



BEFORE THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION STATE OF MISSOURI

DIVISION OF INSURANCE COMPANY REGULATION, PETITIONER, v. AETNA INC. and HUMANA INC., RESPONDENTS. Case No. 160325191C

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Came on for consideration the preacquisition notification filed on Form E to 20 CSR 200-11.101 by Aetna Inc. on October 15, 2015, proposing to acquire Humana Inc. and its subsidiaries.

After full consideration of the same and after a hearing at which extensive evidence was presented by Aetna Inc. and the Division of Insurance Company Regulation (the "Division"), I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department"), pursuant to section 382.095.5, RSMo,<sup>1</sup> enter the following Findings of Fact, Conclusions of Law, and Order:

I. Findings of Fact

A. Preliminary Facts

- 1. Aetna Inc. controls the following 13 subsidiaries licensed to write insurance business in the state of Missouri: Aetna Better Health of Missouri LLC (NAIC #95318), Aetna Dental Inc. (NAIC #95910), Aetna Health and Life Insurance Company (NAIC #78700),

<sup>1</sup> All references to section 382.095 of the Revised Statutes of Missouri, unless otherwise noted, are to the section as amended by House Bill 50 (2015), effective August 28, 2015.

Aetna Health Inc. (NAIC #95109), Aetna Health Insurance Company (NAIC #72052), Aetna Insurance Company of Connecticut (NAIC #36153), Aetna Life Insurance Company (NAIC #60054), American Continental Insurance Company (NAIC #12321), Continental Life Insurance Company of Brentwood, Tennessee (NAIC #68500), Coventry Health and Life Insurance Company (NAIC #81973), Coventry Health Care of Kansas, Inc. (NAIC #95489), Coventry Health Care of Missouri, Inc. (NAIC #96377), and First Health Life & Health Insurance Company (NAIC #90328) (collectively with Aetna Inc., “Aetna”).<sup>2</sup>

2. Three subsidiaries controlled by Aetna Inc. are Missouri domestics: Aetna Better Health of Missouri LLC, Coventry Health and Life Insurance Company, and Coventry Health Care of Missouri, Inc.<sup>3</sup>
3. Aetna Inc. controls NAIC Group #1.<sup>4</sup>
4. Humana Inc. controls the following 10 subsidiaries licensed to write insurance business in the state of Missouri: Arcadian Health Plan, Inc. (NAIC #12151), CompBenefits Dental, Inc. (NAIC #11228), CompBenefits Insurance Company (NAIC #60984), The Dental Concern, Inc. (NAIC #54739), Emphesys Insurance Company (NAIC #88595), Humana Benefit Plan of Illinois, Inc. (NAIC #60052), Humana Health Plan, Inc. (NAIC #95885), Humana Insurance Company (NAIC #73288), HumanaDental Insurance Company (NAIC #70580), and Kanawha Insurance Company (NAIC #65110) (collectively with Humana Inc., “Humana”).<sup>5</sup>
5. Humana Inc. does not control any Missouri domestic insurance companies.<sup>6</sup>
6. Humana Inc. controls NAIC Group #119.<sup>7</sup>

#### B. Facts Related to Product Markets

7. Pursuant to Missouri law, “[i]n the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state....”<sup>8</sup>
8. The Health Annual Statement Blank for the year 2015 is an annual statement required to be filed by insurers doing business in this state.<sup>9</sup>

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<sup>2</sup> Exhibit 9; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

<sup>3</sup> Exhibit 9; Testimony of John Rehagen at 91:25 – 92:14; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

<sup>4</sup> Exhibit 9; Testimony of John Rehagen at 91:7-15; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

<sup>5</sup> Exhibit 10; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

<sup>6</sup> Exhibit 10; Testimony of John Rehagen at 95:21-23; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

<sup>7</sup> Exhibit 10; Testimony of John Rehagen at 95:10-14; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

<sup>8</sup> Section 382.095.4(3)(b), RSMo.

<sup>9</sup> Exhibit 15; Testimony of John Rehagen at 101:25-103:1; section 376.350.1, RSMo (2000); section 354.435, RSMo (Supp. 2013); 20 CSR 200-1.030(1).

9. The Life and A&H Annual Statement Blank for the year 2015 is an annual statement required to be filed by insurers doing business in this state.<sup>10</sup>
10. The Property & Casualty Annual Statement Blank for the year 2015 is an annual statement required to be filed by insurers doing business in this state.<sup>11</sup>
11. The Health Annual Statement Blank for the year 2015, Life and A&H Annual Statement Blank for the year 2015, and Property & Casualty Annual Statement Blank for the year 2015 each contain a page titled “Supplemental Health Care Exhibit – Part 2.”<sup>12</sup>
12. Insurers filling out the “Supplemental Health Care Exhibit – Part 2” page for Missouri report direct written premium on row 1.1 for 12 lines of business in columns 1-12, and a total for such columns in column 13.<sup>13</sup>
13. Insurers doing business in Missouri report direct written premium in the comprehensive individual health insurance line of business in row 1.1, column 1 of the “Supplemental Health Care Exhibit – Part 2” page.<sup>14</sup>
14. References to the “Comprehensive Individual” product market or line of business throughout these Findings of Fact, Conclusions of Law, and Order shall refer to the line of business in column 1 of the “Supplemental Health Care Exhibit – Part 2” page within the Health Annual Statement Blank for the year 2015, the Life and A&H Annual Statement Blank for the year 2015, and the Property & Casualty Annual Statement Blank for the year 2015.
15. Insurers doing business in Missouri report direct written premium in the comprehensive small group employer health insurance line of business in row 1.1, column 2 of the “Supplemental Health Care Exhibit – Part 2” page.<sup>15</sup>
16. References to the “Comprehensive Small Group” product market or line of business throughout these Findings of Fact, Conclusions of Law, and Order shall refer to the line of business in column 2 of the “Supplemental Health Care Exhibit – Part 2” page within the Health Annual Statement Blank for the year 2015, the Life and A&H Annual Statement Blank for the year 2015, and the Property & Casualty Annual Statement Blank for the year 2015.
17. The federal government provides Medicare Parts A and B, also known as Traditional Medicare.<sup>16</sup>

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<sup>10</sup> Exhibit 15; Testimony of John Rehagen at 103:7-12; section 376.350.1, RSMo (2000); 20 CSR 200-1.030(1).

<sup>11</sup> Testimony of John Rehagen at 103:7-12; section 379.105.1, RSMo (2000); 20 CSR 200-1.030(1).

<sup>12</sup> Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

<sup>13</sup> Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

<sup>14</sup> Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

<sup>15</sup> Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

<sup>16</sup> Exhibit 34, pg. 3.

18. Medicare Advantage (also known as Medicare+Choice) plans are Medicare Part C plans offered by private insurance companies in which individuals may choose to enroll in lieu of Medicare Parts A and/or B.<sup>17</sup>
19. Medicare Advantage plans typically offer greater benefits than Medicare Parts A and B, including more favorable deductibles and co-payments, dental benefits, prescription drug benefits, vision benefits, and wellness programs.<sup>18</sup>
20. The federal government recognizes and has promoted Medicare Advantage as a separate economic entity from Traditional Medicare.<sup>19</sup>
21. The health insurance industry has promoted Medicare Advantage as a separate economic entity.<sup>20</sup>
22. A newsletter, called Medicare Advantage News, is devoted to coverage of the Medicare Advantage market.<sup>21</sup>
23. Medicare Advantage is provided by private insurers, whereas Traditional Medicare is provided by the federal government.<sup>22</sup>
24. Medicare Advantage provides much broader coverage of enrollees' out-of-pocket costs than does Traditional Medicare.<sup>23</sup>
25. Medicare Advantage restricts enrollee choice of provider, whereas Traditional Medicare does not.<sup>24</sup>
26. Medicare Advantage plans compete with each other to set their reimbursement rates, subject to a government ceiling.<sup>25</sup>
27. Medicare Advantage plans use marketing to attract enrollees to their plans, whereas Traditional Medicare does not.<sup>26</sup>
28. The health care spending of those switching to Medicare Advantage plans from Traditional Medicare have total annual health care costs that are 45% lower than those in Traditional Medicare.<sup>27</sup>

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<sup>17</sup> Exhibit 34, pg. 3; Testimony of Angela Nelson at 61:14-21; 42 U.S.C. § 1395w-21(a).

<sup>18</sup> Testimony of Angela Nelson at 61:22-62:19.

<sup>19</sup> Exhibit 31, pp. 3-7; Exhibit 34, pp. 2, 4-6.

<sup>20</sup> Exhibits 32, 33.

<sup>21</sup> Exhibit 30.

<sup>22</sup> Exhibit 34, pg. 3; Exhibit C, ¶ 49.

<sup>23</sup> Exhibit 34, pg. 3; Exhibit K, pg. 12.

<sup>24</sup> Exhibit 34, pg. 3; Exhibit K, pg. 12.

<sup>25</sup> Exhibit 34, pg. 3.

<sup>26</sup> Exhibit 34, pg. 7.

<sup>27</sup> *Id.*, citing Brown et al., "How Does Risk Selection Respond to Risk Adjustment? New Evidence from the Medicare Advantage Program," 104 *American Economic Review* 3335-3364 (2014).

29. Switchers from Traditional Medicare to Medicare Advantage tend to be younger than the overall Medicare-eligible population.<sup>28</sup>
30. Between 3% and 4% of Medicare Advantage enrollees switch back to Traditional Medicare each year.<sup>29</sup>
31. Among the 3% of enrollees who switch back to FFS each year, the sickest enrollees are the ones most likely to switch back.<sup>30</sup>
32. To obtain the same benefit package as Medicare Advantage plans provide, Traditional Medicare enrollees must purchase a Part D Prescription Drug Plan and Medigap plan.<sup>31</sup>
33. The average premium for a Medicare Advantage plan which includes Part D coverage is \$38.56.<sup>32</sup>
34. The average Medigap premium is \$101.41.<sup>33</sup>
35. The average premium for a stand-alone Part D Prescription Drug plan is \$39.46.<sup>34</sup>
36. Both Traditional Medicare and Medicare Advantage enrollees must pay the Medicare Part B premium.<sup>35</sup>
37. The extent to which Medicare Advantage plans pass higher payments from the government through to enrollees is highly dependent on the extent of concentration in the Medicare Advantage market: the lower the concentration in the Medicare Advantage market, the greater the pass through to enrollees.<sup>36</sup>
38. When Medicare private fee-for-service plans exited the market, Medicare Advantage plans in the least competitive Medicare Advantage markets reduced their benefits by more than three times the benefit reductions Medicare Advantage plans imposed in the most competitive markets.<sup>37</sup>

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<sup>28</sup> Exhibit K, pg. 38.

<sup>29</sup> Exhibit 34, pg. 7.

<sup>30</sup> Exhibit 34, pg. 7, citing Brown et al., “New Evidence from the Medicare Advantage Program” (2014).

