



### Consumer Participation Program

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#### Award Application Details: Consumers Union of United States, Inc.

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Application Version:

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Please review and approve this Application for an Award and Witness Fees if applicable.

Approvals & Comments DMHC Attachments Send Email

Entity Name: **Consumers Union of United States, Inc.**  
 Submitted By: Dena Mendelsohn  
 Date Submitted: 4/20/2016 4:20:29 PM  
 Status:   
 Date of Decision:   
 DMHC Comment: ()  
 Updated By:  
 Updated Date:

Decisions & Comment History [\(Hide Details...\)](#)

*There are currently no decisions or comment history.*

Award Application [\(Hide Details...\)](#)

[Printer Format](#)

1. For which proceeding are you seeking compensation?

2. What is the amount requested?

3. Proceeding Contribution:

Provide a description of the ways in which your involvement made a substantial contribution to the proceeding as defined in California Code of Regulations, Title 28, Section 1010(b)(14), supported by

specific citations to the record, your testimony, cross-examination, arguments, briefs, letters, motions, discovery, or any other appropriate evidence.

(8000 characters remaining)

Consumers Union of the United States, Inc., submits this request for reasonable advocacy fees for our substantial contribution to the decision of the Department of Managed Health Care (DMHC) regarding Centene Corporation's acquisition of Health Net, Inc. Consumers Union substantially contributed to DMHC's review of the proposed merger in a variety of ways. On December 7, 2015, Dena Mendelsohn, Staff Attorney at Consumers Union, provided an oral statement to the Department during which she voiced major concerns held by Consumers Union regarding this particular health plan merger. Following the Department's public meeting, Ms. Mendelsohn convened several consumer organizations to jointly submit to the Department a list of questions we recommended DMHC ask of the plans. Those thirteen questions were delivered to DMHC via email on December 14, 2015. We believe these questions provided a substantial service to the Department by emphasizing which aspects of the proposed merger required extra consideration. In addition to articulating the concerns of Consumers Union in person, and submitting the joint list of questions, Ms. Mendelsohn provided the Department with a detailed written testimony. This statement included a substantial collection of background information, highlighting a pattern of troubling quality issues by both health plans. Additionally, in our written testimony, Consumers Union detailed for the Department seven recommended undertakings, designed to protect consumer interests in the event that the Department approved the merger. Nearly all of those undertakings are reflected in the final agreement between DMHC and the plans. This suggests that our recommendations pinpointed contractual obligations for DMHC consideration on behalf of consumers. Specifically: 1. Our recommendation that the Department pursue an undertaking requiring the plans to confer with regulators until a reasonable and justified rate is set is addressed by Undertaking 13, which requires Health Net "to meet and confer with the Department and make good faith attempt to resolve any differences regarding the premium rate increase." 2. Our recommendation that the plans be required to improve their quality and consumer satisfaction ratings is reflected in Undertakings 18 through 26. For example, the plans are required to improve star ratings on the Office of the Patient Advocate Quality Report Card and to improve its performance on the Right Care Initiative. 3. Our recommendation that the plans should be required to improve their provider directories and to make them accurate, accessible, and regularly updated is addressed by Undertaking 27. 4. Our recommendation that the merged plan must maintain presence in the commercial market at least commensurate with Health Net's current participation is answered by Undertaking 17, which includes language related to maintaining and expanding product offerings across the California health plan market. 5. Our recommendation that Centene should be required to maintain high level Health Net staff in California—such as Medical Director, Customer Service, and Legal Compliance personnel—is addressed by Undertaking 14, which requires the plans to commit to maintaining certain leadership as well as other key operations in California. In addition, seemingly in response to our concerns that Centene would be unfamiliar "with the intricacies of California legal requirements, the state's extensive consumer protections, and the unique regulatory framework" in California, Undertaking 26 requires Centene to "increase its proficiency in the California commercial health plan market."

4. Please attach your time and billing record in the "Add Attachment" box below. In the time and billing record, include the hourly rate of compensation for each witness or advocate and a justification for each hourly rate, which may include copies of or citations to previously approved hourly rate; and each witness or advocate's resume or curriculum vitae. The time and billing record should show the date and exact amount of time spent on each specific task in thirty (30) minute increments, as defined in California Code of Regulations, Title 22, Section 1010(d)(3).

Document Name	Date Uploaded	Uploaded By	
Consumers Union Time and Billing Record	4/20/2016 4:11:01 PM	Dena Mendelsohn	<a href="#">View</a>
Resume - Betsy Imholz	4/20/2016 4:14:07 PM	Dena Mendelsohn	<a href="#">View</a>
Resume - Dena Mendelsohn	4/20/2016 4:17:04 PM	Dena Mendelsohn	<a href="#">View</a>
Questions for the plans - submitted to DMHC	4/20/2016 4:17:44 PM	Dena Mendelsohn	<a href="#">View</a>
Consumers Union written comments on proposed merger	4/20/2016 4:18:23 PM	Dena Mendelsohn	<a href="#">View</a>

5. Clear and concise statement of participants interest in the proceeding which explains why participation is needed to represent the interests of consumers

Consumers Union was founded on the principle that all consumers should have access to a marketplace that is safe, effective, reliable, and fairly priced, including that all consumers should have access to affordable, high quality health care and coverage. We have concerns that the proposed merger of Centene Corp. and Health Net, Inc. would result in increased prices for lower quality products. This proposed merger came as part of an influx of consolidations in the California healthcare marketplace, making the risks especially pressing. Given our longstanding commitment to furthering the interests of

consumers, and our legacy around the cost of health care and insurance, we believe Consumers Union's participation is especially appropriate to represent the interest of consumers against the massive resources of large health insurers.

