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Advancing Health in America

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April 30, 2019

The Honorable Makan Delrahim
Assistant Attorney General
United States Department of Justice - Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Assistant Attorney General Delrahim:

I am writing on behalf of the nearly 5,000 member hospitals, health systems and other health care organizations, and 43,000 individual members of the American Hospital Association ("AHA") regarding the proposed $17.3 billion acquisition of WellCare Health Plans Inc. ("WellCare") by Centene Corp. ("Centene" and, together, "the Parties"). We respectfully urge that the Antitrust Division of the Department of Justice ("DOJ") investigate thoroughly Centene's proposed acquisition of WellCare because it threatens to reduce competition in delivery of Medicaid Managed Care and Medicare Advantage ("MA") services to tens of millions of consumers across broad swaths of the country.

I. Background

DOJ has a long track record of preserving competition in the vital health insurance markets, including for government-sponsored sectors, such as Medicare Advantage and Medicaid Managed Care. Recently, DOJ obtained an injunction to block Aetna's acquisition of Humana, which would have resulted in dramatic consolidation in local markets for Medicare Advantage programs.[1] Prior to that landmark litigation, in order to remedy UnitedHealth Group's acquisition of Sierra Health Services, which would have resulted in unprecedented concentration in the Medicare Advantage market in the Las Vegas area, DOJ mandated that UnitedHealth divest its Medicare Advantage business in the region.[2] DOJ has also acted to maintain competition in Medicaid Managed Care markets, as well, such as when it mandated that Amerigroup Corp. divest a subsidiary in order to secure clearance for its acquisition by Wellpoint Inc. in 2012.[3]

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[1] *See United States v. Aetna Inc.*, Case No. 1:16-cv-01494 (D.D.C. filed July 21, 2016).
[2] *See United States v. UnitedHealth Group Inc.*, Case No. 1:08-cv-00322 (D.D.C. filed Feb. 25, 2008).
[3] *See* Press Release, *Amerigroup Corp.'s Divestiture of Its Virginia Operations Addresses*

DOJ's careful review of transactions in the health insurance industry is warranted. As DOJ has recognized, there are "significant barriers to entry in the individual Medicare Advantage market,"[4] which apply with equal force to the Managed Care market. As DOJ explained in the Aetna litigation, "the difficulty in building a competitive provider network," the need for "a strong brand," and "specific operational expertise and IT infrastructure" are all substantial barriers to entry – each of which is also true in Managed Care. A careful review is also warranted because transactions such as these can adversely impact the quality of care provided to this vulnerable population.

II. The Parties

A. Centene

Centene is one of the largest health insurance companies focusing on government-sponsored programs in the United States. It is the 61st-largest company in the United States – up from 486th place in 2010 – and the 210th-largest in the world. Last year, Centene generated over $60 billion in revenues across 32 states and 14 million members.

Centene is investor-owned and publicly traded. It has been strikingly successful on its own. Forbes ranked it the number-one fastest growing company by revenue over a 10-year period. Centene touts "strong historical operating performance, size, and scale" that allows it "to grow, diversify and invest" on its own. In fact, it is already "the leader in the four largest Medicaid states" and plans to "increase our Medicaid, Medicare and Health Insurance Marketplace membership through" various independent methods, including "alliances with key providers, outreach efforts, development and implementation of community-specific products."[5] For example, in 2018, Centene "grew [its] portfolio of Medicare products [by] offering Medicare Advantage . . . in eight new . . . states."[6] While it has grown, it has also developed ways "to achieve efficiencies" so that it can "realize up to $500 million in savings over a multiyear period. In addition to long-term savings, this initiative will provide us with additional capital to invest in capabilities and technologies that better position Centene for long-term growth, increased margins, and enhanced profitability."[7]

B. WellCare

WellCare is a large health insurance company with a presence in all fifty states. It is the fourth-largest provider of Managed Medicaid plans (about 4 million members in 13 states) in the country, but is the largest in six of the 13 states in which it offers Medicaid plans. WellCare is also the sixth-largest provider of Medicare Advantage plans in the country (545,000 members in 21 states). It earned over $20 billion in revenue last year and expects to grow that figure by about 30 percent, to $26.3 billion, in 2019.

