

PUBLICATION

California Insurance Commissioner Approves Centene/Health Net Merger

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Since the summer of 2015, a great deal of attention has focused on whether the proposed Anthem/Cigna and Aetna/Humana mergers will be approved by federal and state antitrust regulators. These transactions have been the subject of Congressional hearings and state insurance department hearings, and to date, while some states have approved the transactions, the DOJ Antitrust Division's examination of the Anthem/Cigna and Aetna/Humana mergers remains ongoing, without any indication regarding how or when it will ultimately be completed.

In the meantime, the proposed merger of Centene and Health Net, which was announced at approximately the same time as the Anthem and Aetna deals, has received less attention. This notwithstanding, the Centene/Health Net deal would itself be considered a "blockbuster" deal based upon its size (valued at more than \$7 billion), if not for the even larger Anthem/Cigna and Aetna/Humana deals. In addition, unlike Anthem and Aetna, Centene and Health Net quickly received antitrust approval from federal regulators for their deal (in August of 2015), and by January of this year the only remaining approval they required was from the California Department of Insurance.

Nearing their regulatory "finish line," Health Net and Centene appeared at a public hearing before California Insurance Commissioner Dave Jones in late January to make their case for approval. (Notably, the California Department of Insurance has oversight over this deal because Health Net is domiciled in California. While the California Insurance Department does not have oversight over the Anthem and Aetna deals – because neither insurer is domiciled in California – those transactions require approval from the California Department of Managed Health Care, which has concurrent authority over the Centene deal with the Insurance Department).

At what turned out to be a six-hour public hearing, Commissioner Jones heard from the parties, their economic experts and various consumer groups regarding the proposed transaction. Commissioner Jones expressed some potential concerns about the transaction and noted that he had the authority to disapprove the transaction in its entirety if he believed it was not in the public's interest – a result that could potentially have rendered moot all of their prior regulatory successes.

At the close of the January hearing, Commissioner Jones promised that his review of the deal would be swift, and he lived up to his pledge, providing his answer on March 22. In a public announcement on that date, Commissioner Jones revealed that he was approving the parties' transaction, permitting Centene to obtain control of Health Net. In explaining his decision, Commissioner Jones stated that the transaction "provides an opportunity to bring new capital and resources from a major national health insurer largely outside of California (Centene) to enable a California health insurer (Health Net) to continue to compete and offer consumers additional choices in California's individual, small group and large group commercial health insurance markets."

Despite his approval, Commissioner Jones explained that his approval was coupled with "strong conditions to protect California's consumers." Specifically, these conditions include an obligation that the costs of the merger not be imposed on California policyholders, that Centene continue to maintain and grow Health Net's business in California (including continuing to offer products through Covered California) and the parties' commitment to continue to improve the quality of healthcare in the state. In addition, Centene is also required to make a \$200

million infrastructure investment in California by establishing a California call center, an additional \$30 million investment in California's low and moderate income neighborhoods through investments in health facilities in those areas and may not seek to "re-domesticate" Health Net out of state.

Having now obtained this last, necessary approval, the Centene/Health Net deal closed on March 24. For Anthem and Aetna, however, whether, when and under what conditions they may be permitted to consummate their deals remains uncertain.