FAMILIESUSA
THE VOICE FOR HEALTH CARE CONSUMERS

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TO: Peter J. Mucchetti, Ryan Kantor, Scott Fitzgerald
Department of Justice, Antitrust Division
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Washington, DC 20530

Families USA is non-profit, nonpartisan organization dedicated to the achievement of high-quality, affordable health coverage and care for all. While we take no position on the proposed health insurance mergers currently under consideration by the Department of Justice at this time, we urge the Department to carefully scrutinize the mergers to assess their impact on consumers' health care costs and access to services. Specifically, we respectfully submit the following list of questions and hope the Department will consider them when determining a course of action on proposed health insurance mergers. Should you have any questions or need further information, please contact Joe Ditre, Director of Enterprise and Innovation, at jditre@familiesusa.org and Claire McAndrew, Private Insurance Program Director, at cmcandrew@familiesusa.org.

1. **Choice of plans and carriers**:
   How will the merger affect the entry of new insurers in each geographic area? Are new entrants likely to be financially viable? Please consider this in light of the fact that federal loans for CO-OP plans are no longer available. What impact, if any, will mergers have on the health insurance marketplaces created under the Affordable Care Act in terms of the number of carriers offering plans and the types of plans offered?
2. **Effect on premiums in each market:**
   How will the merger affect premium prices for individual insurance on the marketplace, small group insurance, large group insurance, and/or Medicare Advantage? In considering this, please keep the following factors in mind:
   a. Medical loss ratios are a helpful tool in the individual and small group markets, but they do not prevent all unreasonable price increases: If insurers increase premiums, they can also increase the dollar amount they retain for administration and profit. Are the merged insurers likely to increase both premiums and profits?
   b. Rate review at the state level can stop unreasonable price increases in the individual and small group markets, provided state law provides this authority. But will a merger create entities that are too powerful for regulators to effectively oversee? How will the proposed merger affect states that do not now review and reject unreasonable premium prices?
   c. What will mitigate against price increases in the large group market, since large group insurance is not subject to rate review requirements?
   d. Prices for Medicare Advantage plans are set through bids. If bids are higher than a federal benchmark, enrollees pay the difference in premium prices; if bids are lower than the benchmark, the federal government keeps part of the money and

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beneficiaries may also get supplemental benefits. Will a merger of Medicare Advantage plan sponsors likely increase costs to the federal government, increase costs to beneficiaries, or result in a reduction in supplemental benefits to enrollees?

3. **Savings to the consumer:**
   What portion, if any, of projected savings from each of these mergers will actually return to plan enrollees in the form of lower average premiums, lower out-of-pocket costs, or increased benefits or coverage?
   a. In determining the impact of these mergers on premium prices, what information can existing data about health plan premiums provide? Can data on premium prices for carriers that have strong negotiating power with providers currently indicate whether lower reimbursement rates to providers result in lower premiums for consumers?
   b. What evidence do previous health insurance mergers provide about the likelihood that consumers will directly benefit from any merger efficiencies? Can carriers assure that consumers will benefit from efficiencies?
4. **Access to providers:**
   What are the possible effects of these mergers on access to health care providers? Please especially consider whether they could cause a diminution of access to in-network providers that have not generally had strong negotiating power with insurers and to which consumers often lack access, such as: outpatient mental health providers, pediatric specialists, and hospitals and other providers located in low-income communities.
5. **Post-merger conduct remedies:**
   Will the Department of Justice impose post-merger conduct remedies should either merger be approved and result in higher average premiums by plan type? Reduced benefits or coverage by plan type? Reduced number or breadth of provider networks? Blocked market entry?
6. **Consumer protections in a divestiture:**
   If divestitures are sought as a remedy, how will consumers be protected in the divestiture process? Will consumers have to leave their current plans? Will consumers be able to come back into those divested plans if they choose, and if so, how does this ensure that the merging (divested) plan does not have too much power in the market after the merger?
7. **Future health insurance consumer protections:**
   How will the mergers affect future health insurance regulation? State and federal regulators continue to work on rules implementing the Affordable Care Act, as well as other improvements to consumer protections. Will the mergers create entities that are too powerful to regulate?
8. **Public input:**
   What is the process for currently insured consumers to comment or express any concerns to the Department of Justice about the proposed mergers? How will they know that any comment channels are available to them?