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Public Citizen writes today to express grave concerns about Amazon's [proposed acquisition](#) of primary health care provider One Medical. This uniquely consequential merger brings with it a troubling likelihood of widespread harm and abuse, particularly with regards to market competition, consumer data privacy, the integrity of the U.S. health care system, and worker rights.

We urge you to use your various authorities to investigate this merger thoroughly. It should not receive regulatory approval unless and until Amazon commits to robust, legally binding safeguards that protect consumers, competition, and the integrity of the health care system. If it proves impossible to design such safeguards, then the merger should not be approved.

The specific concerns we wish to raise include the merger's implications for fair competition, consumer data privacy, health care integrity, and worker rights.

1. The merger threatens to give Amazon an unfair competitive advantage in the health care market.

Although post-merger Amazon would have a relatively small share of the national health care market, there is reason to fear that it will leverage its dominant role in the online retail market to gain unfair advantage in health care delivery. [Roughly half](#) the U.S. population is currently enrolled in Amazon Prime. Amazon has a history of tying

membership in Prime, originally an annual fee shipping service, to an expanding array of services. Amazon may well try to bundle membership in Prime with One Medical. In so doing, it may both leverage its market power in the online retail market and capitalize on unique benefits that it may accrue through data-sharing arrangements not available to other competitors. That is, Amazon may be able to build in revenue streams from individuals' membership in One Medical completely distinct from the provision of health care – by, for example, targeting advertising of products related to health conditions.

Antitrust authorities should also evaluate the merger through the lens of the incipiency doctrine. If Amazon is able to tie health care services to its dominant role in online retail, will other Big Tech companies similarly act? If Amazon is able to cherry pick customers or engage in profitable manipulation of Medicare, will it push other large companies to enter the health care space and drive to harmful market consolidation?

2. Amazon may misuse patients' health data.

Amazon gathers a [vast amount of data](#) from consumers through its online marketplace, Alexa voice assistant, Kindle e-readers, Fire tablets, Audible audiobooks, Prime video and music platforms, Ring security cameras and fitness trackers. It uses this data to direct individualized advertising, including based on health status that the company is able to infer. Even prior to the One Medical merger, there was reason to worry about privacy incursions becoming worse due to Amazon acquiring health data. For example, [the company touts](#) a new initiative to “enable senior living and health care providers to integrate Alexa into their properties.” Amazon promises that it will protect consumer privacy in the process – but this is merely a promise, from a gargantuan company with a weak track record on personal privacy.

Amazon's acquisition of One Medical may portend much more troubling misuse of data that raises both privacy and antitrust concerns. The personal medical data that One Medical accumulates in its routine conduct of business would be of extraordinary value to a marketing company such as Amazon, which will have an undeniable and inherent interest in trying to gain access to that most personal of data.

Amazon has responded to such concerns with [assurances](#) that it intends to fully comply with the Health Insurance Portability and Accountability Act (HIPAA), which limits how health care providers, insurers and information managers can use private health information and requires patients to consent to any data sharing. Of course, Amazon-One Medical will be required to adhere to the law, so this assurance is not a concession.

However, there is very good reason to worry that HIPAA protections will be inadequate to prevent Amazon from vacuuming up One Medical patients' data. First,

Amazon will be well positioned to secure privacy waivers from One Medical patients, perhaps simply by offering a Prime discount. Such waivers may be intentional – but consumers may have little awareness of what they are sacrificing for modest price discounts. Second, regulators should scrutinize the possibility that Amazon may be able to secure inadvertent waivers of patients’ HIPAA protections and mandate protections against such deceptive activities. The Federal Trade Commission is [reportedly](#) investigating Amazon for use of [“dark patterns”](#) – manipulative online tactics that trick or trap consumers into subscription services. Amazon has been [accused](#) of extensive use of dark patterns, in response to which the [European Union](#) has forced Amazon to change subscription cancellation practices. Third, it is even conceivable that Amazon might position its Prime business as a “business associate” under HIPAA entitled to access One Medical data. It would be a mistake to underestimate the corporation’s ability to navigate around the law creatively.

If Amazon were able to gain access to One Medical data through legal maneuvering, discount offers, online trickery or otherwise, it would blow a hole in the wall of HIPAA protection of medical privacy – by far the most important U.S. privacy guarantee of data held by private parties – and destroy Americans’ understanding that they can speak openly to medical providers without fear that their information will be used to market to them or discriminate against them in the marketplace, workplace or society.

