

Dr. Bezos is in: Amazon’s Acquisition of One Medical and the Implications for Primary Healthcare in the United States

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INTRODUCTION

Founded in a garage in Washington state on July 5, 1994, Amazon, once an online bookstore, has grown into one of the largest companies in the world.¹ Now worth over \$1

* MPH. I want to express my sincerest gratitude to my parents, Dimitri & Tamara Gauthier, for inspiring me to be a curious individual always in pursuit of knowledge. My aunt, Alexandra Gauthier, for inspiring my love for the law and showing me how to be a strong, unapologetic woman in this male-dominated field. And my sisters, Maya and Jen, for giving me something to look forward to at the end of these long, grueling days at the law school, knowing that they will always answer my call.

1. Colby Hopkins, *The History of Amazon and its Rise to Success*, MICH. J. OF ECON. (May 1, 2023), <https://sites.lsa.umich.edu/mje/2023/05/01/the-history-of-amazon-and-its-rise-to-success/> [<https://perma.cc/G47N-EF8Z>]; see also Lydia DePillis & Ivory Sherman, *Amazon’s Extraordinary Evolution*,

trillion as of September 2023,² Amazon's growth has been controversial for many years as it continues to acquire large corporations.³ In February 2023, Amazon acquired One Medical, a primary care organization for a whopping \$3.9 billion.⁴ This strategic move by Amazon is just another deal in the move towards privatizing health care in the United States, particularly primary care.⁵ Amazon is not the first, nor will it be the last large corporation to enter the lucrative healthcare market.⁶ A consulting company recently predicted that "nontraditional primary care providers," including corporations such as Amazon, CVS Health, and Walmart, will own up to a third of the primary care market by 2030.⁷ What are the implications for primary care? What about data privacy, especially because Amazon already has a wealth of data available to them from their Amazon Prime users? What are the antitrust implications, especially considering the recent lawsuit filed by the FTC against Amazon for unfair methods of competition?⁸ This Note addresses issues at the intersection of antitrust law, healthcare, and data privacy through an examination of Amazon's One Medical Acquisition and other recent moves that evidence Amazon's healthcare ambitions.

Amazon has a vast amount of wealth and resources at its fingertips. Amazon could change how primary care is administered in the United States and use its resources to improve our health care system. However, Amazon's involvement in recent antitrust

CNN (Feb. 3, 2021), <https://www.cnn.com/interactive/2018/10/business/amazon-history-timeline/index.html> [<https://perma.cc/32KB-KUHN>] (focusing on Amazon's history and growth in the context of business growth and profit).

2. Hopkins, *supra* note 1.

3. See George Anderson, *Controversy Persists Over Amazon's Use of Data to Favor its Knockoffs*, FORBES (Oct. 17, 2022), <https://www.forbes.com/sites/retailwire/2022/10/17/controversy-persists-over-amazons-use-of-data-to-favor-its-knockoffs/> [<https://perma.cc/YZ9L-XYLP>] (discussing a recent scandal where Amazon was exposed for promoting goods made by Amazon's brands rather than other businesses and artificially removing competition through nefarious means); Annie Palmer & Jordan Novet, *Amazon Bullies Partners and Vendors, Says Antitrust Subcommittee*, CNBC (Oct. 6, 2020), <https://www.cnbc.com/2020/10/06/amazon-bullies-partners-and-vendors-says-antitrust-subcommittee.html> [<https://perma.cc/M6HP-8MXW>] (continuing the discussion of Amazon's bad-faith methods to remove competition from their own brand by "bullying" other companies.); Lina M. Khan, Note, *Amazon's Antitrust Paradox*, 126 YALE L.J. 710 (2017) (discussing Amazon's domination of multiple markets and how our current antitrust framework is ill-equipped to handle companies with such market power).

4. Rebecca Pifer, *Amazon Closes \$3.9B Buy of One Medical*, HEALTHCARE DIVE (Feb. 22, 2023), <https://www.healthcaredive.com/news/amazon-closes-39b-buy-of-one-medical/643245/> [<https://perma.cc/DS26-F27H>]; see Press Release, Amazon, One Medical Joins Amazon to Make it Easier for People to Get and Stay Healthier (Feb. 22, 2023), <https://www.aboutamazon.com/news/company-news/one-medical-joins-amazon-to-make-it-easier-for-people-to-get-and-stay-healthier> [<https://perma.cc/PN79-27SK>] (announcing the acquisition).

5. *5 Things to Know About Amazon's Recent One Medical Acquisition*, AM. HOSP. ASS'N, <https://www.aha.org/aha-center-health-innovation-market-scan/2023-03-07-5-things-know-about-amazons-recent-one-medical-acquisition> [<https://perma.cc/352K-YTL9>].

6. Rebecca Pifer, *CVS Buys Oak Street Health for \$10.6B*, HEALTHCARE DIVE (Feb. 8, 2023), <https://www.healthcaredive.com/news/cvs-oastreet-health-acquisition-primary-care/642153/> [<https://perma.cc/728H-NQ5F>].

7. *Meeting the Future Demand for Primary Care Services*, KENAN INST. OF PRIV. ENTER. (Mar. 8, 2023), <https://kenaninstitute.unc.edu/kenan-insight/meeting-the-future-demand-for-primary-care-services/> [<https://perma.cc/H7FN-LHKS>].

8. Press Release, FTC, FTC Sues Amazon for Illegally Maintaining Monopoly Power (Sept. 26, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>; Complaint at 5, *FTC v. Amazon.com, Inc.*, No. 23-cv-01495 (W.D. Wash. Sept. 26, 2023).

litigation for allegedly shady business practices is a cause for concern.⁹ Only time will tell, but if Amazon can curb its relentless pursuit of profit and focus more on improving health outcomes, this acquisition could start a new age of primary health care in the United States.

Part I of this Note discusses the dire need to overhaul the United States healthcare system and how corporations like Amazon could be the key to doing so through strategic investment. Part II addresses the antitrust and data privacy implications of Amazon entering the primary care market, and Part III discusses the regulations necessary for Amazon to achieve maximum success while balancing the interests of patients, physicians, and other stakeholders in the health care system.

I. BACKGROUND

The state of healthcare in the United States is lacking in many ways—statistics show that the United States has some of the worst health outcomes of any developed country despite spending obscene amounts of money on healthcare every year.¹⁰ Despite the need for change in our system, data privacy and antitrust concerns arise when a large corporation enters the healthcare sector, especially a corporation with a record of shady business practices.¹¹ Statutorily protected and nonprotected data are always at risk of misuse, and Amazon represents a corporation uniquely equipped to utilize this data. This Part will discuss these issues in depth and give context to the importance of Amazon's purchase of One Medical as part of a broader trend toward increased privatization of healthcare in the United States.

A. *The State of Healthcare in the United States is Dire*

The United States has an ailing healthcare system.¹² Despite spending more money on healthcare than any other country in the world, the United States consistently has the worst health outcomes of any high-income country.¹³ The United States is an outlier as compared to other high-income countries.¹⁴ In 2018, the United States spent 16.9% of its GDP on healthcare.¹⁵ The average for OECD countries is about half this number.¹⁶ In addition, according to the American Medical Association, the United States increases its

9. See Press Release, *supra* note 8 (announcing FTC's action against Amazon).

10. See Robert H. Shmerling, MD, *Is Our Healthcare System Broken?*, HARV. HEALTH PUBL'G (July 13, 2021), <https://www.health.harvard.edu/blog/is-our-healthcare-system-broken-202107132542> [<https://perma.cc/LKU6-6QU>].

