

**U.S. Senate Judiciary Committee  
Subcommittee on Antitrust, Competition policy and Consumer Rights**

**Hearing on  
“Examining Consolidation in the Health Insurance Industry and its Impact on Consumers”**

**September 22, 2015**

**Questions for the Record**

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**U.S. Sen. Mike Lee (R-UT)**

- 1. Should your acquisition of Cigna receive clearance from the Department of Justice and be consummated, will your customers see an increase or decrease in their premiums, deductibles, and/or co-pays?**

The health care costs that consumers ultimately experience depend on a number of variables. Premiums, deductibles, and co-pays are reflective of the expected cost of medical care, including the prices for, and anticipated quantity of, health care services consumed. We expect the transaction to lower plan administrative costs and to expand and improve our product offerings, increasing the quality and breadth of services available to consumers in the market. If we are successful, consumers will benefit through better care and increased affordability. Individuals who purchase and pay for their own insurance can expect improved value. Further, many of Anthem’s and Cigna’s members are in large employer plans that self-insure and contract with us to provide administrative services only (ASO), where the employer pays for the cost of care. These large employer customers will directly benefit from the efficiencies we expect to achieve through this transaction as the cost-of-care savings will be passed directly on to them, as noted by Dr. Paul Ginsburg in his testimony before the Committee referencing a recent study that examined the impact of plan consolidation on price.<sup>1</sup>

- 2. In your testimony, you mentioned pursuing greater affordability and higher quality for your health insurance products. What do you mean by “affordability,” and what do you mean by “quality?”**

Pursuing greater affordability and higher quality is essential to our success. Affordability and quality matter to both Anthem and Cigna, but more importantly, they are of paramount importance to our customers. Simply put, as a result of this combination, we expect to reduce administrative expenses, improve clinical programs to better manage the cost of care, and enhance consumers’ engagement in their own health care. All of these actions result in greater value by making the health care dollar stretch further. This will be accomplished through expanding the reach of the best programs of each company, in the form of more and superior product offerings, improved data analytics, and better collaboration with providers.

Examples of the types of tools and strategies that each company has developed independently, which can be applied to the benefit of customers of the combined company, expanded, or further improved, include:

- Transparency tools – Anthem believes in the importance of providing our customers with the tools they need to make better informed decisions regarding their health care choices.

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<sup>1</sup> Trish, E.E., and B.J. Herring. How do health insurer market concentration and bargaining power with hospitals affect health insurance premiums? *Journal of Health Economics*, 42 (2015): 104-114.

These tools should help consumers weigh costs, quality, and evidence-based clinical outcomes data to make choices that best meet their health care needs. For instance, working with partners such as Castlight Health and Health Care Blue Book, Anthem provides consumers with clearer line-of-sight into price variations within the same geography and network. And, Cigna, through its myCigna cost and transparency tools, is able to provide its members with personalized cost estimates for over a thousand medical and dental procedures, in addition to real-time pricing for medications at 60,000 pharmacies across the country.

- Provider collaboration – Both companies also understand the importance of the patient-provider relationship in making outcome-based health care decisions. For Anthem, that has resulted in our Enhanced Personal Health Care program, which promotes that relationship by focusing on the quality of, and access to, services that have proven results. This program has contributed to Anthem successfully transitioning more than \$50 billion of its total health care reimbursement spending away from traditional, volume-based fee-for-service to a more outcome-based reimbursement model. Meanwhile, the Cigna Collaborative Care program is a similar outcome-based initiative. These models result in better coordination with our provider partners, as we work together to align incentives to encourage smarter, collaborative decision-making to foster better clinical outcomes and an improved patient experience.

