Mega-mergers blocked, averting pay cuts of at least $500 million

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Good news came early in 2017 as two proposed insurance company mega-mergers between Anthem and Cigna and between Aetna and Humana were blocked in court and eventually fell apart. The Anthem-Cigna merger, had it gone through, would have cost physicians an estimated $500 million annually in reduced payments.

“These attempted health insurance mergers reflect the industry-held belief that by joining together, insurers can gain added negotiating leverage over physicians and hospitals,” AMA Immediate Past President Andrew W. Gurman, MD, wrote in AMA Wire.

The AMA led a 17-state medical society coalition, communicated with like-minded stakeholders, marshaled nationally recognized economic and legal experts, engaged the National Association of Attorneys General, and encouraged state attorneys general nationwide to join the Department of Justice (DOJ) in blocking the mergers. The Litigation Center of the American Medical Association and State Medical Societies also filed amicus briefs outlining key arguments against the mergers.

Regarding Anthem’s effort to purchase Cigna, the court concluded that an enhanced ability to coerce physicians to accept lower reimbursement is not an efficiency defense, would not benefit patients, “would erode the relationship between insurers and providers” and “reduce the collaboration” that is essential to innovation in payment and delivery, Dr. Gurman added.

Judge’s January ruling establishes Medicare Advantage (MA) precedent. U.S. District John D. Bates ruled Jan. 23 that the proposed Aetna acquisition of Humana would weaken competition in the sale of individual Medicare Advantage plans in 364 counties. He also ruled that the merger would violate antitrust law in individual commercial markets on the public exchanges in three Florida counties where Humana and Aetna compete.

The ruling was also considered significant because it set a notable legal precedent recognizing MA as a separate market that does not compete with traditional Medicare. This was an important focus of AMA advocacy at Congressional hearings and state departments of insurance.

Mergers for the purpose of acquiring buying power are harmful. That was the argument against the Anthem–Cigna merger put forth in a Litigation Center amicus brief filed prior to March 24 oral arguments before the U.S. Court of Appeals for the District of Columbia. Such mergers ultimately injure consumers and are therefore manifestly anti-competitive, the brief argues. 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 states.

In addition to the Litigation Center brief, at the encouragement of the AMA, 27 professors with expertise in health economics or antitrust and competition policy filed their own friend-of-the-court brief opposing the merger.

Anthem arguments rejected by appeals court. A month after the oral arguments, the court ruled 2–1 that anti-competitive effects of the merger would be outweighed by Anthem's ability to lower Cigna's network provider payments. In fact, the court found that Cigna's higher payments supported physician arrangements for high-touch collaborative services with added behavioral, wellness and lifestyle programs at an affordable cost.

Majority of health insurance markets are highly concentrated. Although the two mega-mergers were blocked, the 16th edition of the AMA annual report, "Competition in Health Insurance: A Comprehensive Study of U.S. Markets," found a near total collapse of competition in many health insurance markets. The report found that, in 2016, 43 percent of U.S. metropolitan statistical areas had one insurer with at least a 50 percent of share of the market.

"Our findings should prompt federal and state antitrust authorities to vigorously examine the competitive effects of proposed mergers between health insurers," the report concludes.

In addition to mergers, concentration is facilitated by barriers that hinder new companies from entering a market. "Barriers to entry allow insurers with market power to charge premiums above competitive levels for an extended period of time," the report states.

Overall, the commercial health insurance markets became more concentrated in 27 states. Alabama has the least-competitive market with one insurer, Blue Cross Blue Shield of Alabama, having an 83 percent market share in 2016.

Taking a stand against threats to quality and affordability. The AMA recognized California Insurance Commissioner Dave Jones with its Nathan Davis Award for Outstanding Government Service in the governor or elected statewide official category.

Jones was honored for taking a strong stand against the two health insurer mergers because they posed a clear and present threat to the quality, accessibility and affordability of health care in California. He was among the first insurance regulators to join the AMA in urging the DOJ to challenge the proposed Anthem–Cigna and Aetna–Humana mergers.