

## **UNDERTAKINGS**

Centene Corporation (“Centene”) has agreed to indirectly acquire all outstanding shares of Magellan Health, Inc. through a merger transaction (the “Acquisition”). Magellan Health, Inc. (“Magellan”) is the indirect parent company of two wholly-owned California health care service plans licensed by the Department of Managed Health Care (the “Department”). The two health plans are: Human Affairs International of California (“HAI-CA”) and Magellan Health Services of California, Inc.- Employer Services (“MHSC”).

After the closing date of the Acquisition, Centene will own the following health plans licensed by the Department: California Health and Wellness Plan, Envolve Vision, Inc., Health Net Community Solutions, Inc., Health Net of California, Inc., Managed Health Network, WellCare of California, Inc., WellCare Prescription Insurance, Inc., Human Affairs International of California, and Magellan Health Services of California, Inc.– Employer Services (collectively, the “California Subsidiaries”). HAI-CA and MHSC filed with the Department Notices of Material Modification (filing numbers 20210178 and 20210179, respectively) regarding the Acquisition.

To demonstrate continued compliance with the Knox-Keene Health Care Service Plan Act of 1975 (“Act”), codified at Health and Safety Code section 1340 et seq., and the Act’s corresponding regulations at Title, 28, California Code of Regulations (“Rules”), the following entities (collectively, the “Parties”) agree to the Undertakings set forth herein, in each case, to the extent applicable to such Party, and acknowledge that any Orders issued by the Department approving Material Modification numbers 20210178 and 20210179 (the “Orders of Approval”) are conditioned upon these Undertakings:

- Centene Corporation
- Magellan Health, Inc.
- Human Affairs International of California
- Magellan Health Services of California, Inc.–Employer Services
- California Subsidiaries

The Parties agree to fully and completely comply with these Undertakings and agree they will not violate these Undertakings, in each case, to the extent applicable to such Party. Reference to “Undertakings Tracking” in these Undertakings means a submission through the Undertakings Tracking section of the Department’s e-filing portal.

## **Financial and Filing Requirements**

### **1. Centene to Fund Costs of Executive Compensation Due to the Acquisition**

The Parties agree to the following:

- (a) All of the executive compensation by reason of the Acquisition, including change in control payments, acceleration of outstanding equity incentives, Centene equity incentive grants, and Centene signing/retention bonuses (together, "CIC Benefit") shall not be paid by the California Subsidiaries regardless of which entity has the legal obligation.
- (b) Centene shall have on hand cash and committed borrowing facilities at the time of the closing of the Acquisition that are adequate to timely discharge all obligations relating to the CIC Benefit.
- (c) Centene shall indirectly assume Magellan's debt through the Acquisition and it shall not be the responsibility of the California Subsidiaries.
- (d) No amounts relating, directly or indirectly, to the CIC Benefit shall be the obligation of the California Subsidiaries.
- (e) No amounts relating, directly or indirectly, to the CIC Benefit shall be charged to or made the responsibility of the California Subsidiaries, directly or indirectly, under any reimbursement or cost allocation arrangement.
- (f) Centene further represents and warrants that there are no CIC Benefit payments owed by Centene by reason of the Acquisition to any of Centene's officers, directors, or key management.

### **2. Restrictions on Upstreaming of Funds**

HAI-CA and MHSC shall not declare or pay dividends, make other distributions of cash or property or in any other way upstream any funds or property to their shareholders or any of the Parties' affiliates (collectively, "Affiliate Company Distributions") if such actions would cause any of the following:

- (a) Cause HAI-CA and MHSC to fail to maintain at all times the greater of the following:
  - i For HAI-CA, 150 percent of the minimum tangible net equity (which annualized amount shall be calculated by multiplying the applicable current quarter revenues and expenditures by four) currently required by the California Code of Regulations, Title 28, section 1300.76.
  - ii For MHSC, 500 percent of the minimum tangible net equity (which annualized amount shall be calculated by multiplying the applicable current quarter

revenues and expenditures by four) currently required by the California Code of Regulations, Title 28, section 1300.76.

- iii 100% of minimum tangible net equity as may be required following any future amendment to Health and Safety Code section 1374.64 or Rule 1300.76, or any successor statute or regulation.
- (b) Result in insufficient working capital or insufficient cash flow necessary to provide for the retirement of existing or proposed indebtedness of HAI-CA and MHSC, as required by the California Code of Regulations, Title 28, section 1300.75.1(a).
- (c) Adversely and materially affect the ability of HAI-CA and MHSC to provide or arrange health care services.
- (d) For purposes of these Undertakings, "Affiliate Company Distributions" will not be deemed to refer to payments made under the terms of any administrative service agreement or tax sharing agreement that was filed with and received approval from the Department.

### ***3. Material Modification Required Before Guaranteeing, Cosigning or Assuming Loans, or Before Borrowing***

The Parties shall not take any of the following actions prior to the submission of a Notice of Material Modification in accordance with the standards set forth in Health and Safety Code section 1352 and Rule 1300.52.4 and the receipt of the Department's order of approval:

- (a) Allow the California Subsidiaries to cosign or guarantee any portion of any current or future loans and/or credit facilities entered into by the Parties or their affiliates.
- (b) Permit any portion of loans obtained by the Parties' shareholders or their affiliates to be assumed by the California Subsidiaries unless the California Subsidiaries are currently a party to the existing loan.
- (c) Allow a pledge or hypothecation of the California Subsidiaries' assets that in any way is connected with any current or future loans of the Parties or their affiliates.
- (d) Borrow any funds or otherwise incur any indebtedness for the purpose of making any Affiliate Company Distribution, except (i) any Affiliate Company Distribution that is made in compliance with this Undertaking, or (ii) a payment made pursuant to any written arm's-length administrative services agreement or tax sharing agreement between or among the Parties on the one hand, and the Parties' affiliates on the other hand.

