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Health Care Antitrust Weekly: Hackers Create Headaches for McKesson and CVS; Boehringer Ingelheim Sued for Allegedly Delaying Generic Inhaler Competition with Improper Patents; USACS, UMD Emergency Medicine Contract Draws Scrutiny; Change Healthcare Updates

McKesson and CVS named in report on Adderall, opioid prescription scheme. Criminals are hacking into digital prescription systems to order and then illegally pick up controlled substances, including Adderall and opioids, before reselling those drugs for a profit, as 404 Media recently reported in collaboration with *The Capitol Forum*.

Criminals filled a fraudulent prescription at a pharmacy owned by CVS (CVS), the parent company of one of the “Big Three” pharmacy benefit managers and a major retail pharmacy chain, and hackers appear to have compromised McKesson (MCK), one of the “Big Three” drug wholesalers, among other companies in the drug supply chain.

When contacted for comment on how this scheme could impact its business, CVS pointed to the statement it previously provided to 404 Media: “We are aware of activity that can occur outside of our systems that may result in the transmission of potential forged prescriptions to our pharmacies. We continue to work both internally and with partners in the health care industry on methods to identify and stop such prescriptions.”

McKesson did not respond to a request for comment on how the hack might affect its business and whether its market share renders it more vulnerable to such attacks.

Invitation to Conference Call: How Hackers Dox Doctors to Order Mountains of Oxy and Adderall on March 15 at 11 am ET. To get even better context around how hackers are causing headaches for big businesses in the pharmaceutical supply chain and also in the financial services space, we’re going to chat with the author of the story, Joseph Cox.

- Friday, March 15 at 11:00 a.m. ET
- Click here to RSVP and receive the link.
- If you need assistance accessing the link, please email info@thecapitolforum-news.com.

Boehringer Ingelheim faces lawsuit from private plaintiffs over allegedly unlawful Orange Book listings. Boehringer Ingelheim, one of the asthma inhaler makers whose patent listings in the FDA’s Orange Book were targeted by the FTC late last year, now faces a private antitrust lawsuit claiming that the company used those same patents to unlawfully delay generic competition.

According to the complaint, filed March 6 by the Massachusetts Laborers' Health & Welfare Fund, Boehringer Ingelheim "wrongfully acquired, locked in, and exploited monopoly power [in] two markets: (i) the Combivent Respimat Relevant Market and (ii) the Spiriva Respimat Relevant Market." By "improperly stuff[ing] the Orange Book with sixteen device patents," Boehringer retained "unconscionably long exclusivity periods, far in excess of what the FDA ever envisioned."

The private plaintiffs suit comes after a *Capitol Forum* investigation predicted the German drugmaker faced enhanced legal risks over improper patent listings in the FDA's Orange Book. At the time, *Capitol Forum*'s reporting noted how all Boehringer Ingelheim's patents for Combivent Respimat and Spiriva Respimat that were challenged by the FTC as improper, were the same patents which were the source of litigation Boehringer Ingelheim filed against an aspiring generic competitor, Anobri Pharmaceuticals U.S.

The lead law firm representing the Massachusetts Laborers' Health & Welfare Fund did not respond to a request for comment.

"Boehringer Ingelheim is aware of this filing and is in the process of reviewing it," a company spokesperson told *The Capitol Forum*. "We stand by our patents and our adherence to FDA guidelines. We remain focused on innovating and expanding access to breakthrough therapies for patients in areas of unmet medical need to improve the lives of patients in the U.S. and throughout the world."

USACS enters emergency medicine contract with UMD sites, raising concerns about corporate influence. Emergency departments included in the University of Maryland's community health system have signed a contract with US Acute Care Solutions (USACS), a private equity-founded company that offers hospital management services to emergency medicine departments. Critics who oppose the corporate practice of medicine (CPOM) are concerned about how the deal will affect staffing, physician pay and patient care at UMD's emergency departments.

"These organizations, they're profit-driven organizations, so they're going to do what they can to increase their profits," Dr. Mike Murphy, an emergency physician based in Salisbury, Maryland who is not affiliated with UMD, told *The Capitol Forum*. "If that includes cutting staffing, cutting payments, cutting benefits, that's what they'll do if they can increase their profit margin. The concern, any time you bring one of these organizations in, it's not good for patient care, it's not good for physicians, and in the end, it's not good for community."

