

# Congress of the United States

Washington, DC 20515

April 5, 2024

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

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

Dear Chair Khan and Assistant Attorney General Kanter,

We write regarding our concerns that UnitedHealth Group's (UnitedHealth) proposed acquisition of Steward Health Care's physician group, Stewardship Health (Stewardship), will increase health care costs and negatively impact patients' quality of care.<sup>1</sup> Consistent with the proposed Department of Justice (DOJ) and Federal Trade Commission (FTC) merger guidelines,<sup>2</sup> we urge the DOJ and the FTC to closely scrutinize this acquisition, and oppose it if it would reduce competition and increase UnitedHealth's market dominance.

This acquisition comes at an unusual time. Steward Health Care (Steward) operates 31 private hospitals in eight states, including Massachusetts, Ohio, Florida, Texas, Pennsylvania, Louisiana, Arkansas, and Arizona.<sup>3</sup> In recent months, Steward has faced "a deep cash crunch"<sup>4</sup> as a result of mismanagement by company executives and massive debts imposed by its private equity parent company.<sup>5</sup> Steward has been unable to pay its rent and is deep in debt to a consortium of lenders, while conditions in the company's hospitals have deteriorated.<sup>6</sup>

In Massachusetts specifically, nine of Steward's hospitals are at risk of closure, which would have a devastating impact on communities across eastern Massachusetts.<sup>7</sup> But Steward's threat to

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<sup>1</sup> Fierce Healthcare, "Optum to buy struggling Steward Health Care's physician group under proposed deal," Dave Muoio, March 27, 2024, <https://www.fiercehealthcare.com/providers/optum-buy-struggling-steward-health-cares-physician-group-under-proposed-deal>.

<sup>2</sup> Federal Trade Commission, "Merger Guidelines: U.S. Department of Justice and the Federal Trade Commission," December 18, 2023, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023\\_merger\\_guidelines\\_final\\_12.18.2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf).

<sup>3</sup> Steward Health Care, "Hospitals," <https://www.steward.org/network/our-hospitals>.

<sup>4</sup> The Wall Street Journal, "A Bat Infestation, Postponed Surgeries and Unpaid Bills: A Hospital Chain in Crisis," Melanie Evans and Jonathan Weil, March 20, 2024, <https://www.wsj.com/health/healthcare/hospital-chain-financial-crisis-steward-mpt-45be8bfb>.

<sup>5</sup> Letter from Senator Elizabeth Warren to Cerberus Capital Management, February 15, 2024, <https://www.warren.senate.gov/imo/media/doc/2024.02.15%20%20Delegation%20Letter%20to%20Cerberus%20re%20Steward%20Health%20Care.pdf>.

<sup>6</sup> The Wall Street Journal, "A Bat Infestation, Postponed Surgeries and Unpaid Bills: A Hospital Chain in Crisis," Melanie Evans and Jonathan Weil, March 20, 2024, <https://www.wsj.com/health/healthcare/hospital-chain-financial-crisis-steward-mpt-45be8bfb>.

<sup>7</sup> Steward, "Hospitals," <https://www.steward.org/network/our-hospitals>; Letter from Senator Elizabeth Warren to Cerberus Capital Management, February 15, 2024,

close hospitals should not prevent DOJ and FTC from conducting a close and careful review of the proposed UnitedHealth acquisition. A quick fix to the short-term crisis that creates an uncompetitive health care marketplace dominated by a vertically integrated UnitedHealth colossus – in Massachusetts or elsewhere – may do more harm than good in the long run.

In 2023 alone, UnitedHealth reported over \$22 billion in profit, making it the largest and most profitable health care conglomerate in the United States.<sup>8</sup> UnitedHealth insures over 47 million people in the United States, including 7.7 million in the Medicare Advantage program.<sup>9</sup> The company has amassed a bevy of vertically-integrated companies across all segments of the health care system, including owning the nation’s third largest pharmacy benefit manager, the largest claims processor, a revenue cycle management company, chart review companies, a bank, and numerous home health care facilities.<sup>10</sup> But of particular concern in this case is UnitedHealth’s physician group, Optum, which employs or maintains affiliations with 10 percent of *all* physicians in the United States.<sup>11</sup> This stranglehold over U.S. physicians harms patients and doctors: by leveraging its massive market power, UnitedHealth can force doctors to limit networks, cut services, and see more patients per day to pad its profits, lowering the quality care of the more than 20 million patients that see Optum physicians.<sup>12</sup>

The company’s control of physicians, which will be expanded by this merger, also facilitates the company’s well-documented self-dealing.<sup>13</sup> By owning every link in the health delivery chain, UnitedHealth can effectively keep much of its business in-house, sending payments from its insurance arm to its various provider subsidiaries, including its Optum physician practices. In 2023 alone, Optum received 62 percent of its *total* revenue from UnitedHealth’s insurance

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<https://www.warren.senate.gov/imo/media/doc/2024.02.15%20%20Delegation%20Letter%20to%20Cerberus%20re%20Steward%20Health%20Care.pdf>.