Department of Justice's Concerns with Wellpoint Inc.'s Proposed Acquisition of Amerigroup, Nov. 28, 2012, https://www.justice.gov/opa/pr/amerigroup-corp-s-divestiture-its-virginia-operations-addresses-department-justice-s-concerns.

[4] *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 56 (D.D.C. 2017).

[5] Centene 2019 10-K at 4.

[6] 2018 Annual Report at 3.

[7] Centene 2018 Annual Report at 4.

Like Centene, WellCare is well-positioned to continue to grow independently. WellCare's Annual Report states that the company "is uniquely positioned to serve the[] growing [Medicare Advantage and Medicaid] market segments thanks to its "unique local approach to managed care combined with [its] high-touch, integrated care model."[8] In fact, in seeking to gain approval of the consent decree in the CVS/Aetna transaction, DOJ recently commended WellCare for its ability to "compete[] successfully" and grow "organically."[9]

III. The Transaction is Likely to Reduce Competition in the Provision of Managed Medicaid Services

Managed Medicaid plans are essential to providing health care to tens of millions of the most vulnerable consumers. The program provides health insurance to low-income adults, children, pregnant women, elderly adults, and people with disabilities. It is intended "to manage cost, utilization, and quality" by "provid[ing] for the delivery of . . . services through contracted arrangements between state Medicaid agencies and managed care organizations (MCOs) that accept a set per member per month (capitation) payment for these services."[10] As of December 2018, there were 65.85 million Medicaid enrollees,[11] and over 12.3 million of them were enrolled in a program offered by the Parties.

The Parties are well aware that their transaction raises significant antitrust issues in the Managed Medicaid sector. In response to antitrust concerns raised by a market analyst during the conference call announcing the proposed transaction on March 27, 2019, Kevin J. Counihan, Centene's Senior Vice President of Products, expressed optimism that the proposed transaction would win antitrust clearance because "we don't set the rates, the rates is set by the state."[12] In fact, as the Parties know, DOJ has consistently rejected the argument that government regulation of health insurance rates in any way justifies less aggressive scrutiny of health insurance mergers. As you noted in a recent speech, "short-term price effects are only one aspect of consumer welfare analysis.

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[8] WellCare 2018 Annual Report: Year in Review, http://ir.wellcare.com/interactive/newlookandfeel/4091918/performancewithpurpose/wellcare2018/letter.html.
[9] Response of Plaintiff United States to Public Comments on the Proposed Final Judgment 14, *United States v. CVS Health Corp.*, Case No. 1:18-cv-02340-RJL, ECF No. 56 (D.D.C. filed Feb. 13, 2019), *available at* https://www.justice.gov/atr/case-document/file/1131901/download.
[10] Medicaid, Managed Care, https://www.medicaid.gov/medicaid/managed-care/index.html (last visited Apr. 18, 2019).
[11] December 2018 Medicaid & CHIP Enrollment Data Highlights, https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html.
[12] Centene Corporation M&A Call Transcript at 9, S&P Global Market Intelligence, Mar. 27, 2019.

Consumer welfare, including quality and innovation effects, ultimately depends on well-functioning competitive markets."[13]

Predictably, Centene revised its stance and appeared to acknowledge that its proposed acquisition of WellCare will have anticompetitive effects. One week after the proposed deal was announced, Centene CEO Michael Neidorff admitted that "[t]here are two states, Nebraska and Missouri, where there's three plans, and WellCare's one, we're one . . . . We know one of the plans is going to have to be divested."[14] This concession flatly undermines Centene's early position that government regulation of rates should justify antitrust approval.

