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Organizations listed for
identification purposes

January 29, 2016

The Honorable Dave Jones
Insurance Commissioner
California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Via e-mail to: jennifer.chambers@insurance.ca.gov
and jon.tomashoff@insurance.ca.gov

RE: Proposed Acquisition of Health Net Life Insurance Company by Centene Corporation, File No. APP-2015-008889

Dear Commissioner Jones:

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 regulator of insurance companies and a consumer protection agency, the California Department of Insurance (CDI) 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 you evaluate each individual merger, you should 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.

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 policyholders. 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 would have a substantial impact on consumers, other purchasers, and our health system as a whole. We urge you to reject the Proposed Acquisition of Control unless they can show this merger not only does no harm to consumers, but that consumers will actually benefit in the form of lower premiums, lower out-of-pocket costs, higher quality care, and reduced health disparities over a sustained period. 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.

HISTORY SHOWS CONSUMERS DO NOT BENEFIT FROM HEALTH INSURANCE INDUSTRY CONSOLIDATION

Prior mergers have led to higher costs. We question whether this and other mergers leave consumers and government purchasers better off. When an insurer with problems seeks to

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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. Executives from Centene and Health Net claim 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 For example, Aetna’s acquisition of Prudential in 1999 resulted in premiums increasing by seven percent.² A study of the 2008 merger between UnitedHealthcare and Sierra Health in Nevada increased premiums in the small group market by nearly 14 percent, relative to a control group.³ Researchers said the results of this merger “suggest that the merging parties exploited the market power gained from the merger.” Furthermore, there is no evidence that mergers lead to improved quality.⁴

Centene and Health Net have not provided evidence that merging will lead to lower costs and better value. Health Net has said that this merger will “enhance our focus on value-based solutions” and Centene has claimed there will be cost savings through “synergies.” As researchers have noted, there is no evidence that larger insurers are more likely to implement value-based payment agreements and care management programs.⁵ Centene and Health Net are already large, scaled entities and it is unclear how they will get any more scale economies from getting even bigger. If Centene claims efficiencies will counteract any negative harm created by its increased market share, then it must provide specific and verifiable information about these purported outcomes. Finally, we question whether larger, more dominant insurers have much incentive to invest in such changes, and if they do, whether the savings and benefits will be passed on to consumers.

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

The ACA has transformed the health insurance market and increased enrollment. As a regulator of health insurance products, CDI protects consumers’ health care rights and ensures a stable insurance marketplace. The Department must ensure 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 coverage through managed care health plans. CDI-licensed health policies provide care to more than 1.7 million Californians, representing 18% of the individual market and 23% of the small-group market, 9% of the large-group market.⁶ In 2014, 2.2 million Californians obtained coverage through the individual market, representing a 47 percent increase over the previous year.⁷ Group coverage continues to be the main source of commercial health insurance, providing coverage for 11.8 million Californians in 2014.⁸ 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.⁹

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 to negotiate on cost and quality.

Healthcare costs continue to burden consumers. The Affordable Care Act has enabled millions of previously uninsured Americans to receive health coverage, improving their financial security and access to care by establishing new rules that provide better financial protection and more comprehensive benefits. Health care costs, however, continue to be a major concern for consumers and 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.¹⁰ Workers are also seeing reduced benefits and increased cost sharing.¹¹ Almost 90 percent of those who enrolled through Covered California for coverage in 2015 received premium assistance to make their health insurance more affordable.¹² According to a newly released Kaiser Family Foundation/New York Times survey, these increasing costs have resulted in one in five Americans *with health insurance* having problems paying their medical bills.¹³ The survey also found that medical expenses limit the ability of patients and their families to meet other basic needs—such as paying for housing, food, or heat—or make it tough for them to pay other bills.¹⁴ 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. HealthNet 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.

