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Humana

August 20, 2018

Chairman Joseph J. Simons
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave. NW
Suite CC-5610 (Annex C)
Washington, DC 20580
Submitted electronically via regulations.gov

RE: Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201

Dear Chairman Simons:

This letter is in response to the Federal Trade Commission's request for comments regarding the Commission's planned "Hearings on Competition and Consumer Protection in the 21st Century." Humana is pleased that the FTC will be examining "whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy" and we provide more details on our concerns about competition in the health care market in more detail below.¹

Humana Inc., headquartered in Louisville, Kentucky, is a leading health care company that offers a wide range of insurance products and health and wellness services that incorporate an integrated approach to lifelong well-being. As one of the nation's top contractors for Medicare Advantage (MA) with approximately 3.29 million members and Medicare Prescription Drug Plans (PDPs) with approximately 5.29 million members, we are distinguished by our long-standing, comprehensive commitment to Medicare beneficiaries across the United States. These beneficiaries – a large proportion of whom depend on the Medicare Advantage program as their safety net and many in underserved areas – receive integrated, coordinated, quality, and affordable care through our plans.

¹ FTC Announces Hearings On Competition and Consumer Protection in the 21st Century
<https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>

Specifically, we urge the Commission to continue monitoring the impact of consolidation in the dialysis provider market on patient access and choice, as well as on costs to the health care system. The dialysis industry has seen notable national consolidation over the past decade, with the two leading large dialysis organizations (LDOs) now providing dialysis to more than 70% of patients in the United States. The FTC has been active in evaluating dialysis facility mergers, and we encourage the Commission, as part of their stated focus on consumer protection and competition, to continue to ensure competition exists in this market.

As always, we value this opportunity to provide comments and are pleased to answer any questions you may have with respect to the technical comments below.

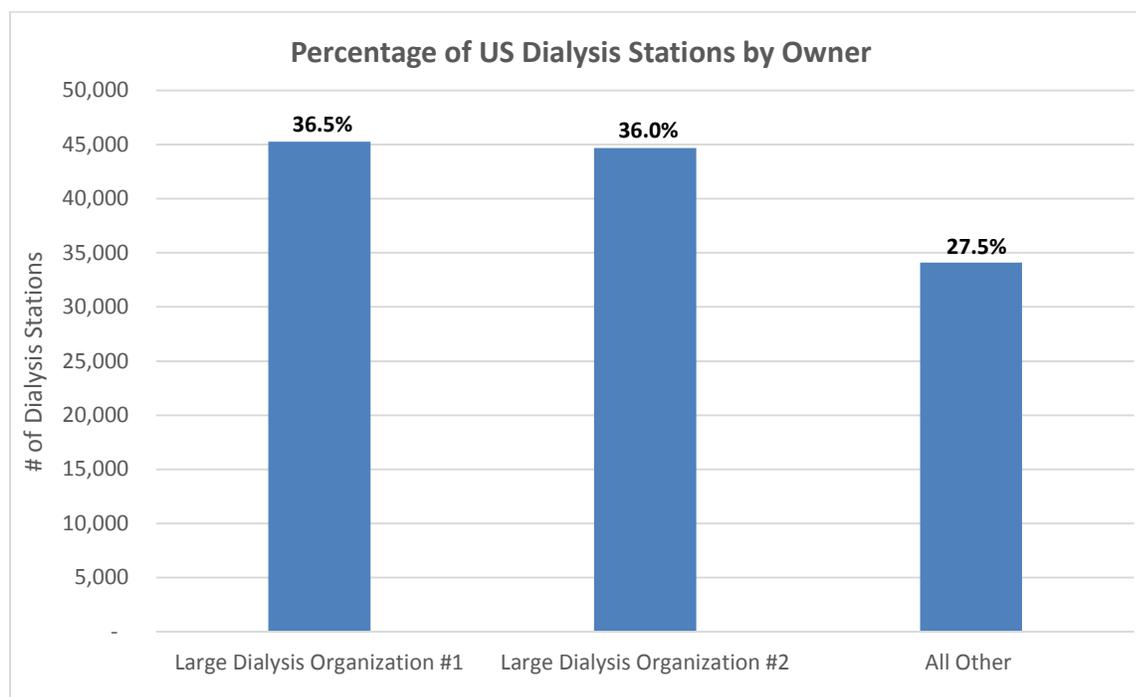
Sincerely,



Mark A. Newsom
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Evaluating competition in the dialysis market

More than 444,000 individuals underwent dialysis in the United States in 2016 for the treatment of end stage renal disease (ESRD) with more than 392,000 of these ESRD patients covered under fee-for-service (FFS) Medicare.² Medicare spends nearly \$88,000 per FFS beneficiary with ESRD per year, totaling nearly \$34 billion and accounting for 7.2% of the costs of overall Medicare paid claims.³ Over the past two decades, the dialysis provider industry has undergone rapid consolidation, with the two large dialysis organizations (LDOs) now operating 72.5% of all dialysis stations in the United States as a result of a number of mergers and acquisitions.⁴ These two LDOs now operate more than 3,900 facility locations across the country, approximately the same number of Best Buy, Target, and Publix Super Market stores combined.⁵



Source: Dialysis Facility Compare⁶

Previous research on dialysis market concentration using the Herfindahl-Hirschman Index (HHI), a commonly used metric of market concentration, has also found high levels of concentration in the dialysis facility market. The FTC and the Department of Justice consider markets with a HHI

² United States Renal Data System. *2017 USRDS annual data report: Epidemiology of kidney disease in the United States*. National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Bethesda, MD, 2017; MedPAC March 2018 Report to the Congress, Chapter 6

³ USRDS 2017 annual data report reference tables

⁴ Dialysis Facility Compare, available on line at <https://data.medicare.gov/Dialysis-Facility-Compare/Dialysis-Facility-Compare-Listing-by-Facility/23ew-n7w9>.

