



September 5, 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 be heard on the issue of the proposed acquisition of WellCare of Georgia, Inc., an indirect subsidiary of WellCare Health Plans, Inc. (collectively referred to as "WellCare"), by Centene Corporation (hereinafter referred to as "Centene"). We, the undersigned organizations, represent Georgia providers who care for Georgia patients and we come to you united in the interest of the healthcare of all Georgians to strongly oppose the acquisition.

As more fully elaborated below, we believe this proposed acquisition will substantially lessen competition, will be prejudicial to the insurance buying public, including the Georgia Medicaid Managed Care recipients and Georgia taxpayers, and the competence of Centene may be such that the acquisition is not in the interest of patients covered by the WellCare or of the public.

### **The Proposed Acquisition Will Substantially Lessen Competition**

Georgia law gives the Commissioner the ability to disprove an acquisition of an insurer when the effect of the merger would be to substantially lessen competition in insurance in Georgia.<sup>1</sup> More specifically, the law authorizes the Commissioner to disprove an acquisition of an insurer when there is prima-facie evidence of a violation of competitive standards or when the requisite anticompetitive effect is established through other substantial evidence.<sup>2</sup>

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<sup>1</sup> O.C.G.A. § 33-13-3(d)(1)(b).

<sup>2</sup> O.C.G.A. § 33-13-3.1(d).

### Prima-facie evidence of violation of competitive standards

In Georgia, prima-facie evidence of violation for competitive standards in highly concentrated markets are as follows<sup>3</sup>:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

Prima-facie evidence for competitive standards in not highly concentrated markets are as follows<sup>4</sup>:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

Here, to the extent the Commissioner deems these standards applicable to the Georgia Medicaid managed care market, or even the Georgia Medicaid market in total, there is prima-facie evidence of a violation. Broadly speaking, this merger would have the effect of making it the largest Medicaid managed care company in the country.<sup>5</sup> As to the Georgia Medicaid managed care market specifically, out of approximately 1,342,432 lives in the managed care program, 814,729 lives would fall under the Centene umbrella between WellCare and Peach State which is a subsidiary of Centene.<sup>6</sup> This would represent an astounding 61% of the Medicaid managed care market leaving the other two managed care companies with approximately 39% of the managed care market.<sup>7</sup> Even if you add in the 517,240 fee for service aged, blind and disabled population the approximate market share post acquisition would be in the 43% range.<sup>8</sup>

### Other substantial evidence indicates anti-competitive effect

Even when an acquisition is not prima-facie violative of competitive standards set out in Georgia law, the Commissioner may find the requisite anti-competitive effect to disprove an acquisition based on other substantial evidence including but not limited to: market share, number of competitors, concentration, trend of concentration in the industry, and ease of entry into market and exit from market.<sup>9</sup>

Based upon the foregoing factors, the acquisition should be disproved due to its anti-competitive effects. As indicated above, with 4 Medicaid managed care companies in Georgia, the acquisition would have the effect of Centene managing approximately 61% of the patients enrolled in Georgia's Medicaid managed care program.<sup>10</sup> To say this is a highly concentrated market would be an understatement and the ease of entry into the Georgia market for competitors is difficult and limited as a result of bidding opportunities, contracting, and process.

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<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Investor Update, p. 9, available online at <https://centene-wellcare.com/wp-content/uploads/2019/05/Investor-Update---May-2019.pdf>.

<sup>6</sup> Georgia Medicaid Managed Care Enrollment Report.

<sup>7</sup> Id.; See also Samantha Liss, Centene, WellCare union likely to raise antitrust concerns, HEALTHCARE DIVE, March 29, 2019, available online at <https://www.healthcaredive.com/news/centene-wellcare-union-likely-to-raise-antitrust-concerns/551479/>.

<sup>8</sup> Georgia Department of Community Health 2018 Annual Report, p. 6, available online at [https://dch.georgia.gov/sites/dch.georgia.gov/files/related\\_files/document/2018AnnualReport.pdf](https://dch.georgia.gov/sites/dch.georgia.gov/files/related_files/document/2018AnnualReport.pdf)

<sup>9</sup> O.C.G.A. § 33-13-3.1(d)(2)(D).

<sup>10</sup> Samantha Liss, Centene, WellCare union likely to raise antitrust concerns, HEALTHCARE DIVE, March 29, 2019, available online at <https://www.healthcaredive.com/news/centene-wellcare-union-likely-to-raise-antitrust-concerns/551479/>.