11. See Press Release, *supra* note 8 (detailing some of Amazon's alleged misconduct).

12. Shmerling, *supra* note 10; see Donald M. Berwick & Michelle A. Williams, *American Health Care is Broken. Major Hospitals Need to Be Part of the Solution*, TIME (May 24, 2023), <https://time.com/6281957/american-health-care-is-broken-major-hospitals> [<https://perma.cc/78EF-LQ86>] (discussing how the United States health care system is broken, largely because the pursuit of profit is put before patient outcomes and most hospital boards are comprised of business professionals, not health care professionals).

13. Roosa Tikkanen & Melinda K. Abrams, *U.S. Health Care from a Global Perspective, 2019: Higher Spending, Worse Outcomes?*, THE COMMONWEALTH FUND (Jan. 30, 2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/jan/us-health-care-global-perspective-2019> [<https://perma.cc/JC64-467W>].

14. *Id.*

15. *Id.*

16. *Id.*

spending on health care nearly every year.¹⁷ In 2020, healthcare spending grew by over 2%, equaling 19.5% of GDP of that year; most of this growth can be attributed to the pandemic.¹⁸ This trend continued in 2021 despite the “end” of the pandemic,¹⁹ and healthcare spending in the United States increased by approximately 10%, comprising 18.2% of the GDP.²⁰ About 31% of the over \$4 trillion spent on health care was used specifically for hospital care.²¹ Less than a fifth was spent on physician services, and about 16% was spent on “other personal health care,” which includes goods and other ancillary services like rehab and long-term care.²²

The life expectancy at birth in the United States is the lowest compared to other high-income countries. And death rates for avoidable or treatable conditions are the highest.²³ This statistic in particular is telling, because these avoidable deaths are preventable through effective public health measures and primary prevention.²⁴ Treatable deaths, can be prevented through screening and timely healthcare interventions.²⁵ Both primary prevention and screening are low-cost tools that can be used to improve health outcomes.²⁶ Despite the relatively small amount of money that it costs to improve health outcomes through prevention, the U.S. healthcare system emphasizes high-tech healthcare innovations and surgeries that only the wealthy can afford, while leaving most people sick and behind the rest of the world in terms of health.²⁷ Avoidable and treatable deaths have

17. *Trends in Health Care Spending*, AM. MED. ASSOC. (July 9, 2024), <https://www.ama-assn.org/about/research/trends-health-care-spending> [<https://web.archive.org/web/20230913015028/https://www.ama-assn.org/about/research/trends-health-care-spending>].

18. *Id.*

19. *Id.* Despite the eagerness of the American public to declare the pandemic “over,” the CDC did not officially announce the end of the pandemic until May 2023. Maya Goldman, *America’s Split on Whether the Pandemic is Over*, AXIOS (Mar. 8, 2024), <https://www.axios.com/2024/03/08/americas-split-on-whether-the-pandemic-is-over> [<https://perma.cc/JC2R-KQPQ>]; *End of the COVID-19 Public Health Emergency (PHE) Declaration*, CDC (Sept. 12, 2023), https://archive.cdc.gov/www_cdc_gov/coronavirus/2019-ncov/your-health/end-of-phe.html. This could account for some of the increase in spending for 2021 but likely not all of it. *See id.* (discussing changes in COVID-19 protocols starting in 2023).

20. *Trends in Health Care Spending*, *supra* note 17.

21. *Id.* A number so high it *seems* unbelievable, \$4.5 trillion was spent on health care in the United States in 2022, and this amount continues to trend upwards. *Id.* This is one of the many reasons why the United States’ health care system is not sustainable.

22. *Id.*

23. Tikkanen & Abrams, *supra* note 13.

24. *Id.* Examples of primary prevention include promoting a nutritional diet and exercise, immunizations, and safe practices mandated by legislation such as wearing seatbelts and banning the use of asbestos. Lisa A. Kisling & Joe M. Das, *Prevention Strategies*, NAT’L LIBR. OF MED. (Aug. 1, 2023), <https://www.ncbi.nlm.nih.gov/books/NBK537222/> [<https://perma.cc/8NXZ-449Z>].

25. *See, e.g.*, ORG. FOR ECON. COOP. & DEV., AVOIDABLE MORTALITY: OECD/EUROSTAT LISTS OF PREVENTABLE AND TREATABLE CAUSES OF DEATH 8 (2022), https://www.oecd.org/health/health-systems/Avoidable-mortality-2019-Joint-OECD-Eurostat-List-preventable-treatable-causes-of-death.pdf?_ga=2.206925399.516477171.1707074459-381843963.1707074459 [<https://perma.cc/Z7ZE-BJH7>] (stating that cervical cancer can be prevented with screening and treatment).

26. *Id.* at 4.

27. *See* Andrzej Kajetanowicz & Aleksandra Kajetanowicz, *Pros and Cons of Technology for Patients*, 72 WIADOMŚCI LEKARSKIE 1178, 1181 (2019) (“Uncontrollable use of technology, social media and internet access to unreliable sources without verification has more negative than positive effect.”).

increased in the United States since 2015, and the United States had the highest rate of avoidable deaths of all high-income countries in 2020.²⁸

The United States also boasts the highest maternal and infant mortality rates of high-income countries, with women of color being disproportionately affected.²⁹ The United States also has the highest rates for comorbid chronic conditions and obesity among all OECD countries in the world.³⁰

In addition, the United States is the only high-income country that does not guarantee health insurance coverage—in 2021, over 8% of the population was uninsured.³¹ This number might seem low compared to numbers that existed before the Affordable Care Act, other high-income countries guarantee some minimal government or public health coverage to their citizens and spend significantly less while doing so.³²

B. Amazon's Health Care Ambitions: Antitrust & Data Privacy Considerations

In an ideal world, big corporations could overhaul our healthcare system and use their vast network of resources to improve the cost, access, and quality of healthcare in the United States. Of course, we do not live in a perfect world, and there are some very real concerns that arise when big corporations insert themselves into the healthcare market.

First, there is the issue of competition. Antitrust concerns arise because corporations like Amazon have the resources to obliterate competition,³³ from small mom-and-pop clinics to some of our biggest healthcare systems in the country. When big corporations are in charge of making decisions that affect the health of the nation, how can we know that they will do what is right for the people, rather than for profit?

28. Tikkanen & Abrams, *supra* note 13.

29. Munira Z. Gunja, Evan D. Gumas, & Reginald D. Williams, II, *U.S. Health Care from a Global Perspective, 2022: Accelerating Spending, Worsening Outcomes*, THE COMMONWEALTH FUND (Jan. 31, 2023), <https://www.commonwealthfund.org/publications/issue-briefs/2023/jan/us-health-care-global-perspective-2022> [<https://perma.cc/B2VK-33ZC>]; Anuli Njoku et al., *Listen to the Whispers Before they Become Screams: Addressing Black Maternal Morbidity and Mortality in the United States*, 11 HEALTHCARE, no. 438, 2023, at 1, 1–2; *Infant Mortality and African Americans*, U.S. DEPT. HEALTH & HUM. SERVS.: OFF. MINORITY HEALTH (Sept. 21, 2023), <https://minorityhealth.hhs.gov/infant-mortality-and-african-americans> [<https://perma.cc/EZE5-JN92>].

