California Medical Association
Physicians dedicated to the health of Californians
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April 1, 2016

Dave Jones, Commissioner
California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Comments submitted via e-mail to: kayte.fisher@insurance.ca.gov

Dear Commissioner Jones:

The California Medical Association (CMA) writes to express our opposition to Anthem Blue Cross' (Anthem) proposed acquisition of Cigna. CMA is a not-for-profit, professional association for California physicians with more than 42,000 members. CMA physician members practice medicine in all specialties and modes of practice throughout California. For more than 150 years, CMA has promoted the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession. CMA and its physician members are committed to the protection of the physicians' ability to exercise their medical judgment to provide quality and effective care for their patients.

CMA has long been concerned with the consolidation of health plans and health insurers and the reduction of competition. Physicians across the country have serious concerns with the recent, rapid wave of proposed mergers and consolidation of health plans and health insurers.[1] Physicians are concerned with the proposed mergers' impact on patients in terms of health care access, quality, and affordability.

CMA and the American Medical Association (AMA) believe that allowing Anthem to acquire Cigna would substantially lessen competition in California to the detriment of physicians and their patients. The success of health care reform will depend as much upon its regulatory implementation as it will upon healthy, competitive health plan markets. In order to improve health care we must encourage competitive health insurance markets that provide ample choice, high quality, and transparency. CMA urges the California Department of Insurance (CDI) to recommend disapproval of Anthem's proposed acquisition of Cigna to the DOJ and the Federal Trade Commission (FTC).

Below we outline specific reasons for CMA's opposition to Anthem's proposed acquisition of Cigna.

Anthem-Cigna Merger Raises Significant Competitive Concerns

It is unquestionable that if approved, the Anthem-Cigna merger would significantly increase the market power of the already powerful insurers. An AMA study, "Competition in Health Insurance: A

[1] Hereinafter the terms health plan and health insurer are used interchangeably in the context of discussing the merger and consolidation of companies that provide health insurance and health plan products.

Comprehensive Study of U.S. Markets, 2015 update," provides the commercial market share and concentration (HHI) for 388 metropolitan statistical areas (MSAs), the 50 states and the District of Columbia.[2] Using the 2010 DOJ/FTC Horizontal Merger Guidelines (merger guidelines), the AMA study presents the state and MSA level commercial markets where the proposed merger would raise significant competitive concerns. Under the merger guidelines, states or MSAs with HHI (which means Herfindahl–Hirschman Index, a measure of market concentration) between 1500 and 2500 are considered moderately concentrated and highly concentrated if the HHI is more than 2500. Those MSAs where the proposed merger would be presumed likely to enhance market power, and which would be expected to be most adversely affected by the merger, are where there is a combination of a highly concentrated market with a post-merger significant increase in the HHI. MSAs where the merger potentially raises significant competitive scrutiny and often warrants scrutiny have a combination of moderately to highly concentrated market with a meaningful increase in the HHI.

The AMA study demonstrates that an Anthem-Cigna merger would be "presumed likely to enhance market power" in the combined (HMO+PPO+POS) commercial markets ("combined markets") in 10 of the 14 states in which Anthem is licensed to provide commercial coverage. California is one of four states where the Anthem-Cigna merger potentially raises significant competitive concerns and warrants scrutiny for the combined HMO+PPO+POS markets. California's total HHI for the combined commercial market is 2108, but would rise to 2399, a net gain of 291 points, if Anthem and Cigna were allowed to merge. Further, for the combined markets, the AMA study demonstrates that in nine California MSAs the Anthem-Cigna merger would be "presumed likely to enhance market power" and in six MSAs it "potentially raises significant competitive concerns."

Specifically, as illustrated in the California map below, the AMA report finds that a merger between Anthem and Cigna would be presumed to enhance the market power in the following California MSAs for the combined HMO+PPO+POS markets: Santa Cruz-Watsonville; Santa Ana-Anaheim-Irvine; Santa Barbara-Santa Maria; Salinas; Oxnard-Thousand Oaks-Ventura; Los Angeles-Long Beach-Glendale; Bakersfield; El Centro; and Modesto. The merger also potentially raises significant competitive concerns that warrant scrutiny for the combined markets in the following California MSAs: San Jose-Sunnyvale-Santa Clara; San Diego-Carlsbad-San Marcos; San Francisco-San Mateo-Redwood City; Riverside-San Bernardino-Ontario; Oakland-Fremont-Hayward; and Sacramento-Arden-Arcade-Roseville.

