

Physician work helps halt insurance merger, preserve competition

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A federal judge today handed down his decision to block Aetna's acquisition of Humana, ruling that the proposed health insurer merger violates federal merger law because it is likely to lessen competition in the health insurance marketplace. This caps 18 months of physician advocacy opposing the merger, during which time a coalition of medical societies provided state attorneys general and the Department of Justice (DOJ) with compelling evidence to challenge the merger in court.

U.S. District Judge John D. Bates Monday ruled that the proposed merger would greatly erode competition in the sale of individual Medicare Advantage plans in 364 counties. Additionally, the court held that the merger violates antitrust law in individual commercial insurance markets on the public exchanges in three counties in Florida where Humana and Aetna compete.

The court's ruling sets a notable legal precedent by recognizing Medicare Advantage as a separate and distinct market that does not compete with traditional Medicare. This characterization of Medicare Advantage as a separate and distinct market in which competition is important was a focus of AMA state and federal advocacy in Congressional hearings and state departments of insurance. And this point also proved influential with state attorneys general and the DOJ that ultimately brought the legal challenge. In support of its position, the AMA secured the opinions of 20 leading academic health economists with expertise in health insurance competition.

Judge Bates found that the merger would threaten the quality, accessibility and affordability of health care for millions of seniors. Judge Bates' ruling acknowledges the important role of antitrust in protecting consumers within health insurance markets.

“Federal regulation would likely be insufficient to prevent the merged firm from raising prices or reducing benefits,” Judge Bates wrote. “The court is unpersuaded that the efficiencies generated by the merger will be sufficient to mitigate the anticompetitive effects for consumers in the challenged markets.”

“Aetna’s strategy to eliminate head-to-head competition with rival Humana posed a clear and present threat to the quality, accessibility and affordability of health care for millions of seniors,” AMA President Andrew W. Gurman, MD, said in a statement. “A spokesman for Aetna reportedly said the company is “giving serious consideration to an appeal.”

Physicians join forces, provide evidence

The Aetna- Humana merger was announced in July 2015, as was a separate merger involving two other health insurance giants, Anthem and Cigna. In September of that year, the AMA released the 14th edition of its report, *Competition in Health Insurance: A Comprehensive Study of U.S. Markets*. The study offered the largest and most complete picture of competition in health insurance markets for 388 metropolitan areas, as well as the 50 states and the District of Columbia.

In that same month, AMA leaders testified against the mergers. Barbara L. McAneny, MD, member of the AMA Board of Trustees, testified at the Sept. 10 hearing of the House Judiciary Committee arguing for the need to provide patients with more choices for health care services and coverage. AMA President Andrew W. Gurman, MD, testified at the Sept. 29 hearing of that committee on examining the proposed mergers and the consequent impact on competition. He urged a close scrutiny of the mergers.

AMA representatives met with the DOJ Antitrust Division to discuss the “Competition in Health Insurance” report late in the fall. In November, the AMA submitted responses to supplemental questions from the House Judiciary Committee on the state of competition in the health care marketplace. The answers highlighted past consolidation experiences and the negative consequences for patients. And later that same month, the AMA, in a comprehensive letter addressing all of the issues today decided by Judge Bates, publicly urged the DOJ to block the proposed megamergers.

In December, a coalition to oppose the mergers began forming. The AMA convened all state and national specialty societies to propose a comprehensive advocacy strategy, urged the National Association of Attorneys General (NAAG) and its merger work group to work within their respective authority to block the mergers, identified states to focus grassroots strategy and held multiple calls with state medical associations in high-concentration states.

The AMA continued to engage the NAAG last year in an effort to convince key state attorneys general to join the DOJ in blocking the mergers. In coordination with state medical societies across the country, the AMA conducted extensive physician surveys, to gauge the mergers' potential impact on patient care. Included in this effort were nationally recognized economists and legal experts who offered support for physician arguments. Some of these experts testified and attended meetings with state regulators alongside AMA and state medical society representatives opposing the mergers.

The release of the 15th edition of *Competition in Health Insurance: A Comprehensive Study of U.S. Markets* in September of last year appears to have been a final nail in the coffin. The study presented clearly the most complete picture of competition in the market and helped to identify the markets where the proposed mergers would erode competition.

“The AMA’s stand against this anticompetitive merger shows again that when doctors join together, the best outcome for patients and doctors can be achieved,” Dr. Gurman said. “Given the troubling consolidation trends in health insurance industry, the AMA will continue to advocate on behalf of patients and physicians to foster more competitive health insurance markets.”

What’s next?

With one megamerger stopped in its tracks, U.S. District Judge Amy Berman Jackson is expected to soon deliver her decision on Anthem’s proposed acquisition of Cigna. Much of the evidence that led the DOJ and state attorneys general to file to block the Anthem-Cigna merger came from physician efforts to prove it was anticompetitive.

The main argument of the Anthem-Cigna merger, however, is that it would grant Anthem monopsony power, which is “a buyer with too much buyer power,” Rich Feinstein, former director of the Bureau of Competition at the Federal Trade Commission said recently.