Tom Bell

January 16, 2016

Derek Schmidt
Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

Dear Attorney General Schmidt:

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, 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 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.

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[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.

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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.[3] 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.[4] The increasing power of the Blues plans that could result 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 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]

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

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

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

Tom Bell
President and CEO