



Robert "Bo" Ryall
President & CEO

December 9, 2015

Arkansas Insurance Department
Attn: Amanda Capps Rose, Associate Counsel
1200 W. 3rd Street
Little Rock, Arkansas 72201
(Sent via email to Amanda.Rose@arkansas.gov)

Re: Comments on the Statement Regarding the Acquisition of Control of or Merger With a Domestic HMO, Humana Regional Health Plan, Inc. by Aetna, Inc.

Dear Ms. Rose:

On behalf of our member hospitals, health systems and other healthcare organizations, the more than 40,000 Arkansans employed by those organizations, and the patients and communities they serve, the Arkansas Hospital Association ("AHA") appreciates the opportunity to offer comments to the Arkansas Insurance Department (the "Department") on the transition referenced above (the "Merger").

We urge the Department to take additional time to scrutinize the proposed Merger in order to assess the anticompetitive impact of the proposed transaction on the market in our state. The proposed Merger especially threatens significant harm to our senior and most vulnerable citizens who depend on Medicare Advantage for their health care needs.

Arkansas already is a highly concentrated health insurance market, and the proposed acquisitions could greatly compound the existing market concentration. The proposed Merger would give Aetna more than 40 percent of our state's Medicare Advantage market, a market share that raises significant anticompetitive concerns. The Department of Justice views the Medicare Advantage market as distinct from traditional Medicare due in large part to "the lower out-of-pocket costs and richer benefits that many Medicare Advantage plans offer seniors over traditional Medicare."¹ The Medicare Advantage market concentration is particularly high in Northwest Arkansas. For example, according to data from the American Hospital Association, in Benton County, Aetna would have over 80 percent of the Medicare Advantage market post-merger, with market share in Madison County at 79 percent and in Washington County at 70 percent.

We are aware that divestiture is sometimes required as a way to remedy anticompetitive problems resulting from transactions such as the proposed Merger. However, even assuming divestiture is an adequate remedy, high barriers to entry into the health insurance market would make finding qualified acquirers for a divestiture an extremely difficult task. In a post-merger environment, barriers to entry increase as well. As one of the nation's leading academics on insurance markets,

¹ Competitive Impact Statement, *United States v. UnitedHealth Group Inc. and Sierra Health Services, Inc.*, No. 08-cv-322 (D.D.C. Feb. 25, 2008), available at www.justice.gov/atr/case/us-v-unitedhealth-group-inc-and-sierra-health-services-inc.

Professor Leemore S. Dafny, PhD, confirmed in recent Congressional testimony, "[c]onsolidation even in non-overlapping markets reduces the number of potential entrants who might attempt to overcome price-increasing (or quality reducing) consolidation in markets where they do not currently operate."

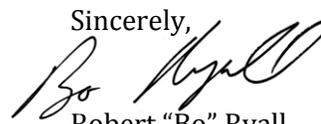
Even an insurer that already has a commercial product in the same relevant geographic market could find entry into the Medicare Advantage market challenging because effective market entry requires that an insurer contract with broad provider networks, be positioned to obtain hospital prices and discounts at least comparable to the leading incumbents in the market and have the requisite experience and skill to effectively coordinate care for participating seniors. The substantial barriers to entry make it extraordinarily unlikely that even existing insurers could replicate the size and scope of the companies involved in the proposed Aetna/Humana transaction.

Research shows that having fewer insurers leads to higher premiums for large and small employers as well as individuals purchasing insurance on the exchange. It also shows that any "savings" – administrative or otherwise – promised by merging insurers are never passed on to consumers. There is no reason to believe that these transactions will be different and every reason to believe that premiums, deductibles and out-of-pocket costs will rise as a result. The real danger is that the insurer-promised "savings" could harm providers and their patients: for example, "savings" derived from cost cutting efforts could reduce access for consumers, creating longer wait times and fewer choices for patients seeking care; slow-downs in payments to providers or more disputed claims, would produce "savings" for the insurer, but be detrimental to providers ability to care for their patients.

Finally, evidence suggests that "[a]n insurer with stronger market power has less of an incentive to invest in new products" and "no research showing the larger insurers are likelier to innovate."² Providers and non-national insurers are the major source of innovative reform efforts. Hospitals and other health care providers have every incentive to work together to better coordinate care to ensure that patients are able to get more effective, high quality, convenient care that keeps them healthy and lowers the overall cost of health care. The loss of competition threatened by these transactions will make it even more difficult for providers in our state to find an insurer partner that is willing to work collaboratively on critical delivery system reform efforts.

We ask the Department to take additional time to assess the impact of the proposed Merger in various areas of the state and assess whether the merger is in the public interest in view of the market consolidation that would occur, particularly in the Medicare Advantage market.

If you have any questions, please feel free to contact me directly. And once again, we thank you for the opportunity to comment on this proposal.

Sincerely,

Robert "Bo" Ryall
President & CEO

² Testimony of Professor Leemore S. Dafny, Ph.D., Professor of Strategy, Kellogg School of Management Northwestern University, before the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights on "Health Insurance Industry Consolidation: What Do We Know From the Past, Is It Relevant in Light of the ACA, and What Should We Ask?" (Dafny Testimony) September 22, 2015 at 3.