

## MEMORANDUM

**TO:** Robert F. Kennedy Jr., Secretary of the U.S. Department of Health and Human Services

**FROM:** American Economic Liberties Project

**DATE:** Feb. 24, 2025

**RE:** HHS Policy Recommendations to Combat Consolidated Corporate Power

The American Economic Liberties Project (AELP) compiled this memo outlining how the second Trump administration, and especially the U.S. Department of Health and Human Services (HHS), can fulfill its promises to voters by reining in the consolidated corporate power imperiling Americans' health.

It identifies five key problems: (1) brand-name drug monopolies, (2) prescription drug middlemen, (3) provider consolidation, (4) workforce shortages, and (5) vertical integration; charts recent executive branch efforts to tackle them; and recommends policy solutions for HHS, working in tandem with Congress to pass key legislative reforms, to make the U.S. healthcare system healthy again.

We've also highlighted some key facts below.

### *U.S. Healthcare System Overview*

- The U.S. healthcare system is characterized by extreme concentration, high costs, limited access, bad outcomes, and an overburdened and underpaid workforce.
- Big Medicine, or vertically-integrated health insurance conglomerates, accounts for seven of the Fortune 20 companies. Their 2023 revenues totaled more than \$1.8 trillion.
- UnitedHealth Group, the biggest of these conglomerates, is the nation's largest commercial insurer, Medicare Advantage plan provider; physician employer; and health insurance claims processor; second-largest health savings account provider; third-largest pharmacy benefit manager (PBM); and fourth-largest pharmacy operator.
- The three largest PBMs, group purchasing organizations (GPOs), and wholesale drug distributors control between 79% and 98% of their respective markets.
- As of 2022, nearly half of U.S. metropolitan areas had only one or two hospitals or health systems providing general inpatient care.
- Meanwhile, healthcare costs continue to skyrocket.
  - The median annual price for new drugs increased 35% to \$300,000 between 2022 and 2023.

- Hospital prices increased 6.9% between June 2023 and June 2024, more than twice the rate of inflation.
- Employer-sponsored health plan costs are expected to grow 9% between 2024 and 2025.
- The Association of American Medical Colleges projects a shortage of up to 48,000 primary care physicians by 2034.

### *Recent Policy Actions*

- Because of President Donald Trump signing a law during his first administration legalizing over-the-counter (OTC) hearing aids and the Biden administration's regulatory implementation of the law, there are now 166 OTC hearing aids listed with the Food and Drug Administration, costing on average \$1,600 per pair compared with \$4,600 for prescription hearing aids.
- Operation Warp Speed, launched in May 2020 by HHS and the U.S. Department of Defense, partnered with pharmaceutical companies to accelerate COVID-19 vaccine development and saved nearly 140,000 American lives by speeding up the vaccine rollout by about five months.
- HHS established a \$35 monthly co-pay cap on insulin for select Medicare patients from 2021 to 2023.
- The Inflation Reduction Act of 2022 expanded this cap to all Medicare patients and authorized Medicare to negotiate drug prices for the first time.
- The Federal Trade Commission (FTC) finalized a rule banning noncompete agreements in April 2024. Although the rule is now on hold, the agency estimates that it would increase average worker earnings by \$525 per year and lower healthcare costs by up to \$194 billion over the next decade.
- The FTC and HHS launched an investigation into GPOs and wholesalers in February 2024.
- In January 2025, the Consumer Financial Protection Bureau finalized a rule prohibiting medical debt on consumer credit reports, expected to lead to the approval of 22,000 additional, affordable mortgages every year and a 20-point credit score increase, average, for Americans with medical debt. This rule is also on hold.

### *Potential Financial Impacts of Tackling Big Medicine*

- Ending federal overpayments to private Medicare Advantage plans could save taxpayers more than \$50 billion annually.
- Researchers estimate that updating the patent approval process for generic drugs could save consumers up to \$5.3 billion annually.

Relatedly, AELP recently launched an initiative called [“Break Up Big Medicine.”](#) focused on rooting out corporate consolidation and related conflicts of interest imperiling the U.S. healthcare system by driving prices up, quality down, and independent providers out of business.

## **A Roadmap for Making the U.S. Healthcare System Healthy Again**

### **Introduction**

The U.S. healthcare system was once regarded as world-class.<sup>1</sup> Today, its main characteristics are high costs, limited access, bad outcomes, and an overburdened and underpaid workforce.<sup>2</sup>

Why? Until recently, federal health policymakers on both sides of the aisle have championed corporate consolidation and privatization, which they promised would deliver better outcomes at lower costs.<sup>3</sup> Instead, this deregulatory agenda has left the U.S. healthcare system at the mercy of monopolies and middlemen who wield their market power to exploit patients, providers, taxpayers, employers, and unions.

Fortunately, policymakers are beginning to address health care’s consolidation crisis, including through industrial policymaking intended to restructure markets. The first Trump administration launched Operation Warp Speed, which provided billions of dollars in federal funding to accelerate production of a COVID-19 vaccine; tested a \$35 monthly co-pay cap on insulin for certain Medicare patients; implemented hospital price transparency requirements; and initiated rulemaking to repeal the anti-kickback safe harbor that enables drug-industry middlemen — including pharmacy benefit managers (PBMs) and group purchasing organizations (GPOs) — to exploit kickbacks and rebates that would otherwise be illegal.

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<sup>1</sup> Hagop Kantarjian, “An Unhealthy System,” U.S. News & World Report, May 30, 2014, <https://www.usnews.com/opinion/articles/2014/05/30/no-the-us-doesnt-have-the-best-health-care-system-in-the-world>; Lydia Saad, “Americans Sour on U.S. Healthcare Quality,” Gallup, January 19, 2023, <https://news.gallup.com/poll/468176/americans-sour-healthcare-quality.aspx>; Spencer Delfino et al., “World-Class Innovation, but at What Cost? A Brief Examination of the American Healthcare System,” *Cureus*, June 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10317843/>.

<sup>2</sup> “U.S. Health Care from a Global Perspective, 2022: Accelerating Spending, Worsening Outcomes,” The Commonwealth Fund, January 31, 2023, <https://www.commonwealthfund.org/publications/issue-briefs/2023/jan/us-health-care-global-perspective-2022#:~:text=Despite%20high%20U.S.%20spending%2C%20Americans.dropped%20even%20further%20in%202021;NicholasShanosky,DanielMcDermott,andNishaKurani,“HowdoU.S.healthcareresourcescomparetoothercountries,”Peterson-KFFHealthSystemTracker,August12,2020,https://www.healthsystemtracker.org/chart-collection/u-s-health-care-resources-compare-countries/#Acute%20care%20hospital%20beds%20per%201.000%20population.%202017>

<sup>3</sup> Krista Brown et al., “The Courage to Learn,” American Economic Liberties Project, January 2021, [https://www.economicliberties.us/wp-content/uploads/2021/01/Courage-to-Learn\\_12.12.pdf](https://www.economicliberties.us/wp-content/uploads/2021/01/Courage-to-Learn_12.12.pdf).

