Groups Urge Fla. To Reject Health Insurance Mergers

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Law360, Miami (December 17, 2015, 9:47 PM ET) -- A coalition of consumer groups, health care providers and unions urged Florida's insurance regulator Wednesday to reject the two proposed mergers among health insurance giants over concerns that less competition will mean higher rates, less choice and lower quality of care for Floridians.

In a letter sent to Florida Insurance Commissioner Kevin McCarty, the groups said the state should reject a **$37 billion deal** between Aetna Inc. and Humana Inc. and a **$54 billion deal** between Anthem Inc. and Cigna Corp. or at least place significant conditions on the tie-ups.

“The proposed mergers between Anthem-Cigna and Aetna-Humana will reduce the number of health insurers within Florida and could substantially lessen competition for millions of consumers,” the groups said in the letter. “Competition between health insurers is vital to ensuring lower premiums, improving quality of care and promoting access and choice.”

The letter comes on the heels of two public hearings held by the Florida Office of Insurance Regulation earlier this month on each merger. The state is one of 25 that need to sign off on the mergers and is the first to have held public hearings on the matter, according to the coalition's attorney David Balto.

Those 25 states have laws requiring insurance commissioners to evaluate the mergers' potential effects within their jurisdiction, and if just one in a populous state fails to approve the mergers, the deals could be derailed.

“People are acting like the DOJ is the only game in town, but the state insurance commissioners are going to play an important role,” Balto said.

The coalition — which includes Consumers Union, Florida CHAIN, Consumer Watchdog, Florida Rural Health Association, Consumer Action, U.S. PIRG and 1199 SEIU United Healthcare Workers East — say that if these mergers proceed, only four companies will control just under 90 percent of the Florida commercial market. Aetna would have 19.3

percent, while Anthem would have 17 percent market share, according to the letter.

The groups added that there are also concerns about significant competitive overlap within the Medicare Advantage space. In Florida, Humana covers 37 percent of the almost 1.6 million residents enrolled in a Medicare Advantage plan. Combining Aetna and Humana would give the company more than half of all Medicare Advantage enrollees in five counties.

“While the merging companies have argued supposed benefits associated with these mergers, available scholarly evidence suggests that consumers will see limited to no benefits and instead will face higher costs, less innovation and potentially lower quality of care,” the coalition said.

The U.S. Department of Justice Antitrust Division's review of the two proposals will examine possible impacts on hundreds of geographic markets and is expected to continue into the second half of 2016. If the mergers are allowed to go through, they will almost certainly be accompanied by extensive divestitures.

But divestitures won't be enough, according to the coalition, which said the measures have not previously been effective in restoring competition.

The groups said that if the mergers are approved, Florida's insurance regulator should consider taking additional measures such as requiring premium stability in a set number of years post-merger, requiring that the merged companies cannot scale back plan benefits, improving access to providers around the state, ensure that the merged companies continue to provide the differentiated insurance products previously offered by the separate companies, and ensure that the merged companies will increase access and improve care in rural and underserved markets.

The coalition also suggested that the regulator require the merged companies to pass along cost savings associated with the merger to consumers through lower premiums and deductibles.

The mergers also recently came under fire by the American Medical Association, which **voiced concerns** that the merged entities would likely be able to lower payments rates for physicians that could end up reducing the quality of care provided.

The association noted that insurance plans have already **become aggressive** about narrowing their provider networks, and it warned that the trend would accelerate if the mergers win clearance. In addition, the association was deeply skeptical that merged insurance companies would pass along savings generated by their stronger negotiating powers, writing that "insurers have a dismal track record of passing any savings from an acquisition on to consumers."

The American Hospital Association has also **attacked the mergers**, though it stopped short of asking the DOJ to block them.

The insurers did not immediately respond to messages sent after business hours Thursday.

The coalition is represented by David Balto and James Kovacs of the Law Offices of David A. Balto.

--Additional reporting by Jeff Overley. Editing by Jeremy Barker.