<sup>31</sup> Exhibit K, pg. 12; Exhibit C, ¶ 53; Exhibit 34, pg. 5.

<sup>32</sup> Exhibit K, pg. 12.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Exhibit C, ¶ 53.

<sup>36</sup> Exhibit 34, pg. 11, citing Brown et al, “New Evidence from the Medicare Advantage Program” (2014).

<sup>37</sup> Exhibit 34, pg. 11, citing Pelech, “Paying More for Less? Insurer Competition and Health Plan Generosity in the Medicare Advantage Program,” Ph.D thesis, Harvard University (2016).

39. The consumer surplus produced by Medicare Advantage plans has been shown to be 12 times greater in counties with four Medicare Advantage plans than in those with one plan.<sup>38</sup>
40. Only private insurers sell Medicare Advantage, and only the government sells Traditional Medicare.<sup>39</sup>
41. Agents or brokers are paid by Medicare Advantage carriers when they sell Medicare Advantage plans.<sup>40</sup>
42. Agents or brokers do not sell Traditional Medicare, and are not paid by Traditional Medicare.<sup>41</sup>
43. At its website Humana sells six different Medicare Advantage plans that include various levels of drug coverage. The premiums for those plans in zip code 64101 (Kansas City) are \$0, \$26.10, \$34.00, \$76.00, \$81.00, and \$118.00.<sup>42</sup>
44. To approximate the same benefits provided by a Medicare Advantage plan a Traditional Medicare enrollee would have to also purchase separate Part D coverage and a separate Medigap policy.<sup>43</sup>
45. At its website, Humana offers three prescription drug plans, at monthly premiums of \$18.40, \$24.80, and \$65.20.<sup>44</sup>
46. At its website Humana also offers eight Medicare Supplement plans, at monthly premiums ranging from \$62.74 to \$213.01.<sup>45</sup>
47. The low, average, and high priced Humana Part D and Medigap plans, along with the total someone choosing those plans would pay when the Medicare Part B premium is added in, is as follows:

	<u>Part D</u>	<u>Medigap</u>	<u>Part B</u>	<u>Total</u>
Low option	18.40	62.74	104.90	186.04
Average	24.80	92.44	104.90	222.14
High option	65.20	213.01	104.90	383.11

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<sup>38</sup> Exhibit 34, pg. 11, citing Town and Liu, “The Welfare Impact of Medicare HMOs,” 34 RAND Journal of Economics 719-36 (2003).

<sup>39</sup> Exhibit 34, pg. 3.

<sup>40</sup> Exhibit C, ¶ 51.

<sup>41</sup> Id.

<sup>42</sup> Exhibit 36. A 5% increase would raise the cost of five of those six plans by \$4.05 or less, and would raise the cost of even the highest-priced plan by less than \$6.00.

<sup>43</sup> Exhibit C, ¶¶ 49-51, 53; Exhibit K, ¶ 12.

<sup>44</sup> Exhibit 36.

<sup>45</sup> Id.

48. A 5% increase would raise the price of Humana’s Medicare Advantage plans by between \$0 (for its zero premium plan) to \$5.90 (for its \$118.00 monthly premium plan).<sup>46</sup>
49. Dr. McCarthy asserts that Traditional Medicare acts as a competitive constraint on Medicare Advantage plans.<sup>47</sup>
50. Dr. McCarthy neither quantifies the extent to which Traditional Medicare constrains Medicare Advantage nor explains how Traditional Medicare constraining Medicare Advantage would work in practice.<sup>48</sup>
51. Mr. Orszag concludes that there is no general relationship between Medicare Advantage competition and market outcomes in Missouri.<sup>49</sup>
52. Mr. Orszag’s conclusion is contradicted by Dr. Gruber’s analysis and the journal articles Dr. Gruber analyzes.<sup>50</sup>
53. Mr. Orszag’s conclusion that there is no general relationship between Medicare Advantage competition and market outcomes in Missouri is not supported by his data: his Fixed Effect Analysis shows that the number of competitors is associated with lower revenues at a statistically significant level.<sup>51</sup>
54. Mr. Orszag characterizes Dunn, Does Competition Among Medicare Advantage Plans Matter? (2009) as “consistent with substantial competition between MA and FFS Medicare.”
55. In fact the Dunn article states that “evidence of competition among MA insurers demonstrates that the relevant product market may be as narrow as MA insurance.”<sup>52</sup>
56. Each month, the Centers for Medicare & Medicaid Services (“CMS”) collect and make public enrollment data by plan and by county and contract data for all insurers doing Medicare Advantage business in the United States.<sup>53</sup>
57. CMS considers reporting enrollments of 10 or less in one plan in one county to violate the privacy laws of HIPAA, and therefore only reports enrollments of 11 or more.<sup>54</sup>
58. This public enrollment data and contract data was filtered and combined by the Division to calculate enrollment in each county by plan.<sup>55</sup>

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<sup>46</sup> Id.

<sup>47</sup> Exhibit C, ¶¶ 55, 57, 62.

<sup>48</sup> Id.

<sup>49</sup> Exhibit K, pg. 27.

<sup>50</sup> Exhibit 34, pp. 10-12.

<sup>51</sup> Exhibit K, pg. 27, row 1, column 4.

<sup>52</sup> Exhibit EE, pg. 4.

<sup>53</sup> Exhibit 5; Exhibit 19; Exhibit 20; Exhibit 35; Testimony of Angela Nelson at 63:24-64:12; Testimony of John Rehagen at 135:13-146:11.

<sup>54</sup> Exhibit 19, pg. 2; Testimony of John Rehagen at 138:8-19.

59. The filtered data was separated into individual Medicare Advantage plans, Special Needs Plans, and group Medicare Advantage plans by the Division.<sup>56</sup>
60. For individual Medicare Advantage plans and group Medicare Advantage plans, the Division calculated total statewide enrollment and market share, and enrollment and market share in each of Missouri’s 115 counties, for the parent organizations reporting non-zero enrollment.<sup>57</sup>
61. References to the “Individual Medicare Advantage” product markets throughout these Findings of Fact, Conclusions of Law, and Order shall refer to enrollment in individual Medicare Advantage plans, excluding Special Needs Plans and group Medicare Advantage plans, based on public data made available by CMS and analyzed by the Division.
62. References to the “Group Medicare Advantage” product markets throughout these Findings of Fact, Conclusions of Law, and Order shall refer to enrollment in group Medicare Advantage plans, excluding Special Needs Plans and individual Medicare Advantage plans, based on public data made available by CMS and analyzed by the Division.

#### C. Facts Related to Geographical Markets

63. The majority of Individual Medicare Advantage plans are offered on a county-by-county basis.<sup>58</sup>
64. Missouri residents may only enroll in Individual Medicare Advantage plans in the county where they reside.<sup>59</sup>
65. For purposes of these Findings of Fact, Conclusions of Law, Order, references to the counties of Missouri include the City of St. Louis.

#### D. Facts Related to the Prima Facie Case

66. Statewide, the four largest insurer groups, in terms of direct written premium for the Comprehensive Individual line of business used in the Supplemental Health Care Exhibit – Part 2 page of the annual statements filed by Life and A&H, Health, and Property & Casualty companies, hold a 91.02% share of the market.<sup>60</sup>

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<sup>55</sup> Exhibit 20; Exhibit 21; Exhibit 35; Testimony of John Rehagen at 139:5-143:25.

<sup>56</sup> Exhibit 20; Exhibit 21; Testimony of John Rehagen 144:5-18.

<sup>57</sup> Exhibit 20; Exhibit 21; Testimony of John Rehagen at 144:19-157:17.

<sup>58</sup> Exhibit 5; Exhibit 6; Testimony of Angela Nelson at 65:16-23; 42 C.F.R. § 422.2 (definition of “service area”); 42 C.F.R. § 422.4(a)(1).

<sup>59</sup> 42 C.F.R. § 422.2 (definition of “service area”); 42 C.F.R. § 422.50(a)(3)(i).

<sup>60</sup> Exhibit 17.

67. Statewide, Aetna holds a 36.88% market share in the Comprehensive Individual market.<sup>61</sup>
68. Statewide, Humana holds a 1.93% market share in the Comprehensive Individual market.<sup>62</sup>
69. Statewide, the four largest insurer groups, in terms of direct written premium for the Comprehensive Small Group line of business used in the Supplemental Health Care Exhibit – Part 2 page of the annual statements filed by Life and A&H, Health, and Property & Casualty companies, hold a 88.49% share of the market.<sup>63</sup>
70. Statewide, Aetna holds a 12.14% market share in the Comprehensive Small Group market.<sup>64</sup>
71. Statewide, Humana holds a 5.99% market share in the Comprehensive Small Group market.<sup>65</sup>
72. The combined market share of the four largest insurer groups in the Individual Medicare Advantage statewide market is 96.83%.<sup>66</sup>
73. In the 11 Individual Medicare Advantage county markets where five insurers have non-zero market share, the combined market shares of the four largest insurer groups in those 11 counties are as follows:<sup>67</sup>

<u>County</u>	<u>Share</u>
Christian	92.03%
Clay	96.76%
Greene	93.10%
Jackson	98.27%
Jefferson	99.49%
Platte	97.35%
St. Charles	98.34%
St. Louis County	97.48%
St. Louis City	97.51%
Taney	96.42%
Webster	98.59%

74. The combined market shares of the four largest insurer groups in the 104 Individual Medicare Advantage county markets not listed in paragraph 73 is 100%.<sup>68</sup>

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<sup>61</sup> Exhibit 17.

<sup>62</sup> Exhibit 17.

<sup>63</sup> Exhibit 17.

<sup>64</sup> Exhibit 17.

<sup>65</sup> Exhibit 17.

<sup>66</sup> Exhibit 20, pp. 30-32.

<sup>67</sup> Exhibit 20, pp. 30-32.

<sup>68</sup> Exhibit 20, pp. 30-32.