Existing law does not protect consumers from price gouging. Insurers have claimed that government regulation such as medical loss ratio (MLR) requirements and rate review limits insurers' ability to raise premium prices. Although MLR requires insurers to spend between 80 and 85 percent of net premiums on medical services and quality improvements, it does not cap prices and insurers can still raise premiums to collect higher profits. In addition, rate review does not prevent health insurers from raising premiums beyond what regulators deem to be reasonable. We note that Health Net has opposed efforts to give California regulators the power to deny unreasonable rate increases.¹⁵

Health Net has opposed measures to increase price transparency in the large group market. Existing state and federal laws regarding rate review provides the public with critical information about rate setting in the individual and small group markets. However, the large group market has largely been left to grapple with dramatic rate increases on its own. Last year, Health Net opposed SB 546 (Leno), Chapter 801, Statutes of 2015, legislation that establishes new rate review requirements for the large group market.¹⁶ This law, which took effect on January 1, 2016, encourages rate increases in the large group market to be more aligned with rates for large purchasers and active negotiators such as CalPERS and Covered California, and with the

individual and small employer markets where rate review has already been implemented. In opposing SB 546, Health Net wanted to continue to not disclose any information or justification when it increases rates for its large group products and ensure that large group purchasers negotiate blind.

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.

Covered California and the Commercial Market: Health Net currently offers products in the individual, small, and large group markets, and 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.¹⁷ Health Net is also responsible for managing care for nearly a million commercial lives in California. If Centene were to acquire Health Net, it would take Health Net's place as one of the largest insurers in California, gain entry into our commercial market, and become a participant in Covered California for the first time. Given Centene's lack of experience in California's commercial market and limited experience in the commercial market elsewhere, we question whether its entry would merely be a byproduct of its merger with Health Net and wonder how Centene will develop competency in this new line of business. These changes also raise questions about how consumers would be affected if Centene were to withdraw from the commercial market and Covered California, particularly in the regions where few plan choices are available.

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.¹⁸ Centene's Medicaid population increased by 32% between 2013 and 2014, and the company continues to expand into additional states.¹⁹ 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 publicly available to evaluate Centene's performance in California, and you should ask them to submit this data early so you can consider it in your review of this merger.

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.²⁰ Earlier this year, an appeals court found Centene in breach of contract and ordered them to pay damages to the state.²¹ 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.²² 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).²³

Given these facts, we are unclear how Centene will add value to California's Medi-Cal program. Centene has not provided details on how it will serve a larger share of 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. Since Centene has a lot of experience in the Medicaid program, what, if any, best practices would it apply in California, and how will it improve Health Net's dismal quality ratings? 54 percent (over 1.3 million) of new Medi-Cal managed care members are assigned to safety-net clinics.²⁴ Does Centene have plans to support the state's safety-net by contracting with safety-net clinics and investing in the safety-net infrastructure, which has played a critical role in providing care for the Medi-Cal population? How will Centene improve access to care in rural and underserved communities? Finally, given that Centene abruptly exited Kentucky's Medicaid program mid-contract, how do we know it would not do the same in California? It is important to note that much of Health Net and Centene's Medi-Cal business is in rural counties where they are one of two plan options, and withdrawing from the Medi-Cal market would have significant implications for our state's lowest income consumers.

ON-GOING VIOLATIONS OF CONSUMER RIGHTS MUST BE RECTIFIED

We urge you to scrutinize how Centene will improve upon Health Net's track record, both in the commercial and Medi-Cal markets. Here, it is relevant to look at oversight and enforcement actions from all California regulators because problems that are present in one line of business are likely to manifest themselves across the company. 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 customers. 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 you to scrutinize how Centene will improve upon Health Net's track record and ensure that policyholders 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 the Department of Managed Health Care's (DMHC) 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.²⁵ While these deficiencies were eventually corrected, we want assurances that Centene will ensure there are no deficiencies in the future.
- **Enforcement actions:** In recent years, Health Net has been the subject of serious enforcement actions by both DMHC and CDI. 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 (\$120K)²⁶; losing 9 server drives, putting the personal information of 700K enrollees at risk (\$200K)²⁷; failing to provide medically necessary speech therapy and occupational therapy services (\$300K)²⁸; and not having an on-call representative available to address an urgent need for medical care (\$150K)²⁹. Health Net has also been heavily fined for failing to pay claims (\$750K)³⁰ and for cancelling coverage after patients became ill (\$1M)³¹; a practice that is now outlawed by the Affordable Care Act.