Notably, the fact that there is evidence of anti-competitive effect in connection with this merger, including specifically in Georgia, based upon market share and consolidation has been pointed out by others including the American Hospital Association in its opposition to the proposed acquisition<sup>11</sup> as well as industry analysts.<sup>12</sup>

The assertion that the merger will yield substantial economies of scale is unsupported by the evidence

In its Form A filing, Centene states the proposed acquisition will lead to significant benefits to members and government partners through increased scale and diversified services.<sup>13</sup> However, this assertion lacks support in the Form A filing.

Indeed, while Centene broadly asserts increased scale and cost synergies as benefits to the merger, with regard to Georgia Medicaid managed care market, it appears to concede that there is no current plan in place in which any such scale or synergies would be realized.<sup>14</sup> Rather, Centene states:

“it is anticipated that the respective operations . . . will initially operate substantially independently; however while integration planning is still ongoing, it is anticipated the Medicaid operations . . . will eventually be consolidated.”<sup>15</sup>

It is also noteworthy that Centene further concedes it has yet to fully assess the impact of the consolidation in the Georgia Medicaid managed care market:

“consolidation would only occur after an initial transitional period, which would enable the respective organizations time to fully analyze the impact of such consolidation . . .”<sup>16</sup>

In an apparent attempt to bolster the assertion, Centene notes that “the combined company will operate 31 NCQA accredited plans across the country.”<sup>17</sup> Interestingly, while Centene makes general reference to NCQA in its filing it fails to address its clinical results in Georgia vis a vie its HEDIS rankings.<sup>18</sup> Noteworthy, Georgia’s most recent external quality review report assessing 2018 performance notes:<sup>19</sup>

- 27.3 % of Peach State performance measures ranked below national Medicaid 25<sup>th</sup> percentile
- 61.4 % of Peach State performance measures ranked below national Medicaid 50<sup>th</sup> percentile
- 19.8% of WellCare’s HEDIS performance measures ranked below national Medicaid 25<sup>th</sup> percentile
- 51.7% of WellCare’s HEDIS performance measures ranked below national Medicaid 50<sup>th</sup> percentile

Based upon the limited information provided, there is no reason to believe the proposed acquisition would not simply exasperate the performance woes of two managed care organizations that both fall below the national average in over 50% of assessed performance measures.<sup>20</sup>

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<sup>11</sup>American Hospital Association letter to Assistant AG Makan Delrahim, April 30, 2019, available online at [https://www.aha.org/system/files/media/file/2019/05/Makan-Delrahim-Ltr-05012019\\_0.pdf](https://www.aha.org/system/files/media/file/2019/05/Makan-Delrahim-Ltr-05012019_0.pdf)

<sup>12</sup> Samantha Liss, Centene, WellCare union likely to raise antitrust concerns, HEALTHCARE DIVE, March 29, 2019, available online at <https://www.healthcaredive.com/news/centene-wellcare-union-likely-to-raise-antitrust-concerns/551479/>.

<sup>13</sup> 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. 4.

<sup>14</sup> Id. At p. 10.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. At p. 4.

<sup>18</sup> HEDIS refers to Healthcare Effectiveness Data and is a registered trademark of the National Committee for Quality Assurance (“NCQA”). See State of Georgia Department of Community Health 2019 External Quality Review Annual Report, p. iii, available online at [https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related\\_files/document/GA2018-19\\_EQR\\_TechRpt\\_F1.pdf](https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related_files/document/GA2018-19_EQR_TechRpt_F1.pdf)

<sup>19</sup> State of Georgia Department of Community Health 2019 External Quality Review Annual Report, p. 3-11, available online at [https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related\\_files/document/GA2018-19\\_EQR\\_TechRpt\\_F1.pdf](https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related_files/document/GA2018-19_EQR_TechRpt_F1.pdf)

<sup>20</sup> Id. While there are also performance measures indicating high performance, it is worth noting the trend of a high percentage of performance measures ranking in the bottom 50<sup>th</sup> percentile in 2018 was not an aberration. Performance results were similar in 2017

