STATEMENT

of the

American Medical Association

to the

Indiana Department of Insurance

RE: Anthem Application for the Proposed Acquisition of Cigna

April 26, 2016

The American Medical Association (AMA) appreciates the opportunity to provide comments regarding Anthem's application for the proposed acquisition of Cigna. We have concluded that the proposed merger would injure consumers by substantially lessening competition. Accordingly, we urge that Anthem's application to acquire Cigna be denied.

The Significance and Measurement of Market Concentration

Competition is likely to be greatest when there are many sellers, none of which have any significant market share. Unfortunately, markets for commercial health insurance in Indiana are "highly concentrated," meaning that the size, size distribution and number of firms in these markets raise substantial risks that a merged Anthem/Cigna would substantially lessen competition.

There are at least two ways of measuring market concentration and the degree of danger to competition that a merger poses. One competitive standard, adopted by the Indiana Insurance Code, looks to the four firm concentration ratio (CR4).[1] This concentration ratio is calculated by summing the market shares of the four largest insurers in the market. A different test is adopted by the federal enforcement agencies in their 2010 Federal Trade Commission (FTC) and Department of Justice (DOJ) Horizontal Merger Guidelines (Horizontal Merger Guidelines). These federal guidelines use the Herfindahl–Hirschman Index (HHI) to measure market concentration. The HHI is the sum of the squares of the market shares of every firm in the relevant market. Markets with HHIs less than 1500 are characterized as unconcentrated. Those with HHIs between 1500 and 2500 are moderately concentrated, and those with HHIs higher than 2500 are highly concentrated. Under either method for measuring concentration, all Indiana commercial health insurance markets are highly concentrated.

In a Statewide Market, the Merger Violates Both Federal Merger Guidelines and the Indiana Competitive Standard.

Under the Indiana competitive standard, a highly concentrated market is one in which the sum of the market shares of the four largest insurers (the so-called four-firm concentration ratio) is 75% or more of the market. Utilizing data obtained from HealthLeaders-Interstudy Managed Market Surveyor from January 1, 2013 (hereafter HLI data), the AMA's health economists have calculated that the combined shares of the four largest commercial health insurers in an Indiana statewide market total a whopping 88.6%,[2] dwarfing by comparison the national four-firm concentration ratio for airlines of 62%.[3] In such a

[1] Indiana Insurance Code §§ 27-1-23-2(f)(2); 27-1-23-2(g)(2); 27-1-23-2.5(h)
[2] Table 1

highly concentrated state health insurance market, there is a prima facie violation of the Indiana competitive standard when a firm with a 10% market share merges with a firm with a 2% or more market share. In the instant case, a prima facie violation of the Indiana competitive standard is easily established: Anthem's share is 54% and Cigna's is 15%.[4] The merger would also run afoul of the Horizontal Merger Guidelines since Indiana's health insurance market has an HHI of 3385 (and thus highly concentrated) and the increase in the HHI caused by the merger would be 1614.

With Respect to Metropolitan Statistical Areas, the Merger Would Again Run Afoul of Both the Federal Antitrust Merger Enforcement Guidelines and the Indiana Competitive Standard

The result is no different if we consider the competitive effect of the merger in metropolitan statistical areas within the state of Indiana. Utilizing data obtained from HLI data from January 1, 2013, the AMA has determined, in accordance with the Horizontal Merger Guidelines, the commercial health insurance market concentrations and change in market concentrations that would result from the merger. The AMA analysis shows that an Anthem acquisition of Cigna would be presumed likely, under the Horizontal Merger Guidelines, to enhance market power in the following commercial health insurance markets: Indianapolis; Lafayette, Terre Haute, Kokomo, Anderson, Gary, Evansville, Fort Wayne, Michigan City-La Porte, Elkhart-Goshen, Muncie, South Bend-Mishawaka, and Bloomington.[5] Moreover, in each of the aforementioned MSAs, the merger would violate the Indiana competitive standard, meaning that in all of them the shares of the four largest insurers total 75% or more. Anthem's market share is at least 37% or more and Cigna's is 4% or more.[6]

In sum, under both the Horizontal Merger Guidelines and the Indiana competitive standard, the merger would create market structures that would likely result in anticompetitive effects. Consequently, the merger should not be approved.