### ***4. Notice of Undertakings to Creditors***

The Parties shall provide written disclosure of Undertakings 2 and 3 to any and all future holders of any loans and/or credit facilities of the Parties, to the extent that the

applicable California Subsidiaries' assets and/or stock are involved in such loans and/or credit facilities, to ensure that the holder of such instrument(s) has written notice that the satisfaction of any obligations under such instrument(s) is subordinated to the applicable California Subsidiaries' obligations under the Act and Rules thereunder.

#### **5. Prefiling Conference Required Prior to Execution of New Plan-to-Plan Agreements**

HAI-CA and MHSC shall have a prefiling conference with the Department prior to executing any new plan-to-plan agreements.

HAI-CA and MHSC shall not execute any new plan-to-plan agreements prior to submitting them to the Department for review in the form of Notice of Material Modification or an Amendment, as determined by the Department during the prefiling conference. HAI-CA and MHSC may not implement such plan-to-plan agreements filed as Material Modification until after the Department has issued an order of approval for such agreements.

Plan-to-plan agreements as used in this section refers only to new agreements involving HAI-CA or MHSC, and not amendments of existing plan-to-plan agreements. Any amendments to existing plan-to-plan agreements by HAI-CA or MHSC shall comply with Section 1352.

#### **6. Termination of a Plan-to-Plan Agreement to be Filed as an Amendment**

HAI-CA and MHSC agree to file a termination of any plan-to-plan agreements by submitting an Amendment through the Department's eFiling portal.

Plan-to-plan agreements as used in this section refers only to agreements in which HAI-CA or MHSC are a party.

#### **7. Tax sharing Agreements to be Filed as Material Modifications**

After the closing date of the Acquisition, if the Parties desire to amend, change, terminate or replace their tax sharing agreements, as previously filed with and approved by the Department, the California Subsidiaries, as applicable, shall file any changes to those tax sharing agreements as a Notice of Material Modification in accordance with the standards set forth in Health and Safety Code section 1352 and Rule 1300.52.4.

#### **8. Payment of Costs Associated with the Department's Review of the Parties' Change of Control Filings**

The Parties agree to pay, within 15 calendar days from the receipt of billings from the Department, the actual costs arising from the activities of the Department associated with the review of Parties' Change of Control Filings, eFiling Nos. 20210178 and 20210179. Such costs include the costs of the activities described in Health and Safety Code section 1399.66.

### **9. *Payment of Costs Associated with the Department's Surveys, Audits, Examinations, or Inquiries***

The Parties agree to pay, within 15 calendar days from the receipt of billings from the Department, the actual costs arising from the activities of the Department, including any necessary out-of-state travel, incurred in the course of verifying and auditing compliance with the Act and each of the Undertakings set forth herein. The Department's activities to verify and audit the Parties' performance of these Undertakings are not a survey or examination under Health and Safety Code sections 1380 and 1382 and their implementing regulations.

### **10. *Payment of Penalty Associated with a Letter of Agreement***

Centene and its California Subsidiaries shall issue payment of any penalty associated with a Letter of Agreement ("LOA") to resolve an enforcement action brought by the Department within 15 business days of the date the Department sends the LOA to the Plan. Centene and its California Subsidiaries shall clearly identify the Department enforcement matter number with the transmitted payment. If Centene and its California Subsidiaries fail to pay within the required timeframe, a fee of \$500 per day or 1% of the total penalty in the LOA, whichever is greater, shall accrue beginning the day after the due date until the penalty is paid in full. Payment of the total late fees incurred shall be transmitted to the Department separately and apart from the penalty payment. This undertaking does not waive the Department's right to file legal action against Centene and its California Subsidiaries seeking any and all available remedies or relief, including breach of contract remedies and civil, criminal, or administrative remedies in the event late payment penalty fees are not paid.

### **11. *No Push-Down of Goodwill from Centene or Magellan***

Centene and Magellan shall not use any form of push-down accounting methods that result in the transfer or allocation of any of Centene's or Magellan's goodwill, including goodwill related to this Acquisition, to the California Subsidiaries.

### **12. *Maintaining Market Presence of HAI-CA and MHSC***

Centene has acknowledged an understanding of the important role HAI-CA and MHSC play in the California market. Accordingly, for a period of at least ten (10) years from the issuance of the Order of Approval:<sup>1</sup>

- (a) HAI-CA shall continue to take commercially reasonable steps in good faith to seek to contract with unaffiliated health care service plans through plan-to-plan agreements on an arm's length basis in the normal course of business.
- (b) HAI-CA and MHSC shall continue to make all commercially reasonable efforts in good faith to operate as ongoing, economically viable and active

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<sup>1</sup> This Undertaking may be extended for three (3) years in the discretion of the Department if the Competition-Related Undertakings are also extended.

competitors in the behavioral health and employee assistance program (“EAP”) markets in California consistent with their practices prior to the close of the Acquisition.

- (c) HAI-CA and MHSC shall take all commercially reasonable steps in good faith to preserve and maintain the value and goodwill of HAI-CA and MHSC and their products in California, including continuing to strive to grow in the California behavioral health and EAP markets, respectively.