Centene also asserts that the acquisition “creates a company with the size and scale to better serve members through enhanced health care programs, expanded capabilities and increased investment in technology.”<sup>21</sup> Once again, Centene does not offer any specifics behind the assertion.<sup>22</sup> Interestingly, with both Centene and WellCare fitting well within the Fortune 500 , at number 51 and 155 respectively<sup>23</sup>, the companies should already have the size and scale to enhance programs, expand capabilities, and increase investment in technology. Centene’s shareholder return is a stellar 1,230% return in ten years.<sup>24</sup> A review of Peach State’s 2018 annual statement reveals that 20% of its \$1,075,488,128 net premium income in Medicaid managed care went to a combination of claim adjustment expenses, general administrative expenses and net gain.<sup>25</sup> With regard to net gain, that amounted to 6% or \$64,744,878.<sup>26</sup> And WellCare’s Statement of Revenues and Expenses for 2017 paints a similar picture, with 6% of its \$2,100,072,904 going to net underwriting gain.<sup>27</sup> The Commissioner’s report also notes dividends paid to stockholders in 2018 in the amount of \$100,000,000 and in 2017 in the amount of \$60,000,000.<sup>28</sup>

Simply put, the size and scale of the Georgia based companies alone should be sufficient to enhance healthcare programs, expand capabilities, and increase investment technologies.

### **The Proposed Acquisition Is Likely To Be Hazardous And Prejudicial To The Insurance Buying Public And Questions Remain As To The Competence Of Centene**

Georgia law gives the Commissioner the ability to disprove an acquisition of an insurer when, amongst other things, after a public hearing the Commissioner finds that “[t]he acquisition is likely to be hazardous or prejudicial to the insurance buying public.”<sup>29</sup> Additionally, the Commissioner may disprove a merger when “the competence . . . of those persons who would control the operation of the insurer are such that it would not be in the best interest of policy holders of the insurer, and of the public to permit the merger . . .”<sup>30</sup>

Here, as more fully elaborated below, based upon the size of the proposed entity, combined with its business practices and current track record in Georgia, the undersigned believe the proposed acquisition would harm the public through negatively impacting patient care and increasing healthcare costs, and that Centene may lack competence to the point that its acquisition of WellCare is not be in the public interest.

### Peach State’s performance in connection with administering prescription drug benefits reflect an inability to effectively manage costs

As set forth in the Line 920 Report prepared for Georgia House and Senate Appropriation Committee Chairmen, in 2018 Peach State paid to its pharmacy benefits manager[s] (“PBMs”) \$120,092,783 of which only \$90,226,111 was paid to pharmacies for prescription drug reimbursement.<sup>31</sup> The remaining \$29,866,672 was

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with 27.4% of Peach State performance measures falling below 25<sup>th</sup> percentile and 50% falling below the 50<sup>th</sup> percentile while WellCare saw 23.8% of performance measures falling below the 25<sup>th</sup> percentile and 46% falling below the 50<sup>th</sup> percentile. State of Georgia Department of Community Health 2018 External Quality Review Annual Report, p. 1-19, available online at [https://dch.georgia.gov/sites/dch.georgia.gov/files/GA2017-18\\_EQR\\_TechRpt\\_F1.pdf](https://dch.georgia.gov/sites/dch.georgia.gov/files/GA2017-18_EQR_TechRpt_F1.pdf).

<sup>21</sup> 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. 4.

<sup>22</sup> Id.

<sup>23</sup> See Centene’s Fortune 500 ranking online at <https://fortune.com/fortune500/centene/> and WellCare’s Fortune 500 ranking online at <https://fortune.com/fortune500/2019/wellcare-health-plans>.

<sup>24</sup> Investor Update, p. 19, available online at <https://centene-wellcare.com/wp-content/uploads/2019/05/Investor-Update---May-2019.pdf>.

<sup>25</sup> Peach State Health Plan, Inc. Annual Statement for the year ending December 31, 2018, p. 7.

<sup>26</sup> Id.

<sup>27</sup> Report on Financial Condition Examination of Wellcare of Georgia, Inc., p 17, available online at [https://www.oci.ga.gov/Insurers/Search\\_Examinations.aspx](https://www.oci.ga.gov/Insurers/Search_Examinations.aspx). Note, this report may reflect revenue beyond Georgia Medicaid managed care.

<sup>28</sup> Id at pp. 3 & 15.

<sup>29</sup> O.C.G.A. § 33-13-3 (d)(1)(F).

<sup>30</sup> O.C.G.A. § 33-13-3(d)(1)(E).