Significant Barriers to Entry into Indiana Health Insurance Markets

The prima facie violation of the Indiana competitive standard and the Horizontal Merger Guidelines could hypothetically be rebutted by establishing the likelihood of timely and sufficient entry to alleviate concerns about the adverse competitive effects of the merger.[7] In the instant case, there is no reliable evidence establishing that entry would be timely, likely, and sufficient. Indeed, the record is that successful entry into Indiana health insurance markets has proven difficult.[8] The AMA's analysis of data from HLI data shows that in a statewide market and in the numerous MSAs where the merger would be anticompetitive in commercial markets, the market shares and ranking of market leaders have been durable and little changed from 2010 through 2013, the most recent timeframe for which we have data. In addition, a DOJ study of entry and expansion in the health insurance industry found that "brokers typically are reluctant to sell new health insurance plans, even if those plans have substantially reduced premiums, unless the plan has strong brand recognition or a good reputation in the geographic area where the broker operates."[9] Likewise, a report commissioned by the Pennsylvania Insurance Department to

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[3] See Dafny, "Health Insurance Industry Consolidation: What Do We Know From the Past, Is It Relevant in Light of the ACA, and What Should We Ask?" Testimony before the Senate Committee on the Judiciary, September 22, 2015, at 10 (Dafny Senate Testimony).
[4] See Table 1
[5] See Table 2
[6] See Table 3
[7] See Horizontal Merger Guidelines at 28.
[8] Table 4
[9] Sharis A. Pozen, Acting Assistant Att'y Gen., Dep't of Justice Antitrust Div., *Competition and Health Care: A Prescription for High-Quality, Affordable Care* 7 (Mar. 19, 2012) [hereinafter Pozen, *Competition and Health Care*], *available at* http://www.justice.gov/atr/speech/competition-and-health-care-prescription-high-quality-affordable-care.

analyze a proposed merger of Highmark, Inc. and Independence Blue Cross concluded that if the merger were approved, it was unlikely that other health insurance firms would be able to step in and replace the loss in competition.[10]

Likely Detrimental Effects for Consumers in Health Insurance Markets

Price Increases

A growing body of peer-reviewed literature suggests that greater consolidation leads to price increases, as opposed to greater efficiency or lower health care costs. Two studies have examined the effects of past health insurance mergers on premiums. A study of the 1999 merger between Aetna and Prudential found that the increased market concentration resulting from the merger was associated with higher premiums.[11] More recently, a second study examined the premium impact of the 2008 merger between UnitedHealth Group Inc. and Sierra Health Services. That merger led to a large increase in concentration in Nevada health insurance markets. The study concluded that in the wake of the merger, premiums in Nevada markets increased by almost 14% relative to a control group. These findings suggest that the merging parties exploited their resulting market power to the detriment of consumers.[12] Professor Leemore Dafny, PhD, a health economist at Northwestern University, also observes that there are a number of studies documenting lower insurance premiums in areas with more insurers, including on the health insurance marketplaces, the large group market, and in the Medicare Advantage market.[13]

Plan Quality

As Dr. Leemore Dafny observes, "the competitive mechanisms linking diminished competition to higher prices operate similarly with respect to lower quality."[14] For example, one study in the Medicare Advantage market found that more robust competition was associated with greater availability of prescription drug benefits.[15] Thus, the merger can be expected to adversely affect health insurance plan quality. The narrowing of networks that might result from the merger is also likely to adversely affect access and quality. For example, of respondents to the Indiana State Medical Association survey of Indiana physicians who are contracted with Anthem, 87% believed that the Anthem-Cigna merger would very or somewhat likely lead to narrower networks which will in turn reduce patient access to care.[16]

The Health Insurer Monopsony Power Acquired Through the Merger Would Likely Degrade the Quality and Reduce the Quantity of Physician Services

