



Jan. 11, 2016

Shelley Rouillard  
Director, Department of Managed Health Care  
980 Ninth Street, Suite 900  
Sacramento, CA 95814-2725

Re: Proposed Aetna – Humana Merger

Dear Ms. Rouillard,

Consumer Watchdog, a nonpartisan, nonprofit public interest group, urges the Department of Managed Health Care (DMHC) to use its full authority to impose comprehensive requirements to protect consumers before allowing the merger between Aetna and Humana to move forward.

DMHC has the authority to deny or require changes to the “Change in Control” request and should use it in order to assure continued access to quality health care and provide the full protection of state laws governing health plans. These types of mergers pose risks that include the further narrowing of physician networks, higher premiums, higher out-of-pocket costs (deductibles, co-pays and coinsurance) and fewer health insurance choices.

The Affordable Care Act was meant to give more people to access to healthcare, and millions of Californians are newly insured. Yet many low- and middle-income families continue to struggle to pay the costs of a policy, let alone use their new health coverage, as deductibles soar and doctor and hospital networks shrink. A Kaiser Family Foundation/New York Times survey released early this month showed that one-in-five working-age Americans ran into serious financial difficulties trying to pay medical bills despite being insured.<sup>1</sup> Mergers exacerbate these issues.

At a U.S. Senate Judiciary subcommittee hearing in September, which discussed insurance industry consolidation nationally, Mark T. Bertolini, the chief executive of Aetna, said the transaction would cut costs for consumers.<sup>2</sup> Despite his assertion, savings created by mergers are rarely passed on to policyholders. At the recent DMHC hearing on the merger, an Aetna representative said the combined company plans to cut \$1.25 billion in “cost savings” by 2018.<sup>3</sup> Depending on the types of “costs” Aetna is targeting (for example, access to more comprehensive provider networks), the company should detail how these cuts will be made.

Northwestern University Professor Leemore Dafny, who testified at the same hearing, noted in her 2012 consolidation study<sup>4</sup> of the 1998 Aetna and Prudential Healthcare merger that top executives cut

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<sup>1</sup> <http://kff.org/health-costs/report/the-burden-of-medical-debt-results-from-the-kaiser-family-foundationnew-york-times-medical-bills-survey/>

<sup>2</sup> [http://www.nytimes.com/2015/09/23/business/aetna-anthem-congress-health-insurers-mergers.html?\\_r=0](http://www.nytimes.com/2015/09/23/business/aetna-anthem-congress-health-insurers-mergers.html?_r=0)

<sup>3</sup> <http://www.latimes.com/business/la-fi-agenda-health-mergers-20160111-story.html>

<sup>4</sup> [http://www.kellogg.northwestern.edu/faculty/dafny/personal/documents/publications/ms\\_2010\\_0837\\_0804.pdf](http://www.kellogg.northwestern.edu/faculty/dafny/personal/documents/publications/ms_2010_0837_0804.pdf)

jobs and wages as well as reduced payments to healthcare providers to cut costs. Dafny also wrote, “Americans are indeed paying a premium on their health insurance premiums as a result of recent increases in market concentration of the health insurance industry.”

At a related U.S House of Representatives hearing on the same subject, Jaime King, a law professor at the University of California, said there was an almost immediate 7 percent hike in premiums after the Aetna-Prudential merger. She added that despite promises of Aetna at the time, the quality of care did not increase.<sup>5</sup>

In addition, Aetna’s recent track record in California has been alarming. According to the Department, two-thirds of its unreasonable premium rate findings have been for Aetna rate increases.<sup>6</sup> In an eight-month period between 2014 and 2015, Aetna subjected more than 40 percent of its small group members to unreasonable rate increases, costing policyholders a projected \$39 million in excessive rates. A continuation of Aetna’s pattern of unreasonable premium rate hikes will make an Aetna – Humana merger even more costly for consumers.

### ***Merger Undertakings***

#### **1. Enhanced Rate Review**

To assure the public that savings from the merger are passed on but costs are not, DMHC must require the merged company to agree to five years of enhanced rate review, much as DMHC did in an order it made before approving the merger of Blue Shield of California and Care1st Health Plan in October.<sup>7</sup>

The department mandated that Blue Shield report its emerging utilization and trend projections, update its projected federal medical loss ratio (MLR) calculation mid-year in the individual market, and issue mid-year rebates to consumers if there is a difference between the updated projected federal MLR and the Plan’s federal MLR estimate filed with the Department as part of the rate review process. The department also required Blue Shield to forgo a rate increase in the 2<sup>nd</sup> quarter of 2016, and to limit any proposed 2017 rate increases for individual and family plans to reflect a 1.41% profit margin, and a 1.67% profit margin for small groups.

