

Congress of the United States

Washington, DC 20515

October 3, 2023

The Honorable Jonathan Kanter
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Dear Assistant Attorney General Kanter and Chair Khan:

We are writing regarding our concerns with the ongoing consolidation and vertical integration in the health care industry and its impact on health care costs and quality of care in the United States. UnitedHealth Group's proposed \$3.3 billion acquisition of home health and hospice provider Amedisys¹ is the latest example of massive health care conglomerates using anti-competitive mergers to increase their market dominance, reducing competition, hurting patients, and increasing health care costs. Consistent with the proposed Department of Justice (DOJ) and Federal Trade Commission (FTC) merger guidelines, we urge DOJ and FTC to closely scrutinize UnitedHealth's proposed acquisition of Amedisys, and oppose the growing trend of insurers buying up health care providers to reduce competition and pad their profits at the expense of their patients.

UnitedHealth Group and the Corporatization of Health Care

UnitedHealth Group (UHG) is the largest health care conglomerate in the United States,² with business lines spanning health insurance, pharmacies, pharmacy benefits, surgical centers, primary care clinics, hospice agencies, mental health agencies, home health agencies, and many other services.³ UHG's massive market power has made the company the largest employer of

¹ Health Care Dive, "UnitedHealth acquirers Amedisys for \$3.3B after home health provider reneges on Option deal," Rebecca Pifer, June 26, 2023, <https://www.healthcaredive.com/news/unitedhealth-optum-amedisys-acquisition-option-care/653870/>.

² CNBC, "How UnitedHealth Group grew bigger than the nation's biggest banks," Charlotte Morabito May 20, 2023, <https://www.cnbc.com/2023/05/20/how-unitedhealth-group-grew-bigger-than-the-nations-biggest-banks.html>; CBS, "Fortune releases list of top 10 biggest U.S. companies," Khristopher Brooks, June 5, 2023, <https://www.cbsnews.com/news/fortune-500-list-biggest-companies-walmart-amazon-apple/>.

³ U.S. Securities and Exchange Commission, UnitedHealth Group, Form 10-K for FY2022, p. 1-5, https://www.sec.gov/ix?doc=/Archives/edgar/data/731766/000073176623000008/unh-20221231.htm#i6b660947fab7488cb4d33baca2cb3a37_196; The American Prospect, "Health Care's Intertwined Colossus," Krista Brown and Sara Sirota, August 2, 2023, <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>.

physicians in the country⁴ and one of the three largest pharmacy benefit managers in the country.⁵ As the second-biggest provider of health savings accounts with \$20 billion in assets,⁶ UHG even operates its own bank.⁷ Without regulatory intervention, UHG has been able to reap excessive benefits by owning numerous components of the health care system and incentivizing its subsidiaries to maximize profit over care.⁸

In doing so, UHG has consistently denied care to patients, mistreated workers, and allegedly overcharged the government to grow its profits even more. In one egregious example, UHG reportedly used an automated review system to reject patients' health insurance claims without a doctor's review,⁹ leaving patients undertreated, at risk of severe health consequences, or facing unexpected medical bills.¹⁰ Most recently, the company announced plans to require prior authorizations for colonoscopies¹¹ at a time when colorectal cancer has been on the rise among young people,¹² leading providers and medical groups to condemn the move for "harm[ing] patients, limit[ing] access to care for vulnerable populations, delay[ing] diagnosis of colorectal cancer in younger populations, and needlessly increas[ing] physician and practice burden."¹³ While UHG ultimately revised this policy and will not require prior authorization, the company

⁴ Becker's Payer Issue, "Meet America's Largest employer of physicians: UnitedHealth Group," Jakob Emerson, February 16, 2023, <https://www.beckerspayer.com/payer/meet-americas-largest-employer-of-physicians-unitedhealth-group.html>.

⁵ Purchaser Business Group on Health, "Vertical Integration Isn't Great for Health Care Consumers or Purchasers," August 23, 2021, <https://www.pbgh.org/despite-claims-vertical-integration-isnt-great-for-health-care-consumers-or-purchasers/>.

⁶ The American Prospect, "Health Care's Intertwined Colossus," Krista Brown and Sara Sirota, August 2, 2023, <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>.

⁷ *Id.*

⁸ Medium, "Breaking Down the Playbook at UnitedHealth Group: the Original Full-Stack Healthcare Company," Nisarg Patel, July 14, 2022, <https://medium.com/@nxpatel/breaking-down-the-playbook-at-unitedhealth-group-the-original-full-stack-healthcare-company-51e687950ff3>.