30. Tikkanen & Abrams, *supra* note 13. The United States, Australia, the UK, Belgium, France, Germany, South Korea, and Austria are some of the 38 OECD member countries. *Id.* With democratic governments and market-based economies, OECD countries collaborate and participate in policy development in order to promote sustainable economic growth across the globe and are often used in statistical models to compare factors such as health outcomes, as was done here. *Id.*

31. Gunja, Gumas & Williams, *supra* note 29.

32. *Id.*

33. See MOIRA WEIGEL, AMAZON'S TRICKLE-DOWN MONOPOLY: THIRD PARTY SELLERS AND THE TRANSFORMATION OF SMALL BUSINESS 7 (2023), https://datasociety.net/wp-content/uploads/2023/01/Weigel_Trickle-Down-Monopoly_01252023.pdf [<https://perma.cc/4NMH-MQC6>] (discussing how Amazon leverages its power for anticompetitive ends).

Next, real data privacy concerns arise when corporations have access to the PHI, or personal health information,³⁴ of millions of people.³⁵ Since Amazon now provides healthcare, they are considered a “covered entity” and, as a result, are subject to the laws under the Health Insurance Portability and Accountability Act (HIPAA).³⁶ HIPAA was originally signed into law by former President Bill Clinton.³⁷ and is the statutory authority for the “use and disclosure” of personal health information.³⁸ It has come to light in recent years that companies like Amazon will receive permission through sneaky privacy policies to share and sell user data to use their services or applications.³⁹ Now that Amazon has PHI in addition to the vast network of Amazon Prime user data, what are the implications for privacy?

1. Antitrust Implications

On September 26, 2023, the FTC and multiple states filed a lawsuit against Amazon for engaging in exclusionary conduct “that prevents current competitors from growing and new competitors from emerging.”⁴⁰ The complaint alleges that Amazon’s anticompetitive practices occur both in their online “superstore market” and the “market for online marketplace services” purchased by sellers.⁴¹ Interestingly, Amazon’s recent acquisition of One Medical is not mentioned in the complaint.⁴² However, while the merger between Amazon and One Medical was underway, the FTC released a joint statement addressing data privacy concerns.⁴³ The statement made it clear that the FTC would monitor both companies and “bring enforcement actions whenever the facts warrant.”⁴⁴

34. Health Insurance Portability and Accountability Act of 1996 § 1177, 42 U.S.C. § 1320d-6 (laying out penalties for disclosure of private information); 45 C.F.R. §§ 164.102–534 (2024); *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, CDC (Sept. 10, 2024), <https://www.cdc.gov/php/php/resources/health-insurance-portability-and-accountability-act-of-1996-hipaa.html> [<https://perma.cc/F4L7-ZN65>] [hereinafter HIPAA Summary].

35. Daniela Coppola, *Number of Amazon Prime Members in the United States from 1st Quarter 2016 to 1st Quarter 2023*, STATISTA (Feb. 13, 2024), <https://www.statista.com/statistics/1223385/amazon-prime-subscribers-in-the-united-states/> [<https://perma.cc/C6DC-AYRS>].

36. See Health Insurance Portability and Accountability Act of 1996 § 1177, 42 U.S.C. § 1320 (applying to “a health care provider who transmits any health information in electronic form”). To clarify, the specific corporate entity that provides healthcare will be considered a covered entity. *Id.* This will depend on how Amazon decides to structure or restructure their different corporate entities to reduce liability.

37. *Anniversary of HIPAA*, GOVINFO (Aug. 18, 2020), <https://www.govinfo.gov/features/HIPAA> [<https://perma.cc/FL7X-ZW9E>].

38. 45 C.F.R. § 164.502 (2024).

39. Sara Morrison, *Dark Patterns, the Tricks Websites Use to Make You Say Yes, Explained*, VOX (Apr. 1, 2021), <https://www.vox.com/recode/22351108/dark-patterns-ui-web-design-privacy> [<https://perma.cc/AFF3-GHBF>].

40. Press Release, *supra* note 8.

41. Complaint, *supra* note 8, at 43.

42. See generally *id.* (focusing on other sources of Amazon’s market power).

43. Press Release, Lina Khan et al., Chair, FTC, Joint Statement of Chair Khan, Commissioner Slaughter, Commissioner Wilson, and Commissioner Bedoya Regarding Amazon.com, Inc.’s Acquisition of iLife Healthcare, Inc. (Feb. 27, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2210191amazononemedicalkhanslaughterwilsonbedoya.pdf [<https://perma.cc/9ZCQ-5ZRM>].

44. *Id.*

Despite this clear warning to Amazon and One Medical to protect consumer data, it did not lead to any actions by the FTC to prevent the acquisition. However, the FTC's inaction did not go unnoticed. Many consumer protection groups have expressed "grave concerns" about Amazon's intentions to enter the healthcare sector.⁴⁵ Public Citizen, a nonprofit dedicated to advocating for public interest, wrote a letter⁴⁶ to regulatory groups expressing their worries about Amazon's acquisition of One Medical. Public Citizen's president recently stated, "what connects most or all of our concerns is the idea that Amazon can leverage its massive retail market power into the healthcare sector for nefarious purposes."⁴⁷

2. Health Privacy Concerns

As the FTC warned, data privacy is the most important factor, besides obvious antitrust implications⁴⁸ As a health care provider, Amazon will have access to the PHI of millions of people, either from One Medical's data or existing Amazon customers. This creates two separate "buckets" of data that Amazon can utilize in marketing and other endeavors.

It is important to note that the acquisition of One Medical is not Amazon's first foray into the health sector—although arguably its largest—because Amazon acquired PillPack in 2018.⁴⁹ PillPack, an online pharmacy focused on home delivery services, delivers "pre-sorted doses of medications" to customers who take multiple medications or doses a day.⁵⁰ PillPack also "coordinates refills and renewals, and makes sure shipments are sent on time" in its quest to "meaningfully improv[e] its customers' lives."⁵¹ Therefore, Amazon has had access to some PHI since at least 2018, but pharmacies generally do not have access to large amounts of PHI.⁵² Pharmacies will often have the medication and dosage information, plus the diagnosis that justifies the prescription.⁵³ Medical history and vital signs are generally not included in their records but are certainly part of the primary care records One Medical, and now Amazon, owns.⁵⁴ Granted, medical records are covered as

45. Rebecca Pifer, *Why Regulators Didn't Challenge Amazon-One Medical Deal, Despite Data Concerns*, HEALTHCARE DIVE (Mar. 1, 2023), <https://www.healthcarediver.com/news/why-regulators-didnt-challenge-amazon-one-medical-deal-data/643316/> [https://perma.cc/GPE6-ZQGP].

46. Letter from Robert Weissman, President, Pub. Citizen, to Lina Khan et al., Chair, FTC (Aug. 4, 2022), <https://www.citizen.org/wp-content/uploads/public-citizen-amazon-onemedical-merger-letter.pdf> [https://perma.cc/K663-3XWS].

47. Pifer, *supra* note 45.

48. Press Release, Khan et al., *supra* note 43.

49. Press Release, Amazon.com, Amazon to Acquire PillPack (June 28, 2018), <https://press.aboutamazon.com/2018/6/amazon-to-acquire-pillpack> [https://perma.cc/H5YF-2XUX].

50. *Id.* (emphasis omitted).

51. *Id.*

52. See AM. SOC'Y. OF HOSP. PHARMACISTS, *ASHP Guidelines on Documenting Pharmaceutical Care in Patient Medical Records*, 60 AM. J. HEALTH SYS. PHARMACISTS 705, 706 (2003).

53. *Id.*

54. Ari Levy, *Amazon Already Knows a Lot About Me, But One Medical Takes it to a Whole New Level*, CNBC (July 23, 2022), <https://www.cnbc.com/2022/07/23/amazon-one-medical-deal-gives-it-access-to-my-most-personal-info.html> [https://perma.cc/2CY4-23V7].

