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identification purposes

December 14, 2015

Shelley Rouillard
Director, Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, California 95814-2725
Via e-mail to: publiccomments@dmhc.ca.gov

RE: Centene-Health Net Merger

Dear Director Rouillard:

Health Access California, the state health care consumer advocacy coalition working for quality and affordable health care for all Californians, offers the following comments on health insurer consolidation and Centene's proposed acquisition of Health Net. As a consumer protection agency, the Department of Managed Health Care (DMHC) is tasked with protecting the public interest by ensuring California maintains a robust and competitive commercial health insurance market that delivers quality and affordable care. The stakes—for consumers and the health system as a whole—are high. As the DMHC evaluates each individual merger, it must keep an eye on the larger picture and evaluate the cumulative effects of these megamergers on patients and the health system we all rely on.

Health Access questions whether this and other mergers leave consumers and government purchasers better off. When an insurer with problems seeks to merge, California regulators should insist on commitments to ensure they get better as they get bigger—so their problems do not grow along with the company. At DMHC's December 7, 2015 public meeting on the Centene-Health Net merger, executives from Centene and Health Net claimed that consolidation would create a more competitive company, improve efficiency, and increase value for consumers. History and research show that insurer mergers have had the opposite effect. Consolidation in the private health insurance industry leads to premium increases, even as insurers with larger local market shares obtain lower prices from providers.¹ Furthermore, there is no evidence that mergers lead to improved quality.² At the public meeting on December 7, 2015, we asked Centene and Health Net what specific commitments they can make to improve the patient experience should the merger go through. Company executives ignored our question, further reinforcing our skepticism about whether this merger will bring any benefit to consumers.

Health Access urges you to deny the Applications for Material Modification submitted by Centene and Health Net unless the companies can show this merger not only does no harm to consumers, but that consumers will actually receive lower prices and better value over a sustained period. Centene, an out-of-state insurer with virtually no experience in the California market, wishes to acquire Health Net, a large California insurer with a lackluster track record of providing care for its enrollees. This merger would allow Centene to have a significant presence in California, gain entry into our commercial market and Covered California, and drastically increase its participation in the Medi-Cal program by nearly sevenfold. As detailed herein, this proposed merger

Capitol Headquarters: 1127 11th Street, Suite 243, Sacramento, CA 95814 PH: 916.497.0923 FAX: 916.497.0921

Northern California: 1330 Broadway, Suite 811, Oakland, CA 94612 PH: 510.873.8787 FAX: 510.873.8789

Southern California: 121 West Lexington Drive, Suite 246, Glendale, CA 91203 PH: 818.480.3262 FAX: 8181.480.6595

www.health-access.org

would have a substantial impact on consumers, other purchasers, and our health system as a whole. Should this merger be approved, it must be accompanied by strong, enforceable conditions to ensure consumers receive the benefits promised by company executives and existing problems are not exacerbated as insurers get bigger.

INSURER CONSOLIDATION AMID ON-GOING IMPLEMENTATION OF THE AFFORDABLE CARE ACT

As the primary regulator of health care service plans in California, the DMHC is responsible for ensuring that insurer mergers do not undermine the state's implementation of the Affordable Care Act (ACA). In addition to promoting competition in the insurance industry, the ACA has increased access to health coverage and cut the state's rate of uninsured by half. Most of the newly covered, whether through Medi-Cal or Covered California, receive their care through private managed health plans. DMHC-licensed health plans provide care to more than 25 million Californians, representing 91% of the large-group market, 82% of the individual market and 77% of the small-group market.³ Enrollment in DMHC's licensed health plans increased 28 percent in the first full year of ACA implementation.⁴ In 2014, 2.2 million Californians obtained coverage through the individual market, representing a 47 percent increase over the previous year.⁵ Group coverage continues to be the main source of commercial health insurance, providing coverage for 11.8 million Californians in 2014.⁶ California's Medicaid program has also seen a rapid increase enrollment as a result of the ACA, and private plans play a significant role in providing coverage to Medi-Cal beneficiaries. As of early 2015, thirty percent of the nearly 9.4 million Medi-Cal beneficiaries enrolled in Medi-Cal managed care received their care through private plans.⁷

While the Affordable Care Act sets up the standards and parameters for a robust market in health insurance, the success and sustainability of the ACA depends on a competitive market. For example, Covered California will not be able to negotiate as effectively for its patient population without a competitive number of plans in the market. If insurer mergers reduce the number of market players and make it less likely that new entrants will participate, then mergers will have a negative impact on the ability of purchasers such as Covered California and Medi-Cal to negotiate on cost and quality.

