NUHW NATIONAL UNION OF HEALTHCARE WORKERS
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June 15, 2021

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

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

Dear Secretary Becerra and Acting Chairwoman Slaughter,

On behalf of the National Union of Healthcare Workers (NUHW), I am writing to support the recent request by Congressmembers Katie Porter and Rosa DeLauro for an investigation into the use of taxpayer-financed COVID-relief funds by large hospital systems. We are concerned that some hospital chains improperly used these federal funds to acquire competitors, pay down debt, stockpile cash and enrich shareholders and executives rather than support patients and frontline caregivers during the pandemic. We have special concerns regarding Tenet Healthcare, the nation's second largest for-profit hospital system, which received $2.6 billion in federal grants, Medicare advance payments, and COVID-related tax savings between April 2020 and March 2021. A federal investigation would determine whether taxpayer funds were properly used by health systems, identify the need for any government efforts to recoup misappropriated funds, and explore ways to improve government initiatives in the future.

Our concerns about Tenet Healthcare stem from NUHW members' direct experience at three of the company's hospitals in California, similar concerns from healthcare workers at Tenet hospitals in Massachusetts and Michigan, as well as our analysis of Tenet's financial records, SEC filings, regulatory records, court filings and other documents.

Federal law specifies that Provider Relief Funds can "only be used to prevent, prepare for, and respond to coronavirus."[1] However, after receiving $936 million in Provider Relief Funds as well as $1.6 billion in additional pandemic aid, Tenet cut spending on its staff and hospital supplies by $274 million during 2020. Meanwhile, it spent $1.1 billion in cash to acquire 45 ambulatory surgery centers, used $500 million in cash to retire debt years before it was due, and spent an undisclosed amount on a highly speculative investment vehicle. It also stockpiled cash to levels unmatched during the preceding ten years. These actions, which prioritized Tenet's bottom line over patients and caregivers, contributed to a five-fold jump in the company's share price since the CARES Act was announced. In recent months, Tenet executives and its largest shareholder have taken advantage of the company's soaring stock price to pocket $500 million from their sales of Tenet stock.

Tenet's conduct not only raises questions about possible violations of the rules governing Provider Relief Funds, it constitutes a profound breach of the public trust. During our nation's largest public health

[1] US Department of Health & Human Services. [Provider Relief Fund Terms and Conditions](#).

emergency of the past century, health system executives have a special responsibility to carefully steward taxpayers' resources in ways that maximize the public benefit.

Regrettably, Tenet's executives have failed to do so. Instead, they appear to have placed personal interests above public health needs. During the pandemic, Tenet continued an aggressive cost-cutting program in place since 2018 by reducing the company's spending on its hospital workforce by nearly $200 million and by cutting hospital supplies by nearly $100 million during 2020. In California, federal and state officials cited Tenet's Fountain Valley Regional Medical Center (FVRMC) for "systemic" infection-control violations that put both caregivers and patients at increased risk for contracting COVID-19. At FVRMC and two nearby Tenet hospitals (Lakewood Regional Medical Center and Los Alamitos Regional Medical Center), Tenet refused to provide affordable health insurance and livable wages to its infection-control staff. Consequently, approximately half of these workers lack employer-provided health insurance. Nonetheless, Tenet's managers instructed them to work alongside COVID-positive patients in emergency rooms, patient treatment rooms and other areas. One uninsured infection-control staffer, who contracted COVID-19 under these circumstances, was hit with a $10,500 hospital bill after developing blood clots in her lungs that required her to seek care in an emergency room. Lacking health insurance and a care provider, she made four more trips to the emergency room to get care for COVID-19. Tragically, she passed the COVID infection to her children as well as her grandfather, who died from the respiratory virus. Other uninsured infection-control staff were forced to pay for COVID tests from their own pockets despite Tenet's having received billions of dollars in taxpayer assistance.

Meanwhile, Tenet's executives appear to have used COVID-relief funds to boost the company's bottom line and to fund its expansion. During the pandemic, Tenet spent $1.1 billion to acquire 45 ambulatory surgery centers from SurgCenter Development, thereby catapulting Tenet to its current position as the largest operator of such facilities in the nation. Tenet also used nearly $500 million in cash to pre-pay debt that was not due for four years. It invested an undisclosed amount of cash in a highly speculative investment vehicle — a Special Purpose Acquisition Company (SPAC) — issued by a New York hedge fund that is also Tenet's largest stockholder.[2] SPACs, known as "blank check" companies, are reportedly the subject of an investigation by the Securities and Exchange Commission.[3]

Tenet's executives also stockpiled cash, ending 2020 with $2.5 billion in cash as compared to $262 million one year earlier. Tenet's cash balance at the end of 2020 was more than double its cash balance during any quarter over the past ten years.

