



The State of New Hampshire  
Insurance Department

21 South Fruit Street, Suite 14  
Concord, NH 03301  
(603) 271-2261 Fax (603) 271-1406  
TDD Access: Relay NH 1-800-735-2964

INS-15-066-AP

Roger A. Sevigny  
Commissioner

Alexander K. Feldvebel  
Deputy Commissioner

TO: Roger Sevigny  
FROM: Doug Bartlett, Director of Financial Regulation  
Jennifer Patterson, Health Policy Legal Counsel  
SUBJECT: Aetna/Humana Form E - Review and Recommendation  
DATE: March 29, 2016

Handwritten initials "JFP" in blue ink.

Form E Review

On October 10, 2015, the New Hampshire Insurance Department received a Form E filing under RSA 401-B:3-a (Acquisitions Involving Insurers Not Otherwise Covered) with respect to the proposed merger between Aetna and Humana. Neither company has a New Hampshire domestic, so no Form A filing is required under RSA 401-B:3.<sup>1</sup>

Our first step was to confirm that the data by line of business in the Form E reconciled to the 2014 Annual Statements of the individual Aetna and Humana companies that are licensed in New Hampshire. We reconciled the data with no material exceptions.

Next, we confirmed that the transaction meets the minimum threshold for Form E review under RSA 401-B:3-a. Form E review is not required for an acquisition if all of the following criteria are met:

- (A) In no market would the combined market share of the involved insurers exceed 5 percent of the total market.
- (B) There would be no increase in any market share; [and]
- (C) In no market would:
  - (i) The combined market share of the involved insurers exceed 12 percent of the total market; and
  - (ii) The market share increase by more than 2 percent of the total market.

*For the purpose of this subparagraph, a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.*

RSA 401-B:3-a, II(b)(4). Using the Department's own data produced by the CY 2014 Medicare Products Summary Report (attached), we determined that each of the

<sup>1</sup> On November 13, 2015 we had informed the Company that we would not consider the Form E to be complete until we received a copy of the approval of the transaction by the United States Department of Justice (DOJ). However, in light of our review of the evidence as outlined in this recommendation, we no longer believe it is necessary to wait for the DOJ to complete its review.

Medicare Part D and Medicare Advantage lines exceeded the 12% combined market share threshold. Thus, Form E review is required under RSA 401-B:3-a, II(b)(4).

Specifically, our review generated the following market shares:

Medicare Line	Total Market	Aetna Premiums	%	Humana Premiums	%	Com-bined
Medicare Part D	\$109,855,286	\$10,970,750	10.0%	\$11,473,101	10.4%	20.4%
Medicare Sup Standardized	\$141,548,198	\$0		\$1,005,147	0.7%	0.7%
Medicare Sup Pre-Standardized	\$12,163,507	\$0	0.0%	\$0	0.0%	0.0%
Medicare Sup Select	\$22,482	\$0	0.0%	\$0	0.0%	0.0%
Medicare Sup - Advantage	\$92,992,577	\$6,610,398	7.1%	\$28,537,027	30.7%	37.8%
Medicare Sup all others	\$42,026,406	\$0		\$37,310	0.1%	0.1%
<b>Total Medicare Products</b>	<b>\$389,638,455</b>	<b>\$17,581,148</b>	<b>4.4%</b>	<b>\$41,015,275</b>	<b>10.3%</b>	<b>10.3%</b>

Next, we considered whether the proposed merger would violate the competitive standard in our law. RSA 401-B:3-a, IV(b), provides for a three step evaluative process. The Commissioner is to consider (1) whether an acquisition is prima facie violative of the competitive standard, (2) whether the results of prima facie analysis are changed based on other substantial evidence establishing the presence or absence of anti-competitive effect, and (3) if the acquisition is violative of the standard, whether either of two “public benefit” situations exist.

