

Amazon's Healthcare Push Raises Tough Questions For Attys

By [Yeji Jesse Lee](#) · 2024-03-26 18:59:58 -0400 · [Listen to article](#)

Along with toiletries, tech gadgets and groceries, your favorite online mega-retailer now offers prescription drugs, monitoring of chronic health conditions and virtual doctor's visits.

Since 2018, [Amazon](#) has embarked on a long list of healthcare businesses — some more successfully than others — and its approach to the industry has emulated its larger consumer strategy: Customers are promised a quick sign-up, a straightforward pricing structure and the benefits of a one-stop-shopping experience with a Prime subscription.

The company's entry into the healthcare space, and that of other big retailers, has attorneys and insiders asking questions about the broader ramifications for the healthcare ecosystem.

Can Amazon's sheer scale and bottomless pockets act as a much-needed catalyst for change? Will it help show the way for a cheaper, more customer-friendly experience? Or could struggles by the hugely successful retailer only showcase the regulatory complexities of running large-scale, consumer-focused health businesses?

There are also questions around whether Amazon has established the proper guardrails or oversight to separate its new healthcare business from its core retail business, especially when they're looped into a single, all-encompassing subscription.

"The way that Amazon has succeeded in other markets has been so overwhelming that certain sectors of the economy have been completely transformed by their participation in a particular sector," said Jeremy Sherer, a partner at [Hooper Lundy & Bookman PC](#) and co-chair of the firm's digital health practice. "I think the interesting question is partially what element of the healthcare ecosystem could we see an Amazon or other consumer-facing companies really change and what evolution could they spur?"

The questions go well beyond Amazon. Many big box brands have made moves over the past few years to expand into healthcare. [Walmart](#) launched Walmart Health in 2019 and has said it plans to expand to more than 75 centers across the U.S. by 2024. Walgreens has primary care provider [VillageMD](#). Kroger announced a partnership with Mark Cuban's Cost Plus Drugs last summer, while CVS closed its acquisition of [Oak Street Health](#) in May of last year.

The trend is only expected to continue. Rajiv Leventhal and Lisa Phillips, analysts at Insider Intelligence — now called Emarketer, said in a December report that they expect more consumer-focused businesses to enter retail healthcare in 2024.

New direct-to-consumer "retail health players are rolling out healthcare offerings that should draw in consumers who are seeking convenience and transparent pricing when searching for care," they said.

Dale Van Demark, a partner at [McDermott Will & Emery](#), said that while he is skeptical that direct-to-consumer subscriptions will upend the healthcare system as we know it, they do present an alternative for those consumers open to trying out less traditional healthcare services.

"And certainly if they are being rolled out by organizations that have mastered things like logistics and user experience with digital interface, they could be supercharged in a lot of ways and could potentially be an impetus for people to think differently and more creatively about more traditional healthcare services," he said.

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Here are some of the questions insiders and attorneys are asking about this shift.

How Have Amazon Health Businesses Fared So Far?

Amazon's interest in the massive healthcare industry is no surprise.

Healthcare spending accounted for around 17% of the U.S. gross domestic product in 2022, or around \$4.5 trillion, according to a [Centers for Medicare & Medicaid Services](#) estimate. Hospital care and physician services account for around half of that amount, followed by retail prescription drugs at 9%, while routine costs like over-the-counter drugs and supplies make up 3%, which is still a whopping \$115.4 billion.

Since 2018, Amazon has launched a new health venture almost every year to expand its offerings in this lucrative space.

Haven, a joint venture created by Amazon, [Berkshire Hathaway](#) and JPMorgan Chase, launched in 2018 and made headlines for its attempt to improve healthcare and lower costs for the three companies' 1.2 million employees. But the venture fizzled out in just three years. Likewise, Amazon launched a pilot telehealth and in-person primary care program called Amazon Care in 2019, which shut down in 2022 after a brief but rapid attempt at nationwide expansion.

Other ventures have had more success. For example, Amazon Pharmacy, which launched in 2020 and allows customers to order prescription medications for home delivery, and Amazon Clinic, a telehealth service that started in 2022, are ongoing businesses for the giant.

In perhaps its biggest bet yet, the company also [closed its long-anticipated deal](#) to acquire telemedicine and primary care company One Medical for \$3.8 billion in February 2023. The concierge medical provider offers both online and in-person care services.