**3. In explaining why your merger with Cigna is necessary to achieve the efficiencies and consumer benefits you expect, you identified the length of time it would take to enter markets individually, as opposed to all-at-once through the acquisition, and constantly changing consumer demand as reasons for the deal. Are not these concerns significant barriers to entry for potential competitors?**

Competition in the health insurance industry remains robust. As referenced in my written testimony, the number of health insurers increased by 26 percent in 2015 with 70 new entrants offering coverage. Whether it is provider systems looking to enter the market themselves or new entrants looking to leverage a distinct core competency in meeting changing consumer demands, the playing field is open to all. Our objective in seeking to combine capabilities with Cigna is a recognition that each organization does something better than the other that will allow the combined entity to offer consumers increased access and greater choice in their health care decision-making, as quickly as demand requires. The health care sector is undergoing dramatic changes that will make the health insurance market even more competitive in the future. There are several drivers bringing about these changes, all aimed at making our country's health care system more efficient, while also expanding access to affordable, quality health care. This transformation is reshaping the competitive landscape across both commercial and government programs. Many types of insurers, including large insurers, regional insurers, Blue plans, previously Medicaid-only insurers, provider-sponsored plans, and others, now compete against each other in the various segments of the market. This expanded competition is expected to continue to grow, further ensuring that competition within the health insurance market will remain vigorous. The proposed transaction will not prevent new entry in any geography.

**4. What are the product and geographic market overlaps between your business and Cigna's, and what is your company willing to do to address them?**

As mapped out in my written testimony, the footprint shared by Anthem and Cigna, whether geographically or by market segment, is minimal and highly complementary. In the provision of small group insurance, Anthem has a presence in 14 states; Cigna does not market to this group. In the provision of individual insurance, Anthem does business in 14 states, and Cigna does business in 12 states; however, the combined company would only share a limited number of rating regions in just five states. In the international market, Cigna has partnerships in 30

countries to provide health coverage to multi-national firms with a global workforce; Anthem does not operate in this market.

In the Medicare Advantage (MA) market, Anthem does business in 20 states, primarily in New York, Ohio, and California. Cigna participates in the MA market in 15 states and the District of Columbia, primarily in Florida, Tennessee, Pennsylvania, and Texas. And within the six states where Anthem and Cigna offer MA products, the combined company would only share a small number of counties within those states. Anthem and Cigna each have a respective market share of about 3% in the MA market segment. In Medicaid, Anthem has contracts in 19 states; whereas, Cigna's footprint is limited to a number of counties in two states, limiting the shared footprint between the two organizations to just six counties in Texas.

Finally, in the large employer space, companies like Anthem and Cigna primarily provide administrative services to these companies rather than insurance, as many of these employers take on the risk of providing their workers' health care coverage by self-insuring. This is a sophisticated group, employing professional departments and utilizing expert consultants to manage and administer health benefits, which are quite often carved up by product segments, such as medical, dental, vision, pharmacy, and life and disability. In addition, large employers seldom seek out one all-inclusive health benefit package for employees scattered across the country. Rather, they contract with local insurers, third-party administrators, and regional, state, and local providers, depending on their needs. There is minimal overlap between the two organizations, and the complementary nature of the proposed transaction is one of the ways in which consumers will benefit from the combination of these two companies. We remain committed to working with the appropriate regulators to ensure that competition continues to thrive in the geographies and markets we service.

**5. As I'm sure you're aware, federal regulations and legislation have imposed a complex set of restrictions and requirements upon your business. Between actuarial value measures, community rating, age bands, guaranteed issue, and medical loss ratios, how does your business set itself apart from the competition?**

The insurance market is highly regulated by a complex set of regulations and requirements, all of which ensure that all participants are good stewards of the trust that has been placed in them to help consumers manage their health care needs. Anthem's 75 years of experience in connecting people to the coverage that works best for them and their families has enabled the company to be forward thinking. As health care continues to adapt – keeping pace with changing consumption patterns and consumer demands, integrating innovative technologies, and operationalizing a high degree of regulatory scrutiny – it is incumbent upon all actors in this market to evolve. Anthem strives to position itself and its members to benefit from this evolution by increasing transparency for consumers and simplifying their access to care. Through its partnership with transparency vendors like Castlight Health and Health Care Blue Book, Anthem is able to arm consumers with the tools they need to make better informed decisions. Also, Anthem's Imaging Cost and Quality program, which proactively engages consumers by educating them on lower cost, high quality alternatives for certain procedures, has shown that it can save \$220 per test, on average. Finally, through its commitment to the provider-payer relationship, Anthem has been able to foster the transition away from traditional, volume-based fee-for-service, to a more outcome-based reimbursement model, by aligning incentives to encourage smarter, collaborative decision-making to foster healthier outcomes and a better patient experience. In fact, more than \$50 billion of Anthem's total health care reimbursement is now tied to these outcome-based contracts.