⁹ STAT News, "Denied by AI: How Medicare Advantage plans use algorithms to cut off care for seniors in need," Casey Ross and Bob Herman, March 13, 2023, <https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/>; STAT News, "How UnitedHealth's acquisition of a popular Medicare Advantage algorithm sparked internal dissent over denied care," Casey Ross and Bob Herman, July 11, 2023, <https://www.statnews.com/2023/07/11/medicare-advantage-algorithm-navihealth-unitedhealth-insurance-coverage/>.

¹⁰ ProPublica, "How Cigna Saves Millions by Having Its Doctors Reject Claims Without Reading Them," Patrick Rucker, Maya Miller, and David Armstrong, March 25, 2023, <https://www.propublica.org/article/cigna-pxdx-medical-health-insurance-rejection-claims>; Empire Financial Research, "A Dark Side of Combining AI and Medicine," Herb Greenberg, March 20, 2023, <https://empirefinancialresearch.com/articles/a-dark-side-of-combining-ai-and-medicine>.

¹¹ CNN, "UnitedHealthcare shifts colonoscopy requirements from controversial 'prior authorization' to 'advance notification'," Jacqueline Howard, June 1, 2023, <https://www.cnn.com/2023/06/01/health/unitedhealthcare-colonoscopy-requirements/index.html>.

¹² CNN,

"Colorectal cancer is rising among younger adults and scientists are racing to uncover why," Jacqueline Howard, March 24, 2023, <https://www.cnn.com/2023/03/24/health/colorectal-cancer-young-age-mystery>.

¹³ CNN, "UnitedHealthcare shifts colonoscopy requirements from controversial 'prior authorization' to 'advance notification'," Jacqueline Howard, June 1, 2023, <https://www.cnn.com/2023/06/01/health/unitedhealthcare-colonoscopy-requirements/index.html>.

nevertheless maintained advanced notification requirements that will similarly deny care outright and delay timely care for patients in pursuit of higher profits.¹⁴

UHG's dominance and vertical consolidation also presents harms to physician autonomy, and reimbursement rates. As of 2020, less than half of U.S. physicians worked in physician-owned practices, and UHG alone employs 70,000 physicians, making it the largest employer of physicians in the U.S.¹⁵ The company also operates a predatory payday loan system that individual physicians rely on to operate their practice while waiting for reimbursement from insurers like UHG – and UHG charges physicians a whopping 35 percent interest rate.¹⁶ Faced with no good options, physicians may have to choose between paying UHG an exorbitant amount to maintain cash flow for delays caused by UHG insurance, or sell to UHG's subsidiary Optum and become an Optum-owned practice to stay in business. UHG has also repeatedly failed providers, utilizing unfair and anticompetitive tactics to boost profits and stock buybacks. The company has a history of forcing providers out of network by offering extremely low reimbursement rates, only to pay out-of-network providers even lower rates in an effort to steer providers into UHG-owned Optum practices, which the company reimburses at a much higher amount.¹⁷ For example, the troubled medical group Envision, which competes with Optum in primary care and surgical specialty,¹⁸ has sued UHG multiple times for “underpayment of essential medical care”¹⁹ and “forcing [competitors] out of network as a part of a scheme to inflate United's profits and grow its Optum business.”²⁰ While Envision has problems of its own

¹⁴ *Id.*

¹⁵ The American Prospect, “Health Care's Intertwined Colossus,” Krista Brown and Sara Sirota, August 2, 2023, <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>.

¹⁶ *Id.*

¹⁷ *Envision Healthcare Corp. v. United HealthCare Insurance Co.*, No. CACE-22-006403, Complaint, pp. 7-9, Fla. Broward County Ct. May 2, 2022, https://www.docketalarm.com/cases/Florida_State_Broward_County_Seventeenth_Circuit_Court/CACE22006403/Envision_Healthcare_Corp._et_al_Plaintiff_vs._United_HealthCare_Insurance_Co._et_al_Defendant/05-02-2022_Complaint%20%28eFiled%29/; Becker's Healthcare, “UnitedHealth policies drive physicians to Optum, lawsuit claims,” May 9, 2022, <https://www.beckersasc.com/asc-news/united-policies-drive-physicians-to-optum-lawsuit-claims.html>.; Health Leaders Media, “UnitedHealth Sued Over Low Reimbursement Rate for Physicians,” Jay Asser, May 11, 2022, <https://www.healthleadersmedia.com/revenue-cycle/unitedhealth-sued-over-low-reimbursement-rate-physicians>.

¹⁸ Becker's Healthcare, “UnitedHealth policies drive physicians to Optum, lawsuit claims,” May 9, 2022, <https://www.beckersasc.com/asc-news/united-policies-drive-physicians-to-optum-lawsuit-claims.html>.

