

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

In the Matter of the Proposed)	
Acquisition of Control of)	
)	
WELLCARE OF KANSAS, INC.)	
)	Docket No. 80243
NAIC No. 14404)	
)	
)	
by:)	
)	
CENTENE CORPORATION)	
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ORDER

Now on this 12th day of September, 2019, the above matter comes before the Commissioner of Insurance of the State of Kansas (the “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 Acquisition of Control of a Domestic Insurer dated April 26, 2019, (“Form A Statement”) by Centene Corporation (“Centene” or “Applicant”). The Form A Statement relates to the proposed acquisition of control of WellCare of Kansas, Inc. (“Domestic HMO”), a Kansas domestic health maintenance organization, by Centene.

Pursuant to the authority granted to the Commissioner by 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 the following:

DECLARATION OF PUBLIC INTEREST AND POLICY

The following statements of fact and conclusions of law are made with the intent to promote the policies and objectives enumerated in K.S.A. 40-3301.

FINDINGS OF FACT

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

1. Background Information

- a. The purpose of the filing of the Form A Statement is to seek authority from the Commissioner for the proposed acquisition of control of the Domestic HMO by the Applicant. The terms and conditions of the proposed acquisition are more fully set forth in the Form A Statement filed by the Applicant with the Commissioner pursuant to the Kansas Insurance Holding Company Act, K.S.A. 40-3301, *et seq.*
- b. Representatives of the Financial Surveillance and Legal Divisions of the Department reviewed significant documents, and the Commissioner has had the benefit of her staff’s technical expertise and advice.
- c. In the Form A Statement, which Centene filed with the Department and the Department received on April 26, 2019, Centene requests approval of the acquisition of control of the Domestic HMO by Centene.

- d. Centene submitted various exhibits to the Form A Statement, including, without limitation, the Agreement and Plan of Merger (“Merger Agreement”), audited financial statements, organizational charts, and NAIC biographical affidavits.
- e. Centene is domiciled in Delaware with its statutory home office in St. Louis, Missouri. As Centene states in the Form A Statement, Centene operates two primary business segments: Managed Care and Specialty Services. Its Managed Care segment provides health plan coverage to individuals through government subsidized and commercial programs. Its Specialty Services segment includes companies offering healthcare services and products to its Managed Care segment and other customers.
- f. WellCare of Kansas, Inc. is a Kansas Corporation with its statutory home office address in Topeka, Kansas. WellCare of Kansas, Inc. is a wholly owned subsidiary of The WellCare Management Group, Inc., a New York corporation, which is, in turn, a direct, wholly owned subsidiary of WGG Health Management, Inc., a Delaware corporation, which is, in turn, a direct, wholly owned subsidiary of WellCare Health Plans, Inc. (“WellCare”), a publicly traded Delaware corporation.

2. Structure of Merger Agreement

- a. According to the Form A Statement and exhibits, the Applicant proposes to acquire control of the Domestic HMO through the acquisition of WellCare pursuant to the Merger Agreement dated March 26, 2019. The following parties entered into the Merger Agreement: WellCare; Centene; Wellington Merger Sub I, Inc., a Delaware corporation and wholly owned subsidiary of Centene (“Merger

Sub I”); and Wellington Merger Sub II, Inc., a Delaware corporation and wholly owned subsidiary of Centene (“Merger Sub II”).

- b. The Merger Agreement provides that Merger Sub I will merge with and into WellCare, with WellCare surviving the first merger (“Surviving Corporation”). In turn, the Surviving Corporation will then merge with and into Merger Sub II, with Merger Sub II surviving this second merger as a wholly owned subsidiary of Centene (“Final Surviving Corporation”). The name of the Final Surviving Corporation will be changed to WellCare Health Plans, Inc. (“Post-Closing WellCare”).
- c. At the conclusion of this series of transactions (“Merger Transaction”), Centene will hold one hundred percent (100%) of the issued and outstanding shares of capital stock of Post-Closing WellCare, and will thereby indirectly own 100% of the issued and outstanding shares of capital stock of the Domestic HMO. Accordingly, upon closing of the Merger Transaction, Centene will be the ultimate controlling person of the Domestic HMO.

3. Consideration for the Merger Transaction

- a. If the Merger Transaction is completed, each outstanding share of WellCare’s common stock will be converted into the right to receive 3.38 shares of Centene’s common stock and \$120 in cash, without interest, subject to certain exceptions (“Merger Consideration”).
- b. Shares of WellCare common stock held by Centene, Merger Sub I, Merger Sub II, or WellCare, including shares held as treasury stock, will be automatically

canceled and cease to exist immediately prior to the First Merger and no consideration will be delivered in exchange therefor.