**6. Do you believe there is a national market for commercial health insurance plans, ASO plans, or any other product? If so, how will Anthem and Cigna's merger effect competition in those markets?**

Anthem remains steadfast in its belief that health care, in addition to being deeply personal, is inherently local. This perspective is honed through our decades of experience in the diverse communities we serve across the country. The complementary nature of this proposed transaction will result in minimal overlap, both, geographically, and by product segment, and will enable us to accelerate bringing each company's distinct expertise to bear, serving to enhance the competition that continues to thrive across the industry. Health care competition and choice is local, just as health care services are delivered locally. In many areas, local or regional plans actually drive competition and compete aggressively.

**U.S. Sen. Patrick Leahy (D-VT)**

**Since 1945, the insurance industry has enjoyed a permanent statutory exemption from the antitrust laws. I have long been skeptical of statutory exemptions from the antitrust laws because of the important role these laws play in protecting consumers and promoting competition. Permanent antitrust exemptions are particularly troublesome because they limit the Congressional oversight that comes as part of the reauthorization process.**

- 1. Do you continue to support the permanent antitrust exemption for the health insurance industry? If so, what justification can you give this Committee for why it should continue to exist, and in particular, why it should exist on a permanent basis?**

The McCarran-Ferguson statute has been interpreted to not include mergers and acquisitions of health insurers. As such, this transaction is subject to federal antitrust review by the Department of Justice, as would any other merger or acquisition. In addition, this transaction is subject to anti-trust review by 29 States' Attorneys General. The McCarran-Ferguson exemption notwithstanding, the health insurance industry is subject to a myriad of complex requirements, regulations, and oversight supervision, which Anthem works diligently to comply with at both the federal and state levels.

**U.S. Sen. Dianne Feinstein (D-CA)**

- 1. Medical loss ratio refers to the percentage of premium dollars that go toward medical care for patients versus administrative costs. Companies that are merging often tout increased administrative efficiencies. Do you expect that increased efficiencies would translate into increased medical loss ratio percentages for Anthem in comparison to the last two years?**

We expect the combined company to meet the statutorily imposed medical loss ratio percentages. We do expect to be able to reduce the rate of growth of the aggregate medical costs of the combined company principally as a result of our outcome-based reimbursement programs and related initiatives.

- 2. What impact do you expect Anthem's merger with Cigna to have on consumers' choice of health plans?**

Given the complementary nature of this transaction, both geographically and by market segment, consumers will continue to enjoy a high degree of choice when it comes to their health care options. In the 14 states where Anthem operates under the BlueCross or BlueCross and BlueShield brand, this transaction will provide better choices to consumers by leveraging Cigna's expertise in product lines that Anthem does not actively market, as well as by integrating the superior capabilities of both companies. In the other 36 states and Washington, DC, we believe that this combination will encourage greater competition and choice in the marketplace. Irrespective of this merger, the health insurance industry is awash with competition – whether it is provider systems applying for insurance licenses (it was estimated last year that as much as 50 percent of health systems in the U.S. had applied, or were intending to apply, for an insurance

license<sup>2</sup>) or new entrants to the market. This proposed deal will only serve to increase the options available to consumers in selecting the providers and plans that best fit their needs.

**3. What steps are you planning to take to ensure that it is easy for consumers to understand their exact provider network, especially if different plans offered by Anthem and Cigna have different provider networks?**

Anthem and Cigna both make participating provider information available to our members in a number of ways – online directories, apps, by phone, and if requested, in a paper directory. We value our relationships with our provider partners and we strive to help consumers access and understand information about their health coverage. Through this transaction, we hope to bring the best practices of both companies together to improve how we engage members in their care and coverage through better data, tools, and transparency.