- 6. The information contained in the Petition to Participate remains true and correct to the best of the knowledge of the person verifying the information.

Yes

I am authorized to certify this document on behalf of the applicant. By entering my name below, I certify under penalty of perjury under the laws of the State of California that the foregoing statements within all documents filed electronically are true and correct and that this declaration was executed at San Francisco (City), CA (State), on April 20, 2016 .

Enter Name: Dena Mendelsohn

Account Info at Time of Submission

(Hide Details...)

**Account Information**

Organization Legal Name: **Consumers Union of United States, Inc.**  
 Organization Fictitious Name:  
 Account Type: Organization  
 Email Address: imhobe@consumer.org  
 Organization Phone Number: (415) 431 - 6747 ext. 125

**Physical Address**

Physical Address: 1535 Mission St  
 Suite: 2nd floor  
 City: San Francisco  
 State: CA  
 Zip/Postal Code: 94973

**Organization Information**

Organization Name: Consumers Union of United States, Inc.  
 Is this a nonprofit organization?: Yes  
 Under what Statute is your Organization Incorporated?: New York  
 Organization's Size: approx 600 employees  
 Organization's Structure: 501(c)(3)  
 Description of the Organization's General Purposes: To work for a fair, just and safe marketplace for all consumers and to empower consumers to protect themselves.

**Organization's Governing Body**

- 1. **Director** Elisa Odabashian
- 2. **Director** Elizabeth Imholz

**Organization's Officers**

- 1. **CEO** Marta Tellado
- 2. **CFO** Eric Wayne

Contact Info at Time of Submission		(Hide Details...)	
First Name:	Dena		
Last Name:	Mendelsohn		
Email Address:	dena.mendelsohn@consumer.org		
Telephone Number:	(415) 431 - 6747 ext.		
Status:	Active		

- Dena Mendelsohn
- Elizabeth Imholz
- Julie Silas

**Consumers Union Time and Billing Record for Award of Advocacy and Witness Fees  
Acquisition of Health Net, Inc. by Centene Corp.**

<b>DENA MENDELSON, STAFF ATTORNEY -- RATE \$350/hour</b>			
<b>Date</b>	<b>Description</b>	<b>Time spent in hours</b>	<b>Amount</b>
11/23/2015	Background research re Centene, preparation for drafting comments and oral testimony.	3	\$ 1,050.00
11/24/2015	Background research re Centene, preparation for drafting comments and oral testimony.	3	\$ 1,050.00
11/30/2015	Drafting of testimony for DMHC Centene-Health Net public meeting	3	\$ 1,050.00
12/2/2015	Additional background research, drafting of testimony for DMHC Centene-Health Net public meeting	3	\$ 1,050.00
12/3/2015	Additional background research, drafting of testimony for DMHC Centene-Health Net public meeting	2	\$ 700.00
12/4/2015	Polishing of written testimony for DMHC Centene-Health Net hearing, drafting of oral testimony	3	\$ 1,050.00
12/6/2015	Polishing of oral testimony for DMHC public meeting	1.5	\$ 525.00
12/7/2015	DMHC hearing, attendance and preparation	1.5	\$ 525.00
12/7/2015	Meeting with advocacy colleagues to coordinate next steps	0.5	\$ 175.00
12/7/2015	Commute to Sacramento from San Francisco (roundtrip)	4	\$ 1,400.00
12/8/2015	Drafting of written testimony for DMHC	1.5	\$ 525.00
12/9/2015-12/11/2015	Time spent finalizing written testimony and preparing joint questions with allied organizations	4	\$ 1,400.00
<b>TOTAL</b>		<b>30</b>	<b>\$ 10,500.00</b>

<b>ELIZABETH M. IMHOLZ, Special Projects Director -- RATE: \$425/hour</b>			
<b>Date</b>	<b>Description</b>	<b>Time spent in hours</b>	<b>Amount</b>
12/2/2015	Review written testimony	2	\$ 850.00
12/3/2015	Review written testimony	1	\$ 425.00
12/4/2015	Review written testimony	1	\$ 425.00
12/10/2015	Review follow-up questions	0.5	\$ 212.50
<b>TOTAL</b>		<b>4.5</b>	<b>\$ 1,912.50</b>

<b>TOTAL HOURS</b>	<b>34.5</b>
<b>TOTAL AWARD REQUESTED</b>	<b>\$ 12,412.50</b>

**Elizabeth Imholz, JD***Director of Special Projects*Consumers Union, 1535 Mission Street, San Francisco, CA 94103  
415-431-6747 x125 • 415-431-0906 Fax • [Blmholz@consumer.org](mailto:Blmholz@consumer.org)

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**EXPERIENCE**

*Oct. 2006-present* **Special Projects Director, Consumers Union of U.S., Inc.**  
Serves as liaison on health policy work between CU's Advocacy and Editorial Divisions. Provides strategic advice on, develops and leads consumer engagement-oriented health projects. Manages multiple projects including California Safe Patient Network, Community Health Assets Project, and Consumer Voices in Health IT.

*Jan. 1999-Sept. 2006* **Director, Consumers Union of U.S., Inc., West Coast Office**  
Developed and supervised implementation of policy agenda for regional office of national nonprofit; specialty focus on health policy and community engagement; provided leadership among consumer and other nonprofit groups across the country; developed and oversaw annual budget of \$2.1 million; led fundraising that resulted in \$10 million in foundation grants and other outside funds; supervised staff of 16; engaged in and supervised lobbying, media work, and development of reports and studies.

