



Welcome to

Advocates' Guide to Health Plan Merger Remedies

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Welcome

Lynn Quincy

Director, Healthcare Value Hub



Agenda for Today

Welcome & Introduction

– Lynn Quincy (Consumers Union, Hub)

Advocates Guide to Health Plan Merger Remedies

-Karen Davenport, consultant

Q&A



Resources

- Research Brief
- Links to key studies
 - Graphics
 - Slides

All available at:

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ConsumersUnion
HEALTHCARE VALUE HUB

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Advocates' Guide to Health Insurance Merger Remedies

The nation's health insurance industry is in the midst of significant consolidation, with national carriers pursuing large-scale mergers and local insurance companies examining other merger and acquisition opportunities. Industry stakeholders argue that consumers will benefit from greater efficiency and innovation if these mergers are approved, but results from previous industry mergers suggest that consumers are more likely to experience the harms of reduced competition, including higher premiums, high cost-sharing and fewer plan choices.

In many cases, the most consumer-friendly decision regulators can make will be to block a merger, but regulators do not always have the legal authority, adequate evidence, or sufficient autonomy to do so. When advocates find that this avenue is closed off, they must look for other tools, such as robust remedies, to protect consumers' interests. Advocates will need to evaluate which types of remedies are most appropriate for their state, considering the likelihood of blocking a merger, remedies' relative effectiveness, their regulators' enforcement powers, and other state-based conditions. The information in this brief can help local consumer advocates work with their state regulators in an effort to minimize consumer harms and, where possible, to add consumer benefits.

SUMMARY

This paper examines regulators' efforts to mitigate possible consumer harms from insurance company mergers—such as higher premiums and cost-sharing and reduced access and choice of health care professionals. Specifically, this brief uses case studies and expert interviews to examine the role of remedies in health insurance merger approvals. Remedies cannot substitute for market competition nor are they likely to fully ameliorate the consumer harms that characterize a less competitive marketplace, but advocates can use remedies to ensure that consumers derive some benefit from the merger negotiation process and to advance improvements in their state's health care system. Consumer advocates and others will find actionable information on these strategies to better protect consumers faced with health plan mergers in their market.

Background

The United States' health financing system relies on insurance companies to spread financial risk, negotiate payment rates with individual and institutional providers, facilitate access to primary and specialty services, and improve enrollees' health outcomes. This industry is experiencing significant change.

Within this context, regulators are scrutinizing proposed mergers between insurance issuers, including the significant mergers of Aetna with Humana, and Anthem with Cigna, which would further consolidate the health insurance market in many states.

When health insurance companies consolidate, firms that formerly competed against each other, or could have competed against each other, combine into a single corporate entity through merger or acquisition.¹ After a significant round of mergers and other affiliations during the 1990s² the health insurance industry appears to be entering another period of consolidation.³ The likely result will be more heavily concentrated health insurance markets.



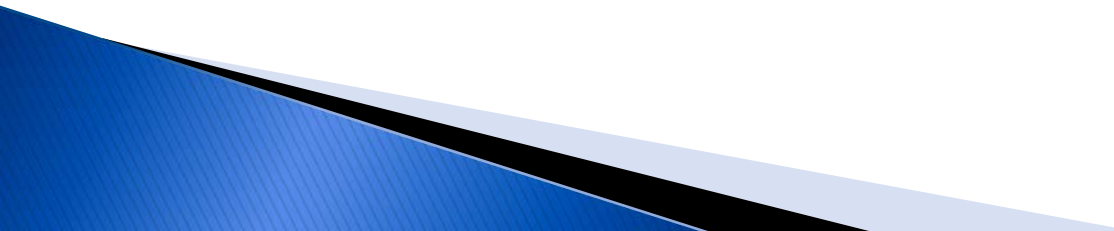
Advocates' Guide to Health Insurance Merger Remedies