Neidorff's concession likely understates the remedies that will be necessary to cure the competitive concerns. Medicaid patients in Illinois, Florida, Georgia, Kentucky, and likely other states will also suffer from dramatically increased concentration if the Parties are permitted to combine. For example, without DOJ intervention, "The companies [would] collectively control about half of the Medicaid market in Illinois and Florida,"[15] and about 61 percent in Georgia.[16] In addition, the proposed transaction will enhance the Parties' dominance of the Medicaid market in Kentucky. As WellCare explained to investors last year, it has the "#1 membership market share" for Medicaid in Kentucky.

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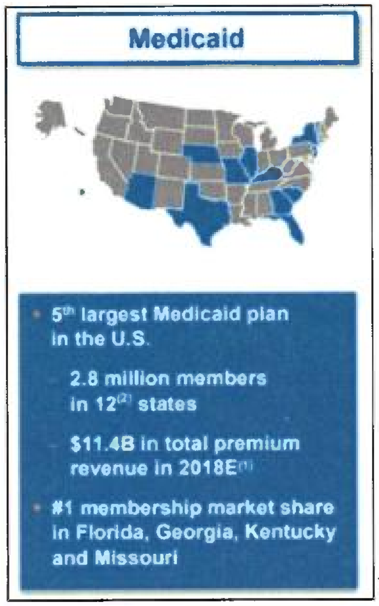
[13] Assistant Attorney General Makan Delrahim Delivers Remarks at George Mason Law Review 22nd Annual Antitrust Symposium, Feb. 15, 2019, https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-george-mason-law-review-22nd.

[14] John Tozzi, *Centene CEO Expects Divestitures in Two States for WellCare Deal*, BLOOMBERG LAW, Apr. 4, 2019, https://news.bloomberglaw.com/mergers-and-antitrust/centene-ceo-expects-divestitures-in-two-states-for-wellcare-deal. If this acquisition were permitted to proceed, the resulting company is projected to enroll 78% of Medicaid beneficiaries in Missouri based on plan data through February 2019.

[15] Bob Herman, *The antitrust questions behind the Centene-WellCare deal*, AXIOS, Apr. 11, 2019, https://www.axios.com/centene-wellcare-merger-medicaid-antitrust-71220685-ad34-41ba-bef7-0aadeee5bb92.html.

[16] *See* Samantha Liss, *Centene, WellCare union likely to raise antitrust concerns*, HEALTHCARE DIVE, Mar. 29, 2019, https://www.healthcaredive.com/news/centene-wellcare-union-likely-to-raise-antitrust-concerns/551479/. *See also* Shelby Livingston, *Why Medicaid and ACA kingpin Centene wants to buy rival WellCare*, MODERN HEALTHCARE, Mar. 30, 2019, https://www.modernhealthcare.com/insurance/why-medicaid-and-aca-kingpin-centene-wants-buy-rival-wellcare.



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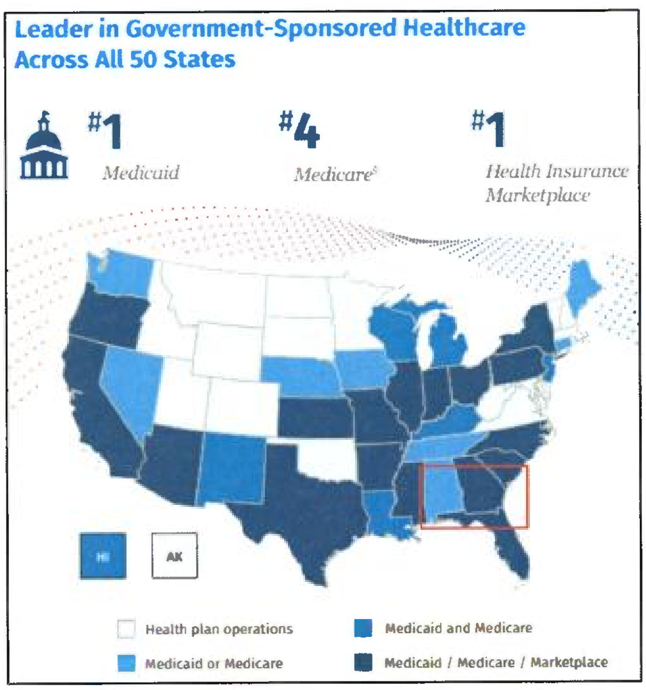
WellCare's top position is especially problematic under the circumstances because the Parties overlap in the Medicaid market in Kentucky, as Centene illustrated in its investor presentation touting the deal.