Health care costs, meanwhile, continues to be a major concern for consumers and other purchasers. Since 2002, health insurance premiums in California have increased by 202 percent, more than five times the 36 percent increase in the state's overall inflation rate.⁸ Workers are also seeing reduced benefits and increased cost sharing.⁹ Almost 90 percent of those who enrolled through Covered California for coverage in 2015 received premium assistance to make their health insurance more affordable.¹⁰ Against this backdrop, it is imperative that you critically evaluate how insurer mergers will impact the significant strides California has made in reducing our rate of uninsured and our ability to control health care costs. Health Net is a significant player in the large employer market as well as Medi-Cal managed care and Covered California and if this acquisition is approved, Centene will take this market position as well.

IMPACT OF MERGER ON CALIFORNIA'S COMMERCIAL AND MEDI-CAL MARKET

This proposed merger also raises concerns about how it will affect commercial and government purchasers such as Covered California and Medi-Cal, and their ability to maintain continuity of care, negotiate for value, and manage costs.

Medicaid/Medi-Cal: Nationally, Centene is the largest Medicaid managed care company, and it is relatively new to California's Medi-Cal program. The company's business has rapidly grown in recent years because of Medicaid expansion and its stock has increased by 448 percent since the ACA was passed.¹¹ Centene's Medicaid enrollment increased by 32% between 2013 and 2014, and the company continues to expand into additional states.¹² California Health and Wellness, Centene's wholly-owned subsidiary, was selected in 2013 to offer coverage as part of California's managed care expansion in rural counties. Data is not yet available to evaluate Centene's performance in California.

While Centene has taken advantage of opportunities to expand its presence in the Medicaid market, it has also quickly exited when profits did not meet expectations. A few years ago, Centene abruptly pulled out of Kentucky's Medicaid program mid-contract, affecting care for its 125,000 patients.¹³ Earlier this year, an appeals court found Centene in breach of contract and ordered them to pay damages to the state.¹⁴ Centene's actions in Kentucky give us great pause here in California.

Health Net has had a large presence in the Medi-Cal program, where it serves nearly 1.4 million consumers, mostly in two-plan model counties.¹⁵ Health Net's low quality ratings for its Medi-Cal products are troubling. The National Committee for Quality Assurance (NCQA) gives Health Net low ratings for customer satisfaction (1.0 out of 5.0), prevention (2.0 out of 5.0), and treatment (2.5 out of 5.0).¹⁶

Recommendations for questions and conditions:

- **Centene's performance and track record:** DMHC should require Centene to share data that would enable the Department to evaluate whether California Health and Wellness has provided timely and quality needed care, addressed geographic barriers to care, and ensured that beneficiaries can reach providers. DMHC should also scrutinize Centene's performance in other state Medicaid programs.
- **Demonstrate added value:** Centene should demonstrate how it will add value to Medi-Cal. What specific best practices would it apply to its existing Medi-Cal plan and the plan it would acquire from Health Net?
- **Increase quality ratings to above average:** How will Centene improve Health Net's dismal quality ratings? Centene should be required to bring Health Net's quality ratings up to above-average ratings within three years.
- **Commitment to California's Medi-Cal Program:** Centene should be required to submit detailed plans and strategies for serving California's Medi-Cal beneficiaries, including how it will provide language access and culturally competent care, adequate networks with sufficient primary care and specialist providers equipped to treat conditions common to the Medi-Cal population in a timely manner. Centene should make an enforceable commitment to continue participating in the Medi-Cal program for at least 10 years and not withdraw from any of the counties where Centene and Health Net are currently operating.