[2] American Medical Association, *Markets Where an Anthem-Cigna Merger Warrants Antitrust Scrutiny: Analysis of data from the 2015 update to "Competition in Health Insurance: A comprehensive study of U.S. markets"* (2016).

A close look at the individual MSAs that would be most impacted by the proposed merger demonstrates that in many California combined markets, like the rest of the country, there has already been a near total collapse of competition that would be further exacerbated by the proposed merger and which would make some moderately concentrated markets, highly concentrated.

Table 1

MSAs where an Anthem-Cigna merger will be presumed likely to enhance market power, by state

MSA name	Total HHI	Total HHI post-merger	Change in HHI
California			
Santa Cruz-Watsonville, CA	2934	3530	596
Santa Ana-Anaheim-Irvine, CA	1986	2514	528
Santa Barbara-Santa Maria, CA	3371	3849	478
Salinas, CA	4446	4888	442
Oxnard-Thousand Oaks-Ventura, CA	2471	2838	367
Los Angeles-Long Beach-Glendale, CA	2256	2575	319
Bakersfield, CA	2664	2969	305
El Centro, CA	3125	3416	291
Modesto, CA	2453	2668	215

Table 2

MSAs where an Anthem-Cigna merger potentially raises significant competitive concerns and often warrants scrutiny, by state

MSA name	Total HHI	Total HHI post-merger	Change in HHI
California			
San Jose-Sunnyvale-Santa Clara, CA	2112	2453	341
San Diego-Carlsbad-San Marcos, CA	1622	1890	267
San Francisco-San Mateo-Redwood City, CA	2063	2305	242
Riverside-San Bernardino-Ontario, CA	2162	2375	213
Oakland-Fremont-Hayward, CA	2859	3031	172
Sacramento-Arden-Arcade-Roseville, CA	2466	2578	112

The lack of competition is particularly striking in the POS markets and PPO markets. In the California POS markets, the Anthem-Cigna merger is presumed likely to enhance market power. The current HHI for California of 3037 would increase by 1,191 points, totaling 4228 HHI, if the merger is allowed to proceed. Specifically, the tables below demonstrate the California MSAs where the concentrated market power for POS products would be significantly enhanced.

Table 3

MSAs where an Anthem-Cigna merger will be presumed likely to enhance market power, by state

MSA name	PPO HHI	PPO HHI post-merger	Change in PPO HHI
California			
Santa Cruz-Watsonville, CA	4403	4975	572
El Centro, CA	3377	3724	347

Table 4

MSAs where an Anthem-Cigna merger will be presumed likely to enhance market power, by state

MSA name	POS HHI	Total POS HHI post-merger	Change in POS HHI
California			
Santa Barbara-Santa Maria, CA	3025	5236	2212
Salinas, CA	3599	5663	2064
Visalia-Porterville, CA	3478	5386	1907
Madera, CA	3655	5560	1904
Modesto, CA	3184	5065	1881
San Luis Obispo-Paso Robles, CA	3850	5651	1801
Napa, CA	3453	5241	1788
Merced, CA	3308	5077	1769
Fresno, CA	3410	5068	1658
Redding, CA	4004	5559	1555
Oxnard-Thousand Oaks-Ventura, CA	3034	4587	1553
Santa Cruz-Watsonville, CA	3062	4614	1552
Bakersfield, CA	3269	4753	1485
Santa Ana-Anaheim-Irvine, CA	3130	4527	1397
Stockton, CA	3360	4716	1356
Los Angeles-Long Beach-Glendale, CA	2669	3952	1283
Yuba City-Marysville, CA	4159	5353	1194
Sacramento-Arden-Arcade-Roseville, CA	3613	4705	1092
Chico, CA	4020	5098	1078
Vallejo-Fairfield, CA	3813	4755	942
Santa Rosa-Petaluma, CA	3892	4831	939
San Diego-Carlsbad-San Marcos, CA	3531	4455	924
Oakland-Fremont-Hayward, CA	3878	4715	837
San Francisco-San Mateo-Redwood City, CA	3970	4747	777
Riverside-San Bernardino-Ontario, CA	2391	3165	774
San Jose-Sunnyvale-Santa Clara, CA	3854	4535	681

The loss of competition resulting from an Anthem-Cigna merger would likely be permanent and the acquired health insurer market power would be durable.[3] Physicians overwhelmingly oppose the merger, concluding that the combined Anthem-Cigna company's overwhelming market power would further incentivize it to restrict access to care, dictate physician's clinical judgment, and severely restrict physician resources, resulting in a significant degradation of their ability to provide the quality of care that patients value and need.[4] Further, the AMA data and analysis demonstrates that the competitive harm posed by the proposed merger cannot be counterbalanced by any merger-specific, cognizable efficiencies, or be effectively remedied in a way that fully restores competition.