If approved, the merger would also injure consumers by enhancing the merged insurers' monopsony (i.e. buyer) power in the purchase of physician services. As Dr. Dafny explained in her recent Senate testimony on this merger: "[m]onopsony is the mirror image of monopoly; lower input prices are achieved by reducing the quantity or quality of services below the level that is socially optimal."[17] The

[10] LECG Inc., "Economic Analyses of the Competitive Impacts From The Proposed Consolidation of Highmark and IBC." (September 10 2008) at 9.
[11] Leemore Dafny et al, "Paying a Premium on your Premium? Consolidation in the US Health Insurance Industry," *American Economic Review* 2012; 102: 1161-1185.
[12] Jose R. Guardado, David W. Emmons, and Carol K. Kane, "The Price Effects of a Large Merger of Health Insurers: A Case Study of UnitedHealth-Sierra" *Health Management, Policy and Innovation*, 2013; 1(3) 16-35.
[13] Dafny Senate Testimony, supra note 3, at 11.
[14] Dafny Senate Testimony, supra, note 3 at 11.
[15] Robert Town and Su Liu, "The Welfare Impact of Medicare HMOs," *RAND Journal of Economics* (2003): 719-736.
[16] See Summary of the Indiana State Medical Association's Survey that is attached.
[17] Dafny Senate Testimony, supra note 3, at 10.

result is a reduction in compensation leading to diminished physician service and quality of care that harms consumers.[18]

The DOJ has successfully challenged two health insurer mergers (half of all cases brought against health insurer mergers) based in part on DOJ claims that the mergers would have anticompetitive effects in the purchase of physician services.[19] In a third merger matter occurring in 2010—Blue Cross Blue Shield of Michigan and Physicians Health Plan of Mid-Michigan—the health insurers abandoned their merger plans when the DOJ complained that the merger "would have given Blue Cross Blue Shield of Michigan the ability to control physician payment rates in a manner that could harm the quality of healthcare delivered to consumers."[20]

Similarly, in 2008 the Pennsylvania Insurance Department was prepared to find a proposed merger between Highmark, Inc. and Independence Blue Cross to be anticompetitive in large part because it would have granted the merged health insurer undue leverage over physicians and other health care providers that would have been "to the detriment of the insurance buying public" and would have resulted in "weaker provider networks for consumers who depend on these networks for access to quality healthcare." [21] The Pennsylvania Insurance Department further noted:

> [o]ur nationally renowned economic expert, LECG, rejected the idea that using market leverage to reduce provider reimbursements below competitive levels will translate into lower premiums, calling this an "economic fallacy" and noting that the clear weight of economic opinion is that consumers do best when there is a competitive market for purchasing provider services.[22]

These monopsony challenges properly reflect governmental conclusions that it is a mistake to assume that a health insurer's negotiating leverage acquired through merger is a good thing for consumers. On the contrary, consumers can expect higher insurance premiums."[23] Health insurer monopsonists typically are also monopolists.[24] Facing little if any competition, they lack the incentive to pass along cost savings to consumers.[25]

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[18] *See* Gregory J. Werden, *Monopsony and the Sherman Act: Consumer Welfare in a New Light*, 74 ANTITRUST L.J. 707 (2007) (explaining reasons to challenge monopsony power even where there is no immediate impact on consumers); Marius Schwartz, *Buyer Power Concerns and the Aetna-Prudential Merger,* Address before the 5th Annual Health Care Antitrust Forum at Northwestern University School of Law 4-6 (October 20, 1999) (noting that anticompetitive effects can occur even if the conduct does not adversely affect the ultimate consumers who purchase the end-product), available at: http://www.usdoj.gov/atr/public/spceches/3924.wpd.

[19] *U.S. v. Aetna Inc.*, supra note 12, at ¶¶ 17-18; *see also U.S. v. Aetna, Inc.*, No. 3-99 CV 1398-H, at 5-6 (Aug. 3, 1999) (revised competitive impact statement), available at *http://www.usdoj.gov/atr/case/s/f2600/2648.pdf*; *United States v. UnitedHealth Group Inc.* No. 1:05CV02436 (D.D.C., Dec. 20, 2005) (complaint), available at: www.usdoj.gov/atr/cases/f213800/213815.htm.