- Support for safety-net providers: Safety-Net clinics have played a critical role in providing care for the Medi-Cal population. 54 percent (over 1.3 million) of new Medi-Cal managed care members are assigned to safety-net clinics.¹⁷ Will Centene and Health Net increase investments in the safety-net by contracting with safety-net clinics and investing in the safety-net infrastructure?
- Improve access to care in rural and underserved communities: Centene should be required to invest in improving access to care in rural and underserved communities for 25 years and support efforts to provide comprehensive health coverage for the remaining uninsured, including the undocumented.

Covered California and the Commercial Market: Health Net has participated in Covered California since it began offering plans in 2014. Health Net currently offers products in 16 of Covered California's 19 regions and covers 18% of Covered California's enrollment statewide.¹⁸ Health Net has nearly a million commercial enrollees in California. If Centene were to acquire Health Net, it would take Health Net's place as one of the largest insurers in California and become a participant in Covered California for the first time.

Recommendations for questions and conditions:

- Interest in the commercial market: Is Centene genuinely interested in participating in California's commercial market, or is this merely a byproduct of its merger with Health Net? Is Centene planning to enter the commercial market in other states?
- Commitment to Covered California: Will Centene commit to continue participation in Covered California? How would consumers be affected if Centene withdraws from Covered California, particularly in the regions where there are few plan choices available? DMHC should require Centene to continue participating in Covered California for at least 10 years.
- Competency in the commercial market: Centene has little experience operating in the commercial market. Health Net currently offers products in the individual (on and off exchange), small, and large group markets. How will Centene develop competency in this new line of business? Will Centene commit to continue participating in the commercial market? How will consumers be affected if Centene withdraws from the commercial market?

ENFORCEABLE COMMITMENTS NEEDED TO ENSURE CONSUMER PROTECTION

The deficiencies found in Health Net's routine medical survey, extensive history of enforcement actions, poor quality ratings, and high rate of being overturned in Independent Medical Review (IMR) pose significant concerns about the quality and value of services provided to its existing enrollees. As consumer advocates, we are deeply concerned that these problems will become more acute if Centene, an out-of-state company that has virtually no experience in California's commercial market and little familiarity with California's consumer protections, is allowed to acquire Health Net. We urge DMHC to scrutinize how Centene will improve upon Health Net's track record and ensure that enrollees have access to adequate networks, timely access to care, high quality health care, effective grievance procedures, language access, and health equity.

- **Routine Medical Survey:** In DMHC's most recent routine medical survey (2014), Health Net was found to have five major deficiencies in the plan's grievances and appeals and utilization management processes.¹⁹ While these deficiencies were

eventually corrected, we want assurances that Centene will ensure there are no deficiencies in the future.

- **Enforcement actions:** Health Net has been the subject of nearly 200 enforcement actions by DMHC in the past 15 years. Some of the more recent fines included six-figure penalties for terminating patients' COBRA coverage without informing them of their right to request a review from the DMHC (\$120,000)²⁰; losing nine server drives, putting the personal information of 700,000 enrollees at risk (\$200,000)²¹; failing to provide medically necessary speech therapy and occupational therapy services (\$300,000)²²; and not having an on-call representative available to address an urgent need for medical care (\$150,000)²³. Health Net has also been heavily fined for failing to pay claims (\$750,000)²⁴ and for cancelling coverage after patients became ill (\$1 million),²⁵ a practice that is now outlawed by the Affordable Care Act.
- **Quality ratings:** Health Net's commercial plans have poor quality ratings in some key areas that are important to consumers. According to the Office of the Patient Advocate's HMO quality report card, Health Net has poor ratings for not helping patients to get the care they needed when they needed it and for not providing customer service and helping them get answers to questions.²⁶ Among the largest HMOs in the state, Health Net does the worse job of answering calls quickly by far, with only 25% of plan members saying that their calls are answered quickly.²⁷ While Health Net has average ratings for providing needed care, there are areas that need improvement. Health Net has poor to fair ratings for asthma and lung disease care, behavioral and mental health care, heart care, and maternity care.²⁸

Covered California Quality Ratings, which were recently made available to consumers shopping in the current open enrollment period, show Health Net's HMO products earned a dismal 2 out of 5 stars in all its regions, placing Health Net in the 25 to 50 percent range as compared to plans in the western U.S. region. Ratings for Health Net's EPO and HCSP products are not yet available.²⁹

