New Hampshire Hospital Association

November 9, 2015

The Honorable Maggie Hassan
Governor, State of New Hampshire
107 North Main Street
Concord, NH 03301

Dear Governor Hassan:

I am writing to express our concerns with the proposed acquisition of Cigna by Anthem, both of which operate in the State of New Hampshire and provide fully insured and self-funded health insurance products to individuals, as well as small and large businesses. While this potential transaction will be vigorously reviewed by the United States Department of Justice, it is essential that it be given a commensurate amount of scrutiny by the New Hampshire Department of Justice (NH DOJ) and the New Hampshire Insurance Department (NHID). This transaction threatens enduring harm to consumers, businesses, and providers in our state.

Higher Market Concentration and Barriers to Entry

New Hampshire is one of the nation's most highly concentrated health insurance markets and Anthem's acquisition of Cigna would greatly compound that concentration. As a result of the deal, Anthem would have more than a 60 percent share of the commercial health insurance market; a level that is presumptively anticompetitive. To even attempt to fix this problem, Cigna would need to divest as many as 91 percent of its 166,000 covered lives to an acceptable acquirer. Finding a qualified acquirer that can adequately serve so many of our consumers' needs and remain viable in the market is a huge and perhaps insurmountable task made more difficult by the high barriers to entry into the health insurance market. It's unclear that a willing and viable alternative exists in the Northern New England market for such a massive divestiture.

Competition is important for consumers and providers. While our state has made some recent progress growing competition on the federal health exchange from just Anthem to now multiple plans, that progress is fragile and vulnerable to an entrenched insurer made even larger and more powerful by the proposed transaction. Recent Congressional testimony by one of the nation's leading academics on this topic, Professor Leemore S. Dafny, PhD, confirms that "[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 gets larger so do the barriers to entry for other insurers.

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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. It 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 this transaction will be different and every reason to believe that premium, deductible 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 that create problems such as longer wait times for patients, cannot be considered a benefit of this transaction. Neither are slow-downs in payments to providers or more disputed claims based on such things as policy changes that make an artificial distinction about where a hospital service is delivered, both of these produce "savings" for the insurer and costs for the hospital and their patients and are much more likely to occur as a result of this transaction.

Perhaps even more concerning is the risk of halting the recent progress that some of our hospitals have made with insurers on care delivery reform models and the innovative payment arrangements that support them. While the insurers claim that this transaction will allow them to accelerate those efforts, there is scant tangible evidence to support the 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."

Health care is changing to transform how care is organized and delivered, as well as how it is paid for to ensure patients get the right care, at the right time, in the right setting…every time. 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 this transaction will make it even more difficult for our providers to find a willing partner in the insurance industry to work with collaboratively on reform efforts.

This Deal Needs Vigorous State Review

A little over a year ago, hospitals—through the New Hampshire Hospital Association—supported legislation to spur innovative health care delivery and financing reforms to support accessible, high quality, effective and affordable care. To do so most effectively, we proposed more local review and control. While there is clearly a federal role in reviewing the proposed acquisition of Cigna by Anthem, we urge state regulators to take an active role to protect consumers, businesses and providers. If this transaction is allowed to procced and proves to be anticompetitive, as we believe it will, the harm is unlikely ever to be undone.

Sincerely,

Steve Ahnen
President

Attachment: Testimony of Professor Leemore S. Dafny before the United States Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, September 22, 2015

Courtesy copies:

Joseph Foster, Attorney General, New Hampshire Department of Justice
David Rienzo, Assistant Attorney General, Consumer Protection and Antitrust Bureau

Roger Sevigny, Commissioner, New Hampshire Insurance Department
Alex Feldvebel, Deputy Commissioner, New Hampshire Insurance Department