September 16, 2019

Commissioner John F. King
Office of Insurance and Safety Fire Commissioner
Administrative Procedure Division
Two Martin Luther King, Jr. Drive
West Tower, Floyd Building
Atlanta, Georgia 30334

Re: Acquisition of WellCare of Georgia, Inc., an indirect subsidiary of WellCare Health Plans, Inc. by Centene Corporation

Dear Commissioner King,

Thank you for the opportunity to provide public comment at the September 9th hearing. Thank you also for agreeing to keep the record open for an additional seven days. The undersigned did want to supplement the written and public comments already offered in the hopes of further shedding light on why the proposed acquisition is anti-competitive and will be hazardous and prejudicial to the public.¹

At the outset, it is worth pointing out that Centene concedes that Georgia’s Medicaid managed care market is already highly concentrated and that the merger is prima facie anti-competitive.² Indeed, it is prima facie violative of the competitive standards set forth in O.C.G.A. 33-13-3.1(a) by no small margin coming in at approximately 61% market share.

¹ The Georgia Dental Association shares the concerns raised in GPhA, MAG, and GASCO’s September 5, 2019 letter and likewise asks the Commissioner to disprove Centene’s acquisition of WellCare. While it is possible Centene or others have also supplemented the record subsequent to the September 9, 2019 proceeding, the undersigned are not in possession of any additional information submitted by Centene or others.

Other Relevant Factors Point To Anti-Competitive Effect

In an attempt to explain away the prima facie evidence of a violation, Dr. Rozanski proposed that other relevant factors establish the absence of anti-competitive effect. Central to his argument was that the Georgia Medicaid managed care market has a low barrier to entry. This is simply false. Rather, since the establishment of Georgia’s Medicaid managed care program in 2006, there has been one additional opportunity to enter in the market – in 2015 via the bid process. It is noteworthy that the losing bidders, of which there were only a handful, appealed the decision on grounds including contract evaluation process, scoring of proposals, and the evaluation team. With but one additional opportunity to enter in the market since the program’s inception in 2006, one would be hard pressed to point to a market with a higher bar in terms of market entry.

Just as the high barriers to entry support a finding of anti-competitive effect, so do other factors including the highly concentrated market share, and the limited number of competitors.

The Georgia Department Of Community Health

Dr. Rozanski also asserted that the Georgia Department of Community Health (“DCH”), as the regulator, can ensure competitiveness of the market place. However, the fact remains that Georgia law calls upon the Commissioner of Insurance to make determinations with regard to such acquisitions. In addition, Dr. Rozanski’s argument is belied by the fact that DCH and Centene have already entered into an MOU contemplating the merging of the two Medicaid managed care companies without providing for divestiture or even without the assessment Centene represented would occur in its Form A filing.

Specifically, in its Form A filing Centene provided that:

consolidation [of Georgia companies] would only occur after an initial transitional period, which would enable the respective organizations time to fully analyze the impact of such consolidation.

However, a little over a month following that representation Centene entered into an MOU with DCH which provides:

[o]n a date mutually agreeable between DCH and Peach State . . ., which is expected to occur within 12 months of the closing of the Merger Transaction, DCH will transfer all then-current WellCare of Georgia members to Peach State.

Missing from the agreement is the full analysis referenced in the Form A. And, to the extent one may presume that the analysis had been performed between the time between the Form A filing and entering into

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3 Transcript of September 9, 2019 Proceedings, P. 4
5 See Georgia DCH Bid information, available online at https://ssl.doas.state.ga.us/PRSapp/PublicBidNotice?bid_op=154190041900-DCH0000100/
7 Transcript of September 9, 2019 Proceedings, P. 71, lines 15-25
8 O.C.G.A. § 33-13-3(d).
9 Form A Statement Regarding the Acquisition of Control of WellCare of Georgia, Inc., and indirect subsidiary of WellCare Health Plans, Inc. by Centene Corporation, at p. 10 (emphasis added).
10 Memorandum of Understanding Regarding Centene Corporation’s Acquisition of Control of WellCare of Georgia, Inc., pp. 2-3 (emphasis added).
11 See Id.
the MOU, Mr. Koster put that to rest in responding to Mr. Sanders question about the existence of “forecasts” and “studies” with regard to the effect of the merger in Georgia specifically:

“I don’t think Georgia specific studies have been conducted on that point.”12

Dr. Rozanski also emphasized as relevant to the analysis, DCH’s “tools” to regulate quality.13 In doing so, he referenced measures “developed and published by an organization referred to as the National Committees for Quality Insurance.”14 As previously indicated, for 2018:

- 27.3 % of Peach State performance measures ranked below national Medicaid 25th percentile
- 61.4 % of Peach State performance measures ranked below national Medicaid 50th percentile.15

Despite representations to the contrary, these numbers were no aberration, with Peach State experiencing similar performance woes for 2017:

- 27.4 % of Peach State performance measures ranked below national Medicaid 25th percentile
- 50 % of Peach State performance measures ranked below national Medicaid 50th percentile.16

Dr. Rozanski also noted, as a point in favor of the merger, the fact that DCH maintains standards for network adequacy. However, as with the performance measures cited above, Peach State’s record with regard to network adequacy leaves much to be desired and demonstrates not that DCH can ensure competitive outcomes, but rather, that Georgia can ill afford the merger, and can ill afford more of the same from Peach State. By way of example, a review of Georgia’s Southeast Region alone for the second quarter of 2018 reflects access to care problems including but limited to the following:

- PCP Urban: 2 counties not meeting access standards;
- PCP Rural: 3 counties not meeting access standards;
- Pediatrics Urban: 1 county not meeting access standards;
- Pediatrics Rural: 3 counties not meeting access standards;
- Allergy Urban: 1 county not meeting access standards;
- Allergy Rural: 4 counties not meeting access standards;
- Audiology Rural: 3 counties not meeting access standards;
- Dental Rural: 1 county not meeting access standards;
- Dermatology Rural: 1 county not meeting access standards;
- Dialysis Rural: 1 county not meeting access standards;
- Endocrinology Rural: 9 counties not meeting access standards;
- ENT Rural: 3 counties not meeting access standards;
- Gastroenterology Rural: 1 county not meeting access standards;
- General Surgery Rural: 1 county not meeting access standards;
- Home Health & Infusion Rural: 1 county not meeting access standards;
- Infectious Disease Rural: 6 counties not meeting access standards;

12 Transcript of September 9, 2019 Proceedings, p. 28, lines 23-25; p. 29, lines 1-11
13 Id. at p. 73, lines 23-25; p. 74, lines 1-3.
14 Id. at p. 74, lines 4-13.
• Pediatrics Rural: 1 county not meeting access standards;
• OBHYN Rural: 1 county not meeting access standards; and
• Pharmacy (24 hour) Rural: 18 counties not meeting access standards¹⁷

A review of the other regions reflect similar issues with inadequate networks.¹⁸ Thus, while Dr. Rozanski is correct in that DCH sets such criteria, he is incorrect when he says DCH can use these criteria to “ensure” CMOs achieve the desired level of quality.”¹⁹ Meeting standards is in fact not “ensured,” as reflected by the Peach State’s performance.

Dr. Rozanski also represents that the CMOs have little control in that they “can’t set price, they can’t change the product.”²⁰ This is, to say the least, an oversimplification as the CMOs enjoy tremendous leeway and autonomy through the prior authorization process and daily coverage determinations regarding particular courses of treatment or prescription drugs coverage. Indeed, in the prescription drug world, CMOs, through their PBMs, set reimburse rates, a particular pressure point for pharmacies; dispensing fees; and formularies, which are often rebate driven.

In sum, the fact that Centene has already reached agreement with DCH to consolidate the Georgia companies without Georgia specific analysis and without divestiture underscores the importance of the decision before this office. Moreover, the fact that Peach State is already underperforming despite DCH oversight undermines any argument that the Commissioner should somehow defer on the issue of anti-competitiveness and the impact of this merger on Georgian’s to DCH.

There Has Been No Demonstration By Centene Of Economies Of Scale For Consolidation In The Georgia Medicaid Managed Care Market

While the Form D made reference to the benefits of increased scale and cost synergies realized by the same, the only specifics offered concerned projected annual net cost synergies of $500 million by year two driven by economies of scale in “pharmacy and other medical cost management.”²¹ No further details were provided beyond this blanket statement.