"There's only so many ways to make a profit in emergency medicine, and after the charges and revenue are maximized—cutting staff, altering the staff composition—that's a recognized strategy of multi-state, multi-hospital groups," Dr. Robert McNamara, chair of emergency medicine at

Temple University School of Medicine and a founding member of the American Academy of Emergency Medicine, told *The Capitol Forum.*

USACS already has significant market share in Northern Virginia and Maryland, surrounding the Washington, DC area. The company's growing market share in Maryland might curtail physicians' options, Dr. Murphy said: "If somebody at USACS says, 'I'm going to cut your pay,' and you say, 'Okay, I'm going to go to another hospital,' where's that doctor going to go?"

USACS was founded by private equity group Welsh, Carson, Anderson and Stowe in 2015. The company's physician owners bought out Welsh Carson in 2021 with support from another private equity group, Apollo Global Management (APO)—and since then, USACS has touted itself as more than 90% physician-owned. However, critics including the American Economic Liberties Project have questioned how much control physicians actually have over USACS because of the structure of Apollo's $711 million investment in USACS stock.

The private equity group can ask for its money back beginning in early 2026. If USACS can't pay Apollo back, the investment could convert into debt—or Apollo could "force the sale of the company," Moody's reported. USACS already has $725 million in debt from the Welsh Carson buyout. Apollo did not respond to a request for comment on the deal.

"When you have a lot of debt, you've got to pay it, which further raises concerns about the financial equation and how that's going to affect staffing," Dr. McNamara said.

News of the contract between USACS and UMD comes as federal antitrust enforcers and the White House take a closer look at private equity roll-ups in health care, as reported last week.

The UMD Medical System provided the following statement to *The Capitol Forum:*

"The University of Maryland Medical System is expanding its existing relationship with US Acute Care Solutions. As of July 1st, USACS will provide Emergency Department physician services at three additional UMMS member organization hospitals; the University of Maryland Shore Regional Health, the University of Maryland Upper Chesapeake Health and the University of Maryland Capital Region Health. USACS has been successfully providing Emergency Medicine care at the University of Maryland Charles Regional Medical Center for more than a decade. The largest physician-owned provider of integrated acute care medicine in the country, USACS has a demonstrated track record of excellence in patient care and operations, and they are a national leader in operating Emergency Medicine groups with more than 400 health care sites in 30 states, including 18 locations in Maryland. Over the next several weeks, USACS will begin the process of onboarding current Maryland Emergency Medicine Network providers under the terms of the new contract."

Dr. Tina Latimer, chief clinical officer for USACS, confirmed the deal and said doctors will have a say in running the affected emergency departments.

"USACS has entered into an agreement to partner with the University of Maryland Medical System to provide emergency medicine services to three community hospitals in Prince Georges County, Harford County and the Eastern shore of Maryland, and the affiliated freestanding emergency departments," Latimer told *The Capitol Forum.* "Our physician-owned group has provided emergency medicine services for one UMMS hospital for more than a decade. The UMMS physicians at the new community sites will be offered the opportunity to join our group as equity partners, without a buy-in, and as is the case with all USACS partners, will have a say in how the department is staffed, run and compensated."

Antitrust Agency Health Care Agenda

Louisiana lawmakers introduce legislation targeting sales of nonprofit insurers to for-profit insurers following failed sale of Blue Cross Blue Shield LA to Elevance Health. Last week, nola.com reported that two of the most outspoken critics of the proposed sale of BCBS LA to Elevance Health (ELV) filed separate bills remedying some of the concerns raised by stakeholders in the weeks before Elevance and BCBS LA withdrew merger plans.

State Senators Jeremy Stine and Patrick McMath's respective bills require companies to submit independent actuarial analyses to the state's Commissioner of Insurance, examining the effects on policyholders. Stine's bill additionally bars directors of an insurance company from receiving financial compensation for a sale and the solicitation of policyholder votes over the phone. All three of these areas came under scrutiny earlier this year.

Stine told nola.com, "I am a businessman and understand the need to have flexibility in running a company. But if it's a mutual company, it is member-owned and has to be fair and equitable to its mutual members, or policyholders."

McMath's bill complements Stine's. Before a company solicits policyholder votes over a sale, McMath's proposal requires the state's Department of Insurance to hold public hearings on the matter. Additionally, the Commissioner of Insurance would be empowered to review all marketing materials the company provides to its policyholders before a sale.

Blue Cross Blue Shield of Louisiana did not respond to a request for comment.

John Ford, a spokesperson for the Louisiana Department of Insurance, told *The Capitol Forum* "LDI staff administered the transaction process transparently over the past year, and we are proud of the team's diligent work. Blue Cross's decision to withdraw its application does not prevent it from refiling in the future, and it's important for the LDI to remain neutral on this issue in case it comes up again down the road. For that reason, we have no position on this legislation."