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[17] *Investor Presentation, WellCare Equity Offering for Meridian Transaction* 5, Aug. 2018, http://ir.wellcare.com/Cache/1001240970.PDF?O=PDF&T=&Y=&D=&FID=1001240970&iid=4091918.

[18] *Creating a Premier Healthcare Enterprise Focused on Government-Sponsored Healthcare Programs*, Mar. 27, 2019, https://investors.centene.com/static-files/f2dd6396-af84-422a-a838-f6cb7ad2cc0c.

The anticompetitive effects of the transaction are also likely to extend to other states. More and more states are moving towards a Managed Care model for their Medicaid programs in an attempt to control costs. Accordingly, DOJ must carefully scrutinize the transaction's present *and future* competition between the Parties to win state contracts. For example, North Carolina recently "join[ed] the ranks of other large states in embracing Medicaid managed care" and awarded contracts to just five companies – two of which are the Parties.[19]

It is uniquely important to maintain states' choices in the Managed Care market because, unlike a typical market for a good or service, federal law mandates (with limited exceptions) that states offer at least two Managed Care options.[20] Although Centene's Mr. Counihan cited this regulatory requirement as a point in *favor* of antitrust clearance,[21] the reality is just the opposite.[22] Providers compete for state contracts, and this competition gives states more options and benefits consumers. Removing one of those very few options is problematic for competition in the market for state-level Managed Care contracts. Moreover, there are already strong indications that the Managed Care market lacks sufficient competition, for example in Iowa, where per-member costs skyrocketed in the wake of that state's transition to a Managed Care model.[23]

IV. The Provision of Medicare Advantage of Plans

DOJ should also investigate if the transaction is likely to substantially reduce competition in the sale of Medicare Advantage plans. Over 20 million people obtain their health insurance through MA, and that number is growing rapidly: The total MA population has almost doubled since

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[19] Bob Herman, *North Carolina outsources Medicaid to 5 private companies*, AXIOS, Feb. 4, 2019, https://www.axios.com/north-carolina-medicaid-awards-first-contracts-7acacc6d-904a-4760-af1b-f1208aaefb44.html.

[20] *See* Section 1932 of the Social Security Act, 42 U.S.C § 1396u-2(a)(3) ("A State must permit an individual to choose a managed care entity from not less than two such entities"); 42 C.F.R. §438.52(a) (rule implementing 42 U.S.C § 1396u-2(a)(3)).

[21] Centene Corporation M&A Call Transcript at 9, S&P Global Market Intelligence, Mar. 27, 2019.

[22] *See* Samantha Liss, *Centene, WellCare union likely to raise antitrust concerns*, HEALTHCARE DIVE, Mar. 29, 2019, https://www.healthcaredive.com/news/centene-wellcare-union-likely-to-raise-antitrust-concerns/551479/ (quoting former FTC economist Dr. Chris Garmon, now a Senior Consultant at Compass Lexecon, as stating "The market may not function like commercial health insurance, but the state is still a customer, and like customers in other markets, states could be harmed by a loss of competition. For example, if companies bid to be awarded a Medicaid contract, a reduction in the number of bidders could lead to less desirable bids from the state's point of view.").

[23] *See* Tony Leys, *Iowa Medicaid's per-member cost increases nearly triple since privatization*, DES MOINES REGISTER, Sept. 19, 2018, https://www.desmoinesregister.com/story/news/health/2018/09/19/iowa-medicaid-cost-increases-nearly-triple-under-privatized-managed-care-legislature-kim-reynolds/1293372002/.

2009, and the share of Medicare beneficiaries who are enrolled in MA is up over 50 percent from 22 percent to 34 percent during that same timeframe.[24]

As of January, more than 857,000 seniors were enrolled in MA plans operated by Centene and WellCare.[25] The deal would not only eliminate current competition between them in the MA market, it also would eliminate the possibility of future competition between them.

