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MEDCHI CALLS FOR INVESTIGATION INTO HEALTH INSURANCE MERGERS

BALTIMORE, December 16, 2015 — MedChi, The Maryland State Medical Society, has requested Maryland Attorney General Brian Frosh and Insurance Commissioner Al Redmer, Jr., to oppose two proposed mergers of health insurance industry giants: Anthem and Cigna and United Healthcare and Humana. In doing so, MedChi joined with the American Medical Association and a number of other concerned groups who object to the proposed mergers as creating monopolistic/monopsonistic conditions in the health insurance market. In addition, MedChi called for the state regulators to investigate similar conditions in the Maryland health insurance market, which is dominated by two large insurers, CareFirst and United Healthcare.

MedChi CEO Gene Ransom stated "The opposition of MedChi and the AMA to the proposed national mergers is based on the increased concentration in the already highly concentrated health insurance marketplace that would result if these mergers are allowed to take place." Standard objective measures of market concentration demonstrate that the health insurance market is already concentrated to an unhealthy degree. Ransom expressed concern for patients explaining "market concentration is likely to lead to higher prices, lower quality, and diminished choice for patients." Mergers among already large insurers not only eliminate the competition among the merger partners but make it more difficult for other insurers to provide meaningful competition in the particular market. The proposed mergers are a threat to Maryland consumers both because of their direct impact on health insurance markets affecting Marylanders, such as the large employer market with a national scope and because they reduce potential competition for our own already highly concentrated marketplace.

In its letter, MedChi pointed out that under the standard measure of market concentration, the Herfindahl-Hirschman Index (HHI), Maryland health insurance market is well beyond the point at which regulators become concerned. Regulators normally deem an HHI of above 2500 as being a sign of a "highly concentrated" market but the HHI figures for Maryland health insurance markets range from 2604 to an astounding 6174. In almost all markets, CareFirst and United Healthcare are the dominant participants. Confirming the arguments of MedChi and the AMA, the only markets where the market is deemed less than highly concentrated are those that border or comprise portions of other states. Unfortunately, a significant part of the competition that is provided is by the very insurers that are involved in the proposed mergers.

MedChi strongly urges Attorney General Frosh and Insurance Commissioner Redmer to both join with other concerned parties in opposing the Anthem-Cigna and United-Humana mergers. Maryland health care users have been damaged too long by regulatory inattention to the monopolistic and monopsonistic conditions that prevail in the Maryland health insurance market.

About MedChi
MedChi, The Maryland State Medical Society, is a non-profit membership association of Maryland physicians. It is the largest physician organization in Maryland. The mission of MedChi is to serve as Maryland's foremost advocate and resource for physicians, their patients and the public health of Maryland. For more information, please visit www.medchi.org.

December 9, 2015

Maryland Attorney General
The Honorable Brian Frosh
200 St. Paul Place
Baltimore, MD 21202

Maryland Insurance Administration
The Honorable Al Redmer
200 St Paul St
#2700
Baltimore, MD 21202

Sent Via Email

Dear Attorney General Frosh and Commissioner Redmer:

On behalf of MedChi, The Maryland State Medical Society, and the practicing physicians it represents, as well as the citizens of Maryland, I would like to bring to your attention the serious problem of excessive concentration in the health insurance market. Physicians have long been troubled by the concentration of ownership in the health insurance market and have frequently requested governmental inquiry into that issue. Most recently, two mergers between major health insurers have raised concern at the national level. We would like to call your attention to the specifics of those mergers, as well as the broader issues in play, and, in addition, point out that Maryland's own health insurance market shows every sign of excessive concentration. Specifically, Aetna has proposed to acquire Humana and Anthem has proposed to acquire Cigna. The American Medical Association has sent a lengthy letter to the Department of Justice detailing the concerns with these mergers, a copy of which letter we are enclosing. (See attached letter.)

We would like to summarize the concerns of the AMA, which we share, at this time.

The proposed mergers are occurring in markets where there has been a near total collapse of competition. Because of the persistent high barriers to entry in health insurance markets, the loss of competition would likely be permanent. (AMA 1)

The AMA's analysis indicates the proposed Anthem-Cigna merger would be presumed likely, under the Justice Department/Federal Trade Commission Merger Guidelines, to enhance market power in 85 commercial (combined health maintenance organization [HMO], preferred provider organization [PPO] and point of service [POS]) Metropolitan Statistical Area (MSA) markets. The AMA also considered the effect of the merger using states rather than MSAs as a geographic market. The AMA found that within ten of the fourteen states in which Anthem is licensed to provide commercial coverage, the merger is likely to enhance market power. In the remaining four states, the merger would potentially raise significant competitive concerns and warrant scrutiny under the Merger Guidelines. (AMA 4)

With regard to the Aetna-Humana merger, the AMA points out that that merger would "combine one of the two largest insurers of Medicare Advantage (Humana) with the fourth largest (Aetna) to form the largest Medicare Advantage insurer in the country. This would further concentrate a market that is already "highly concentrated among a small number of firms." In addition, the Aetna/Humana merger will exacerbate the near total collapse of competition in commercial markets. The AMA analysis shows that the merger would be presumed to enhance market power in the commercial markets of health insurance in fifteen MSAs within seven states.

