

April 6, 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

Re: Antitrust Review of UnitedHealth/Optum's Proposed Acquisition of Change Healthcare

Dear Acting Assistant Attorney General Powers:

The American Medical Association (AMA) thanks the Antitrust Division of the U.S. Department of Justice (DOJ) for devoting resources to the health care sector. We are writing to present our views regarding UnitedHealth Group (UHG)/Optum's proposed acquisition of Change Healthcare (CHNG). We have reviewed this transaction from our long-standing perspective that competition in health care and related markets is the right prescription for these markets. The purpose of this letter is to identify potential antitrust concerns and to encourage the DOJ to conduct a thorough examination of the proposed acquisition.

As discussed more fully below, there is substantial overlap in markets for health information technology (IT)/analytics services that the merging firms supply to health insurers, physicians, and hospitals. Given this overlap and the companies' large sizes, it is likely that the merging firms have been, or absent the merger would become, substantial head-to-head competitors. The loss of such competition or potential competition could have significant anticompetitive effects on physicians, hospitals, and health insurers. Moreover, the acquisition could also have vertical anticompetitive effects in health IT/analytics, health insurance, physician, and clinical guideline markets. The effects on clinical guideline markets could particularly harm consumers through reduced quality of care.

### **The Merging Companies are Large Players in Health IT/Analytics and Vertically Related Markets**

#### *UHG/Optum's Portfolio*

UHG owns and operates two distinct, but strategically aligned businesses—UnitedHealthcare (UHC) and Optum.<sup>1</sup> UHC provides health insurance benefits in an array of markets, including commercial health insurance and Medicare Advantage. UHC is the largest health insurer nationally, and it is one of the four largest insurers in 86% of metropolitan statistical area (MSA)-level commercial markets and 91% of MSA-level Medicare Advantage markets, most of which are highly concentrated.<sup>2</sup>

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<sup>1</sup> UnitedHealth Group Annual Report (Form 10-K) for the year ended Dec 31, 2019 at 1, available at <https://www.unitedhealthgroup.com/viewer.html?file=/content/dam/UHG/PDF/investors/2019/UNH-Form-10-K.pdf>.

<sup>2</sup> See *Id.* See also, *AMA's 2019 Update to Competition in Health Insurance: A Comprehensive Study of U.S. Markets*, available at <https://www.ama-assn.org/system/files/2019-09/competition-health-insurance-us-markets.pdf>. (The national-level numbers and the Medicare Advantage numbers were obtained from AMA's calculations using data from the Managed Market Surveyor Suite | MSA Medical Program | January 1, 2019 | Managed Market Surveyor | Selected Geographies | January 1, 2019, and Managed Market Surveyor | Data Extraction | Enterprise License © 2019 DR/Decision Resources, LLC. All rights reserved).

Optum is a “technology-enabled health services business” serving payers, providers, hospitals, governments, and life science companies. Optum provides services via several specialized business segments including OptumInsight.<sup>3</sup> OptumInsight provides data, analytics, research, consulting, technology, and managed services solutions across the health care industry,<sup>4</sup> which includes operation as a health care claims clearinghouse.<sup>5</sup> According to UHG, hospital systems, physicians, health plans, and others comprising the health care industry, “depend on OptumInsight.”<sup>6</sup>

Optum has a large footprint in the provider community. According to its annual report to stakeholders, OptumInsight serves **nine out of ten U.S. hospitals and more than 100,000 physicians**, with particular focus on clinical performance and quality improvement, population health, data management and analytics, revenue management, cost containment, compliance, cloud-enabled collaboration, and consumer engagement.<sup>7</sup> These operations generate enormous amounts of data, which Optum stores and commodifies. OptumInsight alone reports having access to “clinical and claims data” for **250 million insured lives**.<sup>8</sup>

OptumInsight also serves **four out of five U.S. health plans** through technology-enabled solutions that help them improve efficiency, understand, and optimize growth while managing risk, improve payment integrity performance, deliver on clinical initiatives and compliance goals, and build and manage strong networks of care.<sup>9</sup>

In 2019, UHG processed, through UHC and Optum, nearly \$1 trillion in gross billed charges and managed more than \$250 billion in aggregate health care spending.<sup>10</sup> Optum’s payer portfolio has roughly 70% of the market that uses integrity tools, according to OptumInsight CEO Eric Murphy.<sup>11</sup>

#### *CHNG’s Portfolio*

CHNG also serves customers across the health care industry, including payers, physicians, hospitals, and governments. Like those offered by OptumInsight, CHNG products and services are in health IT/data analytics. According to CHNG itself, “We [CHNG] compete in the market for data and analytics driven solutions that help ensure clinically appropriate care, increase efficiency and reduce waste in the health care industry.”<sup>12</sup> CHNG also operates as a major clearinghouse for health care claims.

