Investment Programs that Ensure that Californians Receive Benefits from Proposed Mergers

Author: Cindy Ehnes, Executive Vice President

The nation's largest health insurance companies are actively courting Congress and the Department of Justice as they attempt to make some large changes in the industry. Aetna wishes to acquire its smaller rival Humana; Anthem is courting Cigna. UnitedHealth Group, now the largest of the five, is on the sidelines looking at its options. Centene, which specializes in offering Medicaid coverage, plans to buy Health Net (headquartered in Los Angeles). The arguments made by the health care executives and pro-market forces pundits are that consolidation will produce value from better bargaining leverage over big hospitals and health systems, and the ability to benefit from large-scale analytic systems.

But as insurers grow larger, how will this impact health systems and physicians, particularly those that serve our most vulnerable safety net populations? How will mergers impact a heralded movement to better coordinated care and value-based payments?

As a former regulator once charged with protecting the welfare of ordinary Californians and their providers, I believe that regulators must strongly scrutinize these proposed benefits and ensure that ordinary Californians and the hospitals and physicians that heal them will see tangible benefits of mega-mergers. Since, however, I am no longer a regulator but now an adviser to health systems and health entities, I further argue that merger conditions should actively promote the safety net health care infrastructure and the ability of the delegated, coordinated care model to successfully provide care to Californians. There are proposals currently being made for merger conditions that warrant the serious consideration of policymakers and regulators.

Two programs that grew out of the 2004 and 2005 "mega mergers" -- United Healthcare's purchase of PacifiCare and Anthem's purchase of Blue Cross of America -- serve to illustrate the possibility of real, sustainable benefits to the California health care safety net system. Those two programs were created to ensure that California's rural and safety net health infrastructure received some of the benefits of these mergers. I highlight these programs to illustrate the opportunity to condition those consolidations on measurable benefits that are pro-consumer, pro-provider, pro-safety net commitments.

A bit of background on the law relating to health plan mergers and acquisitions: If a not-for-profit entity is converting to a for-profit as Blue Cross did in 1996, or if a for-profit entity is acquiring a not-for-profit, the regulator enjoys the broadest legal authority to either deny the merger or acquisition outright, or to condition it. However, in instances such as these most recent acquisition proposals, if a for-profit entity is buying another for-profit entity, regulatory authority is much more limited.

For the California Department of Justice, the inquiry regards potential anticompetitive effects. For the regulator, in California likely both the California Department of Managed Health Care and the Department of Insurance, the issue is more along the lines of: Will the emerging company be the same (or better than) the existing company? This allows latitude in scrutinizing current compliance with a strong lens, to shine light on whether current operational practices are in conformity with the law and whether the combined entity will continue to be compliant.

These are perhaps the technical parameters of a traditional scope of review. Regulators can get to this limited scope of review and be praised by pro-business interests as not over-regulating and strangling competition. But, I would argue that more is owed to the California public. Regulatory approval can also require specific targeted initiatives or investments to improve health care quality and benefits for Californians. These additional benefits can be realized through the use of conditions on the transaction and resulting company. These conditions are outlined in formal requirements, or negotiated "undertakings" are added to any additional provisions adopted between the companies and the regulatory entities.

The first undertaking I wish to highlight is the 2004 Anthem *Investment in a Healthy California Program,* formed as a result of the acquisition of Blue Cross of California in 2004. The second is United Healthcare's *The California Health Care Investment Program*, resulting from the acquisition of PacifiCare Health Systems by UnitedHealth. In each instance, both surviving companies, Anthem Blue Cross and United Healthcare, were required to put millions of dollars to work from their investment portfolios to provide meaningful social and economic benefits to rural, underserved, low-income and underinsured communities.

The purpose of both programs was and continues to be to provide access to capital through a dedicated investment portfolio for health care entities providing services to this segment of the California healthcare market. A mix of safety net health care entities, they must be geographically representative of all areas of the state. However, the use of investment funds was conditioned on a requirement that the investments generate a reasonably competitive rate of return and that the preservation of capital invested remained controlling features, in order to distinguish it from a grant program. Both programs are guided by an engaged and collaborative cadre of industry, state and investment professionals as well as representatives of associations and California health care entities.

The goals of both investment programs were to provide to safety net and critical access health care entities:

- A more cost effective financing option than would normally be available in the marketplace
- A lower cost of funds than would be available in the marketplace
- Flexibility in design of maturity and term structures - with 100% loan-to-value financing.
- Access to institutional investment pricing, research and support
- Addition of credit enhancement and or insurance, as desired or needed

To highlight one of the fund's contributions to the California health care infrastructure, the United California Healthcare Investment fund has completed investments of approximately $300 Million since its operational start in 2007:

- Twelve clinic investments
- Twenty-one rural hospital investments
- Five behavioral healthcare investments
- One rural skilled nursing facility one urban senior adult day health care center
- One urban hospital
- Eleven critical access hospitals as part of EHR/HIT financing

As of Fall 2015, the United Fund reports estimated interest cost savings of over $16.5 million, awards of $8 million in grant funds to pay financing costs and $590,000 of rebates to critical access hospitals for repayment. This is in addition to $50 million granted post-merger for charitable activities, including technology projects for safety net providers. This also includes a Small Issuance Program targeting smaller entities' needs for capital access.

The 10-year success of these two low-cost bond financing programs for California's safety net and critical access healthcare facilities illustrates how merger undertakings can shape a win-win outcome for both California consumers and health plans, which have a vested interest in the long-term health and viability of California's healthcare infrastructure. There are proposals for merger conditions being shaped right now for the consideration of policymakers and regulators that warrant serious consideration of how to shape the future of health care delivery in California. Those who have ideas for infrastructure support should communicate those to policymakers while there is opportunity for consideration.

At COPE Health Solutions, we are passionate about the ability of safety net health systems and providers to successfully and sustainably achieve their missions of providing outstanding care to vulnerable Californians. We invite you to connect with us to discuss what strategies are needed to compete and remain viable in a rapidly changing and consolidating payer environment.

For more information, please contact Cindy Ehnes at cehnes@copehealthsolutions.org