75. The market shares of Aetna and Humana in the Individual Medicare Advantage statewide market are 32.82% and 20.94%, respectively.<sup>69</sup>
76. The market shares of Aetna and Humana in Individual Medicare Advantage county markets each exceed 4.0% in the following 65 counties:<sup>70</sup>

<u>County</u>	<u>Aetna</u>	<u>Humana</u>	<u>Combined</u>
Audrain	37.23%	21.05%	58.28%
Barry	47.09%	31.97%	79.06%
Barton	71.93%	15.53%	87.47%
Bates	75.87%	17.18%	93.05%
Benton	47.14%	37.71%	84.85%
Boone	9.11%	13.30%	22.41%
Caldwell	20.51%	16.67%	37.18%
Callaway	21.08%	19.80%	40.88%
Carroll	42.86%	32.28%	75.13%
Cass	54.14%	30.89%	85.03%
Cedar	67.28%	29.50%	96.78%
Christian	38.69%	21.68%	60.38%
Clay	35.36%	51.72%	87.08%
Clinton	59.76%	11.83%	71.60%
Cole	46.13%	22.34%	68.47%
Cooper	33.76%	20.56%	54.31%
Crawford	27.32%	6.06%	33.38%
Dade	49.42%	37.81%	87.23%
Dallas	52.32%	29.46%	81.78%
Douglas	33.03%	36.29%	69.32%
Franklin	49.73%	5.21%	54.94%
Gasconade	10.79%	4.96%	15.76%
Greene	40.71%	20.67%	61.37%
Henry	60.58%	30.13%	90.71%
Hickory	59.53%	34.08%	93.61%
Howard	24.42%	22.58%	47.00%
Jackson	46.14%	39.22%	85.36%
Jasper	48.04%	42.82%	90.86%
Jefferson	16.99%	6.61%	23.59%
Johnson	47.53%	45.68%	93.21%
Laclede	49.22%	41.63%	90.84%
Lafayette	33.58%	52.54%	86.11%
Lawrence	44.34%	26.78%	71.12%
Lincoln	67.73%	9.61%	77.34%
Livingston	61.93%	14.72%	76.65%
Maries	18.69%	12.15%	30.84%
McDonald	32.16%	59.85%	92.01%

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<sup>69</sup> Exhibit 20, pp. 30-32.

<sup>70</sup> Exhibit 20, pp. 30-32.

Miller	26.15%	36.83%	62.98%
Moniteau	38.67%	19.14%	57.81%
Montgomery	60.29%	13.71%	74.00%
Newton	40.95%	47.61%	88.56%
Osage	45.58%	20.00%	65.58%
Ozark	9.12%	60.42%	69.54%
Perry	8.70%	27.33%	36.02%
Pettis	34.65%	33.17%	67.82%
Phelps	37.48%	34.87%	72.35%
Pike	27.71%	36.00%	63.71%
Platte	32.22%	56.34%	88.56%
Polk	55.73%	32.39%	88.12%
Pulaski	47.29%	42.08%	89.37%
Randolph	17.16%	15.09%	32.25%
Ray	24.70%	51.78%	76.48%
Saline	51.93%	30.76%	82.69%
St. Charles	31.93%	5.16%	37.09%
St. Clair	40.66%	48.13%	88.80%
St. Louis County	24.50%	4.50%	29.00%
St. Louis City	21.29%	7.58%	28.87%
Ste. Genevieve	74.08%	6.54%	80.63%
Stone	34.78%	27.96%	62.75%
Taney	29.65%	30.57%	60.21%
Vernon	32.43%	44.48%	76.91%
Warren	37.04%	7.02%	44.06%
Washington	5.59%	51.02%	56.61%
Webster	47.47%	21.09%	68.57%
Wright	34.03%	32.44%	66.47%

77. The combined market share of the four largest insurer groups in the Group Medicare Advantage statewide market is 96.33%.<sup>71</sup>

78. In the seven Group Medicare Advantage county markets where five or six insurer groups have non-zero market share, the combined shares of the four largest insurer groups in those seven counties are as follows:<sup>72</sup>

<u>County</u>	<u>Combined Share</u>
Cass	93.43%
Clay	88.65%
Jackson	91.03%
Jefferson	95.36%
Platte	84.47%
St. Charles	99.01%
St. Louis County	99.01%

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<sup>71</sup> Exhibit 21, pp. 34-36.

<sup>72</sup> Exhibit 21, pp. 34-36.

79. The combined market shares of the four largest insurer groups in the 108 Group Medicare Advantage county markets not listed in paragraph 78 is 100%.<sup>73</sup>
80. The market shares of Aetna and Humana in the Group Medicare Advantage statewide market are 18.77% and 10.80%, respectively.<sup>74</sup>
81. The market shares of Aetna and Humana in Group Medicare Advantage county markets each exceed 4.0% in the following 16 counties:<sup>75</sup>

<u>County</u>	<u>Aetna</u>	<u>Humana</u>	<u>Combined</u>
Boone	17.65%	9.80%	27.45%
Camden	8.76%	9.89%	18.64%
Cass	23.05%	17.70%	40.75%
Christian	27.88%	12.12%	40.00%
Clay	14.07%	19.23%	33.30%
Greene	38.00%	11.19%	49.19%
Jackson	15.72%	30.47%	46.18%
Jefferson	13.93%	4.64%	18.57%
Platte	17.01%	25.51%	42.51%
St. Charles	24.79%	4.13%	28.92%
St. Louis County	26.02%	4.49%	30.50%
St. Louis City	34.69%	9.23%	43.91%
Stone	19.16%	9.81%	28.97%
Taney	12.50%	10.19%	22.69%
Warren	13.38%	4.21%	17.59%
Webster	24.55%	10.00%	34.55%

82. The market shares of Aetna and Humana in Group Medicare Advantage county markets exceed 15.0% and 1.0%, respectively, in the following county:<sup>76</sup>

<u>County</u>	<u>Aetna</u>	<u>Humana</u>	<u>Combined</u>
Lincoln	17.79%	3.02%	20.81%

83. The market shares of Aetna and Humana in Group Medicare Advantage county markets exceed 7.0% and 3.0%, respectively, in the following county:<sup>77</sup>

<u>County</u>	<u>Aetna</u>	<u>Humana</u>	<u>Combined</u>
Franklin	8.63%	3.84%	12.47%

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<sup>73</sup> Exhibit 21, pp. 34-36.

<sup>74</sup> Exhibit 21, pp. 34-36.

<sup>75</sup> Exhibit 21, pp. 34-36.

<sup>76</sup> Exhibit 21, pp. 34-36.

<sup>77</sup> Exhibit 21, pp. 34-36.

E. Facts Related to Section 382.095.4(4) Factors and Other Relevant Factors for the Comprehensive Individual Market

84. The eight largest insurer groups in the Missouri Comprehensive Individual market hold the following market shares:<sup>78</sup>

<u>Group</u>	<u>Group Code</u>	<u>2015 Market Share</u>
Aetna Inc.	1	36.88%
Anthem Inc.	671	23.01%
UnitedHealth Group	707	15.79%
Blue Cross and Blue Shield of Kansas City	537	15.33%
Assurant Inc.	19	2.81%
Humana Inc.	119	1.93%
Cox Insurance	1203	1.90%
Cigna Health	901	1.84%

85. The insurer groups not listed in paragraph 84 with market share in the Missouri Comprehensive Individual market possess a combined market share of 0.50%.<sup>79</sup>

86. The four largest insurer groups in the Missouri Comprehensive Individual market hold a combined market share of 91.02%, well in excess (by 16.02%) of 75.0%.<sup>80</sup>

87. No insurer group in the Missouri Comprehensive Individual market outside of the four largest insurer groups holds a market share above 2.81%.<sup>81</sup>

88. In the Missouri Comprehensive Individual market in 2010, the six largest insurer groups in order of market share were Anthem Inc., Blue Cross and Blue Shield of Kansas City, UnitedHealth Group, Assurant Inc., Coventry Corp.,<sup>82</sup> and Aetna Inc.<sup>83</sup>

89. In the Missouri Comprehensive Individual market in 2015, the five largest insurer groups in order of market share were Aetna Inc., Anthem Inc., UnitedHealth Group, Blue Cross and Blue Shield of Kansas City, and Assurant Inc.<sup>84</sup>

90. Accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Individual market in 2010 and 2015 are identical.<sup>85</sup>

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<sup>78</sup> Exhibit 17, pg. 3.

<sup>79</sup> Exhibit 17, pg. 3.

<sup>80</sup> Exhibit 17, pg. 3.

<sup>81</sup> Exhibit 17, pg. 3.

<sup>82</sup> Coventry Corp., NAIC Group #1137, was acquired by Aetna Inc. between 2010 and 2015. Exhibit 29, pp. 42-48.

<sup>83</sup> Exhibit 18, pg. 3.

<sup>84</sup> Exhibit 17, pg. 3.

<sup>85</sup> Exhibit 17, pg. 3; Exhibit 18, pg. 3; Exhibit 29, pp. 42-48.

91. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Individual market with at least \$1,000,000 in direct written premium dropped from 17 to nine.<sup>86</sup>
92. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Individual market with at least 2.0% market share dropped from eight to five.<sup>87</sup>
93. Between 2010 and 2015, the Missouri Comprehensive Individual market has experienced the following trends of concentration:<sup>88</sup>

<u>Grouping</u>	<u>2010</u>	<u>2015</u>	<u>Increase/(Decrease) in Concentration</u>
Top 2 Groups	57.70%	59.89%	2.19%
Top 3 Groups	74.03%	75.69%	1.66%
Top 4 Groups	83.50%	91.02%	7.52%
Top 5 Groups	87.67%	93.83%	6.16%
Top 6 Groups	89.87%	95.76%	5.89%
Top 7 Groups	92.03%	97.66%	5.63%
Top 8 Groups	94.20%	99.50%	5.30%

94. Financial filings made by the eight largest insurer groups in the Missouri Comprehensive Individual market provide the following information:

<u>Group</u>	<u>Group Code</u>	<u>Total Assets</u>
Aetna Inc.	1	\$24.2 billion <sup>89</sup>
Anthem Inc.	671	\$61.7 billion <sup>90</sup>
UnitedHealth Group	707	\$111.4 billion <sup>91</sup>
Blue Cross and Blue Shield of Kansas City	537	\$1.1 billion <sup>92</sup>
Assurant Inc.	19	n/a <sup>93</sup>
Humana Inc.	119	\$24.7 billion <sup>94</sup>
Cox Insurance	1203	\$1.5 billion <sup>95</sup>
Cigna Health	901	\$57.1 billion <sup>96</sup>

<sup>86</sup> Exhibit 17, pg. 2; Exhibit 18, pg. 2.

<sup>87</sup> Exhibit 17, pg. 3; Exhibit 18, pg. 3.

<sup>88</sup> Exhibit 17, pg. 3; Exhibit 18, pg. 3.

<sup>89</sup> Exhibit 22, pg. 32. This is the total asset figure for Aetna Inc. only as of December 31, 2015, and does not include assets of its subsidiaries.

<sup>90</sup> Exhibit 25, pg. 82. This is the consolidated total asset figure for Anthem Inc. as of December 31, 2015.

<sup>91</sup> Exhibit 24, pg. 48. This is the consolidated total asset figure for UnitedHealth Group as of December 31, 2015.

<sup>92</sup> Exhibit 27, pg. 2. This is the total asset figure for Blue Cross and Blue Shield of Kansas City as of December 31, 2015 on a statutory accounting basis. Testimony of John Rehagen at 162:9-163:13.

<sup>93</sup> No financial filings pertaining to Assurant Inc. are in the record.

<sup>94</sup> Exhibit 23, pg. 85. This is the consolidated total asset figure for Humana Inc. as of December 31, 2015.