CHNG describes its scale and reach within its most recent annual report as follows:

***Scale and reach define us as a preferred technology partner.*** The pervasive nature of our solutions and network in the workflows of our more than 30,000 customers, and our breadth of industry relationships position us to introduce best-in-class technologies to the healthcare industry at scale. We provide solutions supporting approximately **2,400 government and commercial payer connections**,

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<sup>3</sup> UnitedHealth Group Annual Report, *supra* note 1, at 5.

<sup>4</sup> See UnitedHealth Group, *Optum - Who We Are*, <https://www.unitedhealthgroup.com/who-we-are/businesses/optum.html>

<sup>5</sup> See Optum, *Optum Intelligent EDI* (Brochure), available at [https://www.optum.com/content/dam/optum3/optum/en/resources/factsheets/IntelligentEDIBrochure\\_092816.pdf](https://www.optum.com/content/dam/optum3/optum/en/resources/factsheets/IntelligentEDIBrochure_092816.pdf)

<sup>6</sup> UnitedHealth Group Annual Report, *supra* note 1, at 8.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> UnitedHealth Group, *Optum Overview*, 2020, at 15, [https://www.unitedhealthgroup.com/viewer.html?file=/content/dam/UHG/PDF/investors/2020/investor-conference/IC20\\_Optum\\_Overviews\\_QandA.pdf](https://www.unitedhealthgroup.com/viewer.html?file=/content/dam/UHG/PDF/investors/2020/investor-conference/IC20_Optum_Overviews_QandA.pdf) (Report to Investors).

<sup>9</sup> *Id.* at 1.

<sup>10</sup> See UnitedHealth Group Annual Report, *supra* note 1.

<sup>11</sup> See Susan Morse, *Secret Weapon: UnitedHealth’s Optum business is laying waste to old notions about how payers make money*, HEALTHCAREFINANCENEWS.COM, May 10, 2017, <https://www.healthcarefinancenews.com/news/secret-weapon-unitedhealths-optum-business-laying-waste-old-notions-about-how-payers-make-money>.

<sup>12</sup> Change Healthcare Annual Report (Form 10-K) for year ended Dec. 31, 2020 at 8, available at [https://ir.changehealthcare.com/node/7326/html#tx904010\\_8](https://ir.changehealthcare.com/node/7326/html#tx904010_8).

**1,000,000 physicians, 125,000 dentists, 39,000 pharmacies, 6,000 hospitals and 700 laboratories. This network transacts clinical records for over 85 million unique patients, approximately one-quarter of the estimated total U.S. population.**

Our customers increasingly leverage our industry-leading data and analytics-driven solutions while taking advantage of our innovations in AI, ML, and robotic process automation (RPA) to improve clinical, financial, and patient engagement outcomes. Our collaboration with technology leaders helps further broaden our scale and reach with new, innovative solutions.<sup>13</sup>

CHNG reports that in the fiscal year ending March 31, 2020, the company facilitated over 15 billion health care transactions and approximately \$1.5 trillion in adjudicated claims or more than one-third of all U.S. health care expenditures.<sup>14</sup>

### **This is a Horizontal Merger that Could Cause the Loss of Substantial Head-to-Head Competition or of Potential Competition**

UHG's press release announcing Optum's acquisition of CHNG says that the acquired company will "join with OptumInsight."<sup>15</sup> OptumInsight and CHNG are both big health IT/analytics companies serving providers and payers. They currently compete in markets related to health care data management and analytics, workflow improvement, risk management, and revenue cycle management.

Areas of potential product overlap include solutions, consulting, and analytics that support program integrity, revenue cycle management (including claims processing), compliance, risk management/adjustment, population health, value-based care, and electronic payments. Notably, both CHNG and Optum also possess and commodify stores of claims, reimbursement, and clinical data.<sup>16</sup>

The list of potential market competitors CHNG provides in its 2020 annual report speaks to this overlap. Specifically, CHNG and OptumInsight seem to compete in their individual capacities as:

- Health care transaction processing companies, including those providing electronic data interchange services [i.e., EDI clearinghouses];
- Health care information system vendors that support revenue and payment cycle management [...] capacity and resource management, clinical information exchange processes [and] imaging and workflow solutions;
- IT and health care consulting service providers;
- Health care payments and communication solutions providers that have invested in health care data management assets;
- Health care eligibility and enrollment companies;
- Health care payment accuracy companies;
- Health care billing and coding services companies;
- Providers of data products and data analytics solutions, including health care risk adjustment, quality [and] other data and analytics solutions;
- Licensors of de-identified health care information.<sup>17</sup>

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<sup>13</sup> *Id.* at 5(emphasis added).