HEALTHCARE OFFERING	FOCUS AREA	LAUNCHED	CURRENT STATUS	COUNSEL INFORMATION
Haven	Employee-focused healthcare venture	Launched in January 2018 by Amazon, Berkshire Hathaway and JPMorgan Chase	Disbanded in February 2021	Not available
Pillpack	Online pharmacy focused on daily dose packaging	Acquired June 2018	Folded into Amazon Pharmacy	PillPack was advised by Goodwin Procter
Amazon Care	Telehealth and in-person care	Launched 2019	Shut down in December 2022	Not available
Amazon Pharmacy	Online pharmacy	Launched November 2020	Active; currently testing drone delivery service in College Station, Texas	Not available
Amazon Clinic	Virtual healthcare marketplace that connects patients to providers	Launched November 2022	Active; expanded nationwide in August 2023	Not available
One Medical	Telehealth and in-person primary care	Deal announced in July 2022 for \$3.8B	Active; deal closed in February 2023 and service was offered as a \$9 add-on to Prime subscriptions in November 2023	One Medical was advised by Ropes & Gray . Amazon was advised by Paul Weiss Rifkind Wharton & Garrison
Rxpass	Generic prescription drugs for a flat rate	Launched January 2023 under Amazon Pharmacy	Active	Not available
Health Conditions Program	Management and tracking of chronic conditions	Launched January 2024	Active; Amazon announced that it was partnering with digital care company Omada Health at launch	Not available

What Are Amazon's Latest Endeavors and Challenges?

Most recently, the tech giant announced this month that it had struck a deal with [Eli Lilly](#) to dispense the biotech's diabetes, obesity and migraine medicines through Amazon Pharmacy. It's also made moves to further simplify its healthcare offerings as flat-rate options or add-ons to Prime.

In November, Amazon said that Prime members could add a One Medical subscription to their monthly membership for just \$9, giving them access to the telehealth and in-person primary care service for a flat fee. Prime members can also access as many generic drugs as they're prescribed for a flat fee of \$5 a month through Amazon's Rxpass, and manage chronic conditions like diabetes and high blood pressure through a new Health Conditions Program that launched

in January of this year.

Amazon's flat rate model, designed to simplify healthcare's notoriously complex pricing, isn't a new concept. Many telehealth companies today started out with direct-to-consumer and cash-pay offerings that were consumer-focused and simplified for patients, said Hooper Lundy's Sherer.

But Amazon's hyper-focus on a streamlined user experience has a natural tension with concerns around transparency and consumer protection. A simplified subscription model with an easy user experience is difficult to mesh with a complicated healthcare system that involves multiple entities and myriad regulations. And when the service involves payers like insurers or the government, it means abiding by more complex state and federal rules.

"These are not insurmountable issues. There are ways to navigate through these problems," Sherer said. "I raise them more to point out that implementing something which looks like, from a user experience perspective, a typical subscription offering outside of healthcare becomes a lot more complicated when you enter the healthcare space."

According to some insiders, Amazon's new offerings, organized under "Amazon Health," reflect what Amazon has continuously focused on since its 2005 launch of the Prime membership model: to grow and retain Prime subscribers.

Richie Cartwright, founder of male obesity-focused healthcare startup Fella Health, said the tech giant's move into healthcare "makes perfect sense."

"They're a very successful consumer company and that there is a lot of change to be done and the healthcare system is changing a lot," he said. "Their whole consumer-facing business model is built around the Prime Subscription – getting more features for retention."

When asked whether Amazon's expansion into healthcare as part of a larger strategy to encourage Prime retention, Amazon Health Services spokesperson Samantha Kruse told Law360 that Prime "has always delivered disproportionate value to its members and will always do so."

Amazon is focused on bringing high-quality care to all customers, including Prime members, Kruse said, adding that even non-Prime members can access certain Amazon Health offerings, like free shipping on Amazon Pharmacy orders, and access to Amazon Clinic and One Medical.

Kruse declined to speculate on Amazon Health's future plans to expand into other areas within healthcare that it is currently not involved in.

"The fact that Amazon is plugged into so many American homes gives it a unique ability to promote the delivery of care into those homes," Sherer said. "And it's easy to see a tremendous success in terms of expanding access via Amazon because of how tied into so many American households the company already is."

A company like Amazon entering the business could promote creative thinking and competition with the established players. On the flip side of it, though, the stakes are higher in healthcare than in most other industries, he said.

"Suddenly, things that are very common in other areas are not just problematic, but can be deeply problematic very quickly in the healthcare space."

How Will Government Scrutiny Play Out?

Amazon's main business is data-driven retail – with an intense awareness of customer behavior and competitor pricing – and the company's foray into healthcare has raised alarms for federal agencies that want to ensure that private patient data remains just that.

After Amazon [completed its acquisition](#) of One Medical in February 2023, the [Federal Trade Commission](#) outlined its expectations for [the companies' conduct](#) concerning sensitive data.

The agency pointed to Amazon's promises that it would protect and not misuse sensitive health data, but said that it would continue to monitor the company and "bring enforcement actions whenever the facts warrant."

That same month, the FTC slapped telehealth provider [GoodRx](#) with a [\\$1.5](#)

that same month, the FTC slapped telehealth provider [Cocoon](#) with a [\\$1.5 million civil penalty](#) for failing to notify customers that their health data was being disclosed to third party advertisers like Facebook and [Google](#).

