

United Health Care Accused of Using Market Power for Financial Gain, Impeding Provider Competition in Texas and Colorado

This month in Litigation and Enforcement Highlights, we dive into a pair of healthcare antitrust lawsuits that is making the headlines. In late March, a group of doctors sued United Healthcare Insurance in Colorado and Texas in state courts, alleging the insurance giant violated state antitrust laws. Plaintiffs U.S. Anesthesia Partners (USAP) is a physician practice group made of anesthesiologists who practice in nine states. In the complaints, they claimed that United Healthcare used its market power to “squeeze” the group out of its insurance network and the marketplace for its own financial gains. Specifically, USAP alleged that United Healthcare bribed and used financial penalties to force in-network providers to refer patients to other anesthesiologists and avoid USAP.

The Texas lawsuit, filed in Dallas County, alleges United Healthcare engaged in unreasonable and unlawful restraint of trade in violation of the Texas Free Enterprise and Antitrust Act of 1983. The complaint claims that United Healthcare used an unlawful scheme to force USAP Texas out of its insurance network that includes:

1. bribing in-network surgeons with 50% more compensation to steer patients away from USAP;
2. imposing penalties on healthcare facilities to force them to stop using USAP; and
3. coordinating and conspiring with USAP’s competitors, many of them physician groups that are affiliated with United via Optum, to pressure surgeons to refer cases toward specific anesthesia providers and away from USAP to drive it out of market.

In a similar vein, the USAP lawsuit filed in Denver County of Colorado claims United

Health engaged in an unlawful scheme to eliminate USAP Colorado from its network, in violation the Colorado Antitrust Act of 1992. The lawsuit specifically alleges United engaged in unlawful conduct constituting, among other actions, unreasonable and unlawful restraint of trade, including:

1. providing surgeons in-network with 50% more compensation to induce them to steer patients away from USAP;
2. penalizing and forcing healthcare facilities and hospitals to stop using USAP;
3. providing inaccurate information about USAP to patients; and
4. initiating a group boycott of USAP with competitor anesthesiologists (including Optum affiliates) to pressure surgeons to drive referrals to these competitors and away from USAP.

The Colorado lawsuit also claims that by eliminating USAP from its network to increase its own profits, United is abusing the Colorado Medical Transparency Act of 2010,[\[1\]](#) which protects patients against balance billing. USAP Colorado claims that United improperly used its extraordinary resources to intentionally target USAP and force it out of network, resulting in balance billing from USAP anesthesiologists, to the detriment of the patients.

In both cases, the complaint describes how United Healthcare used and abused the “collective behemoth strength” of its insurance and healthcare service divisions for its own financial benefits.[\[2\]](#) In addition to its health insurance business, United Health Group (UHG), the parent company of United Healthcare, also owns large physician practices including OptumCare and Sound Physicians via its subsidiary Optum. These affiliates are forced to either sever their relationships with USAP or compete directly with USAP. As such, the complaints very vividly depict United as squeezing USAP from all angles, like a “boa constrictor.” The Texas lawsuit further accuses United of extending its “tentacles into virtually every aspect of healthcare, allowing United to squeeze, choke, and crush any market participant that stands in the way of United’s increased profits.”[\[3\]](#) USAP Colorado also claims that the 50% increased compensation made to steer patients away from USAP are “intended solely to force USAP-CO into an economically precarious position, increasing United’s bargaining leverage against USAP-CO, and furthering United’s efforts to drive reimbursement for physician services below competitive levels.” As a result,

the less United reimburses the providers, the more United can benefit financially from the insurance premiums.

The lawsuits also point out that the actions of United in both cases harmed and reduced competition in general, to the detriment of both patients and healthcare providers. Not only does United pocket the benefits from lower reimbursement and not pass the difference down to patients to decrease their healthcare costs, but patients also suffer by losing access to high-quality anesthesia providers like USAP and end up paying more out-of-pocket as USAP is forced out of network.

United Health released statements in response to the lawsuits, claiming they are merely a distraction tactic by USAP for rate negotiation. United claims that USAP has higher median rates compared to other anesthesiology groups (double in Texas and 70% higher in Colorado) and the lawsuits are “just the latest example of the group’s efforts to pressure us into agreeing to its rate demands and to distract from the real reason that it no longer participates in our network.”[\[4\]](#)

This pair of lawsuits may bring increased scrutiny to parent company United Health Group’s proposed acquisition of Change Healthcare, a healthcare technology company, into UHG’s Optum subsidiary. Even before these cases made the headlines, the Department of Justice (DOJ) was looking into the merger for potential antitrust concerns. In a [letter to the DOJ](#), the American Medical Association warned the merger could lead to consolidation of healthcare data and reduce competition for the sale of health IT services to hospitals and providers, for which Optum is also a major competitor. If the acquisition is approved, it would no doubt add to the behemoth power of United Health Group, as detailed in these lawsuits.

[\[1\]](#) C.R.S. § 12-30-113.

[\[2\]](#) Plaintiff U.S. Anesthesia Partners of Colorado, Inc.’s Complaint Against Defendants UnitedHealthcare Insurance Company, UnitedHealthcare Of Colorado, Inc., And PacifiCare of Colorado, Inc.

[3] Plaintiff's Original Complaint, U.S. Anesthesia Partners of Texas, P.A. v. United Healthcare Insurance.

[4] Reed Abelson, *Doctors Accuse UnitedHealthcare of Stifling Competition*, New York Times (April 1, 2021).