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Young Invincibles

Testimony on Anthem, Inc.'s Application to Acquire Cigna Life Insurance Company of New York

September 8, 2016

Submitted by:
Health Care For All New York

Health Care for All New York (HCFANY) commends the Department of Financial Services (the Department) for holding this public hearing on the proposed merger between Anthem, Inc. (Anthem) and Cigna Life Insurance Company of New York (Cigna). HCFANY is a statewide coalition of over 170 organizations from every major region of New York State dedicated to securing quality, affordable health coverage for all New Yorkers. We bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected. We also provide expert policy analysis, advocacy, and education on important health policy and coverage issues that affect New Yorkers around the state.

The Anthem-Cigna merger is likely to increase premiums and cost-sharing for New Yorkers while reducing access to health care. Previous mergers have produced just those results, despite regulators' attempts to protect consumers through conditions like divestiture and despite insurers' promises that consolidation would result in better service and cost savings that would be passed along to their customers. For this reason, HCFANY strongly urges the Department to reject the Anthem-Cigna merger.

I. The Anthem-Cigna merger will reduce competition in New York.

The Department has the authority to review and reject the Anthem-Cigna merger under N.Y. Insurance Law §1506 in cases where a transaction will "substantially... lessen competition in any line of commerce in insurance in this state." In New York, the main market segment in which Anthem and Cigna directly compete is the Administrative Services Only (ASO) market. The ASO market serves large employers and large groups that cover their employees' health

costs but purchase access to provider networks, claims processing, and other administrative services from insurance companies. Reducing competition in the ASO market will thus have the greatest impact on our largest employers, unions, and state and local government agencies and will ultimately affect the cost and quality of their employees' coverage.

According to figures compiled by Mark Farrah Associates, a combined Anthem and Cigna would control more than 35 percent of the New York ASO market.¹ Though Anthem and Cigna currently compete all over the state, some areas will experience a greater loss of competition than others – the metropolitan areas of New York-Jersey City-White Plains, Nassau and Suffolk Counties, Dutchess and Putnam Counties, Glens Falls, Kingston, Cortland, Binghamton, Essex County, Allegany County, and Schuyler County.²

II. Reduced competition in insurance markets will lead to higher costs and reduced service.

The likely impacts of this loss of competition are increased premiums and reduced access to health care. While the health insurance marketplace is complex, it still follows basic economic rules – when a market is controlled by a small number of firms, their products will tend towards the lowest common denominator.

Research on past health insurance mergers shows a direct correlation between health insurer concentration and higher premiums.³ Two separate, retrospective economic studies on health insurance mergers found significant premium increases for consumers post-merger. One study found that the 1999 Aetna-Prudential merger, which affected 139 separate markets throughout the United States, resulted in an additional seven percent premium increase overall.⁴ Another study found that the 2008 United-Sierra merger resulted in an additional 13.7 percent premium increase in Nevada.⁵ Another study examining 34 states found that dominant insurers increased rates an average of 75 percent higher than smaller insurers competing in the same state.⁶ Anticompetitive insurance mergers could also increase out-of-pocket costs for consumers who may be required to bear higher deductibles or other insurance-related costs.⁷

¹ See *Effects on Competition of Proposed Health Insurer Mergers: Hearing before Comm. on the Judiciary Subcomm. on Regulatory Reform, Commercial and Antitrust Law*, 114th Cong. (Sept. 29, 2015) (testimony of Edmund F. Haislmaier, Heritage Foundation), available at http://judiciary.house.gov/_cache/files/1e694641-b703-40f1-8d6f-1d46c489cc0b/haislmaier-revised-testimony.pdf.

² See Attached Spreadsheet from Interstudy Database, *Anthem and Cigna Commercial Lives Overlap by MSA, New York*, compiled by the American Medical Association (January 2015).

³ See Leemore Dafny, *Are Health Insurances Markets Competitive?*, 100 *American Economic Review*: 1399 (2010).

⁴ *Ibid.*

⁵ See Jose Guardado, David Emmons, and Carol K. Kane, *The Price Effects of a Large Merger of Health Insurers: Case Study of UnitedHealth-Sierra*, *Health Management, Policy, and Innovation*, 1(3): 16-35 (2013).