PHI under HIPAA,⁵⁵ but there are broader issues that arise when a company has access to both protected and unprotected PHI.

3. Non-HIPAA Covered Data

One concept in the data privacy sphere is particularly relevant here—health inferences.⁵⁶ Health inferences, also known as data inferences, more generally,⁵⁷ are different from PHI because health inferences can be made without identifying information relating to health in the traditional PHI sense.⁵⁸ Therefore, health inferences do not fall under the purview of HIPAA.⁵⁹ One scholar explains the principle of health inferences as “if an agent obtains some information legitimately, then the agent can make any inference she wants based on the information, without violating anyone’s [legal] right to privacy.”⁶⁰ Using “[s]tatistical correlations”⁶¹ found in data analysis, agents can make inferences about individuals, “such as . . . political views, credit worthiness, or *health conditions*.”⁶² There is a potent philosophical debate among scholars as to the ethics behind health inferences and whether or not they violate an individual’s privacy rights, as most people likely did not intend to disclose this additional information.⁶³ Additionally, the increased use of AI has led many companies to utilize inferential analytics to make inferences about people from their data.⁶⁴ These new developments in data privacy have big implications for Amazon and its use of PHI. Amazon can look at purchase history and make inferences about their health. While health inferences are not a new phenomenon, it follows from Amazon’s recent acquisition of One Medical that they have acquired the company’s patient population, too, meaning they have newfound PHI at their fingertips.⁶⁵

Now that Amazon offers clinical care, the implications of this wealth of data become even more frightening, and it warrants scrutiny from the public to ensure that this data is not misused. Who is to say that Amazon cannot use this newfound health information to match their existing Amazon Prime user data and make health inferences based upon it for marketing or other purposes? For example, if a person purchases baby clothes, a changing table, and a crib on Amazon Prime, they could assume that the member is having a child and use targeted advertising to get them to buy more things online, plus send them referral information to Amazon clinic for monthly check-ups. Things like this can be done without HIPAA violations or sharing of PHI, so there are no legal implications.

55. See Health Insurance Portability and Accountability Act of 1996 § 1177, 42 U.S.C. § 1320d-4 (defining “health information”).

56. See Sandra Wachter & Brent Mittelstadt, *A Right to Reasonable Inferences: Re-thinking Data Protection Law in the Age of Big Data and AI*, 2019 COLUM. BUS. L. REV. 494, 497 (2018) (explaining that the use of AI to create inferences using highly personal data are used to manipulate the population and how we perceive each other).

57. *Id.*

58. *Id.*

59. Mona Sobhani, *HIPAA Isn’t Enough: All Our Data is Health Data*, U.S.C. CTR. FOR BODY COMPUTING (Jan. 29, 2019), <https://cbc.ict.usc.edu/un-sensored/hipaaisnotenough/> [<https://perma.cc/9EKX-YX9T>].

60. Jakob Mainz, *Inferences and the Right to Privacy*, 58 J. VALUE INQUIRY 563, 563 (2022).

61. *Id.*

62. *Id.* (emphasis added).

63. *Id.* at 564.

64. Wachter & Mittelstadt, *supra* note 56, at 506.

65. Levy, *supra* note 54.

However, purchase history does not have to be conspicuous to make health inferences. In the early 2010s, Target was aware of a teenage girl's pregnancy before her father was.⁶⁶ Target assigns a unique identifier to each customer, linking their credit card, name, email address, and customer purchase history to create targeted ads.⁶⁷ A data analyst for Target noticed a growing trend among pregnant women—they tend to buy more unscented lotion and cotton swabs towards the latter half of their pregnancy—and subsequently began sending coupon booklets to these women in the mail for formula, baby clothes, and other baby-related items.⁶⁸ A Minneapolis teenager was sent one of these booklets in the mail, which led to her enraged father confronting the Target store manager, asking if Target was “encourag[ing] her to get pregnant?”⁶⁹ Of course, the manager had no clue why the booklet was sent, but a week later, the father went back to the store and apologized for his outburst because he had discovered that his daughter was, in fact, pregnant with her first child.⁷⁰ This is just one chilling account of how innocuous things like our purchase history can be used to make inferences about our health.

Amazon being subject to HIPAA sounds promising, but the statute does not fully protect PHI from being shared.⁷¹ Organizations are authorized to share PHI when they receive authorization from the patient.⁷² Certain information is exempt from HIPAA, and some can be shared without the patient's knowledge—mainly for continuity of care between providers and insurance companies.⁷³ HIPAA can be easily averted by utilizing applications to gather health data not covered under HIPAA.⁷⁴ Often, this data collection occurs without the user's knowledge when they agree to a privacy policy to sign up for a new service, such as a health tracking app.⁷⁵ Apps from the Apple App Store, for example, largely do not fall under HIPAA rules, as they are not considered covered entities.⁷⁶ Covered entities are healthcare providers, health plans, healthcare clearinghouses, and their business associates—personal health apps do not fall under any of those categories.⁷⁷

66. Kashmir Hill, *How Target Figured Out a Teen Girl Was Pregnant Before Her Father Did*, FORBES (Feb. 16, 2012), <https://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/?sh=2921ff66686d> (on file with the *Journal of Corporation Law*).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Steve Adler, *Majority of Americans Mistakenly Believe Health App Data is Covered by HIPAA*, HIPAA J. (Jul. 26, 2023), <https://www.hipaajournal.com/americans-mistakenly-believe-health-app-hipaa/> [<https://perma.cc/W8D6-Y9M3>].

72. 45 C.F.R. § 164.522 (2013) (describing “[r]ights to request privacy protection for protected health information”).

73. *Id.* (“[I]f the individual who requested the restriction is in need of emergency treatment and the restricted protected health information is needed to provide the emergency treatment, the covered entity may use the restricted protected health information, or may disclose such information to a health care provider.”).

74. Adler, *supra* note 71.

75. DHS OFF. FOR CIV. RTS., *Guidance Materials: The Access Right, Health Apps, & APIs*, DEPT. OF HEALTH & HUM. SERVS. (Jan. 6, 2021), <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access-right-health-apps-apis/index.html> [<https://perma.cc/Q5R2-ZDFC>].

76. Adler, *supra* note 71.

77. *Id.* Healthcare clearinghouses are institutions that transmit medical claims data, and subsequently PHI, to different insurance carriers. HIPAA Summary, *supra* note 34. Business associates are people or entities that assist other entities with certain activities that involve the use or disclosure of PHI. *Id.* It is important to note that

Generally, most people do not read the privacy policy before accepting it.⁷⁸ As a result, many have authorized an app to share, sell, or do what they wish with any information that the user provides while using the app.