The Biden administration built on this progress. Former President Joe Biden signed the Inflation Reduction Act, which expanded the \$35 co-pay cap to all Medicare patients while lowering out-of-pocket drug costs and authorizing Medicare to negotiate drug prices for the first time. Meanwhile, antitrust enforcement agencies started to untangle “Orange Book” patent thickets, which brand-name drug manufacturers use to deter generic competition; empowered healthcare workers by banning noncompete agreements; and increased scrutiny of vertical integration, private equity “roll-ups,” and other forms of consolidation.

Still, there is immense resistance to curbing the consolidated corporate power that has become endemic to the U.S. healthcare system and extremely lucrative for the private sector. Big Medicine accounts for seven of the Fortune 20 companies, outnumbering those from Big Tech, Big Banks, and Big Oil.<sup>4</sup> But American patients and small business owners are paying the ever-increasing price. As just a few examples, the median annual price for new drugs increased 35% — to \$300,000 — between 2022 and 2023; hospital prices increased 6.9% between June 2023 and June 2024, more than twice the rate of inflation; and employer-sponsored health plan costs are expected to grow even faster, by 9%, between 2024 and 2025.<sup>5</sup> Despite paying more than ever, patients are increasingly stranded in primary care and pharmacy deserts.<sup>6</sup>

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<sup>4</sup> Molly Gamble, “Fortune 500’s top 25 healthcare companies,” *Becker’s Hospital Review*, June 6, 2024, <https://www.beckershospitalreview.com/rankings-and-ratings/fortune-500s-top-25-healthcare-companies-2024.html>.

<sup>5</sup> Deena Beasley, “Prices for new US drugs rose 35% in 2023, more than the previous year,” Reuters, February 23, 2024, [Healthcare Dive, Aug. 19, 2024, <https://www.healthcaredive.com/news/employer-healthcare-costs-increase-2025-aon/724505/#:~:text=The%20average%20cost%20of%20employer.in%202025%2C%20the%20report%20found.>](https://www.reuters.com/business/healthcare-pharmaceuticals/prices-new-us-drugs-rose-35-2023-more-than-previous-year-2024-02-23/#:~:text=The%20median%20annual%20list%20price.a%20study%20published%20in%20JAMA; Shameek Rakshit et al., “How does medical inflation compare to inflation in the rest of the economy?” Peterson-KFF Health System Tracker, August 2, 2024, <a href=)

<sup>6</sup> “America’s Health Care Consolidation Crisis: A Ledger of Harms and Framework for Advancing Economic Liberty for All,” American Economic Liberties Project, Oct. 24, 2024, <https://www.economicliberties.us/our-work/americas-health-care-consolidation-crisis-a-ledger-of-harms-and-framework-for-advancing-economic-liberty-for-all/>; “Health Professional Shortage Areas: Primary Care, by County, October 2024,” Rural Health Information Hub, October 2024, <https://www.ruralhealthinfo.org/charts/5>; Benjamin Jolley, “2275 pharmacies have closed so far in 2024,” Ramblings of a pharmacist, Sept. 16, 2024, [https://benjaminjolley.substack.com/p/df63c75f-2215-4dbf-95c9-f94c7e38cfe3?postPreview=paid&update\\_d=2024-09-12T16%3A44%3A06.874Z&audience=everyone&free\\_preview=false&freemail=true](https://benjaminjolley.substack.com/p/df63c75f-2215-4dbf-95c9-f94c7e38cfe3?postPreview=paid&update_d=2024-09-12T16%3A44%3A06.874Z&audience=everyone&free_preview=false&freemail=true).

In the runup to the 2024 election, President Donald Trump campaigned on an economically populist platform that promised relief from the status quo, including wider access to high-quality, lower-cost health care; reduced waste and fraud in federal programs; increased choice and competition; and a strengthened Medicare.<sup>7</sup>

After winning a second term, Trump nominated — and Congress has since confirmed — Robert F. Kennedy Jr., who has decried the “smothering cloud of corporate capture” that looms over HHS, to lead the department.<sup>8</sup> Trump also committed to “knock[ing] out the middleman” — referring to PBMs — who fuel out-of-control prescription drug prices.<sup>9</sup>

This memo outlines how the second Trump administration, and especially HHS, can fulfill its promises to voters by reining in the consolidated corporate power imperiling Americans’ health. It identifies five key problems: (1) brand-name drug monopolies, (2) prescription drug middlemen, (3) provider consolidation, (4) workforce shortages, and (5) vertical integration; charts recent executive branch efforts to tackle them; and recommends policy solutions for HHS, working in tandem with Congress to pass key legislative reforms, to make the U.S. healthcare system healthy again.

### *(1) Brand-name drug monopolies*

**The problem:** Big Pharma uses anticompetitive tactics — specifically, government-backed patents covering brand-name drugs — to keep prices high and block more affordable generic competition.<sup>10</sup>

### **Accomplishments:**

*First Trump administration*

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<sup>7</sup> “2024 GOP Platform,” Donald J. Trump, accessed Dec. 24, 2024, <https://www.donaldjtrump.com/platform>.

<sup>8</sup> “Trump nominates RFK Jr. to remake healthcare,” *NPR*, Nov. 15, 2024, <https://www.npr.org/2024/11/15/1213159025/trump-nominates-rfk-jr-to-remake-healthcare>; Robert F. Kennedy Jr. (@RobertKennedyJr), “Thank you @read!Donald Trump for your leadership and courage...” X, Nov. 14, 2024, <https://x.com/RobertKennedyJr/status/1857198805919138235?lang=en>.

<sup>9</sup> Shane Goldmacher, “Trump Meets the Press,” *The New York Times*, Dec. 16, 2024, <https://www.nytimes.com/2024/12/16/us/politics/trump-press-conference.html>.

<sup>10</sup> “The Costs of Pharma Cheating,” American Economic Liberties Project and Initiative for Medicines, Access, and Knowledge, May 16, 2023, [https://www.economicliberties.us/wp-content/uploads/2023/05/AELP\\_052023\\_PharmaCheats\\_Report\\_FINAL.pdf](https://www.economicliberties.us/wp-content/uploads/2023/05/AELP_052023_PharmaCheats_Report_FINAL.pdf).