⁶ See Eugene Wang and Grace Gee, *Larger Insurers, Larger Premium Increases: Health insurance issuer competition post-ACA*, *TECH. SCI.* (Aug. 11, 2015), available at <http://techscience.org/a/2015081104/>.

⁷ See generally Leemore Dafny, *Evaluating the Impact of Health Insurance Industry Consolidation: Learning from Experience*, *COMMONWEALTH FUND* (Nov. 20, 2015), <http://goo.gl/xRYb5x>; see also Korin Miller, *6 Ways the Big Health Insurance Mergers Will Affect Your Coverage*, *YAHOO HEALTH* (July 24, 2015), <https://www.yahoo.com/health/6-ways-the-big-health-insurance-mergers-will-124932195967.html> (noting that “out-

In addition, reductions in access to care may ensue because of the likelihood that the merged company will consolidate its network of providers. Insurers in more concentrated markets offer fewer options to consumers with regard to network size.⁸ For many consumers, the provider networks offered in a plan are as important a consideration as cost. The merging insurance companies have claimed that the mergers will “expand . . . access” for consumers “through a more extensive network of hospitals, physicians, services, and health care professionals.”⁹ We are concerned, however, that the opposite will happen: That consumers will find their options limited to plans with overly restricted provider networks and/or lose access to an adequate number of providers in their local area.

Consumers often complain about the shrinking health plan networks in New York. And they are right to believe their access to providers is constricting rapidly. A recent study by the Leonard Davis Institute of Health Economics and the Robert Wood Johnson Foundation found that 39 percent of silver level plans offered on NY State of Health use narrow networks that only include 25 percent or fewer of all area providers.¹⁰ There is little incentive for a large insurance company with newly expanded market power to increase network sizes – it is more likely that the new company will exacerbate existing network limitations in New York.¹¹

III. Recommendations and potential remedies

Many of the typical remedies that regulators use to protect consumers from market consolidations have proven ineffective – for example, the premium increases described in section II occurred despite court-ordered divestitures. It is difficult for regulators to track outcomes for past mergers and hold insurers accountable for failing to live up to promises made to consumers. For this reason, HCFANY recommends that the Department reject Anthem’s application and issue a formal ruling that such a merger is not in the public interest.

However, if the Anthem-Cigna merger does occur in New York, we strongly urge the Department to apply the following conditions:

of-pocket payments could increase” because insurance coverage could limit certain services or number of visits forcing patients to pay more).

⁸ Leonard Dafny and Christopher Ody, *No Evidence That Insurance Market Consolidation Leads to Great Innovation*, February 24, 2016, Health Affairs Blog, <http://healthaffairs.org/blog/2016/02/24/no-evidence-that-insurance-market-consolidation-leads-to-greater-innovation/>.

⁹ See *Healthy Competition? An Examination of the Proposed Health Insurance Mergers and the Consequent Impact on Competition: Hearing before Comm. on the Judiciary Subcomm. on Regulatory Reform, Commercial and Antitrust Law*, 114th Cong. (Sept. 29, 2015) (testimony of Joseph Swedish, President & CEO of Anthem, Inc.), available at http://judiciary.house.gov/_cache/files/7ec53173-463e-4d15-a1da-f9db48349b0d/swedish-testimony.pdf.

¹⁰ Dana Polsky & Janet Weiner, *State Variation in Narrow Networks on the ACA Marketplaces*, LEONARD DAVIS INST. HEALTH ECON. (Aug. 2015), available at http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2015/rwjf422684.

¹¹ See, e.g., Dareh Gregorian, *Man sues Empire insurance company, claims search for doctor became “frustrating runaround,”* NEW YORK DAILY NEWS, Oct. 7, 2014.

<http://www.nydailynews.com/new-york/man-fails-find-doctor-sues-empire-insurance-company-article-1.1966755>

1. Any cost savings resulting from the mergers should be passed along to consumers in the form of lower premiums. The Department should require documentation that this has occurred, including in premium rate filings in the individual and small group markets.
2. The merged companies and their subsidiaries should continue their current levels of participation in the NY State of Health and should not be allowed to withdraw from any region of the state.
3. The merged companies should be prohibited from reducing plan benefits and options.
4. The differentiated insurance products previously offered by the two companies should remain available to consumers for at least several years.
5. The merged companies should maintain adequate provider networks and should strengthen their networks, including in rural and underserved areas.