*Dec. 1994-Dec. 1998* **Senior Attorney/Policy Analyst, Consumers Union of U.S., Inc., West Coast Office**  
Directed office's health team, focusing on access, quality and affordability of health care. Included extensive project development, media work, hearing testimony, advocacy before government agencies, trainings, lobbying and coordination of consumer group allies. Developed and managed highly successful project on enlisting local residents and their schools to assume leadership role in reaching out to families to enroll their children in government-sponsored health insurance.

*Nov. 1991 to Dec. 1997* **Director, Higher Education and Training Access Project, National Consumer Law Center**  
Established national network of public interest groups and consumers involved in advocacy on behalf of low-income students on higher education and job training funding issues. Drafted proposals for reauthorization of federal Higher Education Act, the principal legislation dealing with federal involvement in postsecondary education, including for consumer representation in negotiated rulemaking. Secured consumer participants in subsequent negotiated rulemaking proceedings. From 1991 through 1994, the project operated under aegis of Legal Services for New York City and South Brooklyn Legal Services.

*June 1993 to Dec. 1994* **Special Consultant, California Council for Private Postsecondary and Vocational Education**  
Acted as liaison between state agency that licenses proprietary trade schools and federal and other state agencies. Trained agency staff on student loan and other legal issues.

*Sept. 1990 to Nov. 1991* **Consumer Law Coordinator, Legal Services for New York City**  
Organized and chaired consumer law task force for attorneys serving low-income consumers. Conducted training for citywide Legal Services staff and pro bono private attorneys. Served as consumer law resource for neighborhood programs. Lobbied state and federal agencies and legislatures for consumer law reform. Testified before committees of U.S. Senate and House of Representatives concerning fraudulent practices within proprietary trade school industry.

*Oct. 1984 to Nov. 1991* **Director, Consumer and Employment Unit, South Brooklyn Legal Services**  
Supervised consumer and employment law unit of attorneys, paralegals, and law students. Initiated national vocational school watch project consisting of federal and state legislative and administrative advocacy; class action litigation; community education and engagement; and substantial media coverage. Engaged and coordinated services of pro bono counsel. Notable decisions: Minino v. Perales, 79 N.Y. 2d 883 (1992); U.S. v. Grundhoefer, et al., 916 F. 2d 788 (2d Cir. 1990); Figueroa v. Market Training Institute, et al., 562 A.D. 2d 175 (2d Dept. 1990).

*Sept. 1980 to Sept. 1984* **Staff Attorney, South Brooklyn Legal Services**  
Handled consumer, employment, and government benefits (Social Security Disability, public

**Elizabeth Imholz, JD***Director of Special Projects*

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assistance, and unemployment benefits) cases before federal and state courts and administrative tribunals. Notable decisions: Robinson v. Secty of Health and Human Services, 733 F. 2d 255 (2d Cir. 1984); Dartmouth Plan, Inc. v. Valle, 117 Misc. 2d 534 (Sup. Ct. Kings Co. 1983).

**Jan. 1979 to Research Assistant, Professor Arthur Kinoy, Rutgers School of Law**

*Jan. 1980* Researched and wrote memoranda on constitutional and civil rights issues. Helped compile materials for Professor Kinoy's book, Rights on Trial (1983).

**Summers, 1978 and Law Clerk, Reproductive Freedom Project, American Civil Liberties Union Foundation***1979***Researched and wrote briefs, legal memoranda, motions, and affidavits for federal litigation on reproductive rights.****May 1976 to Legislative Assistant, Office of the City Council President***Sept. 1977*

Assisted in development of Ombudsman Office to handle citizen complaints against New York City agencies. Wrote reports for New York City Charter Revision Commission. Analyzed contracts presented for approval by Board of Estimate and ordinances introduced before City Council.

**EDUCATION****June 1980 Rutgers University School of Law, Newark, New Jersey***Juris Doctorate*

Clinical Experience: Women's Rights Litigation Clinic (1978)

Urban Legal Clinic (1980)

Honors: Articles Editor, *Women's Rights Law Reporter*, (1979-1980)

G.A. Moore Prize for distinguished work in equal employment opportunity law.

**May 1976 Columbia University, New York, New York***Bachelor of Arts, Political Science and Urban Studies*Honors: *Magna Cum Laude*

Columbia University Scholarship (1973-1976)

Phi Beta Kappa

**BAR MEMBERSHIPS**

- New York State (1981)
- Federal District Court, Southern and Eastern Districts of N.Y. (1981)
- Federal Court of Appeals, Second Circuit (1989)

**PROFESSIONAL AWARDS, HONORS, MEMBERSHIPS**

- National Consumer Law Center, Vern Countryman Consumer Law Award (1996): For "outstanding efforts to strengthen and affirm the rights of low-income Americans through the practice of consumer law."
- Association of the Bar of the City of New York, Legal Services Award (1991): For "outstanding work in providing civil legal assistance to the poor in New York City and equal access to justice."
- California Department of Managed Health Care, Advisory Committee on Managed Care, Gubernatorial Appointee (2000-2005).
- U.C.L. A. California Health Information Survey, Advisory Board Member.
- Insure the Uninsured Project Award (2009): For "Thoughtful Leadership on Value Purchasing and Quality Improvement."

**PUBLICATIONS**

- *Caveat Venditor*, a New York consumer law manual, with Stephen Newman, Professor of Law at New York Law School (1994).
- "Jobs, Education, Employment and Training," *Clearinghouse Review*, January 1994 co-author on advocacy opportunities.