¹⁹ *Envision Healthcare*, “Envision Healthcare Awarded \$91.2M in Judgment Against UnitedHealthcare,” May 2, 2023, <https://news.envisionhealth.com/envision-healthcare-awarded-in-judgment>.

²⁰ *Envision Healthcare Corp. v. United HealthCare Insurance Co.*, No. CACE-22-006403, Complaint, p. 7, Fla. Broward County Ct. May 2, 2022, https://www.docketalarm.com/cases/Florida_State_Broward_County_Seventeenth_Circuit_Court/CACE22006403/Envision_Healthcare_Corp._et_al_Plaintiff_vs._United_HealthCare_Insurance_Co._et_al_Defendant/05-02-2022_Complaint%20%28eFiled%29/; Healthcare Finance, “Envision Healthcare receives \$91.2M in judgment against UnitedHealthCare,” Jeff Lagassee, May 3, 2023, <https://www.healthcarefinancenews.com/news/envision-healthcare-receives-912m-judgment-against-unitedhealthcare>.

– including by treating its own physicians poorly and being owned by private equity²¹ – the behavior of Optum is unacceptable.

Additionally, whistle-blowers, the DOJ, and the Department of Health and Human Services Office of Inspector General have accused UHG of exploiting Medicare Advantage (MA), including by overcharging the program.²² UHG is the largest MA insurer with over 27 percent of the market,²³ and it is estimated that in 2020 alone, UHG overcharged the government for MA by at least \$12 billion.²⁴

UHG’s profiteering has led to a windfall for the company. In 2022, UHG spent over \$16 billion in stock buybacks enriching their shareholders and executives.²⁵ So far in 2023, UHG has brought in record revenue of \$91.9 billion and profit of \$5.8 billion in the first quarter,²⁶ spent over \$3.5 billion in stock buybacks,²⁷ and completed yet another multi-billion-dollar acquisition.²⁸

Profiteering Opportunities Driving Consolidation in Health Care

UHG’s enormous reach and vertically integrated structure has allowed the company to profit off of every part of the health care system, controlling and steering patients, workers, and taxpayers into more profitable services for UHG. UHG’s conglomerate model is extremely successful in pulling out profits from its own subsidiaries, with current estimates finding that 25 percent of UHG’s total company revenue comes from subsidiaries alone.²⁹ Now, as the U.S. population ages and more people become eligible for Medicare, UHG and other large insurers are looking to

²¹ The American Prospect, “Envision Healthcare it’s the Skids,” Eileen Appelbaum and Rosemary Batt, March 14, 2022, <https://prospect.org/health/envision-healthcare-hits-the-skids/>.

²² The New York Times, “‘The Cash Monster was Insatiable’: How Insurers Exploited Medicare for Billions,” Reed Abelson and Margot Sanger-Katz, October 8, 2022, <https://www.nytimes.com/2022/10/08/upshot/medicare-advantage-fraud-allegations.html>.

²³ Kaiser Family Foundation, “Medicare Advantage in 2023: Enrollment Update and Key Trends,” Nancy Ochieng, Jeannie Fuglesten Biniek, Meredith Freed, Anthony Damico, and Tricia Neuman, August 9, 2023, <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/>.

²⁴ MedPac, “Report to the Congress: Medicare Payment Policy, March 2022, p. 413, https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_Ch12_SEC.pdf; The New York Times, “‘The Cash Monster was Insatiable’: How Insurers Exploited Medicare for Billions,” Reed Abelson and Margot Sanger-Katz, October 8, 2022, <https://www.nytimes.com/2022/10/08/upshot/medicare-advantage-fraud-allegations.html>.

²⁵ U.S. Securities and Exchange Commission, UnitedHealth Group, Form 10-K for FY2022, p. 28, <https://www.sec.gov/ix?doc=/Archives/edgar/data/731766/000073176623000008/unh-20221231.htm>.

²⁶ Healthcare Dive, “UnitedHealth notches record revenue in first quarter,” Rebecca Pifer, April 14, 2023, <https://www.healthcaredive.com/news/unitedhealth-first-quarter-earnings-optum-unitedhealthcare-growth/647598/>.

²⁷ Substack, Healthcare Un-Covered, “Q1 2023: UnitedHealth Group Made \$27.8 billion from the drug supply chain; spent \$3.5 billion buying back their own stock,” Wendell Potter, April 19, 2023, <https://wendellpotter.substack.com/p/q1-2023-unitedhealth-group-made-278>.

²⁸ Reuters, “US drops appeal of UnitedHealth acquisition of Change Healthcare,” Rami Ayyub, March 21, 2023, <https://www.reuters.com/legal/us-drops-appeal-unitedhealth-acquisition-change-healthcare-2023-03-21/>.

