

1849 The Exchange  
Suite 200  
Atlanta, GA 30339  
678.303.9290  
800.282.0224  
Fax 678.303.3732  
www.mag.org



Medical  
Association  
of Georgia

*Building a Better State of Health Since 1849*

March 1, 2016

Commissioner Ralph T. Hudgens  
Office of Insurance and Safety Fire Commissioner  
Two Martin Luther King, Jr. Drive  
West Tower, Suite 704  
Atlanta, Georgia 30334

RE: Aetna Inc./Humana Inc. and Anthem Inc./Cigna Corporation Mergers

Dear Commissioner Hudgens:

With more than 7,800 members, the Medical Association of Georgia (MAG) has been the leading voice for physicians in every specialty and practice setting in the state since 1849. MAG greatly appreciates the opportunity to provide comments to the Georgia Office of Insurance and Safety Fire Commissioner (OCI) as it engages in the vital work of investigating Aetna Inc.'s proposed acquisition of Humana Inc. and Anthem Inc.'s proposed acquisition of Cigna Corporation. MAG believes that the proposed health insurance mergers will have a significant negative impact on patient's health care access, quality, and affordability in Georgia.

The mergers will reduce competition and place physicians, their patients, and all Georgians at an even greater disadvantage as a shrinking number of health insurance companies seize increasingly-dominant positions in the marketplace. According to recent studies, further insurance consolidation will lead to reduced payments to healthcare providers with no savings passed to the patient. A recent MAG survey shows that roughly 76 percent of the Georgia physicians who participated in the survey believe that due to these mergers, "(r)eimbursement rates for physicians will decrease such that there would be a reduction in the quality and quantity of the services that physicians are able to offer patients."

**The proposed health insurance mergers will complete a near total collapse of competition in the market.**

Competition is likely to be greatest when there are many sellers, none of which has any significant market share. Unfortunately, Georgia has already seen a near total collapse of competition among the health insurance market. Because of persisting high barriers to entry in health insurance markets, the even greater loss of competition through these proposed mergers will likely be permanent and the acquired health insurer market power will be durable.

The American Medical Association (AMA) analysis of data from the 2015 update to "Competition in Health Insurance" found that Georgia is one of ten states that will be most

adversely affected by the Anthem-Cigna merger.<sup>1</sup> The combined commercial market share and concentration (HHI) in the HMO, PPO, and POS markets in Georgia will increase from 2127 HHI to 2976 HHI, an increase of 848 HHI.<sup>2</sup> This does not account for the increase in concentration if the Aetna-Humana merger is also allowed.

Georgia O.C.G.A. § 33-13-3 states that the Commissioner should approve any merger after a public hearing unless the Commissioner finds that “the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly.”<sup>3</sup> The law goes further in O.C.G.A. § 33-13-3.1 by adding that when considering whether an acquisition may substantially lessen competition, the Commissioner should consider whether an acquisition involving two or more insurers competing in the same market qualify as a prima-facie violation of the competitive standards. The law states that there is a prima-facie violation if the market is already highly concentrated and the involved insurers possess the following shares of the market<sup>4</sup>:

Insurer A	Insurer B
4 percent	4 percent or more
10 percent	2 percent or more
15 percent	1 percent or more

Furthermore, the law states that if the market is not highly concentrated, a prima-facie violation may still exist if the involved insurers possess the following shares of the market<sup>5</sup>:

Insurer A	Insurer B
5 percent	5 percent or more
10 percent	4 percent or more
15 percent	3 percent or more
19 percent	1 percent or more

According to this law, a market is “highly concentrated” if 75 percent or more of the market is held by four or fewer insurers.<sup>6</sup> As every market in Georgia is already considered highly concentrated, the proposed mergers certainly qualify as a prima-facie violation in all four health insurance markets in the state (i.e., individual, small group, Medicare Title XVIII, and large group).

**Both mergers qualify as prima-facie violations of the Georgia competitive standard in all four health insurance markets.**

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<sup>1</sup> American Medical Association (AMA), Markets where an Anthem-Cigna merger warrants antitrust scrutiny (2015)

<sup>2</sup> Id.

