American Hospital Association

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April 10, 2007

Thomas O. Barnett
Assistant Attorney General for Antitrust
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear General Barnett:

The American Hospital Association, which represents nearly 5,000 hospitals, health systems and other health care organizations, as well as 37,000 individual members, is writing to encourage the Antitrust Division (Division) to investigate the proposed merger of UnitedHealth Group (United) and Sierra Health Services, Inc. (Sierra). The proposed merger raises significant competitive concerns. Among them: It would bring additional consolidation to an already highly concentrated industry and would increase the market share held by an already substantial payer.

Sierra (Health Plan of Nevada) is by far the largest Health Maintenance Organization (HMO) in Nevada, selling commercial, Medicare, and Medicaid HMO services as well as PPO plans.[1] According to data from the Nevada State Health Division, which reports data on HMO enrollment by plan type (*e.g.*, Medicare, Medicaid, and commercial), Sierra represents more than 50 percent of the HMO enrollment in the state and comparable or higher shares in more localized areas, particularly Clarke County, the home of Las Vegas. Sierra has a substantial share of PPO-covered lives in the state as well. United, through its recent acquisition of Pacificare, is one of a relatively few managed care plans in the state and has a presence in several of the counties in which Sierra operates.

The state data also show that both commercial and managed government plans could be hurt by the merger, because, as the attached charts show, Sierra and United provide both types of plans and each represents large numbers of enrollees in a still-developing managed care marketplace.

More importantly, the Nevada state data show that plans other than Sierra and United have essentially been static or declining in their HMO growth between 2005 and 2006. In contrast, both United (Pacificare) and Sierra experienced growth of about 10 percent.[2] These data suggest that the merger will eliminate a potential competitor in the marketplace, and that its competitive significance could be understated by a static share measure. Competition among payers is especially important for consumers and providers, including hospitals, in a state in which managed care penetration is relatively low.

The Division considers a variety of theories of competitive harm and examines the effects on the customers of the merging parties when it undertakes an investigation. In this instance, we believe it is particularly important that consideration be given to *all* potentially affected consumers: enrollees, employers, hospitals, and physicians. In addition, we strongly believe that the relevant competitive theories should consider single-firm conduct (*e.g.*, unilateral effects) and should consider both price and non-price effects on all consumers. The health care field has been seeking innovative ways to improve quality and accountability, for example, and a competitive market on both the payer and provider side is essential to achieving this goal.

As the Division has stated repeatedly, if health plan mergers create or enhance monopsony power, the result is reimbursement to hospitals and physicians that is below competitive levels. Monopsony power, and the creation or enhancement of dominant firms in the health care marketplace, thus generate considerable risk to the evolution of innovation, particularly if the merging health plans are in a position to reduce reimbursements to levels that starve hospitals and other providers of the capital needed to fund such innovations. Even beyond reimbursement levels, creation of dominant firms can reduce the ability of smaller plans and all hospitals to maintain alternative and competing arrangements that achieve quality or other important initiatives that improve care for patients.[3] Consolidation on the payer side has the potential to create "must-have" payers who represent so large a share of any provider's business that the provider has no alternative but to adopt the programs and initiatives of that payer to the exclusion of others. This is the type of market power concern that was addressed recently in hearings before the Division on single-firm conduct in a variety of industries. And, as noted in the Division's policy statements, there is the risk of reduced flexibility for employers and customers, as well as increased premiums.

We urge the Division to consider single-firm conduct and potential harm for another reason: The expanded market share that Sierra will achieve in Nevada markets (for the reasons set out above) likely understate substantially the competitive effects of the transaction. United (Pacificare) appears well-positioned to expand its operations and provide substantial competition and has been doing so. Other payers appear less vigorous.[4]

In addition to the effects on local consumers, we note that in several other states Sierra is a major participant in the provision of Prescription Drug Plans through Medicare Part D, which may merit parallel investigation into potential competitive effects.

Finally, we understand that in prior matters where a merger raised significant concerns, the Division has considered divestiture as a remedy. We urge you to consider the efficacy of past divestitures and whether divestiture would truly be an effective solution in this case, given the combined large share and the possible elimination of a particularly likely competitor. In this instance, it may be more appropriate for the Division to block the proposed merger to protect competition.

To achieve the hospital field's goal of improving quality while ensuring cost-effective health care delivery, robust competition among payers is essential.

If we can provide further assistance, please contact Melinda Hatton at (202)626-2336 or mhatton@aha.org.