<sup>95</sup> Exhibit 28, pg. 6. This is the consolidated total asset figure for CoxHealth as of September 30, 2014. CoxHealth is the parent company of NAIC Group #1203. Testimony of John Rehagen at 163:14-167:2.

<sup>96</sup> Exhibit 26, pg. 65. This is the consolidated total asset figure for Cigna Corporation as of December 31, 2015.

95. Eighteen insurer groups and one unaffiliated insurer with positive direct written premium in the Missouri Comprehensive Individual market in 2010 did not report any direct written premium in the Missouri Comprehensive Individual market in 2015: NAIC Groups #7, 20, 143, 241, 304, 332, 449, 450, 451, 542, 612, 687, 781, 826, 872, 1137, 2538, 4750, and NAIC Company #64580.<sup>97</sup>
96. One insurer group and one unaffiliated insurer with positive direct written premium in the Missouri Comprehensive Individual market in 2015 did not report positive direct written premium in the Missouri Comprehensive Individual market in 2010: NAIC Group #4826 and NAIC Company #71439.<sup>98</sup>
97. The two new entrants to the Missouri Comprehensive Individual market in 2015, as compared to 2010, reported a combined total of \$2,848 of direct written premium and a 0.00% combined market share in 2015.<sup>99</sup>
98. The total direct written premium in the Missouri Comprehensive Individual market increased from \$525,596,708 in 2010 to \$1,406,615,726 in 2015.<sup>100</sup>
99. Anthem Inc. does not participate in the Missouri Comprehensive Individual market in at least 30 Missouri counties.<sup>101</sup>
100. Blue Cross and Blue Shield of Kansas City does not participate in the Missouri Comprehensive Individual market in at least 85 Missouri counties.<sup>102</sup>
101. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete with each other in the Missouri Comprehensive Individual market in any Missouri county.<sup>103</sup>
102. Two UnitedHealth Group insurers that wrote approximately \$138,741,000 of direct written premium in the Missouri Comprehensive Individual market in 2015 have withdrawn from the Missouri Comprehensive Individual market effective January 1, 2017.<sup>104</sup>
103. By analyzing the state-by-state effect of UnitedHealth Group not selling on the Exchange in all states in 2014, Professor Gruber has found that premiums would have been 5.4% lower on the Exchanges had UnitedHealth Group participated in them.<sup>105</sup>
104. A substantial body of empirical research indicates that fewer insurers on the Exchanges could reduce competitive pressure which could lead to higher consumer premiums.<sup>106</sup>

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<sup>97</sup> Exhibit 17, pg. 2; Exhibit 18, pg. 2.

<sup>98</sup> Exhibit 17, pg. 2; Exhibit 18, pg. 2.

<sup>99</sup> Exhibit 17, pp. 2-3; Exhibit 18, pp. 2-3.

<sup>100</sup> Exhibit 17, pg. 2; Exhibit 18, pg. 2.

<sup>101</sup> Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.

<sup>102</sup> Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.

<sup>103</sup> Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.

<sup>104</sup> Exhibit 3, pg. 9; Exhibit 4, pg. 7; Exhibit 17, pg. 2; Testimony of Angela Nelson at 52:5-53:17, 55:6-20.

<sup>105</sup> Exhibit 34, pg. 14, and attachment B thereto at 9-10.

105. In Missouri the Director has no authority to disapprove excessive health insurance rates.<sup>107</sup>
106. The Exchanges have no standardized plans. There is substantial heterogeneity in each metal tier, thus making effective shopping difficult.<sup>108</sup>

F. Facts Related to Section 382.095.4(4) Factors and Other Relevant Factors for the Comprehensive Small Group Market

107. The eight largest insurer groups in the Missouri Comprehensive Small Group market hold the following market shares:<sup>109</sup>

<u>Group</u>	<u>Group Code</u>	<u>2015 Market Share</u>
Anthem Inc.	671	39.53%
UnitedHealth Group	707	21.83%
Blue Cross and Blue Shield of Kansas City	537	14.98%
Aetna Inc.	1	12.14%
Humana Inc.	119	5.99%
Federated Mutual	7	3.36%
Cox Insurance	1203	1.02%
Principal Financial	332	0.69%

108. The insurer groups not listed in paragraph 107 with market share in the Missouri Comprehensive Small Group market possess a combined market share of 0.46%.<sup>110</sup>
109. The four largest insurer groups in the Missouri Comprehensive Small Group market hold a combined market share of 88.49%, well in excess (by 13.49%) of 75.0%.<sup>111</sup>
110. No insurer group in the Missouri Comprehensive Small Group market outside of the six largest insurer groups holds a market share above 1.02%.<sup>112</sup>
111. In the Missouri Comprehensive Small Group market in 2010, the six largest insurer groups in order of market share were Anthem Inc., UnitedHealth Group, Blue Cross and Blue Shield of Kansas City, Coventry Corp.,<sup>113</sup> Humana Inc., and Aetna Inc.<sup>114</sup>

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<sup>106</sup> Exhibit 34, pg. 13, and attachment B thereto at 9-10.

<sup>107</sup> Chapter 376, RSMo.

<sup>108</sup> Exhibit 34, pg. 13.

<sup>109</sup> Exhibit 17, pg. 3.

<sup>110</sup> Exhibit 17, pg. 3.

<sup>111</sup> Exhibit 17, pg. 3.

<sup>112</sup> Exhibit 17, pg. 3.

<sup>113</sup> Coventry Corp., NAIC Group #1137, was acquired by Aetna Inc. between 2010 and 2015. Exhibit 29, pp. 42-48.

<sup>114</sup> Exhibit 18, pg. 3.

112. In the Missouri Comprehensive Small Group market in 2015, the five largest insurer groups in order of market share were Anthem Inc., UnitedHealth Group, Blue Cross and Blue Shield of Kansas City, Aetna Inc., and Humana Inc.<sup>115</sup>
113. Accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Small Group market in 2010 and 2015 are identical.<sup>116</sup>
114. Accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Small Group market in 2010 and 2015 rank in identical order, one through five, in terms of direct written premium.<sup>117</sup>
115. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Small Group market with at least \$1,000,000 in direct written premium dropped from 15 to nine.<sup>118</sup>
116. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Small Group market with at least 2.0% market share dropped from seven to six.<sup>119</sup>
117. Between 2010 and 2015, the Missouri Comprehensive Small Group market has experienced the following trends of concentration:<sup>120</sup>

<u>Grouping</u>	<u>2010</u>	<u>2015</u>	<u>Increase/(Decrease)</u>
Top 2 Groups	61.61%	61.36%	(0.25%)
Top 3 Groups	75.79%	76.34%	0.55%
Top 4 Groups	85.71%	88.49%	2.78%
Top 5 Groups	89.34%	94.47%	5.13%
Top 6 Groups	91.89%	97.83%	5.94%
Top 7 Groups	94.18%	98.85%	4.67%
Top 8 Groups	95.66%	99.54%	3.88%

118. Financial filings made by the eight largest insurer groups in the Missouri Comprehensive Small Group market provide the following information:

<u>Group</u>	<u>Group Code</u>	<u>Total Assets</u>
Anthem Inc.	671	\$61.7 billion <sup>121</sup>
UnitedHealth Group	707	\$111.4 billion <sup>122</sup>
Blue Cross and Blue Shield of Kansas City	537	\$1.1 billion <sup>123</sup>

<sup>115</sup> Exhibit 17, pg. 3.

<sup>116</sup> Exhibit 17, pg. 3; Exhibit 18, pg. 3; Exhibit 29, pp. 42-48.

<sup>117</sup> Exhibit 17, pg. 3; Exhibit 18, pg. 3; Exhibit 29, pp. 42-48.

<sup>118</sup> Exhibit 17, pg. 2; Exhibit 18, pg. 2.

<sup>119</sup> Exhibit 17, pg. 3; Exhibit 18, pg. 3.

<sup>120</sup> Exhibit 17, pg. 3; Exhibit 18, pg. 3.

<sup>121</sup> Exhibit 25, pg. 82. This is the consolidated total asset figure for Anthem Inc. as of December 31, 2015.

<sup>122</sup> Exhibit 24, pg. 48. This is the consolidated total asset figure for UnitedHealth Group as of December 31, 2015.

Aetna Inc.	1	\$24.2 billion <sup>124</sup>
Humana Inc.	119	\$24.7 billion <sup>125</sup>
Federated Mutual	7	n/a <sup>126</sup>
Cox Insurance	1203	\$1.5 billion <sup>127</sup>
Principal Financial	332	n/a <sup>128</sup>

119. Seven insurer groups with positive direct written premium in the Missouri Comprehensive Small Group market in 2010 did not report any direct written premium in the Missouri Comprehensive Small Group market in 2015: NAIC Groups #429, 450, 458, 525, 687, 1137, and 4727.<sup>129</sup>
120. One insurer group with direct written premium in the Missouri Comprehensive Small Group market in 2015 did not report positive direct written premium in the Missouri Comprehensive Small Group market in 2010: NAIC Group #123.<sup>130</sup>
121. The new entrant to the Missouri Comprehensive Small Group market in 2015, as compared to 2010, reported \$137,951 of direct written premium and held a 0.00% market share in 2015.<sup>131</sup>
122. Anthem Inc. does not participate in the Missouri Comprehensive Small Group market in at least 30 Missouri counties.<sup>132</sup>
123. Blue Cross and Blue Shield of Kansas City does not participate in the Missouri Comprehensive Small Group market in at least 85 Missouri counties.<sup>133</sup>
124. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete with each other in the Missouri Comprehensive Small Group market in any Missouri county.<sup>134</sup>

G. Facts Related to Section 382.095.4(4) Factors and Other Relevant Factors for the Individual Medicare Advantage Markets

125. The market shares of Aetna and Humana each exceed 4.0% in each of the 65 Individual Medicare Advantage county markets where Aetna has non-zero enrollment.<sup>135</sup>

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<sup>123</sup> Exhibit 27, pg. 2. This is the total asset figure for Blue Cross and Blue Shield of Kansas City as of December 31, 2015 on a statutory accounting basis. Testimony of John Rehagen at 162:9-163:13.

<sup>124</sup> Exhibit 22, pg. 32. This is the total asset figure Aetna Inc. only as of December 31, 2015, and does not include assets of its subsidiaries.

<sup>125</sup> Exhibit 23, pg. 85. This is the consolidated total asset figure for Humana Inc. as of December 31, 2015.

<sup>126</sup> No financial filings pertaining to Federated Mutual are in the record.

<sup>127</sup> Exhibit 28, pg. 6. This is the consolidated total asset figure for CoxHealth as of September 30, 2014. CoxHealth is the parent company of NAIC Group #1203. Testimony of John Rehagen at 163:14-167:2.

<sup>128</sup> No financial filings pertaining to Principal Financial are in the record.

<sup>129</sup> Exhibit 17, pg. 2; Exhibit 18, pg. 2.