- c. Shares of WellCare common stock that are outstanding immediately prior to the effective time of the First Merger and held by any person who is entitled to demand and properly demands appraisal of such shares pursuant to Delaware law will be automatically canceled and cease to exist, and each holder thereof will cease to have any rights with respect thereto except the right to receive an amount in cash equal to the judicially determined “fair value” of such shares.
 - d. For persons holding a WellCare restricted stock unit (“RSU”), each RSU is converted into a Centene RSU with an equivalent fair market value of the WellCare RSU.
 - e. For persons holding a WellCare performance-based restricted stock unit (“PSU”) granted in 2017 or earlier, each PSU vests at the actual level of performance and is converted into the right to receive the Merger Consideration.
 - f. For persons holding any other WellCare PSU, each PSU is converted into a Centene time-based restricted stock unit with an equivalent fair market value to the WellCare PSU.
4. The Merger Transaction is valued at approximately \$17.3 billion based on closing stock prices as of March 26, 2019. The cash component of such total amount is equal to approximately \$6.06 billion. The actual value to the WellCare stockholders will depend on the closing stock prices at the time the Merger Transaction is complete.
5. In addition to the Merger Consideration, Centene may assume approximately \$1.95 billion in existing WellCare indebtedness. All or part of this indebtedness will remain

outstanding following the closing if it is not repurchased pursuant to a change of control offer under the terms of the indebtedness. Centene intends to seek a waiver of such change of control offer prior to the closing of the proposed transaction. If Centene's waiver request is not successful, Centene will be required to repurchase all or part of such indebtedness at 101% of its aggregate principal amount at the election of the holders thereof.

6. Source of the Merger Consideration

- a. As stated in the Form A filing, Centene anticipates that it will finance the cash component of the Merger Consideration through available cash on hand and the issuance of unsecured senior notes at a public offering that will yield up to \$8.35 billion in aggregate gross cash proceeds. The ultimate nature and mix of any public or private debt offering has not yet been decided and will be determined in the future based on prevailing market conditions and other financial factors.
- b. In the Form A Statement, made under oath, Centene indicated that the basis and terms of the Merger Agreement, including the Merger Consideration, were determined through arms' length negotiations among the representatives of Centene and WellCare, and their respective legal and other advisors.

7. In the Form A filing, Centene indicated that the Domestic HMO will continue to maintain its separate corporate existence and will continue its operations as currently conducted. Currently, the Domestic HMO does not transact any health maintenance organization business in Kansas or any other jurisdiction. Centene does not have any present plans to change the existing directors and executive officers of the Domestic HMO. Centene

expects that none of the current directors on the WellCare board of directors will act as directors of Post-Closing WellCare.

8. The Merger Agreement provides for the transaction to close following, among other things, the receipt of proper regulatory approvals, including approval by the Department.

APPLICABLE LAW

9. K.S.A. 40-3304(a)(1) provides:

“No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amendments thereto.”

CONCLUSIONS OF LAW

10. Representatives of the Financial Surveillance and Legal Divisions of the Department inspected and reviewed the contents of the Form A Statement and exhibits and determined those filings comply with the provisions of the Kansas Insurance Holding Company Act, K.S.A. 40-3301, *et seq.* and K.A.R. 40-1-28. Additionally, the Department determined that the Applicant provided the information required under Kansas law to enable the Commissioner to render a decision.

11. The evidence shows that after the change of control the Domestic HMO would be able to satisfy all the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.
12. The evidence shows that the financial condition of the Applicant does not jeopardize the financial stability of the Domestic HMO or prejudice the interest of its policyholders.
13. The evidence shows that the Applicant has no current plans or proposals to liquidate the Domestic HMO, sell its assets or consolidate or merge it with any person, or make any material change in Domestic HMO's current active business operations, corporate structure, or management.
14. The evidence shows that the competence, experience and integrity of those persons who would control the operation of Domestic HMO are such that it would not be harmful to the interest of policyholders of the Domestic HMO and of the public to permit the acquisition of control by the Applicant.
15. The evidence shows that the acquisition of control of Domestic HMO by the Applicant is not likely to be hazardous or prejudicial to the insurance-buying public.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The application by the Applicant to acquire control of Domestic HMO in the manner set forth in the Form A Statement and exhibits is hereby approved pursuant to K.S.A. 40-3304, provided that the acquisition is effected no later than March 31, 2020.
2. The Commissioner 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

This Final Order is effective upon service. Pursuant to K.S.A. 77-529, the Applicant may petition the Commissioner for reconsideration of this Final Order within fifteen (15) days after service of the Final Order. A petition for reconsideration must state the specific grounds upon which relief is requested. Additionally, a party to this agency proceeding may seek judicial review of this Final Order by filing a petition in the District Court, pursuant to K.S.A. 77-601, *et seq.* Reconsideration of this Final Order is not a prerequisite for judicial review. A petition for judicial review is not timely unless filed within thirty (30) days following the service of this Final Order, unless the Applicant petitions the Commissioner for reconsideration, in which case a petition for judicial review is not timely unless filed within thirty (30) days following service of an order rendered upon reconsideration, or an order denying the request for reconsideration. In the event the Applicant files a petition for judicial review, the agency officer to be served on behalf of the Department is:

Justin McFarland, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

IT IS SO ORDERED THIS 11th DAY OF SEPTEMBER, 2019, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.



Vicki Schmidt
Commissioner of Insurance

By:



Justin L. McFarland
General Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order was forwarded via first class mail, postage prepaid on the 12th day of September 2019, to:

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