Not only do the Parties overlap already, but both have strong records of organic MA growth and believe that they are capable of continuing to grow their MA businesses independently. For example, as noted above, Centene plans to grow organically in MA via "alliances with key providers, outreach efforts, development and implementation of community-specific products,"[26] and in 2018 it offered MA in eight new states.[27] Similarly, WellCare experienced "9.3% organic membership growth in 2017" in its MA plans, which it followed in 2018 with "[n]ew state and county expansions" in 2018.[28]
Since it acquired Meridian last year, WellCare is the sixth-largest MA plan in the country.[29] That transaction solidified its ability to continue to grow in the MA space. As WellCare noted in August 2018, acquiring Meridian "[s]trengthen[ed] existing business and position[ed] WellCare for future growth."[30] Thousands of the MA accounts that WellCare acquired from Meridian are in states where WellCare and Centene have considerable overlap, such as Illinois, Indiana, Michigan, and Ohio.[31] Considering that WellCare already was active in MA in Illinois prior to acquiring Meridian,[32] Centene's proposed acquisition of WellCare would mean that three separate Illinois MA plans would have consolidated into one in a span of less than a year.

There have been other indications that the Parties will increasingly compete against each other in the MA space. Their attempts to purchase Aetna's MA business, which was reported by multiple industry sources,[33] illustrate their intent to compete against each other in MA. When Aetna was reportedly contemplating divesting its MA business during antitrust review of its proposed acquisition of Humana, Centene and WellCare reportedly competed against each other to be the prospective divestiture purchaser. If true, those reports illustrate Centene and WellCare hope to enroll the exact same consumers in the exact same plans.

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[24] Gretchen Jacobson, Anthony Damico, and Tricia Neuman, *A Dozen Facts About Medicare Advantage*, HENRY J KAISER FAMILY FOUNDATION, Nov. 13, 2018, https://www.kff.org/medicare/issue-brief/a-dozen-facts-about-medicare-advantage/.
[25] Shelby Livingston, *Why Medicaid and ACA kingpin Centene wants to buy rival WellCare*, MODERN HEALTHCARE, Mar. 30, 2019, https://www.modernhealthcare.com/insurance/why-medicaid-and-aca-kingpin-centene-wants-buy-rival-wellcare.
[26] Centene 2019 10-K at 4.
[27] Centene 2018 Annual Report at 3.
[28] *Investor Presentation, WellCare Equity Offering for Meridian Transaction* 5, Aug. 2018, http://ir.wellcare.com/Cache/1001240970.PDF?O=PDF&T=&Y=&D=&FID=1001240970&iid=4091918.
[29] *Investor Presentation, WellCare Equity Offering for Meridian Transaction* 5, Aug. 2018, http://ir.wellcare.com/Cache/1001240970.PDF?O=PDF&T=&Y=&D=&FID=1001240970&iid=4091918.
[30] *Id.* at 15.
[31] *Id.* at 14.
[32] *See* WellCare 2018 10-K at 4, 12.
[33] Carl O'Donnell & Caroline Humer, *Exclusive: WellCare, Centene make offers for Aetna assets – sources*, REUTERS, July 9, 2016, https://www.reuters.com/article/us-aetna-divestiture-idUSKCN0ZP0TG; Evan Sweeney, *WellCare has a lot to gain in Aetna-Humana merger*, FIERCEHEALTHCARE, July 13, 2016, https://www.fiercehealthcare.com/payer/wellcare-has-a-lot-to-gain-aetna-humana-merger.

V. Conclusion

There is no service more important to American consumers than health care, and vigorous competition among health insurance companies is necessary to ensure that consumers receive high quality at affordable rates. The facts show that the WellCare-Centene transaction is likely to significantly reduce competition and will therefore harm the most vulnerable Americans. DOJ should vigorously review this transaction's effects on current and future competition and take all appropriate measures to protect U.S. consumers.

Sincerely,

/s/

Melinda Reid Hatton
General Counsel