“Prima facie” violation analysis. The standards for prima facie violation of the competitive standard are set forth in RSA 401-B:3-a, IV(b)(1) and (2). The burden of showing prima facie evidence of violation of the competitive standard “rests upon the commissioner.” RSA 401-B:3-a, IV(b)(3)(C). The prima facie standard looks to market shares and provides two sets of thresholds depending on whether or not the market is “highly concentrated.” RSA 401-B:3-a, IV(b)(1). A “highly concentrated market” is one in which “the share of the 4 largest insurers is 75 percent or more of the market.” *Id.* In that case it is “prima facie evidence of violation of the competitive standards” if the involved insurers have market shares of 4% and 4% or more, 10% and 2% or more, or 15% and 1% or more. RSA 401-B:3-a, IV(b)(1)(A). If the market is not highly concentrated, there is a prima facie violation if the involved insurers have market shares of 5% and 5% or more, 10% and 4% or more, 15% and 3% or more or 19% and 1% or more. RSA 401-B:3-a, IV(b)(1)(B).

Applying the statutory criteria, we reviewed the data to determine whether the merger would create a prima facie violation of the competitive standard in the relevant product markets.

1. Medicare Part D. Medicare Part D generated \$109.8 million in 2014 New Hampshire premiums. The Aetna companies (Aetna Life and First Health Life) had about 9.9% of the market and the Humana company had about 10.4% for a total of about \$22.3 million and 20.3%.

MEDICARE: Part D 2014	Premiums Written	%
UnitedHealthcare Insurance Company	\$ 34,903,564	31.8%
WellCare Prescription Insurance, Inc.	\$ 11,592,842	10.5%
Humana Insurance Company	\$ 11,473,101	10.4%
First Health Life and Health Insurance Company (REVISION)	\$ 9,832,713	8.9%
CIGNA Health and Life Insurance Company	\$ 9,600,556	8.7%
Anthem Health Plans of NH, Inc	\$ 8,892,539	8.1%

Anthem Insurance Companies, Inc.	\$ 8,858,422	8.1%
SilverScript Insurance Company	\$ 8,697,586	7.9%
Medco Containment Life Insurance Company	\$ 1,748,422	1.6%
Symphonix Health Insurance, Inc.	\$ 1,560,078	1.4%
Aetna Life Insurance Company (REVISION)*	\$ 1,138,037	1.0%
United American Insurance Company	\$ 574,128	0.5%
HealthSpring Life & Health Insurance Company, Inc.	\$ 367,380	0.3%
Envision Insurance Company	\$ 306,068	0.3%
Stonebridge Life Insurance Company	\$ 157,631	0.1%
HealthMarkets Insurance Company	\$ 80,965	0.1%
Sterling Life Insurance Company	\$ 66,630	0.1%
UniCare Life and Health Insurance Company	\$ 34,624	0.0%
<b>TOTALS</b>	<b>\$ 109,885,286</b>	<b>100.0%</b>

\*Aetna no longer markets Medicare Part D in New Hampshire.

Based on this analysis, we concluded that the Medicare Part D market is not highly concentrated as defined in RSA 401-B:3-a, IV(b)(1)(A), but the respective shares of Humana (10.4%) and the Aetna companies (9.9%) do exceed the “prima facie violation” threshold of RSA 401-B:3-a, IV(b)(1)(B) (10% plus 4%).

2. Medicare Advantage. In 2014, the Humana companies (Humana and Arcadian Health) had 7.4% and 23.3% shares, respectively, while Aetna had 7.1%.

2014 Medicare Advantage Company Name	Covered Lives	2014 Premiums	%
United Healthcare Insurance Company	4,634	\$ 38,662,521	41.6%
Arcadian Health Plan	2,616	21,656,798	23.3%
Anthem Health Plans of NH, Inc.	2,659	14,547,214	15.6%
Humana Insurance Company	656	6,880,229	7.4%
Aetna Life Insurance Company*	579	6,610,348	7.1%
Harvard Pilgrim Health Care of New England	370	2,389,603	2.6%
Matthew Thornton Health Plans Inc.	363	2,246,569	2.4%
First Health Life and Health Insurance Co	-	50	0.0%
Anthem Insurance Companies	-	(755)	0.0%
<b>TOTALS</b>	<b>11,877</b>	<b>\$ 92,992,577</b>	<b>100.0%</b>

\*Aetna renews but does not write new Medicare Advantage business in New Hampshire.