II. ANALYSIS

A. *Amazon's Potential Impact on Primary Care and Greater Society: The Good, the Bad, and the Ugly*

With a value of over \$1 trillion,⁷⁹ Amazon has the resources to change how primary healthcare is delivered in the United States. Amazon's standing in the "Big Five" (the top five big tech corporations in the country)⁸⁰ could be useful in implementing telehealth and delivering care to rural and/or underserved areas, in addition to creating efficiencies in urban healthcare. Since Amazon has over 150 million Amazon Prime subscribers, a vast potential patient population is right at their fingertips.⁸¹ The possibilities seem rather endless. Current One Medical patients, Amazon Prime subscribers, and future potential patients are only a few who could be affected. The shockwaves from this change could affect everyone in the United States, including healthcare organizations, insurance companies, and practitioners alike.

other covered entities can be business associates of one another. DHS OFF. FOR CIV. RTS., *Business Associates*, DEPT. OF HEALTH & HUM. SERVS. (May 24, 2019), <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html> [<https://perma.cc/2W46-87AL>]. Some common business associates include third-party administrators who assist health plans with insurance claims, accounting firms whose services involve the disclosure of PHI, and medical transcriptionists who provide transcription services to a physician or hospital. *Id.*

78. Brooke Auxier et al., *Americans and Privacy: Concerned and Confused and Feeling Lack of Control Over their Personal Information*, PEW RSCH. CTR. (Nov. 15, 2019), <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/> [<https://perma.cc/YK5J-RLP7>]; see Geoffrey A. Fowler, *I Tried to Read All My App Privacy Policies. It Was 1 Million Words.*, WASH. POST (May 31, 2022), <https://www.washingtonpost.com/technology/2022/05/31/abolish-privacy-policies/> (on file with the *Journal of Corporation Law*) (discussing the inaccessibility of privacy policies due to their length and complexity); see also Duha Ibdah et al., 'Why Should I Read the Privacy Policy, I Just Need the Service': A Study on Attitudes and Perceptions Toward Privacy Policies, 9 IEEE ACCESS 166465, 166470–73 (2021) (summarizing the general attitude of people toward privacy policies and highlighting the lack of insight on what the policies entail).

79. Hopkins, *supra* note 1.

80. Zia Muhammad, *The Big Five Tech Companies (Apple, Amazon, Alphabet, Microsoft, and Meta) Earned Over \$1.4 Trillion Last Year, Here's Where That Money Came From*, DIGIT. INFO. WORLD (May 4, 2022), <https://www.digitalinformationworld.com/2022/05/the-big-five-tech-companies-apple.html> [<https://perma.cc/LF7Z-U6YB>].

81. Coppola, *supra* note 35. "For the first time since 2016, the number of Amazon Prime members has declined in the United States. In the first quarter of 2023, 167 million users had a Prime account on Amazon, down by roughly 3,000 compared to the same quarter in 2022." *Id.* Granted, the decline is marginal compared to the overall number of subscribers, but an interesting statistic, nonetheless. It will be interesting to see how Amazon markets their health care services to current and prospective Prime members, especially given how lucrative the health care industry is.

1. *The Good: Primary Care in the United States*

As discussed in the previous section, the state of the United States healthcare system is abysmal. Primary care, deemed “the only part of the health system that produced longer life and improved health equity” by the National Academies of Sciences, Engineering, and Medicine, is included in this discussion.⁸² Unfortunately, the primary health care system is “starved for resources and [is] losing both workforce and capacity.”⁸³ Based on the health outcomes the United States has been experiencing for years,⁸⁴ this is unsurprising. Another possible reason for this lack of resources could be that hospital boards are comprised of many non-medical professionals, with most folks coming from private equity, wealth management, and banking.⁸⁵ It would follow that their decisions will be made with financial consequences in mind, not patient outcomes.

For a primary care system to function efficiently and produce the best patient outcomes, it has been posited that four key elements are to be met. Dr. Barbara Starfield, M.D.,⁸⁶ a fierce advocate for primary health care in her lifetime, outlined these elements and dubbed them the “Four Cs of Primary Care.”⁸⁷ The four Cs include “contact,” “coordination,” “comprehensiveness,” and “continuity.”⁸⁸ Contact with patients is important because primary care physicians serve as the gatekeepers of the specialist world and are likely to be the first to consult with a patient when a new health concern arises.⁸⁹ Overlooking an indication of a serious condition that could require specialist intervention leads to increased morbidity and mortality.⁹⁰ Coordinating care is equally as important because primary care physicians make referrals to specialists when the situation calls for it.⁹¹ Comprehensiveness of care is also necessary, as the overall health of the patient must be considered.⁹² Finally, and arguably most importantly, continuity is required to ensure that the patient is consistently having their health needs met. Studies have shown that

82. Kyu Rhee, Robert Phillips & Brandon Moritz, *Industry Voices—Meet the 5th ‘C’ of Primary Care: Corporate America*, FIERCE HEALTHCARE (Aug. 8, 2023), <https://www.fiercehealthcare.com/practices/industry-voices-meet-5th-c-primary-care-corporate-america> [https://perma.cc/63XH-9QC3].

83. *Id.*

84. *See supra* Part I.A. (describing the state of healthcare in the United States).

85. Berwick & Williams, *supra* note 12.

86. Barbara Starfield, *Championed Importance of Primary Care*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (June 13, 2011), <https://publichealth.jhu.edu/2011/starfield> [https://perma.cc/9YFB-8YHC].

87. Rhee, Phillips & Moritz, *supra* note 82.

88. *Id.*

89. Christopher B. Forrest, *Primary Care in the United States: Primary Care Gatekeeping and Referrals: Effective Filter or Failed Experiment?*, 326 BRITISH MED. J. 692, 692 (2003); Ree, Phillips & Moritz, *supra* note 82.

90. Forrest, *supra* note 89, at 693.

91. Rhee, Phillips & Moritz, *supra* note 82; Jennifer Warren, *Gatekeepers Hold Key to Lower Costs in Health Care*, SMU COX SCH. BUS. (Oct. 24, 2017), <https://www.smu.edu/cox/academics/research-papers/20171024,-d-.ahuja,-d-.gatekeepers> [https://perma.cc/WQ8B-W39E]. Some examples of specialists include cardiologists, neurologists, pulmonologists, surgeons, and obstetricians. Kathryn Whitbourne, *What Are the Different Types of Doctors?*, WEBMD (June 6, 2024), <https://www.webmd.com/health-insurance/insurance-doctor-types> [https://perma.cc/HKL2-3ZUG]. With continuing advances in science and technology, the number of specialists has increased in the United States, making primary care physicians’ ability to serve as gatekeepers to the greater medical system more important than ever. Warren, *supra* note 91.

92. Ree, Phillips, & Moritz, *supra* note 82.

continuity of care can decrease healthcare costs and reduce the wait time to see specialists, too.⁹³

Some have posited that the primary care framework should include an additional “c”—corporate.⁹⁴ This corporate element

[D]oesn’t stand on its own, but rather should be thought of as an element that could either support and strengthen each of the other “Cs”—or, alternatively, undercut them and damage America’s primary care system even more. If the burgeoning corporate owners of physician practices truly engage with their new assets and shore up the first four “Cs,” the corporatization of primary care may actually turn out to be a good thing. If they cut back on their investment and begin to cut corners, it could well erode the foundations of American healthcare.⁹⁵

This is not an obscene proposition. It appears that very soon, corporations will be the fifth “C” in primary care. Who will be affected by this? Patients, providers, healthcare organizations, hospitals, and insurance companies, to name a few.

i. Affected Stakeholders: Patients

The first, and most important group of people who would be affected by Amazon’s expansion of primary care is patients. This could impact not only the current One Medical patients and potential future patients but many Americans whether they receive primary care or not. The National Association of Community Health Centers released a report in early 2023 that showed “[o]ver 100 million people in the United States . . . do not have access to a usual source of primary care” and “almost quarter of [those] are children.”⁹⁶ The number of Americans who are “medically disenfranchised” has doubled since 2014—largely due to a lack of providers in their area.⁹⁷ The report also highlights the role that the COVID-19 pandemic played in amplifying the “essential role of primary care providers in reaching vulnerable populations and ensuring access to public health interventions, such as vaccinations.”⁹⁸ A report by The Robert Graham Center also highlighted the importance of primary care, saying it should be a top priority for leaders seeking to improve our healthcare system.⁹⁹ They further characterize its importance with an analogy: focusing on health insurance coverage while neglecting primary care is similar to providing people with

93. *Id.*

94. *Id.*

95. *Id.*

96. NAT’L ASS’N CMTY. HEALTH CTRS., CLOSING THE PRIMARY CARE GAP 3 (2023), https://www.nachc.org/wp-content/uploads/2023/06/Closing-the-Primary-Care-Gap_Full-Report_2023_digital-final.pdf [<https://perma.cc/W2WH-88FW>].