<sup>130</sup> Exhibit 17, pg. 2; Exhibit 18, pg. 2.

<sup>131</sup> Exhibit 17, pp. 2-3; Exhibit 18, pp. 2-3.

<sup>132</sup> Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.

<sup>133</sup> Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.

<sup>134</sup> Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.

126. The combined market shares of Aetna and Humana exceed 70.0% in the following 33 Individual Medicare Advantage county markets:<sup>136</sup>

<u>County</u>	<u>Aetna</u>	<u>Humana</u>	<u>Combined</u>
Barry	47.09%	31.97%	79.06%
Barton	71.93%	15.53%	87.47%
Bates	75.87%	17.18%	93.05%
Benton	47.14%	37.71%	84.85%
Carroll	42.86%	32.28%	75.13%
Cass	54.14%	30.89%	85.03%
Cedar	67.28%	29.50%	96.78%
Clay	35.36%	51.72%	87.08%
Clinton	59.76%	11.83%	71.60%
Dade	49.42%	37.81%	87.23%
Dallas	52.32%	29.46%	81.78%
Henry	60.58%	30.13%	90.71%
Hickory	59.53%	34.08%	93.61%
Jackson	46.14%	39.22%	85.36%
Jasper	48.04%	42.82%	90.86%
Johnson	47.53%	45.68%	93.21%
Laclede	49.22%	41.63%	90.84%
Lafayette	33.58%	52.54%	86.11%
Lawrence	44.34%	26.78%	71.12%
Lincoln	67.73%	9.61%	77.34%
Livingston	61.93%	14.72%	76.65%
McDonald	32.16%	59.85%	92.01%
Montgomery	60.29%	13.71%	74.00%
Newton	40.95%	47.61%	88.56%
Phelps	37.48%	34.87%	72.35%
Platte	32.22%	56.34%	88.56%
Polk	55.73%	32.39%	88.12%
Pulaski	47.29%	42.08%	89.37%
Ray	24.70%	51.78%	76.48%
Saline	51.93%	30.76%	82.69%
St. Clair	40.66%	48.13%	88.80%
Ste. Genevieve	74.08%	6.54%	80.63%
Vernon	32.43%	44.48%	76.91%

127. Between 2008 and 2016, the statewide Individual Medicare Advantage market has undergone the following volatility of ranking of market leaders:<sup>137</sup>

<u>Rank</u>	<u>2008</u>	<u>2012</u>	<u>2016</u>
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<sup>135</sup> Exhibit 20, pp. 30-32.

<sup>136</sup> Exhibit 20, pp. 30-32.

<sup>137</sup> Exhibit 20, pp. 4-6, 16-18, 30-32.

1st	UHC (30.77%)	Coventry (30.15%)	Aetna (32.82%)
2nd	Humana (26.69%)	Humana (25.24%)	UHC (24.95%)
3rd	Coventry (16.29%)	UHC (24.83%)	Humana (20.94%)
4th	Mercy (10.70%)	Essence (13.94%)	Essence (18.12%)
5th	Essence (9.27%)	WellPoint (3.82%)	Anthem (2.27%)
6th	WellPoint (2.63%)	WellCare (0.90%)	Cigna (0.49%)

128. Accounting for the acquisition of Mercy by Coventry Corp.,<sup>138</sup> the acquisition of Coventry Corp. by Aetna,<sup>139</sup> and the change of name from WellPoint to Anthem,<sup>140</sup> the three largest groups in the statewide Individual Medicare Advantage market in 2008, 2012, and 2016 are identical.<sup>141</sup>
129. Accounting for the acquisition of Mercy by Coventry Corp.,<sup>142</sup> the acquisition of Coventry Corp. by Aetna,<sup>143</sup> and the change of name from WellPoint to Anthem,<sup>144</sup> the four largest groups in the statewide Individual Medicare Advantage market in 2008, 2012, and 2016 are identical.<sup>145</sup>
130. Accounting for the acquisition of Mercy by Coventry Corp.,<sup>146</sup> the acquisition of Coventry Corp. by Aetna,<sup>147</sup> and the change of name from WellPoint to Anthem,<sup>148</sup> the five largest groups in the statewide Individual Medicare Advantage market in 2008, 2012, and 2016 are identical.<sup>149</sup>
131. Between 2008 and 2016, accounting for the acquisition of Mercy by Coventry Corp.,<sup>150</sup> the acquisition of Coventry Corp. by Aetna,<sup>151</sup> and the change of name from WellPoint to Anthem,<sup>152</sup> the Individual Medicare Advantage county markets have undergone little volatility of ranking of market leaders.<sup>153</sup>

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<sup>138</sup> Exhibit 29, pp. 27-28.

<sup>139</sup> Exhibit 29, pp. 42-48.

<sup>140</sup> WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice at 34:25-35:10.

<sup>141</sup> Exhibit 20, pp. 4-6, 16-18, 30-32.

<sup>142</sup> Exhibit 29, pp. 27-28.

<sup>143</sup> Exhibit 29, pp. 42-48.

<sup>144</sup> WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice at 34:25-35:10.

<sup>145</sup> Exhibit 20, pp. 4-6, 16-18, 30-32.

<sup>146</sup> Exhibit 29, pp. 27-28.

<sup>147</sup> Exhibit 29, pp. 42-48.

<sup>148</sup> WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice at 34:25-35:10.

<sup>149</sup> Exhibit 20, pp. 4-6, 16-18, 30-32.

<sup>150</sup> Exhibit 29, pp. 27-28.

<sup>151</sup> Exhibit 29, pp. 42-48.

<sup>152</sup> WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice at 34:25-35:10.

<sup>153</sup> Exhibit 20, pp. 4-32.

132. The four largest insurer groups in the Individual Medicare Advantage county markets hold a minimum 93.10% market share in all 115 county markets, with a 100.0% market share in 104 of those 115 county markets.<sup>154</sup>
133. The three largest insurer groups in the Individual Medicare Advantage county markets hold a 100.0% market share in 86 of those 115 county markets.<sup>155</sup>
134. The two largest insurer groups in the Individual Medicare Advantage county markets hold a 100.0% market share in 49 of those 115 county markets.<sup>156</sup>
135. Between April 2008 and April 2016, the statewide Individual Medicare Advantage market has experienced the following trends of concentration:<sup>157</sup>

<u>Grouping</u>	<u>2008</u>	<u>2012</u>	<u>2016</u>	<u>Post-Merger</u>
Top 2 Groups	57.45%	55.39%	57.78%	78.71%
Top 3 Groups	73.74%	80.22%	78.71%	96.83%
Top 4 Groups	84.44%	94.16%	96.83%	99.10%
Top 5 Groups	93.71%	97.97%	99.10%	99.59%
HHI <sup>158</sup>	2,136.8	2,372.8	2,472.2	3,846.6
Total Enrollees	136,270	201,249	273,197	273,197

136. Between April 2008 and April 2016, the Individual Medicare Advantage county markets have experienced the following trends of concentration based on the number of competitors:<sup>159</sup>

<u>No. of Providers</u>	<u>2008<sup>160</sup></u>	<u>2012</u>	<u>2016</u>	<u>Post-Merger</u>
2 or fewer	50	69	49	85
3	19	20	37	19
4	17	11	18	11
5+	29	15	11	0
Average	3.30	2.67	2.87	2.30
Total Enrollees	136,270	201,249	273,197	273,197

<sup>154</sup> Exhibit 20, pp. 30-32.

<sup>155</sup> Exhibit 20, pp. 30-32.

<sup>156</sup> Exhibit 20, pp. 30-32.

<sup>157</sup> Exhibit 20, pp. 4-6, 16-18, 30-32.

<sup>158</sup> The HHI, or Herfindahl-Hirschman Index, is often used by federal agencies to calculate and measure market concentration. Federal agencies generally consider markets with an HHI between 1,500 and 2,500 to be moderately concentrated, and markets with an HHI above 2,500 to be highly concentrated. Exhibit 7, pp. 375-376.

<sup>159</sup> Exhibit 20, pp. 4-6, 16-18, 30-32.

<sup>160</sup> Information in these columns represents the number of Missouri counties with the corresponding number of providers.

137. Exhibit 20 demonstrates a wide variance in the number of insurer groups with non-zero enrollment between urban and rural counties.<sup>161</sup>
138. Exhibit 20 demonstrates a wide variance in the number of insurer groups with non-zero enrollment when comparing neighboring counties throughout the state.<sup>162</sup>
139. A properly licensed insurer that decides to newly enter or expand into the Individual Medicare Advantage statewide or county markets in Missouri is subject to a waiting period between 10 ½ and 22 ½ months.<sup>163</sup>
140. Waiting periods of this length are uncommon to other Missouri insurance markets.<sup>164</sup>
141. An insurer seeking to enter the Individual Medicare Advantage statewide or county markets in Missouri must undergo a rigorous application process.<sup>165</sup>
142. Insurers offering products in the Individual Medicare Advantage statewide or county markets in Missouri must comply with a lengthy set of substantive requirements.<sup>166</sup>
143. Anthem Inc. does not participate in the Individual Medicare Advantage county markets in at least 30 Missouri counties.<sup>167</sup>
144. Blue Cross and Blue Shield of Kansas City does not participate in the Individual Medicare Advantage county markets in at least 85 Missouri counties.<sup>168</sup>
145. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete with each other in any of the 115 Individual Medicare Advantage county markets.<sup>169</sup>

H. Facts Related to Section 382.095.4(4) Factors and Other Relevant Factors for the Group Medicare Advantage Market

146. The insurer groups in the Missouri Group Medicare Advantage market hold the following market shares:<sup>170</sup>

<u>Group</u>	<u>Group Code</u>	<u>April 2016 Market Share</u>
UnitedHealth Group	707	46.56%
Blue Cross and Blue Shield of Michigan	572	20.19%
Aetna Inc.	1	18.77%

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<sup>161</sup> Exhibit 20, pp. 30-32.

<sup>162</sup> Exhibit 20, pp. 30-32.

<sup>163</sup> Exhibit 6, pg. 12; Testimony of Angela Nelson at 74:6-75:16.

<sup>164</sup> Testimony of Angela Nelson at 75:17-76:18.

<sup>165</sup> Exhibit 6; 42 C.F.R. § 422.500-527.

<sup>166</sup> 42 C.F.R. § 422-100-458.

<sup>167</sup> Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.

<sup>168</sup> Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.

<sup>169</sup> Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.

<sup>170</sup> Exhibit 21, pp. 34-36; Official Notice at 34:25-35:10.

