

March 25, 1999

Joel I. Klein
Assistant Attorney General
Antitrust Division
Department of Justice
950 Pennsylvania Avenue, NW
Suite 3101
Washington, DC 20530

Dear Mr. Klein:

The undersigned organizations, representing approximately 450,000 physicians, believe that the proposed merger of Aetna U.S. Healthcare with another large national insurance company, Prudential, can and should be stopped. These organizations are concerned that the continued consolidation of the market will interfere with patient choice and physician care. Given Aetna's past behavior, its latest proposal has particularly troublesome implications for physicians' ability to provide needed services to their patients. We therefore, want to join with the American Medical Association in urging you to challenge an Aetna-Prudential merger.

The approval of the merger by the Department of Justice would send a grave signal that insurance companies are not being held accountable for anti-competitive behavior. The antitrust laws have been appropriately enforced to preclude hospitals and physicians from mergers that would allow the resulting entity to control market conditions. However, we are concerned that the same vigorous enforcement is not being applied to national insurance companies, which are, in fact, controlling market conditions in many parts of the country. Merger activities are on the rise and we fear the impact of such significant control over health care being vested in a handful of companies.

Consolidation decreases both competition and choice

The health insurance business is consolidating among those that control the more profitable, self-insured, large group employers market. Aetna U.S. Healthcare claims that it will only control 10 percent of national market after the merger. In fact, the company will control at least a third of the market in nine states, including Texas, New Jersey, Georgia, Florida, Maryland, New York, Ohio, Pennsylvania, and Virginia. What is particularly significant is the growth in Aetna's share of the self-insured large group market. Aetna U.S. Healthcare promotes its own book of business as one that encompasses more than 40 percent of the Fortune 1000 companies, the majority of which presumably are self-insured. Notably, that was the case even before the merger with Prudential.

As Aetna U.S. Healthcare has grown through a series of mergers, the choices available to employers and thus employees have consistently decreased. Typically, Aetna has created very restrictive physician networks, particularly for specialist care. The size of these networks restricts

the choices available to patients for in-network care and interferes with primary care doctors' ability to make referrals to specialists.

The combined administrative controls developed by Aetna, U.S. Healthcare, and NYL Care have produced complex and lengthy approval processes for care. In several states, legislative redress has been required to assure that this company's payments, even for pre-approved care, are made in a timely fashion. Furthermore, cases are still pending with several states' Insurance Commissioners (see Maryland, Texas). Should the merger be approved, it is reasonable to conclude that Prudential patients and physicians will encounter these same obstacles to care, because Aetna has made it clear that its business philosophy will carry the day in the new merged company. Physicians with large percentages of the company's covered patients will have to choose between closing their practice or accepting contracts without accompanying fee schedules, living with unilateral fee schedule changes, and participating in all plans and products of the merged company, whether reasonable or not.

Most importantly, both companies still maintain administrative control over determinations of medical necessity, while accepting no liability for that decision making control. The resulting incentive is for companies, particularly the dominant companies, to seek higher profits at the expense of access to care. Aetna U.S. Healthcare has repeatedly defined medical necessity in terms of the "least costly alternative" to care. The market power of this insurance company combined with the limited options for physicians to collectively negotiate reasonable medical policies poses a problem for patients, who rely on their physicians to make care decisions that place them first.

Significant "dislocations" of care

While merger activity in any industry creates concern about potential "dislocations," these concerns are particularly well-founded in the health industry where such dislocation interferes with continuity of care and jeopardizes the well-being of thousands of patients, particularly the 10% to 15% with the most serious conditions. Such dislocations have already occurred in past mergers as Aetna disrupted care by restricting networks and creating claims approval backlogs due to its inability to successfully combine the operations of the two companies. For this reason, we urge the Department to carefully scrutinize the proposed merger and take any steps necessary to assure that it does not impede continuity of care and timely claims processing.

The undersigned organizations oppose this merger, and urge you to review this transaction, and challenge its fundamentally anti-competitive purpose and effect.

Sincerely,

American Academy of Child & Adolescent Psychiatry
American Academy of Facial Plastic & Reconstructive Surgery
American Academy of Ophthalmology
American Academy of Otolaryngology - Head & Neck Surgery
American Association for Thoracic Surgery
American Association of Clinical Endocrinologists
American Association of Neurological Surgeons

American Association of Orthopaedic Surgeons
American College of Emergency Physicians
American College of Cardiology
American College of Obstetricians & Gynecologists
American College of Osteopathic Surgeons
American College of Physicians - American Society of Internal Medicine
American College of Rheumatology
American College of Surgeons
American Gastroenterological Association
American Medical Association
American Psychiatric Association
American Society for Gastrointestinal Endoscopy
American Society for Reproductive Medicine
American Society of Anesthesiologists
American Society of General Surgeons
American Society of Plastic & Reconstructive Surgeons
American Urological Association
College of American Pathologists
Congress of Neurological Surgeons
Medical Group Management Association
Renal Physicians Association
Society of Thoracic Surgeons