



*Advancing Health in America*

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March 17, 2021

Richard Powers  
Acting Assistant Attorney General  
Antitrust Division  
U. S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Dear Acting Assistant Attorney General Powers:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) writes to express its concern with UnitedHealth Group’s (UHG) proposed acquisition of Change Healthcare (the transaction).

We respectfully request that the Antitrust Division of the Department of Justice (DOJ or Division) conduct a thorough investigation of the proposed transaction because it threatens to reduce competition for the sale of health care information technology (IT) services to hospitals and other health care providers, which could negatively impact consumers and health care providers. Indeed, the Parties are well aware that the transaction presents substantial antitrust concerns because the transaction agreement provides that the Parties will divest assets that generate hundreds of millions of dollars in revenue in order to obtain DOJ approval.<sup>1</sup>

The proposed acquisition also would produce a massive consolidation of competitively sensitive health care data and shift such data from Change Healthcare, a neutral third-party, to Optum, a subsidiary of UHG. Because Optum’s parent, UHG, also owns the largest health insurance company – UnitedHealthcare – in the United States, the combination of the Parties’ data sets would impact (and likely distort) decisions about patient care and claims processing and denials to the detriment of consumers and health care providers, and further increase UHG’s already massive market power.

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<sup>1</sup> See Change Healthcare Inc., Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Form 8-K), Jan. 5, 2021 <https://ir.changehealthcare.com/static-files/02feed0d-ba45-4227-9798-9c1f8195c155>.

## THE PARTIES

### UnitedHealth Group

UHG generated more than \$242 billion in 2019.<sup>2</sup> Its subsidiary, UnitedHealthcare, is the largest health insurance company in the United States. With more than 70 million members, and commercial, Medicare and Medicaid insurance plans, UnitedHealthcare has the largest or second largest market share in 20 states.<sup>3</sup> Its network includes 1.4 million physicians and other health care professionals, and more than 6,500 hospitals.<sup>4</sup>

### Optum

Optum, a subsidiary of UHG, also is a market leader. It is one of the leading health care technology companies in the country. Optum is a key part of UHG's success, representing approximately 50% of UHG's earnings.<sup>5</sup> Optum is expected to continue to drive UHG's revenues over the next three years.<sup>6</sup>

Optum consists of OptumHealth, OptumRx and OptumInsight businesses.

OptumHealth is Optum's health care providers segment including physicians, ambulatory surgical centers, surgical hospitals and urgent care services.<sup>7</sup> OptumHealth entered 2021 with over 50,000 physicians and 1,400 clinics.<sup>8</sup> Over the course of this year, Optum "expect[s] to grow our employed and affiliated physicians by at least 10,000. This work of building local physician-led systems of care continues to be central to our mission and is accelerating with notable progress in the Northeast, Pacific Northwest, and Southern California ..."<sup>9</sup> Indeed, Optum recently announced that it is acquiring the 715-physician group Atrius Health – Massachusetts' largest independent physician group.<sup>10</sup> Optum also is reportedly in talks to acquire Landmark Health, a physician-led in-home medical group operating in 17 states.<sup>11</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> American Medical Association, Competition in Health Insurance: A comprehensive study of U.S. markets, 2020 update, Table 1. Market concentration (HHI and largest insurers' market shares as of Jan. 1, 2019 Combined HMO+PPO+POS+EXCH (total) product markets. <https://www.ama-assn.org/system/files/2020-10/competition-health-insurance-us-markets.pdf>.

<sup>4</sup> UnitedHealth Group, Annual Report (Form 10-K) (Dec. 31, 2019).

<sup>5</sup> UnitedHealth Q4 2020 Earnings Call Transcript, Jan. 20, 2021(Transcript).

<sup>6</sup> Trefis: How UnitedHealth Gets to \$440 Billion: Medicare or Optum? Apr. 17, 2020.

<https://www.trefis.com/stock/unh/articles/486310/how-unitedhealth-gets-to-330-billion-medicare-or-optum/2020-04-17>

<sup>7</sup> UnitedHealth Group, Annual Report (Form 10-K) (Dec. 31, 2019).

<sup>8</sup> Transcript.