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

<sup>15</sup> Press Release, *OptumInsight and Change Healthcare Combine to Advance a More Modern, Information and Technology-Enabled Health Care Platform*, UnitedHealth Group, Jan. 6, 2021, <https://www.unitedhealthgroup.com/newsroom/2021/2021-01-06-optuminsight-and-change-healthcare-combine.html>.

<sup>16</sup> Change Healthcare Annual Report, *supra* note 12, at 1. *See also* Optum, *Real World-Data*, <https://www.optum.com/business/solutions/life-sciences/explore-data/advanced-analytics.html>.

<sup>17</sup> *See* Change Healthcare Annual Report, *supra* note 12, at 21.

Given OptumInsight's and CHNG's common and extraordinarily large health care customer base and their strong reputations as health IT/analytics companies, it is likely that the merging firms have been, or absent the merger would likely become, substantial head-to-head competitors. The loss of such competition, or potential competition, suggests that the merger could have substantial anticompetitive effects.<sup>18</sup> We find that, in contrast to other health care markets, blurry market definition in the field of health IT makes it difficult to obtain data to calculate market shares and concentration in the markets affected by this merger. We suspect that an effort by the DOJ to obtain data to calculate market shares and concentration would be fruitful. It seems at least plausible that the firms possess market shares large enough for the merger to cause an increase in market concentration to levels that would at least make the merger raise significant competitive concerns and warrant scrutiny under the Federal Trade Commission and DOJ Horizontal Merger Guidelines, Section 2 (2010) (Merger Guidelines).<sup>19</sup>

### **This Proposed Acquisition has Vertical Ramifications**

The proposed acquisition also raises vertical competitive concerns. UHC has a national reach and is the largest health insurance firm in the United States. As such, it is a significant customer of health IT/analytics. The transaction will harm competition in the markets for health IT/analytics because UHC is likely to exclusively or predominantly buy health IT/analytics from the merged company. This will essentially cut off a critical customer from other health/IT firms—that is, there is a risk of *customer* foreclosure.

Second, the transaction can also harm competition in health IT/analytics markets because UHG could engage in *input* foreclosure in those markets. Currently, CHNG offers market insight data and other de-identified data feeds to payers, providers, and *competing health IT vendors*,<sup>20</sup> boasting that, “the scale, diversity, and timeliness of [CHNG’s] data provide[s] differentiated value.”<sup>21</sup> If the proposed acquisition were approved, UHG is likely to give the merged firm more favorable access to these vast stores of CHNG-held data than the access offered to competing health IT/analytics firms. UHG could stop selling CHNG’s valuable data feeds—a critical input to production of health care analytics solutions—to its health IT/analytics competitors.

Third, given that CHNG provides services—an input to the production of health insurance plans—to several of UHC’s insurance competitors, UHG’s acquisition of CHNG could potentially harm competition in health insurance markets. The acquisition could foreclose UHC’s competitors from an essential resource needed to compete with UHC, or it could raise their costs. For example, CHNG provides clearinghouse services to UHC’s competitors, including many Blue Cross Blue Shield (BCBS) insurers. Post-merger, UHG would control critical electronic revenue cycle services, such as claims processing, that its competitors require for basic operations. Thus, there would likely be input foreclosure or raising rival health insurers’ costs in the generally highly concentrated health insurance markets. This would further strengthen the competitive position of UHC.<sup>22</sup>

Fourth, the transaction will likely harm physician markets. Once CHNG is under the UHG umbrella, UHC will have access to CHNG’s large database of competitively sensitive information on physicians. This would include, for example, physician reimbursement data for CHNG’s electronic data interchange (EDI) clearinghouse customers, of which non-UHC insurers make up a formidable share. UHC will have an advantage over its competitors in negotiations with physicians once UHC can observe other insurers’ negotiated rates; instead of reimbursing competitively, UHC could tie its own reimbursement levels to those of its competitors. This would be especially problematic if, for example, those competitors—i.e.,

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<sup>18</sup> See Federal Trade Commission (“FTC”) and DOJ Horizontal Merger Guidelines, Section 2 (2010) (“Merger Guidelines”).