### **13. No Increase in Premiums Because of the Acquisition**

The Parties agree that controlling health care costs is of the utmost importance. For a period of no more than four (4) years from the issuance of the Order of Approval, the Parties represent and warrant that premiums payable by the California Subsidiaries’ enrollees (including copayments and deductibles) shall not increase as a result of direct costs incurred in financing, analyzing and/or consummating the Acquisition (“Acquisition Costs”). Such costs include but are not limited to, attorneys’ and investment bankers’ fees, travel expenses, the CIC Benefit, due diligence expenses, and expenses related to concurrent or future acquisitions by Centene affiliates.

The Parties further represent and warrant that, subject to any exceptions filed with and approved by the Department.

- (a) The California Subsidiaries’ methodologies for determining premium rates in the California market after the Acquisition shall not materially vary from their pre-Acquisition practices and methodologies in a manner that directly or indirectly includes Acquisition Costs.
- (b) No debt rating factor relating to the indebtedness that Centene has incurred to finance the Acquisition shall be directly included in the California Subsidiaries’ premium practices and methodologies post-Acquisition.
- (c) In the event there are reductions in the level of reimbursement of the California Subsidiaries’ health care providers, as defined in Health and Safety Code section 1345(i), such reductions shall not be directly attributable to the Acquisition Costs.
- (d) If there are reductions in the benefits of the California Subsidiaries’ products sold in California markets, such reductions shall not be directly attributable to the Acquisition Costs.

### **14. Keep premium rate increases to a minimum**

The Parties agree that controlling health care costs is of the utmost importance. This Undertaking applies to commercial lines of business subject to rate review by the Department at the time the rate is filed.

For a period of four (4) years following the issuance of the Order of Approval:

- a) Health Net of California, Inc. and the Department shall meet at least 30 days prior to the submissions of each individual, and small group quarterly, rate filing to review the upcoming filing;
- b) Health Net of California, Inc. shall provide the Department with annual income statements specific to individual, small group and large group markets for calendar years 2018 through 2025. Statements for calendar years 2018, 2019 and 2020 shall be submitted at least 90 days from the consummation of the Acquisition and statements for 2021 through 2025 shall be filed by April 30th following the close of the calendar year. With each rate filing submitted, Health Net of California, Inc. shall include (1) a two-year forecast of medical cost, medical cost trend, pharmacy cost, administrative cost, member months and profit margin; and, (2) a three-year historic comparison summary of medical cost, medical cost trend, pharmacy cost, administrative cost, member months and profit margin between projection and actual results;
- c) For any premium rate increase deemed unreasonable or unjustified by the Department, the Parties or those that are subject to the rate review, shall meet and confer with the Department and make a good faith attempt to resolve any differences regarding the premium rate increase;
- d) Consistent with the Department's historical information requests, Health Net of California, Inc. shall provide information requested by the Department to support its review of a filing within five business days; and,
- e) Annually, through eFiling, as an Exhibit HH-32, within sixty (60) days following the end of the calendar year, Health Net of California, Inc. shall file a certification, signed by Health Net of California, Inc.'s Chief Actuary, Chief Financial Officer or similar officer, certifying Undertaking 12 and 13 have been met for commercial lines of business by market type for the prior calendar year starting from calendar year of 2022.

### ***15. Key Functions and Management Based in California***

HAI-CA and MHSC commit to keeping the positions overseeing the California operations of HAI-CA and MHSC based in California, as well as the leaders responsible for local functions described below, to the extent such positions and leaders were based in California as of January 12, 2021 (the date HAI-CA and MHSC filed their material modifications related to the Acquisition with the Department). HAI-CA and MHSC further commit that health plan job functions performed by employees in California who directly interact with members and providers in California, as of January 12, 2021, except as approved by the Department to be performed elsewhere either before or after the Acquisition, shall continue to be performed in California after the Acquisition consistent with their past practices. After the Acquisition is completed, HAI-CA and MHSC shall maintain leaders and personnel in California to the extent such leaders and personnel were based in California as of January 12, 2021, to assure adequate organizational and

administrative capacity and to perform, at a minimum, the following functions consistent with the plans' practices in effect prior to the Acquisition:

- (a) Clinical decision-making and California medical policy development by a chief medical officer(s) and appropriate clinical personnel responsible for California medical decision-making and California medical policy.
- (b) Prior authorization and referral functions.
- (c) Enrollee grievance and appeal functions.
- (d) Network management.
- (e) Provider services, including membership accounting and provider directories.
- (f) Clinical decision making in connection with the Independent Medical Review process.
- (g) Underwriting functions.
- (h) Provider Dispute Resolution Mechanism process.
- (i) Oversight of claims processing functions.
- (j) Key management positions, including the following positions to the extent the positions were held within HAI-CA and MHSC as of January 12, 2021:
  - i President
  - ii Chief Operating Officer
  - iii Chief Financial Officer
  - iv Chief Medical Officer
- (k) Key regulatory, financial, and compliance officers and other personnel performing state and federal compliance functions, including personnel knowledgeable with the Act and Rules and any other applicable law.

These aforementioned functions shall be conducted in conformity with California standards, and timeframes, as required by the Act. HAI-CA and MHSC confirm to the Department that they intend to maintain offices in California to the extent such offices were located in California as of January 12, 2021.