Humana Inc.	119	10.80%
Blue Cross and Blue Shield of Kansas City	537	2.95%
Highmark	812	0.54%
Anthem Inc.	671	0.19%

147. The four largest insurer groups in the Missouri Group Medicare Advantage market hold a combined market share of 96.33%, well in excess (by 21.33%) of 75.0%.<sup>171</sup>

148. Between April 2008 and April 2016, the statewide Group Medicare Advantage market has experienced the following trends of concentration:<sup>172</sup>

<u>Grouping</u>	<u>2008</u>	<u>2012</u>	<u>2016</u>	<u>Post-Merger</u>
Top 2 Groups	60.77%	80.68%	66.75%	76.14%
Top 3 Groups	86.39%	95.66%	85.53%	96.33%
Top 4 Groups	95.07%	98.33%	96.33%	99.28%
Top 5 Groups	97.98%	99.07%	99.28%	99.81%
HHI <sup>173</sup>	2,593.0	3,523.2	3,053.8	3,459.4
Total Enrollees	18,627	21,180	36,929	36,929

149. A properly licensed insurer that decides to newly enter or expand into the Group Medicare Advantage statewide or county markets in Missouri is subject to a waiting period between 10 ½ and 22 ½ months.<sup>174</sup>

150. Waiting periods of this length are uncommon to other Missouri insurance markets.<sup>175</sup>

151. An insurer seeking to enter the Group Medicare Advantage statewide or county markets in Missouri must undergo a rigorous application process.<sup>176</sup>

152. Insurers offering products in the Group Medicare Advantage statewide or county markets in Missouri must comply with a lengthy set of substantive requirements.<sup>177</sup>

153. Anthem Inc. does not participate in the Missouri Group Medicare Advantage market in at least 30 Missouri counties.<sup>178</sup>

154. Blue Cross and Blue Shield of Kansas City does not participate in the Missouri Group Medicare Advantage market in at least 85 Missouri counties.<sup>179</sup>

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<sup>171</sup> Exhibit 21, pp. 34-36.

<sup>172</sup> Exhibit 20, pp. 4-6, 16-18, 30-32.

<sup>173</sup> See footnote 158.

<sup>174</sup> Exhibit 6, pg. 12; Testimony of Angela Nelson at 74:6-75:16.

<sup>175</sup> Testimony of Angela Nelson at 75:17-76:18.

<sup>176</sup> Exhibit 6; 42 C.F.R. § 422.500-527.

<sup>177</sup> 42 C.F.R. § 422-100-458.

<sup>178</sup> Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.

<sup>179</sup> Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.

155. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete with each other in the Missouri Group Medicare Advantage market in any Missouri county.<sup>180</sup>

I. Facts Related to Section 382.095.4(5)(a) Analysis

156. Gregory Martino, Assistant Vice President for Aetna Inc. in state government affairs,<sup>181</sup> testified regarding claimed nationwide benefits from the proposed acquisition.<sup>182</sup>

157. Mr. Martino admitted that none of his testimony about the claimed nationwide benefits from the proposed acquisition applied specifically to Missouri.<sup>183</sup>

158. Aetna's expert did not independently verify Aetna's efficiencies claims.<sup>184</sup>

159. Aetna's expert did not determine the time at which Aetna's asserted efficiencies would be achieved.<sup>185</sup>

160. Aetna's expert stated that competition would force Aetna to pass through any savings resulting from efficiencies to consumers.<sup>186</sup>

161. Professor Gruber analyzed the literature on the extent to which Medicare Advantage plans pass on the increases in the payments they receive to consumers.<sup>187</sup>

162. One study analyzed by Professor Gruber finds that Medicare Advantage insurers retain 47 cents of every dollar they receive in increased payments.<sup>188</sup>

163. Another study analyzed by Gruber found that Medicare Advantage insurers retain more than 80% of every dollar they receive in increased payments.<sup>189</sup>

164. Dr. McCarthy's assertion that competition would force Medicare Advantage plans to pass on any savings resulting from any efficiencies created by the merger is inconsistent with the evidence cited by Gruber on the extent to which Medicare Advantage plans do in fact pass on to consumers the increases they receive in payments from the government.

165. Aetna is a multinational company.<sup>190</sup>

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<sup>180</sup> Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.

<sup>181</sup> Testimony of Gregory Martino at 262:2-6.

<sup>182</sup> Testimony of Gregory Martino at 283:12-14.

<sup>183</sup> Testimony of Gregory Martino at 283:15-18.

<sup>184</sup> Testimony of Dr. McCarthy at 532.

<sup>185</sup> Testimony of Dr. McCarthy at 534.

<sup>186</sup> Testimony of Dr. McCarthy at 535.

<sup>187</sup> Exhibit 34, pg. 8.

<sup>188</sup> Exhibit 34, pg. 8, citing Cabral, Geruso and Mahoney, "Does Privatized Health Insurance Benefits Patients or Producers? Evidence from Medicare Advantage," NBER Working Paper #20470 (Sept. 2014).

<sup>189</sup> Id. at 8, citing Duggan, Starc and Vabson, "Who Benefits When the Government Pays More? Pass-through in the Medicare Advantage Program," NBER Working Paper #19989 (March 2014).

<sup>190</sup> Exhibit 22.

166. Aetna produced no evidence that it had allocated the efficiencies it asserts by country.
167. Aetna produced no evidence that it had allocated the efficiencies it asserts by state.
168. Aetna produced no evidence that it had allocated the efficiencies it asserts by line of business.
169. Aetna produced no evidence that any efficiencies produced by the merger would outweigh the anticompetitive effects of the merger.

J. Facts Related to Section 382.095.4(5)(b) Analysis

170. Gregory Martino was unable to testify as to any definite plans of Aetna to offer any new products post-merger in Missouri that are not currently offered by either Aetna or Humana.<sup>191</sup>

K. Procedural History

171. On October 15, 2015, Aetna filed its Form E preacquisition notification proposing to acquire Humana.<sup>192</sup>
172. On November 13, 2015, the Director, through the Division, required additional material and information from Aetna.<sup>193</sup>
173. On February 26, 2016, Aetna provided the required additional material and information to the Division.<sup>194</sup>
174. On March 25, 2016, the Division filed a Request for Hearing.<sup>195</sup>
175. A hearing was held on May 16, 2016 at the Harry S Truman State Office Building, Room 520B in Jefferson City, Missouri.
176. At the hearing, evidence was submitted by the parties in the form of testimony and exhibits, and comments were made by members of the public.
177. Division Exhibits 1-36 were admitted into evidence and Aetna Inc. Exhibits A-EE were admitted into evidence.

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<sup>191</sup> Testimony of Gregory Martino at 275:23 – 277:8.

<sup>192</sup> Exhibit 11; Testimony of John Rehagen at 96:12-97:9.

<sup>193</sup> Exhibit 12; Testimony of John Rehagen at 97:10-98:6.

<sup>194</sup> Exhibit 13; Testimony of John Rehagen at 98:8-99:13.

<sup>195</sup> Exhibit 14; Request for Hearing filed by Petitioner on March 25, 2016 in this matter.

## II. Conclusions of Law

### 1. *Jurisdictional Matters.*

A Form E preacquisition notification was filed by Aetna on October 15, 2015.<sup>196</sup> On November 13, 2015, prior to the expiration of the initial, thirty-day waiting period of section 382.095.3, RSMo, the Director, through the Division, required additional material and information from Aetna.<sup>197</sup> Aetna provided the required additional material and information to the Division on February 26, 2016.<sup>198</sup> On March 25, 2016, prior to the expiration of the subsequent, thirty-day waiting period of section 382.095.3, RSMo, the Division filed a Request for Hearing.<sup>199</sup> Issuance of these Findings of Fact, Conclusions of Law, and Order is within the jurisdiction of the Director pursuant to section 382.095, RSMo.

### 2. *Product Market: Comprehensive Individual*

“In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state.”<sup>200</sup> The Comprehensive Individual line of business is a line of business “used in the annual statement required to be filed by insurers doing business in this state.”<sup>201</sup> The parties did not present facts sufficient to support a deviation from this product market definition for comprehensive individual health insurance business. Because no sufficient information to the contrary was presented, the statutory Comprehensive Individual product market is assumed.

### 3. *Product Market: Comprehensive Small Group*

“In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state.”<sup>202</sup> The Comprehensive Small Group line of business is a line of business “used in the annual statement required to be filed by insurers doing business in this state.”<sup>203</sup> The parties did not present facts sufficient to support a deviation from this product market definition for comprehensive small group employer health insurance business. Because no sufficient information to the contrary was presented, the statutory Comprehensive Small Group product market is assumed.

### 4. *Product Market: Individual Medicare Advantage*

In *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962), the Supreme Court set forth seven “practical indicia” for determining whether a relevant antitrust product market exists.

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<sup>196</sup> ¶ 171.

<sup>197</sup> ¶ 172.

<sup>198</sup> ¶ 173.

<sup>199</sup> ¶ 174.

<sup>200</sup> Section 382.095.4(3)(b), RSMo.

<sup>201</sup> Section 382.095.4(3)(b), RSMo; ¶¶ 8-13, 15.

<sup>202</sup> Section 382.095.4(3)(b), RSMo.

<sup>203</sup> Section 382.095.4(3)(b), RSMo; ¶¶ 8-13, 15.

While a relevant antitrust product market can exist even if only some of the *Brown Shoe* factors are present, e.g., *Beatrice Foods Co. v. FTC*, 540 F.2d 303 (7th Cir. 1976) (submarket exists based on industry recognition, peculiar characteristics of the product, and differences in production methods and prices), Medicare Advantage satisfies each of the seven *Brown Shoe* “practical indicia”:

1. The insurance industry and the federal government recognize and promote the Medicare Advantage market as a separate economic entity.
2. Medicare Advantage has characteristics and uses that differ from those of Traditional Medicare.
3. Medicare Advantage is produced by private insurers, whereas Traditional Medicare is produced by the federal government.
4. Medicare Advantage and Traditional Medicare each have distinct customers.
5. Medicare Advantage and Traditional Medicare each have distinct prices.
6. Medicare Advantage is sensitive to price changes of other Medicare Advantage plans, not price changes of Traditional Medicare.
7. Medicare Advantage and Traditional Medicare each have specialized vendors: Medicare Advantage is sold by private insurers through agents and brokers, whereas Traditional Medicare is sold directly by the government, without the involvement of agents or brokers.

Because Medicare Advantage satisfies each of the *Brown Shoe* “practical indicia,” Medicare Advantage constitutes a relevant antitrust product market within the meaning of section 382.095.4(3)(b), RSMo.

The Horizontal Merger Guidelines<sup>204</sup> are not binding on the Department, but they may be considered by the Director in evaluating a merger. Under the SSNIP test set forth in the Merger Guidelines, a product is in its own antitrust product market if a hypothetical monopolist of that product could impose a non-transitory 5% price increase on that product.

Because to approximate the benefits provided by a typical Medicare Advantage plan a Traditional Medicare enrollee would have to also purchase separate Part D coverage and a separate Medigap policy, a 5% increase in the Medicare Advantage premium is negligible in comparison to the combined cost of Traditional Medicare, Medigap, and Part D. A hypothetical monopolist in the Medicare Advantage market therefore could impose a non-transitory 5% increase on its Medicare Advantage policies. Medicare Advantage therefore constitutes a separate antitrust product market under the SSNIP test set forth in the Merger Guidelines.

