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to the

California Department of Managed Health Care

On

Proposed Merger of Centene Corporation and Health Net of California, Inc.

December 14, 2015

Consumers Union, the public policy and advocacy arm of nonprofit Consumer Reports, is pleased to offer comments on the proposed merger of Centene Corporation and Health Net of California. From our vantage point advocating for consumers on a number of health access, cost, and quality issues—including health insurance rate setting, network adequacy, and health insurance benefit design—we are keenly attuned to the burden of health care and coverage costs for Californians.

In our mission to work for a fair, just, and safe marketplace for all consumers, we have examined proposed mergers in health insurance and other markets to assess whether they threaten to impede the competitive nature of the marketplace, potentially reducing choice as well as affordability, quality, and the incentive to innovate. Given that the federal Department of Justice and the Federal Trade Commission both granted early termination of the waiting period under the Hart Scott Rodino Antitrust Improvements Act of 1976 (HSR Act), Californians now rely on state actors to protect consumer interests. We, therefore, turn to the Department of Managed Health Care (DMHC) to ensure that when plans such as Centene and Health Net merge, the sum of the two plans is better than what consumers get when the plans stand alone.

I. Impact of the Centene-Health Net Merger on the California Health Insurance Market

Some say that mergers like that proposed here are necessary responses to increased concentration in provider markets. Indeed, in our work on health insurance rate review, we witness a growing chasm between rate increases for northern California versus rate change in southern California¹, due at least in

¹ For the 2016 plan year, for example, Covered California reported that the “weighted average increase for Southern California consumers who stay in their current plan is ... 1.8 percent, while for consumers in Northern California it is 7 percent. Consumers in Southern California can save an average of nearly 10 percent by moving to a lower-cost plan in the same metal tier, while consumers in Northern California would potentially be able to limit their rate increase to an average of 1 percent if they did the same.” Covered California press release, 27 July 2015, available at http://news.coveredca.com/2015/07/covered-california-holds-rate-increases_27.html.

part to the consolidation of providers in northern California. However, we are not convinced that the antidote to provider consolidation is plan consolidation. Rather, if history is a guide, having a high concentration of health insurers, as in other industries, results in higher prices. For example, when Aetna and Prudential merged in 1999, premiums rose seven percentage points.² While this example precedes the ACA and its significant impact on the insurer landscape, we believe the outcome is still telling.

We also have reason to doubt assurances by Centene and Health Net, stating that the merger of these two companies would afford efficiencies for the benefit of consumers.³ The announcement of a proposed merger of health plans is frequently padded with promises of cost-savings to be passed along to consumers. However, research on the subject reveals a dearth of economic studies or other evidence finding those assurances to be true. Rather, according a health economics expert, “Past mergers among insurance companies suggest that consumers seldom benefit. ‘When insurers merge, there’s almost always an increase in premiums’.”⁴ While it is foreseeable that stronger market power will strengthen health plans’ negotiating position with providers, as a leading health antitrust scholar notes, there is “little incentive [for an insurer] to pass along the savings to its policyholders.”⁵ Furthermore, we note that if price reductions are in fact realized and passed through, we seek assurances that cost savings will not be achieved via reductions in the quantity or quality of services.

The threat of increased insurance rates also stems from the possibility that Centene will opt to shrink or remove Health Net’s presence from the commercial market in California altogether. In 2015, Health Net offered products in all but three Covered California regions, capturing 18% of statewide enrollment in Covered California (subsidized and non-subsidized).⁶ Health Net was also the third largest health plan of all full service commercial HMO enrollees, serving 8% of the California market.⁷ Centene, on the other hand, has limited exposure in the commercial market, focusing most heavily in government contracting; it does not operate at all in California’s commercial market and appears to have entered the commercial market in other states only after the implementation of the ACA.⁸ The possibility of a large player such

² Leemore Dafny, Mark Duggan and Subramaniam Ramanarayanan, *Paying a Premium on your Premium? Consolidation in the U.S. Health Insurance Industry*, NBER Working Paper No. 15434, Issued October 2009.