- In August 2017, Trump signed into law legislation that included the bipartisan Over the Counter (OTC) Hearing Aid Act by Sens. Elizabeth Warren (D-MA) and Chuck Grassley (R-IA).<sup>11</sup>
- In May 2020, HHS and the U.S. Department of Defense launched Operation Warp Speed, partnering with pharmaceutical companies to accelerate the development of COVID-19 vaccines.<sup>12</sup> The National Institutes of Health estimate that the operation saved nearly 140,000 American lives by speeding up the vaccine rollout by about five months.<sup>13</sup>
- HHS also established a temporary model under which select Medicare patients could access insulin for a \$35 monthly co-pay from 2021 to 2023.<sup>14</sup>

### *Biden administration*

- In August 2022, HHS finalized a rule implementing the OTC hearing aid law, improving affordability and accessibility without compromising quality.<sup>15</sup> There are now 166 OTC hearing aids listed with the FDA, costing on average \$1,600 per pair compared with more than \$4,600 for prescription hearing aids.<sup>16</sup>

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<sup>11</sup> “Bipartisan Over-the-Counter Hearing Aid Legislation To Become Law,” U.S. Sen. Elizabeth Warren, Aug. 3, 2017, <https://www.warren.senate.gov/newsroom/press-releases/bipartisan-over-the-counter-hearing-aid-legislation-to-become-law>.

<sup>12</sup> “Operation Warp Speed: Accelerated COVID-19 Vaccine Development Status and Efforts to Address Manufacturing Challenges,” Government Accountability Office, Feb. 11, 2021, <https://www.gao.gov/products/gao-21-319>.

<sup>13</sup> Sumedha Gupta et al., “Vaccinations Against COVID-19 May Have Averted Up To 140,000 Deaths In The United States,” *Health Affairs Journal*, September 2021, <https://pubmed.ncbi.nlm.nih.gov/34406840/>.

<sup>14</sup> “President Trump Announces Lower Out of Pocket Insulin Costs for Medicare’s Seniors,” Centers for Medicare & Medicaid Services, May 26, 2020, <https://www.cms.gov/newsroom/press-releases/president-trump-announces-lower-out-pocket-insulin-costs-medicare-seniors>; Jacob Gardenswartz, “Trump Is Wrong in Claiming Full Credit for Lowering Insulin Prices,” *KFF Health News* and *PolitiFact*, July 28, 2024, <https://kffhealthnews.org/news/article/fact-check-trump-lower-insulin-prices-false/>.

<sup>15</sup> Eugene Scott and Katie Shepherd, “FDA moves to make over-the-counter hearing aids available to millions,” *The Washington Post*, August 16, 2022, <https://www.washingtonpost.com/health/2022/08/16/fda-hearing-aids-biden/>; Jeffrey Gibbs, Sara Koblitz, and Philip Won, “Do You Hear What I Hear? One Year of OTC Hearing Aids,” *FDA Law Blog*, November 8, 2023, <https://www.thefdalawblog.com/2023/11/do-you-hear-what-i-hear-one-year-of-otc-hearing-aids/#:~:text=The%20Agency%20stated%20that%20the%20improved%20access%20to%20devices%20that%20Over-the-Counter%20Hearing%20Aids%20Information%20on%20the%20New%20Medical%20Device%20Category%20U.S.%20Government%20Accountability%20Office%20May%207%202024%20https://www.gao.gov/assets/gao-24-106854.pdf>.

<sup>16</sup> Nina Raemont, “These OTC Hearing Aids Are the Best Deal For You. Here’s the Math,” *CNET*, July 30, 2024, <https://www.cnet.com/health/medical/these-otc-hearing-aids-are-the-best-deal-for-you-heres-the-math/>; Abram Bailey, “How much do hearing aids cost in 2024?” Hearing Tracker, updated January 3, 2024, <https://www.hearingtracker.com/how-much-do-hearing-aids-cost#:~:text=The%20average%20price%20paid%20for.on%20a%20variety%20of%20factors>.



- That same month, Congress passed the Inflation Reduction Act, which now caps seniors' annual out-of-pocket drug costs at \$2,000 and authorizes Medicare to negotiate prices with the makers of 10 blockbuster drugs. The updated prices — with discounts as high as 79% — will take effect in 2026, saving Medicare an estimated \$6 billion annually.<sup>17</sup> The legislation also capped monthly out-of-pocket insulin costs at \$35 for all Medicare beneficiaries, building on earlier HHS action and creating significant savings for patients with private insurance or Medicare, who paid, on average, \$63 a month for insulin in 2019, and uninsured patients, who paid nearly twice that.<sup>18</sup>
- In August 2023, the U.S. Department of Justice (DOJ) Antitrust Division forced Teva Pharmaceuticals and Glenmark Pharmaceuticals to pay \$225 million and \$30 million, respectively, in criminal penalties and to divest their generic versions of the cholesterol drug pravastatin to resolve criminal charges of price fixing.<sup>19</sup> In doing so, the DOJ Antitrust Division established an innovative model for breaking up too-big-to-fail pharmaceutical firms as an effective remedy where disbarment from the healthcare industry would be dangerous.
- Starting in November 2023, the Federal Trade Commission (FTC) challenged hundreds of junk patent listings, which pharma giants like AbbVie, Mylan, and Glaxo-Smith Kline have used to keep asthma inhalers, epinephrine pens, and obesity and diabetes injectables prohibitively expensive.<sup>20</sup> Researchers estimate

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<sup>17</sup> “Medicare Drug Price Negotiation Program: Negotiated Prices for Initial Price Applicability Year 2026,” Centers for Medicare & Medicaid Services, August 2024, <https://www.cms.gov/files/document/fact-sheet-negotiated-prices-initial-price-applicability-year-2026.pdf>; Sydney Lupkin and Asma Khalid, “Medicare negotiated drug prices for the first time. Here’s what it got.” *NPR*, August 15, 2024, <https://www.npr.org/sections/shots-health-news/2024/08/15/nx-s1-5075659/medicare-negotiated-drug-prices-for-the-first-time-heres-what-it-got>.

<sup>18</sup> Bisma Sayed et al., “Insulin Affordability and the Inflation Reduction Act: Medicare Beneficiary Savings by State and Demographics,” Assistant Secretary for Planning and Evaluation Office of Health Policy, January 24, 2023, <https://aspe.hhs.gov/sites/default/files/documents/bd5568fa0e8a59c2225b2e0b93d5ae5b/aspe-insulin-affordability-datapoint.pdf>.

<sup>19</sup> “Major Generic Drug Companies to Pay Over Quarter of a Billion Dollars to Resolve Price-Fixing Charges and Divest Key Drug at the Center of Their Conspiracy,” DOJ, Aug. 21, 2023, <https://www.justice.gov/archives/opa/pr/major-generic-drug-companies-pay-over-quarter-billion-dollars-resolve-price-fixing-charges>.

<sup>20</sup> “FTC Challenges More Than 100 Patents Improperly Listed in the FDA’s Orange Book,” Federal Trade Commission, November 7, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-challenges-more-100-patents-improperly-listed-fdas-orange-book>; “FTC Expands Patent Listing Challenges, Targeting More Than 300 Junk Listings for Diabetes, Weight Loss, Asthma and COPD Drugs,” Federal Trade Commission, April 30, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-expands-patent-listing-challenges-targeting-more-300-junk-listings-diabetes-weight-loss-asthma>.

that updating the patent approval process to root out such listings would save consumers up to \$5.3 billion annually by increasing access to more affordable generic drugs.<sup>21</sup>

**Solutions:** During the confirmation process, Secretary Kennedy, pledged to take on Big Pharma, which he argued has used its “lobbying power to maximize profits at the expense of the country’s health.”<sup>22</sup> Federal agencies, alongside Congress, must heed his warning and rein in the industry’s patent abuses.

