



**The State of New Hampshire  
Insurance Department**

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**Roger A. Seigny  
Commissioner**

**Alexander K. Feldvebel  
Deputy Commissioner**

June 30, 2016

Sarah Prescott, Clerk  
NH Department of Insurance  
21 South Fruit Street  
Concord, NH 03301

Re: Anthem Cigna Merger – Docket No. INS. 15-054-AP  
Status Report

Dear Sarah,

Enclosed for filing in the above referenced docket is the Analysis team's First Status report. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Alexander K. Feldvebel".

Alexander K. Feldvebel

Cc: Steven Lauwers – Counsel for Anthem

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**IN THE MATTER OF:**

**FORM A STATEMENT REGARDING THE ACQUISITION OF  
CONTROL OF OR MERGER WITH CIGNA HEALTHCARE OF NEW  
HAMPSHIRE, INC., BY ANTHEM, INC.; FORM E PRE-ACQUISITION  
NOTIFICATION FORM REGARDING THE POTENTIAL  
COMPETITIVE IMPACT OF A PROPOSED MERGER OR  
ACQUISITION BY ANTHEM, INC., OF CIGNA CORPORATION**

**Docket No: Ins 15-054-AP**

**STATUS REPORT OF THE ANALYSIS TEAM AS OF JUNE 30, 2016**

The Analysis Team of the Insurance Department (“Analysis Team”)<sup>1</sup> submits this second status report to the Insurance Commissioner (“Commissioner”) concerning the status of the Form A Statement Regarding the Acquisition of Control of Cigna Healthcare of New Hampshire, Inc., by Anthem, Inc. (“Anthem”), filed with the Insurance Department (“Department”) on September 2, 2015 (“Form A Statement”), and the related Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer concerning Anthem, Inc., and Cigna Corporation (“Form E Statement”) filed with the Department on December 11, 2015.

1. In the interest of clarity and transparency, this status report includes a summary of the statutory process and applicable legal standards for reviewing insurance company mergers in New Hampshire, in addition to an update on the procedural status of this matter.

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<sup>1</sup> As described in the Analysis Team’s status report of March 11, 2016, the Department has assigned staff to be involved in the review of Anthem’s application to two “teams”: (1) the Adjudicative Team, led by the Commissioner, who bears ultimate responsibility for making a decision in this matter; and (2) the Analysis Team, led by the Deputy Commissioner, which will review and evaluate the application and present a recommendation to the Commissioner at the public hearing in this matter.

2. As the regulator of insurance in New Hampshire, the Commissioner has authority to approve or disapprove a proposed merger or other acquisition of control involving insurance companies operating in the state under the Insurance Holding Companies law, NH RSA chapter 401-B. The state's insurance company merger review is separate from any review of the merger in which the federal government or other state regulators may be engaged, and the Department's exercise of its authority is not contingent on action by the federal government or any other state regulator.

3. The statute lays out a clear standard for the review: the Commissioner "shall approve" a proposed merger unless he or she finds, after a public hearing, that the merger would create one or more of six specified conditions harmful to the public or the state's insurance markets, which may be summarized as: (1) inability to satisfy insurance licensing requirements; (2) substantial lessening of competition in insurance in the state or tendency to create a monopoly; (3) financial condition that might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders; (4) material changes in business or corporate structure that are unfair and unreasonable to policyholders of the insurer and not in the public interest; (5) lack of competence, experience, and/or integrity of those persons controlling the operation of the insurer; or (6) other likelihood of hazard or prejudice to the insurance-buying public. See NH RSA 401-B:3, VI(a).

4. With respect to the potential anticompetitive effect of a proposed merger on the state's insurance markets, the New Hampshire law provides for a three-step analysis. See NH RSA 401-B:3, VI(a)(2) (incorporating the standards of NH RSA 401-B:3-a, IV(b)). First, the Commissioner is to consider whether the merger meets one of two "prima facie" standards in the law (these vary depending on whether or not the market in question is already "highly

concentrated”); if so, the merger is considered in the first instance to have a “prima facie” anti-competitive effect. Second, if a prima facie standard is exceeded, the next step is to consider “other substantial evidence” about the competitive effect of the merger; depending on the nature of this evidence, the Commissioner could find that there is not an anti-competitive effect even if a prima facie standard is exceeded. The third and final step is a further balancing test. If this step is reached, the Commissioner would consider whether, even if the first two steps show an anti-competitive effect, the applicant has demonstrated (a) that the merger will create “substantial economies” that cannot feasibly be achieved in any other way, or will “substantially increase” the availability of insurance; and (b) that the public benefits from these effects exceed the harm created by reducing competition. See NH RSA 401-B:3-a, IV.

5. At present, the general status of this matter is that the Analysis Team is engaged in collecting information that it may present to the Commissioner at the public hearing in this matter. The Commissioner may consider the evidence presented, along with any evidence presented by Anthem and by members of the public, in making the statutory determinations outlined above with respect to effects of the proposed merger in New Hampshire.

6. The Analysis Team offers the following specific status updates in this matter:
- a. The Analysis Team intends to request a public hearing, and anticipates that at the hearing it will present evidence regarding the effects of the merger on New Hampshire consumers.
  - b. The Analysis Team, together with its experts, is presently engaged in analyzing the proposed merger and gathering information about its effects, including information from sources other than the merging entities.

- c. As noted in the Analysis Team's previous status report, on March 1, 2016, the Analysis Team provided Anthem with an Information Request asking for additional information to support or otherwise clarify statements made by the company in its Form E and Form A Statements filed with the Department.
- d. To date, Anthem has made preliminary, and incomplete, responses to the Department's Information Request. Accordingly, the statutory review timelines under RSA 401-B are presently stayed, which is why the Analysis Team has not yet filed a request for a public hearing.
- e. The Analysis Team anticipates that it will seek to make public, at or before the hearing, some or all of Anthem's Form E Statement, which at present is subject to confidential treatment under the insurance holding company statute, as well as material derived from the company's responses to its information requests. Because this material is treated as confidential by law, see NH RSA 401-B:3-a, III and RSA 401-B:8, making such material public will require either agreement by Anthem or the granting of a motion by the Commissioner under those statutes.

7. The Analysis Team anticipates that upon completion of its analysis, including review of Anthem's final and complete responses to its information requests, it will file for the Commissioner's consideration either recommendations or an agreed-to proposal concerning how to proceed in this docket.

Respectfully submitted,



Alexander K. Feldvebel  
Deputy Commissioner

June 30, 2016

Certificate of Service

I hereby certify that a copy of this Status report of the Analysis Team as of June 30, 2016, is being served this 30th day of June, 2016, by email and mail on counsel for Anthem, Inc.



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Alexander K. Feldvebel