**Dena B. Mendelsohn, JD MPH**

*Staff Attorney*

Consumers Union, 1535 Mission Street, San Francisco, CA 94103

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**PROFESSIONAL EXPERIENCE**

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**Consumer Reports**

**Staff Attorney (2015-Present)**

**Health Policy Analyst (2014-2015)**

- Advocating for affordable, quality healthcare for consumers nationwide, focusing on health insurance, federal health reform, and insurer accountability.
- Research and analyze federal and state healthcare policy regarding premium rates, health insurer practices, and insurer mergers.
- Review rate filing justifications filed in California, submit comments to DMHC, and create consumer engagement opportunities around rate review. Consult with advocates nationwide on specific rate filing justifications filed outside California.
- Author reports and blogs on health insurance, health insurance rates, and health information technology.
- Crafting of written comments and oral testimony for state and federal regulators in response to state and federal rulemaking, as well as for hearings on proposed health insurance mergers.
- Cultivating a consortium of experts and advocates on health insurance rate setting by convening regular conference calls and providing detailed briefs in easily accessible formats.
- Contribute to a national campaign working on ending “surprise medical bills.”
- Appointed to serve on a national committee addressing health IT and patient safety.

**Independent Consultant (2013-2014)**

Provided executive services to businesses facing time or staffing crunches in need of a confident self-starter to identify and resolve the unique needs of each business.

- Copywriting, copy editing, strategic thinking, and project management.
- Rehabilitation, improvement, and in some cases wholesale replacement of Excel workbooks.
- Legal research and legal writing.

**Pacific Business Group on Health**

**Policy Analyst (2011-2013)**

Balance priorities with aggressive timelines, working with stakeholders and experts nationwide to improve the quality, safety, efficiency, and patient-reported outcomes of health care.

- Special assignments for the Executive director: creation of policy PowerPoint presentations, membership newsletter, Affordable Care Act (ACA) press releases.
- Ad hoc assignments related to employer wellness programming.
- Comment letters on federal regulations related to health IT, Affordable Care Organizations, and Medicare data release.
- Support national representatives on four federally-funded committees.
- Proposed and drafted strategic communications including press releases and newsletter.
- Design systems to identify and track progression towards team goals.

## **Hammond Law Group**

### **Law Firm Manager (2010 – 2011)**

Strategic planning and independent project management with the goal of increasing efficiency, cost effectiveness, and client satisfaction.

- Researched and implemented hardcopy and automated document management system.
- Recruited through interviews and hiring one legal secretary and one attorney.
- Managed client billing and offsite bookkeeper service.
- Optimized billable opportunities.

## **State of Missouri Office of Administration, Division of Budget and Planning Budget and Planning Analyst II (2008-2010)**

Individually tasked with educating the Governor on all pending legislation related to three major statewide departments as well as managing their budgets totally approximately \$800 million.

- Represented the Governor's budgeting office in diverse settings with various stakeholders.
- Developed recommendations for the Governor's Office including drug court funding, responses to an influx in the prison population, and budget shortfalls for public attorneys.
- Engaged in the challenging work of budget cuts during a national economic crisis.

## **O'Gorman & Sandroni, P.C.**

### **Private Practicing Attorney (2005 – 2006)**

- Practice primarily estate law and general litigation.
- Conceptualized and developed firm website, marketing materials.

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## *EDUCATION*

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### **Washington University School of Law: J.D: May 2005**

Honors and Activities:

- Merit tuition scholarship award
- Dean's List
- CALI Award for highest grade in Biomedical Ethics writing seminar course
- Excellence Award in Oral Advocacy
- Credited for contribution in two legal treatises

### **Saint Louis University School of Public Health: MPH-Health Policy: May, 2008**

Honors and Activities

- Passed comprehensive exams with great distinction
- Alpha Delta Chapter of Delta Omega – The Honorary Public Health Society
- The Health Policy Outstanding Student Award recipient
- Vice President, Graduate Students in Health Policy and Advocacy
- Alpha Epsilon Lambda (AEL) Honor Society, based on academics (gpa 3.97), leadership, recommendations

### **Emory University, Atlanta, Georgia: B.A. (Magna Cum Laude): May 2002**

Joint major in English/Writing

Honors and Activities: Dean's list, Leader of the Year award

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## *PROFESSIONAL MEMBERSHIP*

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**Missouri State Bar**, licensed member in good standing (inactive) • **National Quality Forum (NQF)**

December 14, 2015

**Delivered Via Email: publiccomments@dmhc.ca.gov**

Re: Proposed merger of Centene Corporation and Health Net of California

On December 7, 2015, the Department of Managed Health Care conducted a public meeting on the proposed merger of Centene Corporation and Health Net of California. Although we appreciate the opportunity to comment on this potentially significant alteration of the health insurance market in California, we believe there was a missed opportunity for the public to have questions answered by the health plans. We therefore respectfully request that DMHC pose the following questions to Centene and Health Net, and make the plans' responses available to the public.

**Questions for Health Net**

1. In your presentation, you stressed that Centene relies on maintaining local control. However, if this acquisition is consummated, Health Net will be a fully owned subsidiary of Centene based in Delaware. What do you mean by local control? What does that look like? Which high level staff will continue to serve in California? Will there be a separate board of directors for the California subsidiary? What other arrangements will ensure that Centene continues to be knowledgeable and responsive to the California Market and California Law?
2. You mentioned that the proposed merger with Centene will afford Health Net improved efficiencies for the benefit of consumers. However, there is ample evidence that mergers and acquisitions increase costs to customers rather than decreasing costs. Historically, commitments on rates negotiated with Medi-Cal and Covered California, and rates charged to commercial customers, (particularly the large group customers), have been the core of Health Net's business. What efficiencies do you project? How will these efficiencies be sustained? How will plan members and purchasers benefit?
3. How does this merger enhance competition in California as you asserted at the hearing?
4. What compensation will senior management and the board receive if this merger goes through?