[20] Blue Cross Blue Shield of Michigan and Physicians Health Plan of Mid-Michigan Abandon Merger Plans | OPA | Department of Justice, available at: http://www.justice.gov/opa/pr/blue-cross-blue-shield-michigan-and-physicians-health-plan-mid-michigan-abandon-merger-plans.

[21] *See* Statement of Pennsylvania Insurance Commissioner Joel Ario on Highmark and IBC Consolidation (January 22, 2009).

[22] Id.

[23] Dafny Senate Testimony, supra note 3, at 9.

[24] Peter J. Hammer and William M. Sage, *Monopsony as an Agency and Regulatory Problem in Health Care*, 71 ANTITRUST. L.J. 949 (2004).

[25] See Dafny Senate Testimony, supra note 3, at 10 ("If past is prologue, insurance consolidation will tend to lead to lower payments to healthcare providers, but those lower payments will not be passed on to consumers. On the contrary, consumers can expect higher insurance premiums.")

Results of Indiana State Medical Association's Survey

An Indiana State Medical Association survey explored the monopsony issue, guided by the following principle: a loss of competition on the buy side can occur within the localized geographic markets for the purchase of physician services when the merging health insurers hold contracts with a significant number of physicians who are financially dependent on contracting with the merging health plans.[26] This is precisely the case in a merger of Anthem with Cigna. Eighty-four percent of physician respondents to the Indiana State Medical Association survey felt they *had* to contract with Anthem in order to have a financially viable practice and 48% felt that way with respect to Cigna. Ninety-one percent of physicians said that the merger would reduce the quality and quantity of the services that physicians are able to offer their patients, and 78% reported that they will be *very or somewhat likely* pressured *not* to engage in aggressive patient advocacy as a result of the merger.

The extent of the merged entity's monopsony power and how it may ultimately injure consumers is also revealed in physician responses to the question of whether there would be any consequences in not continuing to contract with the merged firm: 31% would cut investments in practice infrastructure; 40% would cut or reduce staff salaries; 43% would have to spend less time with patients; and 27% would cut quality initiatives or patient services. These reductions in service levels and quality of care would cause immediate harm to Indiana consumers.

CONCLUSION

Given that the proposed merger would significantly increase the market concentration of already highly concentrated commercial health insurance markets, we urge the Indiana Department of Insurance to reject the proposed merger so that consumers and physicians have adequate competitive alternatives. Unless the application is rejected, the merged entity would likely be able to raise premiums, reduce plan quality, and lower payment rates for physicians to a degree that would reduce the quality or quantity of services that physicians offer to patients.

[26] Christine White, Sarahlisa Brau, and David Marx, Antitrust and Healthcare: A Comprehensive Guide, at 163 (2013); see also Capps, Cory S., Buyer Power in Health Plan Mergers (June 2010). Journal of Competition Law and Economics, Vol. 6, Issue 2, pp. 375-391; and U.S. Dep't of Justice and Fed. Trade Comm'n, Horizontal Merger Guidelines, supra 1, at page 33; Federal Trade Commission and U.S. Department of Justice, Improving Health Care: A Dose of Competition (July,2004), at 15.

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Tables to the Statement of the American Medical Association to the Indiana Department of Insurance
(April 26, 2016)

Table 1. Four-Firm Concentration Ratio and Largest Insurers' Market Shares in Indiana, 2013

Insurer	Market Share	Rank by Share	Concentration Ratio
WellPoint	54	1	88.6
Cigna	15	2	
UnitedHealthcare	14	3	
Aetna	5	4	

Table 2. Indiana MSAs where an Anthem-Cigna Merger Will Be Presumed Likely to Enhance Market Power

MSA	Pre-Merger HHI	Post-Merger HHI	Change in HHI
Indianapolis, IN	3299	5716	2417
Lafayette, IN	2780	4762	1982
Terre Haute, IN	5436	7047	1611
Kokomo, IN	3764	5191	1427
Anderson, IN	4803	6073	1270
Gary, IN	3059	4274	1215
Evansville, IN-KY	3419	4621	1202
Fort Wayne, IN	3595	4762	1167
Michigan City-La Porte, IN	4064	5135	1071
Elkhart-Goshen, IN	4328	5161	833
Muncie, IN	3771	4299	528
South Bend-Mishawaka, IN-MI	2813	3295	482
Bloomington, IN	3748	4189	440