Because only retirees of a firm that offers health coverage for retirees can buy group Medicare Advantage coverage, there is an individual Medicare Advantage market and a group Medicare Advantage market.

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<sup>204</sup> Exhibit 7, pp. 355-391.

The exclusion of Traditional Medicare enrollment from this product market definition is consistent with product markets advanced by the federal government in two prior civil actions brought to enjoin mergers involving Medicare Advantage insurance business under Section 7 of the Clayton Act, 15 U.S.C. § 18.<sup>205</sup>

#### 5. *Product Market: Group Medicare Advantage*

The conclusions made in the previous section with respect to the exclusion of Traditional Medicare from the individual Medicare Advantage market are equally applicable to the group Medicare Advantage and are adopted herein.

The exclusion of Traditional Medicare enrollment from this product market definition is consistent with product markets advanced by the federal government in two prior civil actions brought to enjoin mergers involving Medicare Advantage insurance business under Section 7 of the Clayton Act, 15 U.S.C. § 18.<sup>206</sup>

#### 6. *Geographic Market: Comprehensive Individual*

The relevant geographical market is assumed to be the State of Missouri “[i]n the absence of sufficient information to the contrary.”<sup>207</sup> The parties did not present facts sufficient to support a deviation from the statewide geographical market for the Comprehensive Individual product market.<sup>208</sup> Because no sufficient information to the contrary was presented, the statutory geographical market of the State of Missouri is assumed with regard to the Comprehensive Individual product market.

#### 7. *Geographic Market: Comprehensive Small Group*

The relevant geographical market is assumed to be the State of Missouri “[i]n the absence of sufficient information to the contrary.”<sup>209</sup> The parties did not present facts sufficient to support a deviation from the statewide geographical market for the comprehensive small group employer product market. Because no sufficient information to the contrary was presented, the statutory geographic market of the State of Missouri is assumed with regard to the Comprehensive Small Group product market.

#### 8. *Geographic Markets: Individual Medicare Advantage*

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<sup>205</sup> See *United States v. UnitedHealth Group Inc. and Sierra Health Services, Inc.*, No. 1:08-cv-00322-ESH (D.C. Cir. 2008) (Complaint pg. 6, ¶ 18); *United States v. Humana Inc. and Arcadian Mgmt. Services, Inc.*, No. 1:12-cv-00464 (D.C. Cir. 2012) (Complaint pg. 7, ¶ 21).

<sup>206</sup> See *United States v. UnitedHealth Group Inc. and Sierra Health Services, Inc.*, No. 1:08-cv-00322-ESH (D.C. Cir. 2008) (Complaint pg. 6, ¶ 18); *United States v. Humana Inc. and Arcadian Mgmt. Services, Inc.*, No. 1:12-cv-00464 (D.C. Cir. 2012) (Complaint pg. 7, ¶ 21).

<sup>207</sup> Section 382.095.4(3)(b), RSMo.

<sup>208</sup> Furthermore, evidence presented relating to the proper geographical market for the implicitly proposed individual Exchange product market does not necessarily apply to the Comprehensive Individual product market as a whole.

<sup>209</sup> Section 382.095.4(3)(b), RSMo.

The facts found at paragraphs 63-64 demonstrate that individuals residing in a county of Missouri may only enroll in Individual Medicare Advantage plans offered in that county.<sup>210</sup> Those facts further demonstrate that insurers typically must receive approval from CMS prior to offering an Individual Medicare Advantage plan in any one county in Missouri.<sup>211</sup> Finally, the facts demonstrate that the number of insurer groups with non-zero enrollment varies widely throughout Missouri, including when comparing neighboring counties throughout the state, and particularly when comparing urban counties to rural counties.<sup>212</sup>

The evidence presented is sufficient to support a deviation from the statewide geographical market to 115 different geographical markets, defined as the 114 counties of Missouri and the City of St. Louis, for the Individual Medicare Advantage product market.

#### 9. *Geographic Market: Group Medicare Advantage*

The relevant geographical market is assumed to be the State of Missouri “[i]n the absence of sufficient information to the contrary.”<sup>213</sup> The parties did not present facts sufficient to support a deviation from the statewide geographical market for the Group Medicare Advantage product market. Because no sufficient information to the contrary was presented, the statutory geographical market of the State of Missouri is assumed with regard to the Group Medicare Advantage product market.

#### 10. *Prima Facie Case: Comprehensive Individual*

The facts found at paragraphs 66-68 demonstrate that the Missouri Comprehensive Individual market is highly concentrated statewide pursuant to section 382.095.4(2)(a)a., RSMo. Statewide, Aetna and Humana hold market shares of 36.88% and 1.93%, respectively.<sup>214</sup> These market shares are prima facie evidence of violation of the competitive standard of section 382.095.4(1), RSMo, pursuant to section 382.095.4(2)(a)a., RSMo.

#### 11. *Prima Facie Case: Comprehensive Small Group*

The facts found at paragraphs 69-71 demonstrate that the Missouri Comprehensive Small Group market is highly concentrated statewide pursuant to section 382.095.4(2)(a)a., RSMo. Statewide, Aetna and Humana hold market shares of 12.14% and 5.99%, respectively.<sup>215</sup> These market shares are prima facie evidence of violation of the competitive standard of section 382.095.4(1), RSMo, pursuant to section 382.095.4(2)(a)a., RSMo.

#### 12. *Prima Facie Case: Individual Medicare Advantage*

The facts found at paragraphs 72-76 demonstrate that the Individual Medicare Advantage market is highly concentrated pursuant to section 382.095.4(2)(a)a., RSMo, both statewide and

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<sup>210</sup> ¶¶ 63-64.

<sup>211</sup> ¶¶ 63-64, 137-140.

<sup>212</sup> ¶¶ 136-138.

<sup>213</sup> Section 382.095.4(3)(b), RSMo.

<sup>214</sup> ¶¶ 66-67.

<sup>215</sup> ¶¶ 69-70.

in each of Missouri's 115 counties. Statewide, Aetna and Humana provide coverage to 32.82% and 20.94%, respectively, of Missourians enrolled in Individual Medicare Advantage plans.<sup>216</sup> These market shares would be prima facie evidence of violation of the competitive standard of section 382.095.4(1), RSMo, pursuant to section 382.095.4(2)(a)a., RSMo, if the statewide geographical market were used.

Using the geographical market definitions concluded in section II.8 of this Order, the market shares of Aetna and Humana in Individual Medicare Advantage county markets are at least 4.0% in the 65 counties listed in paragraph 76.<sup>217</sup> These market shares are prima facie evidence of violations of the competitive standard of section 382.095.4(1), RSMo, pursuant to section 382.095.4(2)(a)a., RSMo, in each of the 65 counties listed in paragraph 76.

### *13. Prima Facie Case: Group Medicare Advantage*

The facts found at paragraphs 77-83 demonstrate that the Group Medicare Advantage market is highly concentrated statewide pursuant to section 382.095.4(2)(a)a., RSMo. Statewide, Aetna and Humana provide coverage to 18.77% and 10.80%, respectively, of Missourians enrolled in Group Medicare Advantage plans.<sup>218</sup> These market shares are prima facie evidence of violation of the competitive standard of section 382.095.4(1), RSMo, pursuant to section 382.095.4(2)(a)a., RSMo.

### *14. Section 382.095.4(4) Factors and Other Relevant Factors: Comprehensive Individual*

Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect. In fact, the Division presented substantial evidence demonstrating additional anticompetitive effects of the proposed acquisition in the statewide Comprehensive Individual market, as found in paragraphs 84 to 102.

Section 382.095.4(4), RSMo, provides as follows, in relevant part:

Even though an acquisition is prima facie violative of the competitive standard under subdivision (2) of this subsection, a party may establish the absence of the requisite anticompetitive effect, based upon other substantial evidence. Relevant factors in making a determination under this subdivision include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

The evidence presented concerning the "market shares" factor demonstrates that Aetna and Humana possess market shares in the statewide Comprehensive Individual market well in excess of the highly concentrated statutory thresholds of 15% and 1% necessary to establish prima facie evidence of violation of the competitive standards.<sup>219</sup>

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<sup>216</sup> ¶ 74.

<sup>217</sup> ¶ 75.

<sup>218</sup> ¶ 80.

<sup>219</sup> ¶ 84.

The evidence presented concerning the “volatility of ranking of market leaders” factor demonstrates that the statewide Comprehensive Individual market leader rankings have undergone very little volatility between 2010 and 2015.<sup>220</sup>

The evidence presented concerning the “number of competitors” factor demonstrates that the number of competitors in the statewide Comprehensive Individual market has dropped substantially between 2010 and 2015, with just five insurer groups holding at least 2.0% market share in 2015 and a net loss of 17 insurer groups from the market.<sup>221</sup>

The evidence presented concerning the “concentration” factor demonstrates that the degree of concentration in the statewide Comprehensive Individual market far exceeds the statutory threshold of section 382.095.4(2), RSMo, past which a market is highly concentrated under Missouri law.<sup>222</sup>

The evidence presented concerning the “trend of concentration in the industry” factor demonstrates that the statewide Comprehensive Individual market has trended toward becoming more highly concentrated between 2010 and 2015.<sup>223</sup>

The evidence presented concerning the “ease of entry and exit into the market” factor demonstrates that the statewide Comprehensive Individual market is comprised of well-capitalized competitors<sup>224</sup> and has experienced negligible entry into the market between 2010 and 2015.<sup>225</sup>

Additional evidence presented demonstrates that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the Comprehensive Individual market,<sup>226</sup> and that UnitedHealth Group’s market share in the Comprehensive Individual is likely to significantly decrease beginning January 1, 2017.<sup>227</sup> Finally, the Director has no authority to disapprove excessive health insurance rates.<sup>228</sup>

15. *Section 382.095.4(4) Factors and Other Relevant Factors: Comprehensive Small Group*

Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect. In fact, the Division presented substantial evidence demonstrating additional anticompetitive effects of the proposed acquisition in the statewide Comprehensive Small Group market, as found in paragraphs 107 to 124.

Section 382.095.4(4), RSMo, provides as follows, in relevant part:

Even though an acquisition is prima facie violative of the competitive standard under subdivision (2) of this subsection, a party may establish the absence of the requisite anticompetitive effect, based upon other substantial evidence. Relevant factors in making a determination under this subdivision include, but are not limited to, the following: market

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<sup>220</sup> ¶¶ 88-90.

<sup>221</sup> ¶¶ 91-92, 95-98.

<sup>222</sup> ¶ 86.

<sup>223</sup> ¶¶ 93, 95-97.

<sup>224</sup> ¶ 94.

<sup>225</sup> ¶¶ 95-97.

<sup>226</sup> ¶¶ 99-101.

