

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Proposed)	
Acquisition of the Control of)	
FIRSTGUARD HEALTH PLAN)	
KANSAS, INC.)	
)	Docket No. 3409-M
By)	
)	
CENTENE CORPORATION)	

ORDER

NOW on this 1st day December 2004, the above matter comes before the Commissioner of Insurance of the State of Kansas ("Commissioner") upon the filing of a pre-acquisition notice pursuant to K.S.A. § 40-3304 and K.A.R. § 40-1-28 in the form of a Form A Statement Regarding the Proposed Acquisition of Control ("Form A Statement") by Centene Corporation ("Centene" or "Applicant"). The Form A Statement relates to the proposed acquisition of control of FirstGuard Health Plan Kansas, Inc. ("FirstGuard"), a Kansas domestic health maintenance organization, by Applicant.

Applicant is represented by its attorney, James P. Rankin, Esq., Foulston Siefkin, L.L.P. The Kansas Insurance Department ("KID") is represented by its General Counsel, John W. Campbell. Also appearing for KID are Linda J. Sheppard, Assistant General Counsel; Don Gaskill, Director, Financial Surveillance Division; Patrick Mulvihill, Assistant Director, Financial Surveillance Division; and Mark Owens, Financial Analyst, Financial Surveillance Division.

Pursuant to the authority granted to the Commissioner pursuant to K.S.A. §§ 40-3301 and 40-3304(d)(1) and in accordance with the Kansas Administrative Procedures Act, K.S.A. §§ 77-

501, *et seq.*, the Commissioner hereby asserts the following declarations of public interest and policy, findings of fact, conclusions of law, and orders, as follows:

DECLARATIONS OF PUBLIC INTEREST AND POLICY

The Commissioner finds and declares that it is consistent with the public interest and the interest of policyholders to permit insurers to:

- (a) Engage in activities which would enable insurers to make better use of management skills and facilities;
- (b) diversify into new lines of business through acquisition or organization of subsidiaries;
- (c) have free access to capital markets which could provide funds for insurers to use in diversification programs;
- (d) implement sound tax-planning conclusions; and
- (e) serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

The Commissioner further finds and declares that the policies and purposes in K.S.A. § 40-3301, *et seq.*, promote the public interest by:

- (a) facilitating the achievement of the objectives enumerated in K.S.A. § 40-3301 and set out above;
- (b) requiring disclosure of pertinent information relating to changes in control of an insurer;

- (c) requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends paid by the insurer; and
- (d) providing standards governing material transactions between an insurer and its affiliates.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings and conclusions stated herein are based upon the statements made by the Applicant in the Form A Statement and accompanying documents filed with the Kansas Insurance Department by the Applicant pursuant to K.S.A. § 40-3304(b) and K.A.R. § 40-1-28.

1. Significant documents have been reviewed by representatives of the Financial Surveillance and Legal Divisions of KID, and the Commissioner has had the benefit of their technical expertise and advice as provided in K.S.A. § 77-546(c).

2. The purpose of the filing of the Form A Statement is to seek authority from KID for the proposed acquisition of control of FirstGuard by the Applicant. The terms and conditions of the proposed acquisition are more fully set forth in the Form A Statement filed with the Commissioner dated November 24, 2004, pursuant to the Kansas Insurance Holding Companies Act, K.S.A. §§ 40-3301, *et seq.*

3. Applicant has submitted various Exhibits to the Form A Statement, including, but not limited to, the Stock Purchase Agreement By and Between Centene Corporation and Swope Community Enterprises, dated September 28, 2004, financial statements, a business plan for FirstGuard, and financial examination reports.

4. The staff of KID has inspected and reviewed the contents of the Form A Statement and Exhibits attached thereto, to the extent necessary, and found that the filing of the

Form A Statement and Exhibits thereto are in accordance with K.S.A. § 40-3304 and K.A.R. § 40-1-28 and that the Form A Statement and Exhibits attached thereto have provided the information required under Kansas statutes to enable the Commissioner to render a decision on the application.

5. FirstGuard, a Kansas health maintenance organization, was organized under the laws of Kansas on February 2, 1999, and became authorized to transact business in Kansas on April 30, 1999.

6. FirstGuard, Inc., a Delaware corporation, owns 100% of the stock of FirstGuard.

7. Swope Community Enterprises (“Swope”), a Missouri corporation, owns 100% of the shares of FirstGuard, Inc. and is considered to be the ultimate controlling parent of FirstGuard.

8. It has been determined that no person or entity “controls” the Applicant of the Form A Statement as “control” is defined in K.S.A. § 40-3302(c).

9. Applicant intends to purchase from Swope all the issued and outstanding stock of FirstGuard, Inc. and will then indirectly own 100% of the issued and outstanding stock of FirstGuard through its ownership of FirstGuard, Inc.

10. Applicant filed a draft copy of the Form A statement with KID on or about October 8, 2004 and subsequently filed a duly certified copy of the Form A statement dated November 24, 2004.

11. Review of the evidence establishes that, after the acquisition of control as proposed in the Form A Statement, Applicant will be able to satisfy the requirements necessary for maintaining the business of FirstGuard to the satisfaction of the policyholders.