Amazon’s access to One Medical data would, additionally, raise concerns about unfair competitive advantage. In gaining access to private and profoundly personal medical information unavailable to other retailers, Amazon would have a major, unfair advantage over other retailers.

3. The merger may exacerbate health care inequalities.

The health care reinvention Amazon executives are imagining may significantly impact the health care market not just for Amazon-One Medical patients, but the entire country. There is a risk that this new health care entity’s focus on comparatively affluent markets (Amazon Prime members, employees of major corporations located in city centers) will be tantamount to cherry picking. With a marketing approach focused on the affluent and a business model of greater appeal to the affluent, Amazon-One Medical is likely to disproportionately serve patients with more robust baseline physical or financial health. This will leave other health care providers with sicker and less profitable patients and raise overall costs. This will likely worsen health care disparities already experienced by vulnerable populations.

4. The merger may exacerbate overbilling of Medicare.

One Medical's [10-K filings](#) with the Securities and Exchange Commission highlight that health network partnerships, where One Medical refers patients for specialty or other non-primary care (e.g., inpatient stays) not directly provided by One Medical, "comprise a significant portion of [the company's] revenue." Such contracts may encourage illness severity upcoding for the enrollees whose third-party reimbursements depend upon the vagaries of algorithmic risk-adjustment. Such [upcoding](#), which is especially common and pernicious within the Medicare Advantage program, allows those on the provider-side of the health care enterprise to capture inflated federal reimbursements for care that is rendered.

The upcoding problem is already real and pervasive within the Medicare Advantage system. The worry with Amazon's acquisition of One Medical is that it builds out a primary care network across the country that inflates Medicare payments as part of its business model.

5. The merger may undermine the quality of health care.

The merger invites the too-real possibility that Amazon's online business model can deeply erode the quality of primary health care, including preventative, acute and chronic disease management care. While some virtual visits can enhance consumer access, overly aggressive substitution of in-person medical encounters with e-visits can work directly against the proper provision for needed in-person care.

Similarly, Amazon's demand for robot-like efficiency among its employees may well conflict with the imperatives of providing quality health care. [One Medical employees](#) have already complained that the company is pushing for shorter doctor visits, less time to respond to patient concerns at the company call center and rushed schedules for laboratory employees. There is every reason to fear that Amazon's takeover will worsen, not improve, such trends.

6. The merger may undermine worker rights at One Medical.

Amazon has a well-documented hostility to workers exercising their right to form unions. The NLRB has recently found Amazon to have violated the National Labor Relations Act in union organizing drives at facilities in [Bessemer, Alabama](#) and [Staten Island, New York](#).

Controversies have also flared recently at One Medical, where workers have been trying to organize. They point to the declining quality of care issues, which involve not just issues of patient safety and well-being, but quality of work for employees. They report being rushed, pressured, stretched out and unable to deliver the quality of care they believe patients require.



Given its history, Amazon may well worsen workplace issues and interfere with workers' right to organize.

Conclusion:

We recognize that Congress and federal agencies each have different roles and powers when it comes to the proposed Amazon takeover of One Medical. Because we believe many of the issues posed by the merger are novel; because of Amazon's vast economic power and reach; because of the potential consequences of a new category of data harvesting for core privacy protections; and because of the central importance of health care in America, we urge all of you to exercise your powers to give this merger the intensive scrutiny it deserves. The risks to competition, patient privacy and the delivery of quality health are evident. This merger should not be permitted to proceed unless and until strong public interest protections are imposed that will demonstrably address all of those grave dangers.

Thank you for your consideration.

A handwritten signature in blue ink that reads "Robert Weissman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert Weissman
President, Public Citizen
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CC: Senate Judiciary Committee Chair Richard Durbin, Senate Judiciary Committee Ranking Member Chuck Grassley, Senate Subcommittee on Competition Policy, Antitrust and Consumer Rights Amy Klobuchar, Senate Subcommittee on Competition Policy, Antitrust and Consumer Rights Ranking Member Mike Lee, House Judiciary Committee Chair Jerold Nadler, House Judiciary Committee Ranking Member Jim Jordan, House Antitrust, Commercial, and Administrative Subcommittee Chair David Cicilline, House Antitrust, Commercial, and Administrative Subcommittee Ranking Member Ken Buck.