

March 17, 2023

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

The Honorable Rebecca Kelly Slaughter  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, DC 20580

The Honorable Alvaro Bedoya  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, DC 20580

Dear Chair Khan, Commissioner Slaughter, and Commissioner Bedoya:

I am writing regarding consolidation and vertical integration in the health care industry and its potential impact on health care costs and quality of care in the United States. In particular, I fear that the acquisition of thousands of independent providers by a few massive health care mega-conglomerates could reduce competition on a local or national basis, hurting patients and increasing health care costs. I have fresh concerns in light of CVS Health Corp.'s (CVS) pending acquisition of Oak Street Health, Inc. (Oak Street),<sup>1</sup> the latest example of a major health care company expanding its reach into the primary-care industry. Given the potential risk that vertical integration could lead to higher health care prices and lower quality of care, the Federal Trade Commission (FTC) should carefully scrutinize this deal, and others like it, and oppose any health care acquisition that would threaten competition, increase prices, and reduce quality of care. The FTC should also retrospectively review similar consummated deals and challenge in court any mergers that have reduced competition in violation of antitrust laws.

In the past decade, the Centers for Medicare and Medicaid Services (CMS) has led an important initiative at the request of Congress<sup>2</sup> – and in response to rapidly rising health care costs – to test new ways of paying for health care.<sup>3</sup> Whereas payers have traditionally paid providers for each

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<sup>1</sup> CVS Health, “CVS Health to acquire Oak Street Health,” February 8, 2023, press release, <https://www.cvshealth.com/news/company-news/cvs-health-to-acquire-oak-street-health.html>.

<sup>2</sup> American College of Emergency Physicians, “Value-based Care: An Example of How the Affordable Care Act Has Impacted Health Care,” Jeffrey Davis, September 24, 2020, <https://www.acep.org/federal-advocacy/federal-advocacy-overview/regs--eggs/regs--eggs-articles/regs--eggs---september-24-2020/>.

<sup>3</sup> Centers for Medicare and Medicaid Services, “Medicare Advantage Value-Based Insurance Design Model,” <https://innovation.cms.gov/innovation-models/vbid>.

service performed, known as fee-for-service (FFS),<sup>4</sup> some payers have begun transitioning to new value-based care models, in which providers are paid based on the quality of patient care and the resulting health outcomes.<sup>5</sup> In value-based care, “providers are rewarded for helping patients to improve their health, reduce the effects and incidence of chronic disease, and live healthier lives in an evidence-based way.”<sup>6</sup> Value-based care has the potential to reduce costs, increase efficiency, and improve patient health outcomes,<sup>7</sup> but bad actors have already showed their willingness to abuse the system by prioritizing profits and denying necessary care to Medicare Advantage recipients.<sup>8</sup>

## **Profiteering Opportunity in New Payment Models is Driving Consolidation in Healthcare**

The growth in value-based care has attracted the attention of giant health care companies who see a significant money-making opportunity, particularly through Medicare Advantage (MA).<sup>9</sup> Indeed, one analysis predicts that the value-based care market could become a trillion-dollar industry for payers, providers, and investors.<sup>10</sup> Consistent with this prediction, large health care corporations have been acquiring primary and home health care practices in recent years that accept MA plans.

For example, the nation’s second largest health company, UnitedHealth Group, Inc. (United),<sup>11</sup> recently announced plans to acquire LHC Group, a home health provider.<sup>12</sup> This acquisition, which could be completed soon,<sup>13</sup> would expand United’s primary care portfolio, which already includes its Optum Care division,<sup>14</sup> a primary care network with over 60,000 doctors in 2,000

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<sup>4</sup> HealthCare.gov, “Fee for Service,” <https://www.healthcare.gov/glossary/fee-for-service/>.

<sup>5</sup> NEJM Catalyst, “What is Value-Based Healthcare?” January 1, 2017, <https://catalyst.nejm.org/doi/full/10.1056/CAT.17.0558>.

<sup>6</sup> *Id.*

<sup>7</sup> Revcycle Intelligence, “What Is Value-Based Care, What It Means for Providers?,” Editorial Staff, March 2, 2022, <https://revcycleintelligence.com/features/what-is-value-based-care-what-it-means-for-providers>.

<sup>8</sup> U.S. Department of Health and Human Services, Office of Inspector General, “Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care,” Christi A. Grimm, April 2022, p. 2, <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf>.

<sup>9</sup> Health Payer Intelligence, “How Medicare Advantage is Leading Payers to Adopt Value-Based Care,” Kelsey Waddill, January 10, 2020, <https://healthpayerintelligence.com/features/how-medicare-advantage-is-leading-payers-to-adopt-value-based-care>.