***16. Books and Records to Stay in California Unless Approved by the Department***

HAI-CA and MHSC agree to not remove, or require, permit, or cause the removal of any HAI-CA and MHSC books and records, as defined in the Act, from California prior to the submission of a Notice of Material Modification in accordance with the standards set

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forth in Section 1352 of the Act and Rule 1300.52.4 and the receipt of the Department's Order of Approval. Further, notwithstanding any failure or omission on the part of HAI-CA and MHSC, or that of an affiliate, to maintain the records of HAI-CA and MHSC in California, HAI-CA and MHSC agree they shall return to California, as may be required by the Department, within the timeframe specified by the Department, any such HAI-CA and MHSC books and records removed from California without the Department's express, written permission. This Undertaking shall not restrict HAI-CA and MHSC from maintaining books and records in an electronic format, as long as electronic books and records are contemporaneously available in California.

### ***17. Changes to Administrative Services Agreements Must be Filed as Material Modifications***

In the event of any Change(s), as defined below, to an administrative services agreement (ASA) to which HAI-CA and MHSC are a party with any HAI-CA and MHSC's affiliate, or through which HAI-CA and MHSC receive services, HAI-CA and MHSC shall file a Notice of Material Modification in accordance with the standards set forth in Health and Safety Code section 1352 and Rule 1300.52.4 and shall not implement the changes prior to the receipt of the Department's Order of Approval.

Neither HAI-CA and MHSC, nor its administrative services provider, or any entity delegated or subdelegated to perform any plan functions, may implement such change(s) until after the Department has issued an Order of Approval for such change(s).

"Change" is defined for purposes of this Undertaking as an amendment, modification, termination, or replacement of an ASA, which involves any of the following:

- (a) Material changes to any ASA relating to provider claims processing, utilization management, grievance processing, or accounting functions;
- (b) Any other material change that requires the plan to file a material modification pursuant to Rule 1300.52.4.

Notwithstanding the above, these undertakings do not supersede the Plan's requirement to file a Notice of Material Modification when required by Health and Safety Code section 1352(b), Rule 1300.52.4(d), or as otherwise required by the Act.

### ***18. Appointment of an Independent Third-Party Monitor Due to TNE Deficiency***

In the event HAI-CA or MHSC fails to maintain at all times 100 percent of the minimum tangible net equity required by the California Code of Regulations, Title 28, section 1300.76 ("TNE Deficiency") and fails to remedy the TNE Deficiency within 30 calendar days upon notice by the Department, the DMHC may appoint an independent third-party monitor ("TNE Third-Party Monitor") to monitor HAI-CA and MHSC's financials. The TNE Third-Party Monitor shall periodically report to the Department on HAI-CA and MHSC's actions towards remedying the TNE Deficiency.

HAI-CA and MHSC, in consultation with the Department, will select an appropriately qualified TNE Third-Party Monitor. Upon the Department's approval, HAI-CA and MHSC shall promptly appoint the TNE Third-Party Monitor. The appointment shall cease when HAI-CA and MHSC remedy the TNE Deficiency and demonstrate to the Department that HAI-CA and MHSC are financially stable. Termination of the TNE Third-Party Monitor's appointment shall require the Department's approval. HAI-CA and MHSC shall be financially responsible for the TNE Third-Party Monitor's costs and fees, including any cost and fees associated with the TNE Third-Party Monitor's services. HAI-CA and MHSC shall reimburse the Department for any reasonable costs incurred in verifying the TNE Third-Party Monitor's qualifications.

## **Surveys and Networks**

### ***19. Pertaining to Health Plan Surveys***

Centene shall ensure that the following California Subsidiaries undertake the activities described in items a. through d. below.

- California Health and Wellness Plan
- Health Net Community Solutions, Inc.
- Health Net of California, Inc.
- Managed Health Network
- Human Affairs International of California
- Magellan Health Services of California, Inc. - Employer Services
- Envolve Vision, Inc.

(a) Correct all deficiencies identified in the applicable California Subsidiary's most recently issued Medical, Behavioral Health or Vision Survey Final or Follow Up Report of routine and non-routine surveys.

(b) For medical surveys that are open and for which a preliminary report has not yet been issued, correct all uncorrected deficiencies identified in the subsequently issued Final Report.

(c) As part of the pre-onsite materials for the next routine, routine follow-up or non-routine follow up survey, as applicable, each of the identified Subsidiaries shall prepare a detailed report describing the activities undertaken to correct each uncorrected deficiency and activities to complete the required remediation as to items a. and b. above. The report shall also;

- Indicate the date each deficiency was corrected, and any required remediation was completed;
- For deficiencies that remain uncorrected or for which remediation is not fully completed, include a description of the Subsidiary's efforts and current status of all corrective actions and the date the deficiency will be fully corrected and remediation completed; and

- Include the name and contact information of the person at the Subsidiary who is responsible for overseeing correction of each deficiency and completion of remediation.
- Include the name and contact information of the person at Centene who is responsible for ensuring compliance with this Undertaking.

(d) The prepared reports as described in item (c) above, along with any data, documents, written processes or other information related to or evidencing the Subsidiary's corrective action and remediation activities, shall be submitted as instructed by the Division of Plan Surveys in relation to the routine, routine follow-up or non-routine follow up survey, or if not otherwise specifically stated, to the Department's Division of Plan Surveys through the Department's Web Portal Communication Tab.