**4. What impact do you expect Anthem’s merger with Cigna to have on the cost of premiums?**

Premiums are determined by an array of factors. At Anthem, we work hard to provide the most affordable products that meet consumer needs. The goal of the transaction is to increase value through improved efficiencies and applying the best capabilities of both companies as described more fully in my response above and in my testimony. This should result in improved affordability for consumers.

**5. What specific benefits to the consumer do you expect to see from Anthem’s merger with Cigna?**

The benefits to consumers from the combination of Anthem and Cigna have to do with access, affordability, and quality. Specifically, by combining the footprints of these two companies, consumers across complementary geographies and market segments will have more options, enjoying both increased choice and greater flexibility in their health care decision-making. In addition, through each company’s focus on enhanced transparency and consumer-centricity, customers will have greater line-of-sight into the true costs of care, connecting them more intimately with value. Finally, both organizations’ experience in designing benefits packages around quality-based clinical outcomes will enhance consumers’ overall health.

**6. Are there any markets in which Anthem, Cigna, Aetna, and Humana each have more than 10% market share? If so, please identify them.**

While market share is one factor that the Department of Justice will consider in its evaluation of the proposed transaction, we believe that it is both appropriate and necessary to consider a number of other factors to gain a full picture of insurance competition at the local level. These include, but are not limited to, geographic differences in health care prices and patterns of care, local market features, and the number and type of health plan choices available to consumers in each market segment. We believe that a comprehensive review of these and other factors will demonstrate that the two companies are complementary and well-positioned to achieve better value for our combined membership.

**What impact do you expect the proposed mergers (i.e. Anthem with Cigna and Aetna with Humana) to have on consumers’ choice of health plans in the markets in which the companies each have more than 10% market share?**

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<sup>2</sup> “Medical Cost Trend: Behind the Numbers 2014,” PwC.com. 2013. PricewaterhouseCoopers Health Research Institute. June 2013 <<http://www.pwc.com/us/en/health-industries/behind-the-numbers/assets/medical-cost-trend-behind-the-numbers-2014.pdf>>.

Consumers will benefit from new choices being made available to them. The complementary nature of the Anthem-Cigna deal, in addition to enhancing and expanding these health care options, will also enable the combined company to deliver an improved consumer experience, better quality health coverage, and greater ability to control rising medical costs, all of which will provide more value to consumers. Across Anthem's and Cigna's different geographies and market segments, if trends hold, consumers can also expect to see more competitors enter the market in the coming years.

**What impact do you expect the proposed mergers (i.e. Anthem with Cigna and Aetna with Humana) to have on the cost of premiums in the markets in which the companies each have more than 10% market share?**

We expect consumers will benefit from significant cost savings. Premiums are a reflection of the underlying cost of health care and the relative utilization of enrolled members. The combination of Anthem and Cigna is intended to improve value. Applying the complementary strengths of the two companies, we intend to continue to improve consumer engagement in their health care along with supporting providers' ability to better organize care delivery. Combined we will drive improved affordability.

**U.S. Sen. Orrin Hatch (R-UT)**

- 1. The American Hospital Association has argued that the Anthem-Cigna merger would increase the Herfindahl-Hirschman Index score for commercial health insurance by over 200 points in 600 highly concentrated markets and by over 100 points in another 217 highly concentrated markets. Do you agree with those calculations? If not, why not? And if those calculations are correct, does that mean the merger will presumptively increase market power?**

Health care is delivered locally. The Department of Justice will review this transaction by market segment on a local level. And, we are confident that the DOJ will agree with our analysis that the transaction will, in fact, result in much lower concentration ratios than the American Hospital Association have suggested.

The American Hospital Association (AHA) calculations were not based on the economically-sound evidence considered by antitrust economists. For example, their analysis aggregated different market segments, failing to take into account the fact that, in many cases, both companies do not offer the same products to the same customers in the same geographic areas and, instead, are highly complementary. As a result, the AHA's quick look at market data is misleading when applied to the Anthem and Cigna combination. We expect the DOJ to spend the appropriate amount of time and resources – likely, months – to carefully evaluate more reliable and applicable data sets to determine the impacts to markets and market concentration.