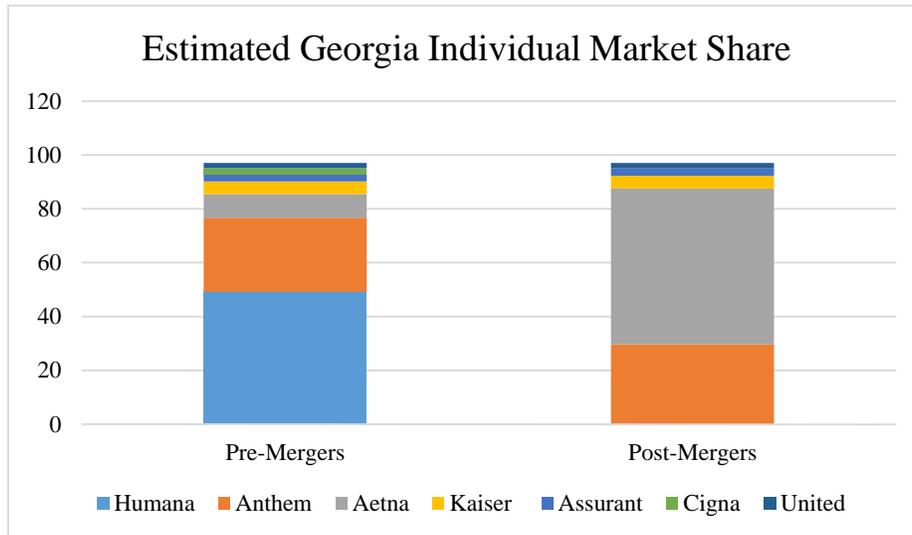
<sup>3</sup> O.C.G.A. 33-13-3(d)B)

<sup>4</sup> O.C.G.A. 33-13-3.1(d)(2)(A)(i)

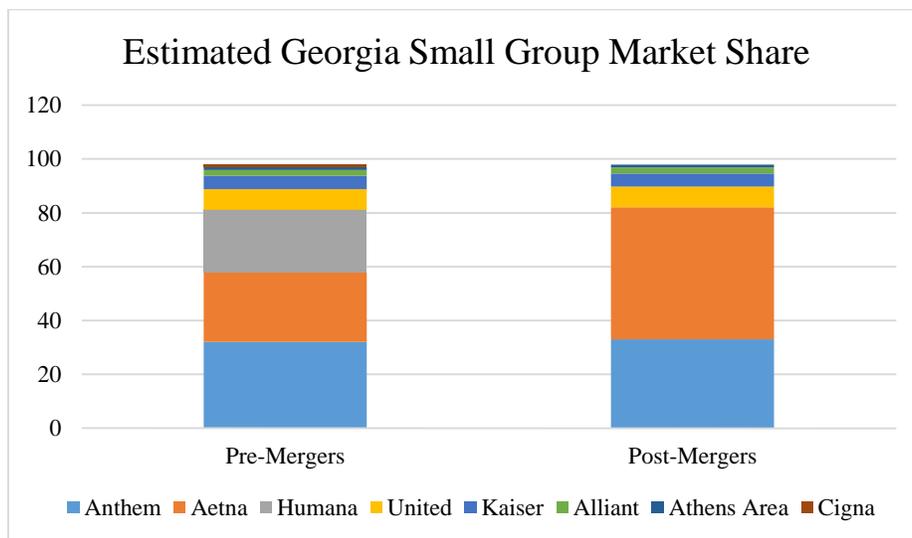
<sup>5</sup> O.C.G.A. 33-13-3.1(d)(2)(A)(ii)

<sup>6</sup> O.C.G.A. 33-13-3.1(d)(2)(A)

The combined entities will control nearly 90 percent of the individual health insurance market in Georgia, including Aetna at 58 percent and Anthem at 30 percent.<sup>7</sup> As Humana currently holds 49.2 percent of the market and Aetna holds 8.79 percent of the market, this merger represents a prima-facie violation. And as Anthem currently holds 27.48 percent of the market and Cigna holds 2.14 percent, this is also a prima-facie violation.<sup>8</sup>



