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May 31, 2016 - by Ed Roberts - Opponents of the two big healthcare mergers were criticizing Connecticut regulators for clearing the Humana/Aetna deal without a public hearing and are vowing greater scrutiny for the Cigna/Anthem combination, which would have a more profound impact on the state's healthcare markets.

"This is a development of market dominance we have not seen ever in the insurance industry," Mathew Katz, CEO of the Connecticut State Medical Society, told CTFN, of the \$54 billion merger still being mulled by state regulators, as well as by the Department of Justice. The CSMS is an affiliate of the American Medical Association, which is fighting to block the two healthcare mergers.

If the Cigna/Anthem merger comes to fruition it will make Anthem, an operator of Blue Cross and Blue Shield plans in 14 states, the nation's largest health insurance company by the number of insured individuals, ahead of UnitedHealth Group.

Katz said that he and others aligned against the giant healthcare mergers, were stunned by Thursday's announcement by the Connecticut Insurance Department that they had approved the Humana/Aetna merger absent any public hearings, despite Aetna being based in Hartford. "It seems to be a rather secretive and dark of the night kind of thing," he stated, while calling for greater transparency and public involvement for the Cigna/Anthem merger.

Connecticut is the 15th state to approve the Humana deal but the companies encountered a potential obstacle last week with Missouri becoming the first of 20 states reviewing the merger to deny the application. In its order, the Missouri Department of Insurance said that if federal regulators approve the Humana/Aetna merger, it will block the combined company from selling certain insurance plans because the merger would have anti-competitive effects.

The Missouri order would block the company from selling individual health insurance (other than catastrophic plans), small group health insurance, group Medicare Advantage, and individual Medicare Advantage plans in 65 of the state's 114 counties. Missouri cannot block the merger on its own but it can control how the combined company operates in its state. The order allows Aetna and Humana to submit a plan to remedy the anticompetitive impacts the department has identified, and therefore continue to sell these sorts of plans in the state after a merger. The companies have 30 days to submit a plan, though the order says the department may allow an extension.

The Cigna/Anthem merger was approved by regulators in Indiana last week, the 12th of 26 states that will be weighing in on the deal. Representatives of Anthem and Cigna declined to comment on the regulatory review process.

Officials with the Connecticut Insurance Department said that their oversight role in the Humana/Aetna deal was a minor one because Humana is not incorporated in Connecticut. "Because Humana is not a Connecticut-based company (like Cigna is) and has a very small market footprint here, we are not the lead regulator and a public hearing is not required (in Connecticut)," Donna Tommelleo, a spokesperson for the department said in an email, adding that Kentucky, where Humana is based, is the lead state for reviewing that merger.

She said the Insurance Department plans to hold a public hearing on the Cigna/Anthem merger in the future. No date has been set.

Connecticut is one of the key states for the two megamergers, not only because it is home to both Aetna and Cigna, but because it is considered the insurance capital of the US. The influence of the insurance industry throughout the regulatory process is large. Attorney General George Jepsen, who is reviewing both mergers for antitrust issues, was prompted to recuse himself from the Cigna/Anthem matter early on because his wife was a Cigna employee.

But Jepsen subsequently reversed his decision after his wife left Cigna. And state insurance commissioner Katharine Wade has been fighting calls for her recusal because she is a former Cigna lobbyist and her husband still works there as a company executive. Wade refused to recuse herself from reviewing the merger because she said she has taken steps to ensure that her Cigna ties would not be considered a substantial conflict of interest. Wade said in a letter to the state Office of Ethics that she and her husband

have put their assets in a blind trust and that the company “firewalled/recused” her husband from matters involving the Insurance Department.

Valerie Pillo, a market analyst with healthcare consultant Decision Research Group, said that the difference between the two deals is that a post-merger Anthem will have a much larger footprint in the state’s healthcare market than it does now, while a post-merger Aetna will continue to have a small share.

Department of Insurance figures show that Aetna covers 458,000 of the 2.5 million insured individuals. Aetna is not even a participant in the state’s healthcare exchange, known as Access Health CT. Anthem and Cigna are much bigger players in the state, with Anthem, one of just three providers in the state exchange, covering 1.1 million residents and Cigna 490,000, giving the combined companies a projected 64 percent share of Connecticut’s commercial insurance market.

She said that the insurance commissioner will look at a number of factors when reviewing the Cigna/Anthem deal, including the impact on policyholders and providers, but also how asset sales, consolidation or liquidation would materially affect Cigna's business operations, how the corporate structure would change, and how it might affect the policies Cigna currently offers.

She also expects the regulators to look at how the merger may impact the 4,200 jobs Cigna has at its Bloomfield offices in suburban Hartford. Aetna, which employs more than 6,000 workers in the state, made no public promises to retain workers, suggesting instead that many jobs will be shifted to Humana’s Louisville, Kentucky, headquarters. Still, it is impossible to know how these aspects were measured in the Humana/Aetna review which, she said, was conducted “behind closed doors.”

The market share figures, according to Katz equate to a power that will allow the post-merger Anthem to dictate pricing, coverage, and insurer options for the state’s healthcare consumers. “I don’t know how you have much of a choice when you have an entity that big,” said Katz, whose group has joined with the Connecticut Citizens Action Group and the Universal Health Care Foundation of Connecticut in a coalition opposing the two mergers, called Connecticut Campaign for Consumer Choice.

Jill Zorn, a policy analyst with Universal Health Care Foundation of Connecticut, said that they hope the Cigna/Anthem application will ultimately be judged on the requirement in the state insurance statute that the deal be “in the public interest,” which she said should weigh the costs to and choices for consumers and providers. She said it will be difficult for healthcare providers to walk away from an insurer that covers almost 70 percent of the patients they work with.

One major variable still at play are the rate requests the big insurers are due to submit to the insurance department any day. Insurers in several states have already submitted requests for major premium increases. Such requests could influence how regulators

view a Cigna/Anthem tie-up. “These proposed mergers are extremely complex because they can influence policyholders and providers in many different ways in each of the local markets,” said Pillo.

The groups have also been in discussions with the DOJ, which will likely have the last word on approval of the two healthcare mergers. Among the questions asked by DOJ investigators, said Katz, are what percentage of the state market the combined companies will control, whether there is abusive behavior in the market now, and whether it would worsen if one or both of the mergers is completed.

The opponents are already exploring potential legal challenges should the deal be approved by state regulators, including litigation. A legal challenge is being studied by the American Medical Association.

However, the AMA has concluded the success of litigation to challenge the mergers is doubtful, citing CSMS’s unsuccessful efforts to challenge UnitedHealth’s 2010 acquisition of Health Net’s customer base in Connecticut, New York, and New Jersey. The CSMS appeal was dismissed for lack of standing.

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