



Tom Bell

January 15, 2016

Ken Selzer
Kansas Insurance Commissioner
Kansas Insurance Department
420 SW 9th Street
Topeka, Kansas 66612-1678

Dear Commissioner Selzer:

I am writing to express the concerns of the Kansas Hospital Association and its 126 member hospitals regarding the proposed acquisition of Humana by Aetna and Cigna by Anthem. The insurers involved in these proposed deals operate in the State of Kansas and Aetna and Humana have a significant presence in the Medicare Advantage market for our state. All of the insurers also provide insured and self-funded health insurance products to individuals as well as small and large businesses in the state. If approved, these deals would significantly reduce competition, and will likely increase the cost of premiums and diminish the insurers' willingness to be innovative partners with Kansas providers and consumers in transforming health care.

While these potential transactions will be vigorously reviewed by the United States Department of Justice, it also is essential that they be given a commensurate amount of scrutiny by our state Attorney General and the Kansas Insurance Department. These proposed transactions threaten enduring harm to consumers, businesses, and providers in our state, particularly to our senior and most vulnerable citizens who depend on the Medicare Advantage programs for their health care needs.

Higher Market Concentration and Barriers to Entry

Kansans opt to participate in Medicare Advantage plans instead of traditional Medicare because of the richer benefits and lower costs these plans can offer. In 2015, about 14 percent of our state's Medicare recipients (67,545 individuals) were participating in Medicare Advantage plans.¹ The Medicare Advantage market has been viewed by the Department of Justice as a market 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."² Moreover, the Medicare Advantage market in our state already is highly concentrated and Aetna's acquisition of Humana would greatly compound that concentration. As a result of the proposed Aetna/Humana deal, Aetna would have more than 90 percent of the Medicare Advantage market in the state, a market share that is presumptively anticompetitive. Any attempt to fix the problem would require that Humana divest itself of more than 70 percent of its 30,019 covered lives. Finding qualified acquirers that can adequately serve so many of

¹ <https://www.healthinsurance.org/kansas/>

² 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.

our consumers' needs and remain viable in the market, however, is a huge and perhaps insurmountable task made more difficult by the high barriers to entry into the health insurance market.

Entry into the Medicare Advantage market requires that an insurer contract with broad provider networks and be in a position to obtain hospital prices and discounts at least comparable to the leading incumbents in the relevant market. In fact, even if that insurer already has a commercial product in the same relevant geographic market, entering the Medicare Advantage market may present challenges. The substantial barriers to entry make it extraordinarily unlikely that even existing insurers could replicate the size and scope of those involved in the proposed Aetna/Humana transaction. The likely result of this acquisition is erosion of the richer benefits that Medicare Advantage plans offer to our state's elderly and most vulnerable citizens.

What is true of effective entry into the Medicare Advantage market also is true of entry into the commercial health insurance market. As one of the nation's leading academics on insurance markets, Professor Leemore S. Dafny, PhD, confirms 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." In other words, as Anthem and Aetna get larger, so do the barriers to entry for other insurers. Our state is struggling to stabilize competition on the health insurance exchange. For 2016, Kansas consumers will continue to be able to select from among four carriers, because United Healthcare of the Midwest announced it will join the exchange for 2016 while Coventry makes its exit.³ But the exchange's stability is fragile and potentially vulnerable to entrenched insurers that get larger and more powerful as a result of these proposed insurance deals.

The proposed Anthem/Cigna deal might appear at first glance to be more benign, giving Anthem only about a 10 percent share of the commercial health insurance market and requiring that Cigna be divested of less than 12 percent of its 39,699 covered lives to an acceptable acquirer to fix some of the problems resulting from combined companies' larger market share. However, it is important to note that the three other carriers participating on the exchange for 2016 all operate under the Blue Cross Blue Shield umbrella.⁴ This circumstance creates some unique competitive concerns because of Anthem's affiliation with the Blue Cross and Blue Shield (Blue) system. The Blue Cross Blue Shield Association's license agreement, described in an August 2015 letter from Joe R. Whatley, Jr., to the Department of Justice, prevents the individual Blue plans from directly competing against one another, and also prevents their non-Blue subsidiaries from competing even slightly vigorously against other Blue companies. This means that Anthem can no longer compete for new business in any market unless it decreases its business by an offsetting amount in another market and the net effect is that Anthem's effectiveness as a competitor will be significantly impaired. The proposed Anthem/Cigna deal may augment the already considerable power of the Blues plans in our state as a result of the folding of Cigna into the overall Blues system through Anthem's existing affiliation and, as a result, could undermine efforts to maintain the stability of the insurance exchange for our state's consumers.

Higher Prices and Less Innovation

One of the justifications the insurers most frequently offer for their transactions is that premium prices will decrease for consumers. However, research shows that having fewer insurers leads to higher premiums for large and small employers as well as individuals purchasing insurance on the exchange. The average final rate changes – approved before Coventry announced its exit – for plans on the exchange for our state range from 9.4 to 25.4 percent.⁵ The increasing power of the Blues plans that could result

³ <https://www.healthinsurance.org/kansas-state-health-insurance-exchange/>

⁴ <https://www.healthinsurance.org/kansas-state-health-insurance-exchange/>

⁵ <https://www.healthinsurance.org/kansas-state-health-insurance-exchange/>

from the potential acquisition of Cigna by Blues-affiliated Anthem can only perpetuate a future of such rate increases. And, the same is true for the cost and coverage trends in the Medicare Advantage market as a result of the Aetna/Humana deal.

Research also shows that any “savings” – administrative or otherwise – promised by the 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.

There is, however, a real danger that the “savings” the insurers promise could harm providers and their patients. “Savings” derived from cost cutting efforts such as offering narrower networks of providers is likely to reduce access for consumers, for example, with longer wait times and fewer choices for patients seeking care. Likewise, slow-downs in payments to providers or more disputed claims, both of which produce “savings” for the insurer, cannot be considered benefits of any transaction.

Perhaps even more concerning is the risk to the progress that hospitals in our state have made with some insurers on care delivery reform models and innovative payment arrangements. While the insurers claim that the proposed deals will allow them to accelerate reform efforts, there is scant tangible evidence to support such a claim. In fact, research shows 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.”⁶

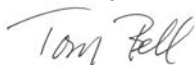
The fact is that providers and non-national insurers are the major source of innovative reform efforts. Hospitals and other health care providers have every incentive to work together to better coordinate care to ensure that patients are able to get more effective, high quality, convenient care that keeps them healthy and lowers the overall cost of health care. The loss of competition these transactions threaten 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.

These Deals Needs Vigorous State Review

As mentioned, providers in our state already are now working collaboratively with willing insurer partners to engage in innovative health care delivery and financing reforms to support accessible, high quality, effective and affordable care. While under current market conditions some insurers have been fairly open and flexible in engaging in such coordinated engagements, we fear that additional efforts to develop collaborative and innovative reform initiatives is likely to be hindered should the proposed insurer deals be approved. We, therefore, urge your department to take an active role in examining the potential acquisitions in order to protect our state’s consumers, businesses and providers as the federal regulators simultaneously engage in their own robust review.

If you have questions, or need additional information, please do not hesitate to contact me.

Sincerely,



Tom Bell
President and CEO

⁶ 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.