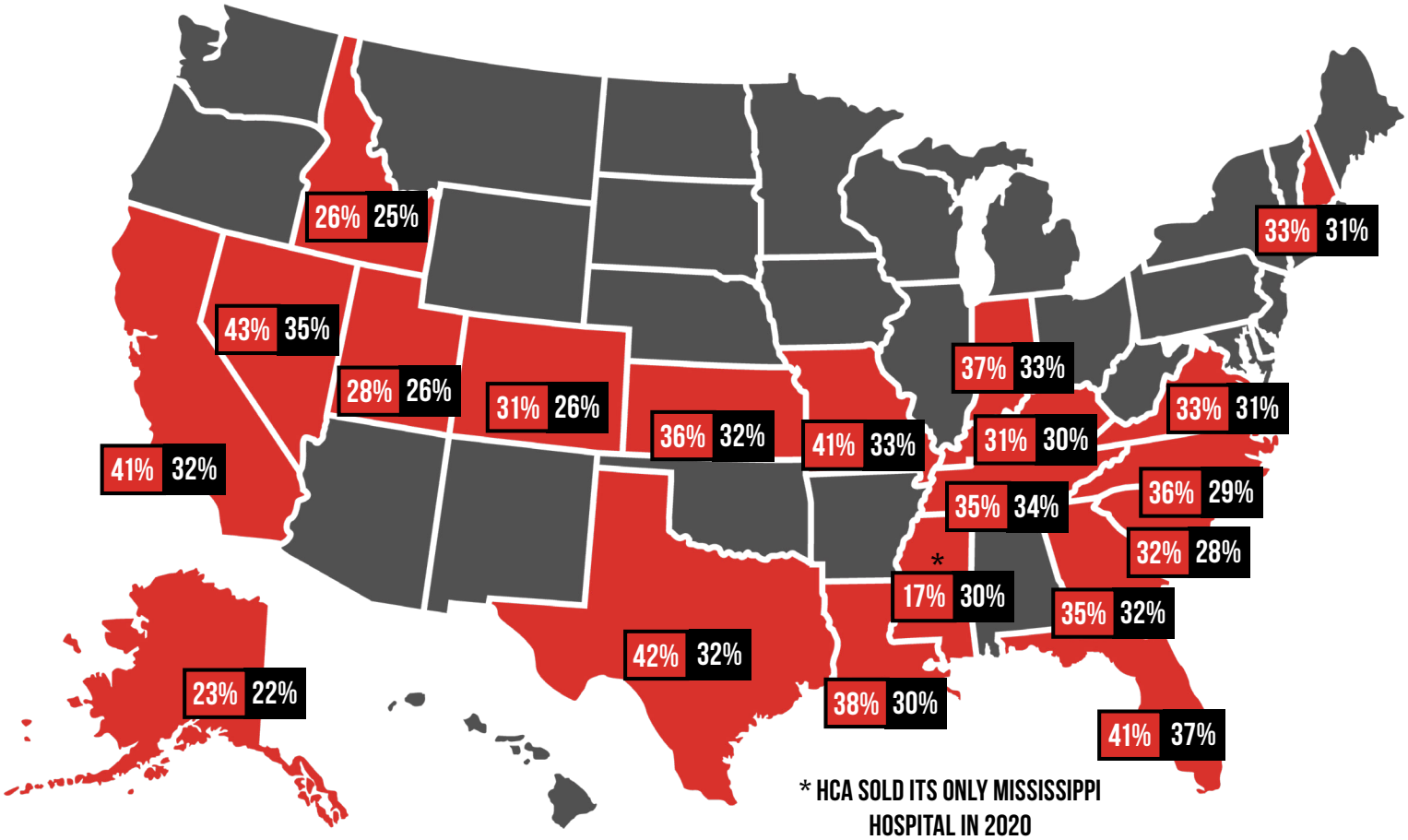


Modern Healthcare

The dust finally clears | HCA agrees to a whopping $840 million to settle litany of Medicare, Medicaid allegations

Blowing away the legal cloud that's been hanging over it for the past four years, HCA-The Healthcare Co. last week agreed to a record-setting $840 million civil and criminal Medicare and Medicaid fraud settlement. The settlement includes guilty pleas to 14 various criminal counts related to defrauding Medicare, Medicaid and other government health insurance programs, and the forced sale of one hospital and the expulsion of another from the Medicare program.