## ***20. Pertaining to Oversight***

Centene shall work with each of the California Subsidiaries to develop and implement consistent delegation oversight standards to ensure the California Subsidiaries comply with the requirements of Section 1370 and Rule 1300.70. To the extent that a California Subsidiary delegates any function or responsibility that is the Subsidiary's obligation under the Knox-Keene Act, the oversight standards shall require all delegation agreements between each of the California Subsidiaries and their delegates to include provisions requiring the delegating health plan to document, track and evaluate all delegated functions to ensure the delegate's operations are appropriate, effective and comply with applicable Knox-Keene Act requirements. For purposes of this Undertaking, a "delegate" is a person or entity to which a California Subsidiary has given the responsibility to perform a function, task or operation for, or on its behalf related to compliance with Section 1370 or Rule 1300.70, including utilization management.

- (a) Centene shall ensure that each California Subsidiary shall incorporate into its quality assurance program an assessment, conducted at least annually, of each delegate's compliance with the delegation oversight standards referenced above. Each California Subsidiary shall prepare a report no less than annually describing each area of delegated responsibility, methods used in assessing delegated functions, assessment findings and a description of facts supporting each finding, as well as follow-up timeframes for any findings determined to be non-compliant along with corrective actions. The required reports shall include a section that discusses delegates' implementation of any corrective action plans from the previous year, and the delegating plan evaluation and findings pertaining to the effectiveness of the corrective actions. The first annual reports will be for the calendar year 2022.
- (b) All annual reports and any data, documents, written processes or other information related to or evidencing a delegate's corrective action shall be submitted to the Department's Division of Plan Surveys as part of the pre-onsite materials for each Subsidiary's next routine, routine follow-up, or non-routine follow-up survey, as applicable. All of these annual reports shall be submitted through the Department's

Web Portal Communication Tab and shall be identified as “Centene/Magellan Change of Control Undertaking #Number Delegation Oversight Compliance Report.”

Centene shall require each Subsidiary to attach as an exhibit to the required annual reports, a description of Centene’s involvement and efforts, along with the name and contact information of the person at Centene responsible for ensuring compliance with this Undertaking.

- For the first survey after the date of this Order of Approval, each California Subsidiary shall submit all annually prepared report(s) along with supporting documentation as noted above.
  - For each subsequent survey, each California Subsidiary shall submit annually prepared report(s) along with supporting documentation that were not previously submitted for a prior survey.
- (c) The annual reporting obligations under this Undertaking shall be in effect for a period of five (5) full calendar years (2022, 2023, 2024, 2025, 2026) following the issuance of the Order of Approval. If a Subsidiary’s implementation of this Undertaking requires revisions to documents and/or information previously submitted to the Department’s Office of Plan Licensing, or new documents required to be filed as an Amendment or Notice of Material Modification (see Section 1352 and Rule 1300.52.4), please identify the eFiling numbers corresponding to each Filing and include the eFiling numbers in the annual reports referenced above.

### ***21. Pertaining to Subsidiaries and Delegates Re: Continued Care***

Centene shall ensure, through Magellan,<sup>2</sup> that HAI-CA and any of its delegate(s) comply with the following requirements. For purposes of this Undertaking, a “delegate” is a person or entity to which a plan has given the responsibility to perform a function, task or operation of utilization management (“UM”) or utilization review (“UR”) for, or on behalf of, a health plan.

- (a) When HAI-CA (or its utilization management (UM) or its utilization review (“UR”) delegate) receives a request for authorization for continued or additional health care services for an enrollee at the time services are being provided to the enrollee under a previous authorization (i.e., a concurrent review circumstance), HAI-CA (and/or its UM or UR delegate) shall be responsible to ensure care is not discontinued until (a) the enrollee’s treating provider has been notified of the utilization management

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<sup>2</sup> The reference to Magellan encompasses Magellan entities and lines of business after the proposed Transaction occurs. Centene may not use this provision to vitiate the Competition-Related Undertakings, but rather must ensure that the Magellan entities and lines of business have a separate process by which they can comply with this Undertaking.

decision, and (b) a care plan has been agreed upon by the treating provider that is appropriate for the medical needs of that patient.

In order to satisfy its obligation to ensure care is not discontinued during the concurrent review process, HAI-CA (or its UM or UR delegate) shall be responsible to ensure coverage and payment for the health care services rendered by the provider to the enrollee until conditions (a) and (b) above are fulfilled. Notification to the treating provider of an alternative service the California Subsidiary HAI-CA (or its UM or UR delegate) is willing to authorize does not satisfy condition (b) above. To satisfy condition (b), HAI-CA (or its UM or UR delegate) shall either obtain the treating provider's written agreement to a proposed plan of care or shall document the treating provider's verbal agreement. Documentation of verbal agreement shall include the provider's name, the name of HAI-CA (or its UM or UR delegate) representative who received and documented the provider's verbal agreement, the date and time the provider provided verbal agreement, the plan of care agreed upon and any comments the provider would like to include. The required written or documented provider agreement shall be maintained in the enrollee's files.

- (b) If HAI-CA's implementation of this Undertaking requires revisions to documents and/or information previously submitted to the Department's Office of Plan Licensing, or new documents required to be filed as an Amendment or Notice of Material Modification (see Section 1352 and Rule 1300.52.4), include the following in the Exhibit E-1:
- A statement that the filing is in response to this Undertaking; and
  - The name and contact information of the person at Centene responsible for ensuring compliance with this Undertaking.

## ***22. Pertaining to Subsidiaries and Delegates Re: Modifications***

Centene shall ensure, through Magellan,<sup>3</sup> that HAI-CA and any of its delegate(s) comply with the following requirements. For purposes of this Undertaking, a "delegate" is a person or entity to which a plan has given the responsibility to perform a function, task or operation of utilization management ("UM") or utilization review ("UR") for, or on behalf of, a health plan.