97. *Id.* at 2; see THE ROBERT GRAHAM CTR., ACCESS DENIED: A LOOK AT AMERICA’S MEDICALLY DISENFRANCHISED ii (2007), <https://www.graham-center.org/content/dam/rgc/documents/publications-reports/monographs-books/Access%20Denied.pdf> [<https://perma.cc/7KTR-ESXJ>] (reporting on the status of medically disenfranchised citizens in the United States across “all income levels, race and ethnicity, and insurance status.”). Medically disenfranchised folks “face disparities in access to primary and preventative health care. The toll of these unmet needs is steep, from higher death and disease rates to wide health disparities in communities where residents have few or no primary health care options.” *Id.*

98. NAT’L ASS’N CMTY. HEALTH CTRS., *supra* note 96, at 2.

99. THE ROBERT GRAHAM CTR., *supra* note 97.

money but nowhere to spend it.¹⁰⁰ Additionally, they state that more investment and training for primary health care workers is necessary.¹⁰¹

With this huge disparity comes an opportunity for Amazon to fill the gap in primary care by investing in brick-and-mortar pharmacies and healthcare centers, plus training a competent workforce that can address this growing issue.

ii. Affected Stakeholders: Providers & Health Care Organizations

It is a known fact that primary care serves patients the best when long-term relationships are developed.¹⁰² Primary care is unique, as it is used by anyone at any point in their lives.¹⁰³ Consistency or continuity can lower costs because it takes providers less time to prepare care for a patient they have known for years.¹⁰⁴ Instead of memorizing a patient's chart before their appointment, a physician can quickly review the chart and focus on their understanding of the patient as a whole person to increase the patient-centeredness of care.¹⁰⁵

Because the healthcare system in the United States is fragmented, primary care is important to help patients navigate the landscape and receive care. Corporations like Amazon are highly sophisticated regarding information technology and data analysis.¹⁰⁶ The increased utilization of AI by companies such as Amazon¹⁰⁷ can serve an important function in primary care. Data scientists, actuaries, and other data-focused employees can relieve the burden of coordinating care from physicians, giving them more time with the patient. Not only could coordination of care improve, but Amazon's sophisticated use of data could be useful for measuring health outcomes, making health predictions, and measuring community needs.

B. The Elephant in the Room

The privatization of primary care by corporations is a polarizing issue, with both sides of the argument having meritorious concerns. Until now, this Note has worked under the assumption that Amazon will enter the primary care space with one main goal: to improve

100. *See id.* at ii (“Focusing only on ensuring everyone has health insurance without ensuring them a regular source of primary care is like providing currency without a marketplace.”).

101. *See id.* (“More must be done to prepare for growing primary health care demand, through further investment in health centers and other sources of primary health care, and in training the primary health care providers who will care for today's aging Americans and the millions waiting in line behind them.”).

102. Ilima Loomis, *How Having a Good Relationship with Your Doctor Can Benefit Your Long-Term Health*, U. CHI. MED. (Dec. 21, 2023), <https://www.uchicagomedicine.org/forefront/health-and-wellness-articles/2023/december/primary-care-relationship-aranas> [https://perma.cc/4W84-23KT].

103. Laurie Higgins, *Why Everyone, Regardless of Age, Needs a Primary Care Provider*, CAPE COD HEALTH NEWS (Apr. 9, 2024), <https://www.capecodhealth.org/medical-services/primary-care/why-everyone-needs-a-primary-care-provider-regardless-of-age/> [https://perma.cc/8YAE-AA6E].

104. Andrew Bazemore et al., *Higher Primary Care Physician Continuity is Associated with Lower Costs and Hospitalizations*, 16 ANNALS FAM. MED. 492, 494 (2018).

105. *Id.* at 492.

106. Blake Morgan, *How Amazon Has Reorganized Around Artificial Intelligence and Machine Learning*, FORBES (July 16, 2018), <https://www.forbes.com/sites/blakemorgan/2018/07/16/how-amazon-has-re-organized-around-artificial-intelligence-and-machine-learning/?sh=78c41fd07361> (on file with the *Journal of Corporation Law*).

107. *Id.*

access and quality of affordable health care in the United States. However, this assumption overlooks a major concern: profitability. Corporations exist to make a profit; that is the bottom line, regardless of other motivations.¹⁰⁸ What happens when a decision arises when Amazon needs to decide between profit and benefitting their patient population? It is not difficult to imagine that Amazon will choose the option that increases the profitability of its healthcare endeavors. This concern is supported by years of litigation, the FTC investigation into Amazon's anticompetitive activities, and the subsequent lawsuit filed in September.¹⁰⁹ Primary care will be even further diminished if more profitable endeavors lead to the reduction in necessary services that make primary care so incredibly important.¹¹⁰

Additionally, many are concerned about the prospect of Amazon's corporate leadership dictating the direction of primary care. What do CEOs know about the nuances of medicine? To keep the five "Cs" at the center of the conversation, primary care teams need to be recruited and, more importantly, retained. In the retail and private healthcare sectors, turnover rates are incredibly high, and employee satisfaction skews low.¹¹¹ If corporations like Amazon prioritize profit over patient-centered care, this turnover could impact the ability to provide continuous primary care.

In addition, there is the issue of major hospital boards being primarily comprised of business professionals.¹¹² One physician aptly characterized the effect on their decisions, "[Business professionals] are accustomed to looking at spreadsheets, not the worry lines etched into patients' faces, and their decisions reflect that experience."¹¹³

III. RECOMMENDATION

In an ideal world, a complete overhaul of the primary care system in the United States is in order. However, more realistically, it will happen in stages. We must ensure that changing how primary healthcare is administered is done correctly, and patient interests comprise a significant part of decision-making, even if it requires reducing profitability. Corporations entering the healthcare sector must be intensely scrutinized by the public and held accountable when necessary. Corporations must not put profitability over patient outcomes (although easier said than done), patients' health data must be protected, and anticompetitive activities must be regulated. With the right balance of public accountability

108. See Robert T. Miller, *Delaware Law Requires Directors to Manage the Corporation for the Benefit of Its Stockholders and the Absurdity of Denying It: Reflections on Professor Bainbridge's Why We Should Keep Teaching Dodge v. Ford Motor Co.*, 48 J. CORP. L. DIGIT. 32, 33 (2022) (stating that directors of a corporation must "act for the sincere purpose of maximizing value for shareholders within the law").

109. Complaint, *supra* note 8, at 5–7 (describing how Amazon has used its market power to allegedly engage in illegal and unfair business practices).

110. See Sharon Reynolds, *Infections and Falls Increased in Private Equity-Owned Hospitals*, NAT'L INSTS. HEALTH (Jan. 23, 2024), <https://www.nih.gov/news-events/nih-research-matters/infections-falls-increased-private-equity-owned-hospitals> [<https://perma.cc/LF6N-4LN9>] (describing recent research showing that after hospitals were acquired by private equity firms, patient outcomes like infections and falls increased significantly); see also Sneha Kannan, Joseph Dov Bruch & Zirui Song, *Changes in Hospital Adverse Events and Patient Outcomes Associated with Private Equity Acquisition*, 24 J. AM. MED. ASS'N 2365, 2371 (2023) (presenting the findings of the study referenced in the previous article).