IN 2019, HCA'S MEDICARE EMERGENCY DEPARTMENT ADMISSION RATES EXCEEDED STATE AVERAGES IN 19 OF THE 20 STATES IN WHICH THEY OPERATED.



HCA AVG. | NON-HCA AVG.

The "Non-HCA" average for each state is the average ED admit rate among all hospitals that are not part of HCA in that state for the year 2019. This distinction was selected because in some states (like Florida), HCA is such a large portion of the state that they drag the state average significantly toward them.

FRAUD AS A BUSINESS PRACTICE

Our analysis shows a pattern at HCA hospitals of prioritizing profit-making in emergency departments. Several documents and records raise concerns that such conduct is the result of encouragement/coercion by corporate executives of the medical decision-makers at its hospitals. In some cases, legal allegations against HCA describe how it might be done.

A major piece of this picture is revealed in a recently unsealed whistleblower lawsuit filed by a physician who provided hospitalist services to an HCA hospital in Florida.[29] His allegations include data analysis similar to what is presented in this report (summarized above). More importantly, this physician's allegations also include detailed descriptions of how HCA pressures physicians to admit patients from the ED regardless of medical need. This includes alleged threats that physicians will lose their admitting privileges if they do not meet certain admissions targets as well as communications from HCA to physicians that they would be out of compliance with Medicare regulations unless they admitted specific patients.[30]

Another piece of this picture is revealed in HCA's communications to its investors. Over the past decade, HCA executives have repeatedly emphasized to investors the strategic business importance of the hospital system's emergency departments, regularly referencing the proportion of its hospitals' inpatient admissions coming from emergency departments.[31] HCA executives have outlined strategic profit-making efforts in earnings calls, including seeking to put physicians in competition with each other[32] and aggressive operational and communications campaigns.[33]

A further piece of the picture is HCA's joint venture with the physician staffing firm EmCare, a subsidiary of the private-equity-owned company Envision Healthcare.[34] Under this joint venture, HCA and EmCare split a portion of the profits 50-50, according to news reports,[35] which gives both parties an incentive for the physicians to perform more profitable services at HCA hospitals. (Our research suggests that EmCare provides physician services in upwards of 90 HCA hospitals.[36]) It is striking here that EmCare/Envision has faced multiple federal subpoenas regarding its emergency department practices[37] and in 2017 entered into a settlement with the federal government for roughly $30M.[38]