<u>Physicians Overwhelmingly Oppose Anthem's Proposed Acquisition of Cigna</u>

CMA, in collaboration with the AMA, conducted a survey of California physicians to gauge their perspective on the Anthem-Cigna merger, and to gather data on how physicians currently negotiate with insurance companies. This survey was administered to members of CMA. In a brief period of time, CMA received one of the highest response rates for such a survey with 989 physician practices responding to the survey.

The survey results demonstrate that physicians overwhelmingly oppose the mergers. They believe that the mergers would give insurers more influence over physicians' clinical and business practices and would force physicians to cut costs, resulting in a significant degradation of their ability to provide the care patients value and need. Physicians do not believe that the mergers are necessary to gain efficiencies—as insurers claim—in areas such as innovative payment programs and care management strategies that will benefit patients. The survey results also demonstrates that:

- Eighty-five percent (85%) of physicians strongly or somewhat oppose the merger of Anthem and Cigna;

- Eighty-three percent (83%) of physicians believe the Anthem-Cigna merger would make the contracting negotiation process less favorable;

- Eighty-two percent (82%) of physicians believe the Anthem-Cigna merger is very or somewhat likely to lead to narrower physician networks, which will reduce access to patient care;

- More than 75 percent (75%) of physicians believe they will be pressured not to engage in aggressive patient advocacy if either of the merger is approved;

[3] See, e.g., Letter from James L. Madara, M.D., Exec. Vice President, American Medical Association, to William Baer, Assistant Attorney General, U.S. Dept. of Justice Antitrust Division (November 11, 2015)(on file with the California Medical Association).
[4] California Medical Association Survey, *The Anthem-CIGNA and Aetna-Humana mergers: Putting profits ahead of patients*, (on file with the California Medical Association).

- Almost 90 percent (90%) of physicians believe that it is either very likely or somewhat likely that reimbursement rates will decrease and the result will be a reduction in the quality and quantity of services physician can provide to their patients;

- Eighty-three percent (83%) of physicians report they disagreed or strongly disagreed that the mergers are necessary to gain efficiencies;

- Eighty-four percent (84%) of physicians believe that if the mergers are approved, insurers will have even more influence over physician practices and physicians will be forced to cut costs, which will result in a significant degradation of their ability to provide the care that patient's value and need; and

- Physicians report if the merger is approved and the physician does not continue to have a contract with the merged plan(s) they would be forced to cut staff and salaries, reduce investment in practice infrastructure, spend less time with patients, cut quality initiatives, close their practice and/or retire.

Regulatory Oversight of Mega Insurer Would Be Insufficient

The CMA has participated in the regulatory consideration of several proposed mergers in the past and the regulatory oversight of approved mergers to address the subsequent shortcomings and problems. Based upon this experience, CMA urges the CDI to carefully review past mergers and to foresee the numerous shortcomings and specific concerns that would be presented by Anthem's proposed acquisition of Cigna. Based upon past experience and a recent analysis of the significant anticompetitive impact of an Anthem-Cigna merger, CMA respectfully requests that the CDI recommend disapproval of the proposed Anthem-Cigna merger. No regulatory oversight could adequately counteract or minimize the negative impact that a near collapse in competition would have in a significant number of California MSAs if the merger is approved.