<sup>31</sup> House Bill 684 – Line 920 Report, p. 7.

apparently retained by the PBM[s].<sup>32</sup> This represents a whopping 25% spread.<sup>33</sup> Said another way, 25% of prescription drug spend was not spent on patients' drugs, but rather, was spent paying a third party administrator.

At a time when pharmacists and other prescription drug dispensers, such as oncologists, are struggling to keep their doors open throughout our state as a result of low Medicaid managed care reimbursement, Georgians and the state can ill afford such waste.

It is also important to note that the Line 920 Report raises more questions than answers, as it does not reference Centene's own PBM, Envolve Pharmacy Services, and the dollars of that spread that it retained, if any. Moreover, the Line 920 Report does not reflect how the money that was paid to and retained by the PBM[s] was reported in Peach State's medical loss ratio reports. If it was reported as an expenditure on prescription drugs as opposed to being reported a non-medical expense, this may raise serious additional questions.

Significantly, similar spread pricing issues have led to probes in several other states including attorney general investigations in Kentucky and Ohio and a task force in Louisiana in which it was noted that \$42 million in spread was incorrectly listed as "medical costs."<sup>34</sup>

As will be more fully elaborated below, there are other significant administrative costs in addition to dollars paid to PBMs for the administration of prescription drug claims. It is also unknown, at least to the undersigned, what Peach State paid to PBMs via spread pricing in years previous to 2018 and how much it is paying its current PBM in 2019 and how.<sup>35</sup>

Finally, while this information is critical in assessing Peach State's performance and conduct, the little we know is enough to raise serious questions as to the capability of Centene and/or Peach State to manage prescription drug benefits and efficiently use state funds, and to conclude the result of its performance harms the Georgia's Medicaid managed care population, Georgia's pharmacies, and dispensing prescribers.

#### Peach State's self-interested transactions

As indicated above, Peach State utilizes Centene owned Envolve Pharmacy Solutions along with Rx Advance whom Centene also possesses some ownership.<sup>36</sup> It is unknown to the undersigned what Peach State is paying those PBM affiliates. Interestingly, that is not the limit of Peach State's self-interested transactions as it also does business with Centene affiliate AcariaHealth Pharmacy, which currently holds 3 non-resident pharmacy permits and 1 pharmacy licensed in Georgia.<sup>37</sup> How Acaria pharmacy obtains Georgia Medicaid managed care patients, how many patients, drugs filled, and how much it is reimbursed in connection with Georgia Medicaid managed care patients are all questions that need to be answered.

Outside of prescription drugs, Peach State appears to rely heavily on affiliated companies in connection with its duties to the state of Georgia. By way of example, Peach State has a management agreement with affiliate Centene Management Company, in which the affiliate is paid 11.5% on net revenue up to 1 billion dollars and

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<sup>32</sup> Id.

<sup>33</sup> Id. Spread refers to the amount between what was paid to its PBMs and what was passed on by the PBMs to pharmacies for the healthcare services.

<sup>34</sup> Robert Langreth, Drug Middlemen Face State Probes on Complex Pricing System, Bloomberg, April 9, 2019, available online at <https://www.bloomberg.com/news/articles/2019-04-09/drug-middlemen-face-state-probes-over-complex-pricing-system>; Melinda Deslatte, Task Force: Is Louisiana Medicaid Drug Spending Inflated?, U.S. News and World Report, October 26, 2017, available online at <https://www.usnews.com/news/best-states/louisiana/articles/2017-10-26/louisiana-spending-on-medicaid-prescription-drugs-questioned>.

<sup>35</sup> Peach State, through the Georgia Quality Healthcare Association which represents Georgia's four Medicaid managed care companies agreed in January of 2019 to adopt no spread reimbursement methodologies in future agreements with PBMs.

<sup>36</sup> Peach State Disclosure of Information on Annual Business Transactions, June 30, 2018.

<sup>37</sup> <https://gadch.mylicense.com/verification/SearchResults.aspx>.



10.5% in excess of 1 billion dollars.<sup>38</sup> In 2017 this amounted to \$116,496,970 paid to Centene Management Company.<sup>39</sup> Centene paid \$146,476,367 in general administrative expenses in 2018.<sup>40</sup>

Peach State's reliance on Centene owned or affiliated companies does not stop there. In particular, Peach State also utilizes the services of Envolve People Care in connection with mental health and disease management, as well as Envolve Vision and Envolve Dental.<sup>41</sup>

The undersigned believe that the pattern of self-interested transactions and lack of transparency contribute to a climate of continually climbing profits to Centene, meaning fewer Georgia dollars being spent on Georgia patients and paid to Georgia healthcare providers which results in barriers to care between providers and patients, including through onerous prior authorization standards and rebate driven formularies driving drug selection over physician and pharmacist professional judgment.

