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FTC Chasing the Wrong Healthcare Villain in Chicago

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By David Johnson, CEO

Last December the Federal Trade Commission sued to block the proposed merger between Advocate Health Care and NorthShore University Health System. The combined company's annual revenues would exceed $7 billion. Their consolidated network would provide healthcare services throughout the entire metropolitan region. In opposing the merger, the FTC argued that the new company's concentration of hospitals in Chicago's North Shore would stifle competition, raise prices and reduce service quality for North Shore residents.

Advocate and NorthShore are challenging the FTC's action in Chicago's U.S. District Court. The trial began last week. Most health law experts believe the FTC will prevail. This would be a pyrrhic and ironic victory.

BlueCross BlueShield of Illinois controls almost 75% of Metropolitan Chicago's lucrative commercial insurance market. A merged Advocate-NorthShore health company would have the scale, geography and capabilities to challenge BlueCross' market dominance. It would deliver better, lower-cost healthcare services throughout the entire metropolitan region. Absent a merged Advocate-NorthShore, BlueCross will continue its anti-competitive, market-crushing business practices.

Healthcare's Dynamic Marketplace

This trial occurs as powerful market forces are reshaping healthcare delivery. Expanding Medicare Advantage, public exchanges, value-based payment and more equitable health insurance are placing new demands on healthcare companies. New business models are emerging. Traditional lines between insurance provision and healthcare delivery are blurring.

Disruption in healthcare poses enormous challenges for industry incumbents. Lack of care management capabilities is American healthcare's greatest deficiency. Large commercial insurers are losing billions insuring new exchange members under Obamacare. Care costs have overwhelmed premium revenues. Health companies able to attract customers, provide patient-centric services and manage total care costs will thrive in post-reform healthcare. Others will lose market relevance.

Health Care Services Corporation (HCSC) is the parent company of BlueCross affiliates in Illinois and four other states. It is struggling to adapt to new marketplace dynamics. HCSC lost $2.3 billion on individual policies in 2014 and 2015. To compensate, it eliminated popular PPO plans and stopped paying broker commissions. In Illinois, these decisions forced 173,000 BlueCross members to scramble for new health insurance coverage.

Anti-Competitive Consequences

BlueCross overcomes losses in the individual market by generating monstrous profits administering healthcare benefits on behalf of self-insured employers. High-paying commercial contracts are lifeblood for the region's hospitals and doctors. Blue Cross provides vital cash-flow to these providers by pre-paying for commercially-insured treatments.

With its quasi-monopolistic market position, BlueCross essentially sets provider reimbursement rates and payment procedures. Doctors and hospitals have little choice but to accept BlueCross' payment terms. Not surprisingly, these payment terms favor BlueCross.

Since self-insured employers pay the costs, BlueCross benefits when covered employees consume healthcare services for two reasons:

- self-insured employers pay BlueCross a percentage of claims administered. Higher claims mean higher fees; and/or
- BlueCross manipulates provider reimbursement through complex pre-payment and discounting strategies. These "strategies" accelerate co-pay/deductible capture, facilitate claim denials, optimize profitability and complicate payment reconciliation.

BlueCross scores beauty points by lowering some contract rates. Under pressure from employers, BlueCross created a lower-cost narrow network for 2016. They euphemistically named this plan "Blue Choice." Blue Choice excludes the region's most prestigious and higher-cost health companies, including Advocate, NorthShore, Northwestern, Rush and University of Chicago.

BlueCross uses "soft steerage" to direct members to lower-cost treatments and diagnostic services. Narrow networks and soft steerage reduce per-unit costs of healthcare services, but do little to reduce unnecessary medical treatments.

BlueCross' profitability emanates from financial contracting, not patient care. The company is expert at shifting "treatment risk" and its costs to individuals, employers and providers.