The new companies will control more than 80 percent of the small group market – including Aetna at more than 49 percent and Anthem at more than 33 percent.<sup>9</sup> As Humana currently holds 23.34 percent of the market and Aetna holds 25.73 percent of the market, this merger represents a prima-facie violation. And as Anthem currently holds 32.12 percent of the market and Cigna holds almost 1 percent, this can also be considered a prima-facie violation.<sup>10</sup>



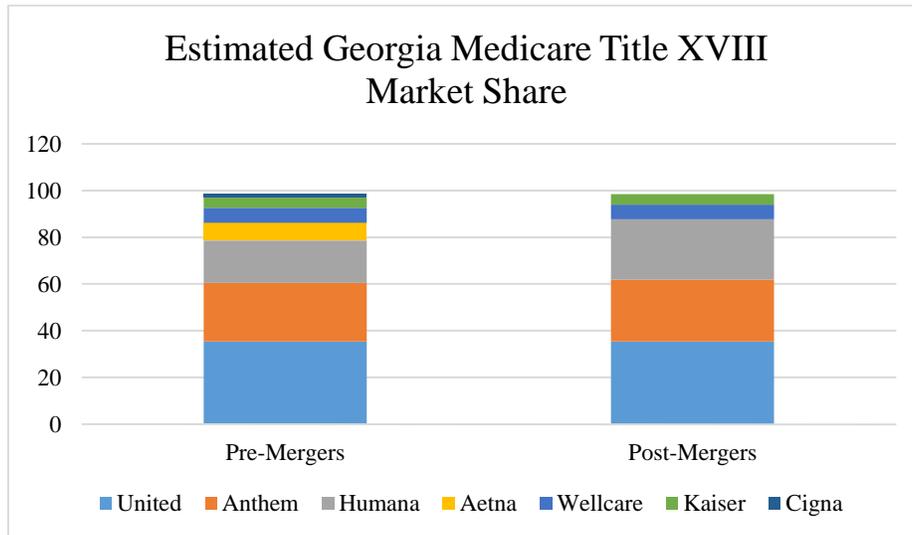
<sup>7</sup> Office of Insurance and Safety Fire Commissioner, Initial Competition Letter, <http://www.oci.ga.gov/ExternalResources/Documents/RegServices/AetnaFormAFiles/5.%20-%20OCI%20Ltr.%20-%20Competition%20-%2008-12-15.pdf> (August 12, 2015)

<sup>8</sup> Id.

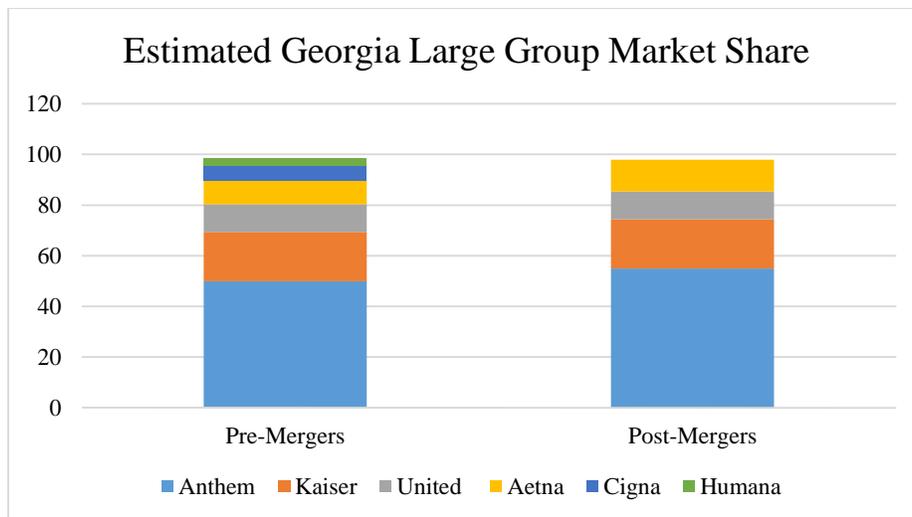
<sup>9</sup> Id.