- (a) When HAI-CA (or its UM or UR delegate) receives a request for authorization of a health care service from a provider, prior to, retrospectively, or concurrent with, the provision of health care services to the enrollee, and the determination, which is

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<sup>3</sup> The reference to Magellan encompasses Magellan entities and lines of business after the proposed Transaction occurs. Centene may not use this provision to vitiate the Competition-Related Undertakings, but rather must ensure that the Magellan entities and lines of business have a separate process by which they can comply with this Undertaking.

based in whole or in part on medical necessity, results in a decision to authorize a health care service that is different from, or that changes, adjusts, alters, limits or qualifies the health care service that was originally requested by the provider, HAI-CA (or its UM or UR delegate) shall designate and process the determination as a modification. HAI-CA (or its UM or UR delegate) shall communicate the decision to the enrollee and provider pursuant to the requirements in Section 1367.01(h)(3) and (h)(4) pertaining to modifications.

- (b) The obligation described in this Undertaking cannot be waived by a provider or enrollee. If HAI-CA (or its UM or UR delegate) secures a requesting provider's agreement to accept an alternate, reduced or limited service, as compared to the provider's requested service, the authorization of the alternate, reduced or limited service shall be deemed a modification requiring the applicable Section 1367.01(h)(3) and (h)(4) communications be sent to the provider/enrollee.
- (c) The following is a representative, non-exhaustive list of examples that describe practices HAI-CA (or UM or UR delegate) shall designate and process as modifications:
- A plan (or its UM or UR delegate) conducts UM review and determines the requested health care service does not meet clinical criteria. The plan or delegate then offers the requesting provider an alternate level of service that the plan or delegate determines to meet clinical criteria. The plan or delegate authorizes the alternate level of service if the provider agrees to accept the offered service. The provider's original request is withdrawn and a new request for the alternate level of service is generated and authorized.
  - A plan (or its UM or UR delegate) conducts UM review and determines the requested health care service does not meet clinical criteria. The plan or delegate reviewer discusses the case with the provider, and they agree upon a health care service other than the service originally requested by the provider. The plan or delegate authorizes the agreed upon service.
  - A plan (or its UM or UR delegate) conducts UM review and determines the requested health care service does not meet clinical criteria. The plan or delegate reviewer discusses the case with the provider and obtains the provider's consent for a different service. The plan deems the provider's consent as a "final request" for the different service, and either closes out or otherwise does not recognize or respond to the provider's initial request. The plan or delegate authorizes the service for which it obtained the provider's consent.
- (d) Notwithstanding the foregoing, a requesting provider may legitimately withdraw or change his or her request for services when such withdrawal is voluntarily made based on changed circumstances. Such changed circumstances may include, for example:

- a change in the enrollee’s clinical condition necessitating, in the provider’s opinion, a change in treatment;
- the provider learns the enrollee declines the requested service;
- HAI-CA or its UM or UR delegate notifies the provider a requested service is not a covered benefit, but a different, comparable service is covered.

In cases when a provider legitimately and voluntarily withdraws or changes his or her request for service, no modification decision results and the communications pertaining to modifications required by Section 1367.01(h)(3) and (h)(4) are not required. In cases of legitimate and voluntary withdrawal or change by the provider, HAI-CA (or its UM or UR delegate) shall document the name of the provider, the date and time of the provider communication and the specific details of the request to withdraw or change his or her request for service, including clinical reasons, if any.

***23. Pertaining to Measurement Year 2019 Network Findings Report***

HAI-CA will take the below-listed actions in Undertakings 23 through 25 to demonstrate its commitment to address the issues and findings indicated within its Measurement Year (“MY”) 2019 Network Findings Report and take further actions as necessary to ensure these issues do not recur.

***24. Pertaining to Timely Access Compliance Report Findings***

- (a) HAI-CA will not include survey data in its Raw Data Template report and Crosswalk Table for Provider Types not set forth in Department-issued Provider Appointment Availability Survey (“PAAS”) Methodology. HAI-CA will also update its reporting systems and implement multi-level checks that comply with the DMHC-issued PAAS Methodology as indicated in its MY2019 Timely Access Compliance Report Findings Response dated May 14, 2021.
- (b) HAI-CA will identify in its Timely Access Compliance Report submitted pursuant to Rule 1300.67.2.2, incidents of non-compliance resulting in substantial harm to an enrollee using the definition of “substantial harm” set forth in Civil Code section 3428.

***25. Pertaining to Annual Provider Network Review Benchmark Findings***

HAI-CA will maintain an adequate network of contracted or employed physicians specializing in addiction medicine or addiction psychiatry. HAI-CA shall further ensure that it appropriately identifies which psychiatry providers in its network are qualified to treat addiction and report these providers as specialty type “addiction medicine or addiction psychiatry” for the purposes of annual network reporting pursuant to Section 1367.035 and Rule 1300.67.2.2(g)(2)(G).

## **26. Pertaining to Data Accuracy Findings**

- (a) HAI-CA will report PAAS Data pertaining to all DMHC-licensed networks subject to the PAAS, including the networks made available to enrollees with Western Health Advantage and California Physicians' Service for MY 2021, as indicated in its MY2019 Annual Network Findings Report Response dated May 12, 2021. Beginning in MY2021 and annually thereafter for a period of four (4) years, HAI-CA agrees to pay a penalty to the Department of at least \$200,000 for each network it fails to report during each measurement year.
- (b) HAI-CA will accurately report data regarding the proportion of contracting providers and non-contracting providers paid for enrollee services at all contracting health facilities in the Out-of-Network Payment Report Form for future measurement years.