"Digital health companies and mobile apps should not cash in on consumers' extremely sensitive and personally identifiable health information," Samuel Levine, director of the FTC's Bureau of Consumer Protection, said at the time. "The FTC is serving notice that it will use all of its legal authority to protect American consumers' sensitive data from misuse and illegal exploitation."

Consumer protection groups have raised alarm bells too. In August 2022 [Public Citizen](#) raised a warning about Amazon including One Medical under its Prime membership and urged regulators to block the deal.

"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 condition," the group warned.

Months after the deal closed, Amazon did bundle One Medical with its Prime subscription. The company says it is committed to protecting patient data and is transparent about the data it collects from customers.

"Across all of the health services Amazon offers — Amazon Pharmacy, Amazon Clinic, and One Medical — we take the responsibility of safeguarding and protecting customer information extremely seriously," Amazon's Kruse told Law360.

The company guards customers' protected health information "with stringent, HIPAA-compliant privacy and security practices to keep information safe and secure." The company does not sell customers' protected health information, she added, and such information from Amazon's health businesses is not used to market retail products in the broader Amazon store.

But that hasn't stopped concerns over the data implications of a health offering owned by a company like Amazon.

After a Washington Post article last year pointed out that Amazon Clinic asks patients to fill out an authorization form for the "use and disclosure of protected health information," Democratic Sens. Peter Welch of Vermont and Elizabeth Warren of Massachusetts wrote a letter to Amazon CEO Andy Jassy expressing concern that Amazon Clinic "may be harvesting consumer health data from patients."

Kruse said that Amazon Clinic asks for an authorization under the Health Insurance Portability and Accountability Act "to make things easier for customers," and that the form allows the business to best treat customers without requiring them to duplicate information and past visit history.

Paul F. Schmeltzer, senior attorney at [Clark Hill PLC](#), told Law360 his data privacy concerns are about whether there are enough guardrails in place so that customer data from Amazon's healthcare offerings cannot be misused by Amazon to target consumers based on their health conditions.

The company declaring publicly that it doesn't use patients' data for its retail business or for third parties is "a good start," Schmeltzer said.

"I'm an attorney, so I do have an inherent amount of skepticism based on what's contained in such documentation versus what a commercial entity is actually doing with data," he said. "I think it's just the skeptical attorney in me that would have some second thoughts about whether that's really taking place and that my data is really being protected and not shared for those purposes."

Could Amazon Alter the Healthcare Ecosystem?

While most agree the U.S. healthcare system is badly in need of reform, it can feel like a near impossible task, with so many old guard stakeholders, from payer behemoths to multibillion dollar health systems, holding so much power in a deeply established space.

But if there's any one company that can catalyze change, it might just be Amazon, according to healthcare insiders.

Rafid Fadul, a co-founder of healthcare software platform Zivian Health, said Amazon is unique in the space in large part because of its tremendous scale. Fadul was formerly the executive medical director of healthcare technology company Wheel.

"I think they're operating the same playbook, but it doesn't look or feel that way because of the size and scale difference," Fadul said. When Amazon rolls out a new healthcare offering, "it comes with tremendous weight associated with it," whereas a smaller company offering the same service may make a relatively small splash in comparison.

While Amazon's presence raises plenty of questions around privacy and patient data integrity, and about a potential healthcare monopoly, Fadul said, "that's less of a real concern at this juncture, but that's something that people kind of toss around."

The clear positives to a company like Amazon venturing into healthcare, he argued, are the efficiencies a company with such resources could create and how those efficiencies could drive down costs for consumers.

He added that the biggest question he has on Amazon's healthcare venture is simply: Why are they doing this today? What's the long term benefit for them?

Amazon's Kruse told Law360 that the company's healthcare goal in five to 10 years' time is to have a "meaningful impact on improving human health by building health care experience improvements, centered around the customer."

"Over time, these changes will add up. And, eventually it will feel like a complete reinvention and welcomed improvement of the overall health care experience," Kruse said. "We won't be able to achieve our mission alone, and we will continue to partner with others in the industry who share our desire to make the things that should be easier in health care, easier."

Hooper Lundy's Sherer said that creating a nationwide medical practice is a hugely expensive feat that proves to be too high a barrier to entry for some companies.

"So when you have a much larger entity entering the space with significant resources, that's obviously a hurdle that they're able to navigate more easily," he said. "Market share is really important and when you're talking about real tech giants that are coming into healthcare, the value of that brand can't be overstated."

He added that there's already a level of familiarity with a brand like Amazon among consumers, not to mention large and developed business and legal teams internally within the company to navigate through the complicated regulatory issues within the healthcare space.

Fella Health's Cartwright said that he expects Amazon's presence in the healthcare space to rattle the big old guard players rather than the more adaptable and younger startups in the space that are able to pivot quickly.

"I have a feeling that this is going to be much more impactful, not for young startups, but much more for people that are sitting on a gold mine and they've built their whole house on top of that," he said. "They may actually realize people are coming for the gold beneath their house."

--Additional reporting by Renee Hickman and Allison Grande. Editing by Alex Hubbard.

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