American Hospital Association

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VIA E-MAIL AND U.S. MAIL

The Honorable Christine A. Varney
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Ms. Varney:

On behalf of our nearly 5,000 hospitals, health systems and other health care organizations, as well as our 40,000 individual members, the American Hospital Association (AHA) encourages the Antitrust Division (Division) to investigate the proposed merger of Tufts Health Plan (Tufts) and Harvard Pilgrim Health Care (Harvard Pilgrim). The proposed merger raises significant competitive concerns by further concentrating an already consolidated health plan market in the Commonwealth of Massachusetts, and in local and regional markets within the state.

Tufts and Harvard Pilgrim are two of the three largest health plans in Massachusetts. Tufts had revenues of $2.5 billion in 2010, with more than 700,000 members; Harvard Pilgrim's 2010 revenues were almost $3 billion; with more than a million members. The only other health insurance company of significance in the state is Blue Cross Blue Shield of Massachusetts (Blue Cross), the state's largest health plan. Together, the three companies account for more than 80 percent of health plan revenues and more than 80 percent of member months, according to the Massachusetts Division of Health Care Finance and Policy. The most recent American Medical Association report on competition in health insurance shows that Massachusetts has a statewide Herfindahl-Hirschman Index (HHI) of 3639, and HHIs ranging from 2180 to 4005 in metropolitan areas across the state. These already high concentration levels would increase substantially if Tufts and Harvard Pilgrim are allowed to merge.

The effects of the merger also will be felt in the HMO market. The leading firm, Blue Cross, has more than 40 percent of the market, according to HealthLeaders Interstudy data, and the merger would combine the second- and third-largest HMOs, with a resulting share of more 30 percent. These shares dwarf those of other competitors; the next most significant HMO has a share of less than 7 percent.

Other market facts underline the potential negative consequences of this proposed merger. First, although the national health plans have a presence in Massachusetts, they have been unable to gain traction in competing with Blue Cross, Tufts and Harvard Pilgrim. The merger would likely entrench this dominance even further. As the Division has found in its investigations of health plan mergers, and in its health insurance entry project, because many providers find it necessary to give their best discounts to insurers with significant market shares, it is difficult for insurers with smaller shares to expand. Second, the three largest competitors are the only ones with statewide coverage for HMO products. This number would decrease to two after the merger.

In sum, an already oligopolistic market would become a duopoly. This could have serious negative consequences for consumers, both because of higher prices to purchasers of health insurance and lower reimbursement for providers of health care.

As the Division has recognized in its prior enforcement actions, if health plan mergers create or enhance monopsony power, reimbursements to hospitals and physicians fall below competitive levels. Monopsony power and increased concentration among health insurers can interfere with the ability of health care providers to engage in the kinds of innovation that are necessary to contain health care costs and improve care for patients. We urge the Division to continue to be vigilant to prevent the exacerbation of an already monopsonistic market in Massachusetts.

The Tufts-Harvard Pilgrim proposed merger could eliminate an important competitive force in the marketplace. As you made clear in your remarks last year on Antitrust and Healthcare, "[t]he goals of health care reform cannot be achieved if mergers between significant insurers in a particular market substantially reduce competition."

To achieve the promise of health care reform and the hospital field's goal of improving quality while ensuring cost-effective health care delivery, robust competition among payers is essential.

If we can provide further assistance, please contact Melinda Hatton, AHA general counsel and senior vice president, at (202) 626-2336 or mhatton@aha.org.

Sincerely,

Rick Pollack
Executive Vice President