- **Independent Medical Review:** DMHC data shows consumers prevailing against Health Net in IMR at a high rate. In 2014, Health Net had 1.17 IMRs filed per 10,000 enrollees, the third highest among insurers. IMR overturned Health Net one-third of the time for experimental/investigational and medical necessity IMRs.³⁰
- **Complaint Data:** According to the Office of the Patient Advocate, regulators received 17 complaints per 10,000 enrollees in Health Net. This figure places Health Net in the median of the number of complaints as compared to other health plans.³¹ The sources of Health Net's complaints should be reduced.

Recommendation for questions and conditions:

Clear and enforceable conditions to protect consumers. DMHC has found Health Net to provide deficient services to its enrollees, and its acquisition by Centene must result in improved care and services for enrollees. If this merger is to be approved, it must include clear and enforceable conditions to ensure that Health Net's existing commercial and Medi-Cal enrollees are able to access the quality care they are entitled to under the Knox-Keene Act.

- DMHC should require Centene to meet specific benchmarks in improving access to care and customer service for Health Net's patients. Centene should be required to submit detailed plans on how it will improve customer service and grievance procedures.
- Centene must be required to bring quality ratings up to above-average levels within 3 years, and submit plans on how it will accomplish this task.
- Centene must be required to reduce the rate of IMRs filed and overturned by DMHC.
- The rate at which consumers contact DMHC with information inquiries and complaints is one measure of how well a plan meets their members' needs and solve problems when they occur. Centene should be required to reduce the source of consumer complaints.

TRANSPARENCY, ACCOUNTABILITY, AND GOVERNANCE

Centene and Health Net should not be allowed to make empty promises to California's health care consumers. Their proclamation that this merger will not affect competition because the two companies do not have any overlapping geographic markets does not alleviate all our concerns about how the merger will affect California's commercial and Medi-Cal market, and whether Centene's growth strategy is sustainable. These insurers have provided no information to demonstrate how their promises of increased competition, efficiency, and value will be realized and shared with consumers. Finally, if this deal goes through, it would make Health Net the latest of California-based insurers to end up being headquartered elsewhere, raising questions about how Centene would be accountable to California regulators and consumers. If Centene's acquisition of Health Net is supposed to be good for California, then clear and enforceable conditions must be in place to ensure transparency and accountability and protect Californians' hard-earned premium dollars.

Recommendations for questions and conditions:

- Entry into California market. Centene currently has a very small presence in California's Medi-Cal program. The proposed merger, whereby Centene acquires an existing California insurer, does not expand the number of plans participating in Medi-Cal managed care, Covered California, or the commercial market. Why has Centene chosen to increase its presence in the California market through an acquisition rather than as a new entrant? Why not provide California consumers with additional choices, rather than supplanting an existing option?
- How big is too big? Centene has grown rapidly in recent years and most of its growth is attributed to new business opportunities created by Medicaid expansion. Is Centene's business model sustainable?
- Will existing problems get bigger? As previously discussed, Health Net has provided lackluster service and care to its 1.4 million Medi-Cal enrollees and nearly 1 million commercial enrollees. Is it in the public interest to allow Health Net to be acquired if there is no commitment to fix these problems?
- Will Centene competently manage new lines of business? Should Centene be permitted to enter California's commercial market if it has little experience in the commercial market?
- How will consumers benefit? Centene and Health Net should be required to reveal how they will achieve efficiencies and savings, show how these efficiencies and savings will be shared with consumers, and commit to a plan for sharing these savings through lower premiums and cost-sharing. These commitments must be maintained over time, and not just in the near term. Does Centene have the demonstrated management

capacity to manage the growth in a way that assures that consumers get the care they need when they need it rather than simply delivering the profits shareholders want?

