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DOJ Antitrust Reportedly Investigating UnitedHealth Group

On February 27, 2024, the Wall Street Journal (WSJ) reported that the Department of Justice (DOJ) has launched an antitrust investigation into UnitedHealth Group (UHG), the owner of the biggest health insurer in the U.S. and the leading manager of drug benefits and one of the largest networks of physician groups.[1] This investigation comes as the Biden administration's antitrust enforcers have ramped up investigations into some of the biggest U.S. companies, including Amazon, Apple, and Google.[2] This Health Capital Topics article reviews the reported government investigation.

In interviews with healthcare industry stakeholders, investigators purportedly have been inquiring into UHG's effect on competition, particularly in healthcare.[3] UHG operates in nearly every healthcare industry subsector: it is one of the largest pharmacy benefit managers (PBMs) in the country and runs a large data analytics and billing business, a sizable network of physicians, and the largest private health insurer in the U.S.[4] Investigators are reportedly focusing on the relationship between Optum, its health services arm, and UnitedHealthcare, its insurance business.[5]

According to sources close to the investigation, antitrust regulators are specifically interested in whether Optum's acquisition of physician practices may be creating an anticompetitive environment for other providers and consumers.[6] Optum has been acquiring provider practices for years, and is currently the largest physician employer in the U.S., with 90,000 employed or aligned physicians.[7] DOJ investigators been examining whether UnitedHealthcare favors Optum's physician groups in their contracting practices, which may have prevented rival providers from participating in certain payment arrangements.[8]

DOJ officials are also investigating UHG's Medicare billing, including company practices related to documenting patient illness.[9] When patients have more health conditions, payments to Medicare plans increase, so aggressive documentation practices by healthcare providers can be lucrative for health insurers like UnitedHealthcare.[10] Investigators have also inquired if the relationship between Optum and UnitedHealthcare may affect UnitedHealthcare's compliance with federal rules that cap how much insurance companies can retain from the premiums they collect from customers.[11] The Patient Protection and Affordable Care Act (ACA) requires insurers to spend at least 80-85% of premiums received on medical care (known as the Medical Loss Ratio, or MLR).[12] In other words, insurers are not allowed to allocate more than 15-20% of received premium to their profits and administrative costs, with exact percentages varying depending on the type of plan.[13] Anything above the MLR must be rebated back to customers or spent on patient care.[14] When the company owns both the providers who take care of patients and the health insurer, the combined firm may absorb far more than the capped amount, as the providers and the health insurer can each absorb 15-20% of premiums for profits and administrative costs.[15]

This investigation is the latest in the heightened government scrutiny UHG has faced over the past two years in regard to its business practices. In 2022, the DOJ unsuccessfully sued to block UHG from acquiring Change Healthcare, the largest electronic data clearinghouse that connects providers and pharmacies with insurance companies for reimbursement purposes.[16] The DOJ has also been reviewing Optum's plan to purchase home health provider Amedisys Inc. for $3.3 billion, after Optum acquired one of Amedisys's rivals, LHC Group, for $5.4 billion in early 2023.[17] The agency had previously requested additional information regarding the proposed transaction, and has been deposing parties on the particulars.[18] However, on March 20, 2024, it was reported for the first time that the DOJ is considering suing to block the Amedisys acquisition, perhaps because of the resulting consolidation in the home health market, as LHC and Amedisys together would comprise approximately 10% of the home health market.[19] UHG unsurprisingly finds itself the target of antitrust regulators due in part to being the largest healthcare company in the U.S., with a revenue of $372 billion and $23 billion in profits in 2023.[20]

UHG has expanded its strong foothold in the healthcare industry through relentless acquisitions.[21] For example, in 2023, UHG had the largest market share in the commercial health insurance market, at 14%, and in the Medicare Advantage market, at 42%.[22] The DOJ's investigation of UHG highlights regulators' growing concern regarding the anticompetitive effects of vertical consolidation, e.g., when insurers acquire physician practices or other providers.[23]

Regulators have been aggressively cracking down on anticompetitive business practices, and the healthcare sector has been an investigative priority for the past few years.[24] The investigation is still in its early stages, and the DOJ has not alleged any wrongdoing to date.[25] The DOJ and UHG have both declined to comment on the investigation.[26]

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Todd A. Zigrang, MBA, MHA, FACHE, CVA, ASA, ABV, is the President of **HEALTH CAPITAL CONSULTANTS** (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 28 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "*The Adviser's Guide to Healthcare - 2nd Edition*" [AICPA - 2015], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Guide to Valuing Physician Compensation and Healthcare Service Arrangements* (BVR/AHLA); *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. Additionally, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); the National Association of Certified Valuators and Analysts (NACVA); the American Health Lawyers Association (AHLA); the American Bar Association (ABA); the Association of International Certified Professional Accountants (AICPA); the Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

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Jessica L. Bailey-Wheaton, Esq., is Senior Vice President and General Counsel of HCC. Her work focuses on the areas of Certificate of Need (CON) preparation and consulting, as well as project management and consulting services related to the impact of both federal and state regulations on healthcare transactions. In that role, Ms. Bailey-Wheaton provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services.

Additionally, Ms. Bailey-Wheaton heads HCC's CON and regulatory consulting service line. In this role, she prepares CON applications, including providing services such as: health planning; researching, developing, documenting, and reporting the market utilization demand and "need" for the proposed services in the subject market service area(s); researching and assisting legal counsel in meeting regulatory requirements relating to licensing and CON application development; and, providing any requested support services required in litigation challenging rules or decisions promulgated by a state agency. Ms. Bailey-Wheaton has also been engaged by both state government agencies and CON applicants to conduct an independent review of one or more CON applications and provide opinions on a variety of areas related to healthcare planning. She has been certified as an expert in healthcare planning in the State of Alabama.

Ms. Bailey-Wheaton is the co-author of numerous peer-reviewed and industry articles in publications such as: The Health Lawyer (American Bar Association); Physician Leadership Journal (American Association for Physician Leadership); The Journal of Vascular Surgery; St. Louis Metropolitan Medicine; Chicago Medicine; The Value Examiner (NACVA); and QuickRead (NACVA). She has previously presented before the American Bar Association (ABA), the American Health Law Association (AHLA), the National Association of Certified Valuators & Analysts (NACVA), the National Society of Certified Healthcare Business Consultants (NSCHBC), and the American College of Surgeons (ACS).

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