³ Testimony of Steve Sell, President and CEO of HealthNet of California and Rone Baldwin, Executive Vice President of Centene, DMHC public meeting conducted December 7, 2015.

⁴ Erin Trish, researcher at USC’s Schaeffer School for Health Policy and Economics, as quoted by David Lazarus, *As Health Insurers Merge, Consumers’ Premiums are Likely to Rise*, 10 July 2015. Available at <http://www.latimes.com/business/la-fi-lazarus-20150710-column.html>.

⁵ Thomas Greaney, *Examining Implications of Health Insurance Mergers*, Health Affairs, 16 July 2015. Available at <http://healthaffairs.org/blog/2015/07/16/examining-implications-of-health-insurance-mergers/>.

⁶ Covered California, *Health Insurance Companies and Plan Rates for 2016 (preliminary rates)*, July 27, 2015 (updated Oct. 29, 2015), at p.31. Available at <https://www.coveredca.com/PDFs/7-27-CoveredCA-2016PlanRates-prelim.pdf>.

⁷ Cattaneo & Stroud, Inc., *Before & After Results of the Proposed California HMO Acquisitions*, 24 August 2015 at pp.1-2.

⁸ Avalere Health LLC, *New Market Entrants: Growth and Diversification in U.S. Health Insurance*, September 2015.

as Health Net exiting the market altogether is troubling because it would result in less competition, and potentially higher prices for consumers. At the DMHC public meeting, on December 7, both Centene and Health Net executives made assurances that Health Net’s current Knox-Keene products would be maintained in the California marketplace. However, Centene has a history of backing out of a health insurance market abruptly: in 2013, Centene discontinued its Kentucky Medicaid product, Kentucky Spirit Health Plan, a year prior to the conclusion of its contract, leaving policyholders scrambling.⁹ We therefore urge DMHC to get these assurances of continued presence in both the Medicaid and commercial markets in California in writing, in the form of a specific undertaking, if this merger is approved.

II. Impact of Centene-Health Net Merger on Incentive to Improve Quality

In addition to the specter of the cost of health insurance increasing under a consolidated plan marketplace, Consumers Union is also concerned that greater market power will erode incentives for plans, including the newly merged company, to provide high quality health insurance coverage to its members.

Looking at what we know about current records for both Health Net and Centene gives us reason for concern.

- According to a recently issued report by the California Office of the Patient Advocate, Health Net HMO members on the commercial market conferred on Health Net a single star—the lowest score possible—for both categories of “*ease of access to care*” and “*members get answers to questions*.”¹⁰
- The National Committee for Quality Assurance (NCQA) reported that Health Net of California earned the lowest score possible for consumer satisfaction for its Medicaid Managed Care Organization in 2014-2015.¹¹
- In a 2013 Routine Medical Survey conducted by DMHC, the Department identified five deficiencies.¹² Of those, a year later, Health Net failed to resolve one: “to demonstrate adequate

⁹ Centene was recently found in breach of its contract with the state of Kentucky by the Court of Appeals and the case is pending calculation of damages by the Circuit Court. The Courier-Journal, *Kentucky Spirit Loses Appeal in Medicaid Suit*, available at <http://www.courier-journal.com/story/news/local/2015/02/06/kentucky-spirit-loses-appeal-medicare-suit/23000931/>.

¹⁰ State of California Office of the Patient Advocate, Health Net of California, Inc. 2015-16 Edition Medical Care Ratings, available at http://reportcard.opa.ca.gov/rc/profile.aspx?EntityType=HMO&Entity=HEALTH_NET.

¹¹ Kaiser Family Foundation Medicaid MCO Quality Rankings available at <http://kff.org/medicaid/state-indicator/medicaid-mco-quality-rankings/>. Centene is currently unranked because of its nominal share of the California market.

