March 4, 2016

Shelley Rouillard
Director, Department of Managed Health Care
980 Ninth Street, Suite 900
Sacramento, CA 95814-2725

Re: Proposed Anthem – Cigna Merger

Dear Ms. Rouillard,

Consumer Watchdog, a nonpartisan, nonprofit public interest group, urges the Department of Managed Health Care (DMHC) to use its full authority to impose comprehensive consumer protection requirements to protect consumers before allowing the merger between Anthem and Cigna to move forward. The Department is under no obligation to allow the merger to go forward if it will harm California policyholders. DMHC should reject the merger if Anthem and Cigna refuse to make enforceable promises to protect Californians from enduring reduced services, higher premiums or bearing any costs of the merger.

As Consumer Watchdog noted in previous comments on the proposed Aetna-Humana and Health Net-Centene mergers, DMHC has full authority to deny or require changes before approving mergers and should use it in order to ensure consumers have access to quality health care. Exercising this authority to provide the full protection of state laws governing health plans is critical as you seek to protect consumers. Studies of past health insurance mergers show that companies, despite assertions to the contrary, exploit these consolidations to increase premiums and reduce services.

The number of uninsured Californians has fallen dramatically since the passage of the Affordable Care Act. Yet the state's success in signing up new Medi-Cal enrollees has made the simple act of finding a doctor who will accept Medi-Cal coverage a daunting task.[1] And many low- and middle-income families continue to struggle to pay the costs of a commercial policy, let alone use their new health coverage, as deductibles soar and doctor and hospital networks shrink. A Kaiser Family Foundation/New York Times survey released in January showed that one-in-five working-age Americans ran into serious financial difficulties trying to pay medical bills despite being insured.

Historically, health insurance consolidation has not provided the benefits promised by merging companies.

Northwestern University Professor Leemore Dafny, who testified at a U.S. Senate hearing in

[1] http://www.sfchronicle.com/health/article/Fast-growing-Medi-Cal-has-shortage-of-doctors-6392039.php

September about insurance industry consolidation, noted in her 2012 consolidation study[2] of the 1998 Aetna and Prudential Healthcare merger that top executives cut jobs and wages as well as reduced payments to healthcare providers to cut costs. Dafny wrote, "Americans are indeed paying a premium on their health insurance premiums as a result of recent increases in market concentration of the health insurance industry."

At a related U.S. House of Representatives hearing on the same subject, Jaime King, a law professor at the University of California, said there was an almost immediate 7 percent hike in premiums after the Aetna-Prudential merger. She added that despite promises of Aetna at the time, the quality of care did not increase.[3] Another study found that the 2008 United-Sierra merger resulted in an additional 13.7 percent premium increase in Nevada.[4] There is no evidence that mergers ever produce the benefit improvements or consumer savings promised by merging insurers.

In California, consolidation will only further narrow consumer options. Four health plans – Kaiser Permanente, Anthem Blue Cross, Blue Shield of California and Health Net – currently control 83 percent of the private insurance market[5] and, if the proposed merger occurs, Anthem will become the largest plan in California.[6]

In September, the American Medical Association released 2013 data on commercial health plan enrollment to measure competition in U.S. health care markets. The analysis uses a measure of market concentration, the Herfindahl-Hirschman Index, used by the U.S. Department of Justice, and Department of Justice/FTC guidelines to measuring competition in mergers. They conclude that an Anthem-Cigna merger is likely to enhance the merged company's market power and reduce competition in California. Those areas of the state the enrollment data shows will be hardest hit include: Santa Cruz-Watsonville, Santa Ana-Anaheim-Irvine, Santa Barbara-Santa Maria, Salinas, Oxnard-Thousand Oaks-Ventura, Los Angeles-Long Beach-Glendale, Bakersfield, El Centro, and Modesto.[7] Since the AMA's study is based on 2013 enrollment data, we can only assume two years of increasing consolidation has made the situation worse, not better, for Californians.

Anthem and Cigna have less-than stellar records on price and quality in California.

Cigna and Anthem have dismal records in California and across the country on rate increases, providing adequate provider networks and timely, fair patient service.

