

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF )  
CONTROL OF WELLCARE HEALTH PLANS )  
OF NEW JERSEY, INC. BY CENTENE )  
CORPORATION )

HEARING OFFICER'S  
REPORT

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated May 3, 2019, Centene Corporation (“Centene” or “the applicant”), a publicly traded Delaware corporation, filed with the Department of Banking and Insurance (“the Department”) an application to acquire control (“the Form A filing”) of WellCare Health Plans of New Jersey, Inc. (“WellCare NJ”). WellCare NJ is a New Jersey domiciled health maintenance organization (“HMO”), and is a direct, wholly owned subsidiary of the WellCare Management Group, Inc., a New York Corporation. WellCare Management Group, Inc. is a direct, wholly owned subsidiary of WCG Health Management, Inc., a Delaware Corporation. WCG Health Management, Inc. is a direct, wholly owned subsidiary of WellCare Health Plans, Inc. (“WellCare HP”), a publicly traded Delaware Corporation (collectively “WellCare Companies”).

This transaction is part of an agreement whereby, through mergers with its subsidiaries, Centene will acquire control of WellCare HP. Centene will then indirectly own 100 percent of the issued and outstanding shares of the capital stock of WellCare NJ.

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing was held on the Form A filing on November 4, 2019. Pursuant to N.J.A.C. 11:1-35.6(g), the public hearing was conducted based on the documents filed. The hearing panel and Department staff determined that the documents filed in connection with the proposed acquisition satisfied the requirements of N.J.S.A. 17:27A-2b.

Public comments were allowed to be submitted through the close of business on November 4, 2019. No comments were received. No other documents were required, and the record was closed on November 4, 2019.

#### Findings of Fact

WellCare NJ was incorporated on December 8, 2006 and commenced business on May 29, 2007. Centene was organized in 1993 in Wisconsin as a holding company for its initial health plan, and commenced operations in 1994. Centene then reincorporated in Delaware in 2001.

Centene is a healthcare corporation that provides services to government-sponsored and commercial healthcare programs, focusing on uninsured and under-insured individuals. Centene's locally based staff helps its members in accessing care, coordinating referrals to health and social services, and addresses member concerns and questions. Centene also provides its members with education and outreach to assist them to access healthcare to ensure they receive appropriate services and effectively manage routine care and chronic health problems. Centene operates two business segments: Managed Care and Specialty Services. The Managed Care segment, which constitutes 95 percent of total external revenues, provides health plan coverage to individuals through government subsidized and commercial programs. The Specialty Services segment, which constitutes five percent of total external revenues, includes companies offering healthcare services and products to its Managed Care segment and other external customers.

Pursuant to the Agreement and Plan of Merger dated March 26, 2019, ("the Merger Agreement"), included as part of the Form A filing, Wellington Merger Sub I, Inc. ("Merger Sub I"), a Delaware corporation and wholly owned subsidiary of Centene, will be merged with and into WellCare HP ("First Merger"). WellCare HP will then be a wholly owned subsidiary of Centene. Immediately after the First Merger, WellCare HP will be merged with and into Wellington Merger

Sub II, Inc. (“Merger Sub II”), a Delaware corporation and wholly owned subsidiary of Centene (“Second Merger” and together with the First Merger, “Merger Transaction”). After the Second Merger, Merger Sub II will be the final surviving corporation and a wholly owned subsidiary of Centene (“Surviving Corporation”). After the Second Merger, the name of the Surviving Corporation will be “WellCare Health Plans, Inc.” (“Post-Closing WellCare”). After the Merger Transaction, Merger Sub I and Merger Sub II will no longer exist or function independently apart from Post-Closing WellCare. Further, after the Merger Transaction, Centene will directly own 100 percent of the issued and outstanding shares of capital stock of Post-Merger WellCare and will thereby indirectly own 100 percent of the issued and outstanding shares of the capital stock of WellCare NJ.

Centene stated that after the merger, Centene and WellCare will be better able to serve members by extending Centene’s Medicaid offerings and by providing an excellent Medicare platform. Centene stated that the combined companies would be able to serve approximately 22 million members across all 50 states.

