Appeals court upholds decision blocking Anthem-Cigna merger

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Kevin B. O'Reilly
News Editor

Editor's note: Today, the appeals court upheld the lower court’s ruling to block the proposed Anthem-Cigna merger. Read the appellate court’s decision. Our original story, filed after appellate arguments in this case, was published April 10 and appears in its entirety below.

Giant health insurance company Anthem is appealing a federal judge’s February ruling that blocked its proposed acquisition of fellow health insurer Cigna, arguing that the merger would result in $2.4 billion in “efficiencies” that would benefit consumers. But in an amicus brief filed with the U.S. Court of Appeals for the District of Columbia, the AMA Litigation Center strongly disputed that argument and urged a three-judge panel to uphold the lower court’s ruling to protect patients and physicians.

In late March, the appeals court heard oral arguments in the case, during which Anthem said that its Cigna acquisition is justified because it will give the merged firm bargaining power to cut physician and hospital payment rates that Cigna currently pays to the lower Anthem levels.

Anthem told the appeals court that “consumers should rejoice” at the prospect of the merger’s being approved, according to a news report published in the Hartford (Conn.) Courant.

In their brief, the AMA and the Medical Society of the District of Columbia (MSDC), representing the Litigation Center of the AMA and the State Medical Societies, noted that Cigna’s higher level of physician and hospital compensation was to support collaborative arrangements aimed at lowering utilization and thus total employer health care costs. The higher fees are central to this value-based approach and to the medical cost trend guarantees that Cigna is selling. Thus, says the brief, the trial court properly found that the lower fees Anthem characterizes as a consumer benefit will actually damage patient care, stifle innovation, and cause patients to use more health care services.

“Anthem’s claim that the merger will enable it to offer a new product—Cigna’s products at Anthem’s prices—was contradicted by the evidence at trial and the experience of the market,” the brief says.

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The Litigation Center brief further emphasizes that health insurer merger agreements for the purpose of acquiring buyer power in physician markets are harmful to those markets, ultimately injure consumers and are therefore manifestly anti-competitive. The trial court properly found that Anthem’s proposed lowering of physician reimbursements was not based on offering physicians more patients, akin to bulk purchasing discounts or similar efficiency enhancements. Moreover, rather than causing an increase in output or quality, Anthem’s reimbursement cuts would likely cause quality to degrade and patients to be deprived of choice.

The brief points to evidence at trial showing harm to patient care that echoed the experiences physicians reported to the AMA and state medical associations in surveys conducted as part of the AMA’s pre-trial strategy. In any event, the brief argues, increasing Anthem’s bargaining power does not constitute an efficiency that would outweigh the anti-competitive effects in the health insurance market that the merger will cause.

At the AMA’s suggestion, 27 professors who have expertise in the subjects of health economics, antitrust or competition policy also filed their own amicus brief opposing the Anthem-Cigna merger. The professors are from leading academic centers and many are nationally renowned.

For nearly two years, the AMA has fought the proposed Anthem-Cigna merger, along with the merger of Aetna and Humana, also blocked in federal court, on the grounds they would adversely affect health care access, quality and affordability for consumers. The AMA’s efforts included updating its gold-standard study of health-insurance competition, preparing state-specific market analysis of the Anthem-Cigna and Aetna-Humana mergers, and sending comprehensive, evidence-based advocacy letters to the DOJ and state regulators.

The AMA also led a 17-state medical society coalition, communicated with like-minded stakeholders, engaged the National Association of Attorneys General to convince key state AGs to join the DOJ in blocking the mergers, conducted physician surveys in conjunction with state medical association partners to gauge the patient-care impact, and marshaled nationally recognized economists and legal experts to oppose the merger.

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