- Within HHS, the FDA should issue regulations to prohibit improper Orange Book patent listings, pursue enforcement action against drug manufacturers that have listed such patents, remove existing improper listings, and update its approval process for generic drugs to curtail product hopping, another form of patent abuse.
- The FTC and DOJ Antitrust Division should continue to vigorously enforce antitrust laws. This includes no longer settling related lawsuits and instead punishing individual and corporate violators more harshly. Patent abuse is extremely profitable, meaning that Big Pharma has incentives to violate antitrust laws and will not be deterred by relatively small settlements at the corporate level.

**Further reading:** [“The Costs of Pharma Cheating”](#) by the American Economic Liberties Project (AELP) and the Initiative for Medicines, Access, & Knowledge (May 2023)

### *(2) Prescription drug middlemen*

**The problem:** In addition to Big Pharma, middlemen — including PBMs, GPOs, and wholesale drug distributors — inflate prescription drug costs, squeeze independent pharmacies out of business, and contribute to persistent generic drug and medical supplies shortages.

PBMs negotiate pharmacy benefits on behalf of health plans with drug manufacturers and pharmacies.<sup>23</sup> The “Big Three” — CVS Caremark, Cigna’s Express Scripts, and UnitedHealth Group’s OptumRx — account for nearly 80% of U.S. prescription drug claims, giving them enormous leverage to decide who pays how much for which

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<sup>21</sup> Michael Frakes and Melissa Wasserman, “Investing in Ex Ante Regulation: Evidence from Pharmaceutical Patent Examination,” *American Economic Journal*, August 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10783444/>.

<sup>22</sup> Will Stone and Allison Aubrey, “RFK Jr. wants to ‘Make America Healthy Again.’ He could face a lot of pushback,” *NPR*, Nov. 15, 2024, <https://www.npr.org/sections/shots-health-news/2024/11/15/nx-s1-5191947/trump-rfk-health-hhs>.

<sup>23</sup> Sara Sirota, “Why We Should Ban PBM Rebates,” American Economic Liberties Project, February 13, 2024, <https://www.economicliberties.us/our-work/why-we-should-ban-pbm-rebates/>.



drugs.<sup>24</sup> Each of the Big Three is also vertically integrated with a major insurer upstream and with pharmacies downstream, incentivizing them to steer patients to their own affiliates. As Dr. Martin Makary, Trump’s nominee to lead the Food and Drug Administration, explained in his 2019 book about rising healthcare costs, “The fundamental conflict is that the PBM claims to reduce what you spend on drugs while owning a pharmacy that profits when you spend more.”<sup>25</sup>

GPOs and wholesalers — middlemen who buy medical supplies and distribute them to providers, respectively — are similarly concentrated. The three largest GPOs and wholesalers control at least 90% of their respective markets, enabling them to put downward price pressure, in the form of rebates and exclusive contracts, on generic manufacturers.<sup>26</sup> The manufacturers, in turn, consolidate, discontinue production of unprofitable drugs, underinvest in factories, or close — all of which result in shortages.<sup>27</sup> Despite steady consumer demand, such shortages reached a record high in early 2024.<sup>28</sup>

Meanwhile, wholesalers are increasingly acquiring specialty medical practices, locking them in as customers while steering patients toward the most lucrative drugs, regardless of whether they are appropriate or affordable.<sup>29</sup>

## **Accomplishments:**

### *First Trump administration*

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<sup>24</sup> Adam Fein, “The Top Pharmacy Benefit Managers of 2023: Market Share and Trends for the Biggest Companies – and What’s Ahead,” Drug Channels, April 9, 2024, <https://www.drugchannels.net/2024/04/the-top-pharmacy-benefit-managers-of.html>.

<sup>25</sup> Marty Makary, *The Price We Pay*, Bloomsbury Publishing, 2019, p. 194.

<sup>26</sup> Bill Whitaker, “Medical Middlemen: Broken system making it harder for hospitals and patients to get some life-saving drugs,” *60 Minutes*, May 22, 2022,

<https://www.cbsnews.com/news/generic-drugs-pharmaceutical-companies-60-minutes-2022-05-22/>;

Adam Fein, “The Big Three Wholesalers: Revenues and Channel Share Up, Profits Down,” Drug Channels, October 2, 2019,

<https://www.drugchannels.net/2019/10/the-big-three-wholesalers-revenues-and.html>.

<sup>27</sup> Sara Sirota, “The Dirty Secret of Drug Shortages,” American Economic Liberties Project, October 19, 2023, <https://www.economicliberties.us/our-work/the-dirty-secret-of-drug-shortages/>.

<sup>28</sup> “Drug Shortage Statistics,” American Society of Health System Pharmacists and the University of Utah Drug Information Service, accessed August 8, 2024,

<https://www.ashp.org/drug-shortages/shortage-resources/drug-shortages-statistics?loginreturnUrl=SSOCheckOnly>.

<sup>29</sup> “Economic Liberties and Partners Call on FTC to Block McKesson and Cardinal Health Acquisitions,” AELP, Sept. 26, 2024,

<https://www.economicliberties.us/press-release/economic-liberties-and-partners-call-on-ftc-to-block-mckesson-and-cardinal-health-acquisitions/>; “Antitrust Enforcers Must Crack Down on Big Wholesaler Acquisitions and Protect Patients,” AELP, Nov. 21, 2024,

<https://www.economicliberties.us/press-release/antitrust-enforcers-must-crack-down-on-big-wholesaler-acquisitions-and-protect-patients/>.

- In October 2018, Congress passed legislation prohibiting “gag clauses” in network contracts between PBMs and pharmacies.<sup>30</sup> Gag clauses prohibit a pharmacist from disclosing to patients that they could save money by paying for a prescription in cash. Many states have passed similar legislation.<sup>31</sup> But such policies have their limits; although they may lower insured patients’ cost at the pharmacy counter, they do not affect a drug’s list price — or benefit patients without insurance.<sup>32</sup>
- In December 2020, HHS finalized a rule to repeal PBMs’ safe harbor, which exempts them from the federal anti-kickback statute.<sup>33</sup> However, following pressure from the PBM lobby, the Biden administration agreed to delay the rule’s implementation; it was later pushed back even further, to 2032, through a series of unrelated legislation.<sup>34</sup>

### *Biden administration*

- In February 2024, the FTC and HHS launched an investigation into GPOs and wholesalers for their role in persistent drug shortages.<sup>35</sup>
- The FTC also targeted PBMs, releasing two interim staff reports — in July 2024 and January 2025 — that showed how the Big Three use anticompetitive tactics to profit at the expense of patients and independent pharmacies; the agency also

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<sup>30</sup> Paige Minemyer, “Trump signs bills ending pharmacy gag clauses,” *Fierce Healthcare*, Oct. 10, 2018, <https://www.fiercehealthcare.com/regulatory/trump-signs-bills-ending-pharmacy-gag-clauses>.

