

memo

To: Greg Walklin, Director of Procurement and Grants
Nebraska Department of Health and Human Services

From: Nebraska Total Care

Date: October 18, 2022

Re: Response to Nebraska DHHS October 13, 2022 Memo (the “DHHS Memo”) regarding Healthy Blue Protest of 112209 O3 (the “Protest”)

Purpose

This memorandum serves as Nebraska Total Care’s (“NTC”) response to the “Request for Additional Information” made in the DHHS Memo. Specifically, the DHHS Memo included a notice permitting the three MCOs identified in DHHS’s September 23, 2022 Notice of Intent to Award (the “Awardees”) to provide “*any relevant information to DHHS for the sole purpose of its consideration of the...protest.*”

Background

On October 7, 2022, Community Care Plan of Nebraska D/B/A Healthy Blue (“Healthy Blue”) filed a protest with DHHS protesting the Notice of Intent issued by DHHS on November 23, 2022 awarding contracts to three other proposers, including NTC, for Proposal for Medicaid Managed Care Program, Number 112209 O3 112209-O3 – MCO RFP (the “RFP”). Healthy Blue makes a series of unfounded assertions and specifically requests the disqualification of the Awardees. Among the Protest’s various speculative arguments, Healthy Blue specifically asserts NTC “*should be disqualified as non-responsive because [its proposal failed] to comply with the RFP.*” Healthy Blue’s argument here is based on NTC’s alleged non-compliance with RFP requirements due to the non-disclosure of “*numerous investigations and settlements*” pertaining to various subsidiaries owned by NTC’s parent, Centene Corporation (“Centene”). As discussed below, Healthy Blue’s argument lacks merit as NTC fully complied with the RFP requirements.

Discussion

NTC Complied with Section VI of the RFP and Healthy Blue's Protest Should Be Denied

The Protest asserts that Section VI of the RFP requested each respondent disclose “*whether it (and its parent company, affiliates, and subsidiaries) is or has been the subject of any criminal or civil investigation by a state or federal agency, during the past five years.*” NTC did so, as evidenced by its RFP response. Attachment A.7.A to NTC's RFP response (the “NTC Disclosures”) provided a detail of twenty responsive matters. NTC additionally provided information on six separate matters related to a newly acquired Centene subsidiary, Magellan Health, Inc. (“Magellan”), all of which occurred prior to Centene's acquisition of Magellan in January 2022.

Of the 26 disclosed matters, Healthy Blue points to the three related to Centene subsidiaries in Ohio, Mississippi, and New York. Under the column of the NTC Disclosures titled “Nature of Case”, these entries respectively read: “Investigation relating to PBM practices”, “Investigation relating to PBM practices”, and “NY AG re-initiated a previously dormant inquiry into PBM activities at Fidelis Care.” The three matters bear these descriptions because they were in fact investigations, and pursuant to NTC's interpretation of the RFP requirements, subject to disclosure.

Healthy Blue's Protest goes on to assert “*In addition to Centene's three disclosed investigations, however, Centene's parent company and affiliates have been the subject of many more investigations regarding their PBM program...*”. Healthy Blue appears to conflate no-fault settlements reached through proactive outreach with investigations. On June 14, 2021, Centene Corporation publicly announced that it had reached no-fault settlements with the states of Ohio and Mississippi and were in discussions with the states' counsel to bring resolution to other affected states – see Exhibit 1. Consistent with the referenced proactive approach meant to avoid the need for an investigation and potentially litigation, Centene has entered into no-fault settlements with various other states related to its pharmacy benefit management business, as Healthy Blue's Protest notes in its citations back to disclosures made by NTC in its own RFP Proposal (See Protest P. 10, FN 10). Contrary to Healthy Blue's unsubstantiated allegations, however, these no-fault settlements were reached after proactive outreach by Centene through discussions with the states' counsel -- *not* in response to any undisclosed civil or criminal investigation. Based on Healthy Blue's misrepresentation of facts integral to its argument in Section I.B.1 of its Protest, and the fact that NTC did in fact disclose all investigations consistent with the RFP requirements, Healthy Blue's argument is without merit and should be disregarded by DHHS. Indeed, Centene's proactive actions and resulting no-fault PBM settlements certainly serve as no basis to disqualify its bid.