<sup>10</sup> McKinsey & Company, “Investing in the new era of value-based care,” Zahy Abou-Atme, Rob Alterman, Gunjan Khanna, and Edward Levine, December 16, 2022, <https://www.mckinsey.com/industries/healthcare/our-insights/investing-in-the-new-era-of-value-based-care>.

<sup>11</sup> Forbes, “Largest Health Insurance Companies 2023,” Chris Kissell, January 3, 2023, <https://www.forbes.com/advisor/health-insurance/largest-health-insurance-companies/>.

<sup>12</sup> Fierce Healthcare, “UnitedHealth, LHC Group extend merger agreement as FTC probe continues,” Paige Minemyer, December 7, 2022, <https://www.fiercehealthcare.com/payers/unitedhealth-lhc-group-extend-merger-agreement-ftc-probe-continues>.

<sup>13</sup> Healthcare Drive, “LHC to delist from Nasdaq, suggesting UnitedHealth could complete acquisition next week,” Rebecca Pifer, February 16, 2023, <https://www.healthcaredrive.com/news/lhc-delist-nasdaq-unitedhealth-deal-imminent/642999/>.

<sup>14</sup> Duke Corporate Education, “OptumCare: The biggest health care system you have never heard of,” Joe Perfetti and Michael Cichello, <https://www.dukece.com/optumcare-biggest-health-care-system-never-heard/>.

locations nationwide,<sup>15</sup> to include LHC's 30,000 employees who provide more than 12 million home health services annually.<sup>16</sup>

Similarly, Humana Inc., one of the largest health insurance providers in the nation,<sup>17</sup> has been steadily expanding its primary care services, acquiring a South Florida primary care physician network through its subsidiary Conviva in March of 2021.<sup>18</sup> And this is just the beginning: Humana announced last year that it will spend up to \$1.2 billion to open 100 new value-based primary care clinics between 2023 and 2025.<sup>19</sup> More recently, Humana also announced that it would be exiting the employer group commercial market entirely to focus their health plan offerings primarily on Government-funded programs like MA.<sup>20</sup>

Retailers have also been trying to expand into the primary care space. In 2021, Walgreens Boots Alliance (WBA), the holding company that owns Walgreens pharmacies,<sup>21</sup> became the majority owner of VillageMD, a primary-care company.<sup>22</sup> Then, in 2022, WBA completed its majority stake acquisition of CareCentrix, an at-home care technology platform.<sup>23</sup> These deals are part of WBA's broader effort to turn its stores into primary-care destinations, with the goal of having at least 600 primary-care clinics in the U.S. by 2025, and 1,000 by 2027.<sup>24</sup> Walmart, too, is entering the primary care industry, announcing plans to open 16 new health care centers in Florida by 2023, in addition to the 32 centers that already exist across the American South and the

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<sup>15</sup> Optum, "About Optum Care," <https://www.optum.com/about-us/optum-care.html#:~:text=Optum%20Care%20is%20a%20family,million%20people%20live%20healthier%20lives.>

<sup>16</sup> Fierce Healthcare, "UnitedHealth to acquire home health provider LHC Group in \$5B deal," Paige Minemyer, March 29, 2022, <https://www.fiercehealthcare.com/payers/unitedhealth-acquire-home-health-provider-lhc-group-5b-deal>.

<sup>17</sup> Forbes, "Largest Health Insurance Companies 2023," Chris Kissell, January 3, 2023, <https://www.forbes.com/advisor/health-insurance/largest-health-insurance-companies/>.

<sup>18</sup> Humana, "Conviva Grows Florida Footprint by Acquiring Network of 12 Health Centers and 49 Affiliate Practices," press release, March 2, 2021, <https://press.humana.com/news/news-details/2021/Conviva-Grows-Florida-Footprint-by-Acquiring-Network-of-12-Health-Centers-and-49-Affiliate-Practices/default.aspx#gsc.tab=0>.

<sup>19</sup> Healthcare Dive, "Humana looks to buy clinics from private equity partner for up to \$550M," Susan Kelly, September 19, 2022, <https://www.healthcaredive.com/news/Humana-Welsh-Carson-anderson-stowe-500-million-primary-care-clinics-private-equity/632113/>.

<sup>20</sup> Fierce Healthcare "Humana to shed employer group commercial business," Paige Minemyer, February 23, 2023, <https://www.fiercehealthcare.com/payers/humana-shed-employer-group-commercial-business>.