## **27. Pertaining to Ensuring All Networks Provide Timely Appointments**

- (a) Centene shall ensure that the following California Subsidiaries undertake the below-listed actions to demonstrate its commitment to ensuring its networks are adequate to provide timely access to health care services.
  - California Health and Wellness Plan
  - Health Net Community Solutions, Inc.
  - Health Net of California, Inc.
  - Managed Health Network
  - Human Affairs International of California
- (b) Beginning in MY2022, and annually thereafter for a period of four (4) years, each network the identified subsidiaries are licensed to operate will obtain no less than a 70% rate of compliance for urgent care appointments and a 70% rate of compliance for non-urgent appointments, as identified respectively in the "Rate of Compliance Urgent Care Appointments (All Provider Survey Types)" and "Rate of Compliance Non-Urgent Appointments (All Provider Survey Types)" fields of the PAAS Results Template. If the Department requires health plans to maintain a rate of compliance greater than 70% the identified subsidiaries shall comply with the higher rate of compliance.
- (c) Any identified subsidiary licensed to operate a network that fails to obtain the rate of compliance threshold described in subsection (b) agrees to pay a base penalty to the Department of at least \$100,000 per network. For each year thereafter in which the same non-compliant network fails to meet either the urgent care or non-urgent appointment rate of compliance threshold, the subsidiary will pay the base penalty to the Department plus an additional monetary penalty of no less than \$25,000.

In addition, for each measurement year a network fails to meet the rate of compliance threshold set forth in subdivision (b), the relevant subsidiary will submit a corrective action plan to the Department setting forth the steps it intends to take to improve its network capacity to provide timely access to urgent care and non-urgent appointments.

(d) The identified subsidiaries will adhere to all requirements set forth in the Methodology and Templates published pursuant to Section 1367.03(f)(3) and any regulations promulgated pursuant to that subdivision in gathering and submitting the timely access compliance and annual network reports to the Department on an annual basis. In enforcing these requirements for material violations thereof, the Department will exercise its authority to impose civil and administrative penalties under the Act and Rules. A material violation is a violation of these requirements that impacts the validity or reliability of data, or submission of data in a form that is contrary to Methodology and Templates published pursuant to Section 1367.03(f)(3) and thereby renders the Department unable to compare the subsidiary's data with other health plans reported to the Department.

### ***28. Department of Health Care Services' Independent Third-Party Monitor***

Beginning January 1, 2022, Magellan Medicaid Administration Inc., a subsidiary of Magellan Health Inc., will become the contracted vendor to the California Department of Health Care Services (DHCS) for the administration of Medi-Cal pharmacy benefits and services through a fee-for-service system. This fee-for services system is referred to as "Medi-Cal RX."

As a condition to its contract with DHCS, Magellan Medicaid Administration Inc. entered into a Conflict Avoidance Plan ("Medi-Cal RX CAP) with DHCS. The Medi-Cal RX CAP is incorporated by reference into these Undertakings and a violation of the Medi-Cal RX CAP shall be considered to be a violation of these Undertakings.

As specified in the Medi-Cal RX CAP, DHCS may appoint a third-party monitor to oversee compliance with the terms of the Medi-Cal RX CAP. DHCS, at its discretion, may delegate responsibility for appointing the third-party monitor to the Department.

The Parties agree to submit to oversight by the third-party monitor, as outlined in the Medi-Cal RX CAP, and agree to reimburse DHCS or the Department for the fees and costs of the third-party monitor.

The third-party monitor, or any successor monitor as appointed by DHCS, shall remain in place for the duration of Magellan Medicaid Administration Inc.'s contract, and any amendments thereto, with DHCS for administration of the Medi-Cal RX, unless terminated sooner by DHCS at its sole discretion.

The Independent Monitor appointed by the Department pursuant to Undertaking 30 shall consult with the independent third-party monitor appointed by DHCS where the scope of their responsibilities overlaps. The Department may enforce on the basis of any of the reports and recommendations of DHCS's third-party monitor, in consultation with DHCS, or its own Independent Monitor.

## Competition-Related Undertakings

**29.** The undertakings in this section, *i.e.*, Undertakings 29-34, are being imposed based on the recommendations of the Department's independent expert as reviewed and approved based on all of the evidence, including the responses of the merging parties. The duration of these undertakings shall be 10 (ten) years from the date that the proposed Transaction closes; the Department shall have the option in its sole discretion to extend these undertaking for 3 (three) years.

### **30. *The Department of Managed Health Care's Independent Third-Party Monitor***

The Department shall select an independent third-party monitor ("Independent Monitor") in its sole discretion subject to consultation with Centene. Centene shall reimburse the Department for the cost of the third-party monitor appointed pursuant to this section in an amount up to:

- \$750,000 (seven hundred fifty thousand dollars) for the first 12-month period of the monitor's work measured from the day of the monitor work commences work.
- \$500,000 for each 12-month period thereafter.

However, the limits specified above shall not apply if the Department finds, based on good cause, that further services of the monitor are required to ensure compliance with the Competition-Related Undertakings. The Department shall notify Centene if the Department determines good cause exists for the monitor to exceed the limits identified above and shall provide Centene with an opportunity to respond.

