

## **Opening Statement**

### **Examining Consolidation in the Health Insurance Industry and its Impact on Consumers**

**Senator Mike Lee**

**September 22, 2015**

Welcome to this hearing of the Subcommittee on Antitrust, Competition Policy, and Consumer Rights. Before we start, I would like to thank Ranking Member Klobuchar and her staff for their assistance in preparing for today. I'd also like to thank the Chairman of the full committee, Senator Grassley, for his support for the hearing.

[Housekeeping matters]: A few housekeeping matters before we begin. After I and Senator Klobuchar give some opening remarks about this hearing, we will hear from our panel of witnesses (who I'll introduce later on), and then we will have five-minute question rounds. I should also note that we are expecting an important vote on the floor this morning and I and other members will likely need to step out briefly to participate. If necessary, we may briefly pause the hearing proceedings.

#### **Introduction**

We're here today to discuss the proposed mergers between four of the nation's five largest health insurance companies. In early July this year, Aetna announced it had reached a deal to purchase rival Humana for \$37 billion. A few weeks later, Anthem announced its own deal to purchase Cigna for \$54 billion. The Department of Justice is currently reviewing the proposed transactions, and should they proceed without any objection or substantial modification, the health insurance industry's so-called "Big Five" will be reduced to the "Big Three": UnitedHealthcare, Anthem, and Aetna.

As with any merger between two major competitors, each of these acquisitions raises the question of whether the merging businesses' product offerings overlap in any geographic market. The relevant

antitrust inquiry is whether the combination will lead to a market concentration that may substantially lessen competition.

These transactions and their concurrent review also raise questions about the broader issue of consolidation in the health insurance industry. It is my hope that our discussions today will assist the public and lawmakers in understanding what is causing the trend towards consolidation, as well as how it will affect consumers. As we have seen since the passage of the Affordable Care Act, sudden and drastic changes to the healthcare markets can lead to financial uncertainty and increased strain on consumers and their families.

While vibrant competition in every industry is important to our economy, consumers and policy makers pay special attention when healthcare is involved. Healthcare markets are distinguished from those for other goods and services by their complexity, financial incentives, and inelastic demand. Health-related goods and services reach consumers through a byzantine web of manufacturers, wholesalers, pharmacy benefit managers, insurance companies and other third-party payors, providers, pharmacies, state and federal government agencies, and sometimes employers. In many instances, those prescribing care, those receiving the care, and those paying for the care are all different entities. But despite these complexities, and despite the often high costs for healthcare, everyone will at some point require it. Of course, healthcare also touches on some of the most sensitive and life-changing decisions made by consumers, decisions that have a lasting impact on their *personal* as well as economic well-being.

### **The Proposed Transactions**

That brings us to the present transactions. The first to be announced was that between Aetna and Humana, the third and fifth largest national health insurers, respectively. Aetna serves an estimated 46 million people globally, offering a variety of health insurance products, including dental, vision, Medicaid, Medicare Supplemental, Medicare Advantage, and commercial policies. Aetna's primary focus is in commercial health insurance, particularly national accounts and large multi-site self-insured employers. Humana has over

14 million members and product offerings focusing on Medicare, with at least one Medicare product in every state. Humana is the second largest Medicare Advantage provider behind UnitedHealthcare.

The second transaction, between Anthem and Cigna, proposes to combine the second and fourth largest national health insurers, respectively. Anthem is the largest member of the Blue Cross and Blue Shield Association, operating under that brand in 14 states. Anthem has over 38 million health insurance customers spread across its small group, Medicare, Medicaid, individual, and commercial products. Cigna has over 14 million covered lives and focuses on commercial health insurance offerings.

### **Competitive Concerns**

Each of these deals is incredibly complex and raises its own set of unique concerns. Industry observers have noted that the primary area of overlap between Aetna and Humana is in their Medicare Advantage businesses. The American Hospital Association identified nearly a thousand counties in which the post-acquisition concentration level in the market for Medicare Advantage raises strong competitive concerns. Others, however, question both the accuracy of the data cited and its interpretation. While some are concerned the deal will lead to higher prices and fewer choices for consumers, the companies have identified \$1.25 billion in potential efficiencies.

The Anthem-Cigna merger is viewed to involve overlap primarily in the commercial health insurance market. The American Hospital Association claims the deal may result in concerning concentration levels for commercial health insurance products in up to 807 metropolitan areas. The insurance companies again strongly dispute these numbers, arguing that they fail to separate out different insurance products that are in different product markets. Anthem and Cigna believe they are joining complementary businesses in a way that will allow them to lower costs and improve quality for consumers.

Anthem's acquisition of Cigna also raises questions regarding how Cigna will be integrated into the Blue Cross Blue Shield system.

Anthem's membership agreement in the Association places limits on how much of their business may be conducted outside the Blue Cross and Blue Shield brands. It is possible that Cigna's ability to compete post-acquisition may be constrained by Anthem's membership in the Blue Cross and Blue Shield Association. For their part, Anthem believes that the addition of Cigna's members will not cause them to run into any limits imposed by the Association's membership agreement.

In addition, there is the question of how these mergers may effect nascent forms of competition in the health insurance industry, specifically the trend towards value-based reimbursement and outcome-based treatment models. These alternative approaches to healthcare seek to improve care and lower costs by focusing on patient outcomes and overall health, particularly through preventative care, rather than simply paying for services on a fee-basis. As the marketplace evolves in response to consumer demand and government policies, it will be important to ensure that consumers are benefitting from vigorous competition and wide choice, rather than being locked into the offerings of a few dominant companies.

Finally, we can't ignore the far-reaching effect that the Affordable Care Act has had on the insurance marketplace. While I would like to emphasize that this is not a hearing on Obamacare, a discussion of its role in current industry consolidation is unavoidable given the way the Act has transformed the structure and provision of health insurance in America. It is important for us to ask how it may be affecting competition in these markets.

## **Conclusion**

As we can see, the issues raised by these proposed transactions and the complexities of the healthcare space provide ample topics of discussion. While the final determination regarding the competitive impact of the deals will be made by the Department of Justice, I believe we can make valuable contributions to the conversation today by closely examining any concerns they raise and by looking at what other forces or market realities may be driving consolidation in the health insurance industry.

Particularly at a time when the debate over national healthcare policy continues with fervor, and the healthcare marketplace is rapidly evolving to meet the demands of the 21<sup>st</sup> century, it is essential that lawmakers and regulators in Washington pay close attention to the impact of our actions on competition and the free market. I hope that we can make strides to that end today and I look forward to hearing and engaging with the testimony of our highly qualified panel of witnesses.