In 2012, you initiated enforcement actions against Health Net and other insurers to make sure they meet their obligations to cover behavioral therapy for autism whenever medically necessary. Prior to the settlement you reached with Health Net, it had routinely violated the state's Mental Health Parity Act by denying treatment to children.³²

- **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.³³ 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.³⁴ 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.³⁵

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.³⁶ Health Net's Medi-Cal products also have low quality ratings from the NQCA for customer satisfaction, prevention, and treatment.³⁷

- **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.³⁸
- **Complaint Data:** According to the Office of the Patient Advocate, regulators received 17 complaints per 10,000 enrollees in Health Net, in the median of the number of complaints as compared to other health plans.³⁹ The sources of Health Net's complaints should be reduced.
- **Network Adequacy and Timely Access to Care:** CDI should review Health Net and Centene's (California Health and Wellness') timely access reports, which are not yet publicly available, to determine whether they have adequate networks for all their products and whether they have met their obligations to provide policyholders with timely access to care.

- **Language Assistance Program:** State law and the Department's Language Assistance Program regulations⁴⁰ require insurers to provide limited-English proficient and non-English speaking health consumers with meaningful access to interpreters when receiving their health care. Insurers are also required to translate vital documents and collect data on race, ethnicity, and language to address health inequities. We understand the Department is reviewing insurer compliance with these requirements for its biennial report to the Legislature, and we request you to look into whether Centene and Health Net are in compliance. Health Access regards compliance with language access requirements as a critical indicator of whether insurers are providing quality care to all Californians.
- **Privacy and Protection of Confidential Patient Information:** Just this week, the public learned that Centene has lost six hard drives containing the names, addresses, birth dates, Social Security numbers, and other confidential information for 950,000 patients.⁴¹ We urge you to conduct a financial and market conduct examination of Centene, investigate the data breach, and determine what protections they have in place and what actions could have been taken to avoid data loss.

ENFORCEABLE UNDERTAKINGS NEEDED TO ENSURE CONSUMER PROTECTION

Centene and Health Net's proclamation that 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. The 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.

Questions about Centene's commitment to serving California consumers.

- Why a merger? 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?
- Commitment to getting better. As discussed, Health Net has provided lackluster service and care to its commercial enrollees. Is it in the public interest to allow Health Net to be acquired if there is no commitment to fix these problems? In testimony, Centene executives extolled their "local model" and local control over operations but did not say how would they ensure better outcomes.

- 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 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?
- 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 rather than simply delivering the profits shareholders want?

Clear and enforceable commitments to protect consumers and further the public interest.

Regulators have found Health Net to provide deficient services to its policyholders, and it must be required to improve care and services to its enrollees before it can get bigger. Health Net and Centene's existing policy must have access to the quality care they are entitled to under California law.

- Immediately correct deficiencies. Health Net should be required to immediately correct outstanding deficiencies identified by regulators and maintain compliance with all California laws and regulations over a sustained period.
- Improving service, care, and quality. CDI should require Centene and Health Net to meet specific benchmarks in improving access to care and customer service for its patients. They must be required to bring all its quality ratings up to above-average levels within 3 years, and submit plans on how this task will be accomplished.
- Reduce source of IMRs and consumer complaints. Centene and Health Net must be required to reduce the rate of IMRs filed and overturned by regulators and reduce the source of consumer complaints, a critical measure of how well a plan meets their members' needs and solves problems when they occur.
- Accountability to California regulators and consumers. How will a much larger Centene be accountable to California consumers and regulators? They 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.

- Plans for achieving efficiency and savings. 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, improved quality, and reduced health disparities. These commitments must be maintained over time, and not just in the near term. Can Centene assure that consumers get the care they need when they need it rather than simply delivering the profits shareholders want?
- 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.⁴² How will efficiencies be achieved and savings passed on to consumers? There should be 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 they 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), Chapter 661, Statutes of 2010?
- Keeping premium dollars and profits in California: Centene should be required to reinvest profits earned from the California 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.
- 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.⁴³ 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 the health system as a whole: In order to address other potential impacts of the merger and these insurers' practices, Centene 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.

- Invest in strategies that address the social determinants of health: At the Department's January 22, 2016 hearing, the California Reinvestment Coalition pointed out that neither Centene nor Health Net have participated in the Department's COIN program or other mechanisms that would ensure these companies' investments benefit California's low-to-moderate income and rural communities. We echo the California Reinvestment Coalition's recommendation that Centene be required, as a condition of this merger, to participate in COIN in a substantial way and engage in other investment strategies that address the needs of underserved communities.