<sup>21</sup> Fortune, "Walgreens Boots Alliance," February 1, 2023, <https://fortune.com/company/walgreens-boots-alliance/>.

<sup>22</sup> CNBC News, "Walgreens boosts stake in primary-care company VillageMD with a \$5.2 billion investment," Melissa Repko, October 14, 2021, <https://www.cnbc.com/2021/10/14/walgreens-buys-majority-stake-in-primary-care-company-villagemd.html>.

<sup>23</sup> Healthcare Dive, "Walgreens completes majority stake acquisition in CareCentrix," Rebecca Pifer, August 31, 2022, <https://www.healthcaredive.com/news/walgreens-acquires-CareCentrix-home-care/630918/#:~:text=The%20%24330%20million%20investment%20gives%20Walgreens%20a%2055%25%20ownership%20of%20CareCentrix.>

<sup>24</sup> CNBC, "Walgreens boosts stake in primary-care company VillageMD with a \$5.2 billion investment," Melissa Repko, October 14, 2021, <https://www.cnbc.com/2021/10/14/walgreens-buys-majority-stake-in-primary-care-company-villagemd.html>.

Midwest.<sup>25</sup> Even Amazon – with its recent acquisition of One Medical, a primary care network of over 200 clinics – has entered the primary care market.<sup>26</sup>

Most recently, CVS, which also owns the health insurance company Aetna, announced last month that it would purchase Oak Street, a primary care company with 169 centers in 21 states, for \$10.6 billion.<sup>27</sup> CVS had already been adding more primary care options to its portfolio with the HealthHUBS and MinuteClinics it offers in many of its stores.<sup>28</sup> CVS’s CEO Karen Lynch noted that “Oak Street Health has a proven senior-focused primary care model that is scalable,” and that she sees it as a significant opportunity to expand her company.<sup>29</sup>

In addition to these primary care acquisitions, many of the big health care conglomerates also control their own pharmacy benefit managers (PBMs). In fact, CVS Caremark and United’s OptumRx – together with Cigna-Express Scripts – controls nearly 80% of the entire PBM market.<sup>30</sup> Humana too controls its own PBM and recently teamed up with health insurance company Anthem to expand its PBM market presence.<sup>31</sup>

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

This recent spate of acquisitions constitutes a major push by health care companies towards vertical integration, creating a few large health care conglomerates that control all aspects of patients’ health care journeys. Health care companies, especially those with health-insurance units like CVS, are betting that controlling providers directly will allow them to cut costs by managing patient care more closely.<sup>32</sup> “No wonder insurers want to own medical practices,” wrote Dan Mendelson, former Associate Director of Health under Clinton’s Office of

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<sup>25</sup> Forbes, “Walmart Continues Its Rapid Expansion in Healthcare, Announcing 16 New Facilities,” Sai Balasubramanian, M.D., J.D., October 27, 2022, <https://www.forbes.com/sites/saibala/2022/10/27/walmart-continues-its-rapid-expansion-in-healthcare-announcing-16-new-facilities/?sh=53c368ba288a>.

<sup>26</sup> Forbes, “Amazon Completes \$3.9bn One Medical Acquisition After FTC’s Antitrust Challenge Times Out,” February 23, 2023, <https://www.forbes.com/sites/qai/2023/02/23/amazon-completes-39bn-one-medical-acquisition-after-ftcs-antitrust-challenge-times-out/?sh=23d616c1797c>.

<sup>27</sup> Healthcare Dive, “CVS buys Oak Street Health for \$10.6B,” Rebecca Pifer, February 8, 2023, <https://www.healthcaredive.com/news/cvs-oak-street-health-acquisition-primary-care/642153/>.

<sup>28</sup> The Wall Street Journal, “CVS Nearing \$10.5 Billion Deal for Primary-Care Provider Oak Street health,” Anna Wilde Mathews, Lauren Thomas, and Laura Cooper, February 6, 2023, <https://www.wsj.com/articles/cvs-nearing-10-5-billion-deal-for-primary-care-provider-oak-street-health-11675727217>.

<sup>29</sup> Fierce Healthcare, “With Oak Street Health deal, CVS pushes healthcare ambitions as investment in value-based care heats up,” Heather Landi, February 9, 2023, <https://www.fiercehealthcare.com/providers/oak-street-health-deal-cvs-doubled-down-healthcare-strategy-investment-value-based-care>.

<sup>30</sup> 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/>.

<sup>31</sup> Insider Intelligence, “Anthem, Humana drop \$140M to launch a next-generation pharmacy benefit management platform,” Rhea Patel, July 26, 2021, <https://www.insiderintelligence.com/content/anthem-humana-drop-140m-launch-next-generation-pharmacy-benefit-management-platform>.