On a final note, New York's health insurance market is already concentrated. It is common to require companies participating in other highly concentrated industries to provide a minimum level of service and access to the public. For example, in banking, lending institutions have to show that they offer services and invest in low and moderate income communities in order to merge or expand. Telecommunications companies are required to offer discounted phone service to low-income households. Given the benefits that will accrue to the merged insurance company, we feel our suggested conditions are reasonable and fair to New Yorkers.

Thank you for the opportunity to submit this testimony. Should you have any questions, please contact Amanda Dunker at adunker@cssny.org or 212-614-5312.

Sincerely,



Amanda Dunker
Policy Associate
Community Service Society of New York

**Anthem and Cigna Commercial Lives Overlap by MSA, New York
January 2015 Interstudy Enrollment**

MSA	Enrollment			Shares			HHI		Pre-Merge	Post-Merge	Number of Divestiture Options	Aetna Divestiture Option?	Humana Divestiture Option?
	Anthem	Cigna	MSA Total	Anthem	Cigna	Combine	Delta	r					
New York-Jersey City-White Plains, NY-NJ	1,129,051	555,179	6,723,237	16.8%	8.3%	25.1%	1,707	277	1,984	4	Yes	No	
Nassau County-Suffolk County, NY	442,713	112,987	1,945,324	22.8%	5.8%	28.6%	2,633	264	2,897	0	No	No	
Dutchess County-Putnam County, NY	45,949	15,463	250,711	18.3%	6.2%	24.5%	1,648	226	1,874	4	Yes	No	
Kingston, NY	19,291	3,719	98,148	19.7%	3.8%	23.4%	1,674	149	1,823	5	Yes	No	
Glens Falls, NY	13,527	2,086	68,792	19.7%	3.0%	22.7%	1,552	119	1,671	5	No	No	
Cortland, NY	2,783	623	18,891	14.7%	3.3%	18.0%	2,459	97	2,556	2	Yes	No	
Binghamton, NY	13,453	5,282	123,562	10.9%	4.3%	15.2%	2,415	93	2,508	3	Yes	No	
Ithaca, NY	11,181	1,564	76,353	14.6%	2.0%	16.7%	2,358	60	2,418	4	Yes	No	
Auburn, NY	4,386	824	35,083	12.5%	2.3%	14.9%	2,433	59	2,491	2	Yes	No	
Syracuse, NY	34,720	9,807	349,359	9.9%	2.8%	12.7%	3,270	56	3,326	2	No	No	
Batavia, NY	3,191	688	29,969	10.6%	2.3%	12.9%	1,325	49	1,374	6	No	No	
