



## Insurance Consolidation Position Statement

Approved by the Board of Regents November 2015

**The American College of Physicians opposes consolidation of health insurance companies that significantly increase health insurer concentration and result in decreased choice and increased cost for patients and employers, reduced access due to changing and narrowing networks of physicians and hospitals and prevent physicians from negotiating over provision of health services with those insurers.**

Background (prepared by the staff for the Division of Governmental Affairs and Public Policy):

In early July 2015, Aetna announced a deal to buy rival Humana in a \$37 billion deal. Later that month, it was announced that Anthem would pay \$54 billion for rival Cigna. These two deals would reduce the for-profit health insurance "Big Five" (UnitedHealth Group, Anthem, Aetna, Humana, Cigna) to a "Big Three". These large mergers are subject to assessment by the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC). If they find that the merger is anti-competitive, they can oppose the merger. Once approved by the Antitrust Division, the state attorney general must also approve of the merger, and the state insurance commissioner will do independent review as well. ACP developed the above policy to broadly define standards by which mergers may be considered acceptable, and the position will be utilized in advocacy on the pending mergers and any future insurance consolidation.

### *Measuring Insurer Concentration*

Concentration is the most typically cited measure when discussing market competition and it is gauged using the Herfindahl-Hirschman Index (HHI), which is a measure of how evenly market share is distributed across insurers within a given market. HHI values range from 0 to 10,000 and are calculated as the sum of squares of market share of the largest companies in the market. The DOJ classifies markets in three categories according to HHI: *unconcentrated markets* (the most competitive) have an HHI below 1500; *moderately concentrated markets* have an HHI between 1500 and 2500; and a *highly concentrated market* has an HHI over 2500. In DOJ review of proposed mergers, any merger that increases HHI by less than 100 points is unlikely to have adverse effects, while those above 100 raise competitive concerns and warrant scrutiny, and those above 200 are presumed to enhance market power<sup>1</sup>.

### *The Provider-Insurer Relationship*

The large insurance companies that are currently consolidating cite the rapid consolidation undertaken by providers in recent years as a driving force for their proposed actions. There has been an increase in hospital/provider consolidation in recent years; In 2014, 95 hospital transactions (mergers and acquisitions) took place, marking the third year in a row of hospital transactions at levels of 95 or more<sup>ii</sup>. Insurance consolidation in 2015 has already been met with further hospital consolidation, as hospital transactions are up 24% in the first quarter of 2015 versus the first quarter of 2014. Consolidation has taken place in part due to the movement toward value-based payment, which has led to proliferation of care coordination arrangements and ACOs - but it has also resulted in a more significant presence at the negotiating table with insurers. Many are expecting that the latest mergers could spur greater provider consolidation.

### *General Effects on Insurance Markets*

The full effects of insurance consolidation are widely debated, though many express concerns about a reduction in competition, which is counter to one of the main goals of the Affordable Care Act (ACA). The large size of the insurance companies raises doubts as to whether there will be true savings via improved efficiencies and whether, even if there were savings, they would be passed on to consumers. There are further concerns that consolidation does little to promote innovation or risk and also blocks the entry of new insurance providers in the market.

David Balto, former policy director at the FTC, states that there are three elements that are most necessary to competition: transparency, choice, and a lack of conflict of interest. He voiced concerns that the proposed mergers do not sufficiently fulfill these requirements. His particular view is that the largest insurers and the largest hospital networks will go into joint agreements on pricing, and that all others will be subject to their will (which could be particularly damaging to providers outside of the largest hospital networks and to consumers). A study of rates in state exchanges in 2014 and 2015 showed that, on average, the largest insurance company in each state increased their rates by 75% more than the smaller insurers in the same state and the changes in these rates did not reflect higher medical cost per premium dollar<sup>iii</sup>.

Overall, there is a lack of research on this issue, though two recent studies seek to examine the effect of consolidation of health insurance companies such as the ones being proposed. The first study examines the purchase of Sierra Health Services by UnitedHealth Group that took place in Nevada in 2008. Sierra and UnitedHealth were the first and third largest insurers in the state prior to merging, and became the largest post-merge. In the wake of the merge, premiums increased by an average of 13.7 percent compared to control groups<sup>iv</sup>.