Tenet's use of COVID-relief funds appears to have directly benefited the company's top executives and major shareholders, including a New York hedge fund that owns approximately one-tenth of the company's outstanding shares of stock. Tenet's $1.1 billion acquisition of 45 ambulatory surgery centers in December 2020 helped contribute to a five-fold increase in Tenet's share price. In 2021, Tenet's top executives and its largest shareholder (Glenview Capital Management) cashed in on Tenet's soaring stock price by pocketing approximately $500 million from the sales of their Tenet stock. Additionally, Tenet paid a combined $750,000 in bonuses to two top executives in its corporate headquarters for their work during the pandemic even as many of Tenet's frontline staff lacked health insurance, adequate PPE, and access to COVID-19 testing.

[2] Butterfly Network Inc. Presentation. January 12, 2021.

[3] Yun Li. "SPAC transactions come to a halt amid SEC crackdown, cooling retail investor interest." CNBC. April 21, 2021.

It is unclear whether executives may have received additional bonuses. In a civil case filed last year, the former CFO of a Tenet subsidiary alleged that Tenet's executives failed to adequately disclose a half-billion dollars in bonuses available to certain executives. The former CFO alleged that this failure violates certain provisions of the Sarbanes-Oxley Act of 2002.[4]

Unlike other health systems, Tenet has declined to voluntarily refund any of its CARES Act subsidies. By contrast, HCA announced it would return its entire $6 billion subsidy in October 2020. HCA's CEO Sam Hazen said, "We believe returning these taxpayer dollars is appropriate and the socially responsible thing to do."[5]

During the pandemic, billions of hard-earned tax dollars were handed to health systems with minimal federal oversight. There is ample evidence to suggest that Tenet Healthcare used COVID-relief funds to improperly expand its business, enrich its executives and shareholders, and prioritize the company's bottom line over patients and caregivers. An investigation is urgently needed to investigate these matters, evaluate the actions of other large health systems, and identify steps needed to recoup any misappropriated funds. I have attached additional findings from our analysis. We stand ready to assist in whatever way may be helpful.

Sincerely,

Sal Rosselli, President

cc: Hon. Katie Porter, Member of Congress
Hon. Rosa DeLauro, Member of Congress
Hon. Jim McGovern, Member of Congress
Hon. Elizabeth Warren, U.S. Senator
Hon. Alex Padilla, U.S. Senator
Julie Pinkham, Executive Director, Massachusetts Nurses Association

[4] Kevin Krause. "Lawyer claims he was fired for trying to reveal Tenet Healthcare's financial shenanigans." Dallas Morning News. June 25, 2020; US District Court for the Northern District of Texas. Jason Cagle v. United Surgical Partners International, Inc. Case No. 3:20-CV-01681-BN. June 24, 2020.

[5] HCA Healthcare. "HCA Healthcare statement on CARES Act." October 9, 2020.

Findings: Tenet Healthcare's Use of Pandemic Aid

Tenet received $2.6 billion in COVID-relief subsidies from the federal government during the pandemic. Tenet recognized $2.6 billion in subsidies as of March 31, 2021: $936 million in Provider Relief Funds (PRFs), $1.4 billion in Medicare Advance Payments (which are effectively zero-interest loans), $260 million in deferral of payroll tax match per COVID-19 stimulus legislation, and $14 million in state and local COVID-related grant programs.[6] In order to secure PRFs, Tenet was required to certify that the funds would "only be used to prevent, prepare for, and respond to coronavirus" and that funds would reimburse providers "only for health care related expenses or lost revenues that are attributable to coronavirus." [7]

After receiving billions in aid, Tenet cut frontline healthcare spending during the pandemic while stockpiling cash. In 2018, Tenet announced to investors that it was initiating a significant multi-year cost-cutting program, which continued unabated during 2019 and 2020. Tenet's executives are incentivized to carry out the program. For example, Tenet's Annual Incentive Plan and executive compensation plan, including bonuses and stock awards, are tied directly to corporate cash flow—which benefits from lowering operating expenses.[8] In the second quarter of 2020, Tenet cut hospital spending by 11.3% or $377 million as compared to the previous year. In its August 2020 earnings call, Tenet's CFO Daniel Cancelmi boasted to investors about stockpiling cash during the height of the pandemic, saying: "Our cash balance increased $2.9 billion in the quarter. We did not burn through a material amount of cash in the quarter, even if the benefit from Medicare advances, the grants, the payroll tax match deferral and the net proceeds from debt transactions are excluded."[9] Through 2020, Tenet cut salaries, wages, and benefits at its hospitals by nearly $200 million (or 2.5%) and cut spending on hospital supplies by nearly $100 million (or 3.5%).[10]

