



Salazar v. Colorado Medical Society (Denver Cnty., Colo. Dist. Ct.)

Topics Covered: Antitrust

Outcome: Neutral

Issue

The issue in the lawsuit was whether, pursuant to a Colorado Open Records Act (CORA) request, the Colorado Insurance Commissioner must disclose the competitive impact statement that Aetna, Inc. submitted to support its proposed acquisition of Humana.

AMA Interest

The AMA opposes consolidation in the health insurance industry that may result in anti-competitive markets.

Case Summary

Aetna Inc., one of the largest health insurance companies in the United States, seeks to acquire Humana, also one of the largest health insurers. Both companies do business in Colorado, and Aetna applied to the Colorado Insurance Commissioner for approval of the contemplated merger. As part of its filings, Aetna submitted a competitive impact statement, which set forth, from Aetna's viewpoint, how the contemplated merger would impact competition among health insurance companies in Colorado. When it did so, Aetna asserted that its competitive impact statement was confidential and should not be released to the public. The Insurance Commissioner then approved the Aetna-Humana merger without giving CMS notice and without a hearing.

CMS, under CORA, has requested copies of the documents Aetna submitted to the Insurance Commissioner in connection with the potential merger. In response to the CMS request, the Insurance Commissioner indicated that she did not know whether she was legally required to produce the competitive impact statement. She then applied to the Denver County District Court for instructions as to how she should respond to the CMS CORA request.

CMS responded to the Insurance Commissioner's application, arguing that the information in the Aetna competitive impact statement was taken from public records and, therefore, was not confidential. CMS further argues that, regardless of whether the competitive impact statement contained confidential information, the Insurance Commissioner was required to disclose it under CORA. Aetna then intervened in the suit, contending that its competitive impact statement should not be publicly disclosed.

On April 29, 2016, the court ruled it was within the Insurance Commissioner's discretion to keep the competitive impact statement confidential. The court entered a declaratory judgment in favor of Aetna and against CMS.

Litigation Center Involvement

The Litigation Center is helping to defray the CMS litigation expenses.