With regard to consolidation in the Georgia Medicaid managed care market specifically, as previously noted, the Form D concedes that impact has yet to be analyzed and Mr. Koster concedes there have been no Georgia specific studies on the impact in Georgia.²²

Thus, not only is the acquisition prima facie anti-competitive, and not only do the factors point to anticompetitive effect, but there has been no demonstration of efficiencies in the Georgia market.

As Centene Has Grown It Has Gotten Less Efficient

Despite sweeping representations made by Centene regarding the efficiencies that will come with increased size, the fact remains that, in Georgia, as Centene has grown, Peach State has gotten less efficient.

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¹⁷ A report on the accessibility for the Peach State Health Plan Network for Georgia Families Program – Southeast Region – 2nd Quarter 2018.
¹⁸ A report on the accessibility for the Peach State Health Plan Network for Georgia Families Program – Atlanta, Central, East, South West Regions – 2nd Quarter 2018
¹⁹ Transcript of September 9, 2019 Proceedings, p. 75, lines 14-17.
²⁰ Id. at p. 73, lines 21-22.
²¹ Form A Statement Regarding the Acquisition of Control of WellCare of Georgia, Inc., and indirect subsidiary of WellCare Health Plans, Inc. by Centene Corporation, at pp. 4-5.
²² Form A Statement Regarding the Acquisition of Control of WellCare of Georgia, Inc., and indirect subsidiary of WellCare Health Plans, Inc. by Centene Corporation, at p. 10.; Transcript of September 9, 2019 Proceedings, p. 28, lines 23-25; p. 29, lines 1-11.
In 2011, 17% of Peach State’s net premium income went to non-medical expenses via a combination of claim adjustment expenses, general administrative expenses, and a net gain of 3% ($23 million).\(^{23}\) Fast forward to 2018 and 20% of Peach State’s net premium income went to non-medical expenses via a combination of claim adjustment expenses, general administrative expenses, and a net gain of 6% ($64.7 million).\(^{24}\)

Thus, in a period where Centene has grown exponentially in size and scale, it has not benefitted Georgia or its patients. Rather, Peach State simply doubled the percentage of its net gain. That 3% difference in 2018 alone could have meant $32.2 million more being spent on patient care instead of corporate profits. But alas, Peach State’s priorities were otherwise.

Moreover, as to Centene’s claims it intends to realize efficiencies in connection with prescription drugs, Peach State’s 25% spread between what it paid its PBM[s] and what pharmacies were paid in 2018 speaks directly to Peach State’s inability to administer prescription drug benefits efficiently.\(^{25}\) While Peach State agreed to move away from spread pricing, the undersigned are unaware of the details of their new contracts and what types of administration fees are associated with those contracts but note it is discouraging that Peach State is still using its affiliate Envolve Pharmacy Services along with Rx Advance, with whom Centene also enjoys an ownership interest.

Scrutiny of how Peach State reported its spread in 2018 and previous years along with details of its current contracts with its PBM affiliates and affiliated pharmacies are necessary in light of Peach State’s woeful record of efficiency in connection with prescription drug benefit administration, particularly in light of Centene and Peach State’s failure to conduct and/or provide Georgia specific studies.

**Conclusion**

Centene’s proposed acquisition of WellCare is prima facie anticompetitive and additional relevant factors point to the anti-competitiveness of the acquisition. Any argument that DCH will off-set anti-competitive effects are undermined by Peach State’s performance woes as well as the MOU which contemplated Georgia consolidation without any assessment of the impact of the consolidation in the Georgia market and without divestiture. This merger is anti-competitive, hazardous and prejudicial to Georgians, and should be disproved.

Sincerely,

Georgia Pharmacy Association  
Medical Association of Georgia  
Georgia Society of Clinical Oncology  
Georgia Dental Association

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\(^{23}\) Report on Financial Condition Examination of Peach State Health Plan, Inc. as of December 31, 2011, p. 19, available online at file:///C:/Users/greybold/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/GADOI%20(1).pdf. Note, in his public comments Mr. Reybold incorrectly referred to net gain as net profit.  
\(^{24}\) Peach State Health Plan, Inc. Annual Statement for the year ending December 31, 2018, p. 7.  