Frontline healthcare workers know firsthand that Tenet underinvested in patient care and healthcare worker safety. In response to a complaint filed by caregivers, the Center for Medicare and Medicaid Services (CMS) and the California Department of Public Health issued a 33-page report in September 2020 citing Tenet's Fountain Valley Regional Medical Center in California for "systemic" infection-control violations that put both caregivers and patients at increased risk for contracting COVID-19.[11] Among the violations documented by government investigators, the hospital was cited for placing a suspected COVID-19 patient in the Oncology Unit where immunocompromised patients were receiving cancer treatment. The hospital was also cited for placing a COVID-19 positive patient in the OB/GYN unit where pregnant women were receiving care.[12] Tenet refused to test caregivers in its Southern California hospitals even after they had been exposed to COVID-positive individuals. At Tenet's Detroit Medical

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[6] Recognized as a net increase to its cash balance. Tenet Healthcare Corp. 10-K, Year Ending 12/31/20 and 10-Q, Quarter Ending 3/31/21.

[7] US Department of Health & Human Services. Provider Relief Fund Terms and Conditions.

[8] Tenet Healthcare Corp. Annual Proxy Statement 2021. March 26, 2021.

[9] Tenet Healthcare Corp. Q2 2020 Earnings Call. Aug 4, 2020.

[10] Operating expense spending on salaries, wages and benefits and supplies within Tenet's Hospital segment, compared to 2019. Tenet Healthcare Corp. 10-K, Year ending 12/31/20.

[11] Centers for Medicare & Medicaid Services. "Statement of Deficiencies and Plan of Correction." Survey Completed July 22, 2020.

[12] Sara Cardine. "State officials cite Fountain Valley Regional Hospital for 'systemic' COVID-19 failures." Los Angeles Times. September 25, 2020.

Center Sinai-Grace, photos leaked to CNN in April 2020 showed the bodies of dead patients stored in vacant rooms and piled up in refrigerated holding units in the parking lot.[13] Notably, while exhausted nurses and physicians in hotspots of Michigan and Massachusetts were risking their health to care for patients, Tenet's CFO reported during the company's Q2 2020 earnings call that management continued to cut costs in those hotspots as well—just not "to the same degree as our other markets."[14]

Johnerfer Larry, an infection-control staff member at Tenet's Lakewood Regional Medical Center in Los Angeles, contracted COVID-19 after being directed to work alongside COVID-positive patients in the emergency room despite her lacking adequate PPE and health insurance. Following her infection with the SARS-CoV-2 virus, Ms. Larry developed blood clots in her lungs that required five trips to the emergency room, resulting in a $10,500 bill for just one of the visits. Due to her employer's low wages and expensive charges for health insurance, Ms. Larry was uninsured during the pandemic as are scores of her co-workers at the Tenet hospitals. She likely would have gone bankrupt had she not received emergency coverage under the Medicaid program. Ms. Larry inadvertently spread COVID-19 to her 11- and 13-year old children as well as her grandparents who cared for her children while she worked. Tragically, her 82-year-old grandfather, who had a pacemaker and high blood pressure, died from COVID-19. "I could not go to help him get admitted to the emergency room because I was still under quarantine," Ms. Larry recalled, trying to hold back tears. "I never got a chance to say goodbye." Nearly all of Ms. Larry's colleagues on the overnight shift ended up contracting COVID-19, which she attributes to having to clean and disinfect the rooms of COVID-positive patients without a consistent supply of adequate PPE.

Tenet's largest use of cash during 2020 was its $1.1 billion acquisition of 45 ambulatory surgery centers, which appears to have been unattainable without CARES Act subsidies. After three consecutive years of declining cash balances, Tenet's cash balance ballooned from $262 million at the end of December 2019 to $2.5 billion at year-end 2020. In December 2020, Tenet spent $1.1 billion in cash to acquire the 45 surgery centers, which constituted the company's first large acquisition after a four-year hiatus.[15] Becker's "ASC Review" reported that, "The transaction will cement USPI [a Tenet subsidiary] as one of the largest ambulatory surgery facility chains in the U.S., with 310 facilities, including surgical hospitals."[16] Tenet boasted to investors about the acquisition as well as the company's "strategic use of cash." "We will become the leading national musculoskeletal surgical platform, surpassing others in the sector," according to Tenet's COO Saum Sutaria.[17] The transaction employed "strategic and accretive use of cash funded by cash on hand available from strong balance sheet management," according to an investor presentation.[18] Although Tenet officials claimed it did not use grant funds received from COVID-relief legislation to fund the transaction, the dramatic impact of COVID-related subsidies on its cash position raises doubts about this claim. In January 2021, Tenet CEO

[13] Anuja Vaidya. "Photos of bodies piled up at DMC hospital prompt state probe." Becker's Hospital Review. April 21, 2020.