Centene stated that it does not plan to declare an extraordinary dividend, liquidate WellCare NJ, sell its assets, or to merge it with any person or persons or to make any other material change in its business operations, corporate structure, or management. WellCare NJ will continue to maintain its separate corporate existence and continue its operations as currently conducted. Centene stated that presently, it does not have plans to change the existing directors and executive officers of WellCare NJ, though it does anticipate conducting an ongoing review of WellCare NJ’s management, including directors and executive officers. If any changes are necessary as a result of said review, Centene would communicate those changes to the Department as appropriate.

Centene stated that the Merger Transaction is valued on an enterprise value basis of approximately \$17,300,000,000, based on closing stock prices as of March 26, 2019, the date of the Agreement and Plan of Merger. The cash component for the Merger Transaction is \$6,060,000,000. Centene expects to finance the cash component of the consideration through available cash on hand and the issuance of unsecured senior notes in a public offering registered under the Securities Act of 1933, as amended (the "Securities Act") with the U.S. Securities and Exchange Commission ("SEC"), or in an offering pursuant to Rule 144A under the Securities Act, or other private placement yielding up to \$8,350,000,000 in aggregate gross cash proceeds. However, the Merger Transaction is not subject to a financing condition.

In addition to the payment of consideration, Centene may need to assume approximately \$1,950,000,000 of WellCare HP debt. Centene has entered into a second amended and restated debt commitment letter, dated as of April 23, 2019 (the "Commitment Letter"), by and among Centene, Barclays Bank, PLC and other commitment parties pursuant to which, and subject to the terms and conditions of the Commitment Letter, certain lenders have committed to provide Centene with an aggregate principal amount of up to \$8.350,000,000 in bridge financing in the event that proceeds of the proposed debt offering by Centene or other funds sufficient to pay the consideration are not available prior to the consummation of the Merger Transaction.

The financing contemplated by the Commitment Letter ("the Financing") is unsecured. No assets or stock of WellCare NJ or of any person controlled by WellCare HP will be pledged or offered as security for the Financing. The stock and assets of WellCare NJ will not be pledged or hypothecated as part of the funding of the Merger Transaction.

Based on the consolidated financial statements filed by the applicant, it had shareholders' equity of \$11,013,000,000 in 2018, \$6,864,000,000 in 2017 and \$5,909,000,000 in 2016. In 2018,

it had net before-tax income of \$1,368,000,000; and in 2017, it had net before-tax income of \$1,134,000,000.

### Analysis

N.J.S.A. 17:27A-2(d)(1) provides that the Commissioner shall approve an acquisition of control of a domestic insurer unless he or she finds that one or more of the seven disqualifying factors set forth therein exist. The statute provides in pertinent part:

(1) The Commissioner shall approve any merger or other acquisition of control ... unless, after a public departmental hearing thereon, he [or she] finds that:

(i) After the change of control the domestic insurer ... would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein ... [applying the competitive standard as set forth in the statute];

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with

any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

Upon a thorough review of the documents submitted into evidence, the hearing panel and Department staff have determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated. Each of these conditions is discussed below.

First, after the acquisition, WellCare NJ will continue to meet the requirements to transact the business for which they are presently licensed pursuant to Title 26 of the New Jersey Statutes. There is nothing in the record to indicate that after the proposed transaction WellCare NJ would not be able to continue to satisfy the requirements to transact the business for which they are presently licensed.

Second, it does not appear that the acquisition of WellCare NJ will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2(d)(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1d shall apply. That statute utilizes a complex formula based on the market shares of the insurers involved in the transaction. Centene is a healthcare corporation that provides services to government-sponsored and commercial healthcare programs, focusing on uninsured and under-insured individuals. WellCare NJ is an HMO. The statute by its terms does not apply if, as an immediate result of the acquisition, there would be no increase in the overall market share