An Aetna rate review process should include: a guarantee that Aetna will not impose unreasonable premium increases; that Aetna will not increase premiums, co-payments and other rates more than the rate of inflation for five years following the merger; the planned \$1.25 billion in cuts need to be detailed; and that premiums will not be used to finance any part of the deal.

#### **2. Strengthen Health Care Delivery System**

As it did in the Blue Shield/Care1st approval, DMHC should also mandate that Aetna participate and invest in the Provider Database Project. The Provider Database Project is meant to be a centralized provider directory database to create a single portal for consumers to access information, for providers

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<sup>5</sup> <http://ctmirror.org/2015/09/29/aetna-anthem-merger-plans-under-scrutiny-again-by-congress/>

<sup>6</sup> <https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/2015/pr071615.pdf>

<sup>7</sup> [http://insuremekevin.com/download/department\\_of\\_managed\\_health\\_care/blue\\_shield/DMHC\\_MLR\\_Order\\_Blue\\_Shield.pdf](http://insuremekevin.com/download/department_of_managed_health_care/blue_shield/DMHC_MLR_Order_Blue_Shield.pdf)

to access and update their data, and for health plans to meet their legal obligations regarding provider directories with the expectation that all health plans participate.<sup>8</sup>

### 3. No Plan Cancellations

In 2013, despite Aetna's California individual business being profitable, according to the Wall Street Journal,<sup>9</sup> it stopped selling health insurance to individual consumers, forcing 50,000 policyholders scrambling for other insurance. With Aetna fourth in the state's individual health market at the time, its departure further increased market concentration. It should be required to maintain all California insurance products in the combined company on the same basis as prior to the merger.

### 4. Bar "Upstreaming" of California Premiums

DMHC should also be vigilant when it comes to executive compensation related to the merger and any "upstream" funds sent from California to the parent company post-merger. Past insurers have used these financial avenues to drain money from the state.

In the 2004 merger of Anthem and WellPoint, WellPoint executives wanted to walk away with \$600 million from the deal. Then-Insurance Commissioner John Garamendi blocked that attempt. Even with a reduced compensation package, it was reported that WellPoint CEO Leonard Schaeffer and other executives received \$265 million, and Anthem CEO Larry Glasscock was rewarded with a \$42.5 million bonus for closing the deal.<sup>10</sup>

Since the merger, Anthem has transferred more than \$5.4 billion in dividends to its corporate parent as of December 2014, according to its annual income reports, while raising rates on individual policyholders in California with increases of up to 39%.<sup>11</sup>

California policyholders should not bear this price. DMHC should prohibit either Aetna or Humana from removing reserves from California to pay for severance and retention packages for executives in connection with the merger and require them to explain any "upstream" amounts sent out of state post merger.

### 5. Improve Quality of Care

Aetna Health of California has scored poorly in the rankings of the Office of the Patient Advocate's Medical Care Ratings related to customer satisfaction and timely care.<sup>12</sup> Aetna must be required to improve any star rating on the 2015 ratings that are below two stars with a rating of at least three stars by end of 2017

Consumer Watchdog urges that any undertakings include provisions requiring the commitments to be tracked, measured, and enforced. DMHC needs to make sure that all requirements are written down and not just agreed to in negotiation. Blue Shield's recent refusal to donate millions of dollars to a

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<sup>8</sup> <https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/pr100815A.pdf>

<sup>9</sup> <http://www.wsj.com/articles/SB10001424127887323734304578546144234962424>

<sup>10</sup> <http://www.publicintegrity.org/2015/08/24/17890/merger-health-insurers-usually-leads-big-payday-executives>

<sup>11</sup> <http://articles.latimes.com/2010/feb/23/business/la-fi-anthem-cash23-2010feb23>

<sup>12</sup> <http://reportcard.opa.ca.gov/rc/profile.aspx?EntityType=HMO&Entity=AETNA>

charitable organization despite its earlier promises to DMHC makes it all too clear that, without explicit guarantees, health insurers are likely to ignore any concessions.<sup>13</sup>

Aetna and Humana claim that the merger will increase competition, improve care and benefit consumers. Unfortunately, healthcare mergers generally lead to the opposite: fewer choices, inadequate physician networks and higher premiums. The result of increasing consolidation and lack of competition will lead to a healthcare crisis in California if regulators don't protect consumers with meaningful and stringent safeguards.

Sincerely,

A handwritten signature in black ink that reads "Eddie Barrera". The script is fluid and cursive, with the first name "Eddie" and last name "Barrera" clearly distinguishable.

Eddie Barrera  
Consumer Advocate

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<sup>13</sup> <http://www.latimes.com/business/la-fi-blue-shield-charity-20151117-story.html>