[14] Tenet Healthcare Corp. Q2 2020 Earnings Call. August 4, 2020.

[15] Tenet only spent an average of $76 million on acquisitions in 2016-19, according to annual SEC filings.

[16] Laura Dyrda. "10 details about Tenet's $1.1B acquisition of 45 SurgCenter Development ASCs." Becker's ASC Review. December 15, 2020.

[17] Samantha Liss. "Tenet boosts surgery center footprint with $1.1B deal." Healthcare Dive. December 10, 2020.

[18] Tenet Healthcare Corp. "Expanding Ambulatory Surgery Portfolio." December 10, 2020.

Ronald Rittenmeyer told investors that it plans to acquire 25 to 40 more surgery centers during 2021.[19] In addition to resuming large acquisitions, Tenet invested in a speculative "Special Purpose Acquisition Company" (SPAC). Tenet also used $495 million of cash on hand to retire debt in March 2021, freeing up $30 million in interest annually.[20]

Tenet continues to hold billions in excess cash. As of March 31, 2021, Tenet held $2.1 billion in cash, $1.5 billion more than it held one year earlier. Since receiving COVID-relief funds, Tenet's cash on hand has far exceeded that of any quarter during the past ten years. The U.S. Department of Health and Human Services (HHS) reserves the right to collect any PRFs that were overpaid or not used in a manner consistent with program requirements or applicable law.[21] It is unclear whether Tenet continues to hold unspent PRFs, which are required to be expended or returned to federal officials by June 30, 2021.

Provider Relief Funds were sent directly to Tenet hospitals but apparently ended up in Tenet's Dallas headquarters. PRFs were sent directly to eligible hospitals and healthcare providers based on their prior year's Medicare Fee-for-Service billings and funding formulas designed to target aid to hospitals most impacted by the pandemic. After lobbying by the American Hospital Association, the Consolidated Appropriations Act of December 2020 changed the rules governing the use of PRFs, allowing providers to transfer these funds among any subsidiary of the parent company. In January 2021, Tenet told its investors during the company's Q4 2020 earnings call that it was able to recognize an additional $100 million in grant income after the passage of the Consolidated Appropriations Act because of the change to the formula for determining lost revenues as well as the newly established flexibility to transfer grant funds among subsidiaries within a hospital system.[22] It is unclear how many PRFs were transferred among Tenet's subsidiaries. For example, $10.5 million in PRFs were sent to Lakewood Regional Medical Center in Los Angeles, California. Did Tenet transfer any of these funds to its headquarters in Dallas or to subsidiaries, such as USPI, even as frontline workers lacked PPE and health insurance?

Tenet insiders and a major shareholder sold $500 million of company stock between November 2020 and May 2021.[23] Tenet's acquisition of 45 surgery centers, its pre-payment of nearly $500 million in debt, and its improved profitability contributed to a five-fold increase in Tenet's share price between March 2020 and May 2021.[24] Tenet's top executives and its largest shareholder, a New York hedge fund, have cashed in on Tenet's soaring share price by selling shares of stock in their possession. Together, company insiders and Glenview Capital Management pocketed approximately $500 million from these sales. Specifically, Glenview Capital Management sold $463 million in Tenet stock between December 2020 and April 2021. Tenet CEO Ron Rittenmeyer and CFO Daniel Cancelmi sold $16 million and $12 million in Tenet stock in December 2020 and March 2021, respectively, according to SEC records.

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[19] Robert King, "JPM21: Tenet aims to acquire 25 to 40 surgical centers in 2021 as pivot away from urgent care continues." Fierce Healthcare. January 12, 2021.

[20] Tenet Healthcare Corp. 10-Q, Quarter Ending 3/31/21.

[21] CARES Act Provider Relief Fund: FAQs | HHS.gov

[22] Tenet Healthcare Corp. Q4 2020 Earnings Call. February 10, 2021.

[23] Aggregation of all SEC Form 4 purchases and sales of THC stock by insiders from 3/1/20 to 6/1/21.

[24] Tenet's net income available to shareholders increased from negative $226 million before the pandemic in 2019 to $399 million in 2020.