12. The evidence establishes that, after the acquisition of control as proposed in the Form A statement, FirstGuard will be able to satisfy the requirements for the issuance of a license to write the line or lines of business for which it is presently licensed.

13. No evidence has been introduced to establish that the financial condition of Applicant will jeopardize the financial stability of FirstGuard or prejudice the interest of the policyholders.

12. Evidence has been introduced which shows that Applicant has no plans or proposals to liquidate FirstGuard, 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 which would be unfair and unreasonable to the policyholders of FirstGuard and not be in the public interest.

13. Evidence has been introduced to establish that the competence, experience and integrity of those persons who will control the operation of FirstGuard after the acquisition are such that will be in the interest of the policyholders of FirstGuard and of the public interest to permit the acquisition.

14. Evidence has been introduced to establish that the acquisition of FirstGuard by Applicant will not be hazardous or prejudicial to the insurance-buying public.

15. However, notwithstanding the finding stated in paragraph 14 above, evidence has also been introduced establishing that the acquisition of FirstGuard by Applicant is likely to be hazardous or prejudicial to the insurance buying public, if Applicant does not establish and maintain the capital and surplus of FirstGuard at a minimum of fifteen million five hundred thousand dollars (\$15,500,000).

16. The Form A Statement is in compliance with the provisions of the Kansas Insurance Holding Companies Act, K.S.A. §§ 40-3301, *et seq.* and K.A.R. § 40-1-28.

17. The evidence submitted supports approval of the proposed acquisition of control of FirstGuard by Applicant, subject to certain conditions and requirements.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The application by Centene Corporation to acquire control of FirstGuard Health Plan Kansas, Inc. in the manner set forth in the Form A Statement and Exhibits attached thereto is hereby **approved** pursuant to K.S.A. § 40-3304, provided the acquisition is effected within sixty days of the date of this order and subject to the following:

(a) FirstGuard shall maintain a premium written to capital and surplus ratio that does not exceed 10:1 at all times.

(b) FirstGuard shall not write more than \$155.5 million of premium while maintaining capital and surplus at \$15.5 million. If FirstGuard projects writings greater than \$155.5 million, then FirstGuard shall maintain capital and surplus in an amount such that the premium written to capital and surplus ratio will not be greater than 10:1 prior to writing the additional business.

(c) Given that FirstGuard will retain \$3.0 million total capital and surplus at closing, Centene shall immediately upon closing contribute a minimum of \$12.5 million into FirstGuard.

(d) Centene shall contribute to FirstGuard qualified securities that: (1) meet the definition of an admitted asset according to the 2004 NAIC Accounting Practices and Procedures Manual and (2) meet the statutory requirements of K.S.A. §§ 40-2a01, *et seq.*

(e) The charges to be paid by FirstGuard pursuant to any agreement including, but not limited to, any management services agreement, administrative services agreement, information services agreement and/or claims processing services agreement by Centene or any of its affiliates shall be no greater than cost plus two percent (2%) of allowed charges under the Agreement provided such fees can be paid from the underwriting profits of First Guard. Such charges to be paid by FirstGuard shall be fair and reasonable.

(f) FirstGuard shall pay dividends in accordance with K.S.A. §§ 40-3305 and 40-3306 only when: (1) such dividends can be paid from net gain from operations, including income from investments; and (2) FirstGuard's RBC level will remain at three hundred percent (300%) or more after the payment of such dividends, unless the Commissioner, upon written request, approves otherwise.

(g) FirstGuard agrees that no restatement of reserves out of the ordinary course of doing business will be made without approval of the Commissioner; and

(h) Centene will provide notice to the Commissioner upon the filing of any Form A with any state insurance department prior to acquiring any insurance company.

2. The Commissioner of Insurance retains jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

Notice of Rights

Centene Corporation is entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If Centene desires a hearing, the company must file a written

request for a hearing with:

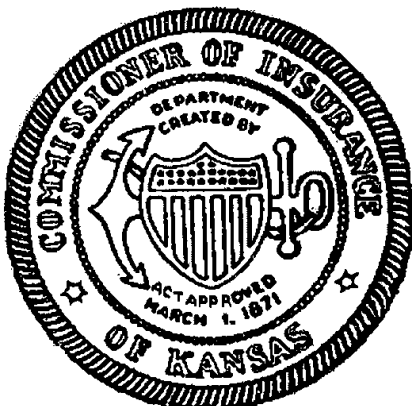
John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If Centene Corporation requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event that Centene files a petition for judicial review, pursuant to K.S.A. § 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

IT IS SO ORDERED THIS 1st DAY OF DECEMBER 2004, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance
BY:

/s/ John W. Campbell
John W. Campbell
General Counsel

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid, on the 1st day of December, 2004 to:

James P. Rankin, Esq.
Foulston Siefkin, LLP
555 S. Kansas Avenue; Suite 101
Topeka, Kansas 66603

Robert B. Sullivan
Polsinelli, Shalton, Welte, Suelthause
700 West 47th Street, Suite 1000
Kansas City, Missouri 64112-1802

_ /s/ Linda J. Sheppard _____
Linda J. Sheppard
General Counsel