Karen Davenport
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June 2016

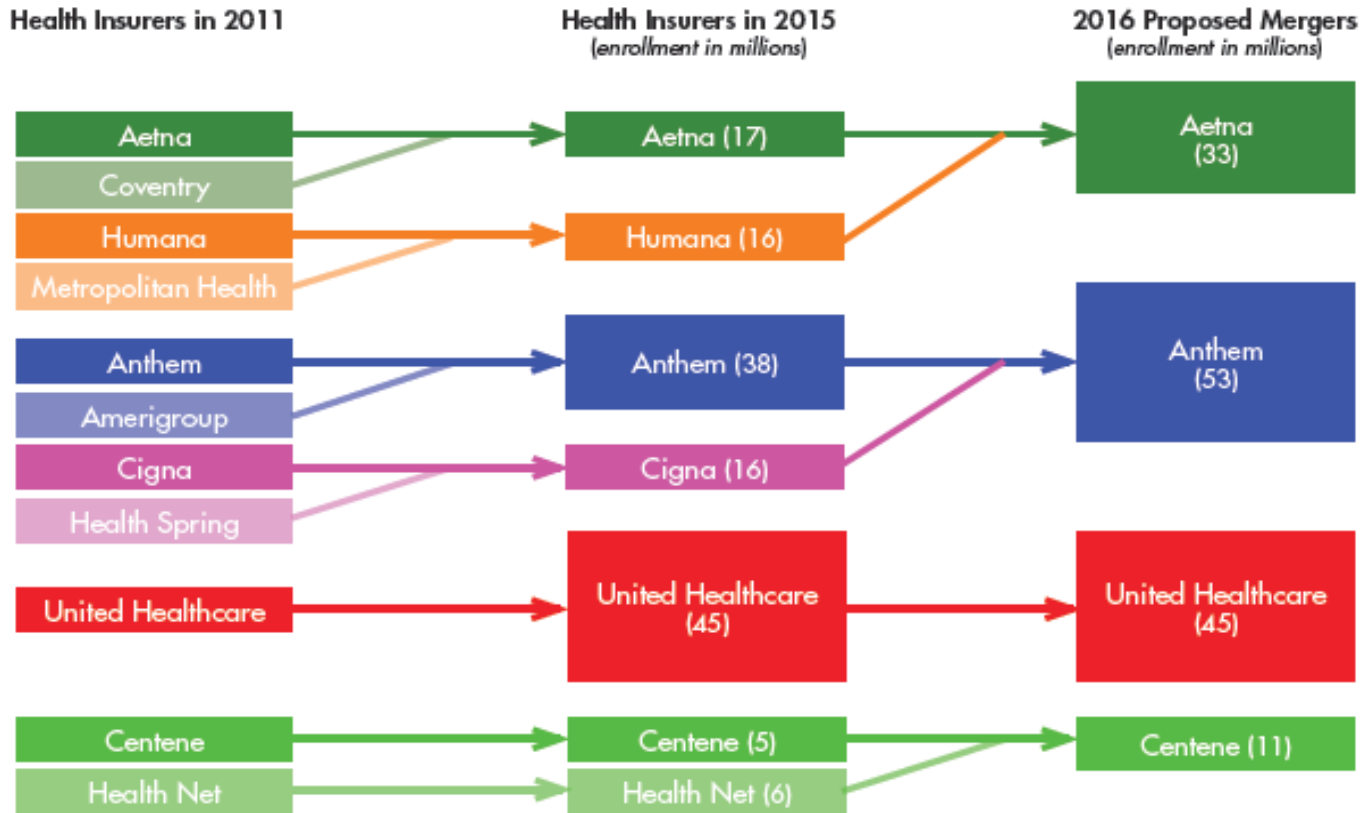


Context on Health Insurance Mergers

- Recent attention to health plan mergers partly driven by Aetna/Humana and Anthem/Cigna.
 - 24 state insurance markets affected by one or both of these proposed mergers.
 - Part of a larger trend towards consolidation of health insurance markets.
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Recent Health Plan Mergers



Source: Chart adapted from "The New Era of Mega-Plans, Managed Care (September 2015). Company enrollment estimates: various sources.