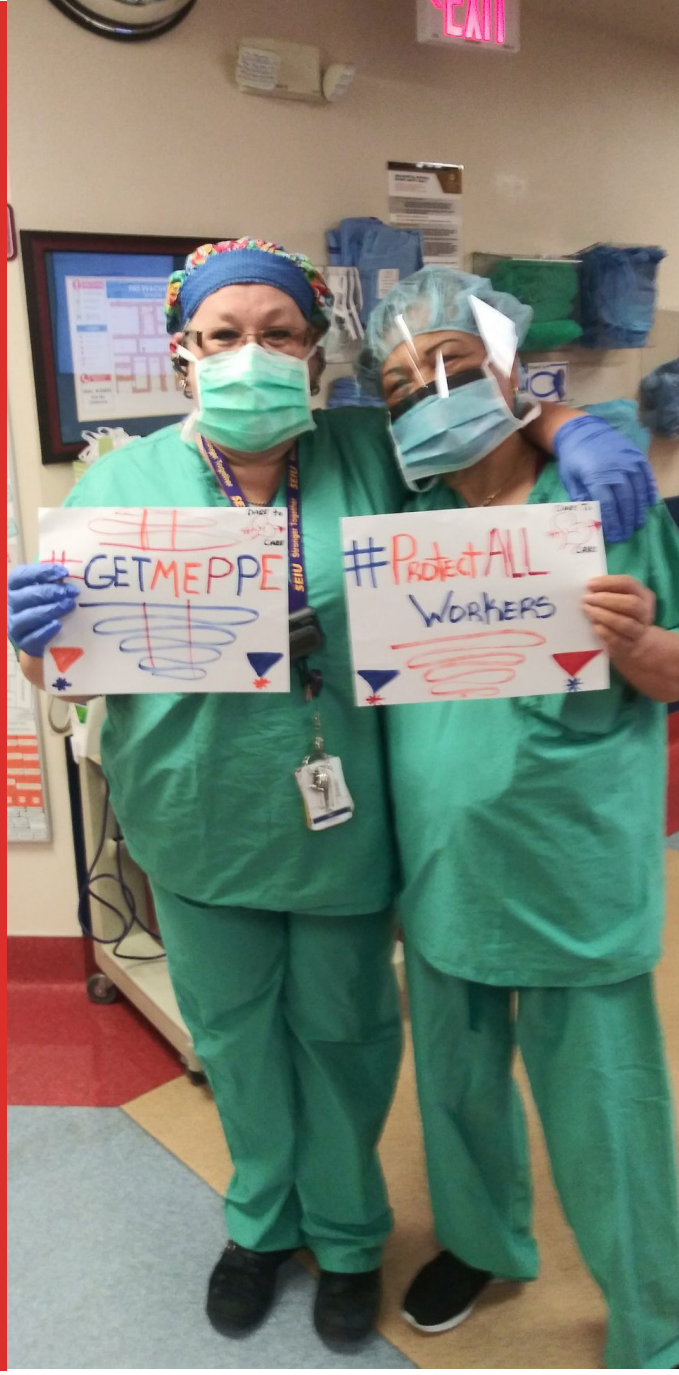
Yet another piece is revealed by other lawsuits alleging that HCA's corporate pressure on their emergency departments is widespread, with allegations including admitting patients without regard to medical necessity in order to maximize profits,[39] falsely billing for patients as inpatient while they are merely boarded in their EDs or kept in hallways,[40] and retaliating against and silencing emergency department physicians or other staff for reporting safety, understaffing, or compliance issues.[41]

These facts and allegations, together with the data analysis summarized above, present a strong case that HCA is engaged in practices that maximize profits at the expense of patient care, working conditions, and responsible corporate behavior.

As alarming as HCA's potentially fraudulent ED admission practices are, they are part of an even larger issue with HCA's profit-seeking focus and the impact it has on patients and on the U.S. healthcare system. In addition to its huge profits — a stunning $5.14 billion in the first 9 months of 2021 alone[42] — HCA stands out for other remarkable facts:

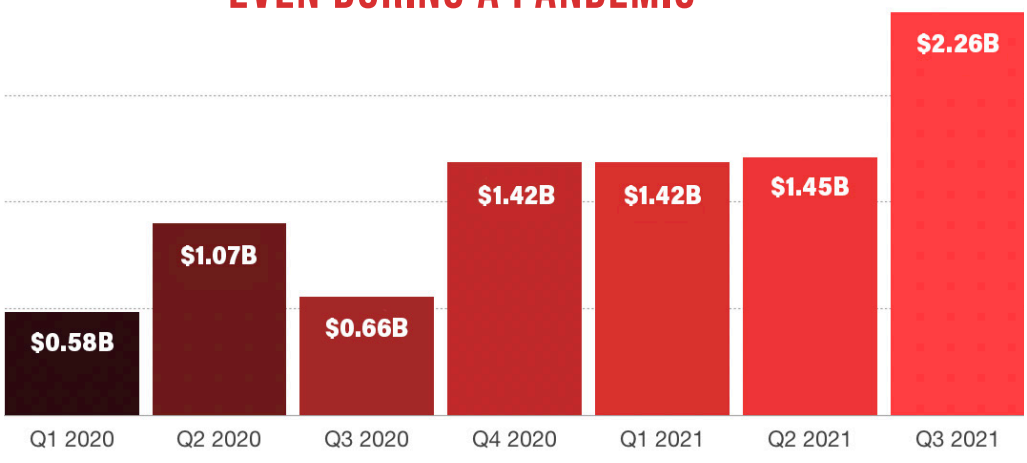
- **Piling on debt to pad the pockets of private equity and the Frist Family:** HCA announced in 2006 that it would be taken private in a record-breaking $33 billion leveraged buyout ("LBO") by a consortium of private equity investors.[43] After HCA's initial public offering ("IPO") in 2011, it was estimated that investors were expected to more than triple their 2006 LBO investments.[44] Through dividends and share repurchases, HCA has stripped over $29 billion out of providing patient care and diverted it to the pockets of rich investors like Bain, KKR, Merrill Lynch, and the Frist family, the founding family of the company and the largest shareholder.[45]