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Table 3. Four-Firm Concentration Ratios and WellPoint's (Anthem) and Cigna's Market Shares in Indiana MSAs where an Anthem-Cigna Merger Will Be Presumed Likely to Enhance Market Power, 2013

MSA	Insurer	Pre-Merger Market Share	Rank by Market Share	Concentration Ratio
Indianapolis, IN	WellPoint	50	1	92.3
	Cigna	24	2	
Lafayette, IN	WellPoint	37	1	92.5
	Cigna	27	2	
Terre Haute, IN	WellPoint	72	1	95.2
	Cigna	11	2	
Kokomo, IN	WellPoint	58	1	90.3
	Cigna	12	2	
Anderson, IN	WellPoint	68	1	90.7
	Cigna	9	3	
Gary, IN	WellPoint	48	1	92.4
	Cigna	13	3	
Evansville, IN-KY	WellPoint	54	1	91.4
	Cigna	11	4	
Fort Wayne, IN	WellPoint	56	1	88.1
	Cigna	10	3	
Michigan City-La Porte, IN	WellPoint	61	1	89.4
	Cigna	9	3	
Elkhart-Goshen, IN	WellPoint	64	1	89.7
	Cigna	7	3	
Muncie, IN	WellPoint	59	1	85.2
	Cigna	4	5	
South Bend-Mishawaka, IN-MI	WellPoint	47	1	84.2
	Cigna	5	5	
Bloomington, IN	WellPoint	57	1	92.2
	Cigna	4	5	

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Table 4. Market Share Trends of the Four Largest Insurers in Indiana MSAs Where an Anthem-Cigna Merger will be Presumed Likely to Enhance Market Power, 2010-2013[1]

MSA	**Insurer**	**Market Shares**			
Indianapolis, IN		2010	2011	2012	2013
	WellPoint	59	49	54	50
	Cigna	10	20	18	24
	UnitedHealthcare	12	13	13	13
	Aetna	7	6	5	5
Lafayette, IN					
	WellPoint	40	34	37	37
	Cigna	15	29	26	27
	UnitedHealthcare	27	27	27	26
	Advantage	5	3	3	3
Terre Haute, IN					
	WellPoint	73	66	72	72
	Cigna	10	17	13	11
	UnitedHealthcare	7	10	9	10
	Humana	4	4	3	2
Kokomo, IN					
	WellPoint	57	54	57	58
	Cigna	13	13	14	12
	Advantage	13	14	12	11
	UnitedHealthcare	7	9	8	9
Anderson, IN					
	WellPoint	68	68	69	68
	UnitedHealthcare	9	10	9	10
	Cigna	7	5	10	9
	Physicians Hlth Plan	4	5	3	4
Gary, IN					
	WellPoint	48	44	49	48
	UnitedHealthcare	20	24	22	22
	Cigna	11	12	12	13
	Aetna	12	11	10	10
Evansville, IN-KY					
	WellPoint	44	43	50	54
	UnitedHealthcare	12	14	12	15
	Humana	13	14	11	11
	Cigna	7	6	6	11
Fort Wayne, IN					
	WellPoint	53	56	58	56
	UnitedHealthcare	11	14	14	15
	Cigna	7	7	8	10

[1] Cigna was the fifth largest commercial health insurer in Terre Haute, IN, Kokomo, IN and Anderson, IN.

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SUMMARY OF INDIANA STATE MEDICAL ASSOCIATION'S SURVEY CONCERNING PROPOSED MEGA-HEALTH INSURANCE MERGERS

INTRODUCTION

This survey polled physicians on the proposed mergers between Aetna and Humana and Anthem and CIGNA, as well as gathered data on how physicians currently negotiate with insurance companies. This survey was administered to members of the Indiana State Medical Association. In total, 218 physicians completed the survey, although specific questions only polled a subset of physicians depending on their role in the practice.