²⁹ The American Prospect, “Health Care’s Intertwined Colossus,” Krista Brown and Sara Sirota, August 2, 2023, <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>; Gist Healthcare, “UnitedHealth Group hits a milestone in vertical integration,” April 7, 2023, <https://gisthealthcare.com/unitedhealth-group-hits-a-milestone-in-vertical-integration/>.

cash in on the booming home health industry, allowing them to keep more premium dollars in-house from treating patients at insurer-owned facilities.³⁰

UHG has been able to amass such significant market power due to lax antitrust enforcement and serial acquisitions.³¹ These acquisitions often fall below the *Hart-Scott-Rodino Act* (HSR) threshold³² that would require UHG to inform DOJ and FTC about the transactions. For example, UHG has purchased at least 28 physician and provider groups since 2010, and an additional eight in 2011 and 2012, all under the HSR threshold.³³

UHG has used its market power to further entrench itself in the entire health care ecosystem. Between 2020 and 2023, UHG spent more than \$32 billion to acquire numerous businesses,³⁴ including home health giant LHC Group³⁵ for \$5.4 billion,³⁶ health care technology company Change Healthcare for \$13 billion,³⁷ health care technology company NaviHealth for over \$1 billion,³⁸ and the physician group Crystal Run Healthcare for an undisclosed amount.³⁹ UHG's health care services provider Optum has also continued to expand its vertical footprint with acquisitions of pharmacy benefit manager Catamaran,⁴⁰ ambulatory surgery center Surgical Care Affiliates,⁴¹ physician-led medical groups,⁴² and other health care organizations.⁴³ Optum's

³⁰ Healthcare Dive, "UnitedHealth closes \$5.4B buy of home health business LHC," Rebecca Pifer, February 22, 2023, <https://www.healthcaredive.com/news/unitedhealth-lhc-group-closes-buy-home-health/643200/>.

³¹ The American Prospect, "Health Care's Intertwined Colossus," Krista Brown and Sara Sirota, August 2, 2023, <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>.

³² U.S. Federal Trade Commission, "HSR threshold adjustments and reportability for 2023," February 16, 2023, <https://www.ftc.gov/enforcement/competition-matters/2023/02/hsr-threshold-adjustments-reportability-2023>.

³³ The American Prospect, "Health Care's Intertwined Colossus," Krista Brown and Sara Sirota, August 2, 2023, <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>.

³⁴ U.S. Securities and Exchange Commission, UnitedHealth Group, Form 10-K for FY2022, p. 28, <https://www.sec.gov/ix?doc=/Archives/edgar/data/731766/000073176623000008/unh-20221231.htm>.

³⁵ MedCity News, "Why UnitedHealth Group is Going All in on Amedisys," Marissa Plescia, July 2, 2023, <https://medcitynews.com/2023/07/unitedhealth-optum-acquisition-home-care/>.

³⁶ Fierce Healthcare, "UnitedHealth, LHC Group close \$5.4B merger deal," Paige Minemyer, February 22, 2023, <https://www.fiercehealthcare.com/payers/unitedhealth-lhc-group-close-54b-merger-deal>.

³⁷ Fierce Healthcare, "DOJ, state attorneys general drop appeal to UnitedHealth-Change Healthcare deal ruling," Paige Minemyer, March 21, 2023, <https://www.fiercehealthcare.com/payers/doj-state-ags-drop-appeal-unitedhealth-change-healthcare-deal-ruling>.

³⁸ Fierce Healthcare, "Optum scoops up post-acute care company NaviHealth," Heather Landi, May 26, 2020, <https://www.fiercehealthcare.com/payer/optum-scoops-up-post-acute-care-software-startup-navihealth>.

³⁹ Fierce Healthcare, "UnitedHealth quietly scoops up New York physician group Crystal Run," Paige Minemyer, April 10, 2023, <https://www.fiercehealthcare.com/payers/unitedhealth-quietly-scoops-new-york-physician-group-crystal-run>.

⁴⁰ Healthcare Dive, "Optum a step ahead in vertical integration frenzy," Jeff Byers, April 12, 2018, <https://www.healthcaredive.com/news/optum-unitedhealth-vertical-integration-walmart/520410/>.

⁴¹ Healthcare Finance, "Secret Weapon: UnitedHealth's Optum business is laying waste to old notions about how payers make money," Susan Morse, May 10, 2017, <https://www.healthcarefinancenews.com/news/secret-weapon-unitedhealths-optum-business-laying-waste-old-notions-about-how-payers-make-money>.

⁴² Lohud, "NY Physician groups merge, feds wary of potential cost increases for patients," David Robinson, August 8, 2022, <https://www.lohud.com/story/news/health/2022/08/08/what-do-health-care-mergers-in-new-york-mean-for-patients/65391916007/>.