- **Over $29 billion paid out to investors in the form of dividends and share buybacks:** In 2010, the year before the IPO, HCA paid out over $4 billion to Bain, KKR, Merrill Lynch and the Frist family.[46] From HCA's IPO in March 2011 until September 30, 2021, HCA has paid over $20 billion to investors in the form of share repurchases and $4.8 billion in dividends.[47]



PUTTING PROFITS BEFORE PATIENTS

HCA PROFITS CONTINUE TO RISE, EVEN DURING A PANDEMIC



HCA'S CHRONIC SHORT STAFFING IS BURNING OUT NURSES AND DOCTORS

HCA's profit-driven approach appears to extend to their hospital staffing decisions as well. Our analysis of cost report data from the Centers for Medicare and Medicaid Services ("CMS") shows that there is a pattern of lower than average staffing ratios at HCA's facilities nationwide. In 2019, HCA had about 30% fewer full-time equivalent ("FTE") staff per adjusted occupied bed ("FTE rate", or "staffing rate") than the national average for acute care and critical access hospitals.[48]

The pattern of low staffing at HCA hospitals is accompanied by a number of disturbing care failures that have impacted patients across the nation. In San Jose, California, investigators found the lack of adequate staffing led to overburdened nurses and mistakes in care, including at least 11 missed patient assessments and at least four instances where medications were not administered to ICU patients according to physician orders.[49] In Houston, Texas, CMS found all 11 exam rooms in the HCA Houston Healthcare Clear Lake ED were dirty, including dust, dirt, and stains on different surfaces, and dirty gauze on the floor of the Psychiatry evaluation room.[50]

> ***"The company's low staffing levels place enormous strain on those who work at HCA and make it challenging to provide the care our patients deserve. We deserve better."***
>
> - Jennifer Barnes
> Medsurge Telemetry Nurse
> West Hills Hospital & Medical Center

CNBC

Largest U.S. hospital owner accused in lawsuit of endangering staff during coronavirus pandemic

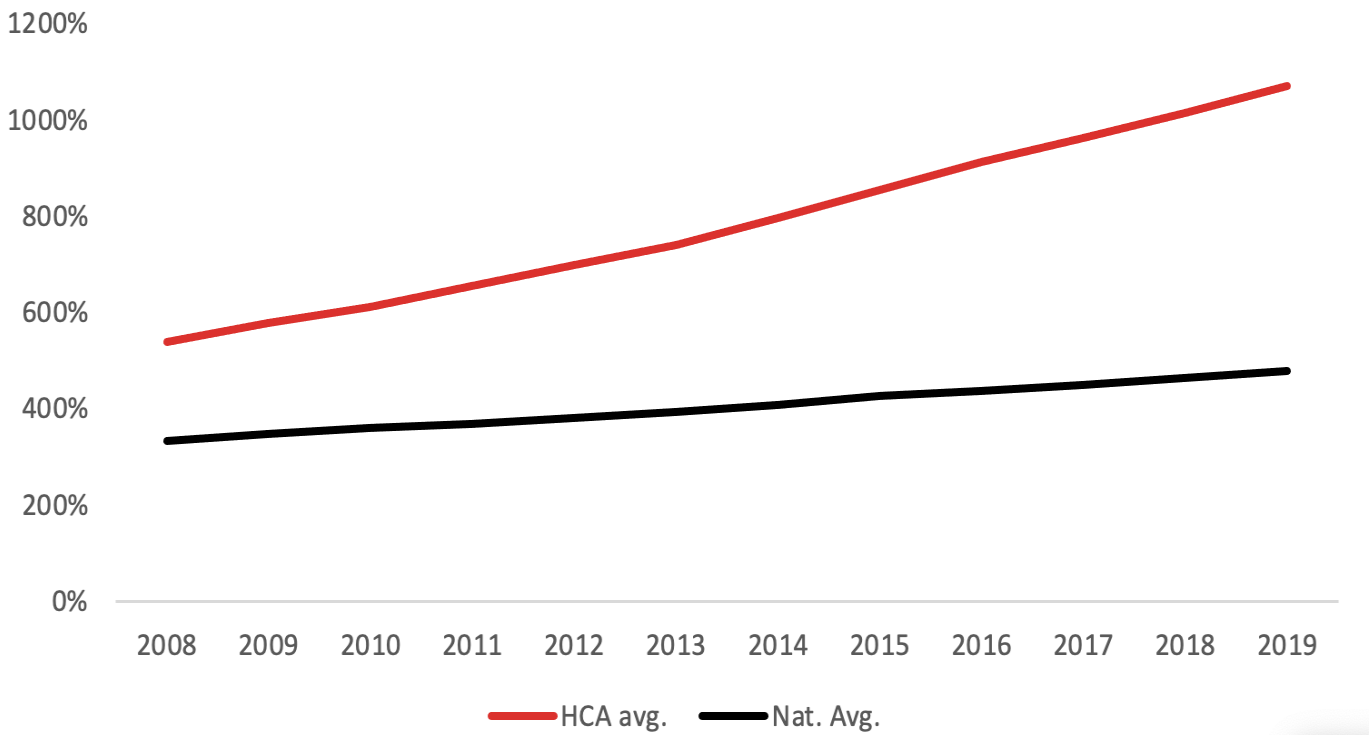
"The suit alleges that management at HCA-owned Southern California's Riverside Community Hospital failed to provide workers with adequate protective equipment. It also accuses management of pressuring staff to ignore safety precautions to meet quotas. The hospital also failed to alert staff to possible Covid-19 exposures, the suit says."