<sup>31</sup> “Trending Now: State Legislation that Bans Pharmacy Benefit Managers’ ‘Gag Clauses,’” National Academy for State Health Policy, Jan. 30, 2018, <https://nashp.org/trending-now-state-legislation-that-bans-pharmacy-benefit-managers-gag-clauses/>.

<sup>32</sup> Colleen Becker, “Prescription Drug Update: State Efforts to Boost Access and Lower Costs,” National Conference of State Legislatures, April 28, 2022, <https://www.ncsl.org/state-legislatures-news/details/prescription-drugs-update-state-efforts-to-boost-access-and-lower-costs>.

<sup>33</sup> Robert King, “HHS finalizes rules to nix Part D rebate safe harbor, tie Part B prices to foreign countries,” *Fierce Healthcare*, Nov. 20, 2020, <https://www.fiercehealthcare.com/payer/hhs-to-finalize-rule-to-nix-part-d-rebate-safe-harbor-propose-tying-part-b-prices-to-foreign>.

<sup>34</sup> Juliette Cubanski, Tricia Neuman, and Meredith Freed, “Explaining the Prescription Drug Provisions in the Inflation Reduction Act,” KFF, Jan. 24, 2023, <https://www.kff.org/medicare/issue-brief/explaining-the-prescription-drug-provisions-in-the-inflation-reduction-act/>.

<sup>35</sup> “FTC, HHS Seek Public Comment on Generic Drug Shortages and Competition Amongst Powerful Middlemen,” HHS, Feb. 14, 2024, <https://www.hhs.gov/about/news/2024/02/14/ftc-hhs-seek-public-comment-generic-drug-shortages-competition-amongst-powerful-middlemen.html>.

sued the Big Three in September 2024 for engaging in an illegal rebate scheme to artificially inflate insulin prices.<sup>36</sup>

**Solutions:** Trump rightly targeted PBMs' exemption from the anti-kickback statute during his first term. Since being re-elected, he has reaffirmed his commitment to PBM reform.<sup>37</sup> Makary, Trump's nominee to lead the FDA, is also a critic of PBMs and GPOs who supports repealing the exemption and prohibiting anticompetitive business practices, including sole-source and exclusive contracting.<sup>38</sup> The second Trump administration should complete its overhaul of these middlemen's extractive business model. By restoring PBMs, GPOs, and wholesalers to purely clerical roles, the administration can address several problems, including the unaffordable costs of prescription drugs, the pharmacy closure epidemic, persistent drug and supplies shortages, and patient steering.

- HHS should engage in rulemaking to immediately repeal the anti-kickback safe harbor, which allows PBMs and GPOs to engage in otherwise illegal behavior, and update the conditions of participation for Medicare to prohibit anticompetitive business practices, including price discrimination, rebates, spread pricing, self-preferencing, network discrimination, data blocking, and single-source and exclusive generic drug and medical supply contracts, all of which increase costs and hurt competition.
- The FTC should act on its February 2024 request for information — jointly issued with HHS — regarding GPOs' and wholesale drug distributors' role in persistent medical supply shortages by suing the Big Three in each market. The FTC should also scrutinize wholesalers' proposed acquisitions of specialty medical practices and block those that raise antitrust concerns.

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<sup>36</sup> "Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies," Federal Trade Commission, July 9, 2024, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/pharmacy-benefit-managers-staff-report.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf); "Specialty Generic Drugs: A Growing Profit Center for Vertically Integrated Pharmacy Benefit Managers," Federal Trade Commission, Jan. 14, 2025, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/PBM-6b-Second-Interim-Staff-Report.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/PBM-6b-Second-Interim-Staff-Report.pdf); "FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices," Federal Trade Commission, September 20, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

<sup>37</sup> "Read the full transcript: President-elect Donald Trump interviewed by 'Meet the Press' moderator Kristen Welker," *NBC News*, Dec. 8, 2024, <https://www.nbcnews.com/politics/donald-trump/trump-interview-meet-press-kristen-welker-election-president-rcna182857>.

<sup>38</sup> William E. Bruhn, Elizabeth A. Fracica, and Martin A. Makary, "Group Purchasing Organizations, Health Care Costs, and Drug Shortages," *JAMA*, Nov. 13, 2018, <https://nebula.wsimg.com/4ef1585092e05e8b7bc9b52bc1ad1155?AccessKeyId=62BC662C928C06F7384C&disposition=0&alloworigin=1>; *ibid.* at 25.

**Further reading:** AELP’s [“Why We Should Ban PBM Rebates”](#) (February 2024) and [“The Dirty Secret of Drug Shortages”](#) (October 2023)

### *(3) Provider consolidation*

**The problem:** In response to the rise of managed care, hospitals began consolidating in the 1990s to gain leverage in price negotiations with insurers.<sup>39</sup> The 2010 Affordable Care Act set off another merger frenzy, incentivizing “integration across the continuum of care” and promising efficiencies of scale.<sup>40</sup> As of 2022, nearly half of U.S. metropolitan areas had only one or two hospitals or health systems providing general inpatient care.<sup>41</sup>

For the same reasons, the physician market has also grown increasingly consolidated as independent practices were acquired in droves by hospitals and health systems; corporate conglomerates like UnitedHealth Group, now the largest employer of physicians in the country; and private equity firms.<sup>42</sup>

But, even at these extreme levels, the purported clinical and administrative benefits of corporate consolidation have yet to materialize. Instead, research shows hospital mergers and other forms of provider consolidation are associated with higher prices and worse quality of care.<sup>43</sup> There are also knock-on effects at the community level, including lower wages and employment beyond the healthcare sector and increased deaths from suicide and drug overdoses.<sup>44</sup>

### **Accomplishments:**

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<sup>39</sup> Sara Sirota, “The Harms of Hospital Mergers and How to Stop Them,” American Economic Liberties Project, April 26, 2023,

[https://www.economicliberties.us/wp-content/uploads/2023/04/Hospital\\_QuickTake-0421-002.pdf](https://www.economicliberties.us/wp-content/uploads/2023/04/Hospital_QuickTake-0421-002.pdf).

<sup>40</sup> Robert Kocher, Ezekiel Emanuel, and Nancy-Ann DeParle, “The Affordable Care Act and the Future of Clinical Medicine: The Opportunities and Challenges,” *Annals of Internal Medicine*, October 19, 2010, <https://www.acpjournals.org/doi/10.7326/0003-4819-153-8-201010190-00274>.

<sup>41</sup> “Nearly Half of Metro Areas Have Only One or Two Hospitals or Health Systems Providing Inpatient Care,” KFF, October 1, 2024, <https://www.kff.org/health-costs/press-release/nearly-half-of-metro-areas-have-only-one-or-two-hospitals-or-health-systems-providing-inpatient-care/>.

