



Jan. 15, 2016

The Honorable Dave Jones
Insurance Commissioner
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA, 95814

Re: Proposed Acquisition of Health Net Life Insurance Company by Centene Corporation, File No. APP-2015-00889

Dear Commissioner Jones,

Consumer Watchdog, a nonpartisan, nonprofit public interest group, urges the California Department of Insurance (CDI) to use its full authority to impose comprehensive requirements to protect consumers before allowing the merger between Centene and Health Net to move forward.

The Affordable Care Act was meant to give more people to access to healthcare, and millions of Californians are newly insured. Yet many low- and middle-income families continue to struggle to pay the costs of a policy, let alone use their new health coverage. Increasing premiums, shrinking physician networks, ruinous out-of-network charges and soaring deductibles have become the hidden premium hike that an increasing number of consumers simply can't afford. A Kaiser Family Foundation/New York Times survey released January 5th showed that one in five working-age Americans ran into serious financial difficulties trying to pay medical bills despite being insured.¹

Research on insurance consolidation has confirmed these results. Northwestern University Professor Leemore Dafny, who testified at a U.S. Senate hearing in September about insurance industry consolidation, noted that in her 2012 consolidation study² of the 1998 Aetna and Prudential Healthcare merger that top executives cut jobs and wages as well as reduced payments to healthcare providers to cut costs. Dafny wrote, "Americans are indeed paying a premium on their health insurance premiums as a result of recent increases in market concentration of the health insurance industry."

At a related U.S. House of Representatives hearing on the same subject, Jaime King, a law professor at the University of California, said there was an almost immediate 7 percent hike in premiums after the Aetna-Prudential merger. She added that despite promises of Aetna at the time, the quality of care did not increase.³

¹ <http://kff.org/health-costs/report/the-burden-of-medical-debt-results-from-the-kaiser-family-foundationnew-york-times-medical-bills-survey/>

² http://www.kellogg.northwestern.edu/faculty/dafny/personal/documents/publications/ms_2010_0837_0804.pdf

³ <http://ctmirror.org/2015/09/29/aetna-anthem-merger-plans-under-scrutiny-again-by-congress/>

In order to safeguard against making California's health insurance market even worse for consumers post-merger, CDI should use its statutory powers⁴ to require the best protections for policyholders. Insurance Code Section 1215.18 gives the Insurance Commissioner the ability to deny a transaction if he finds any of the following:

- (1) After the change of control the domestic insurer referred to in subdivision (a) could not satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (2) The purchases, exchanges, mergers, or other acquisitions of control would substantially lessen competition in insurance in this state or create a monopoly therein;
- (3) The financial condition of an acquiring person might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders;
- (4) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets, or to merge it with any person, or to make any other major change in its business or corporate structure or management, are not fair and reasonable to policyholders;
- (5) The competence, experience, and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders or the public to permit them to do so.

Merger Undertakings

1. Enhanced Rate Review

Under Insurance Code 1215.2 (d)(4), the Insurance Commissioner has the authority to deny a merger transaction if the plans or proposals "are not fair and reasonable to policyholders."

Health Net's past rate filings with the Department of Insurance and Department of Managed Health Care have not always been fair or reasonable.

In 2013, Consumer Watchdog, CalPIRG and Department of Insurance actuaries determined that Health Net's proposed individual PPO rates for Covered California were unreasonable.⁵ The company ultimately agreed to amend its proposal and reduced rates,⁶ however Health Net did not have to accept the Department and consumer advocates' findings.

In 2014, a proposed rate hike by Health Net for individual policyholders regulated by the DMHC was also found to be unjustified by Consumers Union.⁷ Their analysis found that Health Net's pricing and network design suggested manipulation of the market to reduce Health Net's risk by discouraging sicker enrollees. The analysis also found that Health Net had failed to reflect, and thus did not pass on

⁴ Insurance Code Section 1215-1215.18

⁵ <http://www.consumerwatchdog.org/blog/healthnets-exchange-rate-unreasonable>

⁶ https://interactive.web.insurance.ca.gov/apex/f?p=102:9:8204134511014::NO::P9_RATE_FILINGS_ID%2CP9_COMPANY_NAME%2CP9_REFER_RING_PAGE_NUM:7607%2C%5CHealth+Net+Life+Insurance+Company%5C%2C4&cs=13866C17A08C0AFF5E149A02EF3FC6E9D

⁷ https://consumersunion.org/wp-content/uploads/2014/09/CU_Health_Net_comments_0914.pdf

to consumers, anticipated cost savings in its rates. Significantly, Health Net did not consistently account for the cost savings achieved by narrowing its networks.