OVERCHARGING AT HCA UNDERMINES PATIENT CARE

HCA's profit-seeking focus appears to extend into how its hospitals charge for their services. Our analysis of Medicare Cost Reports reveals that HCA hospitals commonly report charges that are well in excess of the costs they report for the service they provide. According to our analysis, the average charge-to-cost ratio among HCA hospitals in 2019 was 1072% – more than double the national average ratio that year.[51]

HCA's high charges are of course a concern to patients and taxpayers alike, given that they could contribute to higher costs of care for all in this country. But it becomes especially worrisome when the system's high charges are viewed in the context of unnecessary utilization, understaffing, and shareholder return issues. The services – necessary or not – that taxpayers are paying such a high cost for are further being shortchanged by understaffing the care that is being provided.

HCA'S CHARGE-TO-COST RATIO HAS FAR EXCEEDED THE NATIONAL AVERAGE EVERY YEAR SINCE 2008



NURSES, FRONTLINE HEALTHCARE WORKERS DEMAND THAT HCA BE HELD ACCOUNTABLE FOR PUTTING THEM AT RISK DURING COVID-19 PANDEMIC

One of the biggest possible implications of HCA's potentially unnecessary admissions is their potential impact on dealing with the COVID-19 pandemic. Since early 2020, U.S. hospitals have been exposed to multiple surges of patients that have wiped out bed capacities in both the ED and inpatient settings, and staff at hospitals around the country have been repeatedly stretched thin. At the same time, COVID's transmissibility has heightened the need for infection control in healthcare settings.

Unnecessary admissions make these problems worse. Filling inpatient beds with patients who could be treated at home results in potentially taking those beds away – at least on a timely basis – from patients whose conditions are more acute and who may need that level of care. Further, admitting patients who do not need to be admitted potentially exposes them to hospital-acquired conditions — including COVID — that they would not have been exposed to otherwise, and it also adds the risk that they could be bringing in undiagnosed COVID into the hospital and unknowingly spread it to vulnerable hospital workers and patients. In short, unnecessary admissions are a problem at any time, but they are a potential powder keg during a pandemic.

"Staffing ratios have long been a problem at HCA. Technicians like myself have a massive workload; it impacts our mental and physical well-being as frontline workers as well as our patients. I want to be able to give patients the best care possible, but how can I when I don't have the proper support? It's clear that the workers are not a priority for HCA."