¹² The Department of Managed Health Care, *Final Report—Routine Medical Survey of Health Net of California, Inc. A Full Service Plan*, February 2014. Available at

consideration and rectification of enrollee grievances.” Indeed, it appears to have taken a full two years after the deficiency was originally identified for Health Net to correct this failure. Obviously, responsiveness to consumer grievances is a key measure for consumers, but it was not prioritized by Health Net.

- DMHC’s 2013 Independent Medical Review Results report shows that there were 1.13 independent medical reviews requested for every 10,000 Health Net members—a number that puts Health Net in the dubious position of one of the top in the state for members requesting outside review. For perspective, Health Net’s 1.13 is more than double the rate of Kaiser Permanente, which has a rate of 0.47 per 10,000 members. Of the cases reviewed for medical necessity, two-thirds were reversed either via judgment by the independent reviewer or by the plan.¹³ Of the Emergency Room (ER) reimbursements that underwent independent review, another two-thirds were reversed, many of which by the plan itself.¹⁴
- DMHC fined Health Net in 2014 for its failure to properly secure of protected health information.¹⁵
- A visit to the Better Business Bureau Business Review website reveals a bevy of recent consumer complaints against Ambetter, Centene’s health insurance exchange product for the individual market. These complaints include lost documentation, unrecorded premium payments, inadequate provider network, and customer service hours that are limited to the standard work day (meaning that policyholders that work during the day may be unable to contact Centene during customer service hours). Complaints were spread among the states where Ambetter was offered in 2014 and 2015.

<http://www.dmhc.ca.gov/desktopmodules/dmhc/medsurveys/surveys/300fs022414.pdf>. Those deficiencies were: (1) The plan failed to demonstrate adequate consideration and rectification of enrollee grievances; (2) The plan does not consistently and correctly display in all its written responses to grievances the Department’s telephone number, the CA Relay service’s telephone number, the Plan’s telephone number, and the Department’s Internet address in 12-point boldface type with the statement required by Section 1368.02(b); (3) The Plan does not consistently follow timeframes indicated in its Evidence of Coverage (EOC) for enrollees to file grievances; (4) Upon receipt of an urgent grievance, the Plan does not consistently, immediately inform the complainant of his/her right to contact the Department regarding the urgent grievance; (5) The Plan does not consistently provide the direct telephone number of the professional who made the denial decision in its commercial denial letters sent to requesting/treating providers.

¹³ The breakdown is 28.8% were overturned by IMR and 37.0% were reversed by the plan. California Department of Managed Health Care 2013 Independent Medical review Summary Report. Available at <http://www.dmhc.ca.gov/Portals/0/FileAComplaint/DMHCDecisionsAndReports/AnnualComplaintAndIMRDecisions/2013.pdf>.

¹⁴ The breakdown is 11.1% were overturned by IMR and 55.6% were reversed by the plan. California Department of Managed Health Care 2013 Independent Medical review Summary Report. Available at <http://www.dmhc.ca.gov/Portals/0/FileAComplaint/DMHCDecisionsAndReports/AnnualComplaintAndIMRDecisions/2013.pdf>.

¹⁵ The Department of Managed Health Care, *2014 Annual Report*, at 14. Available at <http://dmhc.ca.gov/Portals/0/FileAComplaint/DMHCDecisionsAndReports/AnnualComplaintAndIMRDecisions/2014.pdf>.

Despite all this, Health Net's individual health insurance rate increases that were not subject to negotiations with Covered California exceeded the median increase in California in four out of the past five years.¹⁶ The sole year in the period where they fell below was the year the market overall experienced the highest median rate increase by a significant margin.¹⁷

Outside California, Centene's subsidiary, Sunshine State Health Plan, a Medicaid Managed Care Organization (MCO), also earned a single star in some Florida counties where it operated. Further, Centene's subsidiaries operating Medicaid MCOs in Florida, Georgia, Indiana, Ohio, South Carolina, Texas, Washington, and Wisconsin each earned at or below average scores for consumer satisfaction.¹⁸ Health plans are more than a financial conduit between consumers and providers; they also have a direct relationship with consumers, such as by coordinating care and providing resources. Clearly, consumers' experience with a merged Health Net-Centene entity must be improved.