As we've seen with other health insurance companies, such as Aetna⁸ and Anthem⁹, insurance companies repeatedly ignore findings of excessive and unjustified rate proposals, leading to outrageous premium hikes for consumers. Since 2012, Californians have paid at least \$385 million in unreasonable premium hikes.

The proposed merger comes with, according to Centene CEO Michael Neidorff, plans to cut \$150 million in "costs" from Health Net through "synergies."¹⁰ Such "savings" are often achieved through reductions in benefits, such as narrowing networks. Merged insurers may also obtain savings by applying pressure on providers, with a larger entity's market power, to lower costs. Unless the Department of Insurance has binding authority over rates, there is no reason to believe – or even for the Department to know if – these cost savings will be passed on to consumers.

To ensure that the terms of the merger are "fair and reasonable," as statute dictates, the Department must require enhanced rate review as part of any approval. Rate review can ensure: details of any cuts are made public, any cost savings are passed on to consumers, and premiums are not used to finance any part of the deal. The merged company must also agree not to impose unreasonable rates and that premiums, co-payments and other rates will not increase more than the rate of inflation following the merger for a period of five years.

2. 'No Material Change' in Health Net Plans

Under Insurance Code 1215.2 (d)(2), the Insurance Commissioner may also deny a transaction if it "would substantially lessen competition."

Just four health insurance companies, Anthem Blue Cross, Blue Shield, Kaiser and Health Net control 83 % of California's private insurance market. Health Net's 6% share, while small, provides a measure of critical competition and greater choice for consumers.¹¹

In California, Health Net's 1.4 million Medi-Cal enrollees are undoubtedly a primary reason for Centene's interest in a merger. Centene cannot be allowed to abandon the private market in California. There is precedent for Centene leaving an insurance market.¹² In 2012, Centene abruptly cancelled a year-long Medicaid contract short in Kentucky, citing a lack of full disclosure about how ill patients were, resulting in chaos for its 125,000 enrollees.

⁸ <http://www.bizjournals.com/sacramento/news/2015/10/16/insurance-commissioner-slams-aetnas-small-business.html>

⁹ <http://www.latimes.com/business/la-fi-jones-anthem-rates-20141023-story.html>

¹⁰ <http://www.prnewswire.com/news-releases/centene-to-combine-with-health-net-in-transaction-valued-at-approximately-68-billion-300108184.html>

¹¹ <http://www.chcf.org/publications/2015/02/data-viz-health-plans>

¹² <http://insiderlouisville.com/business/media-centene-pulls-out-of-kentucky-medicaid-managed-care-deal/>

In recent years, Health Net has withdrawn both its on- and off-exchange PPO plans, causing consternation and confusion for consumers. If Health Net's plans in California were canceled, seven of Covered California's 19 regions would lose a low cost option, five regions would have just one HMO option for consumers to consider and one region would have only PPO plans. Any further Health Net plan cancellations, considering its place in the market, would be a major blow to competition in California.

At a Department of Managed Health Care (DMHC) public hearing in December on the proposed merger, a representative for Centene pledged that there would be no "material change" to any of Health Net's plans. The company will undoubtedly make the same promise at the CDI hearing on the 22nd. The Commissioner must hold the company to that promise.

As a condition of the merger, the merged company must agree not to withdraw from the private market in favor of the lucrative Medi-Cal business, and CDI should require the company to maintain Health Net's individual and small group products on the same basis as prior to the merger.

3. Bar "Upstreaming" of California Premiums to Centene

Insurance Code 1215.2 (d)(3), also gives the Insurance Commissioner the ability to deny a transaction if the financial condition of an acquiring person might "prejudice the interests of its policyholders."

CDI should be vigilant when it comes to executive compensation related to the merger and any "upstream" funds sent from California to the parent company post-merger. Past insurers have used these financial avenues to drain money from the state.

In the 2004 merger of Anthem and WellPoint, WellPoint executives wanted to walk away with \$600 million from the deal. Then-Insurance Commissioner John Garamendi blocked that attempt, citing Insurance Code section 1215.2(d)(3) and (4) as the legal standard by which he could review a potential purchase of a California insurance company.