<sup>227</sup> ¶¶ 102-104.

<sup>228</sup> ¶ 105.

shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

The evidence presented concerning the “market shares” factor demonstrates that Aetna and Humana possess market shares in the statewide Comprehensive Small Group market well in excess of the highly concentrated statutory thresholds of 10% and 2% necessary to establish prima facie evidence of violation of the competitive standards.<sup>229</sup>

The evidence presented concerning the “volatility of ranking of market leaders” factor demonstrates that the statewide Comprehensive Small Group market leader rankings have undergone very little volatility between 2010 and 2015.<sup>230</sup>

The evidence presented concerning the “number of competitors” factor demonstrates that the number of competitors in the statewide Comprehensive Small Group market has dropped substantially between 2010 and 2015, with just six insurer groups holding more than 1.02% market share in 2015 and a net loss of six insurer groups from the market.<sup>231</sup>

The evidence presented concerning the “concentration” factor demonstrates that the degree of concentration in the statewide Comprehensive Small Group market far exceeds the statutory threshold of section 382.095.4(2), RSMo, past which a market is highly concentrated under Missouri law.<sup>232</sup>

The evidence presented concerning the “trend of concentration in the industry” factor demonstrates that the statewide Comprehensive Small Group market has trended toward becoming more highly concentrated between 2010 and 2015.<sup>233</sup>

The evidence presented concerning the “ease of entry and exit into the market” factor demonstrates that the statewide Comprehensive Small Group market is comprised of well-capitalized competitors<sup>234</sup> and has experienced negligible entry into the market between 2010 and 2015.<sup>235</sup>

Additional evidence presented demonstrates that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the Comprehensive Small Group market.<sup>236</sup>

#### 16. *Section 382.095.4(4) Factors and Other Relevant Factors: Individual Medicare Advantage*

Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect. In fact, the Division presented substantial evidence demonstrating additional anticompetitive effects of the proposed acquisition in the Individual Medicare Advantage county markets, as found in paragraphs 125 to 145.

Section 382.095.4(4), RSMo, provides as follows, in relevant part:

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<sup>229</sup> ¶ 107.

<sup>230</sup> ¶¶ 111-114.

<sup>231</sup> ¶¶ 110, 119-120.

<sup>232</sup> ¶ 109.

<sup>233</sup> ¶¶ 115-117.

<sup>234</sup> ¶ 118.

<sup>235</sup> ¶¶ 119-121.

<sup>236</sup> ¶¶ 122-124.

Even though an acquisition is prima facie violative of the competitive standard under subdivision (2) of this subsection, a party may establish the absence of the requisite anticompetitive effect, based upon other substantial evidence. Relevant factors in making a determination under this subdivision include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

The evidence presented concerning the “market shares” factor demonstrates that Aetna and Humana possess market shares in 65 Individual Medicare Advantage county markets in excess of the highly concentrated statutory thresholds of 4% and 4% necessary to establish prima facie evidence of violations of the competitive standards.<sup>237</sup> In many cases, the markets share of Aetna and Humana far exceed those statutory thresholds.<sup>238</sup>

The evidence presented concerning the “volatility of ranking of market leaders” factor demonstrates that the Individual Medicare Advantage statewide and county market leader rankings have undergone very little volatility between 2010 and 2015.<sup>239</sup>

The evidence presented concerning the “number of competitors” factor demonstrates that the average number of competitors in the Individual Medicare Advantage county markets has dropped from 3.30 in 2008 to 2.87 in 2016.<sup>240</sup> The number of Individual Medicare Advantage county markets with at least five competitors has dropped from 29 in 2008 to 11 in 2016, and would drop to zero post-merger.<sup>241</sup>

The evidence presented concerning the “concentration” factor demonstrates that the degrees of concentration in the Individual Medicare Advantage statewide and 115 county markets far exceeds the statutory threshold of section 382.095.4(2), RSMo, past which a market is highly concentrated under Missouri law.<sup>242</sup>

The evidence presented concerning the “trend of concentration in the industry” factor demonstrates that the Individual Medicare Advantage statewide and county markets have trended toward becoming more highly concentrated between 2008 and 2016.<sup>243</sup>

The evidence presented concerning the “ease of entry and exit into the market” demonstrates that entry into the Individual Medicare Advantage county markets requires a significant waiting period, a rigorous application process, and compliance with a lengthy set of substantive requirements.<sup>244</sup>

Additional evidence presented demonstrates that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the Comprehensive Small Group market.<sup>245</sup>

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<sup>237</sup> ¶ 76.

<sup>238</sup> Id.

<sup>239</sup> ¶¶ 127-131.

<sup>240</sup> ¶ 136.

<sup>241</sup> Id.

<sup>242</sup> ¶ 132.

<sup>243</sup> ¶¶ 135-136.

<sup>244</sup> ¶¶ 139-141.

<sup>245</sup> ¶¶ 143-145.

17. *Section 382.095.4(4) Factors and Other Relevant Factors: Group Medicare Advantage*

Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect. In fact, the Division presented substantial evidence demonstrating additional anticompetitive effects of the proposed acquisition in the statewide Group Medicare Advantage market, as found in paragraphs 146 to 155.

Section 382.095.4(4), RSMo, provides as follows, in relevant part:

Even though an acquisition is prima facie violative of the competitive standard under subdivision (2) of this subsection, a party may establish the absence of the requisite anticompetitive effect, based upon other substantial evidence. Relevant factors in making a determination under this subdivision include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

The evidence presented concerning the “market shares” factor demonstrates that Aetna and Humana possess market shares in the statewide Group Medicare Advantage market well in excess of the highly concentrated statutory thresholds of 15% and 1% necessary to establish prima facie evidence of violation of the competitive standards.<sup>246</sup>

The evidence presented concerning the “concentration” factor demonstrates that the degree of concentration in the statewide Group Medicare Advantage market far exceeds the statutory threshold of section 382.095.4(2), RSMo, past which a market is highly concentrated under Missouri law.<sup>247</sup>

The evidence presented concerning the “trend of concentration in the industry” factor demonstrates that the statewide Group Medicare Advantage market has trended toward becoming more highly concentrated between 2008 and 2016.<sup>248</sup>

The evidence presented concerning the “ease of entry and exit into the market” demonstrates that entry into the statewide Group Medicare Advantage market requires a significant waiting period, a rigorous application process, and compliance with a lengthy set of substantive requirements.<sup>249</sup>

Additional evidence presented demonstrates that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the Comprehensive Small Group market.<sup>250</sup>

18. *Section 382.095.4(5) Analysis*

Aetna and Humana are each large companies with global operations.<sup>251</sup> Neither Aetna nor Humana presented any evidence tying any specific percentage or amount of its projected

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<sup>246</sup> ¶ 146.

<sup>247</sup> ¶ 147.

<sup>248</sup> ¶ 148.

<sup>249</sup> ¶¶ 149-152.

<sup>250</sup> ¶¶ 153-155.

efficiencies from the proposed acquisition to the State of Missouri health insurance markets. Gregory Martino, Assistant Vice President for Aetna Inc. in state government affairs, admitted that none of his testimony about the claimed nationwide benefits from the proposed acquisition applied specifically to Missouri.<sup>252</sup>

Neither Aetna nor Humana presented sufficient evidence to demonstrate that the proposed acquisition would result in substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and neither Aetna nor Humana presented sufficient evidence to demonstrate that the public benefits of any such economies would exceed the public benefits which would arise from not lessening competition.

Neither Aetna nor Humana presented sufficient evidence to demonstrate that the proposed acquisition would substantially increase the availability of insurance in Missouri.

*19. Violation of Competitive Standard: Comprehensive Individual*

The proposed acquisition violates the competitive standard of section 382.095.4(1), RSMo, in the Missouri Comprehensive Individual market.

*20. Violation of Competitive Standard: Comprehensive Small Group*

The proposed acquisition violates the competitive standard of section 382.095.4(1), RSMo, in the Missouri Comprehensive Small Group market.

*21. Violation of Competitive Standard: Individual Medicare Advantage*

The proposed acquisition violates the competitive standard of section 382.095.4(1), RSMo, in each of the 65 Individual Medicare Advantage county markets listed in paragraph 76.

*22. Violation of Competitive Standard: Group Medicare Advantage*

The proposed acquisition violates the competitive standard of section 382.095.4(1), RSMo, in the Missouri Group Medicare Advantage market.

### **III. Order**

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED pursuant to section 382.095.5(1), RSMo, that Aetna Inc. and all of its subsidiaries, and Humana Inc. and all of its subsidiaries, shall cease and desist from doing business throughout the State of Missouri with respect to the Comprehensive Individual, Comprehensive Small Group, and Group Medicare Advantage product markets as defined in this Order;

IT IS FURTHER ORDERED that Aetna Inc. and all of its subsidiaries, and Humana Inc. and all of its subsidiaries, shall cease and desist from doing business in the following 65 counties of Missouri with respect to the Individual Medicare Advantage product markets as defined in this Order: Audrain, Barry, Barton, Bates, Benton, Boone, Caldwell, Callaway, Carroll, Cass, Cedar,

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<sup>251</sup> ¶ 94.

<sup>252</sup> ¶ 157.

Christian, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Douglas, Franklin, Gasconade, Greene, Henry, Hickory, Howard, Jackson, Jasper, Jefferson, Johnson, Laclede, Lafayette, Lawrence, Lincoln, Livingston, Maries, McDonald, Miller, Moniteau, Montgomery, Newton, Osage, Ozark, Perry, Pettis, Phelps, Pike, Platte, Polk, Pulaski, Randolph, Ray, Saline, St. Charles, St. Clair, St. Louis County, St. Louis City, Ste. Genevieve, Stone, Taney, Vernon, Warren, Washington, Webster, and Wright;

IT IS FURTHER ORDERED that this Order shall be sufficient grounds to deny an application for a license or certificate of authority to do business in the State of Missouri of a subsidiary of Aetna Inc. or Humana Inc. not currently licensed in the State of Missouri;

IT IS FURTHER ORDERED that this Order shall not become final until a subsequent Final Order of the Director finalizing this Order, which shall not be issued earlier than thirty (30) days after issuance of this Order, during which time Aetna Inc. and/or Humana Inc. may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time;

IT IS FURTHER ORDERED that based upon such plan or other information submitted by Aetna Inc. and/or Humana Inc., the Director shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of section 382.095, RSMo would be remedied and this Order vacated or modified;

IT IS FURTHER ORDERED that this Order shall not apply unless and until the acquisition of Humana Inc. by Aetna Inc. is consummated.

So ordered, signed and official seal affixed this \_\_\_\_ day of May, 2016.

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JOHN M. HUFF  
DIRECTOR  
Department of Insurance, Financial Institutions and  
Professional Registration  
State of Missouri

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by U.S. Mail, postage prepaid, and courtesy copy by electronic mail, on this \_\_\_\_ day of May, 2016, to:

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