<sup>9</sup> *Id.*

<sup>10</sup> John Tozzi, UnitedHealth Chases 10,000 More Doctors for Biggest U.S. Network. See *a/so* Jessica Bartlett, Atrius Health, state's largest independent physician group, is in acquisition talks, Boston Business Journal (Jan. 12, 2021) <https://www.bizjournals.com/boston/news/2021/01/12/atrus-health-in-talks-to-be-acquired-by-optum.html>. Note that unlike acquisitions by not-for-profit hospitals, Optum-acquired physicians are under no obligation to serve Medicare, Medicaid or destitute patients.

<sup>11</sup> Andrew Dolan, UnitedHealth's Optum Reportedly Strikes Deal for Landmark Health, Home Health Care News (Feb. 21, 2021) <https://homehealthcarenews.com/2021/02/unitedhealths-optum-reportedly-strikes-deal-for-landmark-health>.

In a recent earnings call, UHG elaborated on the “outsize growth” of its “enterprise” describing its physician acquisitions as “a critical anchor strategy both for Optum as well as for UnitedHealth Group.”

OptumRx is Optum’s pharmacy benefit manager segment, managing \$96 billion in pharmaceutical spending.<sup>12</sup> OptumRx also owns specialty pharmacies that administer infusion therapies for acute and chronic conditions.

OptumInsight is Optum’s health care IT segment, providing data analytics services, research, consulting and technology. OptumInsight possesses and analyzes highly confidential, granular health care data from the entire health care network, such as claims data containing specific procedures or treatment and related diagnoses, physician and hospital payments, payer reimbursement rates and guidelines, and electronic health records.

According to UHG’s annual report, Optum is one of the largest providers of health care IT services. More than 5,000 (9 out of 10) hospitals and 100,000 physicians<sup>13</sup> rely on OptumInsight’s data analytic services to ensure payments are accurate and reduce insurance denials. Optum has one of the broadest networks of over 2,300 payer connections, including connections with the top five health insurance companies in the United States. In addition, OptumInsight processes more than 5 billion pages of clinical documents and processes data covering nearly 240 million people annually.<sup>14</sup>

### **Change Healthcare**

Change Healthcare (Change) is the leading independent (i.e., not controlled by health insurance companies) provider of health care IT services targeting insurance reimbursement, payment accuracy and health care provider revenue cycle management. Like OptumInsight, Change has an impressive network of highly confidential, granular health care data from across the entire health care ecosystem. More than 5,000 hospitals and 900,000 physicians rely on Change’s health care IT services. Change’s network encompasses 2,200 payer connections, including connections with the top five health insurance companies in the United States. Through its network, Change has access to health care data of 1 in 3 United States patient records.

### **The transaction will result in an anticompetitive loss of head-to-head competition between Optum and Change.**

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<sup>12</sup> UnitedHealth Group, Annual Report (Form 10-K) (Dec. 31, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> Transcript.

The transaction will result in the loss of substantial head-to-head competition for the following IT health services:

- *Claims clearinghouse services*, which include eligibility and enrollment verification, claims filing, and payer denial or payment processing.
- *Payment accuracy services*, which include coordinating benefits, pre-payment review and insight related to co-payments, coverage, other insurance, proper billing coding, payment auditing and recovery.
- *Revenue cycle management services*, which include eligibility and coverage, clinical triage including utilization, pre-authorization and proper billing codes, and using real-time data, analytics and algorithms to provide visibility into performance and financial outcomes and benchmarking against peers for industry averages.
- *Clinical decision support services*, which include evidence-based clinical decision support resources for determining admissibility, length-of-stay and discharge.

The types of services offered by OptumInsight and Change are a must have for health care providers to navigate byzantine insurance reimbursement and ensure accurate and timely payment. “Eighty-three percent of health care organizations have implemented an artificial intelligence strategy, while another fifteen percent are planning to develop one, according to Optum.”<sup>15</sup>

The Parties are the two largest national providers of these services and scale is a key factor in choosing a health care IT provider. Change, for example, highlights its scale to investors, noting that it is important to be “coordinated” and to “build . . . the most pervasive connected network” because a large network provides unique data that improves analytics and “decision support.”<sup>16</sup> In short, health care IT companies with data volume, variety and velocity are at a substantial and sustainable advantage over smaller, niche competitors.<sup>17</sup>

Change’s independence from payers and its function as an “honest broker” is another critical element of competition.<sup>18</sup> The loss of a key independent competitor that is similar in size to Optum in these essential services will likely result in higher prices for providers and in lower quality clinical outcomes for patients.