The Department’s data show that Medicare Advantage is 23.3% of the Medicare products sold in New Hampshire. (Source: CY 2014 Medicare Products Summary Report).

The Medicare Advantage market appears highly concentrated, and the respective shares of the Humana companies (Arcadian Health and Humana) (30.7%) and Aetna (7.1%) exceed the “prima facie violation” threshold in 401-B:3-a, IV(b)(1)(A) (15% plus 1%).

“Other substantial evidence” analysis. The next step is to consider other substantial evidence concerning the presence or absence of anti-competitive effect. Even if an acquisition is not prima facie violative, the Commissioner may establish anti-competitive effect “based upon other substantial evidence.” RSA 401-B:3-a, IV(b)(4). Further, even though an acquisition is prima facie violative of the competitive standard, “a party may establish the absence of the requisite anti-competitive effect based on other substantial evidence.” *Id.* The statute provides a

nonexclusive list of relevant factors for making this determination: “market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.” RSA 401-B:3-a, IV(b)(4).

In connection with the “other substantial evidence” analysis, we asked the company to provide information on its self-funded business, and it complied with our request. Aetna has approximately 31,616 self-funded group members in New Hampshire, while Humana has approximately 114 self-funded members in New Hampshire.

As to Medicare Part D, our analysis is that, based on “other substantive evidence,” there is not an anti-competitive effect in this market. As shown on the above chart, there are many companies writing this coverage in the New Hampshire market, which is not highly concentrated. Moreover, both the rates (price) and design (product) are highly regulated by the federal government. In sum, the merger would not have the requisite anti-competitive effect as to Medicare Part D.

As to Medicare Advantage, there is also a lack of anti-competitive effect. This product is only about 23% of the Medicare products marketed in New Hampshire, and Aetna ceased writing new business in this line in New Hampshire in 2015. Humana companies mainly write Medicare Advantage in New Hampshire, and Aetna no longer markets Medicare Advantage here. In these circumstances, taking into account the “other substantial evidence,” there is not the requisite anti-competitive effect in the Medicare Advantage line to warrant disapproval.

Further balancing test: Even if an acquisition is found to violate the competitive standard, a remedial order may not be entered if either of two “public benefit” situations exist. RSA 401-B:3-a, IV(c). It is not necessary to undertake this third step of the analysis, as the second step reveals that there is not a violation of the competitive standard.

#### Conclusion

After our review of the Aetna/Humana Form E, we recommend that you approve the merger of the two companies without a public hearing. As noted above, the proposed merger is deemed prima facie violative of the competitive standard under RSA 401-B:3-a, IV(b) in two lines: Medicare Part D and Medicare Advantage. However, even if it is prima facie violative of the competitive standard, the merger does not have the anti-competitive effect required for a disapproval order. The statute provides for consideration of other substantial evidence concerning anti-competitive impact in RSA 401-B:3-a, IV(b)(4), and in view of this evidence, the Department concludes that the transaction does not have the requisite anti-competitive effect in either the Medicare Part D or the Medicare Advantage line to warrant disapproval.

APPROVED and SO ORDERED.