Sincerely,

Rick Pollack
Executive Vice President

Share of HMO and PPO Enrollees by Plan

Source: Nevada HMO Industry Profile Fourth Quarter Report, Oct. 1 through Dec. 31, 2006, Table 1

	Enrollment												
	HMO												
Managed Care Company	**Commercial**	**% Share of Commercial**	**Medicare**	**% Share of Medicare**	**Medicaid**	**% Share of Medicaid**	**NV Check-up**	**% Share of NV Check-up**	**HMO Total**	**PPO**	**% Share of PPO**	**Sum of HMO and PPO**	**% Share of HMO and PPO Combined**
Totals	***409,867***		***88,642***		***44,331***		***16,181***		***559,021***	***359,571***		***918,592***	
Aetna Health, Inc.	9,108	*2.2%*							9,108			9,108	*1.0%*
Health Plan of Nevada (Subsidiary of Sierra Health Services)	279,679	*68.2%*	56,683	*63.9%*	44,331	*100.0%*	16,181	*100.0%*	396,874	33,023	9.2%	429,897	*46.8%*
HMO Colorado, dba HMO Nevada (Anthem subsidiary)	11,365	*2.8%*							11,365	220,606	61.4%	231,971	*25.3%*
Hometown Health	23,281	*5.7%*	4,750	*5.4%*					28,031	75,908	21.1%	103,939	*11.3%*
NevadaCare, Inc. (Subsidiary of I/MX Companies)	10,827	*2.6%*							10,827	10,044	2.8%	20,871	*2.3%*
PacifiCare of Nevada, Inc. (United Health Group)	48,196	*11.8%*	27,209	*30.7%*					75,405	4,260	1.2%	79,665	*8.7%*
Saint Mary's HealthFirst	27,411	*6.7%*							27,411	15,730	4.4%	43,141	*4.7%*

HMO Commercial Enrollment by Geographic Area, Dec. 31, 2006

Source: Nevada HMO Industry Profile Fourth Quarter Report, Oct. 1 through Dec. 31, 2006, Table 2

Health Plan	**Clark County**	**% Share of Clark County**	**Washoe County**	**% Share of Washoe County**	**Rural Counties**	**% Share of Rural Counties**	**Total Commercial**	**% Share of Total Commercial**
Totals	***334,748***		***53,755***		***21,364***		***409,867***	
Aetna, Inc.	8,296	2.48%	700	1.30%	112	0.52%	9,108	2.22%
Health Plan of Nevada (Subsidiary of Sierra Health Services)	267,274	79.84%	7,680	14.29%	4,725	22.12%	279,679	68.24%
HMO Colorado, dba HMO Nevada (Anthem subsidiary)	1,297	0.39%	5,399	10.04%	4,669	21.85%	11,365	2.77%
Hometown Health	0	0.00%	18,249	33.95%	5,032	23.55%	23,281	5.68%
NevadaCare, Inc. (Subsidiary of I/MX Companies)	10,639	3.18%	121	0.23%	67	0.31%	10,827	2.64%
PacifiCare of Nevada, Inc. (United Health Group)	47,242	14.11%	53	0.10%	901	4.22%	48,196	11.76%
Saint Mary's HealthFirst	0	0.00%	21,553	40.09%	5,858	27.42%	27,411	6.69%
Market Penetration	21.5%		15.6%		8.2%		18.9%	

HMO Medicare Enrollment by Geographic Area, Dec. 31, 2006

Source: Nevada HMO Industry Profile Fourth Quarter Report, Oct. 1 through Dec. 31, 2006, Table 5

Health Plan	Clark County	% Share of Clark County	Washoe County	% Share of Washoe County	Rural Counties	% Share of Rural Counties	Total Commercial	% Share of Total Commercial
Totals	***73,499***		***9,937***		***5,206***		***88,642***	
Aetna, Inc.								
Health Plan of Nevada (Subsidiary of Sierra Health Services)	46,788	63.66%	5,187	52.20%	4,708	90.43%	56,683	63.95%
HMO Colorado, dba HMO Nevada (Anthem subsidiary)								
Hometown Health			4,750	47.80%			4,750	5.36%
NevadaCare, Inc. (Subsidiary of I/MX Companies)								
PacifiCare of Nevada, Inc. (United Health Group)	26,711	36.34%			498	9.57%	27,209	30.70%
Saint Mary's HealthFirst								
Market Penetration	38.4%		24.6%		11.8%		32.2%	

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1. United estimates are based on Pacificare enrollment numbers listed in the Nevada report.

2. Contracts between providers and plans and employers and plans involve a number of different dimensions and robust competition provides important competitive constraints on the ability of employers and providers to make use of alternatives

3. Sierra also has an affiliate, Southwest Medical Associates, and we assume that the Division will consider any competitive implications from this affiliation on the possible competitive effects of the transaction.

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