BEFORE THE SOUTH CAROLINA DEPARTMENT OF INSURANCE

In the Matter of: The Proposed Acquisition of Control of WellCare of South Carolina, Inc., a South Carolina Domestic Health Maintenance Organization, by Centene Corporation, a Delaware Corporation.	Docket No. 2019-001 **DECISION AND ORDER CONDITIONALLY APPROVING ACQUISITION OF CONTROL**

This matter comes before me pursuant to the Form "A" Statement regarding the Acquisition of Control of or Merger with a Domestic Insurer ("the Form A") filed by Centene Corporation (the "Applicant"), a Delaware corporation, in accordance with the South Carolina Insurance Holding Company Regulatory Act. *See* S.C. Code Ann. §§ 38-33-280; 38-21-70 (2015) and 25A S.C. Code Ann. Reg. 69-14. Section 38-33-280 requires the approval of the South Carolina Director of Insurance or his designee (the "Director") of any merger or acquisition of control of a South Carolina health maintenance organization in accordance with the provisions of § 38-21-90. Section 38-21-90 requires approval unless after public hearing he finds that one of the conditions set forth in § 38-21-90(A) exists.

STATEMENT OF THE CASE

The Form A dated April 26, 2019 provided notice of the Applicant's intent to acquire control of WellCare of South Carolina, Inc., ("WellCare of SC")[1], a South Carolina domestic health maintenance organization (HMO), through its parent, WellCare Health Plans, Inc. (WellCare), via a merger transaction. The Applicant also submitted a Form E, *Pre-acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or*

[1] WellCare of SC is an indirect, wholly-owned subsidiary of WellCare Health Plans, Inc., a publicly traded Delaware corporation.

Acquisition by a Non-Domiciliary Insurer Doing Business in the State or by an Involved Insurer, and filed an amendment to the Form E on May 31, 2019.

Pursuant to § 38-21-90, a public hearing was held on July 10, 2019. Notice of the hearing was posted on the Department's website, given by publication in *The State,* the *Sun-News,* and the *Greenville News;* and by written notice from the Department to the Applicant. Counsel for the Department submitted a prehearing brief and the Applicant and WellCare submitted a joint pre-hearing brief. Also prior to this hearing, counsel agreed upon and presented to me a Confidentiality Order addressing the confidential treatment of certain portions of the filing under South Carolina law, which I signed on July 10, 2019. The contents of that order are not confidential.

The hearing was held on July 10, 2019 and was conducted in accordance with 25A S.C. Code Ann. Reg. 69-31. As the Director of Insurance, I presided over the hearing. The Department was represented by Melissa B. Manning, Associate General Counsel. The Applicant was represented by Elena M. Coyle, Esq., Todd E. Freed, Esq. and Elliot A. Silver, Esq. of Skadden, Arps, Slate, Meagher & Flom LLP and Thad H. Westbrook, Esq. and Thomas A. Brumgardt, Esq. of Nelson Mullins Riley & Scarborough LLP. Representing WellCare were Ashlee M. Knuckey, Esq. and Steven T. Whitmer, Esq. of Locke Lord LLP and John P. Seibels, Jr., Esq. of The Seibels Law Firm, PA.

Two members of the public at large testified at the hearing. One testified in support of the proposed merger; and the other, a provider, testified primarily regarding her concerns about compensation, as set forth more fully in a letter included in the record. Representatives of the South Carolina Department of Health and Human Services (SCDHHS) also attended the hearing but did not testify or comment.

STATUTORY STANDARD OF REVIEW

Factors Determining Approval or Disapproval of the Proposed Transaction

Section 38-21-10(2) creates a presumption of control whenever an acquiring entity would directly or indirectly own ten percent or more of the voting securities of a regulated entity. Section 38-33-280 prohibits any person from acquiring control of a domestic health maintenance organization without first filing the information required under the § 38-21-70 of the Insurance Holding Company Regulatory Act (the "Act") and obtaining approval for that acquisition from the Director of Insurance or his designee under § 38-21-90.

Section 38-21-90(A) specifically requires the approval of the proposed acquisition of control of a South Carolina domestic insurer unless the Director of Insurance or his designee determines, after a public hearing, that any of the six following conditions will occur:

1. After the change of control the domestic insurer referred to in Section 38-21-60 is not 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.

2. The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this item:

   (a) The information requirements and standards of Section 38-21-125(C) and (D) apply.

   (b) The merger or other acquisition must not be approved if the director or his designee finds that at least one of the situations in Section 38-21-125(D) exists.

   (c) The director or his designee may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders[2].

[2] Health maintenance organizations do not have policyholders. The requirements of § 38-21-90 are made applicable to HMOs (and enrollees) via § 38-33-280.

4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to the insurer's policyholders and not in the public interest.

5. The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is not in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

6. The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Therefore, the Applicant must prove by a preponderance of the evidence that the proposed transaction will not result in one or more of those conditions.