  
 Roger A. Seigny

3-29-16  
 Date

CY 2014 MEDICARE PRODUCTS SUMMARY REPORT

Doug's Addition

COMPANY NAME	NAIC #	Number of SUBSCRIBERS as of 12/31/14	Number of COVERED LIVES as of 12/31/14	Number of GROUPS as of 12/31/14	CY 2014 Total PREMIUMS	MARKETED in NH during CY 2014 (Y or N)*	AETNA	HUMANA	
<b>MEDICARE: Part D</b>									
UnitedHealthcare Insurance Company	79413	42,071	42,071	1	\$ 34,903,564	Y			
WellCare Prescription Insurance, Inc.	10155	14,538	14,538	-	\$ 11,592,842	Y			
Humana Insurance Company	73288	18,323	18,323	-	\$ 11,473,101	Y		\$ 11,473,101	
First Health Life and Health Insurance Company (REVI/90328)	10,915	10,915	10,915	11	\$ 9,832,713	Y		\$ 9,832,713	
CIGNA Health and Life Insurance Company	67369	8,559	8,559	1	\$ 9,600,556	Y			
Anthem Health Plans of NH, Inc	53759	9,016	9,016	-	\$ 8,892,539	Y			
Anthem Insurance Companies, Inc.	28207	9,023	9,023	-	\$ 8,858,422	Y			
SilverScript Insurance Company	12575	108,810	108,810	11	\$ 8,697,586	Y			
Medco Containment Life Insurance Company	63762	1,414	1,414	-	\$ 1,748,422	N			
Symphonix Health Insurance, Inc.	84549	1,851	1,851	-	\$ 1,560,078	Y			
Aetna Life Insurance Company (REVISION)	60054	630	630	1	\$ 1,138,037	N		\$ 1,138,037	
United American Insurance Company	92916	543	543	5	\$ 574,128	Y			
HealthSpring Life & Health Insurance Company, Inc.	12902	310	310	-	\$ 367,380	Y			
Envision Insurance Company	12747	188	188	1	\$ 306,068	N			
Stonebridge Life Insurance Company	65021	155	155	-	\$ 157,631	Y			
HealthMarkets Insurance Company	92908	74	74	-	\$ 80,965	N			
Sterling Life Insurance Company	77399	39	39	1	\$ 66,630	Y			
UniCare Life and Health Insurance Company	80314	24	24	-	\$ 34,624	N			
<b>TOTALS</b>		<b>226,483</b>	<b>226,483</b>	<b>32</b>	<b>\$ 109,885,286</b>			<b>\$ 10,970,750</b>	<b>\$ 11,473,101</b>
<b>MEDICARE SUPPLEMENTAL: Standardized</b>									
UnitedHealthcare Insurance Company	79413	30,717	30,717	1	\$ 65,245,416	Y			
Anthem Health Plans of NH, Inc	53759	15,132	15,132	-	\$ 38,629,955	N			
Bankers Life and Casualty Company	61263	4,850	5,079	-	\$ 15,430,486	N			
Colonial Penn Life Insurance Company	62065	5,490	5,490	-	\$ 9,860,384	Y			
United of Omaha Life Insurance Company	69868	743	743	-	\$ 2,077,092	Y			
USAA Life Insurance Company	69663	721	721	-	\$ 1,538,132	Y			
Continental Life Insurance Company of Brentwood, TN	68500	1,080	1,080	-	\$ 1,152,118	Y			
Transamerica Life Insurance Company	86231	433	469	26	\$ 1,132,195	Y			
American Republic Insurance Company	60836	269	270	-	\$ 1,047,216	Y			
Humana Insurance Company	73288	675	675	-	\$ 1,005,147	Y		\$ 1,005,147	
Mutual of Omaha Insurance Company	71412	274	274	-	\$ 866,043	N			
Genworth Life and Annuity Insurance Company	65536	296	296	-	\$ 648,853	N			
United World Life Insurance Company	72850	171	171	-	\$ 507,987	Y			
State Farm Mutual Automobile Insurance Company	25178	118	118	-	\$ 363,087	Y			
Gerber Life Insurance Company	70939	119	119	-	\$ 308,725	N			
Transamerica Premier Life Insurance Company	66281	114	123	15	\$ 266,780	N			
Combined Insurance Company of America	62146	85	85	-	\$ 257,585	Y			
United American Insurance Company	92916	143	143	-	\$ 250,788	Y			
Washington National Insurance Company	70319	93	93	-	\$ 240,470	N			
American Retirement Life Insurance Company	88366	238	238	-	\$ 199,919	Y			

