TEXAS MEDICAL ASSOCIATION
Physicians Caring for Texans

October 6, 2015

William J. Baer, Assistant Attorney General
Department of Justice, Antitrust Division
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Sirs:

On behalf of the Texas Medical Association and our more than 48,000 physician members in the state of Texas, we are concerned about the anticompetitive effect on the Texas health care market that would result from the acquisition of Humana, Inc. by competing health plan, Aetna, Inc.

The Texas market for health insurance is currently highly concentrated, with a statewide estimated Herfindahl-Hirschman Index of 2537, based on AMA's analysis of 2013 enrollment data[1]. Most metropolitan statistical areas within the state are even more concentrated, several with HHIs above 4000. The proposed acquisition would increase the HHI in the state as a whole and in most market segments, making most markets less competitive. According to the 2010 Horizontal Merger Guidelines and a special AMA analysis[2], the proposed merger would meet the defined threshold to be presumed likely to enhance market power in several markets and market segments:

- Combined HMO, PPO and POS market:
  - El Paso
  - San Antonio
  - Corpus Christi
- HMO market:
  - Houston-Sugarland-Baytown
  - Austin-Round Rock
  - San Antonio
- PPO market:
  - El Paso
  - San Antonio
  - Houston-Sugarland-Baytown
  - Corpus Christi
  - Fort Worth-Arlington
  - Austin-Round Rock
  - Victoria
  - Killeen-Temple-Fort Hood

In most other Texas markets, the HHI effect of the merger is sufficient to raise significant competitive concerns.

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[1] "Competition in Health Insurance, A comprehensive study of U.S markets", 2015 update; American Medical Association

[2] Markets where an Aetna-Humana merger warrants antitrust scrutiny, Analysis of data from the 2015 update to ""Competition in Health Insurance, A comprehensive study of U.S markets".

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In addition to our concerns about the commercial market, we note that there would also be anticompetitive effects in the Medicare Advantage market, with the newly combined entity controlling 36% of that market in the state.[3]

Our concerns about the anticompetitive effects extend beyond the direct effect on health insurance purchasers caused by monopsony pricing of insurance premiums. We also believe there may be adverse effects on insurance purchasers due to the enhanced price-setting power in the market for physician services. Since the large majority of health care services provided by physicians are paid for by insurers and other third-party payers, physicians must be able to secure adequate payment from insurers in order to cover all operating costs and remain profitable. In Texas, most physician practices are very small, comprised of one to three physicians[4]. These small businesses may have very little negotiating leverage to allow them to secure favorable pricing terms. As plans grow large enough, those plans gain coercive pricing power over physicians, so that contract terms are defined unilaterally by the plans and no real negotiation is possible.

Health plans that can wield unchecked pricing power in the physician market can force physician practices out of business in two ways; by unilaterally reducing contract prices to below the actual cost to produce services, or by simply excluding the physician from the plan network. With the increasing prevalence of narrow network plans, the latter threat has grown. When plans control large market shares, physicians can face the sudden loss of a large portion of their revenues, threatening the viability of the business. When markets are less concentrated, physicians can replace the lost business, but in highly concentrated markets, the practice may become permanently unprofitable and close. Physicians who are forced out of business may permanently leave patient practice or relocate, reducing the local availability of medical services and causing harm to patients due to the reduced availability of medical care.

We are aware that, in order to reduce market shares of the combined entity in certain local markets, a divestiture of some segments could be required. In the Texas market, competitiveness would not be improved by such a divestiture if the acquiring plan already controls a large market share. In almost every Texas market, there are two major insurers who each control a very large share of the local market. An acquisition of any part of the divested business by any plan that controls more than 20% of the local market should not be permitted.

We thank you for your attention to this serious problem.

Sincerely,

Joseph S. Valenti

Joseph S. Valenti, MD
Chair, Council on Socioeconomics
Texas Medical Association

cc: David Mattax, Commissioner
Texas Department of Insurance

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[3] Medicare Advantage 2015 Spotlight: Enrollment Update, Kaiser Family Foundation, Appendix Table A5
[4] Survey of Texas Physicians, 2014, Texas Medical Association p.18