- Xochitl Gonzalez
Patient Care Technician
Los Robles Regional Medical Center

There are additional concerns surrounding HCA's actions in the face of the COVID-19 pandemic:

- We have perceived a reluctance by HCA to **suspend elective procedures in the face of COVID.** As hospitals across the country confronted Delta-fueled surges, some HCA hospitals appeared reluctant to suspend elective procedures. In August 2021, as some Florida HCA hospitals opened outdoor tents to address increased utilization of their emergency departments, HCA leaders continued to stress that they had the capacity to continue to safely treat their patient loads, even as other non-HCA hospitals in the area paused their own elective surgeries. [52]

- **Efforts to safely care for their patients or to contain the spread of COVID within HCA facilities are inadequate.** In July 2020, nurses at multiple Florida HCA hospitals reported that the hospital was not regularly testing them for COVID and that they were being told to come to work even when they were symptomatic.[53] Throughout the pandemic, there have been numerous complaints of HCA hospitals failing to provide their workers with the Personal Protective Equipment ("PPE") they need in order to perform their jobs safely — including complaints raised more than a year after the pandemic began.[54] Amid all of these complaints, some HCA caregivers have reported being terminated or suspended for raising issues either internally or externally,[55] and this may have deterred other workers from speaking out themselves.

Los Angeles Times

Nurses know we were unprepared for the coronavirus. They're being punished for speaking out

Jhonna Porter, a supervising nurse in the COVID-19 ward at HCA Healthcare's West Hills Hospital, was suspended on March 23 after she posted an alert to a private nurses' Facebook group about inadequate supplies and asked for community donations for herself and colleagues in her unit.

RECOMMENDATIONS

The circumstances are clear: HCA's repeated history of Medicare fraud has yielded mammoth profits that could incentivize further reliance on the practice as an organizational standard. Medicare admissions fraud will not end without governmental and regulatory intervention.

Multiple legislative and regulatory oversight bodies maintain the proper jurisdiction to take action into HCA's potentially egregious and widespread ED admissions practices. As the largest union of healthcare workers in the US, caring for millions of patients each year, we urge the following actions by different stakeholders:

1. **With 40 percent of HCA's revenues coming from taxpayer-funded Medicare and Medicaid programs,[56] Congress should convene a thorough, robust investigation of HCA's business practices;**

2. **The US Department of Health and Human Services (HHS) should conduct their own investigation;**

3. **Investors should request information from the company regarding its compliance protocols;**

4. **Since the HCA practices examined in this report may not be limited to traditional Medicare, all non-Medicare payors should review claims data and scrutinize reimbursement contracts to determine whether significant numbers of patients might have been admitted unnecessarily;**

5. **For the same reason, self-insured employers in HCA's markets should undertake similar reviews;**

6. **State regulators and policymakers should investigate HCA's specific practices and operations in their states.**

The opportunity to secure meaningful reform of HCA's systemic over admissions of Medicare patients cannot be overstated. As the nation's largest for-profit hospital corporation, HCA Healthcare is the industry leader — setting standards for care that are echoed by thousands of smaller chains across the country. Meaningful reform of HCA's decade-long, emergency department admissions policies would disrupt an unethical business model for an industry giant — and improve patient care for the millions of Americans who enter HCA medical facilities every year.

END NOTES

1 Based upon SEIU analysis of Medicare Cost Reports.

2 Based upon SEIU analysis of Medicare Cost Reports.

3 Kane, Shamliyan, Mueller, Duval, and Wilt, "Nurse Staffing and Quality of Patient Care," Research Prepared for the U.S. Agency for Healthcare Research and Quality, 2007, p. v.

4 SEIU analysis of local union contracts.

5 Net Income attributable to HCA Healthcare, Inc. See pg. 71: *Form 10K HCA Healthcare, Inc.* United States Securities and Exchange Commission, https://www.sec.gov/ix?doc=%2FArchives%2Fedgar%2Fdata%2F860730%2F000119312521048994%2Fd37951d10k.htm

6 Based on an analysis of HCA's filings, press releases, investor presentations and an article by Pitchbook. Analysis can be provided.