Pursuant to § 1-23-350 and 25A S.C. Code Ann. Reg. 69-31(DD)(10), I have the duty and authority to set forth in this Order my findings of fact and conclusions of law, separately stated, regarding the proposed transaction.

FINDINGS OF FACT

Having considered the Form A and its attachments, the Form E as amended, the witnesses' testimony, the exhibits, and all other materials constituting the record in this matter, I find by a preponderance of the evidence the following as to the requested approval of the acquisition by merger of WellCare of SC by the Applicant:

1. The Applicant filed a Form A with the Department on or about April 26, 2019. The application complies with the requirements of §§ 38-21-70, 38-21-90 and 38-33-280 as well as S.C. Code Ann. Reg. 69-14.

2. The Applicant also submitted a Form E, Pre-acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in the State or by an Involved Insurer and filed an amendment

to the Form E on May 31, 2019. The Notification complies with the requirements of § 38-21-125(C)(1) and S.C. Code Ann. Reg. 69-14.

3. The Applicant is a diversified, multi-national healthcare enterprise providing services to government-sponsored and commercial healthcare programs, focusing on under-insured and uninsured individuals. Its corporate office is located in St. Louis, Missouri. It is one of the largest providers of Medicaid, Medicare Advantage and other government-sponsored and commercial programs in the country and serves over 14 million members in twenty-nine (29) states.

4. A Fortune 100 company, the Applicant's total revenues and net earnings attributable to it as of December 31, 2018 were $60.1 billion and $900 million, respectively, with total cash flow of $1.2 billion. Also, as of December 31, 2018, the Applicant had net admitted assets of approximately $10.1 billion and total surplus of approximately $4.2 billion on a statutory accounting basis; and, with its subsidiaries, had consolidated total assets of approximately $30.9 billion and consolidated total stockholders' equity of approximately $11.0 billion on a GAAP [3] basis.

5. WellCare is a managed care company, headquartered in Tampa, Florida, that focuses primarily on providing government-sponsored insurance products and services to individuals and families through Medicaid and Medicare Advantage. Nationally, WellCare has over 5 million members. WellCare has three entities operating in South Carolina, WellCare of South Carolina, Harmony Health Plans, Inc. and WellCare Prescription Insurance, Inc.

6. WellCare of SC is a South Carolina domestic health maintenance organization with approximately 81,000 Medicaid members and approximately 4,000 Medicare Advantage

[3] Generally Accepted Accounting Principles.

members.

7. The Applicant has two risk-bearing subsidiaries domiciled in this State: a pure captive insurance company and Absolute Total Care, Inc., a health maintenance organization (HMO). According to the Form E, the Applicant has three foreign-licensed subsidiaries doing business in this State.

8. The Applicant proposes to acquire, directly or indirectly, all the issued and outstanding stock of WellCare of SC pursuant to a Merger Agreement as outlined in the Form A. Following the completed merger transaction, the Applicant will directly own one hundred percent (100%) of the issued and outstanding shares of capital stock of WellCare and will thereby indirectly own one hundred percent (100%) of the issued and outstanding shares of capital stock of the domestic health maintenance organization.

9. The practical effect of the proposed transaction will be to replace the public common stockholders of WellCare with the Applicant, with Post-Closing WellCare becoming a wholly-owned subsidiary of the Applicant and the Applicant owning one hundred percent (100%) of the issued and outstanding shares of WellCare of SC. WellCare of SC will continue operations in South Carolina as the Applicant's domestic indirect wholly-owned subsidiary.

10. Based upon the materials submitted by the Applicant, which include the Form A, the Form E, as amended, as well as the testimony and exhibits, none of the conditions provided for under Section 38-21-90(A) exist or apply upon closing of the proposed transaction.

11. The Applicant represented that WellCare of SC will continue to comply with all requirements for licensure.

12. The Applicant is financially sound, and the proposed merger will not reduce the

security of, or the service to be rendered to, any enrollees of WellCare of SC, nor will the financial condition of the Applicant jeopardize the financial stability of WellCare of SC or prejudice the interests of its enrollees.

13. Based upon the financial position of the Applicant, WellCare of SC may benefit financially from the proposed transaction. The Applicant's financial condition and resources should strengthen the financial stability of WellCare's subsidiaries, including WellCare of SC.

14. The Applicant has no present plans to liquidate WellCare of SC or to sell its assets to any person, other than those described in the Form A.

15. The Applicant has no present plans to cause WellCare of SC to merge or consolidate or transfer any of its assets with any other company, other than those described in the Form A and summarized above.

16. WellCare of SC will maintain its management and corporate identity and will continue to operate as a South Carolina domestic health maintenance organization under the financial regulation and supervision of the Department. The SCDHHS will continue to oversee WellCare of SC's product offerings, pricing, and market activities including its enrollment and managed care contracts.

17. The Applicant has no present plans to change the existing directors and officers of WellCare of SC. The biographical affidavits provided for the executive officers and directors of the Applicant were included in the Form A. That information indicates that the Applicant's management team and the proposed management of WellCare have substantial management experience in the insurance industry and further indicates that the competence, experience and integrity of those individuals who would control WellCare of SC is not detrimental to the interests of its enrollees such that it would require disapproval of this transaction.