<sup>8</sup> Forbes, “UnitedHealth Group Profits Hit \$22 Billion In 2023,” Bruce Japsen, January 12, 2024, <https://www.forbes.com/sites/brucejapsen/2024/01/12/unitedhealth-group-profits-hit-23-billion-in-2023/?sh=11ca695567ad>; 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>.

<sup>9</sup> AP, “UnitedHealth shares tumble after health care giant reports soaring medical costs in 4Q,” Tom Murphy, January 12, 2024, <https://apnews.com/article/unitedhealth-medical-costs-0e9a14d256d0a7a4ecd3c0f39419b86e>.

<sup>10</sup> Securities and Exchange Commission, “Subsidiaries of the Registrant,” <https://www.sec.gov/Archives/edgar/data/731766/000119312503075552/dex21.htm>.

<sup>11</sup> STAT, “UnitedHealth Group now employs or is affiliated with 10% of all physicians in the U.S.,” Bob Herman, November 29, 2023, <https://www.statnews.com/2023/11/29/unitedhealth-doctors-workforce/>.

<sup>12</sup> The American Prospect, “Building a Giant,” Krista Brown and Sara Sirota, December 20, 2023, <https://prospect.org/health/2023-12-20-building-a-giant-unitedhealth/>; NJ.com, “An insurance titan is dropping hundreds of N.J. physicians to enrich itself, doctors and patients charge,” Phil Galewitz, February 23, 2020, <https://www.nj.com/healthfit/2020/02/an-insurance-titan-is-dropping-hundreds-of-nj-physicians-to-enrich-itself-doctors-and-patients-charge.html>; STAT, “Antitrust lawsuit alleges UnitedHealth’s Optum pressured a California hospital to stop competing over physicians,” Brittany Trang, November 24, 2023, <https://www.statnews.com/2023/11/24/unitedhealth-optum-antitrust-lawsuit/>; Optum, “About Optum Care,” <https://www.optum.com/en/about-us/optum-care.html#:~:text=Optum%20Care%20is%20a%20family,million%20people%20live%20healthier%20lives>.

<sup>13</sup> Gist Healthcare, “Gist Weekly: March 15, 2024,” March 15, 2024, <https://gisthealthcare.com/gist/gist-weekly-march-15-2024/>.

branch, meaning that well over half of Optum’s revenue came from its parent company.<sup>14</sup> More broadly, UnitedHealth sent \$138 billion – 25 percent of its revenue – to its own subsidiaries in 2023.<sup>15</sup> Among other problems, these related party transactions allow UnitedHealth to evade federal regulations that require insurers to spend at least 85 percent of premium dollars on medical claims – corporate profiteering that comes at the expense of taxpayers and patients.<sup>16</sup>

UnitedHealth’s self-dealing and Steward’s financial distress appear to be jointly driving this acquisition. Indeed, UnitedHealth has made a business of acquiring distressed physician groups to expand their monopoly power.<sup>17</sup> With overwhelming market dominance, UnitedHealth’s insurance arm routinely imposes burdensome utilization management requirements and unlawful delays and denials on independent doctors that push them into financial ruin.<sup>18</sup> Then, once the small providers are on the verge of bankruptcy, UnitedHealth acquires these practices at a discount.<sup>19</sup> For example, just last month, after UnitedHealth’s subsidiary, Change Health, oversaw “the most significant cyberattack on the U.S. healthcare system in American history,”<sup>20</sup> UnitedHealth requested emergency authorization to purchase an Oregon-based physician practice, which fell into dire financial health after the cyberattack left the practice without the ability to access reimbursement for services already rendered.<sup>21</sup>

Now, with this proposed merger, UnitedHealth would add thousands more physicians in eight states to its Optum subsidiary,<sup>22</sup> further consolidating the market and setting the stage for more self-dealing and anticompetitive behavior. We are committed to ensuring Steward’s hospitals remain open for the communities they serve. This proposed merger, however, does not guarantee they will stay open in the long-run, and in the meantime could lead to more expensive health care for vulnerable patients and create more opportunities for UnitedHealth to pad its profits with taxpayer dollars.