7 Capital IQ. Market capitalization is shares * outstanding shares and the value changes on a daily basis.

8 Capital IQ. Analysis can be provided.

9 Based upon SEIU analysis of claims data from the Medicare Inpatient and Outpatient Standard Analytic Files.

10 *#386: 06-26-03 Largest Health Care Fraud Case in U.S. History Settled HCA Investigation Nets Record Total of $1.7 Billion.* 26 June 2003, https://www.justice.gov/archive/opa/pr/2003/June/03_civ_386.htm.

11 Tara Bannow. "Shareholder Group Calls Out HCA for Alleged Excessive Emergency Department Admissions." *Modern Healthcare*. March 2, 2021. https://www.modernhealthcare.com/providers/shareholder-group-calls-out-hca-alleged-excessive-emergency-department-admissions.

12 Jennifer Henderson. "Union Group Flags Excessive Admissions at HCA." *MedPage Today*. March 10, 2021. https://www.medpagetoday.com/special-reports/exclusives/91563.

13 CTW Investment Group: Letter to Charles O. Holliday, Chairman of Audit & Compliance Committee of HCA Healthcare, Inc. October 16, 2020. https://s3-prod.modernhealthcare.com/2021-03/CtW%20to%20HCA.pdf.

14 See: "Community Health Systems Inc. to Pay $98.15 Million to Resolve False Claims Act Allegations." *The United States Department of Justice*, 16 Sept. 2014, https://www.justice.gov/opa/pr/community-health-systems-inc-pay-9815-million-resolve-false-claims-act-allegations.
See also: "Hospital Chain Will Pay over $260 Million to Resolve False Billing and Kickback Allegations; One Subsidiary Agrees to Plead Guilty." *The United States Department of Justice*, 13 Feb. 2019, https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-260-million-resolve-false-billing-and-kickback-allegations-one.

15 i) $1.7B, multi-phase settlement in 2000 & 2003, respectively. *#696: 12-14-00 HCA - THE HEALTH CARE COMPANY & SUBSIDIARIES TO PAY $840 MILLION IN CRIMINAL FINES AND CIVIL DAMAGES AND PENALTIES*. The United States Department of Justice, 14 Dec. 2000, https://www.justice.gov/archive/opa/pr/2000/December/696civcrm.htm. See also: *#731: 12-18-02 PRESS STATEMENT RE: HCA. United States Department of Justice*, 18 Dec. 2002, https://www.justice.gov/archive/opa/pr/2002/December/02_civ_731.htm.
ii) $30K settlement in 2004.. See: *HCA Inc. 2004 CIVIL AND ADMINISTRATIVE SETTLEMENT AGREEMENT.* United States Department of Justice, 2004, https://www.justice.gov/sites/default/files/civil/legacy/2014/04/18/HCA%20Inc.%202004.pdf.
iii) $16.5M settlement in 2012, See: *HCA Inc To Pay $16.5 Million To Resolve Federal & State Health Care Fraud Investigation*. U.S. Attorney's Office (Eastern District of Tennessee) - U.S. Department of Justice. 19 Sept. 2012, https://www.justice.gov/archive/usao/tne/news/2012/September/091912A%20HCA%20Settlement.html.
iv) $7.15M settlement in 2013. See: *Fifty-Five Hospitals to Pay U.S. More than $34 Million to Resolve False Claims Act Allegations Related to Kyphoplasty.* 18 Nov. 2014, https://www.justice.gov/usao-wdny/pr/fifty-five-hospitals-pay-us-more-34-million-resolve-false-claims-act-allegations.
v) $1.02M settlement in 2013. See: *Doctors Hospital Of Augusta And Radiation Oncology Practice Pay More Than $1 Million To Resolve False Claims Act Litigation*. 8 Apr. 2015, https://www.justice.gov/usao-sdga/pr/doctors-hospital-augusta-and-radiation-oncology-practice-pay-more-1-million-resolve.
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(List of impacted hospitals is accessible at https://www.justice.gov/opa/file/789656/download).

22 SEIU analyzed claims data for short-term general acute care hospitals from the annual Medicare Inpatient and Outpatient Standard Analytic Files ("SAF"). Emergency department claims were identified through revenue center codes and Healthcare Common Procedure Coding System ("HCPCS") codes. Hospitals with too few claims in a given year were excluded from analysis. Further methodology can be provided.