⁴³ Fierce Healthcare, "Optum to acquire Atrius Health as it continues to grow physician network," Heather Landi, March 4, 2021, <https://www.fiercehealthcare.com/practices/optum-to-acquire-atruius-health-to-grow-its-physician->

proposed acquisition of Amedisys would further entrench the company’s dominance, as Amedisys and LHC Group are two of the largest home health groups in the country.⁴⁴ UHG’s previous home health acquisition – LHC Group – already allowed the company to expand to 964 locations in 37 states, while the acquisition of Amedisys will allow UHG to expand to 522 locations in 37 states.⁴⁵ And new reporting reveals that UHG’s acquisition of Amedisys will result in “at least 172 overlaps of [LHC and Amedisys] within 15 miles of each other in the southeastern U.S., Pennsylvania, Massachusetts, and West Virginia.”⁴⁶ This deal is clearly anticompetitive as it would result in consolidation of home health and hospice services in some regions.⁴⁷

Vertical Integration Could Reduce Competition, Raising Costs and Threatening Adverse Outcomes for Patients

The growth in enrollment in MA – the government program that allows private insurers to provide Medicare coverage to seniors and people with disabilities⁴⁸ – has attracted the attention of health care conglomerates, which have singled out MA as a particularly lucrative growth market. Over 50 percent of people eligible for Medicare are enrolled in MA plans,⁴⁹ and this trend is likely to grow.⁵⁰ UnitedHealth is the largest provider of MA plans in the country, accounting for 29 percent of the market in 2023.⁵¹

It is well-documented that large health care conglomerates, including UHG, have overcharged the government for the coverage it provides. In MA, the federal government pays a fixed fee to the insurance company to cover the health care services that an individual may need.⁵² The amount paid to insurers can be increased if the plan can demonstrate that the patient is in poorer health and may use more health care services. This information is captured in a patient’s “risk

network.

⁴⁴ Home Healthcare News, “Top 10 Largest Home Health, Hospice Providers in 2020,” Andrew Donlan, February 9, 2021, <https://homehealthcarenews.com/2021/02/the-top-10-largest-home-health-hospice-providers-in-2020>.

⁴⁵ Advisory Board, “The race for home-based care assets: Optum bids for Amedisys,” Miriam Sznycer-Taub and Blake Zissman, June 7, 2023, <https://www.advisory.com/daily-briefing/2023/06/07/amedisys-bid>.

⁴⁶ Capitol Forum, “UnitedHealth/Amedisys: Deal Would Create Significant Overlaps in Home Health Care, Hospice Services in Southeast, Pennsylvania, Massachusetts,” September 21, 2023, p. 1, <https://library.thecapitolforum.com/docs/72z84brfld9t?u=68j7qbabagx1>.

⁴⁷ *Id.*

⁴⁸ NerdWallet, “What is a Medicare Advantage Plan?” Liz Weston and Kate Ashford, May 30, 2023, <https://www.nerdwallet.com/article/insurance/medicare/what-is-a-medicare-advantage-plan>.

⁴⁹ Kaiser Family Foundation, “Medicare Advantage in 2023: Enrollment Update and Key Trends,” Nancy Ochieng, Jeannie Fuglesten Biniek, Meredith Freed, Anthony Damico, and Tricia Neuman, August 9, 2023, <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/>.

⁵⁰ Chartis, “In a Shifting Market, Medicare Advantage Shows Continued Growth,” March 23, 2023, <https://www.chartis.com/insights/shifting-market-medicare-advantage-shows-continued-growth>.

⁵¹ Kaiser Family Foundation, “Medicare Advantage in 2023: Enrollment Update and Key Trends,” Nancy Ochieng, Jeannie Fuglesten Biniek, Meredith Freed, Anthony Damico, and Tricia Neuman, August 9, 2023, <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/>.

⁵² Stat News, “Upcoding: one reason Medicare Advantage companies pay clinicians to make home health checkups,” Robert Kaplan and Paul Tang, January 19, 2023, <https://www.statnews.com/2023/01/19/rein-in-upcoding-medicare-advantage-companies/>.

score” and is based on the number of medical diagnoses in a patient’s medical record.⁵³ The higher the risk-score, the more money the insurance company gets to cover that individual’s care. But this doesn’t always translate into the delivery of more health care services. That’s because, whatever the insurance companies don’t pay out in health claims, they get to keep – and watchdogs have discovered that they keep a lot of it.⁵⁴