We have been encouraged by antitrust agencies’ efforts to tackle consolidation and wrongdoing in the health care industry, including by reportedly launching an antitrust investigation into

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*; Health Care un-covered, “UnitedHealth’s self-dealing is accelerating,” Sara Sirota and Krista Brown, January 12, 2024, <https://wendellpotter.substack.com/p/unitedhealths-self-dealing-is-accelerating>.

<sup>16</sup> Letter from Senator Elizabeth Warren to HHS OIG Inspector General Grimm, November 21, 2023, <https://www.warren.senate.gov/download/20231121-letter-to-hhs-oig-regarding-mlr-evasion>.

<sup>17</sup> STAT, “UnitedHealth’s physician buying spree continues with takeover of Crystal Run,” Bob Herman, April 10, 2023, <https://www.statnews.com/2023/04/10/unitedhealth-crystal-run-physician-acquisition/>.

<sup>18</sup> NBC News, “Deny, deny, deny!: By rejecting claims, Medicare Advantage plans threaten rural hospitals and patients, say CEOs,” Gretchen Morgenson, October 31, 2023, <https://www.nbcnews.com/health/rejecting-claims-medicare-advantage-rural-hospitals-rcna121012>.

<sup>19</sup> The American Prospect, “UnitedHealth Exploits an ‘Emergency’ It Created,” Maureen Tkacik, March 10, 2024, <https://prospect.org/health/2024-03-10-unitedhealth-exploits-emergency-change-ransomware-oregon/>.

<sup>20</sup> American Hospital Association, “AHA Urges Congress to Provide Support to Help Minimize Further Fallout from Change Healthcare Attack,” March 4, 2024, <https://www.aha.org/lettercomment/2024-03-04-aha-urges-congress-provide-support-help-minimize-further-fallout-change-healthcare-attack>.

<sup>21</sup> Oregon Public Broadcasting, “Update: Oregon approves controversial Corvallis Clinic, Optum merger,” Amelia Templeton, March 13, 2024, <https://www.opb.org/article/2024/03/13/corvallis-clinic-optum-merger-oregon-health-care/>; The American Prospect, “UnitedHealth Exploits an ‘Emergency’ It Created,” Maureen Tkacik, March 10, 2024, <https://prospect.org/health/2024-03-10-unitedhealth-exploits-emergency-change-ransomware-oregon/>.

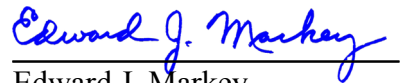
<sup>22</sup> Steward, “Why Steward,” <https://www.stewardphysicians.org/why-steward>.

UnitedHealth<sup>23</sup> and suing U.S. Anesthesia Partners and its private equity parent company over alleged anticompetitive practices.<sup>24</sup> Given the potential anticompetitive impacts of UnitedHealth's acquisition of Stewardship health, we urge you to closely scrutinize this acquisition and oppose it if it would drive up health care costs or reduce patients' quality of care in violation of antitrust law.

Sincerely,



Elizabeth Warren  
United States Senator



Edward J. Markey  
United States Senator



Richard E. Neal  
Member of Congress



James P. McGovern  
Member of Congress



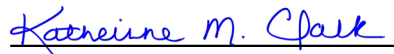
Lori Trahan  
Member of Congress



Jake Auchincloss  
Member of Congress

<sup>23</sup> Wall Street Journal, "U.S. Opens UnitedHealth Antitrust Probe," Anna Wilde Mathews and Dave Michaels, February 27, 2024, <https://www.wsj.com/health/healthcare/u-s-launches-antitrust-investigation-of-healthcare-giant-unitedhealth-ff5a00d2>.

<sup>24</sup> Federal Trade Commission, "FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas," 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>.



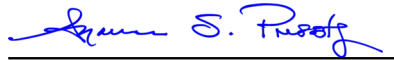
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Katherine M. Clark  
Member of Congress



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Seth Moulton  
Member of Congress



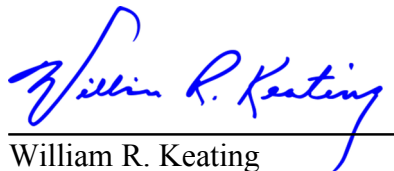
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Ayanna Pressley  
Member of Congress



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Stephen F. Lynch  
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William R. Keating  
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