23 A 2006 report estimated that the average Medicare payment difference between an inpatient hospital admission and a corresponding outpatient discharge with observation services to be about $5,000. For this report, please see: "In Hospital Observation Struggle, Uncertain Outcomes May Justify Inpatient Admissions." *Report on Medicare Compliance*, Volume 15, No. 37. October 23, 2006. P.1. To calculate potential Medicare overpayment for a health system, we multiply this $5,000 amount by the total number of potentially excess admissions that we calculate for that system from our analysis of Medicare claims data. For HCA, we calculate this to be about $1.8 billion from Federal Fiscal Year 2008 through 2019.

24 To calculate hospitals' expected ED admission rates, we first calculate a national average ED admission rate by Federal Fiscal Year for each combination of the following patient- and hospital-based characteristics: patient age, patient sex, patient principal diagnosis, and hospital rural/urban designation. Upon finding these national rates, we then multiply them by the corresponding number of ED encounters at each qualifying hospital within that given characteristic combination group; this provides the hospital's expected number of ED admissions for that group. To determine the overall number of expected ED admissions at a hospital, we aggregate the expected ED admissions totals for all applicable groups for the given FFY. We then calculate a hospital's total number of potentially excess ED admissions by subtracting the "expected" ED admissions total for that hospital from the actual number of inpatient ED admissions reported for that hospital. Further methodology can be provided.

25 One-day hospital admissions have been flagged as potentially unnecessary since at least the 1980s. See: "National DRG Validation Study: Short Hospitalizations." Office of Inspector General, U.S. Department of Health and Human Services. May 1989.

26 Outpatient observation service claims were identified through revenue center codes.

27 In 2011, both CHS and HMA publicly announced that they had been subpoenaed by the federal government with regards to their emergency department practices. See: "Form 8-K COMMUNITY HEALTH SYSTEMS, INC." *United States Securities and Exchange Commission*, 15 May 2011, https://www.sec.gov/Archives/edgar/data/1108109/000095012311036162/g26879e8vk.htm. See also, pg. 16, SEC Form 10-Q for the quarterly period ended June 30, 2011.: "FORM 10-Q Health Management Associates, Inc." *United States Securities and Exchange Commission*, Aug 3, 2011. https://www.sec.gov/Archives/edgar/data/792985/000119312511208148/d10q.htm.

28 See: *Community Health Systems Inc. to Pay $98.15 Million to Resolve False Claims Act Allegations*. 28 Aug. 2014, https://www.justice.gov/opa/pr/community-health-systems-inc-pay-9815-million-resolve-false-claims-act-allegations. See also: *Hospital Chain Will Pay Over $260 Million to Resolve False Billing and Kickback Allegations*; One Subsidiary Agrees to Plead Guilty. 25 Sept. 2018, https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-260-million-resolve-false-billing-and-kickback-allegations-one.

29 See: *United States of America et al ex rel. Ruiz v. Hospital Corporation of America et al* (Case no:3:2017cv01280, M.D. Tenn., filed 9/19/2017).

30 See: *United States of America et al ex rel. Ruiz v. Hospital Corporation of America et al* (Case no:3:2017cv01280, M.D. Tenn., filed 9/19/2017). First Amended Complaint,Paragraphs 134, 142–145.

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32 See: HCA at Wells Fargo Healthcare Conference. June 18, 2014. P.5-6 of transcript.

33 See: HCA Q2 2020 Earnings Call. July 22, 2020. P.17 of transcript.

34 See: *EmCare, Inc. to Pay $29.8 Million To Resolve False Claims Act Allegations*. The United States Department of Justice. 19 Dec. 2017, https://www.justice.gov/usao-wdnc/pr/emcare-inc-pay-298-million-resolve-false-claims-act-allegations. Envision Healthcare was bought by private equity firm KKR in 2018. See *KKR Completes Acquisition of Envision Healthcare Corporation*. BusinessWire, 11 Oct. 2018, https://www.businesswire.com/news/home/20181011005441/en/KKR-Completes-Acquisition-of-Envision-Healthcare-Corporation.

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40 *United States of America et al ex rel. Lazard v. HCA Healthcare, Inc. et al* (Case no: 5:17cv134, N.D. Cal., filed 1/11/2017).

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Analysis can be provided.

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