Health Law Daily Wrap Up, GENERAL HEALTH CARE NEWS—To merge or not to merge, that was the question before a Senate subcommittee, (Sept. 24, 2015)

Health Law Daily Wrap Up

Click to open document in a browser

By Melissa Mitchell, J.D.

The heads of two of the nation’s largest health insurance companies, Aetna and Anthem, provided testimony and fielded questions regarding their acquisition of other coverage providers, Humana and Cigna, respectively, and the effects that the acquisitions may have on the health insurance industry during a hearing before the Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy and Consumer Rights. Other parties, including physicians, consumer representatives, and health competition policy experts, testified at the hearing arguing for or against the proposed acquisitions.

Proposed mergers. Earlier this year, Aetna announced its intention to purchase Humana for $37 billion. A few weeks later, Anthem also made an announcement regarding its proposal to acquire Cigna for $54 billion. Senator Mike Lee (R-Utah), Chairman of the Subcommittee on Antitrust, Competition Policy and Consumer Rights, noted in his opening comments that the proposed mergers involve four of the five largest health insurance providers in the country and that the relevant “antitrust inquiry” in review of these mergers is “whether the combination will lead to a market concentration that may substantially lessen competition.” Both deals are currently being reviewed by the Department of Justice (DOJ), according to Sen. Lee. If approved, he notes, the “big five” in the health insurance industry will be reduced to the “big three.”

Senator Lee also mentioned the Patient Protection and Affordable Care Act (ACA) (P.L. 111-148) is his opening remarks arguing that a discussion of the ACA’s role in current industry consolidation is “unavoidable.”

Medicare Advantage dimension. Since the companies that are parties to these proposed mergers comprise 52 percent of the market share for Medicare Advantage (MA), or Medicare Part C, plans, there will be a potential impact on the MA program and its beneficiaries if the acquisitions occur. The Kaiser Family Foundation previously found that the result of an Aetna and Humana merger would be one company that will provide coverage to 26 percent of all MA enrollees (see Many Medicare Advantage enrollees may see shifts in coverage providers, July 15, 2015).

Proponents. Mark T. Bertolini, Chairman and CEO of Aetna, and Joseph Swedish, President and CEO of Anthem, both testified in support of the proposed mergers and ensured members of Congress that competition in the health insurance market would remain strong after the acquisitions were complete. Bertolini focused many of his comments and much of his written testimony on the MA program and confirmed that because “Medicare is tightly regulated to protect consumers,” competition in this realm would also remain. Bertolini noted that MA beneficiaries would still have “numerous choices” for plans, that competition in the Medicare program is vigorous, and that beneficiaries would still have tools at their disposal—such as the CMS star ratings—to compare plans.

Opponents and skeptics. Leemore S. Dafny, Ph.D. and Professor of Strategy and Director of the Health Enterprise Management at Northwestern University’s Kellogg School of Management, urged Congress to look at the assertions made by the proponents of the mergers through a retrospective lens. She explained, “economic research demonstrates that insurance industry consolidation in the past has not tended to improve the lot of consumers,” and that any assertions that the proposed acquisitions will not follow those trends because of the implementation of the ACA may be misleading. “I see no reason the evidence from the past should be discounted when evaluating current and future consolidation,” Dr. Dafny said.
During his testimony, Richard Pollack, President and CEO, of the American Hospital Association, argued that the acquisitions "could be a blow to millions of health care consumers, as well as the hospitals, doctors, and others who are working to improve quality and efficiency while making care more affordable to patients. The unprecedented level of consolidation these deals threaten could make health insurance more expensive and less accessible for consumers." The AHA also recently sent a letter to the DOJ asking its Antitrust Division to closely scrutinize the proposed merger of these industry leaders (see AHA urges close review of Anthem-Cigna, Humana-Aetna deals, August 7, 2015).

Companies: American Hospital Association; Anthem, Inc.; Cigna Corp.; Humana Insurance Company; Aetna, Inc.; Northwestern University