<sup>10</sup> Id.

Aetna, Anthem, and United Health Care will subsequently control nearly 90 percent of the Medicare Title XVIII market in Georgia following the mergers.<sup>11</sup> As Humana currently holds 18.12 percent of the market and Aetna holds 7.72 percent of the market, this merger represents a prima-facie violation. And as Anthem currently holds 25.02 percent of the market and Cigna holds 1.45 percent, this is also a prima-facie violation.<sup>12</sup>



Finally, the new Aetna and Anthem entities will also control about two thirds of the large group market in Georgia, including Aetna at more than 12 percent and Anthem at nearly 55 percent. Three insurers will control nearly 90 percent of the large group market in the state.<sup>13</sup> As Aetna currently holds 9.42 percent of the market and Humana holds 3.14 percent of the market, this merger represents a prima-facie violation. And as Anthem currently holds 49.42 percent of the market and Cigna holds 5.52 percent, this is also a prima-facie violation.<sup>14</sup>



<sup>11</sup> Office of Insurance and Safety Fire Commissioner, Competition Letter II, <http://www.oci.ga.gov/ExternalResources/Documents/RegServices/AetnaFormAFiles/7.%20-%20OCI%20Ltr.%20-%20Competition%20-%202015.pdf> (August 20, 2015)

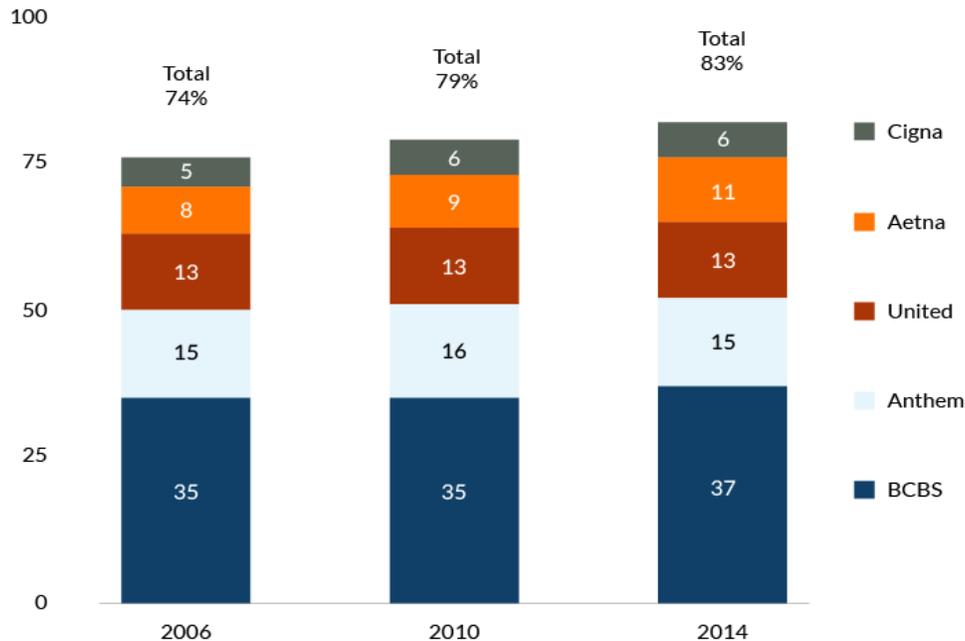
<sup>12</sup> Id.

<sup>13</sup> Office of Insurance and Safety Fire Commissioner, Initial Competition Letter

<sup>14</sup> Id.

Market concentration in the U.S. is already at dangerously high levels. The following chart illustrates the increase in market share for the four largest insurers since 2006 – and note that BCBS and Anthem are shown as separate entities, though they are part of the same corporation.