Finally, in his testimony before the DMHC on December 7, 2015, Health Net President and CEO Steve Sell claimed the proposed merger of the two plans would enable Health Net to innovate and transform Health Net into a leader in the transformation of health care in the country.¹⁹ However, as one leading expert recently testified before the Senate Committee on the Judiciary, "there is no research showing that larger insurers are likelier to innovate."²⁰ One innovation Mr. Sell frequently cited was value-based products. It is unclear, however, how innovation will improve post-merger. Further, there is no evidence that an insurance merger is required to carry out such initiatives. While we support the transition from volume-based care to patient-oriented value-based delivery, health plans must be held accountable for assurances such as these.

We urge DMHC to impose an undertaking on the merger that raises the bar for quality. This may include improved ease of enrollment,²¹ more consumer-friendly benefits and coverage design,²² and enhanced

¹⁶ We do note, however, that its rate increases for products sold on the state Exchange, which underwent negotiations with Covered California, came in more favorably than for many other plans.

¹⁷ California Health Care Foundation, *Individual Health Insurance Premium Growth in California*, available at <http://www.chcf.org/publications/2015/11/individual-premiums-growth-california>.

¹⁸ See <http://kff.org/medicaid/state-indicator/medicaid-mco-quality-rankings/> for notes and sources. Centene's subsidiary operating a Medicaid MCO in South Carolina, Absolute Total Care, achieved a score of four out of five and the subsidiaries in Illinois, Kansas, Louisiana, Massachusetts, Mississippi, and Missouri are not yet scored by NCQA.

¹⁹ Testimony of Steve Sell, President and CEO of HealthNet of California, DMHC public meeting conducted December 7, 2015.

²⁰ Testimony of Leemore S. Dafny, PhD., Before the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights on "Health Insurance Industry Consolidation: What Do We Know From the Past, Is It Relevant in Light of the ACA, and What Should We Ask?," 22 September 2015. Available at <http://www.judiciary.senate.gov/imo/media/doc/09-22-15%20Dafny%20Testimony%20Updated.pdf>.

²¹ In 2014, the most frequent complaint by consumers was in Health Net's enrollment process. The Department of Managed Health Care, *2014 Annual Report*, "2014 Complaint Results by Category and Health Plan."

²² In 2013, the most frequent complaint by consumers was in Health Net's benefits and coverage. The Department of Managed Health Care, *2013 Annual Report*, "2014 Complaint Results by Category and Health Plan." Available at

grievance processes so policyholders can have issues resolved before escalating to the Independent Medical Review stage.

III. Impact of Entry by an Out-of-State Corporation and Management of a California-based Health Plan

While Health Net has a longstanding presence in California, Centene has operated on only a very limited basis here, for a relatively short period of time, and outside the commercial market. Given this, it is unlikely that Centene is familiar with the intricacies of California legal requirements, the state's extensive consumer protections, and the unique regulatory framework of having two regulators as well as an active purchaser Exchange. In the DMHC public meeting held December 7th, executives for both plans insisted that Centene would maintain local management in California. We urge DMHC to hold Centene to this promise and to require that "local management" be comprised of high level executives with prior experiences of considerable depth in California insurance regulations and operations. In addition, not only should management be local, but it should also prioritize practices that put consumers first.