<sup>19</sup> *Id.*

<sup>20</sup> Change Healthcare Annual Report, *supra* note 12, at 16.

<sup>21</sup> *Id.* at 19.

<sup>22</sup> See discussion of *AMA’s 2019 Update to Competition in Health Insurance*, *supra* note 2.

non-UHC insurers—have market (monopsony) power over physicians and reimburse them at rates that are below competitive levels. UHC could insist on paying those same lower-than-competitive reimbursement rates to physicians.<sup>23</sup>

Fifth, UHC’s acquisition of CHNG’s InterQual—one of the country’s two leading developers of clinical guidelines and decision support services—will harm consumers. CHNG describes its leadership in the medical utilization space in its latest annual report:

*Clinical Decision Support:* Our industry-leading clinical criteria, InterQual, assists payers, providers, and government organizations in making clinically appropriate medical utilization decisions to help determine the right care, at the right time, and at the right cost. Our InterQual solutions were used by over 4,200 hospitals and facilities, and health plans covering over 125 million lives as of March 2020.<sup>24</sup>

Because UHG’s new portfolio will include both a health insurance business and a clinical guidelines business, the proposed acquisition is likely to tip clinical guidelines from consumer-focused clinical outcomes to insurance-focused financial outcomes, which could pose an appreciable risk of lowering quality of care.<sup>25</sup> Moreover, clinical guidelines and associated tools that favor costs over quality will be attractive to other health insurers and will incentivize them to switch from competing guideline vendors and clinical decision support services to UHG, which could lower quality of care.

Finally, UHG’s acquisition of InterQual will have anticompetitive effects in the market for clinical guidelines used in utilization management and decision-making on medical coverage. This market is currently dominated by InterQual and Milliman Clinical Guidelines (MCG). At the time of this letter, UHG was an MCG client. In anticipation of the merger, UHC—the nation’s largest health insurer—has already announced that it will switch from MCG to InterQual-based criteria for all benefit plans.<sup>26</sup> Given UHC is such a large customer of clinical guidelines, there is a significant risk of customer foreclosure.

Furthermore, there is a risk that the CHNG/UHG proposed merger will increase InterQual’s market share and its competitive advantage over MCG. Specifically, UHG will possess enormous stores of reimbursement data that can be used to manipulate clinical guidelines to reduce costs and serve insurer financial interests. As indicated above, the availability of these data-informed tools will incentivize other insurers to switch to the merged firm’s solutions over competing clinical decision support services. According to OptumInsight CEO Eric Murphy, “Insurers using Optum’s services fall into one or two camps . . . Either they want help to grow their top line, and/or they want to manage their expenses.”<sup>27</sup>

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<sup>23</sup> Monopsony injury in physician markets has been a basis for successful DOJ challenges of horizontal health insurer mergers, including Anthem’s proposed merger with Cigna. Although the district court in that case decided to block the merger on an alternative ground, *United States v. Anthem*, 236 F. Supp. 3d 171,179 (2017), Judge (now Justice) Kavanaugh wrote an instructive dissenting opinion highlighting the monopsony concerns in provider markets where merging health insurers have buyer power: “If the lower provider rates from this merger turn out to be the fruit of a poisonous tree—namely, the fruit of Anthem-Cigna’s exercise of unlawful monopsony power against hospitals and doctors in the upstream market—then the merger may be unlawful.” See *United States v. Anthem*, 855 F3d 345,436 (D.C. Cir 2017). See #1 *infra* at 6-8, under Top Physician Concerns for additional implications of this issue, including how the data could be misused and harm competition.

<sup>24</sup> See Change Healthcare Annual Report, *supra* note 12, at 17.

<sup>25</sup> See #2, *infra* at 8-9, under Top Physician Concerns for additional information.

<sup>26</sup> United Healthcare Network Bulletin, *United Healthcare is transitioning to InterQual criteria*, Feb. 2021, <https://www.uhcprovider.com/en/resource-library/news/2021-network-bulletin-featured-articles/0221-interqual.html>.

<sup>27</sup> See Morse, *Secret Weapon*, *supra* note 11.



## **Top Physician Concerns**

From the physician perspective, UHG's acquisition of CHNG raises two major concerns. First, UHG's post-acquisition assets will afford the opportunity to access and misuse large amounts of physician reimbursement data that include amounts paid by UHC's competitors. Second, UHG will also be able to control and manipulate clinical guidelines that drive care management across industry, which could lead to negative downstream impacts on treatment quality.