This payment structure has incentivized insurance companies to add as many diagnosis codes as possible to patients’ medical charts through a practice known as upcoding for MA patients.⁵⁵ UHG has been accused of failing to remove invalid diagnoses after becoming aware of them and telling workers to mine old medical records for additional illnesses, for which the company is set to face a civil trial this year.⁵⁶ Insurers often send chart review companies to individuals’ homes to collect these diagnoses, raising serious questions about whether insurers’ moves to acquire home health companies may exacerbate these tactics.⁵⁷ Ninety audits conducted by the Centers for Medicare and Medicaid Services between 2011 and 2013 further revealed that UHG has extracted overpayments from the government at least 8 times in 2007, with auditors finding that UHG and other plans received \$22.5 million in overpayments.⁵⁸ CMS has requested nearly \$800,000 in refunds from UHG as a result.⁵⁹

Through vertical integration, UHG and other health care conglomerates can more easily use practices like upcoding to evade other federal regulations that protect consumers. The Affordable Care Act requires health insurers to spend at least 85 percent of premium revenues on clinical care and quality improvements.⁶⁰ This requirement, also known as the medical loss ratio (MLR)

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*; Center on Budget and Policy Priorities, “Medicare Advantage Upcoding, Overpayments Require Attention,” Paul N. Van de Water, October 30, 2018, <https://www.cbpp.org/blog/medicare-advantage-upcoding-overpayments-require-attention>.

⁵⁶ The New York Times, “‘The Cash Monster was Insatiable’: How Insurers Exploited Medicare for Billions,” Reed Abelson and Margot Sanger-Katz, October 8, 2022, <https://www.nytimes.com/2022/10/08/upshot/medicare-advantage-fraud-allegations.html>; U.S. Department of Justice, “United States Intervenes in Second False Claims Act Lawsuit Alleging that UnitedHealth Group Inc. Mischarged the Medicare Advantage and Prescription Drug Programs,” press release, May 16, 2017, <https://www.justice.gov/opa/pr/united-states-intervenes-second-false-claims-act-lawsuit-alleging-unitedhealth-group-inc>.

⁵⁷ Healthcare Dive, “UnitedHealth closes \$5.4B buy of home health business LHC,” Rebecca Pifer, February 22, 2023, <https://www.healthcaredive.com/news/unitedhealth-lhc-group-closes-buy-home-health/643200/>; U.S. Department of Health and Human Services, Office of Inspector General, “Some Medicare Advantage Companies Leveraged Chart Reviews and Health Risk Assessments to Disproportionately Drive Payments,” September 2021, <https://oig.hhs.gov/oei/reports/OEI-03-17-00474.pdf>.

⁵⁸ Kaiser Family Foundation Health News, “Audits – Hidden Until Now – Reveal Millions in Medicare Advantage Overcharges,” Fred Schulte and Holly K. Hacker, November 21, 2022, <https://kffhealthnews.org/news/article/audits-hidden-until-now-reveal-millions-in-medicare-advantage-overcharges/>.

⁵⁹ U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, “Medicare Advantage Risk Adjustment Data Validation Audits Fact Sheet,” June 1, 2017, p. 2, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/recovery-audit-program-parts-c-and-d/Other-Content-Types/RADV-Docs/RADV-Fact-Sheet-2013.pdf>.

⁶⁰ U.S. Department of Health and Human Services, Federal Register Final Rule, “Medical Loss Ratio Requirements Under the Patient Protection and Affordable Care Act,” December 7, 2011, <https://www.federalregister.gov/documents/2011/12/07/2011-31289/medical-loss-ratio-requirements-under-the>

requirement, was created to “restrain premium growth by limiting the profits and administrative costs of health insurers.”⁶¹ However, UHG has relied on vertical integration and expansion into other sectors of the health care industry to game this limit by shifting profit-capped insurance revenues into its other divisions.⁶² These profit-shifting strategies may serve to evade MLR requirements, while allowing UHG to appear to be in compliance.⁶³

As UHG’s revenue has grown, so have payments from one division of UHG to another. UHG has accelerated payments to itself over the past ten years, allowing the company to substantially increase profitability.⁶⁴ And as one industry expert has noted, UHG subsidiary Optum has been “the leader in showing how a managed care organization with an ambulatory care delivery platform and a pharmacy benefit manager all in house can lower or maintain and bend cost trend[s] and then drive better market share gains in their health insurance business.”⁶⁵

Antitrust Regulators’ Role

The FTC and DOJ’s proposed merger guidelines clarify that the antitrust agencies, acting pursuant to antitrust law, will examine deals that would “entrench or extend a dominant [company] position”⁶⁶ or “further a trend toward concentration,”⁶⁷ and will examine “the whole series”⁶⁸ of acquisitions a company makes. Under the guidelines, regulators will therefore focus on conglomerates – which should include UHG – to holistically examine their anticompetitive effects, and potentially halt rampant vertical integration in health care.