5. What does “value-based product” mean to Health Net? How has Health Net pursued value-based products in the past and how will its value-based products be augmented under Centene? What does Centene offer towards value based products that Health Net has not been able to offer on its own?

### **Questions for Centene**

1. Both Health Net and Centene stressed that Centene values local control of its subsidiaries. To that end, we heard assurances that--assuming the deal is completed-- Centene will maintain local management in California. Specifically, which high level roles does Centene anticipate maintaining in California? And will those offices be filled by individuals currently entrenched in California’s regulatory environment or will they be brought in from outside? Additionally, when California consumers call customer service will they be assisted by staff in California?
2. What does “value-based product” mean to Centene? What does Centene offer towards value-based products that Health Net has not been able to offer on its own?
3. Centene’s operations in California are currently limited to Medi-Cal. If Centene is interested in offering commercial plans, why not develop its own commercial products rather than purchase Health Net?
4. Given that Centene has no experience in the commercial market, how will Centene develop expertise in the commercial market and Covered CA? Will you continue to offer commercial products?
5. Why must the newly merged corporation be housed in a holding company in Delaware?
6. How might having your health plan legally domiciled in Delaware affect consumers’ rights and option of remedies against the plan?
7. Centene has extensive experience in Medicaid managed care in other states. What has worked well? What has not worked well? You mentioned there are best practices from other programs that can be applied here. What are they? What can you offer for California’s Medicaid program and its beneficiaries? How will you improve upon Health Net’s record?
8. If this merger is finalized, does Centene plan to maintain Health Net’s current provider network or will it negotiate new networks in regions where it does not currently operate?

We look forward to learning more about this proposed merger and working with DMHC to ensure that a combined Centene-Health Net corporation will lift up consumer interests and improve their lot—on access, affordability, and quality—rather than leaving consumers carrying the weight of this deal.

Sincerely,

Dena Mendelsohn, Staff Attorney, Consumers Union

Elizabeth Landsberg, Director of Legislative Advocacy, Western Center on Law & Poverty

Tam Ma, Policy Council, Health Access

Statement of Dena Mendelsohn  
Staff Attorney  
Consumers Union

to the

California Department of Managed Health Care

On

Proposed Merger of Centene Corporation and Health Net of California, Inc.

December 14, 2015

Consumers Union, the public policy and advocacy arm of nonprofit Consumer Reports, is pleased to offer comments on the proposed merger of Centene Corporation and Health Net of California. From our vantage point advocating for consumers on a number of health access, cost, and quality issues—including health insurance rate setting, network adequacy, and health insurance benefit design—we are keenly attuned to the burden of health care and coverage costs for Californians.

In our mission to work for a fair, just, and safe marketplace for all consumers, we have examined proposed mergers in health insurance and other markets to assess whether they threaten to impede the competitive nature of the marketplace, potentially reducing choice as well as affordability, quality, and the incentive to innovate. Given that the federal Department of Justice and the Federal Trade Commission both granted early termination of the waiting period under the Hart Scott Rodino Antitrust Improvements Act of 1976 (HSR Act), Californians now rely on state actors to protect consumer interests. We, therefore, turn to the Department of Managed Health Care (DMHC) to ensure that when plans such as Centene and Health Net merge, the sum of the two plans is better than what consumers get when the plans stand alone.

#### **I. Impact of the Centene-Health Net Merger on the California Health Insurance Market**

Some say that mergers like that proposed here are necessary responses to increased concentration in provider markets. Indeed, in our work on health insurance rate review, we witness a growing chasm between rate increases for northern California versus rate change in southern California<sup>1</sup>, due at least in

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<sup>1</sup> For the 2016 plan year, for example, Covered California reported that the “weighted average increase for Southern California consumers who stay in their current plan is ... 1.8 percent, while for consumers in Northern California it is 7 percent. Consumers in Southern California can save an average of nearly 10 percent by moving to a lower-cost plan in the same metal tier, while consumers in Northern California would potentially be able to limit their rate increase to an average of 1 percent if they did the same.” Covered California press release, 27 July 2015, available at [http://news.coveredca.com/2015/07/covered-california-holds-rate-increases\\_27.html](http://news.coveredca.com/2015/07/covered-california-holds-rate-increases_27.html).

part to the consolidation of providers in northern California. However, we are not convinced that the antidote to provider consolidation is plan consolidation. Rather, if history is a guide, having a high concentration of health insurers, as in other industries, results in higher prices. For example, when Aetna and Prudential merged in 1999, premiums rose seven percentage points.<sup>2</sup> While this example precedes the ACA and its significant impact on the insurer landscape, we believe the outcome is still telling.

We also have reason to doubt assurances by Centene and Health Net, stating that the merger of these two companies would afford efficiencies for the benefit of consumers.<sup>3</sup> The announcement of a proposed merger of health plans is frequently padded with promises of cost-savings to be passed along to consumers. However, research on the subject reveals a dearth of economic studies or other evidence finding those assurances to be true. Rather, according to a health economics expert, “Past mergers among insurance companies suggest that consumers seldom benefit. ‘When insurers merge, there’s almost always an increase in premiums’.”<sup>4</sup> While it is foreseeable that stronger market power will strengthen health plans’ negotiating position with providers, as a leading health antitrust scholar notes, there is “little incentive [for an insurer] to pass along the savings to its policyholders.”<sup>5</sup> Furthermore, we note that if price reductions are in fact realized and passed through, we seek assurances that cost savings will not be achieved via reductions in the quantity or quality of services.