Olean, NY	4,300	623	33,961	12.7%	1.8%	14.5%	1,875	46	1,921	5	No	No	
Hudson, NY	3,625	735	34,636	10.5%	2.1%	12.6%	1,595	44	1,639	5	No	No	
Albany-Schenectady-Troy, NY	79,817	12,069	667,486	12.0%	1.8%	13.8%	1,764	43	1,807	5	No	No	
Corning, NY	4,381	743	38,842	11.3%	1.9%	13.2%	2,320	43	2,363	4	No	No	
Ogdensburg-Massena, NY	4,886	933	46,199	10.6%	2.0%	12.6%	2,511	43	2,554	1	No	No	
Seneca Falls, NY	2,378	303	18,519	12.8%	1.6%	14.5%	2,423	42	2,465	3	No	No	
Oneonta, NY	3,761	360	25,734	14.6%	1.4%	16.0%	2,284	41	2,325	4	No	No	
Rochester, NY	37,082	29,083	771,912	4.8%	3.8%	8.6%	4,067	36	4,104	1	Yes	No	
Watertown-Fort Drum, NY	5,532	586	43,606	12.7%	1.3%	14.0%	2,245	34	2,279	4	No	No	
Gloversville, NY	2,801	600	31,424	8.9%	1.9%	10.8%	1,482	34	1,516	6	No	No	
Plattsburgh, NY	5,104	647	44,394	11.5%	1.5%	13.0%	2,010	34	2,044	4	No	No	
Utica-Rome, NY	16,607	3,419	188,792	8.8%	1.8%	10.6%	2,627	32	2,659	3	No	No	
Elmira, NY	7,632	834	65,082	11.7%	1.3%	13.0%	3,741	30	3,771	2	No	No	
Amsterdam, NY	2,408	525	31,671	7.6%	1.7%	9.3%	1,480	25	1,505	6	No	No	
Jamestown-Dunkirk-Fredonia, NY	5,808	583	60,579	9.6%	1.0%	10.5%	1,822	18	1,840	5	No	No	
Buffalo-Cheektowaga-Niagara Falls, NY	27,679	10,357	686,761	4.0%	1.5%	5.5%	2,416	12	2,428	4	No	No	
Malone, NY	2,518	203	29,329	8.6%	0.7%	9.3%	2,520	12	2,532	3	No	No	
<i>Non-MSA Counties</i>													
Schuyler, NY	1,230	271	6,932	17.7%	3.9%	21.7%	1,965	139	2,103	4	Yes	No	
Essex, NY	2,295	1,448	21,963	10.4%	6.6%	17.0%	3,010	138	3,148	0	No	No	
Sullivan, NY	4,474	1,195	35,199	12.7%	3.4%	16.1%	2,242	86	2,328	4	Yes	No	
Allegany, NY	2,330	703	19,642	11.9%	3.6%	15.4%	1,514	85	1,599	6	Yes	No	
Lewis, NY	1,741	270	12,775	13.6%	2.1%	15.7%	2,626	58	2,684	4	Yes	No	
Chenango, NY	2,188	438	24,047	9.1%	1.8%	10.9%	3,157	33	3,190	2	No	No	
Greene, NY	2,671	458	27,304	9.8%	1.7%	11.5%	1,689	33	1,722	5	No	No	
Delaware, NY	2,351	311	21,145	11.1%	1.5%	12.6%	2,184	33	2,216	5	No	No	
Wyoming, NY	2,710	315	26,504	10.2%	1.2%	11.4%	1,404	24	1,429	6	No	No	
Hamilton, NY	302	25	3,583	8.4%	0.7%	9.1%	1,693	12	1,705	5	No	No	