Reduction in Health Care Access

Insurers are already creating very narrow and restricted networks that force patients to go out-of-network in order to access care. The Anthem-Cigna merger, if approved, would further reduce economic pressure on the combined company to offer broader networks as a means to compete for enrollees and subscribers. CMA is convinced that an Anthem-Cigna merger would result in less competitive pressure on all insurers to respond to patients' access needs. Indeed, the federal DOJ has found in earlier merger cases that, where the merged company is presumed to enhance its market power, the result is usually a reduced availability of physician services.[5]

While limited or tiered networks are currently being used by health plans to control health care costs, when a health plan increases its market power as Anthem-Cigna seek to do so through a merger, CMA is concerned that the merged company will be further incentivized, and less hindered by competition, to utilize restricted networks to limit patient access to medically necessary care and increase profits. This

[5] See, e.g., Letter from James L. Madara, M.D., Exec. Vice President, American Medical Association, to William Baer, Assistant Attorney General, U.S. Dept. of Justice Antitrust Division (November 11, 2015)(on file with the California Medical Association).

concern is compounded in the Medi-Cal managed care market, in which Anthem is a participant, by the low physician reimbursement rates that have already severely limited patient choice and access. Medicaid patients who are newly insured under the ACA's Medicaid expansion are struggling to get appointments or find doctors in the narrow Medi-Cal networks, and are consequently seeking care in emergency rooms.[6] Commercial networks are similarly narrow and getting more constrained. A study by University of Pennsylvania researchers shows that 76 percent of health plans sold in California through Covered California have significantly limited networks.[7] Specifically: 38% were considered "x-small," meaning they included 10% or less of providers in the rating area; 38% were considered "small," meaning they included 10% to 25% or less of providers in the rating area; 19% were considered "medium," meaning they included 25% to 40% of providers in the rating area; and 6% were considered "large," meaning they included 40% to 60% of providers in the rating area. No provider networks offered through the California exchange were considered by researchers to be "x-large," meaning they included 60% or more of providers in the rating area. In fact, some health plans have no in-network doctors in key specialties.[8]

CMA also believes that patients' access to health care will be greatly hindered by areduction in administrative capacity and resources post merger as the combined company seeks to cut costs and consolidate resources. The aftermath of past health insurer mergers has taught California physicians and their patients that post merger, the consolidated entity usually lacks the administrative capacity and resources to administer quality health care access to patients. California physicians, for example, experienced this with the United/PacifiCare merger, where post merger the company did not have enough dedicated resources in California to administer claims, authorizations, or otherwise facilitate timely access to health care.[9]

Reduction in Health Care Quality

An Anthem-Cigna merger can be expected to lead to a reduction in health care quality. The federal DOJ department has found that health insurer monopsony, or buyer power, acquired through a merger will likely degrade healthcare quality.[10] Patients fare better when there is a competitive market place for purchasing physician services. Larger mergers, such as the proposed Anthem-Cigna merger, which

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[6] Stephanie Armour, U.S. Emergency-Room Visits Keep Climbing, The Wall Street Journal, May 4, 2015; Sally C. Pipes, A New Cost of Obamacare: Surging Emergency Room Usage, New Pittsburgh Courier, July 26, 2015.

[7] Dan Polsky & Janet Weiner, *State Variations in Narrow Networks on the ACA Marketplaces*, Leonard Davis Inst. Of Health Econ. (Aug. 2015).

[8] Stephen C. Dorner, et al., *Adequacy of Outpatient Specialty Care Access in Marketplace Plans Under the Affordable Care Act*, JAMA, October 27, 2015.

[9] The California Department of Insurance imposed penalties against United Healthcare of more than $173 million dollars for 900,000 violations of the insurance code from 2005 to 2008. The administrative proceeding arose from problems that surfaced after United Healthcare's acquisition of PacifiCare in 2005, which had been heavily scrutinized by regulators. Shortly after the transaction, the CMA saw a spike in complaints from physicians about the way PacifiCare was processing claims and contracts. CMA forwarded dozens of physician complaints to the DOI and requested the insurance regulator investigate. After conducting its own market conduct investigation, the DOI filed an administrative proceeding against United Healthcare, charging PacifiCare with violations that included: (1) failing to give providers notice of their appeal rights and members notice of their right to an independent medical review; (2) failing to timely pay or correctly pay claims as well as interest on late-paid claims; (3) failing to acknowledge receipt of claims; (4) failing to timely respond to provider disputes; (5) illegally closing claims files; and (6) sending untimely collection notices for overpayment.

