NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

August 3, 2016

Sean M. Doolan, Esq.
Hinman Straub, PC
121 State Street
Albany, NY 12207-1693

Re: Application for Approval of Acquisition of Control of CIGNA Life Insurance Company of New York by Anthem, Inc.-Our File No. 51223

Dear Mr. Doolan:

The New York State Department of Financial Services (the "Department") has reviewed the application (the "Application") by Anthem, Inc. ("Anthem") for approval pursuant to Section 1506 of the New York Insurance Law of a proposed acquisition of control of Cigna Life Insurance Company of New York ("Cigna"), furnished with your letter of September 2, 2015 as well as supplemental filings made in connection with the Application. As set forth below, because the Department has significant concerns about the proposed acquisition, we will be noticing a public hearing to further evaluate the matter.

New York Insurance Law § 1506(b) states: "The superintendent shall disapprove such acquisition if [she] determines, after notice and an opportunity to be heard, that such action is reasonably necessary to protect the interests of the people of this state." With respect to this Application, the Department views the following factors to be relevant to its determination:

"[1] the financial condition of the acquiring person and the insurer; …

[4] the source of the funds or assets for the acquisition; …

[6] whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or tend to create a monopoly therein; and

[7] whether the acquisition is likely to be hazardous or prejudicial to the insurer's policyholders or shareholders."

Financial Uncertainties

Anthem is the ultimate parent of Empire HealthChoice Assurance Inc. and Empire HealthChoice HMO, Inc. Cigna Corporation is the ultimate parent of Cigna Life Insurance

Company of New York, Connecticut General Life Insurance Company and Cigna Health and Life Insurance Company. The Application states that the merger of Anthem with Cigna Corporation requires cash consideration in the amount of $27.6 billion to consummate the transaction. The Application further states that Anthem expects to finance the cash portion of the proposed transaction through available cash on hand and the issuance of new debt. In addition to the payment of the merger consideration, Anthem would be assuming approximately $5.5 billion in existing Cigna indebtedness. The Application also states that the pro-forma debt to capital ratio of Anthem is expected to be approximately 49.6% at the Closing, declining to the low 40% ratio two years post-Closing, should the merger be consummated.

Anthem's projections create significant doubts as to whether the underlying financing can be accomplished. Anthem's 2015 Form 10-K states that after the acquisition-related indebtedness and assumption of CIGNA's debt:

> Our substantially increased indebtedness and debt-to-equity ratio on a recent historical basis will have the effect, among other things, of reducing our flexibility to respond to changing business and economic conditions and may increase our borrowing costs. In addition, the amount of cash required to service our increased indebtedness levels and thus the demands on our cash resources may be greater than the percentages of cash flows required to service our indebtedness or the indebtedness of CIGNA individually prior to the acquisition. The increased levels of indebtedness could reduce funds available for our investments in product development as well as capital expenditures, share repurchases, shareholder dividends, other desirable business opportunities and other activities and may create competitive disadvantages for us relative to other companies with lower debt levels.

Moreover, the United States Department of Justice has commenced an action to enjoin the proposed merger of Anthem and Cigna. The pendency of such legal action creates additional concerns about the ability of the proposed merger to be viable. Accordingly, the Department is concerned about the proposed merger's impact on the finances and liquidity of the proposed merged company and, therefore, of Cigna Life Insurance Company of New York.

Significant Impact of the Proposed Merger on the New York Health Insurance Market

In addition, the Department has serious concerns that Anthem's proposed acquisition of Cigna will adversely impact the competitiveness of the health insurance market and harm consumers in New York. The acquisition would be the largest merger in the history of the health insurance industry, and the Department is concerned that it would result in a negative impact on access to and affordability of health insurance in New York.

Limits on Competition. The merger likely will have a significant adverse impact on competition in the commercial insurance market throughout New York State. Based on information provided with the Application, Anthem's acquisition of Cigna would, absent intervention or divestitures, increase Anthem's market share across commercial products to 31.2% statewide. Anthem would command 9.8% of New York's fully insured market and a staggering 47.6% of the self-insured market. The acquisition would increase Anthem's already dominant position in commercial self-insured enrollment in certain counties of lower New York State, which undoubtedly would have implications for the pricing of fully-insured plans in these counties. The combined share of commercial self-insured enrollment in certain counties would reach between 55% and 70%, including Bronx County, 69.3%; Richmond County, 68.8%; Kings County, 63.4%; Queens County, 63.4%; and Putnam County, 55.3%. The next largest competitor would have less than 25% share of enrollment in these counties.