111. Rhee, Phillips & Moritz, *supra* note 82.

112. Berwick & Williams, *supra* note 12.

113. *Id.*

and regulations, corporations like Amazon could completely transform primary care—and as a result, health care as a whole—for the better.

A. Primary Care

As for the first “C,” contact, there are many ways in which Amazon can improve patient contact. As stated earlier, primary care is the gatekeeper to the broader medical system which connects patients with necessary health services and more generally, helps them navigate our confusing healthcare system.¹¹⁴ Top competitors in this sphere—including Walgreens, Walmart, and CVS—own hundreds of brick-and-mortar stores across the country.¹¹⁵ Since almost 90% of the American public lives within 5 miles of a community pharmacy,¹¹⁶ Amazon can use this as an advantage to provide first-contact access to primary care like other established corporations CVS and Walgreens. CVS and Walgreens have their primary care programs¹¹⁷ located in most community pharmacies which provide easy, quick access to care that generally does not require a large co-pay or lengthy waitlist for an appointment. General visits to the Walgreens Healthcare Clinic start at \$89,¹¹⁸ and CVS provides services from \$99.¹¹⁹

However, One Medical only has a few hundred brick-and-mortar locations across the United States.¹²⁰ Their first step in expanding primary care and infiltrating the market as a competitor will be the construction of more community pharmacies and primary care offices. While constructing more primary care locations seems obvious, expanding access to community pharmacies can be incredibly helpful to continuity of care, especially when they have clinics located inside of them.¹²¹ Without this, Amazon cannot compete with the number of physical locations that CVS and Walgreens have across the country.

In addition to brick-and-mortar stores, Amazon can increase patient contact by expanding care into a hybrid model that includes telehealth services. Telemedicine is a

114. Rhee, Phillips & Moritz, *supra* note 82.

115. *Id.*

116. *Id.*

117. *Id.* CVS has the Minute Clinic program, which provides “convenient, quality medical care to adults and children . . . in more than 1,100” family health care clinics and through virtual visits. *Frequently Asked Questions*, CVS MINUTE CLINIC, <https://www.cvs.com/minuteclinic/info?icid=mchome-mcfaq-mcallfaq> [<https://perma.cc/JX4F-UHE7>]. Walgreens has “approximately 400 Healthcare Clinic locations at select Walgreen stores across the country.” *Frequently Asked Questions*, WALGREENS, <https://www.walgreens.com/topic/pharmacy/healthcare-clinic/frequently-asked-questions.jsp> [<https://perma.cc/KJ2P-J446>]. Notably, most of Walgreens’ clinics are operated by a separate corporation, Take Care Health Services, and some are operated by local health systems. *Id.* This integration into the community has served them well, as the majority of their Q3 profit of \$35 billion for 2023 was driven by the retail pharmacy and healthcare services. Press Release, Walgreens Boots All., Walgreens Boots Alliance Reports Fiscal 2023 Third Quarter Results (June 27, 2023), <https://investor.walgreensbootsalliance.com/news-releases/news-release-details/walgreens-boots-alliance-reports-fiscal-2023-third-quarter> [<https://perma.cc/VM27-DP2Y>].

118. WALGREENS, *supra* note 117.

119. *Price Lists*, CVS MINUTE CLINIC, <https://www.cvs.com/minuteclinic/services/price-lists> [<https://perma.cc/2CFD-BHV5>].

120. Giles Bruce, *Amazon Launches One Medical for Prime*, BECKER’S HEALTH IT (Nov. 8, 2023), <https://www.beckershospitalreview.com/disruptors/amazon-launches-one-medical-for-prime.html> (on file with the *Journal of Corporation Law*).

121. *Id.*

fantastic way to reach patients in rural areas, especially the 10% who do not live within 5 miles of a community pharmacy.¹²²

Previous efforts by corporations to join the healthcare sector have been largely unsuccessful, and investors cite one common reason—the “leaders of the companies have not had the staying power to see through changes.”¹²³ Dr. Bob Galvin, CEO of Equity Healthcare and partner at Blackstone, has seen many healthcare acquisitions as a physician on the purchaser side of healthcare financing.¹²⁴ His unique perspective on the matter highlights one important idiosyncrasy: no matter how good a company is at a commercial business, health care is a wholly “different and . . . difficult beast.”¹²⁵ In an interview, he aptly stated:

Measures are murky; it’s hard to know if you’re actually saving money or just avoiding costs. The people who make decisions inside companies, benefit managers, frequently don’t have the support of senior management to make decisions that make some employees unhappy. Finally, employees as consumers don’t act rationally. They don’t seem to pursue quality data. And, on the supplier side, it takes a lot of skill and patience to identify the providers that deliver the most value and then do the hard work of steering employees to them.¹²⁶

Essentially, decision-makers need to venture on even when the going gets tough. Health care is costly and sometimes is simply not profitable. If corporations are going to persist in the healthcare market; they will need to keep both the end goals of profitability and improved patient outcomes in mind.

Not only is healthcare a unique market, but healthcare is also a “very local game.”¹²⁷ Healthcare in the United States is so fragmented in places and consolidated in others that getting a foot into the door is not just as simple as investing. Amazon will need to convince consumers to choose their services over their existing healthcare providers. Not only does this take time, but it takes more effort than it really should on the part of the consumer because of the confusing landscape of health care. That being said, Amazon needs to “tap into the parts of health care where people spend money . . . and be a conduit to provider organizations that are willing to take risk.”¹²⁸ Using the trust that Amazon has built with consumers will be hugely important if they truly want to break into the healthcare market and justify taking such high risks.

B. Other Possibilities for Improving Health Outcomes: Short-Term Solutions

There are many short-term options that Amazon can pursue to improve health outcomes in the United States. Many large hospital systems are using their enormous

122. Rhee, Phillips, & Moritz, *supra* note 82.

123. Robert Galvin & Leemore Dafny, *Amazon and CVS: Short-Lived Unicorns in Health Care, or Healers of the ‘Tapeworm’?*, NEJM CATALYST (Apr. 20, 2018), <https://catalyst.nejm.org/doi/full/10.1056/CAT.18.0202> (on file with the *Journal of Corporation Law*).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Galvin & Dafny, *supra* note 123.

wealth to address the social determinants of health, noting that “conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.”¹²⁹ The social determinants of health are separated into five domains: economic stability, education access, and quality, healthcare access and quality, neighborhood and built environment, and social and community context.¹³⁰ Some social determinants of health may be more obvious than others. For example, access to nutritious food and physical exercise would fall under the neighborhood and built environment domain, meaning that people who live in food deserts without access to fresh produce will have higher rates of obesity, diabetes, and heart disease.¹³¹ Some determinants of health are less obvious: racism, discrimination, and violence all have large impacts on health and well-being, too.¹³² These determinants of health “also contribute to wide health disparities and inequities.”¹³³

For example, Kaiser Permanente, one of the largest healthcare systems in the country, has pledged \$400 million to build 30,000 units of affordable housing to be completed by 2030.¹³⁴ In addition, a group of local healthcare organizations in Portland, Oregon worked together to build around 400 apartments in the city, specifically for the unhoused or those at risk of losing stable housing.¹³⁵ Initiatives like these are great ways to improve the built environment in certain areas and support health with stable housing. Amazon could utilize its Prime shipping to deliver free (or inexpensive) fresh produce to people who live in food deserts. With its vast wealth of resources, the possibilities are endless, and Amazon could improve health outcomes in the community without taking on the monumental task of overhauling our healthcare system.