The federal government has held Cigna accountable for misrepresenting coverage and discriminating against its most vulnerable patients. In January, the Centers for Medicare and

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[2] http://www.kellogg.northwestern.edu/faculty/dafny/personal/documents/publications/ms_2010_0837_0804.pdf
[3] http://ctmirror.org/2015/09/29/aetna-anthem-merger-plans-under-scrutiny-again-by-congress/
[4] http://www.hmpi.org/pdf/HMPI%20-%20Guardado,%20Emmons,%20Kane,%20Price%20Effects%20of%20a%20Larger%20Merger%20of%20Health%20Insurers.pdf
[5] http://www.chcf.org/publications/2015/02/data-viz-health-plans
[6] http://www.latimes.com/business/la-fi-anthem-cigna-california-20150724-story.html
[7] http://www.ama-assn.org/ama/pub/news/news/2015/2015-09-08-analysis-anthem-cigna-aetna-humana-mergers.page

Medicaid Services banned[8] Cigna from marketing its Medicare products to new customers, writing that "Cigna has experienced widespread and systemic failures" and it has "had a longstanding history of non-compliances" with requirements.

Violations resulted in enrollees experiencing delays or denials in receiving needed medical services and prescription drugs, and increased out of pocket costs, according to CMS.

As you know, California regulators do not have the power to deny unjustified rate increases and Anthem has repeatedly ignored state requests to lower excessive rate hikes. Since 2012, Californians have paid at least $385 million in unreasonable premium hikes, and a disproportionate share of those unjustified increases were imposed by Anthem.

Since 2013 Anthem has imposed $145 million in rate hikes deemed by regulators to be excessive and unjustified.[9] Most recently, in April 2015, the Department of Insurance (CDI) found that Anthem failed to justify a $33.6 million hike for nearly 170,000 consumers with individual grandfathered plans, but Anthem went forward with the rate increase.[10]

Anthem has also failed to keep its promises to California policyholders about provider networks. DMHC, of course, is very familiar with Anthem's failure to accurately represent its provider networks to enrollees. The Department fined Anthem $250,000 in November 2015 for overstating its Covered California doctor networks.[11]

DMHC found that provider directories for Anthem were filled with errors, frustrating consumers trying to find doctors. According to the DMHC audit,[12] only 58.7 percent of the physicians listed in Anthem's Covered California directory could be verified as accepting Covered California patients. DMHC found that 12.8 percent of physicians listed by Anthem were not accepting Covered California patients; and 12.5 percent were not in practice at the location listed in Anthem's directory. Some patients incurred big medical bills because they unwittingly went out of network for care.

Anthem's indifference even affected its most vulnerable members, which was highlighted in a June 2015 review by the California State Auditor.[13] After surveying Medi-Cal managed care provider directories, including one from Anthem, the auditor found numerous inaccuracies ranging from incorrect phone numbers of doctors to listings of providers who no longer were participating in the health plans.

Anthem Blue Cross of Fresno County was found to have the highest rate of inaccurate provider information of Medi-Cal plans studied. The state recommended that the Department of Health Care Services, which oversees the program, improve its process for verifying plan data and establish a clear process for doing so. Anthem's nearly 700,000 Medi-Cal members across the

[8] https://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/Downloads/Cigna_Sanction_01_21_16.pdf
[9] http://www.consumerwatchdog.org/blog/premium-hikes-anthem-164-million-profit-spike
[10] http://www.insurance.ca.gov/0400-news/0100-press-releases/2015/release044-15.cfm
[11] http://www.latimes.com/business/healthcare/la-fi-obamacare-network-probe-20151103-story.html
[12] http://www.dmhc.ca.gov/desktopmodules/dmhc/medsurveys/surveys/303_nr_provider%20directory_111814.pdf
[13] https://www.auditor.ca.gov/pdfs/reports/2014-134.pdf

state deserve to be confident they will be able to find a doctor when they need one.

Anthem and Cigna's past failures to provide the health care consumers are promised, at prices that are fair, should be all the prompting DMHC needs to use its full power to protect Californians before agreeing to allow a merger to proceed. To do so the Department should implement the following undertakings.

Merger Undertakings:

1. <u>Enhanced Rate Review</u>

Insurance companies in California have repeatedly ignored regulators' findings of excessive and unjustified rate proposals, leading to outrageous premium hikes for consumers and unaffordable coverage.

In its merger marketing materials, Anthem and Cigna propose $2 billion in cuts through "synergies."[14] Such "synergies" are often achieved through reductions in benefits, such as narrowing networks. As a condition of the merger, the company should pledge that any savings will not be achieved through reductions in benefits or networks.