<sup>32</sup> The Wall Street Journal, “CVS Nearing \$10.5 Billion Deal for Primary-Care Provider Oak Street health,” Anna Wilde Mathews, Lauren Thomas, and Laura Cooper, February 6, 2023, <https://www.wsj.com/articles/cvs-nearing-10-5-billion-deal-for-primary-care-provider-oak-street-health-11675727217>.

Management and Budget,<sup>33</sup> “[i]t’s easier to improve healthcare services and rein in costs if you control what gets done in doctors’ offices, not insurance company cubicles.”<sup>34</sup> But in many cases, there is no evidence that these mergers are accomplishing either.

Of course, health care companies boast that these purported cost-savings will ultimately benefit consumers,<sup>35</sup> but examples from other areas in health care demonstrate that vertical integration has had the opposite result: for example, one study found that vertical integration between primary care and hospitals led to higher total spending at the patient level.<sup>36</sup> Another study determined that when a patient is referred for an MRI scan by a vertically integrated referring physician, the price of their scan is 36.5 percent higher, and they pay 31.9 percent higher out-of-pocket costs.<sup>37</sup> And several experts note that vertical integration between PBMs and health insurers has contributed to skyrocketing prescription drug costs.<sup>38</sup> Similarly, after a detailed review, the Rand Group concluded that:

Medicare claims data shows that vertical integration negatively affects physician referrals and spending for high-volume Medicare services. Over a three-year period of study, changes in referral patterns for just five common imaging and lab procedures triggered an increase in Medicare spending of \$73.1 million.<sup>39</sup>

And another expert, focusing on vertical integration of hospitals and physicians, concluded that “if patient welfare doesn’t improve after integration, there may be other reasons why physicians and hospitals are forming closer relationships — perhaps to raise profits.”<sup>40</sup>

The American health insurance market is already highly concentrated and further consolidation could harm consumers and providers.<sup>41</sup> The American Medical Association (AMA) warns that

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<sup>33</sup> HealthAffairs, “Dan Mendelson,” <https://www.healthaffairs.org/doi/10.1377/hauthor20101018.901398/full/>.

<sup>34</sup> Fierce Healthcare, “Industry Voices—Why insurers are spending billions to acquire physician practices,” Dan Mendelson, April 30, 2018, <https://www.fiercehealthcare.com/payer/why-insurers-are-spending-billions-doctors>.

<sup>35</sup> Fierce Healthcare, “CVS finally makes primary care play, scooping up Oak Street health in \$10.6B deal,” Paige Minemyer, February 8, 2023, <https://www.fiercehealthcare.com/providers/cvs-finally-makes-primary-care-play-scooping-oak-street-health-106b>.

<sup>36</sup> International Journal of Health Plan Management, “Vertical integration in healthcare: What does literature say about improvement on quality, access, efficiency, and costs containment?,” Guilherme C. Amado, Diogo C. Ferreira, and Alexandre M. Nunes, p. 1287, <https://pubmed.ncbi.nlm.nih.gov/34981855/>.

<sup>37</sup> Yale Institution for Social and Policy Studies, “Are Health Care Services Shoppable? Evidence from the Consumption of Lower-Limb MRI Scans,” Michael Chernen, Zack Cooper, Eugene Larsen-Hallock, and Fiona Scott Morton, July 30, 2018, p. 5, [https://isps.yale.edu/sites/default/files/publication/2018/07/20180718\\_mlt\\_manuscript-isps18-16.pdf](https://isps.yale.edu/sites/default/files/publication/2018/07/20180718_mlt_manuscript-isps18-16.pdf).

<sup>38</sup> Healio, “Vertical integration secures PBMs as ‘arsonists and firefighters’ of drug prices,” Rob Volansky, February 22, 2022, <https://www.healio.com/news/rheumatology/20220214/vertical-integration-secures-pbms-as-arsonists-and-firefighters-of-drug-prices>.

<sup>39</sup> RAND Corporation, “Does Vertical Integration Improve or Imperil U.S. Health care?” M. Susan Ridgely, November 16, 2021, <https://www.rand.org/blog/2021/11/does-vertical-integration-improve-or-imperil-us-health.html>.

<sup>40</sup> Rice University, “Physician-hospital integration does not improve quality of care, says Rice study,” Jeff Falk, February 13, 2019, <https://news2.rice.edu/2019/02/13/physician-hospital-integration-does-not-improve-quality-of-care-says-rice-study/>.