18. Applying the competitive standard information requirements and standards of § 38-21-125(C) and (D), the effect of the proposed transaction will not substantially lessen competition in the relevant markets in this State or tend to create a monopoly.

19. Submitted with the Form E pursuant to § 38-21-125(C)(2) was a detailed opinion from an economist as to the competitive impact of the proposed transaction in this State, accompanied by a summary of the education and experience of the expert establishing his ability to render an informed opinion. Regarding the effect of the proposed transaction on the managed Medicaid market in this State, the economist made three specific findings:

a. Market shares and layers of concentration based on market shares are not a reliable indication whether a firm has market power or whether this transaction is likely to reduce competition, because SCDHHS has effective mechanisms to ensure a competitive marketplace;

b. Conditions of entry into the managed Medicaid market in this State are relatively easy: SCDHHS has the means to facilitate that entry and there are a number of firms that are well-positioned to enter the market and offer managed Medicaid in this State; and

c. There are likely to be benefits to consumers as well as the State from the proposed transaction.

20. Regarding the effect of the proposed transaction on the managed Medicare Advantage market in this State, the economist's ultimate conclusion was that the proposed transaction would not result in a violation of the competitive standard by substantially lessening competition in the managed Medicaid or Medicare Advantage markets in the State or tending to create a monopoly in those markets. *See* S.C. Code Ann. § 38-21-125(D)(1) (2015). He also

testified that taking into account the number of competitors, market shares and ease of entry, including the fact that there were ten firms in the market, and that three had entered "since 2013 or 2014," he did not find a violation of the competitive standard with respect to the Medicare Advantage market in this State.

21. Based on his testimony, the Form E as amended and the exhibits, I find that that the effect of the proposed transaction will not violate the competitive standard by substantially lessening competition in the managed Medicaid or Medicare Advantage markets in the State or tending to create a monopoly in those markets.

CONCLUSIONS OF LAW

I have considered the statutory requirements for approval of a change of control in accordance with the applicable provisions of the Code of Laws of South Carolina 1976, as amended, and I make the following conclusions of law:

1. I have jurisdiction over the parties and the subject matter. *See* S.C. Code Ann. §§ 38-21-70, and 38-33-280 (2015) and 25A S.C. Code Ann. Reg. 69-31, and other pertinent provisions of the South Carolina Insurance Code.

2. The approval of the Director is required for the proposed transaction to be effective. S.C. Code Ann. §§ 38-33-280; 38-21-90(A) (2015).

3. The grounds to be considered by the Director in determining whether to approve the proposed transaction are set forth in § 38-21-90(A)(l)-(6).

4. Proper notice of the hearing was given by publication, in *The State,* the *Sun-News*, and the *Greenville News*; and by notice from the Department to the Applicant.

5. The Form A satisfies the requirements of §§ 38-21-70 and 38-21-90 and the Form E meets the requirements of §38-21-125. Both submissions comply with S.C. Code Reg. 69-14.

Pursuant to § 38-21-90, I find and conclude that none of the conditions requiring disapproval exist.

7. I make no determination as to whether any materials related to the proposed transaction are subject to disclosure under South Carolina's Freedom of Information Act.

8. Finally, certain materials are subject to a Confidentiality Order; and an exception to Confidentiality, is that the Department may, consistent with § 38-21-290, disclose confidential information to the insurance departments of other states, provided that any such state insurance department continues to treat such information as confidential, non-public information to the maximum extent permitted by law and to comply with the notification requirements of the Confidentiality Order.

ORDER

Based on the Applicant's filings, testimony and the foregoing findings and conclusions, I hereby approve the Applicant's Form A, subject to these conditions:

1. The Confidentiality Order signed by me as the Presiding Officer shall be enforceable by the South Carolina Department of Insurance;

2. Pursuant to §38-21-90(D), the Applicant shall pay all expenses reasonably necessary to assist me as the Presiding Officer in the review of the proposed acquisition of control, including but not limited to the fees and expenses associated with the July 10, 2019 hearing. All expenses shall be paid within thirty (30) days of this Order.

3. The Applicant shall secure the approval, waiver or clearance (as applicable) of any other regulatory entities that are required by state or federal law to consummate this transaction.

4. I recognize that the United States Department of Justice ("DOJ") continues to separately investigate any possible competition issues raised by this proposed transaction, and that

the information considered and the standard used by the DOJ in conducting its review, including the application and use of the US DOJ–FTC horizontal merger guidelines, may be different than those prescribed by South Carolina law. Accordingly, the approval granted by this Order is conditioned upon and shall not be acted upon, until the applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, expire or are terminated.

5. Failure to comply with the conditions set forth above will render the approval of this transaction null and void and the proposed transaction will be deemed disapproved in its entirety without any further proceedings by me or the Department.

IT IS SO ORDERED.

July 18, 2019

Columbia, South Carolina

Raymond G. Farmer
Director of Insurance