Current market power of commercial insurers over physicians

- 50% of respondents felt that they *had to* contract with Aetna in order to have a financially viable practice; 45% felt that way with respect to Humana. 84% felt that they *had to* contract with Anthem and 48% felt that way with respect to CIGNA. When asked why commercial insurers were essential to their practice's financial viability, responses clustered into the following categories:
    - Coverage of a large percentage of the patient population
    - To offset losses from government health plans
- Only 5% of respondents said that they could turn away from a commercial insurer and recover lost revenue by treating more Medicare or Medicaid patients
- 15%, 13%, 13%, and 24% of respondents who are contracted with Aetna, Anthem, CIGNA, and Humana, respectively, had difficulty finding available in-network physicians who accepted new patients for referrals
- 51%, 58%, 54%, and 58% of respondents who are contracted with Aetna, Anthem, CIGNA, and Humana, respectively, encountered formulary limitations which prevented a patient's optimal treatment.
- Respondents encountered challenges with the adequacy of provider networks including:
    - Difficulty finding local specialists in rural areas
    - Obtaining prior authorizations and denials of reimbursement
- 49%, 70%, 51%, and 55% of practice decision-makers[2] who are contracted with Aetna, Anthem, CIGNA, and Humana, respectively, reported that contracts were "take-it-or-leave-it" offers across the four insurers; where greater than 49% had seen an "all-products" clause in an offered health plan
- 40% of decision-makers were offered a single contract for different types of plans; 22% were offered separate contracts with different terms for different types of offered plans

[2] A "decision-maker" is a respondent who reported that they were the primary decision maker or one of a group of decision makers in their practice. In this survey, the total number of decision-makers was 67.

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- 18% of decision-makers were paid the same fees across different types of plans offered; 57% were offered different fees for different plans

Physicians reject the proposed mergers

- 89% of physicians *strongly or somewhat oppose* the merger of Aetna and Humana; while 83% felt the same with regards to the Anthem and CIGNA merger

- 84% of decision-makers viewed the proposed Aetna-Humana merger as making contract negotiations *somewhat or much less favorable* than before; 85% of physicians felt that way with respect to the Anthem-CIGNA merger

Negative consequences if the mergers are approved

- 85% of decision-makers believed that the Aetna-Humana merger would *very or somewhat likely* lead to narrower physician networks which will in turn reduce patient access to care, with 76% reporting that they will be *very or somewhat likely* pressured not to engage in aggressive patient advocacy as a result of the mergers

- 87% of decision-makers believed that the Anthem-CIGNA merger *would very or somewhat likely* lead to narrower physician networks which will in turn reduce patient access to care, with 78% reporting that they will be *very or somewhat likely* pressured not to engage in aggressive patient advocacy as a result of the mergers

- 94% of decision-makers believed that the Aetna-Humana *merger would very or somewhat likely* decrease reimbursement rates for physicians such that there would be a reduction in the quality and quantity of the services that physicians are able to offer their patients; 91% felt that way with respect to the Anthem-CIGNA merger

- If the insurance mergers proceeded and decision-makers did not continue to contract with the merged health plan, the following consequences were reported:

  If Aetna-Humana merged…

  - 15% would retire from active practice
  - 15% would need to close their practice
  - 6% would move their practice to a more competitive reimbursement market
  - 33% would cut investments in practice infrastructure
  - 40% would cut or reduce staff salaries
  - 37% would have to spend less time with patients
  - 21% would cut quality initiatives or patient services

  If Anthem-CIGNA merged…

  - 16% would retire from active practice
  - 25% would need to close their practice
  - 15% would move their practice to a more competitive reimbursement market
  - 42% would cut investments in practice infrastructure

  - 43% would cut or reduce staff salaries
  - 40% would have to spend less time with patients
  - 27% would cut quality initiatives or patient services

- 82% of respondents *disagreed or strongly disagreed* that the mergers are necessary to gain efficiencies

- 92% of respondents *agreed or strongly agreed* that these mergers will give insurers more influence over physicians' clinical and business practices with little or no recourse for physicians, and that physicians will be forced to cut costs so deep that there would be a degradation in their ability to provide the care that their patients need and value