Oregon CPOM bill killed by delay despite FTC support. A bill that would have strengthened Oregon's prohibition on the corporate practice of medicine stalled in the state senate, with legislators failing to vote on the bill before the close of their 2024 session. Late last month, the FTC submitted testimony in support of the bill—specifically its ban on on-compete clauses for physicians, as previously reported.

Medical Care Market Developments

Change Healthcare cyberattack raises antitrust questions; updates on fallout for UNH. Change Healthcare, a large health technology company acquired in 2022 by UnitedHealth Group's (UNH) subsidiary Optum, was attacked by a ransomware group in late February—disrupting operations for tens of thousands of physicians and pharmacists across the country.

Change Healthcare operates an information clearinghouse, or "switching" platform, connecting providers to insurers to help process electronic prescription claims. The company said its electronic payment platform should return on March 15 and claims processing capabilities should return on March 18.

Pharmacists and competition advocates have argued that the massive shockwaves caused by the cyberattack on Change Healthcare are telling of market concentration in the pharmacy services industry and UnitedHealth Group's 'Too Big to Fail' status, as *The Capitol Forum* reported. Together, UnitedHealth Group, the nation's largest health insurer by revenue, and Change Healthcare, the largest insurance clearinghouse, account for a significant of the switching market. Modest estimates place Change Healthcare's market share at about a quarter of all claims, and the company has exclusive contracts with some payers, industry sources told *The Capitol Forum*.

At the time of UnitedHealth Group's acquisition of Change Healthcare in 2022, DOJ argued that the merger would cause both vertical and horizontal harm. Because Change proposed a divestiture of its claims-editing software on the payer side, assuaging horizontal concerns in the eyes of the court, U.S. District Judge Carl Nichols rejected DOJ's vertical case and allowed the merger to proceed. DOJ dropped its appeal of the $7.8 billion merger in favor of a broader monopolization investigation, as we reported last year.

"Antitrust law could make a greater difference in remedying this sort of problem," Thomas Willcox, an independent antitrust lawyer, told *The Capitol Forum* with reference to the Change Healthcare cyberattack. "If Congress enacted or the judiciary forged stronger rules to prevent and dismantle excessive corporate size in excess of any possible scale-efficiency justifications, such would be consistent with the historic purpose of antitrust law: protecting consumers against the reduction in consumer welfare caused by catastrophic failures."

Fallout from the Feb. 21 cyberattack continues to delay claims submissions, and the financial repercussions for providers will likely last months, sources said. The government is offering accelerated payments to Medicare-funded providers and suppliers in light of the cyberattack.

UnitedHealth Group has also rolled out a temporary funding program; the Department of Health and Human Services also published a letter March 10 urging UnitedHealthcare to expedite payments to providers, ensure ease of access to its programs, and communicate more frequently about the disruptions to Change Healthcare's service. HHS also asked other private insurers to make interim funds available to affected providers.

In the meantime, some have accused UnitedHealth Group of exploiting the cyberattack: *The American Prospect* reported that the company applied to fast-track its acquisition of The Corvallis Clinic in Oregon to keep the clinic afloat amid financial difficulties caused by the cyberattack.

UnitedHealth also faces at least six proposed class-action lawsuits related to the data breach.

A UnitedHealth Group spokesperson told *The Capitol Forum*, "We are focused on the investigation and restoring operations at Change."

M&A and Partnerships

New Mountain Capital's investment partner for potential R1 RCM takeover, began PE roll-up strategy with R1 RCM's predecessor, 9 years earlier. A recent article by Chris Deacon, a health care consultant, for the Substack newsletter Health Care un-covered details the intermingling finances between investors New Mountain (NMFC) and TCP-ASC, a joint investment vehicle between TowerBrook Capital Partners and the nonprofit Catholic hospital system Ascension.

"Ascension and TowerBrook," Deacon writes, "kicked off their formal PE strategy with an investment in a struggling and embattled debt collection company, Accretive Health [in 2016]." The struggling debt collection company had been setback by lawsuits from federal and state regulators over patient data protection and debt collection practices. By the end of 2017, Accretive was renamed R1 RCM."

"During that same acquisition period, TCP-ASC invested in an Ascension subsidiary known as TriMedx. "Started in 1998 as a small department within Ascension's St. Vincent Hospital," Deacon writes, "[TriMedx] eventually grew to become a massive health care technology management organization... Today, TriMedx serves more than 1,800 health care providers across 28 states, including all of Ascension's hospitals and related facilities."

Deacon also notes how leadership between the various investment and health care companies overlap, particularly noting Ascension's former president and CEO Anthony Tersigni, now serving as an advisor at TowerBrook and a board member for R1 RCM.

At time of writing, R1 RCM, New Mountain, and TowerBrook did not respond to requests for comment.