CY 2014 MEDICARE PRODUCTS SUMMARY REPORT

Doug's Addition

COMPANY NAME	NAIC #	Number of SUBSCRIBERS as of 12/31/14	Number of COVERED LIVES as of 12/31/14	Number of GROUPS as of 12/31/14	CY 2014 Total PREMIUMS	MARKETED in NH during CY 2014 (Y or N)*	AETNA	HUMANA
Continental General Life Insurance Company	71404	62	62	-	\$ 129,544	N		
New York Life Insurance Company	66915	28	28	-	\$ 65,390	N		
Physicians Mutual Insurance Company	80578	25	25	-	\$ 59,803	N		
Government Personnel Mutual Life Insurance Company	63967	23	23	-	\$ 44,181	Y		
Guarantee Trust Life Insurance Company	64211	19	19	-	\$ 39,631	N		
Central States Health & Life Co. of Omaha	61751	9	9	-	\$ 31,883	N		
Loyal American Life Insurance Company	65722	10	10	-	\$ 25,774	Y		
American Family Life Assurance Company of Columbus	60380	10	10	1	\$ 21,990	N		
Great American Life Insurance Company	63312	6	6	-	\$ 20,205	N		
Principal Life Insurance Company	61271	6	7	6	\$ 17,249	N		
American Progressive Life & Health Insurance Co of NE	80624	4	4	-	\$ 9,644	N		
The Order of United Commercial Travelers of America	56383	5	5	-	\$ 8,711	N		
Globe Life and Accident Insurance Company	91472	5	5	1	\$ 8,663	Y		
Thrivent Financial For Lutherans	56014	4	4	-	\$ 8,371	N		
Unified Life Insurance Company	11121	3	3	-	\$ 5,947	N		
Equitable Life & Casualty Insurance Company	62952	2	2	-	\$ 4,785	Y		
Allianz Life Insurance Company of North America	90611	2	2	-	\$ 4,450	N		

MEDICARE SUPPLEMENTAL: Standardized (Cont'd)

Union Labor Life Insurance Company	69744	4	4	-	\$ 3,536	Y		
Lincoln Heritage Life Insurance Company	65927	1	1	-	\$ 3,002	N		
Sterling Life Insurance Company	77399	1	1	-	\$ 2,554	N		
Golden Rule Insurance Company	62286	1	1	-	\$ 2,023	N		
21st Century Premier Insurance Company	20796	1	1	-	\$ 1,250	N		
IA American Life Insurance Company	91693	-	1	-	\$ 995	N		
Kanawha Insurance Company	65110	1	1	-	\$ 237	N		
<b>TOTALS</b>		<b>61,993</b>	<b>62,270</b>	<b>50</b>	<b>\$ 141,548,198</b>			<b>\$ -</b>

MEDICARE SUPPLEMENTAL: Pre-Standardized

Anthem Health Plans of NH, Inc	53759	1,681	1,681	-	\$ 9,093,614	Y		
UnitedHealthcare Insurance Company	79413	945	945	1	\$ 2,178,323	Y		
Bankers Life and Casualty Company	61263	191	195	-	\$ 583,992	N		
American Republic Insurance Company	60836	37	37	-	\$ 54,479	N		
Transamerica Life Insurance Company	86231	4	4	1	\$ 39,336	N		
Principal Life Insurance Company	61271	13	15	13	\$ 38,289	N		
Mutual of Omaha Insurance Company	71412	21	21	-	\$ 24,129	N		
Transamerica Premier Life Insurance Company	66281	11	12	7	\$ 23,024	N		
United American Insurance Company	92916	7	7	-	\$ 22,053	N		
Combined Insurance Company of America	62146	6	6	-	\$ 21,390	Y		
Golden Rule Insurance Company	62286	5	5	-	\$ 18,100	N		
Thrivent Financial For Lutherans	56014	3	3	-	\$ 11,406	N		
Washington National Insurance Company	70319	3	3	-	\$ 9,084	N		
Gerber Life Insurance Company	70939	2	2	-	\$ 8,914	N		