The calculation of market shares by MSAs, as quickly performed by the AHA, leads to an overstated picture of concentration. Two published analyses using MSAs have found that hospital providers were highly concentrated in nearly every MSA, and at HHI concentration levels much higher than the AHA has predicted would result in the insurance industry from the combination of Anthem and Cigna<sup>3 4</sup>.

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<sup>3</sup> Melnick, Glenn A., et al., "The Increased Concentration of Health Plan Markets Can Benefit Consumers Through Lower Hospital Prices," *Health Affairs* Vol. 80 No. 9 (September 2011): 1728-1788.

<sup>4</sup> Capps, PhD, Cory, and David Dranove, PhD. "Market concentration of hospitals," Bates White Economic Consulting. June 2011. <<http://www.ahipcoverage.com/wp-content/uploads/2011/06/ACOs-Cory-Capps-Hospital-Market-Consolidation-Final.pdf>>.

Core Based Statistical Areas (CBSAs) used by economists more accurately depict any potential overlaps that result from combining Anthem's and Cigna's different business segments. The complementary nature of their respective business footprints means the overlaps are, in fact, quite small. In 854 of the 929 CBSAs (92 percent), either Anthem or Cigna is not present or has a negligible share of the market. A majority of the remaining CBSAs will remain below the thresholds used by the DOJ/FTC HHI guidelines used to determine whether or not a market is highly concentrated. In short, the merger will not increase concentration over levels seen today be an appreciable amount.

In virtually all areas and all customer segments and types, the combination will provide the benefits of greater efficiency while preserving choice for consumers.

### **U.S. Sen. Thom Tillis (R-NC)**

**1. What can Congress do to ensure that the United States Department of Justice objectively examines these proposed mergers, free from undue influence from the Administration, and without predetermining the outcome of their analysis?**

The hearing convened by this Committee – and its House counterpart – last month is an important step in this process. By inviting Anthem to present the merits of its proposed transaction, this Committee has initiated an ongoing conversation involving a wide sampling of perspectives, representing stakeholder voices from across the health care spectrum. By keeping this dialogue open, a narrative established on fact and careful analysis will continue to develop. We look forward to continued engagement with this Committee, your House of Representatives colleagues, State regulators, and the Department of Justice to ensure a thorough and comprehensive review of the proposed merger.

**2. Much has been said of the potential ability of larger health insurers to act as a check on larger provider networks. In short, the argument goes that larger insurers can better negotiate with larger provider chains, thus creating a balance that will ultimately benefit consumers.**

- **Do you agree with this justification?**

Anthem strives every day to deliver value to both our members and our providers. We have made a deliberate decision to collaborate closely with providers to establish programs and payment models that incentivize quality over quantity, and we actively support provider success by providing education, data, tools, and resources that enable providers to thrive in the world of outcome-based care.

That having been established, independent research has documented the relationship between insurer and provider consolidation and negotiated prices for health care services, suggesting that market share can impact unit prices:

- Melnick, G.A., et al. The Increased Concentration of Health Plan Markets Can Benefit Consumers through Lower Hospital Prices. *Health Affairs*, 30(9), September 2011, 1728-33.
- Moriya, A.S., et al. Hospital Prices and Market Structure in the Hospital and Insurance Industries. *Health Economics, Policy and Law*, 5(4), October 2010, 459-79.
- McKellar, M.R., et al. Insurer Market Structure and Variation in Commercial Health Care Spending. *Health Services Research*, 49(3), June 2014, 878-892.

- Trish, E.E., and B.J. Herring. How Do Health Insurer Market Concentration and Bargaining Power with Hospitals Affect Health Insurance Premiums? *Journal of Health Economics*, 42 (2015), 104-114.

