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## PRIVATE PAYER MERGERS

The pace and magnitude of private payer mergers is accelerating the consolidation of the health insurance market. In 2015, the health insurance industry was rocked by the announcement of three large payer mergers: Anthem acquiring Cigna, Aetna acquiring Humana, and Centene acquiring HealthNet. The health care insurance industry is currently dominated by **just six** national private payers. The proposed mergers would reshape the industry and eliminate two innovative competitors: Humana and Cigna. At a time when health care is shifting to new value-based payment models and experimenting with strategies to lower costs, these mergers threaten access and quality because they create even more powerful payers. Market-dominant payers have unfair leverage over physicians and too often adopt a “take-it-or-leave-it” approach to contract negotiations. They dictate payment terms and performance ratings, limit access, and impose financial consequences on out-of-network practices caring for patients in their communities. When payers merge and further reduce competition, physicians, patients, and other stakeholders lose.

### AAFP’s Response

Following the announcement in 2015 that four of the five largest health insurance companies in the country were planning to pursue mergers, the AAFP sent a [letter](#) to the Federal Trade Commission and another [letter](#) to the U.S. Department of Justice (DOJ), urging federal officials to evaluate and prevent insurance company consolidations that would limit choices for consumers and decrease competition within the health insurance industry. In July 2015, the AAFP sent a [letter](#) to leaders in Congress warning of the consequences of consolidation by large insurers focused on their potential impact on patient care.

Centene finalized its \$6 billion merger with Health Net in March 2016, creating the largest Medicaid managed care organization in the country. The two other mergers face actions from federal antitrust regulators seeking to block the mergers.

### DOJ Reaction to AAFP’s Advocacy and Payer Mergers

On July 21, 2016, the DOJ filed lawsuits challenging both Anthem's proposed merger with Cigna and Aetna's proposed merger with Humana. The DOJ lawsuits face an uncertain future and are no guarantee that the mergers will fail. The expected savings to payers from these mergers are estimated at over \$3 billion during the first two years and the failure of these mergers could cost \$2 billion in fees and penalties.<sup>1</sup> The expected savings from a merger remain a strong motivation for Anthem and Aetna to offer remedies to the DOJ and state insurance departments that would address the mergers’ anti-competitive effects. The Anthem-Cigna occurred in two phases. The first phase ran from late November to mid December 2016 and focused on the regional implications of the deal. The second phase ran from mid-December to early January 2017 and focused on the national implications. Eleven states (California, Colorado, Connecticut, Georgia, Iowa, Maine, Maryland, New Hampshire, New York, Tennessee, and Virginia) and Washington, DC, joined the DOJ in the lawsuit against the Anthem-Cigna merger. On February 8, 2017 the U.S. District Court for the District of Columbia blocked the merger due as it would harm competition nationally. The Aetna-Humana trial began

#### AAFP Headquarters

11400 Tomahawk Creek Pkwy.  
Leawood, KS 66211-2680  
800.274.2237 • 913.906.6000  
fp@aaafp.org

#### AAFP Washington Office

1133 Connecticut Avenue, NW, Ste. 1100  
Washington, DC 20036-1011  
202.232.9033 • Fax: 202.232.9044  
capitol@aaafp.org

on December 5 and concluded on December 21, 2016. Eight states (Delaware, Florida, Georgia, Illinois, Iowa, Ohio, Pennsylvania, and Virginia) and Washington, DC joined the DOJ in its lawsuit against the Aetna-Humana merger. On January 23, 2017 the U.S. District Court for the District of Columbia blocked the \$37 billion merger of Aetna and Humana due to anti-competitive effects.

Few bills have been introduced in state legislatures to block the mergers; however 20 states are required, by their respective state statutes, to assess the Aetna-Humana merger, while 28 states are required to assess the Anthem-Cigna merger. The states have taken a range of independent actions regarding approving or blocking the proposed mergers. Some have investigated the impact of the consolidations on competition and costs, asked for concessions from the insurance companies, set up committees or task forces, or held public hearings. For example, the California Insurance commissioner recommended to the DOJ that it block the Anthem-Cigna merger and joined in the lawsuit. The Aetna-Humana merger was approved by the California Department of Managed Health Care only after Aetna agreed to invest \$50 million in the state's health care infrastructure.

### **Anthem's Merger with Cigna Could Increase Costs and Reduce Reimbursement**

The DOJ argued in its [lawsuit](#) against Anthem that "Anthem's proposed \$54 billion acquisition of Cigna would be the largest merger in the history of the health-insurance industry. It would combine two of the few remaining commercial health-insurance options for businesses and individuals in markets throughout the country. And in doing so, it would substantially lessen competition, harming millions of American consumers, as well as doctors and hospitals." The DOJ further alleged that the Anthem-Cigna merger would reduce competition for nation-wide accounts, large-group employers, Health Insurance Exchanges, and the purchasing of health care services from providers.<sup>ii</sup> The DOJ argued that when private payers compete, employers and individuals have more choices to purchase high-quality insurance at affordable prices. This competition enables employers to request bids when selecting health insurance for their employees and allows individuals and families to choose among competing payers taking into account premiums, benefits, and networks. In addition, competition among payers is critical for providers to ensure their patients have access by contracting with insurers to be "in-network" providers. The DOJ's complaint against the Anthem-Cigna merger also alleged potential harm to providers if the mergers were to be finalized. Depending on the market, when payers merge they concentrate their market share and increase their leverage over providers to negotiate contract terms in their favor.

### **Aetna's Merger with Humana Could Reduce Competition and Increase Costs**

In the [lawsuit](#) against Aetna, the DOJ argued that "Aetna's proposed \$37 billion merger with Humana would lead to higher health insurance prices, reduced benefits, less innovation, and worse service for over a million Americans." The DOJ alleged the Aetna-Humana merger would harm individuals who rely on Medicare Advantage and the Health Insurance Exchanges for coverage.<sup>iii</sup> Seniors with Medicare Advantage are disproportionately impacted because they visit physicians and hospitals more than twice as much as the average person and have less income than the average American household. The AAFP is concerned these mergers could harm patient choice, coverage, and affordability.

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<sup>i</sup> Davis, Russel. "DOJ Files Lawsuits to Block Insurer Mega-Mergers." *The Advisory Board* July 21, 2016.

<sup>ii</sup> United States of America, et al. v. Anthem, Inc. and Cigna, Corp., Case 1:16-cv-01493 (July 2016).

<sup>iii</sup> United States of America, et al. v. Aetna, Inc. and Humana, Corp., Case 1:16-cv-01494 (July 2016).