The threat of increased insurance rates also stems from the possibility that Centene will opt to shrink or remove Health Net’s presence from the commercial market in California altogether. In 2015, Health Net offered products in all but three Covered California regions, capturing 18% of statewide enrollment in Covered California (subsidized and non-subsidized).<sup>6</sup> Health Net was also the third largest health plan of all full service commercial HMO enrollees, serving 8% of the California market.<sup>7</sup> Centene, on the other hand, has limited exposure in the commercial market, focusing most heavily in government contracting; it does not operate at all in California’s commercial market and appears to have entered the commercial market in other states only after the implementation of the ACA.<sup>8</sup> The possibility of a large player such

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<sup>2</sup> Leemore Dafny, Mark Duggan and Subramaniam Ramanarayanan, *Paying a Premium on your Premium? Consolidation in the U.S. Health Insurance Industry*, NBER Working Paper No. 15434, Issued October 2009.

<sup>3</sup> Testimony of Steve Sell, President and CEO of HealthNet of California and Rone Baldwin, Executive Vice President of Centene, DMHC public meeting conducted December 7, 2015.

<sup>4</sup> Erin Trish, researcher at USC’s Schaeffer School for Health Policy and Economics, as quoted by David Lazarus, *As Health Insurers Merge, Consumers’ Premiums are Likely to Rise*, 10 July 2015. Available at <http://www.latimes.com/business/la-fi-lazarus-20150710-column.html>.

<sup>5</sup> Thomas Greaney, *Examining Implications of Health Insurance Mergers*, Health Affairs, 16 July 2015. Available at <http://healthaffairs.org/blog/2015/07/16/examining-implications-of-health-insurance-mergers/>.

<sup>6</sup> Covered California, *Health Insurance Companies and Plan Rates for 2016 (preliminary rates)*, July 27, 2015 (updated Oct. 29, 2015), at p.31. Available at <https://www.coveredca.com/PDFs/7-27-CoveredCA-2016PlanRates-prelim.pdf>.

<sup>7</sup> Cattaneo & Stroud, Inc., *Before & After Results of the Proposed California HMO Acquisitions*, 24 August 2015 at pp.1-2.

<sup>8</sup> Avalere Health LLC, *New Market Entrants: Growth and Diversification in U.S. Health Insurance*, September 2015.

as Health Net exiting the market altogether is troubling because it would result in less competition, and potentially higher prices for consumers. At the DMHC public meeting, on December 7, both Centene and Health Net executives made assurances that Health Net's current Knox-Keene products would be maintained in the California marketplace. However, Centene has a history of backing out of a health insurance market abruptly: in 2013, Centene discontinued its Kentucky Medicaid product, Kentucky Spirit Health Plan, a year prior to the conclusion of its contract, leaving policyholders scrambling.<sup>9</sup> We therefore urge DMHC to get these assurances of continued presence in both the Medicaid and commercial markets in California in writing, in the form of a specific undertaking, if this merger is approved.

## II. Impact of Centene-Health Net Merger on Incentive to Improve Quality

In addition to the specter of the cost of health insurance increasing under a consolidated plan marketplace, Consumers Union is also concerned that greater market power will erode incentives for plans, including the newly merged company, to provide high quality health insurance coverage to its members.

Looking at what we know about current records for both Health Net and Centene gives us reason for concern.

- According to a recently issued report by the California Office of the Patient Advocate, Health Net HMO members on the commercial market conferred on Health Net a single star—the lowest score possible—for both categories of “*ease of access to care*” and “*members get answers to questions*.”<sup>10</sup>
- The National Committee for Quality Assurance (NCQA) reported that Health Net of California earned the lowest score possible for consumer satisfaction for its Medicaid Managed Care Organization in 2014-2015.<sup>11</sup>
- In a 2013 Routine Medical Survey conducted by DMHC, the Department identified five deficiencies.<sup>12</sup> Of those, a year later, Health Net failed to resolve one: “to demonstrate adequate

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<sup>9</sup> Centene was recently found in breach of its contract with the state of Kentucky by the Court of Appeals and the case is pending calculation of damages by the Circuit Court. The Courier-Journal, *Kentucky Spirit Loses Appeal in Medicaid Suit*, available at <http://www.courier-journal.com/story/news/local/2015/02/06/kentucky-spirit-loses-appeal-medicare-suit/23000931/>.

<sup>10</sup> State of California Office of the Patient Advocate, Health Net of California, Inc. 2015-16 Edition Medical Care Ratings, available at [http://reportcard.opa.ca.gov/rc/profile.aspx?EntityType=HMO&Entity=HEALTH\\_NET](http://reportcard.opa.ca.gov/rc/profile.aspx?EntityType=HMO&Entity=HEALTH_NET).

<sup>11</sup> Kaiser Family Foundation Medicaid MCO Quality Rankings available at <http://kff.org/medicaid/state-indicator/medicaid-mco-quality-rankings/>. Centene is currently unranked because of its nominal share of the California market.

<sup>12</sup> The Department of Managed Health Care, *Final Report—Routine Medical Survey of Health Net of California, Inc. A Full Service Plan*, February 2014. Available at

consideration and rectification of enrollee grievances.” Indeed, it appears to have taken a full two years after the deficiency was originally identified for Health Net to correct this failure. Obviously, responsiveness to consumer grievances is a key measure for consumers, but it was not prioritized by Health Net.