**The concentration of health care data to a single, powerful owner with an inherent conflict of interest also will harm competition.**

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<sup>15</sup> Jessica Kent, Over 80% of Health Execs Have Artificial Intelligence Plans in Place, Health IT Analytics, Nov. 20, 2020, <https://healthitanalytics.com/news/over-80-of-health-execs-have-artificial-intelligence-plans-in-place>.

<sup>16</sup> Change Healthcare at JPMorgan Healthcare Conference Transcript, Jan. 14, 2020.

<sup>17</sup> Change Healthcare at Guggenheim Digital Virtual Health Summit Transcript, Dec. 8, 2020; McKesson Corp Change Healthcare Holdings Conference Transcript, 2016. Change Healthcare Q2 2020 Earnings Call Transcript, Nov. 14, 2019; Change Healthcare at Barclays Global Healthcare Conference Transcript, March 12, 2020. For a discussion of the 3V’s of data (volume, variety, and velocity) see M. Delrahim Address at Harvard Law School, “Blind[ing] Me with Science”: Antitrust, Data, and Digital Markets, Nov. 8, 2019.

<sup>18</sup> Change Healthcare at Barclays Global Healthcare Conference Transcript, March 12, 2020.

Equally, if not more concerning, is the acquisition's combination of the massive Optum Change health care data sets. As the Division recognizes, concentration of valuable and rare data can present antitrust concerns, especially when the scale of the data is increased by "several magnitudes" and the type of the data is not "ubiquitous" or "non-rivalous."<sup>19</sup> We discuss below four ways the transaction would harm competition and patients.

First, for payment accuracy and revenue cycle management services, the Parties separately analyze their data through proprietary algorithms and methods to help providers avoid claim denials and reduce health care fraud. Change, as a neutral data broker, uses its advanced analytics and algorithms to improve health care outcomes while also addressing payer financial outcomes. In contrast, Optum as a subsidiary of UHG, would likely be incentivized to manipulate its algorithms to advantage UHG, at the expense of patient health outcomes. Moreover, the proposed acquisition likely removes the competitive pressure from Change that constrains Optum's ability to prejudice its payment accuracy and revenue management cycle services in favor of payer financial outcomes while disadvantaging patients with increased denials and coverage restrictions. In short, Change currently serves as a check on the integrity of Optum's data. Without a neutral third-party competitor, Optum will have greater ability to use its data to support UHG initiatives that increase its market power and enhance its profits at the expense of meaningful improvements to patient care.

Second, and related, thousands of providers rely on Change's InterQual to provide evidence-based clinical decision support criteria.<sup>20</sup> Rooted in data and analytics, evidence-based clinical standards have reduced subjectivity in admissibility, length-of-stay and discharge, and reduced the variance in treatments from region-to-region or facility-to-facility.<sup>21</sup> InterQual admission standards are established by Change, an intermediary without ties to payers. Today, payers determine medical necessity based on either InterQual's or Milliman's (the only other comparable servicer) clinical decision support criteria. Post-merger, Optum will be incentivized to manufacture guidelines that will prioritize the payers' financial outcomes, by increasing patient claim denials, at the expense of patient health outcomes. Indeed, by converting to InterQual in January, shortly before announcing the proposed transaction, UHG has taken steps to facilitate InterQual's prioritization of financial outcomes. And, when Optum prioritizes financial outcomes, competing payers likely will switch to InterQual, creating a *de facto* standard for patient care covered by insurance at the expense of patient health outcomes.

Third, claims clearinghouses' role as intermediaries requires the handling of granular patient-level health care data including payers' claim denial and payment data. Change's

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<sup>19</sup> M. Delrahim Address at Harvard Law School, "Blind[ing] Me with Science": Antitrust, Data, and Digital Markets, Nov. 8, 2019.

<sup>20</sup> Mitus, A. Jacqueline, MD, The Birth of InterQual: Evidence-Based Decision Support Criteria That Helped Change Healthcare. Professional Case Management, July/August 2008, Volume: 13 Number 4, 228-233.