The Affordable Care Act improves health by expanding access to health coverage and supporting reforms to the health care delivery system. While increasing access to health care and transforming the health care delivery system are important, insurers can improve population health and achieve health equity by supporting broader approaches that address social, economic, and environmental factors that influence health. For example, insurer investments can help low-income Californians to access quality and affordable housing in safe communities, which will in turn improve their health and the overall ability of families to make healthy choices.⁴⁴

THE CALIFORNIA INSURANCE CODE SAFEGUARDS CONSUMERS AND THE PUBLIC INTEREST WHEN INSURERS SEEK TO MERGE

State law allows the Insurance Commissioner to disapprove a merger if they find that it is likely to result in any of the five adverse outcomes delineated in Section 1215.2(d) of the Insurance Code.

- (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.*

Centene and Health Net have not shown how this merger will benefit their policyholders or the public interest. While the range of testimony presented at the Department's January 22, 2016 hearing suggests that most of the adverse outcomes in Section 1215.2(d) will materialize if the merger goes through, we focus our attention on the outcomes described in Section 1215.2(d)(1) and (5).

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.⁴⁵

Centene cannot satisfy the requirements for the issuance of a license. Under Section 717 of the Insurance Code, the Insurance Commissioner can deny a license to an insurer if it is materially deficient when it comes to, among other things, its competency, character and integrity of management, and its fairness and honesty of methods of doing business.⁴⁶ As we have discussed, Health Net has fallen short in its statutory and contractual obligations to provide its policyholders with quality care and good customer service across all its plan products. Despite these problems, Centene stated at the Department's January 22, 2016 hearing that it would not make any material changes to the management and operations when Health Net becomes its California subsidiary. In addition, Centene has not made any enforceable commitments to rectify Health Net's ongoing violations of patient rights, raising strong concerns about its competency, character, and integrity of management. Centene's breach of its Medicaid contract with the State of Kentucky calls into question its fairness and honesty of methods of doing business. As a result, we do not believe Centene satisfies the requirements for the issuance of a license to provide health insurance policies.

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.⁴⁷

Centene and Health Net have not established that this transaction will further the interests of policyholders or the public. Centene has asserted that this merger will yield cost savings and efficiencies that will benefit consumers, but has failed to demonstrate how consumers will actually share in these gains. At the same time, Centene has not made any enforceable commitments to ensure that policyholders receive the quality of care and customer service they are entitled to. Centene has also not demonstrated it is competent serve California's commercial market, including Covered California, which it has never done before. Finally, neither Centene nor Health Net have committed to supporting the safety net or improving the health system as a whole. Therefore, this merger is not in the interest of policyholders or the public and it should be rejected unless there are clear and enforceable conditions in place to ensure the interests of policyholders and the public are protected.

INSURANCE COMPANIES MUST ACT IN THE PUBLIC INTEREST

Insurance companies doing business in California are bound by the duties and obligations imposed by statute and by contract. The California Supreme Court has noted that insurance companies are also subject to additional duties and obligations as a matter of public policy. In *Egan vs. Mutual of Omaha*, the Supreme Court noted that as suppliers of a public service, insurance companies must take the public's interest seriously, placing it before their own interest in maximizing profits and limiting payouts:

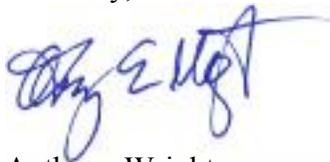
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The insurers' obligations are . . . rooted in their status as purveyors of a vital service labeled quasi-public in nature. Suppliers of services affected with a public interest must take the public's interest seriously, where necessary placing it before their interest in maximizing gains and limiting disbursements . . . (A)s a supplier of a public service . . . the obligations of insurers go beyond meeting reasonable expectations of coverage. The obligations of good faith and fair dealing encompass qualities of decency and humanity inherent in the responsibilities of a fiduciary. Insurers hold themselves out as fiduciaries, and with that the public's trust must go private responsibility consonant with that trust. *Egan v. Mutual of Omaha Insurance Co.* (1979) 24 Cal.3d 809, 820.

The proposed merger between Centene and Health Net has significant implications for California's commercial and Medi-Cal markets, and we are highly skeptical 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 are not 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 assistance as you evaluate this merger. Thank you for giving these issues your highest level of scrutiny and for protecting the interests of consumers in the process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony Wright".

Anthony Wright
Executive Director

Cc: 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>

² L. Dafny, M. Duggan, and S. Ramanarayanan, "Paying a Premium on Your Premium? Consolidation in the U.S. Health Insurance Industry," *American Economic Review*, April 2012 102(2):1161–85.

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