However, as plans and providers move to outcomes-based contracting, these dynamics will continue to evolve. Consumers benefit when decisions about the delivery of health care reflect both the quality and the cost of that care. Both Anthem and Cigna value the partnerships we have developed with our provider-partners and maintain that this transaction will only enhance that collaborative spirit.

- **Further, do you believe that consolidation in the health insurance market is the inevitable result of consolidation in the provider market?**

The consolidation seen in the health care industry, in general, is a result of the shared recognition that the best way to control escalating costs for consumers is through improved efficiencies resulting from the combining of like-minded entities with a shared focus on access, affordability, and quality. The efficiencies that would result from the proposed Anthem-Cigna merger would allow our complementary organizations to bring the best of what we do to more people, more quickly. It is worth noting, however, that recent independent analysis from experts at the Altarum Institute, the Robert Wood Johnson Foundation, and the Institute for Policy Research at Northwestern University has established that hospital market concentration and higher premiums go hand-in-hand.

- **Finally, please opine as to whether the Affordable Care Act has hastened consolidation in health care markets, and if so, identify the features of the Act that are most responsible for this result.**

Anthem continually seeks out ways to offer our customers affordable products that meet their needs. The health care marketplace is evolving quickly as a result of a number of factors, not the least of which are the myriad state and federal regulations that impact the cost of insurance, and rising medical costs remain a fundamental challenge to affordability for consumers. Together, Anthem and Cigna will be better able to collaborate with providers, while facilitating the transition toward a more value-based system designed to increase access and quality of care, lower costs, and improve health outcomes; all to the benefit of consumers.

#### **U.S. Sen. David Vitter (R-LA)**

**Background: The ACA's medical loss ratio (MLR) requirement mandates that insurers spend at least 85 percent of premium revenues for large groups on claims or "activities that improve health care quality." In doing so, the MLR shields incumbents from competition. The need for sufficient scale to comply with MLRs is an impediment to start-up insurance providers while, at the same time, mergers of existing insurers is incentivized by the requirement to minimize administrative and operating costs as a percentage of revenue.**

**MLRs are also likely to limit the capacity of small insurers to invest in overhead needed to expand, serving as punishment for retaining funds unused for medical expenses, which, in turn, is likely to make external funding necessary.**

**Caps on operating expenses can also work to the advantage of hospital run health plans, where the cap is set at 20% of revenue. On the other hand, the cap on operating expenses for for-profit health insurers is set at 15%. This variance gives an advantage to hospital run health plans, which have an easier time staying under the cap because they can shift costs between**



**medical care and administrative overhead. For-profit health insurers, since the provision on medical care is not an option, must spread their fixed operating costs over a larger base of members in order to sustain themselves while meeting the government imposed caps. They must grow larger through mergers and acquisitions.**

**Questions:**

- 1. What role do the ACA's medical loss ratio requirements play in calculations and decisions of health insurers to consolidate? Does the cap on operating expenses incentivize scale over competition, driving insurance industry consolidation?**

Anthem's proposed merger with Cigna is the result of a number of factors – including market conditions – but none more pronounced than the recognition that the complementary strengths of these two organizations would result in better access, affordability, and quality for consumers.

- 2. Do MLRs make market competition-driving high deductible health plans harder to provide, forcing insurers to avoid markets with greater moral hazard that may also have a greater need for higher administrative costs?**

The decision to enter any market, health care included, is informed by many factors. The health insurance marketplace is fundamentally local and robustly competitive, and we see it staying that way and becoming even more competitive as a result of Anthem's merger with Cigna.

- 3. Does this lack of competition result in higher health care costs for consumers? Will it do so in the future?**

There continues to be a high level of competition in the health insurance industry. This year alone saw 70 new entrants to the market, a 26 percent increase. Additionally, the vast majority of exchange-eligible consumers (86 percent) were able to choose from at least three insurers – up from 70 percent in 2014. And, nearly 60 percent of counties experienced a net gain of at least one issuer, while only 8 percent saw a net loss. It is also important to note that, in addition to new entrants and new product offerings, many provider systems are also entering the market. In fact, last year approximately 50 percent of health systems in the U.S. applied – or intended to apply – for an insurance license.