Biden’s top antitrust official calls for breaking up powerful health care companies

Jonathan Kanter worries ‘one or two companies’ will wield ‘massive amount of power’

Anna Moneymaker/Getty Images

By Bob Herman

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Bob Herman has been investigating how health care conglomerates wield their power for years.

The health care system has failed Americans, and government officials need to consider breaking up the powerful companies that have price-gouged patients and suppressed competition, the Biden administration’s top antitrust official told STAT.

Jonathan Kanter, former assistant attorney general at the Department of Justice, said today’s biggest health care conglomerates — many of which are anchored by health insurers — have built “platforms” like the largest technology companies. He said those platforms have created “large moats” that allow companies to extract excessive profits from consumers and taxpayers, and create an unequal playing field for smaller doctors, pharmacists, insurers, and other parties.

“We are at real risk that this sort of platformization concept will result in markets tipping throughout our entire health care system to a very small number,” Kanter told STAT in an exclusive interview. “And by very small, I mean one or two companies that have a massive amount of power and control with a small number of also-rans lingering about.”

Kanter, who left the DOJ in December after more than three years in the top spot of the agency’s antitrust division, is the highest-level official to speak out on the competitive defects within health care. President-elect Trump has nominated Gail Slater as Kanter’s replacement in the DOJ’s antitrust division.

Kanter declined to comment specifically on any company, including UnitedHealth Group, the largest health care company in America, or any pending DOJ lawsuits or investigations.

DOJ is suing to block UnitedHealth's purchase of Amedisys, a large home health and hospice company, and is separately investigating the company's market power and relationships between its insurance and provider subsidiaries. But he flagged many practices as problematic — ranging from Medicare Advantage abuses to getting around insurance regulations — that have been highlighted in STAT investigations over the past two years.

UnitedHealth owns the largest health insurer in the U.S., UnitedHealthcare, with more than 50 million members, and has also methodically amassed one of the largest collections of medical providers, exerting control over 90,000 physicians through its Optum division. The company also has dominant positions within pharmacy benefitsand the health care payments industry.

Other major insurers also have built conglomerates of their own. CVS Health owns the insurer Aetna, thousands of drugstores, and the pharmacy benefit manager Caremark. The health insurer Cigna owns the Express Scripts PBM as well as specialty pharmacies.

STAT has reported how UnitedHealth has adopted technology and restrictive policies to deny rehab care for vulnerable older adults with Medicare Advantage coverage. UnitedHealth has used its clinician empire as a means to inflate payments from taxpayer programs and steer more insurance premiums toward itself.

Consolidation has not benefited consumers. Prices and insurance premiums continue to rise at or above the rate of inflation, and local health care markets are becoming increasingly concentrated, locking out smaller players. Conflicts of interest also proliferate, as companies steer patients' care and prescriptions through a web of subsidiaries that funnel profits to a corporate parent. Kanter said "all options should be on the table" to address the behaviors of the largest companies — especially antitrust enforcement.

“Health care is this massive, complex system that I think is beguiling and overwhelming to so many people,” Kanter said. “It’s going to take a lot of work to get it on the right track. But I think antitrust is an important competition policy and is an extremely important ingredient in the recipe for how to solve it.”

Kanter’s comments to STAT build on the concern emanating from federal and state lawmakers, who worry that UnitedHealth has accumulated too much power across markets. Some, like Sen. Elizabeth Warren (D-Mass.), have specifically called for prohibitions on UnitedHealth owning competing parts of the system. Kanter’s interview also tracks with his former agency’s merger guidelines and a speech he gave in November, when he called for urgent action to address what he called the “platformization of health care.”

During that speech, he said rolling up so many disparate parts of health care into the same platform has created “perverse incentives, conflicts of interest, and opportunities for self-preferencing, steering, and self-dealing.” He didn’t mention specific companies in his speech.

Drawing parallels between the nation’s health care conglomerates and Big Tech is a newer antitrust framework. But more broadly, history may be repeating itself. Companies like Standard Oil monopolized commodities and took over markets as both a buyer and seller of goods and services. The nation’s first antitrust law, the Sherman Antitrust Act, came in response to Standard Oil’s practices.

“If you look at the creation of the antitrust laws, they were designed to deal with these trusts, which were these entities that had massive amounts of control and power throughout the economy and often had exactly these same kinds of characteristics, conflicts of interest, vertical integration,” Kanter told STAT. “Even setting aside whether there’s bad behavior going on — I’ll leave it to others to make that determination — as antitrust enforcers, as an antitrust community, as an economy, as a society, when we see those kinds of conflicts of interest, it at a minimum generates suspicion.”

Companies like UnitedHealth, which estimates it will generate at least $450 billion of revenue this year, did not grow to a gargantuan size overnight. Too often, Kanter said, antitrust policy has viewed health care

markets like a game of Tetris, where competition is only viewed as horizontal or vertical and where the only goal is to gain negotiating power over direct competitors.

"That's an outdated framework," said Kanter, whose agency sued to block UnitedHealth's takeover of Change Healthcare in 2022 but lost. "Now the concern is not that one has too much leverage over the other. It's that now they're maximizing their take rate as an intermediary across the entire continuum."

He pointed to rules surrounding how much money insurers must spend on medical care as an example of how the biggest companies have taken advantage of regulatory loopholes. The rules mandate that 80% to 85% of an insurance company's premiums, for fully insured plans, must go toward actual medical care. The remaining amount can go toward expenses and profit. But insurers can "circumvent" those regulations, known as the medical loss ratio, if they own medical providers and push members toward those options, he said.

STAT reported that UnitedHealth pays its own medical groups more than others for many common patient visits and services — which allows the company to keep more of the insurance premiums it collects from consumers and taxpayers.

"Medical loss ratio is supposed to be a constraint against the ability of an insurance company to maximize its take rate," Kanter said.

Large companies also have been able to swallow smaller companies with little to no pushback because Congress has not invested in antitrust enforcement. In 2023, DOJ's antitrust division had essentially the same number of personnel as it did in 1979. "We are extremely under-resourced, and that's against the backdrop of a massive economy and with significant issues in areas such as health care," Kanter said.

Kanter has no immediate plans for his next job, but said he intends to continue "thinking about these issues and being part of the conversation.