Care Management Magic

Unlike BlueCross, Advocate has devoted enormous organizational energy to advancing care management. Advocate practices integrated delivery, evidenced-based medicine and chronic disease management. Team-based caregivers engage patients, make fewer errors and achieve superior outcomes.

Indeed, Advocate is BlueCross' partner-of-choice for accountable care programs. The two companies initiated the region's first and largest shared-savings program. Last October, they jointly launched a low-cost exchange product named BlueCare Direct. It provides comprehensive services to its 60,000 new subscribers through Advocate's provider network. Advocate, not BlueCross, manages members' total care costs.

Advocate and NorthShore want to merge so they can apply Advocate's well-developed care management protocols region-wide. None of this matters to the Federal Trade Commission.

Regulatory Blindness

Despite healthcare's changing market dynamics, the FTC still applies narrow and outdated 1990s-era methodologies to identify and break-up anti-competitive hospital networks.

Upon examination, the FTC's conclusions regarding the proposed Advocate-NorthShore merger appear pre-determined. The agency structured its analysis to portray the merger in the most anti-competitive terms possible. Consider the following:

- The FTC used a "gerrymandered" North Shore service area to create a "highly concentrated" (greater than 50%) combined marketshare. Their analysis excludes the closest competing hospital (2.9 miles away) from NorthShore's flagship institution. More expansive regional analyses peg the combined marketshare between 23% and 28%.
- They examined only inpatient admission and price data. Most healthcare treatments occur in outpatient settings and physician offices. Relying exclusively on inpatient data is equivalent to assessing phone-company concentration by counting land lines.
- They did not consider Advocate's care management capabilities or the merged company's potential to deliver higher-quality, lower-cost care Metro-wide.
- They focused exclusively on per-unit hospital prices. They did not consider incremental costs associated with unnecessary treatments, medical errors or readmissions. The FTC even rejected Advocate-NorthShore's offer to cap post-merger hospital prices.
- They did not consider non-hospital competitors offering equivalent services at lower prices.
- They did not consider BlueCross' market dominance and "price-setting" power in evaluating Advocate-NorthShore's potential pricing leverage.

Using this tortured methodology, the FTC reached this inaccurate and meaningless conclusion: the proposed merger "will generate significant harm" to North Shore consumers of "general acute care inpatient hospital services."

Like blind men describing elephants, the FTC embodies U.S. healthcare's fragmented and bureaucratic regulatory infrastructure. Government agencies only regulate what they feel and touch. While the FTC regulates hospitals, state insurance commissions regulate health insurers like BlueCross. No regulatory body considers the entire eco-system.

Inadequate regulatory oversight compromises the ability of enlightened health companies, like Advocate and NorthShore, to deliver more holistic healthcare services.

BlueCross' Deepest Fear

BlueCross executives have worked aggressively behind-the-scenes to oppose the Advocate-NorthShore merger. Their real concern isn't higher hospital costs on the North Shore. BlueCross fears the new Advocate NorthShore Health Partners will challenge their dominion in the commercial insurance marketplace.

This potential reality became apparent in March when Advocate and NorthShore announced their intention to partner post-merger with a health insurer to offer a competitive health plan. The companies guarantee the plan's price will be 10% below the region's lowest-priced HMO. This would save subscribers hundreds of dollars annually.

Under cross-examination Steve Hamman, HCSC's Senior Vice President for Provider Engagement and Enterprise Network Solutions, acknowledged BlueCross' concern that a merged Advocate-NorthShore could launch their own health insurance company. This is Blue Cross' nightmare scenario. In the future, fully integrated health companies will not require intermediaries like them to offer health insurance products.

Forward or Backward?

April 2016 will be a seminal month for American healthcare. An Advocate-NorthShore loss will have a chilling effect on health companies pursuing progressive care management.

An Advocate-NorthShore victory will signal that delivering better, more affordable and convenient healthcare services matters. It also will affirm that health outcomes are the best measure of market effectiveness. Let us hope that truth, reason and justice triumph in Chicago for the good of American healthcare.