<sup>41</sup> American Medical Association, “Competition in Health Insurance,” José Guardado, PhD and Carol K. Kane, PhD, 2022, p. 3, <https://www.ama-assn.org/system/files/competition-health-insurance-us-markets.pdf>.

“consolidation has resulted in the possession and exercise of health insurance monopoly power – the ability to raise and maintain premiums above competitive levels – instead of the passing of any benefits obtained through to consumers.”<sup>42</sup>

Furthermore, because of the localized nature of health care markets, health insurance monopolies can also likely exercise monopsony power, or control over their input markets (e.g., in the purchasing of physician services).<sup>43</sup> The AMA warns that such monopsony power could “reduce the quantity (or quality) of healthcare below competitive levels and in turn harm consumers.”<sup>44</sup> Echoing these worries, the American Hospital Association warns that acquisition of physician practices by large health care companies has “the potential to limit consumer choice and increase prices,” and deprive Medicare patients from necessary care.<sup>45</sup>

Recent developments, too, have raised concerns about the anticompetitive practices of these large health care corporations. Just last year, New York Attorney General Letitia James sued CVS for using its monopoly power to “exclusively use a CVS-owned company, Wellpartner, to process and obtain federal subsidies on prescriptions filled at CVS pharmacies,” violating antitrust laws and resulting in millions of dollars in additional costs.<sup>46</sup> A United subsidiary, too, was recently indicted on federal charges for violations of the Sherman Act.<sup>47</sup>

### **FTC Should Carefully Scrutinize Health Care Mergers**

Given these serious concerns, it is important that the FTC monitor industry acquisitions closely to ensure that massive, profit-seeking healthcare conglomerates do not further limit competition and increase health care costs. Section 7 of the Clayton Act prohibits any merger or acquisition that would “substantially lessen competition, or tend to create a monopoly,”<sup>48</sup> and this specifically applies to vertical integration.<sup>49</sup> Accordingly, I ask you to closely scrutinize the acquisition of Oak Street by CVS and other similar acquisitions. I also ask that, using your authority under the FTC and Clayton Acts, you retroactively analyze previous acquisitions of primary and home health care companies by large health insurers and retailers such as United, Humana, WBA, Walmart, and Amazon. If the FTC determines that any of these deals violated antitrust law, I urge you to unravel them.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, p. 4.

<sup>44</sup> *Id.*

<sup>45</sup> American Hospital Association, “Anticompetitive Conduct by Commercial Health Insurance Companies,” <https://www.aha.org/guidesreports/2021-08-16-anticompetitive-conduct-commercial-health-insurance-companies>.

<sup>46</sup> New York State Office of the Attorney General, “Attorney General James Sues CVS for Harming New York Safety Net Hospitals and Clinics by Diverting Millions from Underserved Communities,” press release, July 28, 2022, <https://ag.ny.gov/press-release/2022/attorney-general-james-sues-cvs-harming-new-york-safety-net-hospitals-and-clinics>.

<sup>47</sup> Fierce Healthcare, “UnitedHealth Group subsidiary indicted on antitrust charges,” Paige Minemyer, January 8, 2021, <https://www.fiercehealthcare.com/payer/unitedhealth-group-subsiary-indicted-antitrust-charges>.

<sup>48</sup> 15 U.S.C. 18.

<sup>49</sup> U.S. Department of Justice & The Federal Trade Commission, “Vertical Merger Guidelines,” June 30, 2020, p. 1, [https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical\\_merger\\_guidelines\\_6-30-20.pdf](https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf).

I am encouraged by the recent memorandum of understanding between the Department of Justice and the Department of Health and Human Services, signaling a stronger commitment to antitrust enforcement in the health care industry.<sup>50</sup> And, the Biden administration recently signaled that they are taking a closer look at consolidation in the health care industry.<sup>51</sup> Accordingly, I hope that you will utilize FTC’s broad range of antitrust tools to their fullest extent to protect American health care consumers from further consolidation in the industry.

Sincerely,



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Elizabeth Warren  
United States Senator

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<sup>50</sup> Law360, “Shift in Health Care Antitrust Prosecutions is Likely,” James Attridge, Daniel Oakes, and Tasneem Chowdhury, February 7, 2023, <https://www.law360.com/articles/1572153/shift-in-health-care-antitrust-prosecutions-is-likely>.

<sup>51</sup> STAT, “Here’s another sign the Biden administration is taking a harsher stance on hospital consolidation,” John Wilkerson, February 17, 2023, <https://www.statnews.com/2023/02/17/hospital-consolidation-doj-ftc-acos/>.