⁵ See <https://catalyst.nejm.org/the-big-business-of-dialysis-care/>

⁶ Medicare Dialysis Facility Compare, updated on July 25, 2018, downloaded from <https://data.medicare.gov/data/dialysis-facility-compare>.

greater than 0.25 (HHI score of 2500 or more) to be highly concentrated.⁷ A recently published study on dialysis market concentration found that the average HHI across all hospital service areas (HSAs) was 0.46, indicating a highly concentrated market. This research compared market concentration for dialysis from 2001 to 2011 and found that 85% of dialysis patients were living in an area with a HHI of greater than 0.25 and that “nearly one half of the HSAs in the United States where markets became more concentrated over the decade had only one uniquely owned provider in 2011.”⁸ As the study authors note, dialysis patients living in areas that are highly concentrated or which become more highly concentrated are potentially at risk for the cost and quality consequences that are often associated with decreased competition within a market.

Studies have shown that the likelihood of a county with two dialysis treatment facilities having both of those facilities affiliated with the same corporate parent entity has increased over time and that the markets experiencing the most demand for dialysis services are the markets that have grown more concentrated more quickly.⁹ We analyzed the composition of the dialysis Medicare market by hospital service area (HSA) using the Center for Medicare and Medicaid Service’s (CMS) Dialysis Facility Compare data. An HSA is a collection of zip codes whose residents receive most of their hospitalizations from that area. On average, patients in a given HSA have access to just three different dialysis facilities, and 72% of dialysis stations are run by the two large LDOs. Furthermore, in nearly 50% of HSAs, there is only one dialysis facility available to patients.¹⁰

While patient access to dialysis and the capacity to respond to the increased demand for dialysis has thus far remained functionally adequate, the high concentration in this market raises concerns about impacts on competition, quality of care, innovation, and costs. While there have been some marginal improvements in quality of care and clinical outcomes for patients with ESRD, such as decreased hospitalizations and readmission rates, Medicare spending on beneficiaries with ESRD has doubled since 2003.¹¹ The FTC has been active recently in challenging and, in some cases, preventing anticompetitive mergers in the health care market, particularly with regard to hospital mergers and acquisitions.¹² We applaud the FTC for these important actions to maintain and promote competitive local health care markets.

⁷ See <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c>

⁸ See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5338708/>

⁹ See <https://www.ftc.gov/sites/default/files/documents/reports/profit-status-amp-industry-evolution-health-care-markets-evidence-dialysis-industry/wp314.pdf>

¹⁰ Dialysis Facility Compare. Note: We mapped zip codes of dialysis facilities in the CMS dataset to HSAs using a 2016 zip code to HAS crosswalk file published by the Dartmouth Atlas of Health Care. This file is available online at: <http://www.dartmouthatlas.org/tools/downloads.aspx?tab=39>

¹¹ USRDS 2017 annual data report

¹² Advocate Health Care Network, FTC File No. 141 0231 (2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0231/advocate-health-care-network-advocate-health-hospitals>; Penn State Hershey Medical Center, FTC File No. 141 0191 (2016), <https://www.ftc.gov/enforcement/cases-proceedings/141-0191-d09368/penn-state-hershey-medical-center-ftc-commonwealth>.

Humana Recommendations

As the FTC has previously stated, competition has played an important and profound role in the health care market but “imperfections in the health care system have impeded competition from reaching its full potential.”¹³ Approximately 85% of persons utilizing dialysis services receive coverage from Medicare, compared to the overall population base rate of about 37% for Medicare.¹⁴ Given the significant influence of the Medicare program on the dialysis market, it is very plausible that Medicare payment and benefits regulations may have unintended consequences on the competitive health of the dialysis market. Accordingly, we recommend that the FTC devote some time to the interplay between Medicare policies and concentration in the dialysis market for the next set of public hearings on competition and consumer protection enforcement law, enforcement priorities, and policy. Specifically, we recommend examining the following:

1. How can Medicare policy incentivize new market entrants, including in the home dialysis market?
2. Do Medicare policies encourage market exits, especially from non-profit health systems?
3. What role does the Medicare Advantage network adequacy policy play with respect to contracting competition and increasing dialysis costs in that part of the Medicare program?

¹³ See <https://www.ftc.gov/sites/default/files/documents/reports/improving-health-care-dose-competition-report-federal-trade-commission-and-department-justice/healthcarerptexecsum.pdf>

¹⁴ See 2017 USRDS Annual Data Report at <https://www.usrds.org/reference.aspx> and Health Insurance in the United States: 2016 – Tables available at <https://www.census.gov/data/tables/2017/demo/health-insurance/p60-260.html>