**CY 2014 MEDICARE PRODUCTS SUMMARY REPORT**

**Doug's Addition**

COMPANY NAME	NAIC #	Number of SUBSCRIBERS as of 12/31/14	Number of COVERED LIVES as of 12/31/14	Number of GROUPS as of 12/31/14	CY 2014 Total PREMIUMS	MARKETED in NH during CY 2014 (Y or N)*		
Constitution Life Insurance Company	62359	3	3	-	7,904	N		
Union Labor Life Insurance Company	69744	5	5	2	6,246	N		
Nationwide Life Insurance Company	66869	1	1	-	6,228	Y		
Physicians Mutual Insurance Company	80578	3	3	-	5,777	N		
State Farm Mutual Automobile Insurance Company	25178	1	1	-	3,099	N		
American Family Life Assurance Company of Columbus	60380	1	1	-	2,805	N		
Colonial Penn Life Insurance Company	62065	1	1	-	2,525	N		
Central States Health & Life Co. of Omaha	61751	1	1	-	1,786	N		
Family Life Insurance Company	63053	2	2	-	1,004	N		
<b>TOTALS</b>		<b>2,947</b>	<b>2,954</b>	<b>24</b>	<b>12,163,507</b>			

**MEDICARE SUPPLEMENTAL: Select**

Washington National Insurance Company	70319	6	6	-	12,628	N		
Lincoln Heritage Life Insurance Company	65927	2	2	-	5,474	N		
Mutual of Omaha Insurance Company	71412	1	1	-	2,535	N		
Physicians Mutual Insurance Company	80578	-	-	-	1,845	N		
<b>TOTALS</b>		<b>9</b>	<b>9</b>	<b>-</b>	<b>22,482</b>			

**MEDICARE SUPPLEMENTAL: Medicare Advantage**

UnitedHealthcare Insurance Company	79413	4,634	4,634	1	38,662,521	Y			
Arcadian Health Plan, Inc	12151	2,616	2,616	-	21,656,798	Y		21,656,798	
Anthem Health Plans of NH, Inc	53759	2,659	2,659	3	14,547,214	Y			
Humana Insurance Company	73288	656	656	4	6,880,229	Y		6,880,229	
Aetna Life Insurance Company (REVISION)	60054	579	579	1	6,610,348	N		6,610,348	
Harvard Pilgrim Health Care of New England	96717	370	370	-	2,389,603	Y			
Matthew Thornton Health Plans Inc.	95527	363	363	-	2,246,569	Y			
First Health Life and Health Insurance Company (REVI	90328	-	-	-	50	N		50	
Anthem Insurance Companies, Inc.	28207	-	-	-	(755)	N			
<b>TOTALS</b>		<b>11,877</b>	<b>11,877</b>	<b>9</b>	<b>92,992,577</b>			<b>6,610,398</b>	<b>28,537,027</b>

**MEDICARE SUPPLEMENTAL: All Other Medicare Supplemental Products**

Anthem Health Plans of NH, Inc	53759	12,831	12,831	-	23,839,871	Y			
HPHC Insurance Company	18975	8,109	8,109	27	18,139,377	Y			
Arcadian Health Plan, Inc	12151	111	111	-	37,310	Y		37,310	
Guarantee Trust Life Insurance Company	64211	5	5	-	9,848	N			
<b>TOTALS</b>		<b>21,056</b>	<b>21,056</b>	<b>27</b>	<b>42,026,406</b>			<b>17,581,148</b>	<b>37,310</b>
<b>GRAND TOTAL</b>		<b>324,365</b>	<b>324,649</b>	<b>142</b>	<b>398,638,455</b>			<b>17,581,148</b>	<b>41,052,585</b>

\*Actively Marketed In NH

4.41%

10.30%

Y = (Yes) Carrier responded that they had actively marketed this product in NH during CY 2014  
 N = (No) Carrier responded that they had NOT actively marketed this product in NH during CY 2014  
 Blank = Carrier did not provide a response