IV. Recommended Undertakings

If this merger is finalized, consumers need assurances that the newly combined Centene-Health Net corporation will lift up consumer interests and improve their lot—on access, affordability, and quality—rather than leaving consumers carrying the weight of this deal. Some undertakings we recommend for your consideration include, but are not limited to:

- Health insurance rates: The merged company should agree to not moving forward with rate increases in any market segment that DMHC deems unjustified or that contain inaccurate or incomplete information. California's rate filing law, with broad transparency and detailed information breakout requirements, is more extensive than in other states and quite different from the government contract environment to which Centene is accustomed. Given the risk that the bigger merged company may have higher premiums, it should agree to providing even greater detail, publicly available, to aid DMHC in especially close rate review for the first years after the merger. Moreover, it should agree that Covered California and DMHC may calculate any proposed increase rate based on Health Net rates for the 2016 plan year. Centene must not be permitted to finalize proposed premium rate increases deemed unreasonable or unjustified by the Department and instead should confer with regulators until a reasonable and justified rate is set. This should apply to all lines of business subject to rate review at the time the rate is filed.

- Quality improvement and cost containment initiatives: Existing state law requires that each plan’s rate filing include “any cost containment and quality improvement efforts since the last filing for the same category of health benefits plan. To the extent possible, the plan shall describe any significant new health care cost containment and quality improvement efforts and provide an estimate of potential savings together with an estimated cost or savings for the projection period”.²³ Unfortunately, that requirement is often honored more in the breach than the observance. In fact, in commenting on Health Net’s rate filing justification for 2015, Consumers Union noted “[t]he Health Net filing lacks even minimal narrative on the subject and the data they provide is scant yet paints an unsettling picture.”²⁴ Therefore, we urge assurances that Centene will reinvestment profits in quality improvement and cost containment initiatives and provide clear explanations and documentation of those investments, dollar breakdowns, estimated savings, and descriptions of how each directly benefits policyholders. As noted above, we recommend that any filing by Centene in the first years after the proposed merger refer back to the Health Net products for 2016 as its basis for comparison and build on or differentiate its quality/cost efforts from those of Health Net.
- Improving quality and consumer satisfaction ratings: Achieving above average quality ratings as measured by NCQA, Covered California, the Right Care Initiative, the Office of Patient Advocate Quality Report Card, and the Medi-Cal Managed Care Health Care Options Consumer Guide, by no later than the performance measurement period ending December 31, 2017.
- Improving provider directory: Making available to consumers, policyholders and non-policyholders, an accurate provider directory that is easily accessible and regularly updated. The issue of provider directory inaccuracies is a serious one and likely to be exacerbated by a merged company combining IT systems.
- Maintaining presence in the commercial market at least commensurate with Health Net’s current participation: The aim of this suggested undertaking is to ensure that competition remains vigorous, on and off the state Exchange, both in the number and variety of insurance products offered.
- Adequate, dedicated staffing in California: We urge that high level staff for the newly merged company— Medical Director, Customer Service, and Legal Compliance personnel—be located in California and be comprised of individuals with a depth of expertise in our state in order to acclimate and immerse the newly merged company into the regulatory and consumer protection environment in California.
- Dedicated staffing for transition issues: Whether due to network shifts, information technology glitches or other operational issues, mergers inevitably have bumps in the road which will

²³ Health and Safety Code Section 1385.03(c)(3).

²⁴ Consumers Union comments on the Health Net rate filing justification, available at <http://wpso.dmhc.ca.gov/ratereview/Detail.aspx?lrh=k2flWv6xelQ%24>.

affects Health Net's and the newly merged company's customers. Consumers Union recommends that DMHC require dedicated, increased staffing—in California and anywhere else trouble spots in the company may arise and be rectified—such as personnel to craft provider directories, provide customer service, and to ensure that protected health information is continuously secured through the transition and thereafter.

Conclusion

In conclusion, the California commercial health insurance marketplace has been competitive and relatively stable to date. We believe this has worked to consumers' advantage. Consolidation in that marketplace—from this and other pending mergers—is worrisome both for marketplace stability and pricing and access for consumers. We appreciate DMHC holding a public forum on this proposal and the Department's openness to input. Consumers Union intends to play an active role with the Department in urging your close scrutiny and imposition of undertakings for this deal for the protection of consumer interests.

Sincerely,



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