UHG’s past acquisitions in many cases have not triggered automatic antitrust review under the HSR Act due to UHG’s piecemeal approach, but they have nevertheless allowed UHG to achieve market dominance. For example, in 2011 and 2012, UHG purchased eight physician groups in transactions whose value was below the threshold for mandatory pre-merger notification.⁶⁹ These

patient-protection-and-affordable-care-act.

⁶¹ NAIC, “Medical Loss Ratio,” October 26, 2022, <https://content.naic.org/cipr-topics/medical-loss-ratio> .

⁶² Gist Healthcare, “UnitedHealth Group hits a milestone in vertical integration,” April 7, 2023, <https://gisthealthcare.com/unitedhealth-group-hits-a-milestone-in-vertical-integration/>.

⁶³ Brookings Institute, “Related businesses and preservation of Medicare’s Medical Loss Ratio rules,” Richard Frank and Conrad Milhaupt, June 29, 2023, <https://www.brookings.edu/articles/related-businesses-and-preservation-of-medicares-medical-loss-ratio-rules/>.

⁶⁴ Gist Healthcare, “UnitedHealth Group hits a milestone in vertical integration,” April 7, 2023, <https://gisthealthcare.com/unitedhealth-group-hits-a-milestone-in-vertical-integration/>; Health Justice Monitor, “Insurers Avoid Loss Ratio Limits by Shifting Profits to Provider Subsidiaries,” Bob Herman, July 16, 2021, <http://healthjusticemonitor.org/2021/11/02/421/>.

⁶⁵ Healthcare Dive, “Optum a step ahead in vertical integration frenzy,” Jeff Byers, April 12, 2018, <https://www.healthcaredive.com/news/optum-unitedhealth-vertical-integration-walmart/520410/>.

⁶⁶ U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” July 19, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf, p. 18-21, Guideline 7.

⁶⁷ U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” July 19, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf, p. 21-22, Guideline 8.

⁶⁸ U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” July 19, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf, p. 22, Guideline 9.

⁶⁹ The American Prospect, “Health Care’s Intertwined Colossus,” Krista Brown and Sara Sirota, August 2, 2023, <https://prospect.org/health/2023-08-02-health-cares-intertwined-colossus/>.

and similarly anticompetitive tactics have resulted in the company being the largest employer of doctors⁷⁰ and the largest insurer in MA,⁷¹ while also being the world's largest health care company⁷² and eleventh-largest company by revenue.⁷³ UHG also “looks to capture revenue from medical care increasingly delivered outside of hospitals”⁷⁴ by moving into home health and hospice companies.

In recent years, regulators have increased scrutiny on UHG and other anticompetitive health care transactions: DOJ sued to block UHG's acquisition of Change Healthcare in 2022⁷⁵; FTC requested additional information regarding UHG's acquisition of LHC Group in 2022⁷⁶; and FTC required UHG to completely divest DaVita Medical Group's Healthcare Partners of Nevada⁷⁷ before it would allow UHG's acquisition of DaVita Medical Group, one of the largest providers of dialysis services in 2019.⁷⁸ In August, DOJ requested additional information from UHG and Amedisys surrounding the proposed deal.⁷⁹ Further, the FTC recently filed a lawsuit against U.S. Anesthesia Partners, Inc. alleging strategic consolidation of health care markets, including through the use of serial acquisition.⁸⁰ These actions, together with the proposed merger

⁷⁰ Christensen Institute, “The secret to UnitedHealth Group's power,” Ann Somers Hogg, August 4, 2022, <https://www.christenseninstitute.org/blog/the-secret-to-unitedhealth-groups-power/>.

⁷¹ Healthcare Dive, “UnitedHealth acquirers Amedisys for \$3.3B after home health provider reneges on Option deal,” Rebecca Pifer, June 26, 2023, <https://www.healthcaredive.com/news/unitedhealth-optum-amedisys-acquisition-option-care/653870/>; New York Times, “‘The Cash Monster was Insatiable’: How Insurers Exploited Medicare for Billions,” Reed Abelson and Margot Sanger-Katz, October 8, 2022, <https://www.nytimes.com/2022/10/08/upshot/medicare-advantage-fraud-allegations.html>.

⁷² Investopedia, “How UnitedHealth Group Makes Money,” Greg McFarlane, December 19, 2022, <https://www.investopedia.com/articles/markets/043015/how-unitedhealth-group-makes-its-money-unh.asp>.

⁷³ Fortune, Global 500, 2022, <https://fortune.com/ranking/global500/2022/>.