### *Acquisition of large data stores could enable UHG to harm physicians as it has in the past*

Similarities between the UHG/CHNG merger and a case involving UHG's acquisition of health IT company, Ingenix, in the late 1990s raise significant concerns for physicians. There is a legitimate basis for concern that UHG's history of misusing physician-generated data to serve health insurer financial interests will repeat itself in the UHG/CHNG merger.

UHG's acquisition of Ingenix gave UHG access to a database owned by Ingenix, composed of medical coding and reimbursement information with an estimated 1.3 billion records from more than 100 contributors, including health plans and third-party administrators (TPAs).<sup>28</sup> UHG capitalized on flaws in this database, setting reimbursement rates that increased insurer profits at the expense of physicians. In fact, in 2000, AMA brought litigation against UHG for data misuse (Ingenix case).<sup>29</sup> Physicians regard the Ingenix case as a cautionary tale about the threat to physicians when third-party payers gain access to large amounts of physician/patient data without express consent.

CHNG's role as a major EDI clearinghouse puts in its possession significant amounts of physician-generated data. Boasting "the advantages of scale," CHNG reports that its Intelligent Healthcare Network—which facilitated over 15 billion administrative transactions in FY 2020 alone<sup>30</sup>—is one of the largest in the United States, serving more than 800,000 providers and 2,100 payers.<sup>31</sup> A 2020 report by MITRE Corp. speaks to the enormity of CHNG's data stores. Specifically, the 2020 MITRE report states that deidentified data provided by CHNG alone represented more than **50% of private insurance claims** in the U.S.<sup>32</sup> Moreover, in addition to purely administrative exchanges, CHNG's Intelligent Healthcare Network also facilitates the exchange of clinical records for "over 85 million unique patients, approximately **one-quarter of the US population.**"<sup>33</sup>

As was the case when UHG acquired Ingenix, CHNG's data will become a possession of UHG post-merger, adding to UHG's existing data stores. Currently, UHG has claims data from providers who use Optum's clearinghouse services. In fact, **OptumInsight alone reports access to "clinical and claims data" for ~250 million insured lives.**<sup>34</sup> It is reasonable to suspect that as a consequence of the merger, UHG will own a majority of United States claims data, in addition to any datasets that may result from lines of business involving analysis of clinical outcomes.

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<sup>28</sup>See Joanne Wojcik, *Ingenix database used by insurers, TPAs to calculate out-of-network reimbursements*, BUSINESSINSURANCE.COM, Feb. 17, 2008, <https://www.businessinsurance.com/article/20080217/issue01/100024129/ingenix-database-used-by-insurers-tpas-to-calculate-out-of-network-reimbursements>.

<sup>29</sup> See *American Medical Association v. United Healthcare Corp.*, 00 Civ. 2800 (LMM) (S.D.N.Y. May. 7, 2009); See also Settlement Agreement at <https://www.sec.gov/Archives/edgar/data/731766/000119312509025587/dex992.htm>

<sup>30</sup> Change Healthcare Annual Report, *supra* note 12, at 5.

<sup>31</sup> See Change Healthcare, *Claiming and Remittance*, <https://www.changehealthcare.com/solutions/medical-network/claiming-remittance>.

<sup>32</sup> See *Telehealth Impact: Claims Data Analysis*, Healthcare Coalition, Jan 21, 2021, <https://c19hcc.org/telehealth/claims-analysis/>.

<sup>33</sup> Change Healthcare Annual Report, *supra* note 12, at 12 (emphasis added).

<sup>34</sup>See UnitedHealth Group, *Optum Overview*, *supra* note 8, at 15.

Crucially, UHG seems to offer no pretense of a firewall that would insulate data generated by each business unit/subsidiary. In fact, quite the opposite. Specifically, U.S. Securities and Exchange Commission filings state in no uncertain terms that Optum itself sells services and solutions to UHC.<sup>35</sup> Thus, the merger would leave claims and reimbursement data for all of CHNG’s provider clients vulnerable to use—and potential exploitation—by UHG. This is especially concerning and deserving of attention given the UHG/Ingenix large-scale misuse of physician-generated claims data described above.