The American Medical Association (AMA) analysis on the proposed mergers found that between the two deals, competition would be diminished in up to 154 metropolitan areas across 23 states<sup>v</sup>.

The American Hospital Association (AHA) completed its own review of the effect of insurance consolidation and found that in the Aetna/Humana merger; more than 1,000 counties would have a

substantial decrease in competition<sup>vi</sup>. In the Anthem/Cigna merger, they found that 817 markets that collectively serve 45 million consumers would see increases in HHI, 600 of which would "enhance market power," causing a decrease in competition<sup>vii</sup>.

### *Effect on Physicians*

The insurance mergers have the potential to negatively affect physicians in a number of ways. In the rejection of the 1999 Aetna/Prudential deal, the DOJ stated in its case that Aetna's power as an insurer in the Dallas and Houston areas would render physicians "unable to reject Aetna's demand for contract terms" and would allow Aetna "to depress physicians' reimbursement rates<sup>viii</sup>." If this were to occur, along with further provider consolidation, rural, primary care and smaller practices would be most dramatically affected, as they would possess little leverage with which to negotiate prices with a very limited number of insurance companies. A 2010 study examines the merger between Aetna and Prudential in 1999, finding that higher concentration in relevant markets increased by 7% following the merger and also found evidence that consolidation led to lower employment of healthcare workers, potentially facilitating the substitution of nurses for physicians; the study found that post-merge, physician earnings fell by 3%<sup>ix</sup>.

### *Effect on Medicare Advantage*

Humana is the second largest provider of Medicare Advantage (MA) plans (18%) which will be an important feature of the acquisition for Aetna, which currently holds the spot as the third largest provider of MA plans (7%). In August, the Commonwealth Fund released a study showing that there is already a lack of competition in MA plans (97% of MA markets are highly concentrated), and in the 100 counties with the highest number of Medicare beneficiaries, 81% were found to not have a competitive MA market<sup>x</sup>. While this shows that the current market has not necessarily bred robust competition, it also leaves questions as to what effect additional consolidation may have and how it might increase insurer concentration. There are concerns that if the deal were to move forward, the DOJ would force divestiture in counties where Aetna/Humana have too large of a market share<sup>xi</sup>, as it did in Humana's acquisition of Arcadian in 2012<sup>xii</sup>. Centene has expressed interest in buying MA businesses divested by Aetna.

### *Medical Loss Ratio*

One of the main arguments floated by the insurance companies is that the ACA does, in fact, provide a regulatory mechanism via the Medical Loss Ratio (MLR), which requires that 85% of premiums be utilized for medical care and quality improvement in the large-group market, and 80% must be utilized in the individual and small-group markets. The mechanism was meant to limit the amount of money allocated to overhead in profits, administrative costs, and sales expenses<sup>xiii</sup>. A Commonwealth Fund review of the provision's implementation in 2011 found that administrative costs were not always passed onto consumers, particularly in the large- and small-group markets<sup>xiv</sup>. The study concluded, "Although insurers have reduced their administrative costs and paid substantial rebates in all three market segments, the rule has not reduced total overhead market-wide in the small- and large-group segments. For that to occur, stronger measures may be needed, either in the form of rate regulation,

tighter loss ratio rules, or enhanced competitive pressures." The AHA was particularly critical of the MLR as a measure as it does not provide any price caps, but only relies on a ratio structure, leaving insurance companies with options which would not drive down premium prices for consumers (or promote competition).

#### *ACP Advocacy*

Based on the policy adopted by the Board of Regents as stated above, and the College's analysis of the potential impact of the proposed Aetna-Humana and Anthem-Cigna mergers, ACP wrote to the Department of Justice to state that it "has significant concerns about the pending mergers between Aetna/Humana and Anthem/Cigna and the potential negative effects they could have on competition in the health insurance market. ACP is specifically concerned that the consolidation between these companies could lead to significant increases in insurer concentration, decreased choice and increased costs for patients and employers, and a reduction in physician ability to negotiate with insurance companies over provision of services." The College will continue to advocate with the Department of Justice and state attorney generals to block insurer mergers and consolidations that "**significantly increase health insurer concentration and result in decreased choice and increased cost for patients and employers, reduced access due to changing and narrowing networks of physicians and hospitals and prevent physicians from negotiating over provision of health services with those insurers,**" as stated by our policy.

