

Anthem-Cigna merger threatens innovation, appeals court finds

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The U.S. Court of Appeals for the District of Columbia has upheld a lower-court ruling blocking a proposed \$54-billion mega-merger between health insurance giants Anthem and Cigna. The appeals court agreed with the trial court's ruling that this merger would harm patients because it would likely stifle competition and choice, eliminate the existing head-to-head competition between the two insurers, reduce the number of national carriers from four to three, raise premiums, and diminish quality and innovation.

In the 2–1 ruling, the appeals court cited arguments set forth in the AMA's friend-of-the-court brief on the merger's potential impact on the quality and accessibility of patient care.

The court rejected Anthem's argument that the anti-competitive effects of the merger were outweighed by Anthem's acquired ability to lower Cigna network provider fees.. Cigna's higher fees, the court found, support that company's physician arrangements that offer high-touch, collaborative Cigna service, with its added behavioral, wellness, and lifestyle programs for less money. The court found that this Cigna product could not be offered at the lower Anthem provider fees.

First, providers may "simply choose to walk away," the court's majority said. Second, the court found, it would be "perfectly reasonable" that some providers, even if they are willing to accept less money, will simply respond by offering customers less in the way of Cigna-style high-touch collaborative service. In reaching these two conclusions, the court cited the amicus brief filed by the Litigation Center of the AMA and the State Medical Societies and the Medical Society of the District of Columbia.

Moreover, the court reasoned, even if Anthem were to succeed in obtaining some provider discounts, they would not all be passed along to consumers. The court concluded that health insurers "tend to find it more profitable to capture medical savings and increased premiums" than to pass savings along to consumers. In reaching that conclusion, the court cited an amicus brief that was filed, with

the AMA's encouragement, on behalf of a group of 27 prominent law and economics professors.

"The appellate court sent a clear message to the health insurance industry: a merger that smothers competition and choice, raises premiums and reduces quality and innovation is inherently harmful to patients and physicians," said AMA President Andrew W. Gurman, MD. "The result of 21 months of advocacy before the U.S. Department of Justice, congressional leaders, state attorneys general, insurance commissioners, and federal court, this outcome shows again that when doctors join together, the best outcome for patients and doctors can be achieved."

In addition to these efforts to protect health insurance competition by blocking the Anthem-Cigna and Aetna-Humana mergers, the AMA has developed three model bills to help oppose anti-competitive mergers at the state level. The bills are designed to bring transparency to merger review, protect physicians from retaliation by health insurers and reduce the influence that the health insurance industry has on state insurance regulators. State medical associations can introduce one or more bills in their respective legislative sessions.

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