Exhibit 1

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Exhibit 99.1



NEWS RELEASE

FOR IMMEDIATE RELEASE

Centene Reaches No-Fault Agreements with Ohio and Mississippi to Resolve Pharmacy Subsidiary Claims

Sets Reserve to Resolve Similar Concerns in All Other Affected States

ST. LOUIS (June 14, 2021) – Centene Corporation (NYSE: CNC) today announced that it has reached no-fault agreements with the Attorneys General of Ohio and Mississippi to resolve claims made by the states related to services provided by Envolve Pharmacy Solutions, Inc. (Envolve), its pharmacy benefits manager subsidiary.

Under the terms of these agreements, Centene will pay \$88 million to Ohio and \$55 million to Mississippi. The practices described in the settlement focus on the structure and processes of Envolve, primarily during 2017 and 2018. In the settlements, the Company denies any liability for these practices. As a result of the settlement, the Ohio Attorney General’s litigation against the Company will be dismissed.

In early 2019, Centene proactively restructured its pharmacy benefits operations to create a more transparent relationship between its health plans and its pharmacy benefits manager. Since that time, Centene has also aligned all Medicaid, Medicare and health insurance marketplace products on transparent pharmacy networks to eliminate spread pricing. Going forward, Envolve will operate as an administrative service provider, not a PBM, on behalf of Centene’s local health plans to further simplify our pharmacy operations.

“We respect the deep and critically important relationships we have with our state partners,” said Brent Layton, Centene’s President of Health Plans, Markets and Products. “These agreements reflect the significance we place on addressing their concerns and our ongoing commitment to making the delivery of healthcare local, simple and transparent. Importantly, putting these issues behind us allows us to continue our relentless focus on delivering high-quality outcomes to our members.”

Additionally, the Company is in discussions with a plaintiff's group led by the law firms of Liston & Deas and Cohen & Milstein in an effort to bring final resolution to these concerns in other affected states. Consistent with those discussions, Centene has recorded a reserve estimate of \$1.1 billion related to this issue, exclusive of the above settlements.

Centene Corporation is a leading multi-national healthcare enterprise that is committed to helping people live healthier lives. The Company takes a local approach – with local brands and local teams - to provide fully integrated, high-quality, and cost-effective services to government-sponsored and commercial healthcare programs, focusing on under-insured and uninsured individuals.

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About Centene Corporation

Centene, a Fortune 50 company, offers affordable and high-quality products to nearly 1 in 15 individuals across the nation, including Medicaid and Medicare members (including Medicare Prescription Drug Plans) as well as individuals and families served by the Health Insurance Marketplace, the TRICARE program, and individuals in correctional facilities. The Company also serves several international markets, and contracts with other healthcare and commercial organizations to provide a variety of specialty services focused on treating the whole person. Centene focuses on long-term growth and the development of its people, systems and capabilities so that it can better serve its members, providers, local communities, and government partners.

Centene uses its investor relations website to publish important information about the company, including information that may be deemed material to investors. Financial and other information about Centene is routinely posted and is accessible on Centene's investor relations website, <http://investors.centene.com/>.

Forward-Looking Statements

All statements in this press release that are not purely historical facts are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. Without limiting the foregoing, forward-looking statements often use words such as “believe,” “anticipate,” “plan,” “expect,” “estimate,” “intend,” “seek,” “target,” “goal,” “may,” “will,” “would,” “could,” “should,” “can,” “continue” and other similar words or expressions (and the negative thereof).

In particular, these statements include, without limitation, statements about our settlements with Ohio and Mississippi to resolve claims made by the states with regard to practices at Envolve, our pharmacy benefits manager subsidiary, and other possible future claims and settlements related to the practices at Envolve and our ability to settle claims with other states within the reserve estimate we have recorded and on other acceptable terms, or at all, future operating or financial performance, market opportunity, growth strategy, competition, expected activities in completed and future acquisitions, including statements about the impact of our proposed acquisition of Magellan Health, Inc. (Magellan Health and such acquisition, the Magellan Acquisition), our recently completed acquisition of WellCare Health Plans, Inc. (WellCare and such acquisition, the WellCare Acquisition), other recent and future acquisitions, investments and the adequacy of our available cash resources. These forward-looking statements reflect our current views with respect to future events and are based on numerous assumptions and assessments made by us in light of our experience and perception of historical trends, current conditions, business strategies, operating environments, future developments and other factors we believe appropriate. By their nature, forward-looking statements involve known and unknown risks and uncertainties and are subject to change because they relate to events and depend on circumstances that will occur in the future, including economic, regulatory, competitive and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be

materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and assumptions. All forward-looking statements included in this press release are based on information available to us on the date of this press release. Except as may be otherwise required by law, we undertake no obligation to update or revise the forward-looking statements included in this press release, whether as a result of new information, future events or otherwise, after the date of this press release. You should not place undue reliance on any forward-looking statements, as actual results may differ materially from projections, estimates, or other forward-looking statements due to a variety of important factors, variables and events including, but not limited to: the impact of COVID-19 on global markets, economic conditions, the healthcare industry and our results of operations and the response by governments and other third parties; the risk that regulatory or other approvals required for the Magellan Acquisition may be delayed or not obtained or are subject to unanticipated conditions that could require the exertion of management's time and our resources or otherwise have an adverse effect on us; the possibility that certain conditions to the consummation of the Magellan Acquisition will not be satisfied or completed on a timely basis and accordingly the Magellan Acquisition may not be consummated on a timely basis or at all; uncertainty as to the expected financial performance of the combined company following completion of the Magellan Acquisition; the possibility that the expected synergies and value creation from the Magellan Acquisition or the WellCare Acquisition (or other acquired businesses) will not be realized, or will not be realized within the respective expected time periods; the risk that unexpected costs will be incurred in connection with the completion and/or integration of the Magellan Acquisition or that the integration of Magellan Health will be more difficult or time consuming than expected; the risk that potential litigation in connection with the Magellan Acquisition may affect the timing or occurrence of the Magellan Acquisition or result in significant costs of defense, indemnification and liability; a downgrade of the credit rating of our indebtedness, which could give rise to an obligation to redeem existing indebtedness; the inability to retain key personnel; disruption from the announcement, pendency, completion and/or integration of the Magellan Acquisition or from the integration of the WellCare Acquisition, or similar risks from other acquisitions we may announce or complete from time to time, including potential adverse reactions or changes to business relationships with customers, employees, suppliers or regulators, making it more difficult to maintain business and

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operational relationships; our ability to accurately predict and effectively manage health benefits and other operating expenses and reserves, including fluctuations in medical utilization rates due to the impact of COVID-19; competition; membership and revenue declines or unexpected trends; changes in healthcare practices, new technologies, and advances in medicine; increased healthcare costs; changes in economic, political or market conditions; changes in federal or state laws or regulations, including changes with respect to income tax reform or government healthcare programs as well as changes with respect to the Patient Protection and Affordable Care Act ("ACA") and the Health Care and Education Affordability Reconciliation Act, collectively referred to as the ACA and any regulations enacted thereunder that may result from changing political conditions, the new administration or judicial actions, including the ultimate outcome in "Texas v. United States of America" regarding the constitutionality of the ACA; rate cuts or other payment reductions or delays by governmental payors and other risks and uncertainties affecting our government businesses; our ability to adequately price products; tax matters; disasters or major epidemics; changes in expected contract start dates; provider, state, federal, foreign and other contract changes and timing of regulatory approval of contracts; the expiration, suspension, or termination of our contracts with federal or state governments (including but not limited to Medicaid, Medicare, TRICARE or other customers); the difficulty of predicting the timing or outcome of pending or future legal and regulatory proceedings or matters, including the ongoing regulatory review of claims against our PBM business or whether additional claims, reviews or investigations relating to our PBM business will be brought by other states, the federal government or shareholder litigants, or government investigations; challenges to our contract awards; cyber-attacks or other privacy or data security incidents; the exertion of management's time and our resources, and other expenses incurred and business changes required in connection with complying with the undertakings in connection with any regulatory, governmental or third party consents or approvals for acquisitions, including the Magellan Acquisition; disruption caused by significant completed and pending acquisitions making it more difficult to maintain business and operational relationships; the risk that unexpected costs will be incurred in connection with the completion and/or integration of acquisition transactions; changes in expected closing dates, estimated purchase price and accretion for acquisitions; the risk that acquired businesses will not be integrated successfully; restrictions and limitations in connection with our

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indebtedness; our ability to maintain or achieve improvement in the Centers for Medicare and Medicaid Services star ratings and maintain or achieve improvement in other quality scores in each case that can impact revenue and future growth; availability of debt and equity financing, on terms that are favorable to us; inflation; foreign currency fluctuations; and risks and uncertainties discussed in the reports that Centene has filed with the Securities and Exchange Commission. This list of important factors is not intended to be exhaustive. We discuss certain of these matters more fully, as well as certain other factors that may affect our business operations, financial condition and results of operations, in our annual report on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. Due to these important factors and risks, we cannot give assurances with respect to our future performance, including without limitation our ability to maintain adequate premium levels or our ability to control our future medical and selling, general and administrative costs.