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<sup>i</sup> "Horizontal Merger Guidelines". Antitrust Division, US Department of Justice and the Federal Trade Commission. Issued 19 August 2010. Accessed at: <http://www.justice.gov/atr/horizontal-merger-guidelines-08192010>

<sup>ii</sup> "Number of Hospital Transactions Remains High in 2014 According to Kaufman Hall Analysis." *PR Web*. 9 February 2015. <http://www.prweb.com/releases/2015/02/prweb12502194.htm>

<sup>iii</sup> Wang E, Gee G. Larger Issuers, Larger Premium Increases: Health insurance issuer competition post-ACA. *Technology Science*. 2015081104. August 11, 2015. <http://techscience.org/a/2015081104>

<sup>iv</sup> Guardado, Jose R, Emmons, David W. and Kane, Carol K. "The Price Effects of a Large Merger of Health Insurers: A Case Study of UnitedHealth-Sierra." *Health Management, Policy and Innovation*, 1 (3) 16-35. <http://www.hmpi.org/pdf/HMPI%20-%20Guardado,%20Emmons,%20Kane,%20Price%20Effects%20of%20a%20Larger%20Merger%20of%20Health%20nsurers.pdf>

<sup>v</sup> American Medical Association. AMA Releases Analyses on Potential Anthem-Cigna and Aetna-Humana Mergers [Press release]. 8 September 2015. <http://www.ama-assn.org/ama/pub/news/news/2015/2015-09-08-analysis-anthem-cigna-aetna-humana-mergers.page>

<sup>vi</sup> Hatton, Melinda. Letter to William Baer and Sylvia Burwell on Aetna Humana Merger. American Hospital Association. 1 September 2015. <http://www.aha.org/advocacy-issues/letter/2015/150901-let-hatton-burwell-baer.pdf>

<sup>vii</sup> <http://www.aha.org/advocacy-issues/letter/2015/150805-let-acquisitions.pdf>

<sup>viii</sup> *United States v. Aetna Inc. and The Prudential Insurance Company of America*. Department of Justice. United States District Court of the Northern District of Texas (Dallas Division). 21 June 1999. <http://www.justice.gov/file/483516/download>

<sup>ix</sup> [http://www.kellogg.northwestern.edu/faculty/dafny/personal/Documents/Working%20Papers/8\\_Dafny\\_Paying%20a%20Premium%20on%20Your%20Premium.pdf](http://www.kellogg.northwestern.edu/faculty/dafny/personal/Documents/Working%20Papers/8_Dafny_Paying%20a%20Premium%20on%20Your%20Premium.pdf)

<sup>x</sup> <http://www.commonwealthfund.org/publications/issue-briefs/2015/aug/competition-medicare-private-plans-does-it-exist>

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<sup>xi</sup> Swann, James. "Insurance Industry Consolidation Could Mean Higher Premiums." Health Insurance Report, Bloomberg BNA. 4 August 2015. <http://www.bna.com/insurance-industry-consolidation-n17179934363/>

<sup>xii</sup> US Department of Justice, Office of Public Affairs. Justice Department Requires Divestitures in Humana Inc.'s Acquisition of Arcadian Management Services Inc.[Press Release]. 27 March 2012. <http://www.justice.gov/opa/pr/justice-department-requires-divestitures-humana-incs-acquisition-arcadian-management-services>

<sup>xiii</sup> D. A. Austin and T. L. Hungerford, "The Market Structure of the Health Insurance Industry," Congressional Research Service, Sept. 2009.

<sup>xiv</sup> McCue, Michael and Hall, Mark. "Insurers' Responses to Regulation of Medical Loss Ratios." The Commonwealth Fund. December 2012. [http://www.commonwealthfund.org/~media/files/publications/issue-brief/2012/dec/1634\\_mccue\\_insurers\\_responses\\_mlr\\_regulation\\_ib.pdf](http://www.commonwealthfund.org/~media/files/publications/issue-brief/2012/dec/1634_mccue_insurers_responses_mlr_regulation_ib.pdf)