⁷⁴ Healthcare Dive, “UnitedHealth acquirers Amedisys for \$3.3B after home health provider reneges on Option deal,” Rebecca Pifer, June 26, 2023, <https://www.healthcaredive.com/news/unitedhealth-optum-amedisys-acquisition-option-care/653870/>.

⁷⁵ U.S. Department of Justice, “Justice Department Sues to Block UnitedHealth Group's Acquisition of Change Healthcare,” press release, February 24, 2022, <https://www.justice.gov/opa/pr/justice-department-sues-block-unitedhealth-group-s-acquisition-change-healthcare>; Healthcare Dive, “Done deal: UnitedHealth completes \$13B Change Healthcare Buy,” Samantha Liss, October 3, 2022, <https://www.healthcaredive.com/news/unitedhealth-completes-13b-change-healthcare-buy-doj/633154/>.

⁷⁶ Healthcare Dive, “FTC hits UnitedHealth, LHC with another request for information on \$5.4B buy,” Rebecca Pifer, June 13, 2022, <https://www.healthcaredive.com/news/regulators-unitedhealth-lhc-request-merger/625343/>.

⁷⁷ U.S. Federal Trade Commission, “Analysis of Agreement Containing Consent Orders to Aid Public Comment,” p. 5, https://www.ftc.gov/system/files/documents/cases/181_0057_united_davita_aapc_6-19-19.pdf.

⁷⁸ U.S. Federal Trade Commission, “FTC Approves Final Order Imposing Conditions on UnitedHealth Group's Proposed Acquisition of DaVita Medical Group,” press release, August 22, 2019, <https://www.ftc.gov/news-events/news/press-releases/2019/08/ftc-approves-final-order-imposing-conditions-unitedhealth-groups-proposed-acquisition-davita-medical>; Decision and Order, UnitedHealth Group Inc., Docket No. C-4677, August 12, 2019, https://www.ftc.gov/system/files/documents/cases/181_0057_c4677_united_davita_order.pdf.

⁷⁹ Medical Device Network, “Signal: UnitedHealth's Amedisys acquisition under further DOJ scrutiny,” Isaac Hanson, August 15, 2023, <https://www.medicaldevice-network.com/news/unitedhealth-acquisition-under-doj-scrutiny/>.

⁸⁰ U.S. Federal Trade Commission, “FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas,” press release, September 21, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across>.

guidelines, highlight antitrust agencies' commitment to enforcing antitrust law against anticompetitive practices.

Despite this progress, antitrust agencies must do more to uphold our antitrust laws and protect competition. Specifically, antitrust agencies should block anticompetitive deals, as they should have done in UHG's acquisition of LHC Group, and refuse to accept remedies, as they did in the case of DaVita's Healthcare Partners of Nevada. Contrary to their objectives, structural and behavioral remedies have proven to be ineffective because they are difficult to enforce and fail to maintain competitive conditions.⁸¹ Blocking anticompetitive deals and rejecting the use of remedies will safeguard competition, and in turn protect patients and health care workers.

DOJ and FTC Should Carefully Scrutinize UHG's Acquisition of Amedisys

We are encouraged by DOJ and FTC's efforts to tackle consolidation by proposing updated merger guidelines that are more consistent than prior guidelines with the statutory text and Congressional intent of antitrust law.⁸² In line with these efforts, it remains important that DOJ and FTC closely assess health care industry transactions in the context of the industry's increasing consolidation to stop massive, profit-seeking health care conglomerates from further limiting competition and increasing health care costs to the detriment of patients and taxpayers. The acquisition of Amedisys by UHG is one such transaction that the agencies should examine, though by no means the only one of its kind. We therefore urge the agencies to closely scrutinize this and other similar acquisitions and block any activity found to be illegal under antitrust law.

Sincerely,



Elizabeth Warren
United States Senator



Pramila Jayapal
Member of Congress

⁸¹ CPI Antitrust Chronicle, "Structural vs. Behavioral Remedies," Frank Maier-Rigaud and Benjamin Loertscher, April 2020, p. 4, https://www.nera.com/content/dam/nera/publications/2020/PUB_CPI_Remedies.pdf; U.S. Department of Justice, "Assistant Attorney General Makan Delrahim Delivers Remarks at the Federal Telecommunication Institute's Conference in Mexico City," November 7, 2018, <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-federal-institute>; Institute for Local Self-Reliance, "Strengthening Enforcement Against Illegal Mergers: Updating the Merger Guidelines," April 21, 2022, p. 29, <https://cdn.ilsr.org/wp-content/uploads/2022/04/ILSR-Merger-Guidelines-Comment-Letter.pdf>.

⁸² U.S. Federal Trade Commission, "FTC and DOJ seek comment on Draft Merger Guidelines," press release, July 19, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-doj-seek-comment-draft-merger-guidelines>.