of the involved insurers after the acquisition. See N.J.S.A. 17:27A-4.1(b)(2)(d). Centene and its subsidiaries and the WellCare Companies have no overlap in market share in any of the following lines in which they have written in New Jersey. For the five years prior to the proposed transaction, the WellCare Companies have written no more than 1.05 percent of the market in Disability, Long Term Care, Stop Loss and Other Health lines, and Centene has written none. For the five-year period prior to the proposed transaction, Centene and its affiliates have written no more than 0.24 percent of the market in the Medicare Supplement line, and the WellCare Companies have written none. For the five-year period prior to the proposed transaction, the WellCare Companies have written no more than 3.62 percent of market in the Title XIX Medicaid line, and Centene has written none. In the five-year period prior to the proposed transaction, the WellCare Companies have written no more than 0.78 percent of the market in the Title XVIII Medicare line, and Centene has written none. As the applicant and its subsidiaries and the WellCare Companies do not compete against each other in New Jersey, there would be no increase post-acquisition in the market share of the involved insurers in the New Jersey insurance market. Accordingly, the acquisition will not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1. Thus, it does not appear that the acquisition of WellCare NJ will substantially lessen competition in New Jersey or tend to create a monopoly therein.

Third, it does not appear that the financial condition of the applicants will jeopardize the financial condition of WellCare NJ. As reported in the applicable financial statements filed by the applicant, the applicant had shareholders' equity of \$11,013,000,000 in 2018, \$6,864,000,000 in 2017 and \$5,909,000,000 in 2016. In 2018, it had net before-tax income of \$1,368,000,000 and in 2017, it had net before-tax income of \$1,134,000,000. Further, as a part of the transaction, the applicant may need to assume approximately \$1,950,000,000 of WellCare HP debt.

Fourth, it appears that the financial condition of the applicant is such that it has been solvent on a basis of generally accepted accounting principles for the three-year period immediately prior to the date of the proposed acquisition. As set forth above, based upon the filing the applicant had substantial shareholders' equity for the most recent three-year period, indicating it has been in a sound and viable financial condition for the relevant period. Finally, to the extent debt is utilized to fund the consideration for the transaction, it will not exceed 50 percent. The transaction value is \$17,300,000,000 and any debt that may be utilized is limited to \$8,350,000,000. Thus, if the full amount of potential debt is utilized to fund the transaction, it would not exceed 48.2 percent of the transaction value. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the applicant does not propose to liquidate the WellCare NJ or sell their assets. As set forth above, the applicant stated that WellCare NJ will continue to maintain its separate corporate existence and continue its operations as currently conducted.

Sixth, there is nothing in the record from which it may be concluded that the competence, experience, and integrity of the persons who will control the operations of WellCare NJ are such that it would not be in the interest of the policyholders and of the public to permit the acquisition of control. Centene stated that presently, it does not have plans to change the existing directors and executive officers of WellCare NJ, though it does anticipate conducting an ongoing review of WellCare NJ's management, including directors and executive officers. If any changes are necessary as a result of said review, Centene would communicate those changes to the Department as appropriate.



Seventh, there is nothing in the record from which it may be concluded that the acquisition is likely to be hazardous or prejudicial to the insurance buying public for the reasons set forth above.

Recommendation

Based on the foregoing analysis, the hearing panel and Department staff recommend that the proposed acquisition be approved.

Upon a thorough review of the foregoing, I concur with the findings, analysis and recommendations of the hearing panel and Department staff. I therefore recommend that the proposed acquisition be approved.

11/25/19  
Date

  
Jacqueline Dilks-Brotman  
Hearing Officer

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### **Exhibits List**

**IN THE MATTER OF THE ACQUISITION OF CONTROL OF  
WELLCARE HEALTH PLANS OF NEW JERSEY, INC.  
BY WELLCARE HEALTHPLANS, INC.**

- Exhibit 1 – Form A application dated May 3, 2019
- Exhibit 2 – Waiver of 20-day notice of hearing submitted by Ashlee Knuckey of Locke Lord, LLP, for WellCare Health Plans of New Jersey, Inc., dated October 8, 2019
- Exhibit 3 – Waiver of 20-day notice of hearing submitted by Todd Freed of Skadden, Arps, Slate, Meagher & Flom, LLC for Centene Corporation, dated October 8, 2019
- Exhibit 4 – Affidavit of Publication of Notice of Hearing in Star-Ledger, reflecting publication on October 28, 2019
- Exhibit 5 - Affidavit of Publication of Notice of Hearing in Asbury Park Press, reflecting publication on October 28, 2019
- Exhibit 6 – Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on October 28, 2019