<sup>42</sup> *Ibid.* at 6.

<sup>43</sup> Zachary Levinson et al., “Ten Things to Know About Consolidation in Health Care Provider Markets,” *KFF Health News*, April 19, 2024, <https://www.kff.org/health-costs/issue-brief/ten-things-to-know-about-consolidation-in-health-care-provider-markets/>; Cheryl Damberg, “Health Care Consolidation: The Changing Landscape of the U.S. Health Care System,” RAND Corporation, May 17, 2023, [https://www.rand.org/content/dam/rand/pubs/testimonies/CTA2700/CTA2770-1/RAND\\_CTA2770-1.pdf](https://www.rand.org/content/dam/rand/pubs/testimonies/CTA2700/CTA2770-1/RAND_CTA2770-1.pdf); Elena Prager and Matt Schmitt, “Employer Consolidation and Wages: Evidence from Hospitals,” *American Economic Review*, February 2021, <https://www.aeaweb.org/articles?id=10.1257/aer.20190690>.

<sup>44</sup> Zarek Brot-Goldberg et al., “Who Pays for Rising Health Care Prices? Evidence from Hospital Mergers,” National Bureau of Research, June 2024, <https://www.nber.org/papers/w32613>.

### *First Trump administration*

- In November 2019, the Centers for Medicare & Medicaid Services (CMS) finalized new rules requiring hospitals to publicly post their cash-pay prices for common services.<sup>45</sup> However, a February 2024 report found that barely one third of hospitals are fully compliant with the rule; others have posted the required information in a format that is not meaningfully comparable with other hospitals, leaving patients unable to shop around for the best deal.<sup>46</sup>
- In December 2020, Congress passed and Trump signed into law the bipartisan No Surprises Act, which prevents insurers from charging patients out-of-network rates for care under certain conditions.<sup>47</sup> The law has protected millions of patients from surprise medical bills but also ushered in a complicated arbitration process when insurers and out-of-network providers cannot agree upon a fair payment.<sup>48</sup>

### *Biden administration*

- In September 2023, the FTC sued U.S. Anesthesia Partners, Texas' dominant anesthesia services provider, and its private equity founder, Welsh, Carson, Anderson & Stowe, alleging that the pair had engaged in an illegal, decade-long acquisitions spree to foreclose competition and gouge consumers.<sup>49</sup>
- In July 2024, the DOJ Antitrust Division negotiated a nearly \$34.5 million settlement with DaVita — which, along with Fresenius Medical Care, controls 92% of the dialysis market — to resolve allegations that the company had paid illegal kickbacks to physicians to induce patient referrals to its dialysis centers.<sup>50</sup>

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<sup>45</sup> “Trump Administration Announces Historic Price Transparency Requirements to Increase Competition and Lower Healthcare Costs for All Americans,” CMS, Nov. 15, 2019, <https://www.cms.gov/newsroom/press-releases/trump-administration-announces-historic-price-transparency-requirements-increase-competition-and>.

<sup>46</sup> “Sixth Semi-Annual Hospital Price Transparency Report,” PatientRightsAdvocate.org, February 2024, <https://www.patientrightsadvocate.org/semi-annual-report-feb2024>.

<sup>47</sup> Krutika Amin, Rakesh Singh, Kaye Pestaina, and Cynthia Cox, “How has the federal process for surprise medical billing disputes performed?” Peterson-KFF Health System Tracker, Nov. 2, 2023, <https://www.healthsystemtracker.org/brief/surprise-billing-disputes-year-one/>.

<sup>48</sup> Elisabeth Rosenthal, “The No Surprises Act Comes With Some Surprises,” *KFF Health News*, Feb. 14, 2024, <https://kffhealthnews.org/news/article/health-202-no-surprises-act-rosenthal/#:~:text=First%2C%20it's%20important%20to%20note.attempt%20to%20stay%20in%20network>.

<sup>49</sup> “FTC Challenges Private Equity Firm’s Scheme to Suppress Competition in Anesthesiology Practices Across Texas,” Federal Trade Commission, 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>.

<sup>50</sup> Sam Baker, “The U.S. health care system is full of monopolies,” *Axios*, June 10, 2019, <https://www.axios.com/2019/06/10/health-care-costs-monopolies-competition-hospitals>; Josh Sisco, “Feds

- In January 2025, the Consumer Financial Protection Bureau finalized a rule prohibiting the inclusion of medical debt, which is often error-ridden and inflated by overbilling, on consumer credit reports.<sup>51</sup> Since blocked, the rule would have fundamentally changed how medical expenses impact creditworthiness and ensured that consumers are not wrongly penalized for accessing care.<sup>52</sup>

**Solutions:** Trump and his HHS nominees — including Kennedy and Dr. Mehmet Oz, tapped to lead CMS — have committed to cutting waste and fraud in federal healthcare programs.<sup>53</sup> Inpatient care is the largest driver of healthcare spending; as a result, reforming how inpatient care is priced should be a priority for the incoming administration.<sup>54</sup>

- HHS should issue rules that require healthcare facilities to disclose ownership and test models that cap and standardize prices in consolidated markets to prevent large hospitals and other facilities from gouging patients and payers.

**Further reading:** [“The Harms of Hospital Mergers and How to Stop Them”](#) by Sara Sirota (April 2023)

#### (4) Workforce shortages

**The problem:** Astronomical healthcare costs have not trickled down to the workforce, as evidenced by significant shortages exacerbated by the COVID-19 pandemic.<sup>55</sup>

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tackle dialysis giants with antitrust probe,” *Politico*, July 13, 2024,

<https://www.politico.com/news/2024/07/13/feds-dialysis-giants-antitrust-probe-00167857>.

<sup>51</sup> “CFPB Finalizes Rule to Remove Medical Bills from Credit Reports,” Consumer Financial Protection Bureau, Jan. 7, 2025,

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-remove-medical-bills-from-credit-reports/>.

<sup>52</sup> Kate Berry, “CFPB agrees to temporarily halt medical debt rule,” *American Banker*, Feb. 7, 2025,

<https://www.americanbanker.com/news/cfpb-agrees-to-temporarily-halt-medical-debt-rule>.

<sup>53</sup> Ibid. at 7; Mehmet Oz (@DrOz), “I am honored to be nominated by @realDonaldTrump to lead CMS...” X, Nov. 19, 2024, <https://x.com/DrOz/status/1859006932344074610>.

<sup>54</sup> Emma Wager, Shameek Rakshit, and Cynthia Cox, “What drives health spending in the U.S. compared to other countries?” Peterson-KFF Health System Tracker, August 2, 2024,

<https://www.healthsystemtracker.org/brief/what-drives-health-spending-in-the-u-s-compared-to-other-countries/#:~:text=While%20it%20is%20true%20that,U.S.'s%20higher%20health%20spending>.