Based on all of the above, we respectfully request that the DOJ examine whether this merger could allow UHG to once again misuse physician reimbursement data drawn from a large number of competing health insurers.<sup>36</sup>

*The acquisition will result in payer control of clinical guidelines, which could harm patients by creating barriers or disruptions to care*

As noted above, currently there is little competition in the clinical guideline market, with only two major players developing standardized products for cross-industry use: MCG and InterQual—the latter of which is owned by CHNG.

Health insurers typically use guidelines developed by MCG or InterQual to develop utilization management criteria and support decision-making around coverage for medical services. These guidelines are also used internally by health systems, hospitals, and managed care organizations for case management. Health IT vendors (such as CHNG) use these guidelines as the basis for clinical decision support tools, and electronic health record (EHR) vendors integrate these guideline-based solutions into EHR systems to “improve” physician workflows. For example, Cerner, a major EHR vendor, draws on InterQual for this purpose.<sup>37</sup>

Historically, clinical guideline vendors—which advertise products that apply best practices in evidence-based medicine—have ostensibly operated independently of private health insurers. The UHG/CHNG merger, however, will erode any pretense of this divide. **With the acquisition, InterQual clinical guidelines will fall under the complete control of the parent company of the largest health insurer in the country.** Since the process for development of InterQual guidelines appears to be wholly private (i.e., driven by CHNG with no apparent oversight from a truly independent board or governing body),<sup>38</sup> it is reasonable to expect that UHG will have unrestrained ability to influence InterQual clinical guideline development.

The fact that UHG will have unfettered control of clinical guideline development raises serious concerns among physicians. As the parent company of a health insurer, UHG may prioritize financial incentives over appropriate quality of care. In the possession of huge stores of claims data and with the power to influence InterQual documentation and medical necessity guidelines, UHG will have a direct glidepath to manipulate clinical guidelines to favor reduced health care costs over the delivery of appropriate care. Since physicians generally must rely on these clinical guidelines to receive payment from insurers, cost-based coverage decisions could disrupt care delivery and harm patient access to necessary care.

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<sup>35</sup> UnitedHealth Group Annual Report, *supra* note 1, at 3 (“UnitedHealthcare utilizes Optum’s capabilities to help coordinate and provide patient care, improve affordability of medical care, analyze cost trends, manage pharmacy benefits, work with care providers more effectively and create a simpler and more satisfying consumer experience.”).

<sup>36</sup> See Joanne Wojcik, *Ingenix database*, *supra* note 28.

<sup>37</sup> See Jasmine Pennic, *Cerner Integrates Change Healthcare Solutions to Automate Acute Case Management*, HITCONSULTANT.NET, Dec. 17, 2019, <https://hitconsultant.net/2019/12/17/cerner-integrates-change-healthcare-solutions-to-automate-acute-case-management/#.YC5srGhKjIU>.

<sup>38</sup> See Change Healthcare, “InterQual Evidence-Based Criteria Development” fact sheet, available for download at <https://www.changehealthcare.com/solutions/clinical-decision-support/interqual>.

Any changes made by UHG will have a broad and immediate impact, given that InterQual clinical guidelines are currently used by major payers including BCBS, Tricare, and Centene, as well as EHR vendors such as Cerner. Such cost-based frameworks would likely also be incorporated into internal IT care management systems as EHR vendors build InterQual-based care management technology.

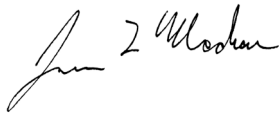
UHC's history of selecting criteria that increase payer profits instead of promoting evidence-based medicine amplifies physicians' significant worries about the proposed merger. For example, in 2020 a federal trial court ruled against UHG for UHC's use of inappropriate clinical guidelines for behavioral health claims.<sup>39</sup> This ruling reinforces concerns about UHG assuming ownership of the InterQual guidelines.

### **Conclusion**

After careful consideration and given the significant concerns set forth above, the AMA respectfully urges the DOJ to conduct a thorough examination of the antitrust ramifications of UHG/Optum's proposed acquisition of CHNG.

If you have questions or would like to discuss this issue further, please contact Henry Allen, Senior Attorney, AMA, at [henry.allen@ama-assn.org](mailto:henry.allen@ama-assn.org).

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD

cc: Kathleen O'Neill, Senior Director of Investigations and Litigation, Antitrust Division  
Aaron Hoag, Chief, Technology and Platforms Section, Antitrust Division

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<sup>39</sup> See *Wit. v. United Behavioral Health*, No. 14-cv-02346-JCS, 2020 WL 6479273 (N.D. Cal. Nov 3, 2020).