In addition to eliminating competition between Cigna and Anthem, the merger also would restrict Cigna in locations where another Blues plan is operating. As a member of the Blue Cross Blue Shield Association, Anthem must abide by certain restrictions on noncompetition that the association places upon its members. Nationally, Anthem is the largest of the Blues plans and Cigna is seen as one of their most formidable competitors. The likelihood of coordination between the Blues and Cigna, even in areas where Anthem does not hold the Blues label, would be significantly increased were the merger to be consummated. This is especially true given that Anthem can be ceded rights to bid on national accounts by other Blues companies even where they do not have the Blues label in the area where the account is headquartered. And even where Anthem is not ceded authority to pick up the national account by another Blue, it still would make money when a covered life receives medical care in an Anthem territory in the form of BlueCard revenue. Thus, were the merger to proceed, Cigna would be dis-incentivized to compete with other Blues plans even where Anthem does not hold the Blues label, thereby substantially lessening competition.

Impact on State Efforts to Increase Quality and Reduce Costs. New York fully supports the move to value-based payments from fee-for-service contracts. The proposed merger likely would operate to stifle the innovations that Cigna has made, in working with providers to create more value-based payment arrangements. With increased market share, especially in the New York Metropolitan area, Anthem's ability to dictate the rate of reimbursement to providers rather than to engage with providers in advancing the value-based payment model would negatively impact New York's objective of moving away from the fee-for-service model which leads to increased costs and fails to fully value outcomes.

Impact on Providers. Competition in the health insurance industry is further necessary so that providers can negotiate with various insurers to secure the best reimbursement agreements. Increased concentration means that insurers are more able to offer non-negotiable

rates to providers in a take it or leave it deal. Therefore, the merger likely would limit New Yorkers' access to healthcare because providers would be forced either to not participate with the dominant insurer or to cut hours or services in order to accommodate a deal they have to accept. This result would be highly problematic for New York consumers.

Even where providers possess enough power to negotiate their contracts, Anthem has indicated that it would likely reduce the rates that providers earn. Yet, Anthem has conceded that such reductions would not result from additional efficiencies or potentially pro-competitive volume discounts. Instead, the provider rates would decrease simply because of Anthem's increased market share. While, in theory, increased bargaining power and lower provider rates could produce a savings for consumers in the form of lower premiums, there are a number of negative impacts on consumers that result from this high level of concentration.

First, as noted above, increased bargaining power of an insurer means that the merged companies are no longer incentivized to design competitive value-based contracts with providers. Value-based payment models prioritize the quality of the health care service provided over the quantity of procedures performed. Because this model is patient-centered and quality-driven, New York State has supported the transition from a fee-for-service model to value-based payments. Increased concentration in the market removes the incentive for innovation in value-based arrangements and could lead to stagnation or reversal of the transition to value-based care.

Second, lower rates to providers could lead to decreased availability of health care services as providers adapt their services to lower rates. A decrease in rates from a dominant insurer may lead providers to reduce hours, lay off staff, and decrease the number of services they offer. This would affect the availability of health care services for all New Yorkers, not only those insured by the dominant insurer.

Finally, based on the history of health insurance mergers, savings from increased negotiating power with providers may not, in actuality, be passed on to the consumer.[1] In fact, studies of prior health insurance mergers indicate that increased concentration resulting from mergers actually leads to increased premiums paid by consumers.[2] With rising health care costs and increased premiums, the Department is very concerned that the proposed merger will continue the cycle of increased premiums and thereby harm consumer choice and affordability.

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[1] *See Examining Consolidation in the Health Insurance Industry and its Impact on Consumers Before the S. Subcomm. on Antistrust, Competition Policy, and Consumer Rights*, 114 Congress (2015) (Testimony of Leemore S. Dafny, Ph.D, Herman Smith Research Professor of Hospital and Health Services); *see also* Dafny, *Are Health Insurance Markets Competitive?*, 100 AM. ECON. REV. 1399 (2010); Dafny, *Evaluating the Impact of Health Insurance Industry Consolidation: Learning from Experience*, COMMONWEALTH FUND (2015).

[2] For example, a study of the United-Sierra merger found that despite savings to the merged insurer, there was actually a significant increase in premiums. *See* Joes Guardado et al., *The Price Effects of a Large Merger of Health Insurers: A Case Study of United-Sierra*, 1(3) HEALTH MANAGEMENT, POL'Y & INNOVATION 1 (2013).

Conclusion

Accordingly, in light of the above-stated concerns, the Department will notice a public hearing in the near future to consider public comment on all relevant issues relating to the Application.

Sincerely,

Maria T. Vullo
Superintendent of Financial Services