Again, concerns regarding impact on patients are borne out by the most recent External Quality Review which included the following results for Peach State:<sup>42</sup>

- Diabetes care: bottom 25% in 4 measurements & bottom 50% in 1 measurement
- Statin Therapy for patients with Diabetes: bottom 25% in both measurements
- Cardiovascular conditions: bottom 25% in 2 measurements & bottom 50% in 1 measurement
- Adherence to respiratory conditions: bottom 25% in 2 measurements
- Medication management/Asthma: bottom 25% 1 measurement & bottom 50% 1 measurement
- Adherence to antipsychotics: bottom 25%
- Antidepressant medication management: bottom 25%

There is no reason to believe that the proposed acquisition will improve these results. Rather, the undersigned believe the proposed merger will exasperate current areas of problematic performance and lead to more self-interested transactions and less transparency. In light of the foregoing, the proposed acquisition is likely to be hazardous and prejudicial to Medicaid managed care patients and calls into question the competence of Centene.

### **Public Hearing And Request For Postponement**

The proposed acquisition implicates care for over 800,000 Georgia Medicaid managed care patients currently receiving Medicaid managed care benefits from Peach State and Centene, Georgia's healthcare providers, along with Georgia tax payors. Simply put, there could not be a stronger public interest in this merger. To that end, the undersigned respectfully request that the Commissioner reschedule this hearing until December to allow interested parties the ability to seek additional public records and the Commissioner more time to conduct a sifting, thorough analysis of the concerns presented.

In addition, in light of the interest to the public, request is hereby made that the Commissioner take action to make records submitted to the Commissioner in connection with the acquisition public, including but not limited to exhibits to the Form A pursuant to O.C.G.A. § 33-13-8(a).

Additionally, no hearing should proceed until a full examination of the cost to Georgia tax payers of Peach State's Medicaid managed care program in Georgia, including but not limited to an accounting of all dollars received and profit made by Peach State and its or Centene's affiliates (such as Envolve Pharmacy Services, Envolve Dental, Envolve Vision, Envolve People Care, Centene Management Services, and Acaria Pharmacy, among all others). Only then can there be a true accounting of Peach State's performance and efficiency.

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<sup>38</sup> Peach State Disclosure of Information on Annual Business Transactions, June 30, 2018.

<sup>39</sup> Id.

<sup>40</sup> Peach State Health Plan, Inc. Annual Statement for the year ending December 31, 2018, p. 7. The Annual Statement does not specify companies paid in connection with the general administration expense.

<sup>41</sup> Peach State Subcontractor Agreement Report, July 2018.

<sup>42</sup> See State of Georgia Department of Community Health 2019 External Quality Review Annual Report, pp. 3-5 to 3-8, available online at [https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related\\_files/document/GA2018-19\\_EQR\\_TechRpt\\_F1.pdf](https://medicaid.georgia.gov/sites/medicaid.georgia.gov/files/related_files/document/GA2018-19_EQR_TechRpt_F1.pdf)

As to the issue of spread pricing, further analysis should also be done to determine spread amounts in previous years along with how the amounts paid to PBMs were reported in medical loss ratio reports filed with the Georgia Department of Community Health and the Commissioner.

The public deserves nothing short of transparency and a thorough review, and the Form A presented in this matter simply fails to provide sufficient information for the Commissioner to assess competitive impact, Centene competency, and effect the proposed acquisition would have on Georgia patients and taxpayers.

## **Conclusion**

The undersigned oppose the merger on the grounds that it will substantially lessen competition, be hazardous to Georgia Medicaid managed care patients, and that Centene may lack the competence such that the acquisition would not be in the interest of WellCare patients or the public. A postponement of the hearing is also requested so that the Commissioner can evaluate the claimed benefits of the acquisition by Centene along with Centene's conduct and performance in Georgia's Medicaid managed care market. Finally, in light of the overwhelming public interest in this merger, we respectfully request the Commissioner begin the process of making records available pursuant to authority provided under Georgia law.

Sincerely,

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