Exhibit 1. Estimated National Market Shares of the Four Largest Insurers, 2006–2014



This exhibit is constructed using the number of privately insured lives reported in each insurer's annual reports. Consistency over time and across insurers in terms of products included is not assured. BCBS share (exclusive of Anthem) is estimated using enrollments reported by BCBS for 2010 and 2014, and extrapolating back to 2006 by applying the growth rate in BCBS enrollments from data supplied by the National Association of Insurance Commissioners (NAIC), and corrected for states not reporting or underreporting BCBS enrollment. The BCBS association reports total enrollment of 100 million in 2010 and 106 million in 2014 and may include noncomprehensive insurance. Unfortunately, NAIC reflects only fully insured plans outside of California, whereas this exhibit includes both full and self-insurance for all states. Anthem operates BCBS affiliates in California, Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Michigan, Nevada, New Hampshire, New York, Ohio, Virginia, and Washington. National market size in each year is the number of privately insured lives, as estimated from the Current Population Survey. Source: Current Population Survey, "Total People with Private Health Insurance, 2002–2013," available at <http://www.census.gov/cps/data/cpsstablecreator.html>.

### The health insurance mergers will impair access, affordability, and innovation.

In the Form A that Aetna submitted to the OCI, Aetna claims that the “combined [post-merger] organization will also be well positioned to offer a broader choice of affordable, patient-centric health care products...helping to improve health outcomes, constrain cost growth, and promote wellness.<sup>15</sup>” Anthem made comparable claims in its Form A filing, asserting that its merger with Cigna will enable it to “operate and compete more efficiently” and “improve the quality of care and enhance access while managing cost and sustaining affordability.<sup>16</sup>”

Yet there is credible evidence that shows that these kinds of mega mergers lead to reduced payments to providers – with little to no cost savings passed on to their patients. There is also

<sup>15</sup> Aetna, Inc. *Form A: Statement Regarding the Acquisition of Control of or Merger with a Domestic HMO Humana Employers Health Plan of Georgia, Inc.*

<http://www.oci.ga.gov/ExternalResources/Documents/RegServices/AetnaFormAFiles/1.%20-%20Form%20A%20Statement.pdf> (July 23, 2015)

<sup>16</sup> Anthem, Inc. *Form A: Statement Regarding the Acquisition of Control or Merger with Cigna Healthcare of Georgia, Inc.* <http://www.oci.ga.gov/ExternalResources/Documents/RegServices/AnthemFormAFiles/1.%20-%20Form%20A%20Statement.pdf> (Sept. 2, 2015).

limited evidence regarding the impact of consolidation on health plan quality. In fact, the AMA believes that more competition will 1) lower premiums, 2) force insurers to enhance customer service and pay their bills in a timelier and more accurate way, and 3) force insurers to develop more innovative ways to improve quality while lowering costs.<sup>17</sup>

A growing body of peer-reviewed literature suggests that a further consolidation of the health insurance industry will lead to greater inefficiencies and increased costs. A study of the 1999 Aetna – Prudential merger found a relative reduction in health care employment and wages in those geographic areas where there was more substantial market overlap between the two insurers<sup>18</sup>. The implication is that the exercise of market power over health care providers reduced prices and output. At the time of the merger, Aetna and Prudential Healthcare were both large national firms and active in most local insurance markets, as are all four of the insurance companies proposing mergers today. The study finds that “rising concentration in local health insurance markets accounts for a nontrivial share of premium growth in recent years.<sup>19</sup>”

Furthermore, the study also found that the “growth in insurer bargaining power following this merger reduced earnings and employment growth of physicians, and raised earnings and employment growth of nurses.<sup>20</sup>” This is significant when you consider that Georgia ranks just 39th in the U.S. in the number of active physicians per population.<sup>21</sup>

Any additional cuts in physician reimbursement will undermine patient care in two important ways. First, physicians will have to see more patients to make up the lost income – which means that they will be able to spend less time with each individual patient. Second, they will have less capital to invest in new equipment, technology, training, staff, etc. that could improve the access to and quality of patient care and could enable physicians to successfully transition into new value-based payment and delivery models.

Physicians in Georgia create more than 88,000 jobs and generate nearly \$30 billion in economic output or sales revenue annually, representing almost 7 percent of the total GDP.<sup>22</sup> These physician practices also generate more than \$16.5 billion in wages and benefits and more than \$1 billion in state and local tax revenue.<sup>23</sup> Due to reduced reimbursement rates and oppressive contracting techniques, insurers have already forced a significant amount of health care consolidation. Allowing the proposed mergers will only increase this trend, decreasing the benefits provided by these smaller practices – both economically and medically.