<sup>55</sup> Alejandra O’Connell-Domenech, “The US is suffering a healthcare worker shortage. Experts fear it will only get worse.” *The Hill*, September 28, 2023,

<https://thehill.com/changing-america/well-being/prevention-cures/4225960-the-us-is-suffering-a-healthcare-worker-shortage-experts-fear-it-will-only-get-worse/>; Imani Telesford et al., “What are the recent trends in health sector employment?” Peterson-KFF Health System Tracker, March 27, 2024,

<https://www.healthsystemtracker.org/chart-collection/what-are-the-recent-trends-health-sector-employment/#Cumulative%20%20change%20in%20health%20sector%20and%20non-health%20sector%20employment.%20January%201990%20-%20February%202024>.



Primary care physicians are in especially short supply, with the Association of American Medical Colleges projecting a shortage of up to 48,000 by 2034.<sup>56</sup>

## Accomplishments

### *First Trump administration*

- In response to the COVID-19 pandemic, CMS expanded coverage of telehealth care in federal programs, with a focus on rural areas.<sup>57</sup> CMS also tested a value-based payment model for rural healthcare providers that sought to improve patient outcomes, reduce Medicare and Medicaid spending, and ensure participating providers' financial sustainability; the model began in 2021 and ended in 2023, partly due to lack of participation.<sup>58</sup>

### *Biden administration*

- In April 2024, the FTC finalized a rule banning noncompete agreements, which prohibit workers — including doctors, nurses, and other healthcare professionals — from changing jobs or leveraging their freedom to work elsewhere to win better pay, benefits, and working conditions.<sup>59</sup> The FTC estimates the rule will increase average worker earnings by \$525 per year and lower healthcare costs by up to \$194 billion over the next decade.<sup>60</sup>
- That same month, HHS established minimum nurse staffing standards for long-term care facilities, including nursing homes.<sup>61</sup>

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<sup>56</sup> Andis Robeznieks, "Doctor shortages are here – and they'll get worse if we don't act fast," American Medical Association, April 13, 2022, <https://www.ama-assn.org/practice-management/sustainability/doctor-shortages-are-here-and-they-ll-get-worse-if-we-don-t-act>.

<sup>57</sup> "Healthcare," Trump White House Archives, accessed Jan. 9, 2025, <https://trumpwhitehouse.archives.gov/issues/healthcare/>; Tricia Neuman et al., "President Trump's Record on Health Care," KFF, Sept. 14, 2020, <https://www.kff.org/report-section/president-trumps-record-on-health-care-issue-brief/>.

<sup>58</sup> Ibid.; "CHART Model," CMS, accessed Jan. 9, 2025, <https://www.cms.gov/priorities/innovation/innovation-models/chart-model>.

<sup>59</sup> Erik Peinert, "Tools to Challenge Big Medicine: A Guide for State Lawmakers," American Economic Liberties Project, October 2023, <http://www.economicliberties.us/wp-content/uploads/2023/10/Tools-to-Challenge-Big-Medicine.pdf>.

<sup>60</sup> "FTC Announces Rule Banning Noncompetes," Federal Trade Commission, April 23, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.

<sup>61</sup> "Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Final Rule (CMS 3442-F)," Centers for Medicare & Medicaid Services, April 22, 2024, <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicare-programs-minimum-staffing-standards-long-term-care-facilities-and-medicare-0>.

**Solutions:** Trump’s presidential platform included a commitment to “protect seniors,” including by “overturn[ing] disincentives that lead to Care Worker shortages.”<sup>62</sup> Meanwhile, Kennedy is reportedly considering changing how Medicare reimburses physicians, including resolving the disparities between primary and specialty care.<sup>63</sup> Doing so should be a key component in a new industrial policy agenda for health care that emphasizes labor by ensuring clinician supply meets patient demand.

- HHS should expand the FTC’s ban on noncompete agreements to include nonprofit employees and physicians who hold equity in medical practices; ban nondisclosure agreements, which employers similarly use to keep wages low and limit worker mobility; and expand its minimum staffing ratio rules to other healthcare professionals and settings. In addition, CMS should establish an expert advisory panel to guide Medicare physician reimbursement rates. This panel would replace the American Medical Association’s RVS Value Committee (RUC), a specialist-dominated offshoot of the physician lobby that has inflated the relative value of specialty services compared with primary care services.<sup>64</sup>

**Further reading:** [“Written Comments from AELP”](#) in response to the DOJ, HHS, and FTC’s joint request for information on consolidation in health care markets (June 2024)

#### *(5) Vertical integration*

**The problem:** Federal health policy, including the shift toward value-based financing and privatization in Medicare and Medicaid, have spurred a new wave of vertical integration along the healthcare supply chain.<sup>65</sup>

Major insurers — including UnitedHealth Group, CVS Health, and Humana — are acquiring PBMs, pharmacies, medical practices, and post-acute care providers, among others.<sup>66</sup> The largest wholesale drug distributors, another type of prescription drug middleman, are pursuing the same strategy, buying up specialty physician practices.<sup>67</sup>

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<sup>62</sup> Ibid. at 7.

<sup>63</sup> Dan Diamond, “RFK Jr. weighs major changes to how Medicare pays physicians,” *The Washington Post*, Nov. 21, 2024, <https://www.washingtonpost.com/health/2024/11/21/rfk-physician-payments/>.

<sup>64</sup> Hayden Rooke-Ley, “Medicare Advantage and Vertical Consolidation in Health Care,” American Economic Liberties Project, April 2024, <https://www.economicliberties.us/wp-content/uploads/2024/04/Medicare-Advantage-AELP.pdf>.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid. at 64.

<sup>67</sup> “Antitrust Enforcers Must Crack Down on Big Wholesaler Acquisitions and Protect Patients,” AELP, Nov. 21, 2024, Bisma Sayed et al., “Insulin Affordability and the Inflation Reduction Act: Medicare Beneficiary Savings by State and Demographics,” Assistant Secretary for Planning and Evaluation Office of Health Policy, January 24, 2023, <https://aspe.hhs.gov/sites/default/files/documents/bd5568fa0e8a59c2225b2e0b93d5ae5b/aspe-insulin-affordability-datapoint.pdf>.

The resulting conglomerates dictate which physicians patients can see, which medications physicians can prescribe to them, and which health plans patients can enroll in them.<sup>68</sup> By coordinating across lines of business, they also squeeze independent practices and pharmacies out of business, shuffle money between subsidiaries, and skirt regulations.<sup>69</sup>

Medicare Advantage epitomizes the problem of vertical integration and its attendant harms, waste and fraud.<sup>70</sup>

## **Accomplishments**

### *First Trump administration*

- In 2018, CMS finalized a rule extending site-neutral Medicare payments to clinic visits regardless of whether they occurred in a hospital outpatient setting or a physician office. Previously, hospitals received higher payments, incentivizing them to acquire physician practices and driving up costs to patients and taxpayers.<sup>71</sup>

### *Biden administration*

- The FTC has blocked or forced the abandonment of several harmful healthcare mergers, including unwinding the Illumina-GRAIL merger, which would have created a monopoly over cancer screening tests, in December 2023.<sup>72</sup>
- The DOJ Antitrust Division similarly forced UnitedHealth Group to abandon its proposed acquisition of the nine-state physician network Steward Health in June

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<sup>68</sup> Ibid. at 64.