- Accountability to California consumers and regulators: Because Centene is not a California-based company nor has it had much experience in California, how will it be accountable to California consumers and regulators? Will its California subsidiary maintain its own board of directors based in California? Centene should be required to be responsive to the California market and California law by having California-based medical director, legal counsel and regulatory compliance staff who are knowledgeable about California-specific consumer protections and other requirements we place on our health plans. In addition, consumer complaints and grievance staff should be based in California to ensure quick resolution of problems.
- Ensuring and maintaining affordable care for consumers and purchasers: The core of Health Net's business has been based on negotiated rates with Medi-Cal, Covered California, and rates charged to commercial customers, particularly in the large group market. As previously discussed, research has shown that health insurer mergers lead to higher costs for consumers.³² How will efficiencies be achieved and savings passed on to consumers? There should clear and enforceable conditions that rate filings and information provided for large group purchasers demonstrate how efficiencies reduce rates for consumers and other purchasers. How will the efficiencies be sustained over time, and how will purchasers benefit? Will Centene commit to not pursue any rate increases deemed to be unreasonable by regulators, pursuant to the rate review program established by SB 1163 (Leno), Chap. 661, Statutes of 2010?
- Keeping premium dollars and profits in California: Centene should be required to reinvest profits earned from Medi-Cal and the California commercial market in California, instead of using Californians' hard-earned premium dollars to expand elsewhere.
- Increasing transparency: Centene and Health Net should be required to provide full transparency for the pricing of premiums, compensation for senior management and the board of directors, and costs associated with the merger. Such costs must be detailed in rate filings and information provided for large group purchasers for at least the next ten years.
- Improve the health system as a whole: In order to address other potential impacts of the merger and these insurers' practices, Centene and Health Net should commit to key investments for the state's safety-net, the remaining uninsured, rural and other underserved populations. They should also support systems that help California's health care system to achieve the quadruple aim of better care, healthier populations, lower costs, and *health* equity, such as the development of health care cost and quality database. Support for these initiatives should supplement, not supplant, the aforementioned consumer protections that are required to ensure California's patients receive the purported benefits of this merger.

This proposed merger between Centene and Health Net has significant implications for California's Medi-Cal and commercial market, and we are not convinced that it is in the best interest of California consumers or the health system as a whole. On behalf of California's health care consumers, we urge you to scrutinize this deal and make sure patients aren't left with higher prices and unfulfilled promises. Please contact Tam Ma, Health Access' Policy Counsel at tma@health-access.org or (916) 492-0973 x. 201 if we can be of

Shelley Rouillard
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assistance in this process. Thank you for giving these issues your highest level of scrutiny and for protecting the interests of consumers in this process.

Sincerely,



Anthony Wright
Executive Director

Cc: Secretary Diana Dooley, California Health and Human Services Agency
Senator Ed Hernandez, Chair, Senate Health Committee
Assemblyman Rob Bonta, Chair, Assembly Health Committee

¹ L. S. Dafny, *Evaluating the Impact of Health Insurance Industry Consolidation: Learning from Experience*, The Commonwealth Fund, November 2015. Available at: <http://www.commonwealthfund.org/publications/issue-briefs/2015/nov/evaluating-insurance-industry-consolidation> (Accessed December 3, 2015).

² *Id.*

³ Wilson, Katherine. *Enrollment in Individual Health Plans Up 47% in 2014*. Prepared for the California HealthCare Foundation, May 2015. Available online at: <http://www.chcf.org/articles/2015/05/enrollment-individual-up>

⁴ *Celebrating Momentous Anniversaries, 2014 Annual Report*, The Department of Managed Health Care, December 2015. Available at: <http://dmhc.ca.gov/Portals/0/FileAComplaint/DMHCDecisionsAndReports/AnnualComplaintAndIMRDecisions/2014.pdf>.

⁵ See *supra* note 1.