Notes:

- Presumptively Anticompetitive MSAs have an increase in HHI of more than 200 and a post-merger HHI greater than 2,500.
- Highly Concentrated Markets are MSAs with an increase in HHI of between 100 and 200 and a post-merger HHI greater than 2,500.
- Moderately Concentrated Markets are MSAs with an increase in HHI of at least 100 and a post-merger HHI between 1,500 and 2,500.

No Antitrust Risk MSAs have an increase in HHI of less than 100 or a post-merger HHI of less than 1,500.

**Anthem and Cigna ASO Commercial Lives Overlap by MSA, New York
January 2015 Interstudy Enrollment**

MSA	Enrollment			Shares			HHI			Number of Divestiture Options	Aetna Divestiture Option?	Humana Divestiture Option?
	Anthem	Cigna	MSA Total	Anthem	Cigna	Combined	Pre-Merger	Delta	Post-Merger			
New York-Jersey City-White Plains, NY-NJ	505,973	393,679	3,179,721	15.9%	12.4%	28.3%	2,037	394	2,431	2	Yes	No
Nassau County-Suffolk County, NY	178,986	84,553	993,017	18.0%	8.5%	26.5%	4,013	307	4,320	0	No	No
Dutchess County-Putnam County, NY	18,578	11,590	131,524	14.1%	8.8%	22.9%	2,283	249	2,532	0	No	No
Glens Falls, NY	5,473	1,973	32,879	16.6%	6.0%	22.6%	1,802	200	2,002	5	No	No
Kingston, NY	7,802	3,092	50,405	15.5%	6.1%	21.6%	2,646	190	2,836	0	No	No
Cortland, NY	1,124	587	10,795	10.4%	5.4%	15.8%	2,692	113	2,805	0	No	No
Binghamton, NY	5,437	4,994	72,814	7.5%	6.9%	14.3%	2,134	102	2,237	2	Yes	No
Hudson, NY	1,466	595	13,517	10.8%	4.4%	15.2%	2,734	95	2,830	4	Yes	No
Albany-Schenectady-Troy, NY	32,272	10,541	284,120	11.4%	3.7%	15.1%	1,939	84	2,023	4	No	No
Auburn, NY	1,775	761	19,218	9.2%	4.0%	13.2%	2,706	73	2,779	1	Yes	No
Olean, NY	1,742	456	14,744	11.8%	3.1%	14.9%	1,612	73	1,685	4	No	No
Rochester, NY	14,993	27,960	343,895	4.4%	8.1%	12.5%	3,017	71	3,088	2	Yes	No
Batavia, NY	1,290	609	15,120	8.5%	4.0%	12.6%	1,542	69	1,611	6	Yes	No
Syracuse, NY	14,037	8,371	189,397	7.4%	4.4%	11.8%	2,694	66	2,759	2	Yes	No
Seneca Falls, NY	961	289	9,810	9.8%	2.9%	12.7%	2,282	58	2,340	3	No	No
Ogdensburg-Massena, NY	1,976	872	25,187	7.8%	3.5%	11.3%	3,975	54	4,029	0	No	No
Ithaca, NY	4,520	1,499	49,977	9.0%	3.0%	12.0%	3,245	54	3,299	0	No	No
Gloversville, NY	1,132	591	16,095	7.0%	3.7%	10.7%	1,555	52	1,607	5	No	No
Oneonta, NY	1,520	311	13,636	11.1%	2.3%	13.4%	2,767	51	2,818	1	No	No
Watertown-Fort Drum, NY	2,238	563	22,314	10.0%	2.5%	12.6%	2,286	51	2,337	4	Yes	No
Elmira, NY	3,085	804	34,898	8.8%	2.3%	11.1%	3,231	41	3,272	0	No	No
Corning, NY	1,773	716	25,013	7.1%	2.9%	10.0%	3,607	41	3,647	1	No	No
Amsterdam, NY	974	450	14,739	6.6%	3.1%	9.7%	1,811	40	1,851	4	No	No
Utica-Rome, NY	6,716	2,440	92,186	7.3%	2.6%	9.9%	2,974	39	3,012	1	No	No
Plattsburgh, NY	2,063	614	26,890	7.7%	2.3%	10.0%	3,083	35	3,118	3	No	No
Jamestown-Dunkirk-Fredonia, NY	2,348	539	27,378	8.6%	2.0%	10.5%	1,794	34	1,828	4	No	No
Buffalo-Cheektowaga-Niagara Falls, NY	11,189	9,655	272,362	4.1%	3.5%	7.7%	1,636	29	1,665	6	Yes	No
Malone, NY	1,018	198	16,408	6.2%	1.2%	7.4%	3,783	15	3,798	1	No	No
<i>Non-MSA Counties</i>												
Essex, NY	928	1,430	11,351	8.2%	12.6%	20.8%	2,776	206	2,982	0	No	No
Allegany, NY	941	693	9,420	10.0%	7.4%	17.3%	1,729	147	1,876	5	Yes	No
Schuyler, NY	498	270	4,544	11.0%	5.9%	16.9%	2,878	130	3,008	0	No	No
Sullivan, NY	1,809	1,001	19,613	9.2%	5.1%	14.3%	4,186	94	4,280	2	Yes	No
Lewis, NY	703	265	6,917	10.2%	3.8%	14.0%	2,282	78	2,359	3	Yes	No
Greene, NY	1,080	373	13,282	8.1%	2.8%	10.9%	2,921	46	2,967	4	Yes	No
Delaware, NY	951	259	10,556	9.0%	2.5%	11.5%	2,856	44	2,900	0	No	No
Chenango, NY	883	401	12,834	6.9%	3.1%	10.0%	3,200	43	3,243	0	No	No
Wyoming, NY	1,096	307	12,960	8.5%	2.4%	10.8%	1,830	40	1,870	5	No	No
Hamilton, NY	124	25	1,819	6.8%	1.4%	8.2%	2,880	19	2,899	2	No	No

Notes:

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- No Antitrust Risk MSAs have an increase in HHI of less than 100 or a post-merger HHI of less than 1,500.