- DMHC’s 2013 Independent Medical Review Results report shows that there were 1.13 independent medical reviews requested for every 10,000 Health Net members—a number that puts Health Net in the dubious position of one of the top in the state for members requesting outside review. For perspective, Health Net’s 1.13 is more than double the rate of Kaiser Permanente, which has a rate of 0.47 per 10,000 members. Of the cases reviewed for medical necessity, two-thirds were reversed either via judgment by the independent reviewer or by the plan.<sup>13</sup> Of the Emergency Room (ER) reimbursements that underwent independent review, another two-thirds were reversed, many of which by the plan itself.<sup>14</sup>
- DMHC fined Health Net in 2014 for its failure to properly secure of protected health information.<sup>15</sup>
- A visit to the Better Business Bureau Business Review website reveals a bevy of recent consumer complaints against Ambetter, Centene’s health insurance exchange product for the individual market. These complaints include lost documentation, unrecorded premium payments, inadequate provider network, and customer service hours that are limited to the standard work day (meaning that policyholders that work during the day may be unable to contact Centene during customer service hours). Complaints were spread among the states where Ambetter was offered in 2014 and 2015.

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<http://www.dmhc.ca.gov/desktopmodules/dmhc/medsurveys/surveys/300fs022414.pdf>. Those deficiencies were: (1) The plan failed to demonstrate adequate consideration and rectification of enrollee grievances; (2) The plan does not consistently and correctly display in all its written responses to grievances the Department’s telephone number, the CA Relay service’s telephone number, the Plan’s telephone number, and the Department’s Internet address in 12-point boldface type with the statement required by Section 1368.02(b); (3) The Plan does not consistently follow timeframes indicated in its Evidence of Coverage (EOC) for enrollees to file grievances; (4) Upon receipt of an urgent grievance, the Plan does not consistently, immediately inform the complainant of his/her right to contact the Department regarding the urgent grievance; (5) The Plan does not consistently provide the direct telephone number of the professional who made the denial decision in its commercial denial letters sent to requesting/treating providers.

<sup>13</sup> The breakdown is 28.8% were overturned by IMR and 37.0% were reversed by the plan. California Department of Managed Health Care 2013 Independent Medical review Summary Report. Available at <http://www.dmhc.ca.gov/Portals/0/FileAComplaint/DMHCDecisionsAndReports/AnnualComplaintAndIMRDecisions/2013.pdf>.

<sup>14</sup> The breakdown is 11.1% were overturned by IMR and 55.6% were reversed by the plan. California Department of Managed Health Care 2013 Independent Medical review Summary Report. Available at <http://www.dmhc.ca.gov/Portals/0/FileAComplaint/DMHCDecisionsAndReports/AnnualComplaintAndIMRDecisions/2013.pdf>.

<sup>15</sup> The Department of Managed Health Care, *2014 Annual Report*, at 14. Available at <http://dmhc.ca.gov/Portals/0/FileAComplaint/DMHCDecisionsAndReports/AnnualComplaintAndIMRDecisions/2014.pdf>.

Despite all this, Health Net's individual health insurance rate increases that were not subject to negotiations with Covered California exceeded the median increase in California in four out of the past five years.<sup>16</sup> The sole year in the period where they fell below was the year the market overall experienced the highest median rate increase by a significant margin.<sup>17</sup>

Outside California, Centene's subsidiary, Sunshine State Health Plan, a Medicaid Managed Care Organization (MCO), also earned a single star in some Florida counties where it operated. Further, Centene's subsidiaries operating Medicaid MCOs in Florida, Georgia, Indiana, Ohio, South Carolina, Texas, Washington, and Wisconsin each earned at or below average scores for consumer satisfaction.<sup>18</sup> Health plans are more than a financial conduit between consumers and providers; they also have a direct relationship with consumers, such as by coordinating care and providing resources. Clearly, consumers' experience with a merged Health Net-Centene entity must be improved.

Finally, in his testimony before the DMHC on December 7, 2015, Health Net President and CEO Steve Sell claimed the proposed merger of the two plans would enable Health Net to innovate and transform Health Net into a leader in the transformation of health care in the country.<sup>19</sup> However, as one leading expert recently testified before the Senate Committee on the Judiciary, "there is no research showing that larger insurers are likelier to innovate."<sup>20</sup> One innovation Mr. Sell frequently cited was value-based products. It is unclear, however, how innovation will improve post-merger. Further, there is no evidence that an insurance merger is required to carry out such initiatives. While we support the transition from volume-based care to patient-oriented value-based delivery, health plans must be held accountable for assurances such as these.

We urge DMHC to impose an undertaking on the merger that raises the bar for quality. This may include improved ease of enrollment,<sup>21</sup> more consumer-friendly benefits and coverage design,<sup>22</sup> and enhanced

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<sup>16</sup> We do note, however, that its rate increases for products sold on the state Exchange, which underwent negotiations with Covered California, came in more favorably than for many other plans.

<sup>17</sup> California Health Care Foundation, *Individual Health Insurance Premium Growth in California*, available at <http://www.chcf.org/publications/2015/11/individual-premiums-growth-california>.

<sup>18</sup> See <http://kff.org/medicaid/state-indicator/medicaid-mco-quality-rankings/> for notes and sources. Centene's subsidiary operating a Medicaid MCO in South Carolina, Absolute Total Care, achieved a score of four out of five and the subsidiaries in Illinois, Kansas, Louisiana, Massachusetts, Mississippi, and Missouri are not yet scored by NCOA.

<sup>19</sup> Testimony of Steve Sell, President and CEO of HealthNet of California, DMHC public meeting conducted December 7, 2015.

<sup>20</sup> Testimony of Leemore S. Dafny, PhD., Before the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights on "Health Insurance Industry Consolidation: What Do We Know From the Past, Is It Relevant in Light of the ACA, and What Should We Ask?," 22 September 2015. Available at <http://www.judiciary.senate.gov/imo/media/doc/09-22-15%20Dafny%20Testimony%20Updated.pdf>.

<sup>21</sup> In 2014, the most frequent complaint by consumers was in Health Net's enrollment process. The Department of Managed Health Care, *2014 Annual Report*, "2014 Complaint Results by Category and Health Plan."