⁶ *Id.*

⁷ *Medi-Cal Managed Care Plans and Safety-Net Clinics Under the ACA*, California Health Care Foundation, December 2015. Available at: <http://www.chcf.org/~media/MEDIA%20LIBRARY%20Files/PDF/PDF%20M/PDF%20MediCalMgdCarePlansSafetyNet.pdf>

⁸ *California Employer Health Benefits: Rising Costs, Shrinking Coverage*, California Health Care Foundation, April 2015. Available at: <http://www.chcf.org/publications/2015/04/employer-health-benefits#ixzz3u9z4ZMrT>

⁹ *Id.*

¹⁰ *Health Insurance Companies and Plan Rates for 2016, Keeping the Individual Market in California Affordable*, Covered California, Updated October 29, 2015. Available at: <https://www.coveredca.com/PDFs/7-27-CoveredCA-2016PlanRates-prelim.pdf>

¹¹ Herman, Bob. *Centene's behemoth Medicaid business continues to swell, Modern Healthcare*, October 27, 2015. Available at: <http://www.modernhealthcare.com/article/20151027/NEWS/151029904>

¹² Herman, Bob. *Rising Medicaid enrollment boosts Centene's profit, revenue*, Modern Healthcare, October 28, 2014. Available at: <http://www.modernhealthcare.com/article/20141028/NEWS/310289961>

¹³ Colston, Kenny. *Medicaid Operator Kentucky Spirit Plans to Break Contract, Beshear says He's Disappointed*, October 17, 2012. Available at: <http://wfpl.org/medicaid-operator-kentucky-spirit-plans-break-contract-beshear-says-hes-disappointed>

¹⁴ The Associated Press. *Court rules Kentucky Spirit must pay the state damages*, February 6, 2015. Available at: <https://www.ksl.com/?sid=33379597>

¹⁵ *Medi-Cal Managed Care Enrollment Report*, Department of Health Care Services, October 2015. Available at: http://www.dhcs.ca.gov/dataandstats/reports/Documents/MMCD_Enrollment_Reports/MMCEnrollRptOct2015.pdf

¹⁶ *NCQA Health Insurance Plan Ratings 2015-16 for Health Net of California (Medicaid)*. Available at: <http://healthinsuranceratings.ncqa.org/2015/HprPlanDetails.aspx?id=296>

¹⁷ *Medi-Cal Managed Care Plans and the Safety Net Under the ACA*, California Health Care Foundation, December 2015. Available at: <http://www.chcf.org/~media/MEDIA%20LIBRARY%20Files/PDF/PDF%20M/PDF%20MediCalMgdCarePlansSafetyNet.pdf>

¹⁸ See *Supra*, note 10.

¹⁹ *Final Report Routine Medical Survey of Health Net of California*, Department of Managed Health Care, February 13, 2014. Available at:

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

²⁰ DMHC Enforcement Matter Number: 14-152 (March 16, 2015). Available at:

<http://wpsso.dmhc.ca.gov/enfactions/docs/2273/1429554844522.pdf>

²¹ DMHC Enforcement Matter 11-260 (December 22, 2014). Available at:

wpsso.dmhc.ca.gov/enfactions/docs/2214/1420496039748.pdf

²² Department of Managed Health Care Enforcement Matter No. 12-165 (November 20, 2014). Available at:

wpsso.dmhc.ca.gov/enfactions/docs/2041/1420496203478.pdf

²³ Department of Managed Health Care Enforcement Matter No. 11-009 (March 25, 2011). Available at:

wpsso.dmhc.ca.gov/enfactions/docs/1362/1301333605540.pdf

²⁴ Department of Managed Health Care Enforcement Matter Numbers 10-002, 07-330, 09-424, and 10-204 (January 25, 2011). Available at: wpsso.dmhc.ca.gov/enfactions/docs/1335/1297789648054.pdf

²⁵ Department of Managed Health Care Enforcement Matter No. 07-206 (November 16, 2007). Available at:

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²⁷ *Office of the Patient Advocate HMO Quality Ratings: HMO Helps Members Get Answers Summary, 2015-16 Edition*. Available at: reportcard.opa.ca.gov/rc/HMOtopic.aspx?Category=HMOCALHPS&Topic=PlanService

²⁸ See *Supra* note 24.

²⁹ *Covered California Quality Rating System*, October 2015. Links to ratings by Covered California pricing regions available at: <http://hbex.coveredca.com/insurance-companies/ratings/>

³⁰ See *Supra* note 4.

³¹ *Rate of Inquiries and Complaints About HMOs Received by DMHC*, Office of the Patient Advocate. Available at: http://reportcard.opa.ca.gov/rc/hmo_member_inquiry.aspx

³² See *Supra* note 1.