[10] See, e.g., Letter from James L. Madara, M.D., Exec. Vice President, American Medical Association, to William Baer, Assistant Attorney General, U.S. Dept. of Justice Antitrust Division (November 11, 2015)(on file with the California Medical Association).

result in an increase in a plan's monopsony power and physicians receiving reimbursement rates below competitive market levels. As a result, patients may be harmed in a variety of ways. Physicians may be forced to spend less time with their patients in order to meet their practice expenses. Physicians may also be hindered in the ability to invest in new equipment, technology, training, staff and other practice infrastructures that could improve the access and quality of patient care. In addition, a plan's increase in monopsony power could limit a physician's successful transition into new value-based payment and delivery models. History also has shown that larger mergers, such as the proposed merger between Anthem-Cigna, typically result in lower reimbursement rates to physicians, which will probably motivate some physicians to retire early or seek other opportunities outside of medicine. This erosion of the physician workforce would also negatively impact the quality of health care offered to California patients.

<u>Reduction in Health Care Affordability</u>

A growing number of studies demonstrate that health plan mergers do not result in lower costs to patients.[11] That is, the promise to use their increased market power, or monopsony power, to negotiate lower reimbursement rates from providers does not translate into lower premiums or lower deductibles for patients. Instead, a growing body of peer-reviewed literature suggests that greater consolidation amongst health plans leads to price increases and access disruptions.[12] A review of past mergers demonstrates that competition in the health insurer market, not consolidation, is the right prescription for patients. The AMA has found that in markets with healthy competition, patient premiums are lower; plans are incentivized to enhance customer service, pay bills accurately and on time, and develop and implement innovative ways to improve quality while lowering costs.[13]

<u>Loss of Collaboration and Innovation</u>

One driver behind health care reform and value based health care is to incentivize collaboration in health care markets in order to increase innovation and reduce costs. When examining recent mergers, industry experts have expressed concern that if insurers have too much market power then they have no reason to collaborate with health care providers.[14] California physicians have experienced this effect already in California markets where health insurers do not negotiate with solo and small group physicians but instead offer them take-it-or-leave contracts. While health insurers assert that their exercise of such market power results in lower provider reimbursement rates, such savings do not benefit the patient because history demonstrates that any such savings are not passed down in cost savings to the patients,

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[11] *See, e.g.,* Thomas Greaney, *Examining Implications of Health Insurance Mergers*, Health Affs. (July 16, 2015); Leemore Dafny et al., *Paying a Premium on Your Premium? Consolidation in the US Health Insurance Industry*, 102 Am. Econ. Rev. 1161 (2012); Jose Guardado, et al., *The Price Effects of a Larger Merger of Health Insurers: A Case Study of United-Sierra*, 1(3) Health Management, Policy and Innovation 1 ; Robert Pear, *Many Say High Deductibles Make Their Health Law Insurance All but Useless*, N.Y.Times (Nov. 14, 2015); David Lazarus, *As Health Insurers Merge, Consumer's Premiums Are Likely to Rise*, L.A. Times (July 10, 2015); Leemore Dafny, *Are Health Insurance Markets Competitive?*, 100 Am. Econ. Rev. 1399 (2010).

[12] *See* Statement of the American Medical Association and California Medical Association to the California Department of Insurance re: Anthem Application for the Proposed Acquisition of Cigna (March 29, 2016) (filed concurrently with this letter).

[13] Letter from James L. Madara, M.D., Exec. Vice President, American Medical Association, to William Baer, Assistant Attorney General, U.S. Dept. of Justice Antitrust Division (November 11, 2015)(on file with the California Medical Association).

[14] Reed Abelson, *With Merging of Insurers, Questions for Patients About Costs and Innovation*, N.Y. Times (July 5, 2015).

patients lose access to their physicians who are driven out of the network, and the opportunity to "collaborate" with physicians to provide innovative, quality health care is lost. Accordingly, the CMA urges the CDI to thoroughly review and research whether there is any independent evidence supporting the health plans' claims that mergers lead to greater efficiencies and innovative payment and care management programs. Fostering competition between Anthem and Cigna, not consolidation, will benefit California patients through lower prices, better quality and greater choice.

Conclusion

Accordingly, and based upon the letter the CMA jointly filed with the AMA, the CMA urges the CDI to recommend disapproval of the proposed Anthem-Cigna merger in order to protect patients from premium increases, lower health plan capacity and physician collaboration, and a reduction in the quantity and quality of physician services. We thank the CDI for considering the impact the proposed Anthem-Cigna merger would have on California and look forward to working with you further on this issue.

Sincerely,

Francisco J. Silva

General Counsel and Senior Vice-President
Centers for Legal Affairs, Health Policy, & Economic Services

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Encl.