

March 22, 2016

VIA ELECTRONIC MAIL

James C. Boll
Hearing Officer and Chief Legal Counsel
Office of the Commissioner of Insurance State of Wisconsin
GEF—III, Second Floor
125 South Webster Street
Madison, Wisconsin 53703-3474

Re: In Re the Acquisition of Control by Aetna Inc. of Humana Insurance Company, HumanaDental Insurance Company, Humana Wisconsin Health Organization Insurance Corporation and Independent Care Health Plan, insurers and health maintenance organizations controlled by Humana Inc. and domiciled in the State of Wisconsin (“the Domestic Insurers”)

Dear Judge Boll:

I am writing on behalf of Citizen Action of Wisconsin and SEIU Healthcare Wisconsin to respond to Aetna Inc. (“Aetna”) and Humana Inc.’s (“Humana”) letter dated March 21, 2016, in opposition to our request for intervenor status.¹ Aetna and Humana rely on *Fox v. Wis. Dept. of Health & Soc. Servs.* in stating that a petitioner seeking intervenor status must meet a two prong test: (1) that the decision of the agency will directly cause injury to the interest of the petitioner, and (2) that this interest is recognized by law. *Fox v. Wis. Dept. of Health & Soc. Servs.*, 112 Wis. 2d 514, 524 (1983). However, *Fox* explicitly states that the two prong test is “for determining whether parties seeking to **challenge an administrative rule** have standing.” *Id.* (emphasis added). The petitioners are not seeking to challenge an administrative rule, but rather to participate as an intervenor party for the limited purposes of protecting their right to raise concerns on the impact of the merger on the market and Wisconsin consumers in the March 30, 2016 hearing.

Even if *Fox* applies, petitioners can readily meet both prongs of this test. First, the petitioners are local consumer groups that both are made up of individuals who purchase insurance in Wisconsin, including that offered by Aetna and Humana, and represent consumers who purchase insurance in Wisconsin. Their interest is in ensuring a continuing competitive landscape in Wisconsin insurance markets. Wisconsin is already one of the most expensive states in the country for health insurance. Increased consolidation leads to higher premiums and other competitive concerns. As detailed in the March 21,

¹ Although the original filing was solely on behalf of Citizen Action and SEIU healthcare Wisconsin, many of the state’s and nation’s most important consumer protection groups and unions have concerns over this deal, including the groups that signed on to our March 21, 2016 letter addressed to Commissioner Ted Nickel: Consumer Action, Consumers Union, Citizen Action of Wisconsin, SEIU Healthcare Wisconsin, Consumer Federation of America, US PIRG, WISPIRG, Wisconsin Jobs Now, Coalition of Wisconsin Aging Groups, Wisconsin AFL CIO, ABC for Health, Wisconsin Federation of Nurses and Health Professionals, American Federation of State, County and Municipal Employees (AFSCME), Wisconsin Chapter of National Association of Social Workers, Wisconsin 9to5 Association of Working Women, Wisconsin Farmers Union, National Alliance on Mental Illness Wisconsin.

2016, letter on behalf of numerous consumer groups addressed to Commissioner Ted Nickel, if the merger moves forward as contemplated, Wisconsin health insurance customers, including petitioners, have a real and immediate risk of suffering from increased monthly premiums, reduced quality of care, reduced access, diminished innovation, and reduced choice. This risk is not “conjectural” or “hypothetical,” but based on documented studies that unequivocally demonstrate that mergers lead to higher premiums and less choice. *E.g.*, Leemore Dafny *et al.*, *Paying a Premium on Your Premium? Consolidation in the US Health Insurance Industry*, 102 AM. ECON. REV. 1161 (2012). These interests are significantly differentiated from the interests given in the *Blue Cross & Blue Shield* case cited by Aetna and Humana. Those interests concerned potential grant money from funds made available through the results of the proceeding. *Application for Conversion of Blue Cross & Blue Shield United of Wisconsin*, Case No. 99-C26038 (OCI Nov. 29, 1999) (Order).

Second, the petitioners have interests that *are* recognized by law. The Commissioner is tasked with determining whether “the proposed merger would be contrary to the law or to the **interests of the insureds** of any participating domestic corporation or the **Wisconsin insureds** of any participating nondomestic corporation.” See W.R.S. § 611.73(3)(A) (emphasis added). These consumer groups and unions represent thousands of insured individuals and entities that purchase health insurance. The Commissioner’s oversight is also governed by a competition standard which states, in part, that “[t]he commissioner may approve the acquisition if the **public** benefits of the acquisition exceed the **public** benefits which would arise from not lessening competition.” Ins 40.025(4)(c) (emphasis added). The petitioners are the public and the insureds. The petitioners request intervenor status to ensure that their statutorily recognized interests are protected and that information regarding their interests is thoroughly examined. As groups both representing and comprised of Wisconsin insureds, they are the best positioned parties to protect this interest.²

The failure of the petitioners to meet the second prong in the *Blue Cross & Blue Shield* case, as explained by Aetna and Humana, was related to their inability to state a persuasive substantial interest. However, as described above, Wisconsin consumers are “in immediate danger of sustaining some direct injury.” *Fox*, 112 Wis. 2d at 525. If this merger is approved they may face substantially higher premiums and less access and choice. Furthermore, granting the petitioners intervenor status would not lead to the parade of horrors outlined in the *Blue Cross & Blue Shield* order. Petitioners seek intervenor status for the limited purposes of posing the stated questions to the parties, asking any necessary follow-up questions based on the completeness of the parties’ answers, and to protect their right to raise the concerns outlined in the March 21, 2016 consumer letter at the March 30, 2016 Class 1 hearing.

Based on the foregoing, Petitioners respectfully ask you to grant intervenor status. We thank you for your consideration of this matter.

Sincerely,

David A. Balto

² Along with consumer groups, we have participated in assisting insurance commission review in California, Delaware, Illinois, Ohio, Virginia, and Florida. We have substantial expertise in the interests of consumers in this merger.