For more resources on health plan mergers and other healthcare value topics, see www.HealthcareValueHub.org

Impact on Consumers

- Reduced competition in health insurance markets hurts consumers:
 - Higher premiums
 - Increased cost-sharing
 - Reduced choice of plan designs
 - Reduced choice of providers and greater likelihood of out-of-network cost-sharing

State Regulators' Oversight of Mergers

- Typically involves Attorney General and/or State Insurance Commissioner.
- Regulators apply standards in state law to determine whether a merger is anti-competitive and in consumers' interest.
- Regulators may reject a merger, approve a merger as proposed, or approve after applying remedies, or conditions, to the merger.

Merger Approvals and Remedies

- The strongest response to an anti-competitive merger that will harm consumers is for regulators to block the merger.
 - Preserves competition and maintains consumer choice.
- But regulators may decide they cannot reject the merger.
 - Constraints may include state law, inadequate information, limited autonomy.
- Regulators may turn to remedies to limit consumer harms.

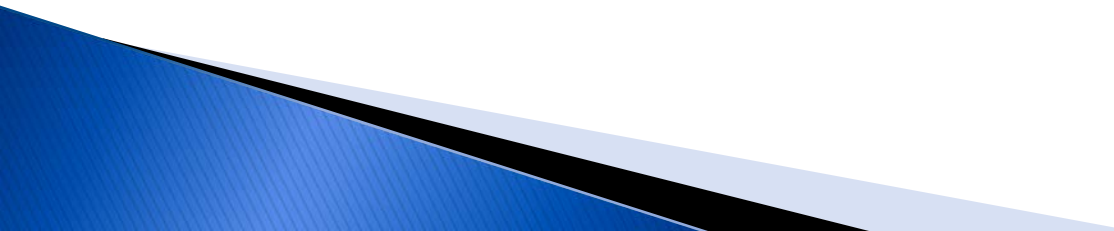
Types of Remedies

- Structural Remedies
 - Seek to restore competition to the market – and protect consumers – through requirements that restructure the market.
 - Divestiture
- Conduct Remedies
 - Intended to protect consumers from reduced competition by restricting the behavior or conduct of the merged entity. Sometimes called behavioral remedies.
 - Pricing restrictions
 - Quality measurement targets

Types of Remedies (continued)

- Other Conditions
 - May require issuers to make targeted investments in state health infrastructure or help consumers navigate the health care system. May not ameliorate loss of competition; instead, may address other public goals for the health system, or other state concerns.
 - Consumer assistance programs
 - Encounter or claims databases
 - Maintain health insurance-based employment

Possible Conduct Remedies and Other Conditions

- Pricing restrictions
 - Market expansion
 - Performance improvements
 - Health infrastructure investments
 - Charitable giving requirements
 - Maintaining corporate presence or employment within the state
 - Independent monitoring entity
 - Greater accountability for promised merger benefits
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Pricing Restrictions

- Limiting rate increases.
- Prohibiting the issuer from covering merger costs through premium increases.
- Limiting administrative costs or growth in administrative costs.
- Restricting the issuer from making significant changes in their rate-setting methods.
- Requiring issuer to negotiate with regulators if they submit excessive rate increases.

Improving or Retaining Consumer Choices in Sub-Markets

- Requiring the issuer to offer Marketplace policies in additional counties.
- Requiring or asking the issuer to expand their presence in the commercial market.
- Requiring the issuer to continue serving public programs, such as Medicaid, or the individual and/or small group market.

Improving performance

- Requiring the issuer to develop a stronger provider network.
- Requiring the issuer to improve their performance on specific quality or access measures.
- Requiring the issuer to reduce the proportion of coverage disputes going to independent review.
- Requiring the issuer to establish and internal patient advocate program.

Investments in Health Infrastructure

- Funding service improvements, such as rural health access or telemedicine.
- Funding for consumer assistance programs, enrollment outreach, language access or other activities that help consumers acquire and use coverage.
- Funding encounter data collection, development of a provider database.
- Funding health–sector employment development.