<sup>21</sup> *Id.*

claims clearinghouse is a neutral intermediary of this highly confidential data. Post-merger, Optum will have access to its competitors' sensitive payment and denial data relayed through Change's clearinghouse.

And, post-merger, Optum will have strong financial incentives to use competitive payers' data to inform its reimbursement rates and set its competitive clinical strategy, which will reduce competition among payers and harm hospitals and other providers. For example, Optum could share pricing information from competitor claims that pass through its clearinghouse to help inform UnitedHealthcare's negotiations with providers. Optum also could analyze claims data to identify opportunities to steer patients, including to Optum providers, especially in its growing specialty pharmacy division, and UnitedHealthcare could supply utilization data to its Optum companies to identify new business opportunities. Optum could further use its claims data to identify geographies with substantial infusion service volume and pass that information to OptumRx as a factor for whether to establish an OptumRx specialty pharmacy. The plan could then alter its provider contracts to discontinue specialty pharmacy coverage at all but OptumRx's pharmacies.<sup>22</sup> And, Optum could create a data toolset that will simplify UnitedHealthcare's ability to automatically deny claims.

### **Firewalls will not resolve the data concerns.**

Optum claims that it maintains an "informational firewall"<sup>23</sup> and UHG reports that UnitedHealthcare and Optum platforms are "distinct, but strategically aligned."<sup>24</sup> But UHG has never demonstrated that the firewalls are sufficiently robust to prevent sensitive and strategic information sharing. Moreover, despite UHG's assertions that the platforms are distinct, the two platforms cross paths often. Optum sells "pharmacy care products, health information and technology solutions, consulting and other services" to UnitedHealthcare.<sup>25</sup> In addition, the close relationship between UHG and Optum starts at the top. Five former Optum senior personnel now hold executive positions at UHG, creating a substantial risk of the sharing of information between United and Optum, either intentionally or inadvertently.<sup>26</sup>

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<sup>22</sup> The data consolidation is particularly concerning given that UHG has engaged in serial acquisitions in the healthcare technology space beginning in 2014. In 2014, Optum purchased a majority stake in Audax Health Solutions, a digital health platform. In 2015, Optum acquired MedExpress, an urgent care provider. In 2015, Optum purchased Catamaran, a pharmacy benefit manager. In 2017, Optum acquired Surgical Care Affiliates, an ambulatory surgery center, the Advisory Board Company's healthcare information and technology business, and DaVita Medical Group. In 2019, UHG acquired Equian a payment integrity company.

<sup>23</sup> Morgan True, Federal law raises questions about who can bid on IT projects supported by health exchange, Vermont biz, (Oct. 14, 2014) <https://vermontbiz.com/news/2014/october/14/federal-law-raises-questions-about-who-can-bid-it-projects-supported-health>.

<sup>24</sup> UnitedHealth Group, Annual Report (Form 10-K) (Dec. 31, 2019).

<sup>25</sup> *Id.*

<sup>26</sup> Sir Andrew Witty, UHG CEO, previously CEO of Optum; Dirk McMahan, president and chief operating officer, previously president and COO at Optum; Ed Lagerstrom, president United Healthcare Networks is involved with Optum RX; Tami Reller, chief marketing and experience officer, UHG previously served as an executive for Optum; Amy Shaw, CEO UHG Global previously served as a VP at Optum.

Acting Assistant Attorney General Richard Powers

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**Conclusion**

Health care IT services that target improved health care provider revenues, claim reimbursement and clinical decision support are essential to today's health care providers. Optum's proposed acquisition of Change will reduce the competition between two similarly scaled competitors for these services. The acquisition also will concentrate an immense volume of competitively sensitive data in the hands of the most powerful health insurance company in the United States, with substantial clinical provider and health insurance assets, and ultimately removes a neutral intermediary.

We would be pleased to discuss our concerns with you in more detail at your convenience. Please contact me at [mhatton@aha.org](mailto:mhatton@aha.org).

Sincerely,

/s/

Melinda Reid Hatton  
General Counsel

cc: Kathleen O'Neill, senior director of Investigations and Litigation, Antitrust Division  
Aaron Hoag, chief, Technology and Platforms Section, Antitrust Division