I am writing to express our concerns with the proposed acquisitions of Cigna by Anthem and Humana by Aetna. All of the insurers involved in these proposed deals operate in the State of West Virginia and provide insured and self-funded health insurance products to individuals as well as small and large businesses. Humana and Aetna also have a significant presence in the Medicare Advantage market for our state. If approved, both deals would significantly reduce competition, and will almost certainly increase the cost of premiums, diminish the insurers' willingness to be innovative partners with West Virginia providers and consumers in transforming health care and otherwise harm providers and consumers.

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's Attorney General and Department of Insurance. These proposed transactions threaten enduring harm to consumers, businesses, and providers in our state. And, in the case of the Aetna/Humana deal, threaten harm 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

West Virginia is a highly concentrated health insurance market and these acquisitions would greatly compound that concentration. As a result of the proposed Anthem/Cigna deal, Anthem would have more than a 30 percent share of the commercial health insurance market, a level that raises significant anticompetitive concerns. To even attempt to fix this problem, Cigna would need to divest more than a quarter of its 34,355 covered lives to an acceptable acquirer. The Aetna/Humana deal would give Aetna about 85 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 at least 20 percent of its 70,182 covered lives. For both transactions, finding qualified acquirers that can adequately serve so many of 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.

To date, our state has struggled to promote competition on the state's health insurance exchange. For 2016, consumers in only 15 of the 55 counties in West Virginia will be able to select from two carriers because CareSource now will offer plans in Boone, Brooke, Cabell, Clay, Hancock, Kanawha, Lincoln, Marshall, Mason, Ohio, Pleasants, Putnam, Wayne, Wirt and Wood counties.[1] In the other 40 counties, Highmark Blue Cross Blue Shield (Highmark) will remain the only option.[2] In 2014 and 2015, our state's exchange had just one carrier – Highmark; in fact, our state in 2015 was the only state in the country that had just one participating carrier on the exchange.[3] For some of our state's residents, there will be some competition and choice for at least the immediate future. But in most areas of the state, competition and choice remains elusive; and, in part as a result of the lack of significant competition in these areas, Highmark has requested – although not yet approved for − an average rate increase of 19.7 percent for individual plans on the exchange.

Competition and effective consumer choice for the state as a whole remains especially vulnerable should entrenched insurers become even larger and more powerful as a result of the proposed transactions. As one of the nation's leading academics on insurance markets, Professor Leemore S.

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[1] https://www.healthinsurance.org/west_virginia-state-health-insurance-exchange/
[2] https://www.healthinsurance.org/west_virginia-state-health-insurance-exchange/
[3] https://www.healthinsurance.org/west_virginia-state-health-insurance-exchange/

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. The presence of Anthem and Aetna in the state as the hulking giants they would become as a result of these proposed deals could undermine efforts to support and expand the competitiveness of our state insurance exchange.

It also is important to note that one of the only two carriers participating on the exchange for 2016 and the only one that offers plans in most of our state's counties – Highmark − operates 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 Blues 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 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 ensure robust and effective competition on the insurance exchange that would benefit our state's consumers.

Consolidation of health insurers that sell policies to self-insured employers (often called Administrative Services Only plans, or ASO) raise comparable anticompetitive concerns. An essential service that health insurers provide is access to a provider network at competitive rates. Increasing the market power of a provider of self-insured products would allow the carrier to increase the administrative and other service fees that self-insured employers need to pay in order to obtain access to the carrier's provider network and raises other competitive concerns that negatively impact consumers. These proposed transactions will combine four of the five national health insurance companies, and the permanent loss of national competitors would affect competition for contracts with West Virginia employers. Anthem and Cigna are particularly strong in the sale of ASO plans, and Anthem's proposed acquisition of Cigna is likely to have particularly large and wide-ranging anticompetitive effects in the sale of health insurance to those national and large regional employers operating in our state who self-insure. The Anthem/Cigna combined market share in many areas throughout the state of West Virginia would reach presumptively anticompetitive levels; and in many of those areas, there is no possibility that existing firms could replicate the size and scope of the insurers involved in the proposed transaction. Effectively, that leaves no effective divestiture option that might help to mitigate any anti-competitive market concerns that the permanent loss of national competitors produces.

As is true of effective entry into the commercial health insurance markets, entry into the Medicare Advantage market requires that an insurer contract with broad provider networks, be in a position to obtain hospital prices and discounts at least comparable to the leading incumbents in the relevant market and have the requisite experience and skill to effectively coordinate care for participating seniors. Even if that insurer already has a commercial product in the same relevant geographic market, entering the Medicare Advantage market may present challenges for those reasons. 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. Furthermore, this acquisition likely would serve only to erode future benefits Medicare Advantage plans offer to our state's elderly and most vulnerable citizens.

[4] https://www.healthinsurance.org/west_virginia-state-health-insurance-exchange/

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 request by Highmark for a rate increase for 2016 averaging 19.7 percent for individual plans on the exchange is a clear example of this exploitive conduct. Fewer insurers as a result of these acquisitions can only lead to a future of anticompetitive rates increases. And, the same is true for the cost and coverage trends in the Medicare Advantage market.

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 have made with insurers on care delivery reform models and innovative payment arrangements. While the insurers claim that the transactions will allow them to accelerate those efforts, there is scant tangible evidence to support such 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.”[5]

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 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.

These Deals Needs Vigorous State Review

As mentioned, providers in West Virginia 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. However, not all insurers, even under current market conditions, have been so open and flexible in initiating such coordinated engagements. Should these proposed insurance transactions be approved, we fear that this trend toward collaborative and innovative reform initiatives will likely be hindered. We, therefore, urge state regulators to take an active role in scrutinizing closely these potential acquisitions in order to protect our state’s consumers, businesses and providers as the federal regulators simultaneously engage in their own robust review.

[5] 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.