

## DOJ, states side with patients and physicians-file to block insurance mergers

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Prospects for major health insurance consolidation took a major hit when the U.S. Department of Justice (DOJ) and a number of states filed antitrust lawsuits Thursday to block both the Aetna, Inc.-Humana, Inc. and Anthem, Inc.-Cigna Corp. mergers. The DOJ asserted that the mergers would substantially lessen competition.

When something comes up that could negatively affect our patients and the quality and affordability of the care they receive, physicians take the lead and engage policymakers. With the same drive that put us through late nights in med school, carried us through the intensity of our residencies and continues to push us every day to go the extra mile for our patients and their families, we took these mergers on—and our voices were heard.

Creating even larger goliaths would be unacceptable—and I said so in a public statement today. Federal and state officials have a strong obligation to enforce antitrust laws to protect patients by ensuring a competitive marketplace that operates in patients' best interests.

The DOJ's action is a significant step toward the kind of marketplace that doesn't put the insurers first but rather puts patients first. And that's what we as physicians care about most.

## Physicians fight to protect patients

Both mergers were announced in July of last year. My colleague, Immediate-past President Steven J. Stack, MD, responded swiftly with a statement detailing how the mergers would increase health insurance market concentration and reduce competition in both the market for the sale of health insurance and in the market in which health insurers purchase physician services, ultimately resulting in further patient injury due to a decrease in the quality and quantity of available physician services. Neither development is something we as physicians can allow.

At the outset of the DOJ and state investigation of these mergers, the AMA was armed by our annual market studies on competition in health insurance and by an AMA study published in a leading academic journal establishing that a previous merger—United Health Group Inc.’s 2008 merger with Sierra health services—resulted in higher premiums.

Over the course of the next year, we physicians took it upon ourselves to stand up against the mergers of these powerful insurers by submitting testimony in congressional and state proceedings and preparing memoranda to state and federal officials investigating the mergers. In this effort, the AMA joined with state medical societies and gained the assistance of influential lawyers and economists to gather the evidence and present the arguments against the mergers to the DOJ, state attorneys general and state insurance departments.

I testified at a congressional hearing examining the proposed mergers and the impact they would have on competition in September, urging them to closely scrutinize the mergers and utilize enforcement tools at their disposal to protect patients and preserve competition.

Two weeks before, my colleague, Barbara L. McAneny, MD, who is a member of the AMA board of trustees, testified before Congress with a similar message. Together, we carried that message into the 2015 AMA Interim Meeting, where the AMA House of Delegates passed new policy that emphasized the need for active opposition to consolidation in the health insurance industry that could result in anticompetitive markets.

In December, the AMA identified the “big 17”—states where the mergers would have the greatest impact—and formed a coalition to block the mergers. A survey was developed relating to the monopsony issues raised by the proposed mergers and sent out to physicians in those states. Physician feedback was included as the big 17 coalition drafted letters sent to the DOJ.

What’s important is that the medical community came together under this coalition, not with the intention of fighting the goliath companies that would be formed by the mergers, but rather to prevent them from happening. The physician voice is stronger when we can all come together under the same leadership.

As the letters were drafted and sent, we continued to lay on the pressure and the argument of the

coalition became stronger and harder to refute.

Last month, the California Department of Insurance issued a letter urging the DOJ to block the Anthem-Cigna merger. The insurance commissioner based this conclusion on a March 29 public hearing that included testimony and written comments from the public, patient advocates, experts on health insurance mergers, and both the AMA and the California Medical Association (CMA).

Jointly with the CMA, we filed a comprehensive, evidence-based analysis (log in) explaining why the merger should be blocked. At the hearing, our top antitrust attorney testified that the consequences of the proposed merger would have long-term consequences for health care access, quality and affordability.

Similarly, Missouri, with our input, took a hard stand against Aetna's acquisition of Humana in May when the Missouri Department of Insurance issued a cease-and-desist order preventing the companies from doing any post-merger business in Missouri's Medicare Advantage markets and some commercial insurance markets.

All of these efforts raised awareness and ultimately led to this moment today—on the cusp of a win for our patients.

Today's news is especially gratifying. The DOJ /state suit against Anthem-CIGNA incorporates the AMA's concerns that the merger would result in a health insurer buyer "monopsony" power over the physician marketplace. The suit against Aetna adopts the AMA's long-held and strenuously argued view that Medicare Advantage is a separate market that would suffer antitrust injury by the proposed Aetna-Humana merger. Finally, the AMA is thankful the state Attorneys General, like Florida, who listened to the physicians' concerns and joined the lawsuits.

## **The fight isn't over yet**

A merger of this magnitude would compromise physicians' ability to advocate for their patients—something we consider an integral part of our place in society. In practice, market power allows insurers to exert control over clinical decisions, which undermines our relationships with patients and eliminates crucial safeguards of patient care.

On the other hand, competition can lower health insurance premiums, enrich customer service and spur inventive ways to improve quality and lower costs. Patients benefit when they can choose from many different insurers that are competing for their business by offering coverage that patients want and at competitive prices.

The suit filed by the DOJ is not the end—yet. Both companies have stated that they plan to fight the



battle in court and challenge the DOJ lawsuit. The AMA will remain engaged in this process and relentless in our quest to preserve competition in the health insurance marketplace.