<sup>22</sup> In 2013, the most frequent complaint by consumers was in Health Net's benefits and coverage. The Department of Managed Health Care, *2013 Annual Report*, "2014 Complaint Results by Category and Health Plan." Available at

grievance processes so policyholders can have issues resolved before escalating to the Independent Medical Review stage.

### **III. Impact of Entry by an Out-of-State Corporation and Management of a California-based Health Plan**

While Health Net has a longstanding presence in California, Centene has operated on only a very limited basis here, for a relatively short period of time, and outside the commercial market. Given this, it is unlikely that Centene is familiar with the intricacies of California legal requirements, the state's extensive consumer protections, and the unique regulatory framework of having two regulators as well as an active purchaser Exchange. In the DMHC public meeting held December 7<sup>th</sup>, executives for both plans insisted that Centene would maintain local management in California. We urge DMHC to hold Centene to this promise and to require that "local management" be comprised of high level executives with prior experiences of considerable depth in California insurance regulations and operations. In addition, not only should management be local, but it should also prioritize practices that put consumers first.

### **IV. Recommended Undertakings**

If this merger is finalized, consumers need assurances that the newly combined Centene-Health Net corporation will lift up consumer interests and improve their lot—on access, affordability, and quality—rather than leaving consumers carrying the weight of this deal. Some undertakings we recommend for your consideration include, but are not limited to:

- Health insurance rates: The merged company should agree to not moving forward with rate increases in any market segment that DMHC deems unjustified or that contain inaccurate or incomplete information. California's rate filing law, with broad transparency and detailed information breakout requirements, is more extensive than in other states and quite different from the government contract environment to which Centene is accustomed. Given the risk that the bigger merged company may have higher premiums, it should agree to providing even greater detail, publicly available, to aid DMHC in especially close rate review for the first years after the merger. Moreover, it should agree that Covered California and DMHC may calculate any proposed increase rate based on Health Net rates for the 2016 plan year. Centene must not be permitted to finalize proposed premium rate increases deemed unreasonable or unjustified by the Department and instead should confer with regulators until a reasonable and justified rate is set. This should apply to all lines of business subject to rate review at the time the rate is filed.

- Quality improvement and cost containment initiatives: Existing state law requires that each plan's rate filing include "any cost containment and quality improvement efforts since the last filing for the same category of health benefits plan. To the extent possible, the plan shall describe any significant new health care cost containment and quality improvement efforts and provide an estimate of potential savings together with an estimated cost or savings for the projection period".<sup>23</sup> Unfortunately, that requirement is often honored more in the breach than the observance. In fact, in commenting on Health Net's rate filing justification for 2015, Consumers Union noted "[t]he Health Net filing lacks even minimal narrative on the subject and the data they provide is scant yet paints an unsettling picture."<sup>24</sup> Therefore, we urge assurances that Centene will reinvestment profits in quality improvement and cost containment initiatives and provide clear explanations and documentation of those investments, dollar breakdowns, estimated savings, and descriptions of how each directly benefits policyholders. As noted above, we recommend that any filing by Centene in the first years after the proposed merger refer back to the Health Net products for 2016 as its basis for comparison and build on or differentiate its quality/cost efforts from those of Health Net.
- Improving quality and consumer satisfaction ratings: Achieving above average quality ratings as measured by NCQA, Covered California, the Right Care Initiative, the Office of Patient Advocate Quality Report Card, and the Medi-Cal Managed Care Health Care Options Consumer Guide, by no later than the performance measurement period ending December 31, 2017.
- Improving provider directory: Making available to consumers, policyholders and non-policyholders, an accurate provider directory that is easily accessible and regularly updated. The issue of provider directory inaccuracies is a serious one and likely to be exacerbated by a merged company combining IT systems.
- Maintaining presence in the commercial market at least commensurate with Health Net's current participation: The aim of this suggested undertaking is to ensure that competition remains vigorous, on and off the state Exchange, both in the number and variety of insurance products offered.
- Adequate, dedicated staffing in California: We urge that high level staff for the newly merged company— Medical Director, Customer Service, and Legal Compliance personnel—be located in California and be comprised of individuals with a depth of expertise in our state in order to acclimate and immerse the newly merged company into the regulatory and consumer protection environment in California.
- Dedicated staffing for transition issues: Whether due to network shifts, information technology glitches or other operational issues, mergers inevitably have bumps in the road which will

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<sup>23</sup> Health and Safety Code Section 1385.03(c)(3).

<sup>24</sup> Consumers Union comments on the Health Net rate filing justification, available at <http://wps0.dmhc.ca.gov/ratereview/Detail.aspx?lrh=k2fIWv6xelQ%24>.

affects Health Net's and the newly merged company's customers. Consumers Union recommends that DMHC require dedicated, increased staffing—in California and anywhere else trouble spots in the company may arise and be rectified—such as personnel to craft provider directories, provide customer service, and to ensure that protected health information is continuously secured through the transition and thereafter.

### **Conclusion**

In conclusion, the California commercial health insurance marketplace has been competitive and relatively stable to date. We believe this has worked to consumers' advantage. Consolidation in that marketplace—from this and other pending mergers—is worrisome both for marketplace stability and pricing and access for consumers. We appreciate DMHC holding a public forum on this proposal and the Department's openness to input. Consumers Union intends to play an active role with the Department in urging your close scrutiny and imposition of undertakings for this deal for the protection of consumer interests.

Sincerely,

A handwritten signature in cursive script that reads "Dena B. Mendelsohn".

Dena B. Mendelsohn, JD, MPH  
Staff Attorney  
Consumers Union