C. Antitrust

Public accountability is important if Amazon becomes a powerhouse in the healthcare sector, and new regulations are necessary. The FTC recently sued for antitrust violations related to their commercial Prime services—raising the costs of businesses to participate in Prime, “pay to play,” and other shady business practices.¹³⁶ Who can say the same won’t happen concerning their health care services? Strict regulations are needed to encourage competition and discourage big corporations from monopolizing the healthcare industry.

129. *Social Determinants of Health*, DHS OFF. DISEASE PREVENTION & HEALTH PROMOTION: HEALTHY PEOPLE 2030, <https://health.gov/healthypeople/priority-areas/social-determinants> [https://perma.cc/96VD-8F8Q].

130. *Id.*

131. *Id.*; see also Bonnie Ghosh-Dastidar et al., *Distance to Store, Food Prices, and Obesity in Urban Food Deserts*, 47 AM. J. PREVENTIVE MED. 587, 587 (2014) (discussing how “[l]ack of access to healthy foods may explain why residents of low-income neighborhoods and African Americans in the U.S. have high rates of obesity”).

132. *Social Determinants of Health*, *supra* note 129; see also *Impact of Racism on Our Nation's Health*, CDC (June 26, 2024), https://www.cdc.gov/minority-health/racism-health/index-1.html?CDC_AAref_Val=https://perma.cc/L9SK-ZKYU (discussing how racism pervades and impacts health care outcomes in the United States).

133. *Social Determinants of Health*, *supra* note 129.

134. Berwick & Williams, *supra* note 12.

135. *Id.*

136. See generally Complaint, *supra* note 8.

However, a balance must also be struck between controlling Amazon's potential monopoly on healthcare and giving it enough room to grow.

The FTC uses its power to block mergers and acquisitions or bring antitrust litigation, as ways to promote competition.¹³⁷ Since the FTC failed to prevent the merger of Amazon and One Medical, we need to look further down the timeline and see where we can enact change once companies have already been acquired.

First, Amazon needs to be allowed to enter the market and establish its healthcare services. A commonly stated goal of antitrust enforcement in the healthcare context is to create an environment where "innovative forms of health care delivery" can be created.¹³⁸ If Amazon is going to change primary health care in the United States, it needs to be given time to do so. Thankfully, current antitrust laws cannot prevent Amazon from entering the market, as the FTC failed to prevent the merger from happening. Amazon has time to get a feel for the healthcare market.

Beyond the merger context, legislation increasing federal oversight of retail healthcare providers like Amazon should be implemented. There is no regulatory apparatus in the current antitrust framework that would allow the FTC to have general, ongoing oversight of Amazon. I propose that the FTC be given additional enforcement authority to conduct routine examinations of Amazon's activities within the healthcare market, focusing on price-setting practices compared to other competitors. Additionally, stricter reporting requirements should be required. Amazon should be required to submit quarterly reports of its finances, and the FTC should be given broad authority to investigate any discrepancies. Amazon already has a tenuous relationship with the FTC considering their ongoing litigation, so their foray into the health care market deserves greater scrutiny.

This proposed regulation could be implemented by following the European Union's approach to "dominant position" antitrust issues.¹³⁹ Under Article 102 of the Treaty on the Functioning of the European Union,¹⁴⁰ the commission is given latitude to enter the physical premises of corporations, examine business records, make copies of those records, and interview employees.¹⁴¹ Under Article 18 of the same treaty, the commission is also empowered to request information (RFI) from the company, which requires the company to provide the commission with the requested records for an investigation into their business practices.¹⁴²

D. Data Privacy

The most obvious way for Amazon to generate business is through using existing Prime user data to create targeted advertisements. This would likely be generally helpful to users, but we must not let Amazon take its data collection and utilization too far. As

137. *Healthcare Competition*, FTC, <https://www.ftc.gov/news-events/topics/competition-enforcement/health-care-competition> [<https://perma.cc/A886-W5NQ>].

138. Janet D. Steiger, Chair, FTC, Public Statement to The Health Trustee Institute on Health Care Antitrust Enforcement Issues (Nov. 9, 1995), <https://www.ftc.gov/news-events/news/speeches/health-care-antitrust-enforcement-issues> [<https://perma.cc/83UW-PYH3>].

139. Consolidated Version of the Treaty on the Functioning of the European Union art. 102, May 9, 2008, 2008 O.J. (C 115) 47.

140. *Id.*

141. *Id.*

142. *Id.* art. 18.

discussed in Part II, data inferences are a unique way for companies to circumvent HIPAA regulations and acquire health data.¹⁴³ To address this, HIPAA regulations need to be expanded to include coverage and regulation of health data that is not as obvious as the usual PHI, namely, health inferences.

However, more is needed to ensure the protection of health data. Specifically, new regulations should be implemented that mirror the recent rule finalized by the Office for Civil Rights at the U.S. Department of Health and Human Services (HHS) after the Supreme Court's decision in *Dobbs*.¹⁴⁴ The "HIPAA Privacy Rule To Support Reproductive Health Care Privacy," is enforced to "ensure that individuals are not afraid to seek health care from, or share important information with, their health providers" due to privacy concerns post-*Dobbs*.¹⁴⁵ A central part of the rule includes a prohibition of the use or disclosure of PHI by a covered entity for two purposes:

A criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care, where such health care is lawful under the circumstances in which it is provided . . . [and] [t]he identification of any person for the purpose of initiating such investigations or proceedings¹⁴⁶

Additionally, the rule requires a covered entity to "obtain a signed attestation that the use of disclosure [of PHI] is not for a prohibited purpose."¹⁴⁷ The signed attestation would be required if a covered entity is seeking PHI for "health oversight activities," "judicial and administrative proceedings," "law enforcement purposes," and "disclosures to coroners and medical examiners."¹⁴⁸

Now, it is important to note that this legislation is uniquely tailored to protecting access to reproductive health care in a post-*Dobbs* world, where obtaining an abortion before fetal viability is no longer a fundamental right.¹⁴⁹ However, the concept underlying the legislation could be more broadly applied to a covered entity obtaining any PHI. In the context of covered PHI, Amazon and One Medical would be required to attest to what specifically they plan to use any PHI for and be subject to investigation at any time by the relevant administrative agency, HHS, for compliance. Additionally, I would propose a requirement that all privacy policies have an overview section with all of the purposes for which the user's data will be utilized in plain language, without any legal jargon, outside of the fine print. This way, users will know exactly what the privacy policy entails rather than accepting it without a second thought, and companies like Amazon would be required to provide a paper trail justifying their use of PHI and other information not covered under HIPAA. This is another tangential but important way that Amazon could improve patient outcomes.

143. Wachter & Mittelstadt, *supra* note 56; Sobhani, *supra* note 59.

144. HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32976 (finalized Apr. 26, 2024) (to be codified at 45 C.F.R. pts. 160 & 164); *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 292 (2022) (reversing the fundamental right to an abortion before the viability of a fetus).

145. HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32977.

146. *Id.*

147. *Id.*

148. HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 33028.

149. *Id.*; *Dobbs*, 597 U.S. at 231.

No matter how it may be accomplished, to ensure the privacy of users, especially as corporations enter the healthcare sector, more stringent regulations must be put into place.

CONCLUSION

We live in an imperfect world, no single solution will fix our society's health issues in one fell swoop. Innovation has always been highly valued in the United States. Without it, medical innovations would not be where they are today. Perhaps our healthcare system would be even worse off. However, Amazon's controversial entry into the healthcare sector could change primary care in the United States for better or worse. Only time will tell, but if the right strategies are utilized and their growth and actions are highly scrutinized and regulated effectively, Amazon might change the course of our healthcare system in ways we could have never imagined just twenty years ago.