<sup>69</sup> Ibid. at 64.

<sup>70</sup> Ibid. at 64.

<sup>71</sup> Ibid. at 57; “CMS finalizes Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System changes for 2019 (CMS-1695-FC),” CMS, Nov. 2, 2018, <https://www.cms.gov/newsroom/fact-sheets/cms-finalizes-medicare-hospital-outpatient-prospective-payment-system-and-ambulatory-surgical-center#:~:text=On%20November%202%2C%202018%2C%20the.more%20affordable%20choices%20and%20options>; Zachary Levinson, Tricia Neuman, and Scott Hulver, “Five Things to Know About Medicare Site-Neutral Payment Reform,” KFF, June 14, 2024, <https://www.kff.org/medicare/issue-brief/five-things-to-know-about-medicare-site-neutral-payment-reforms/>.

<sup>72</sup> Harris Meyer, “Biden’s FTC Has Blocked 4 Hospital Mergers and Is Poised to Thwart More Consolidation Attempts,” *KFF Health News*, July 18, 2022, <https://kffhealthnews.org/news/article/biden-ftc-block-hospital-mergers-antitrust/>; “FTC Orders Illumina to Divest Cancer Detection Test Maker GRAIL to Protect Competition in Life-Saving Technology Market,” Federal Trade Commission, April 3, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-orders-illumina-divest-cancer-detection-test-maker-grail-protect-competition-life-saving>.

2024, following antitrust scrutiny.<sup>73</sup> In November 2024, the DOJ Antitrust Division also sued UnitedHealth Group to block its proposed acquisition of Amedisys, one of the nation's largest home health and hospice care providers, in a case that is still pending.<sup>74</sup> Most recently, the DOJ reportedly launched a civil fraud investigation into UnitedHealth Group's Medicare Advantage billing practices.<sup>75</sup>

**Solutions:** Trump campaigned on strengthening Medicare and eliminating waste and fraud.<sup>76</sup> By ending the massive over-subsidization of Medicare Advantage, reversing the shift to value-based care, and investing the resulting savings in traditional, fee-for-service Medicare, his second administration can accomplish both.<sup>77</sup> However, if the administration instead pursues Medicare Advantage for All, a policy endorsed by Oz, then it will break its promises to voters and exacerbate the problems it purports to want to solve.

- Barring federal legislation to end Medicare Advantage, HHS should further reduce risk-adjustment payments, which incentivize upcoding, to private Medicare Advantage plans.<sup>78</sup> Doing so would save the federal government more than \$50 billion annually, which should be reinvested in traditional Medicare, strengthening the program for generations to come.<sup>79</sup> HHS should also:
  - Prohibit private Medicare Advantage plans from engaging in price discrimination, self-preferencing, network exclusions, patient steering, and other anticompetitive business practices.
  - Increase the medical loss ratio, a federal rule that is intended to minimize administrative costs and maximize spending on medical care. Instead, the

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<sup>73</sup> "UnitedHealth Group Abandons Two Acquisitions Following Antitrust Division Scrutiny," U.S. Department of Justice, July 25, 2024, <https://www.justice.gov/opa/pr/unitedhealth-group-abandons-two-acquisitions-following-antitrust-division-scrutiny>.

<sup>74</sup> "Justice Department Sues to Block UnitedHealth Group's Acquisition of Home Health and Hospice Provider Amedisys," U.S. Department of Justice, Nov. 12, 2024, <https://www.justice.gov/opa/pr/justice-department-sues-block-unitedhealth-groups-acquisition-home-health-and-hospice>.

<sup>75</sup> Christopher Weaver and Anna Wilde Matthews, "DOJ Investigates Medicare Billing Practices at UnitedHealth," *The Wall Street Journal*, Feb. 21, 2025, <https://www.wsj.com/health/healthcare/unitedhealth-medicare-doj-diagnosis-investigation-66b9f1db>.

<sup>76</sup> *Ibid.* at 7.

<sup>77</sup> Hayden Rooke-Ley and Andrew M. Ryan, "A New Medicare Agenda — Moving Beyond Value-Based Payment and the Managed Care Paradigm," *JAMA*, Feb. 20, 2025, <https://jamanetwork.com/journals/jama/article-abstract/2830677>.

<sup>78</sup> Christopher Weaver, Anna Wilde Matthews, and Tom McGinty, "UnitedHealth's Army of Doctors Helped It Collect Billions More From Medicare," *The Wall Street Journal*, Dec. 29, 2024, <https://www.wsj.com/health/healthcare/unitedhealth-medicare-payments-doctors-c2a343db>.

<sup>79</sup> "Our Payment Their Profits," Physicians for a National Health Program, October 4, 2023, [https://pnhp.org/system/assets/uploads/2023/09/MAOverpaymentReport\\_Final.pdf](https://pnhp.org/system/assets/uploads/2023/09/MAOverpaymentReport_Final.pdf).

current ratio incentivizes private payers to integrate with providers and pharmacies, which they then overpay, circumventing this requirement.

- o Require such plans to advertise truthfully, including informing patients of their stricter prior authorization requirements and narrower networks relative to traditional Medicare.
- The DOJ Antitrust Division’s Task Force on Health Care Monopolies and Collusion should sue UnitedHealth Group for monopolization and other anticompetitive business tactics.<sup>80</sup>
- Given the leading role antitrust enforcers have played in investigating and addressing the root causes of America’s healthcare crisis, the second Trump administration and Secretary Kennedy should include the chair of the FTC and the assistant attorney general for the DOJ Antitrust Division as permanent members of the Make America Healthy Again Commission.<sup>81</sup>

**Further reading:** [“Medicare Advantage and Vertical Consolidation in Health Care”](#) (April 2024) and [“A New Medicare Agenda — Moving Beyond Value-Based Payment and the Managed Care Paradigm”](#) by AELP’s Hayden Rooke-Ley (April 2024)

## Conclusion

The second Trump administration can build on recent efforts to reform the U.S. healthcare system by keeping its promises to root out waste, fraud, and inefficiency — including in the private sector. Alongside congressional action, the above policy recommendations are essential for making this system healthy again.

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<sup>80</sup> “Assistant Attorney Jonathan Kanter Announces Task Force on Health Care Monopolies and Collusion,” U.S. Department of Justice, May 9, 2024, <https://www.justice.gov/opa/pr/assistant-attorney-general-jonathan-kanter-announces-task-force-health-care-monopolies-and>.

<sup>81</sup> “A Serious MAHA Commission Must Include FTC, DOJ Antitrust,” AELP, Feb. 14, 2025, <https://www.economicliberties.us/press-release/a-serious-maha-commission-must-include-ftc-doj-antitrust/>.