Garamendi eventually approved the merger only after Anthem agreed to concessions, including reduced executive compensation tied to the merger, and donations of \$265 million into California state health programs. As part of the concessions, Anthem also had to restrict the practice of selecting healthy populations while excluding people who are more likely to get ill or incur medical expenses, and had to agree that Blue Cross Life & Health customers would not pay for the merger through any higher rates.¹³

Even with a reduced compensation package, it was reported that WellPoint CEO Leonard Schaeffer and other executives received \$265 million, and Anthem CEO Larry Glasscock was rewarded with a \$42.5 million bonus for closing the deal.¹⁴

¹³ <http://www.sandiegouniontribune.com/news/2004/nov/10/california-insurance-commissioner-oks-anthem/>

¹⁴ <http://www.publicintegrity.org/2015/08/24/17890/merger-health-insurers-usually-leads-big-payday-executives>

Since the merger, Anthem has also transferred more than \$5.4 billion in dividends to its corporate parent as of December 2014, according to its annual income reports, while raising rates on individual policyholders in California with increases of up to 39%.¹⁵

California policyholders should not bear such a price if Centene and Health Net are allowed to merge. CDI should prohibit Centene from removing reserves from California to pay for severance and retention packages for executives in connection with the merger and require it to explain any “upstream” amounts sent out of state post merger.

4. Improve Quality of Care

The Insurance Commissioner may also deny the transaction under Insurance Code Section 1215.2 (d)(5), if “the competence, experience, and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders or the public to permit them to do so.”

Health Net’s integrity in its treatment of policyholders has been in question in California for years. Accusations about Health Net’s record include privacy breaches,¹⁶ failing to respond adequately to policyholder complaints,¹⁷ denial of “medically necessary” services¹⁸ and narrow doctor and hospital (“provider”) networks.¹⁹ It has scored poorly in the rankings of the Office of the Patient Advocate’s HMO quality report card²⁰ and the National Committee for Quality Assurance²¹ related to timely care and customer satisfaction.

Consumer Watchdog is currently involved in litigation on behalf of Health Net consumers because the insurer failed to provide customers accurate information about which providers were participating in their networks.²²

CDI should not reward this behavior. Centene should have to promise to resolve these issues and litigation to benefit consumers. It should be required to have adequate provider networks for all of its health plans and pledge to approve medically necessary services.

Centene must be also required to improve any star rating for Health Net on the 2014 Office of Patient Advocate Quality Report Card that is below two stars with a rating of at least three stars by end of 2017. It must also improve Health Net’s ranking in the NCQA to the top 1/3 of all plans ranked in California by the end of 2017.

¹⁵ <http://articles.latimes.com/2010/feb/23/business/la-fi-anthem-cash23-2010feb23>

¹⁶ <https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/PressReleases/2011/pr031411.pdf>

¹⁷ <http://www.dmhc.ca.gov/desktopmodules/dmhc/medsurveys/surveys/300fs022414.pdf>

¹⁸ <http://articles.latimes.com/2012/sep/13/business/la-fi-medical-denials-case-20120913>

¹⁹ <http://articles.latimes.com/2013/sep/14/business/la-fi-insure-doctor-networks-20130915>

²⁰ <http://reportcard.opa.ca.gov/rc/hmorating.aspx>

²¹ <http://blog.ncqa.org/top-health-insurance-plans-california/>

²² <http://www.consumerwatchdog.org/newsrelease/health-net-sued-%E2%80%98bait-switch%E2%80%99-doctor-and-hospital-networks-consumer-pays-12000-out-pocke>

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Consumer Watchdog urges that any undertakings include provisions requiring the commitments to be tracked, measured, and enforced. CDI needs to make sure that all requirements are written down and not just agreed to in negotiation. As DMHC's most recent experience shows when Blue Shield refused to donate millions of dollars to a charitable organization despite its earlier promises to DMHC makes all too clear that without explicit guarantees, health insurers are likely to ignore any concessions.²³ Make sure they don't.

Centene and Health Net claim that the merger will increase competition, improve care and benefit consumers. Historically, healthcare mergers generally lead to the opposite: fewer choices, inadequate physician networks and higher premiums. The result of increasing consolidation and lack of competition will lead to a healthcare crisis in California if regulators don't protect consumers with meaningful and stringent safeguards.

If Centene and Health Net do not agree to the above-proposed undertakings, which are reasonable and protect consumers, the Commissioner should use his statutory powers and stop the proposed merger.

Sincerely,



Eddie Barrera
Consumer Advocate

²³ <http://www.latimes.com/busine.ss/la-fi-blue-shield-charity-20151117-story.html>