Further consolidation may conversely motivate physicians to retire early or seek opportunities outside of medicine that are more rewarding. This will also exacerbate an already significant shortage of primary care physicians in the Georgia. Fostering competition, not consolidation, benefits American patients through lower prices, better quality, and greater choice.

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<sup>17</sup> AMA. *Physicians stand up against mergers of powerful insurers*. <http://www.ama-assn.org/ama/ama-wire/post/physicians-stand-up-against-mergers-of-powerful-insurers> (Nov. 12, 2015)

<sup>18</sup> L. Dafney, et al. *Paying a Premium on your Premium? Consolidation in the U.S. Health Insurance Industry*. [www.kellogg.northwestern.edu/faculty/dafny/personal/documents/publications/ms\\_2010\\_0837\\_0804.pdf](http://www.kellogg.northwestern.edu/faculty/dafny/personal/documents/publications/ms_2010_0837_0804.pdf)

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> AAMC. *Georgia Physician Workforce Profile*. <https://www.aamc.org/download/447164/data/georgiaprofile.pdf> (2015)

<sup>22</sup> American Medical Association and Medical Association of Georgia, *Physicians Boost the Economy*. (2014)

<sup>23</sup> Id.

MAG also believes that the proposed mergers will result in an even greater reduction in health plan quality. The mergers will result in even narrower provider networks, which means that increasing numbers of patients will be forced to seek the medical care they need on an out-of-network basis – so many will have to go farther, will have less choice, and will have to pay more (e.g., pay out-of-network rates and be subjected to “balance billing”).

There is no evidence supporting the insurer’s claim that the proposed mergers will lead to greater efficiencies and innovative payment and care management programs or that patients will benefit.<sup>24</sup> There is, however, a vast literature concerning other health care settings that shows quality does not improve when markets become more consolidated.<sup>25</sup>

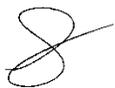
Insurers are already struggling to maintain their databases and directories – and many are outdated and unreliable. The recent Anthem provider database conversion has reportedly been causing significant problems for physicians and patients in Georgia as the company is using a mix of old and new systems that are clearly incompatible. This results in underpayment and overpayments and audits, and patients are receiving reimbursement checks because the physicians who provided their care were erroneously “tagged” as out-of-network. The mergers will only exacerbate these kinds of problems as Aetna/Humana and Anthem/Cigna will have to merge their databases and directories.

Gone unchecked, a few insurers will be in a position to manipulate the marketplace to institute policies that will exacerbate the physician shortage and undermine the economic viability of the practice environment in the state which will limit the accessibility of care and individual patient choice. These mergers are likely to impair access, affordability, and innovation in the health insurance market.

The evidence clearly shows that these mergers will result in disastrous consequences for physicians and patients in Georgia. Therefore, MAG urges the OCI to block the proposed Aetna/Humana and Anthem/Cigna mergers to safeguard the health of Georgia patients.

Please contact me or MAG Legal Counsel Trish Yeatts at 678.303.9274 or [pyeatts@mag.org](mailto:pyeatts@mag.org) with questions or in the event you need additional information.

Sincerely,



Donald J. Palmisano, Jr.  
Executive Director/Chief Executive Officer

cc: Honorable Sam Olens, Esq., Attorney General of Georgia

<sup>24</sup> L. S. Dafny, Testimony Before the Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, on “Health Insurance Industry Consolidation: What Do We Know from the Past, Is It Relevant in Light of the ACA, and What Should We Ask?” <http://www.commonwealthfund.org/publications/issue-briefs/2015/nov/evaluating-insurance-industry-consolidation> (Sept. 22, 2015)

<sup>25</sup> See, for example, M. Gaynor and R. Town, *The Impact of Hospital Consolidation* (Princeton, N.J.: Robert Wood Johnson Foundation, June 2012), <http://www.rwjf.org/en/library/research/2012/06/the-impact-of-hospital-consolidation.html>