

# United Health Subsidiary Optum Sued for Anticompetitive Practices in Federal Lawsuit

Research indicates that concentrating control of healthcare providers and facilities into a handful of massive health systems leads to higher healthcare costs, without improving quality of care. There are often limited possibilities available for smaller marketplace participants who are attempting to compete with the giants in the field, especially when the giants engage in unfair business practices.

On November 20, 2023, Emanate Health filed an antitrust with the US District Court for the Central District of California. The complaint alleges that Optum engaged in unfair and unlawful business practices and anticompetitive practices to monopolize care in the local market, adversely impacting Emanate's ability to compete, causing a decline in revenue for Emanate.

## **Parties to the case:**

Plaintiff Emanate Health is a nonprofit group of hospitals and physicians providing care in the San Gabriel Valley in California. Defendant Optum, a subsidiary of UnitedHealth Group, is a healthcare services provider that includes technology services, a pharmacy benefit manager, and direct healthcare services. UnitedHealth is the largest health insurer in America, based on revenue, but some observers believe that the Optum division directly providing healthcare services represents a greater avenue for profit for UnitedHealth than insurance coverage. As the largest employer of physicians in the United States, Optum has been aggressively acquiring healthcare service groups in recent years, adding nearly 20,000

physicians in 2023, taking its total to nearly 90,000 employed or affiliated physicians nationwide. Additionally, according to the filing, Optum Health Plan of California's market share in Medicare Advantage HMO and Commercial HMO enrollees is close to, or exceeds, fifty percent (50%) in the area where Emanate's patients reside.

### **Anticompetitive allegations in the suit:**

[The lawsuit alleges](#) that Optum acted to eliminate Emanate from the local primary care physician market, and to monopolize that market (a violation of Section 2 of the Sherman Act) through unlawful and anti-competitive means, including threatening cancellation of Hospital Service Agreements with Emanate facilities, unless Emanate agreed to new, coercive, anti-competitive terms. Proposed terms included a requirement that Emanate would not solicit any of Optum's independent physician association participating providers, and if any physician affiliated with Optum Health Plan of California wanted to sell their practice, Optum would have the first privilege to purchase.

### **Alleged unlawful business practices against providers:**

Emanate contends Optum intimidated doctors who want to leave Optum to go to competing medical groups by using unlawful restrictions in the physicians' contracts, and by threatening the physicians and competitors with legal action if the doctors moved to Optum's competitors. Specifically, Emanate claims that Optum contracts with primary care physicians include post-employment non-competition and non-solicitation covenants, preventing providers from working for competing provider networks or health systems. Emanate states these post-employment restrictive covenants are void and unenforceable under California law.

## **Alleged unlawful and unfair business practices:**

The suit also claims that Optum engaged in a concerted effort to prevent patients from contacting their doctors who chose to leave Optum to join competing medical groups. Specifically, Emanate claims that Optum transferred the patients to other Optum physicians without informing them of their treating physicians' departure, lied to the patients who called about where their doctors had gone (claiming that their physicians had either retired or gone on vacation), and instructed Optum's remaining personnel not to reveal to patients where the departed doctors could be found. The complaint also claims that Optum disciplined employees for truthfully responding to inquiries as to why patients were no longer being treated by former Optum providers, and where the provider had moved. The suit claims at least one employee was terminated for truthfully responding to such a patient inquiry. Emanate also contends that Optum failed to comply with continuity of care requirements imposed by the state of California and Medicare by steering patients away from Emanate facilities to geographically remote facilities, including for emergency services.

## **In context:**

Optum has a history of aggressively acquiring healthcare services to increase market power. have been previously accused of using that market power to impede provider competition for financial gain. In March of 2021, a physician group [sued United Healthcare Insurance in Colorado and Texas in state courts](#), alleging the insurance giant violated state antitrust laws, claiming that United Healthcare used its market power to "squeeze" the group out of its insurance network and the marketplace for United's own financial gains. In February 2022, the Department of Justice (DOJ), along with attorneys general of New York and Minnesota, [filed a lawsuit in federal court](#)

attempting (although ultimately failing) to block a merger between UnitedHealth Group and Change Healthcare claiming that it would limit competition and innovation in claims processing technology and would give UnitedHealth Group access to healthcare data of competitor insurers and an unfair advantage in health insurance markets. A successful action by Emanate, which has asked for a jury trial, could be encouraging for other small systems attempting to find ways to compete with Optum and other mammoth healthcare systems. The Source will be closely tracking the litigation and be sure to bring the latest developments and analysis in this case.