

Secretary Xavier Becerra
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington DC 20201

September 13, 2024

Attorney General Merrick Garland
Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

Dear Secretary Becerra and Attorney General Garland:

We are members of the behavioral health and disability communities representing individuals, families, and advocates and we write to express our deep concern regarding a recent New York Times [investigation](#) of Acadia Hospital and to offer to partner and help advance an immediate, coordinated federal response to the gross violations of civil rights and unethical practices described in the article. Holding patients against their will in dangerous conditions violates their rights, makes them fearful of seeking help, and prevents people from getting care far beyond the places where Acadia operates. We also note that the Department of Justice settled a similar case against Universal Health System (UHS), indicating the need for a systemic response.

The government should take action and communicate those actions through media and stakeholder town halls to allow individuals and their families security when they seek help for mental health, suicidal thoughts, and substance use. We request the following areas of investigation and action and look forward to working with you to help in any way and to communicate the response to stakeholders:

Center for Medicare and Medicaid Services:

The Center for Medicare and Medicaid Services should open an investigation into Acadia's ability to participate in the Medicaid and Medicare programs and require the company to demonstrate that it has ceased these practices and no longer uses assessors. Treatment plans should be evaluated during a probationary phase and patient experience data needs to be factored into the ability to be maintained in these programs. Surveys of patients should be supplemented by patient interviews. And onsite reviews should be conducted to prevent papering over these gross violations.

This investigation and the prior allegations against UHS highlight a bigger problem with the financing of psychiatric hospitals. Unlike general hospitals which receive additional payment based on quality measures, they are only paid based on quantity. While Acadia's actions are unethical and inexcusable, they are financially incentivized. As a result, CMS needs to develop strong counter incentives toward ethical practice and quality care within its legal authority. CMS should not only collect quality data on the hospitals and center patient experience in its quality reviews, but it should also investigate any hospital whose patient experience information is problematic.

And we strongly recommend CMS ban the practice of assessors in emergency rooms. Such practices create insurmountable conflicts of interest and as we point out below, violate patients' privacy and their reasonable expectations of care. CMS should also send joint guidance with the Office for Civil Rights that alerts emergency rooms that having assessors is illegal and violates patients' rights.

We also note that part of the reason that emergency rooms allow these assessors is their inadequate mental health staffing and low compensation for serving patients with mental health conditions and suicidal ideation. CMS should work with emergency rooms and develop standards of care that are adequately reimbursed to ensure evidence-based care in emergency rooms. The reimbursement of safety planning and follow up calls in the most recent physician fee schedule proposed rule is a helpful start but much more can and should be done. We cannot think of any other health condition where people hesitate to recommend the emergency room for acute conditions because of the fear of unethical behavior, such as the practices described in this article. This is a bigger problem than this bad actor and needs to be systematically addressed.

Department of Justice and HHS Office of the Inspector General investigation of fraud:

Holding someone against their will and falsifying their records for financial gain is fraud. The government agencies charged with investigating fraud should open investigations of Acadia hospitals and take appropriate action to create strong financial disincentives against these unethical practices. As noted above, financial gain is the motivating factor behind these practices and penalties need to be sufficient to deter future unethical behavior.

HHS Office for Civil Rights and Department of Justice Civil Rights Division:

The use of assessors who are not emergency room employees but are employed by an outside entity and allowed into the emergency room violates patient privacy rights. We are particularly horrified by this practice because emergency rooms are allowing entities with a financial interest in their care access to a patient and their records during an extremely vulnerable time with information that they would not want disclosed to such an entity.

OCR should investigate these practices at hospitals as privacy violations of the hospital operating the emergency room as well as the psychiatric hospital employing the assessors and should take action, including penalties, against those entities that allowed these gross violations to be perpetrated against individuals in emergency rooms. OCR should not allow obscurely worded consent agreements that patients are pressured to sign during times of acute distress to be used as a justification for this unethical practice. Patients do not understand, and these documents are not worded to alert them that they are consenting to have their information shared with a private entity that has a financial interest in their admission to their facility and will be actively working with the emergency room to assure their placement there. Given the insurmountable conflict of interest, these assessors should be summarily banned from emergency rooms.

In addition, to the extent that these unethical practices resulted in or have put people at serious risk of needless institutionalization, HHS OCR and DOJ Civil Rights Division (CRT) should investigate whether there are civil rights and *Olmstead* violations. Acadia is covered by Title III of the Americans with Disabilities Act (ADA) and, to the extent it received federal dollars, by Section 504 of the Rehabilitation Act, both of which prohibit the unnecessary institutionalization and segregation of people with disabilities, like that described by the New York Times. Acadia should be held accountable for these discriminatory practices on a nationwide basis and required to make systemic changes in its practices to come into compliance with federal civil rights laws. HHS OCR and DOJ CRT should also investigate whether states and counties have taken sufficient measures to ensure that individuals rights under the Title II of the ADA and Section 504 have not been violated. The increasing use of private psychiatric hospitals funded by private equity requires additional vigilance on the part of states and counties to ensure compliance with non-discrimination mandates. Under the ADA, states and counties cannot contract away their nondiscrimination obligations.

Conclusion:

The actions uncovered by this investigation and prior ones are horrific and concerning for the impact they have had on people at their most vulnerable time and the irreparable harm

to their recovery. They are equally concerning because of all the people who will not seek help because of their fear of being detained against their will by unethical entities seeking to profit from their health conditions. We already know that data collected by SAMHSA indicates that fear of hospitalization and treatment against their will is one of the leading causes of young people not getting help. In 2023, nearly half (46%) of youth with major depression did not seek treatment because they were afraid of being committed to a hospital. If the federal government can demonstrate clearly and publicly that it is addressing these practices, people who desperately need care will be more likely to seek it.

We look forward to hearing about a multi-agency response and aiding the government in communicating this response to stakeholders and the media. Please contact Mary Giliberti at mgiliberti@mhanational.org with information on next steps and timing, and she will convey to the undersigned and coordinate follow-up meetings and discussions.

Sincerely,

American Association on Health and Disability
American Foundation for Suicide Prevention
Bazelon Center for Mental Health Law
Depression and Bipolar Support Alliance
Disability Rights Education and Defense Fund
Inseparable
The Kennedy Forum
Mental Health America
National Alliance on Mental Illness
National Disability Rights Network
National Health Law Program