Charitable Giving Conditions

- Issuer establishes or enhances and independent health care foundation.
- Requiring issuer or their corporate foundation to increase in-state charitable giving.
- Depending on the transaction, these conditions may be required by the state's nonprofit conversion law.

Conditions Related to Corporate State Presence or Employment

- Requiring the issuer to maintain in-state corporate headquarters.
 - May be important for on-going state regulatory authority.
- Requiring the issuer to create jobs within the state.
- Requiring the issuer to retain a certain number of in-state jobs.
 - May also affect customer service.

New Merger Monitoring Entity

- Merger agreement could require the issuer to fund the creation of an independent entity to monitor market competitiveness and the effects of insurance mergers.
- Could examine changes in premiums, cost-sharing, plan benefits and other consumer impacts.
- Regular reporting and dissemination could improve transparency on issuers' post-merger behavior and inform decision-making on future mergers.

Accountability for Purported Merger Benefits


- Issuers would be required to report on their savings related to more favorable provider rates, delivery system reforms and other benefits they argue would be possible with larger size.
- Issuers would need to demonstrate how they have passed these savings on to consumers through reduced premiums or cost-sharing, or improved coverage.

Pros and Cons of Conduct Remedies and Other Conditions

Pros:

- Allow regulators to address unresolved concerns with the merging issuers.
- Permit long-sought investments in state infrastructure or data capacity.
- Enable advocates to put other consumer issues before regulators.

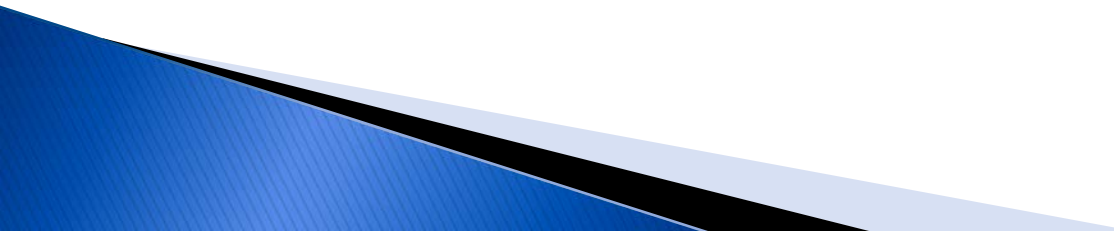
Cons:

- Do not directly address consumer harms from loss of competition.
 - Hard to implement, monitor and enforce.
 - Often time-limited, while market changes can be permanent.
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Remedies and Enforcement

- Literature on conduct remedies points to enforcement problems as a serious limitation on remedies' effectiveness.
- Remedies need to be clearly articulated, measurable, and tied to specific consequences within the consent order or merger agreement.
- Oversight will still be critical.

How Can Advocates Proceed?

- Research the merging insurance companies
 - Are there pending compliance problems, quality problems, other consumer concerns?
 - Look to past mergers in the state
 - What happened to premiums, cost-sharing, plan choices, customer service?
 - Did the state impose remedies? What were they? Were they enforced? Were they effective?
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How Can Advocates Proceed?

- Consider strategy and timing
 - State process may give advocates a single opportunity for input, or multiple opportunities.
 - While your first priority may be to block the merger, prepare remedy suggestions, too.
- Identify asks
 - Consider state context – what tools do regulators have to enforce remedies? What are state needs?
 - Emphasize clear, measurable, enforceable remedies.
 - Identify a broad range of remedies.



Questions?

Click the “raise hand” icon at the top of your screen

To unmute, press *6

***Please do not put us on hold!**



Next Webinar:

Research Gaps: Can We Be Strategic About Addressing Research Gaps?

June 17, 2016
2:00pm – 3:00 E.S.T.

Registration at www.HealthCareValueHub.org/events



Thank you!

- Karen Davenport
- Robert Wood Johnson Foundation

Contact Lynn Quincy at lquincy@consumer.org
or any member of the Hub team with your follow-up questions.

Visit us at www.HealthcareValueHub.org