The AMA also argues that there may also be "a national market in which the health insurers compete or potentially compete for the contracts of large national employers … In that market there are only five national health insurance companies remaining today: Anthem, Cigna, Aetna, Humana and United Healthcare … The proposed Anthem/Cigna and Aetna/Humana mergers would pare the number of national players to three." (AMA 6)

The AMA further points out that the mergers "also would enhance monopsony … power in the purchase of inputs such as physician services, eviscerating physicians' ability to contract with alternative insurers in the face of unfavorable contract terms and ultimately inefficiently reducing the quality or quantity of services that physicians are able to offer patients." Monopsony is no more benign than monopoly: "'Monopsony is the mirror image of monopoly; lower input prices are achieved by reducing the quantity or quality of services below the level that is socially optimal' … In addition to producing higher insurance premiums and a reduction in the quantity and quality of physician services, the lower than competitive physician reimbursements will deny physicians the rates necessary to support delivery reforms associated with value-based care, the cost of which the physicians—not the health insurers—must bear." (AMA 6, quoting Leemore Dafny, Ph.D.'s testimony before the U.S. Senate Judiciary Committee). The AMA letter then provides an extended discussion as to why the health insurance market is prone to monopsonistic conditions (AMA 7-8), noting that the recent ACA triggered experimentation with "Health Co-ops" in which about half the start-up co-ops have already illustrated is a real world demonstration of the very high barriers to entry in the health insurance market. The most likely source of competition for large insurers is the possibility of entry is by already established insurers into neighboring markets – mergers like these reduce the number of possible entrants.

The likely effects for consumers of continued mergers in the industry are price increases, reduced quality in the form of smaller networks (since carriers will have less need to compete on the basis of physician availability. The AMA expects that the Medicare Advantage offerings may be particularly damaged.

We are bringing this issue to your attention because, although the carriers involved are relatively small players in Maryland (with the exception of Aetna in the Baltimore Metropolitan Area), we believe that the mergers could have a substantial impact on Maryland and, in addition, the principles outlined should be used to review similar concentrations of market power in this state.

As noted, because of the high barriers to entry in the health insurance market, the best source of competitive pressure against the formation of monopolistic conditions is the entry of new insurers into a neighboring market. The Maryland health insurance market is heavily dominated by CareFirst and United Healthcare. Overall, there is a Herfindahl-Hirschman Index (HHI) number of 2978 (numbers above 2500 indicate a "highly concentrated" market) for the overall state combined HMO/PPO/POS markets, with CareFirst having an overall market share of 48% to United's 17%, with the most extreme concentration being in the Salisbury MSA, which has a HHI of 4376. If separated out by individual product and MSA, the results are even more disturbing, with, e.g., the HHI numbers for the HMO market ranging from 3616 in the Hagerstown-Martinsburg WV MSA to an astonishing 5564 in Salisbury, with Carefirst having a market share above 50% in all MSAs.

The situation is even worse in the PPO market, with the exception that the Hagerstown MSA has an HHI of "only" 2604 and Aetna is the largest carrier, with a share of 31% to CareFirst's 29%. (This illustrates the AMA's point that the best source of competition is from already established carriers in neighboring areas). Elsewhere in the state, the HHI numbers are above 3000, with Salisbury again showing the most extreme concentration with an HHI number of 6174.

In the Point of Service (POS) market, the data is less extreme. Rather than a clearly dominant single carrier, the overall state figures show a two carrier dominated market with United having a slightly larger market share than Carefirst (37% vs. 36%). An individual MSA analysis shows, that in the two MSAs including some West Virginia territory, Hagerstown and Cumberland, Cigna rather than CareFirst is the runner up to United, again confirming the overall point that the most viable source of competition is carriers operating in neighboring states. Unfortunately, the two outside carriers that have provided the only significant challenge to the CareFirst-United dominance are both involved in the mergers that are being challenged nationally.

We strongly urge the Office of the Attorney General and the Maryland Insurance Administration to both join with other concerned parties in opposing these mergers and also independently investigate the lack of a competitive market for health insurance in Maryland.

Sincerely,

Gene M Ransom III

Gene M. Ransom, III
Chief Executive Officer

Attachment

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