Merged insurers may also seek savings by applying pressure on providers, with a larger entity's market power, to lower costs. Unless the DMHC has binding authority over rates, there is no reason to believe – or even for the Department to know – if these cost savings will be passed on to consumers.

The Department should require the merged companies to agree to an enhanced rate review process as part of any approval. Enhanced review should include a requirement that the company submit additional information to ensure details of any cuts are made public, any cost savings are passed on to consumers, and premiums are not used to finance any part of the deal. In light of Anthem's history of unjustified rate hikes, the company should also agree to not impose rate increases that Department actuaries determine are unreasonable, and that premiums, co-payments and deductibles will not increase more than the rate of inflation following the merger for a period of five years.

2. <u>Bar "Upstreaming" of California Premiums to Anthem</u>

The Department should be vigilant when it comes to executive compensation related to the merger and any "upstream" funds sent from California to the parent company post-merger. In the past, insurers have used these financial avenues to drain money from the state.

When Anthem and Wellpoint proposed to merge in 2004, WellPoint executives tried to walk away with $600 million from the deal. The DMHC abdicated its responsibility to the public and approved the deal with little improvement.[15] This deal is the Department's chance to do better for California consumers.

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[14] http://betterhealthcaretogether.com/content/uploads/2015/07/Better-Healthcare-Together_Presentation.pdf
[15] http://www.consumerwatchdog.org/story/group-calls-dmhc-meeting-wellpointanthem-deal-sham

The Department of Insurance under Commissioner John Garamendi blocked the 2004 merger,[16] eventually approving it only after Anthem agreed to concessions including reduced executive compensation tied to the merger and donations of $265 million to California state health programs. As part of the concessions, Anthem also had to restrict the practice of selecting healthy populations while excluding people who are more likely to get ill or incur medical expenses, and had to agree that Blue Cross Life & Health customers would not pay for the merger through higher rates. [17]

Even with a reduced compensation package, it was reported that WellPoint CEO Leonard Schaeffer and other executives received $265 million, and Anthem CEO Larry Glasscock was rewarded with a $42.5 million bonus for closing the deal.[18] Since the merger, Anthem has also transferred more than $5.4 billion in dividends to its corporate parent as of December 2014, according to its annual income reports.[19]

California policyholders should not bear the cost of an Anthem - Cigna merger. DMHC should prohibit Anthem from removing reserves from California to pay for severance and retention packages for executives in connection with the merger and require it to explain any "upstream" amounts sent out of state post-merger.

3. <u>Improve Quality of Care</u>

Anthem and Cigna have been repeatedly caught and punished for their questionable treatment of policyholders, including failures to respond adequately to policyholder complaints, denial of "medically necessary" services and misrepresentations of narrow doctor and hospital networks across the country.

DMHC should not reward this behavior. Anthem and Cigna should be required to submit their commercial and Medi-Cal provider networks to a full review now as a condition of approval of the merger, and to submit a plan to ensure that other activities for which they have been sanctioned do not carry forward in the merged company.

<u>4. Accountability</u>

Consumer Watchdog urges that any undertakings include provisions requiring the commitments to be tracked, measured, and enforced. DMHC needs to make sure that all requirements are written down and not just agreed to in negotiation. DMHC's most recent experience with Blue Shield, which refused to uphold its charitable contribution commitment to DMHC in the CareFirst acquisition, makes all too clear that without explicit guarantees, health insurers are likely to ignore any concessions.[20] Make sure they don't.

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[16] http://www.consumerwatchdog.org/story/anthemwellpoint-calif-may-ok-merger-without-public-hearing
[17] http://www.sandiegouniontribune.com/news/2004/nov/10/california-insurance-commissioner-oks-anthem/
[18] http://www.publicintegrity.org/2015/08/24/17890/merger-health-insurers-usually-leads-big-payday-executives
[19] http://articles.latimes.com/2010/feb/23/business/la-fi-anthem-cash23-2010feb23
[20] http://www.latimes.com/busine.ss/la-fi-blue-shield-charity-20151117-story.html

Anthem and Cigna claim that their merger will increase competition, improve care and benefit consumers. Historically, healthcare mergers generally lead to the opposite: fewer choices, inadequate physician networks and higher premiums.

The increasing consolidation and lack of competition in California will lead to a healthcare crisis if regulators don't protect consumers with meaningful and stringent safeguards. Anthem and Cigna should be forced to get better before being allowed to get bigger.

Sincerely,

Carmen Balber
Executive Director