**(a) Selection.** To be qualified to serve as an Independent Monitor, a candidate must disclose to the Department and to Centene any potential conflict of interest, be experienced with health insurance operations and contracting in general, if not also knowledgeable as to health insurance operations and contracting in California and be knowledgeable in particular about behavioral health issues. Centene will disclose candidates it proposes to serve as the Independent Monitor to the Department and the Department will disclose candidates it proposes to serve as the Independent Monitor to Centene. The Department and Centene shall consider diversity, equity, and inclusion in proposing candidates to serve as the Independent Monitor. The Department will give due consideration to any candidates proposed by Centene and Centene will give due consideration to any candidates proposed by the Department. Any interviews of any candidates will be jointly conducted by Centene and the Department. Not later than thirty (30) days after the Department's selection of the Independent Monitor, Centene shall execute an agreement that, subject to the prior approval of the Department, confers on the Independent Monitor those rights, powers, and authorities necessary to permit the Independent Monitor to perform his/her duties and responsibilities described in section (b) of this Undertaking below. Centene may require the Independent Monitor and each of the Independent Monitor's staff and experts to sign a customary confidentiality agreement; provided however, that such agreement shall not restrict the Independent Monitor from providing any information to

the Department and the California Attorney General. Centene will be solely responsible for the expenses of the selected Independent Monitor, including staff and experts of the Independent Monitor, in performing the services described in sections (b) and (d) below, subject to the aggregate annual budget set forth above in Undertaking 30.

**(b) Power.** The Independent Monitor shall have the following powers to the extent necessary to monitor compliance with the Competition-Related Undertakings, *i.e.*, Undertakings 29-34: to investigate Centene's and Magellan's compliance with such Undertakings; to take complaints from customers and clients of Centene, customers and clients of Magellan, competitors of Centene or Magellan, employees of Magellan, employees of Centene, the Department or the California Attorney General<sup>4</sup> (with reasonable notice to be provided thereafter to all parties); to inspect records and to compel disclosure of confidential documents subject to any demonstrated legally recognized privilege and appropriate confidentiality protections; to interview witnesses (if Centene or Magellan employees, then at the employee's election, subject to reasonable prior notice and the opportunity for Centene or Magellan to have counsel present); to hire staff and experts; and to make recommendations concerning enforcement to the Department.

**(c) Duty to Cooperate:** Centene and Magellan shall cooperate with the Independent Monitor in the performance of the Independent Monitor's work and shall take no action to interfere with or impede the Independent Monitor's ability to monitor compliance with the Competition-Related Undertakings, *i.e.*, Undertakings 29-34.

**(d) Reporting:** Centene and Magellan shall each provide annual reports to the Independent Monitor of Centene's and Magellan's efforts to comply with Competition-Related Undertakings, *i.e.*, Undertakings 29-34. Within a reasonable time from the date the Independent Monitor receives these reports, the Independent Monitor will be obligated to report in writing to the Department and Centene as to any and all concerns as set out in these annual reports regarding Centene's and Magellan's performance of their respective obligations under the Competition-Related Undertakings, *i.e.*, Undertakings 29-34.<sup>5</sup>

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<sup>4</sup> If the Attorney General is representing the Department in implementing or enforcing these Undertakings, then any such complaints will be sent to the Department in accordance with the scope of representation rather than being made directly to the Independent Monitor.

### **31. Hold Separate Requirements**

References to Centene and Magellan in this Undertaking apply to their lines of business and entities that operate in California; provided, however, that the requirements of this Undertaking cannot be vitiated through the storage, transportation, or transfer of Magellan information and data outside of California or to Magellan or Centene owned entities outside of California. This Undertaking also applies to subcontractors of any Magellan line of business or entity that has access to any confidential or proprietary information of such covered Magellan line of business or entity.

(a) Centene and Magellan shall ensure that Magellan's lines of business are run as a separate business from Centene's lines of business, except as allowed in this Undertaking or in the Medi-Cal RX CAP, and that as part of running Magellan's lines of business separately from Centene's lines of business, that (i) proprietary information and data, (ii) commercially sensitive information and data, and (iii) confidential information and data of clients or customers of Magellan's lines of business are not inappropriately used or accessed.

(b) After the proposed Transaction closes, all of Magellan's lines of business will be housed as separate Magellan entities within Centene's Health Care Enterprises ("HCE") portfolio of companies. Other than Corporate Shared Service Functions (as defined below), the Magellan entities shall be kept operationally separate from Centene's health plan business line (*i.e.*, Markets and Products), or any other Centene line of business, and there shall be no integration or sharing of Magellan's employees, processes, transactional and reporting information technology systems, proprietary information and data, commercially sensitive information and data, or any other confidential information and data with Centene's Markets and Products business line or any other Centene business line. Further, employees of Magellan will report through a separate reporting vertical devoted solely to Magellan entities, separated from all other Centene divisions or lines of business, and will maintain leadership independence from Markets & Products leadership (including a separate Board of Directors). To the extent that HCE is solely composed of Magellan entities and lines of business, any obligations in this section of the Undertaking may be carried out through HCE as a whole:

- i. "Corporate Shared Service Functions" shall include finance and accounting/procurement, risk and compliance, legal, human resources, facilities and physical security, information security, and government relations to the extent that said functions do not involve any sharing of commercially sensitive information and data, or confidential client/customer information and data, of any Magellan entity or line of business. However, if the provision of a Corporate Shared Service Function to a Magellan entity could expose confidential or commercially sensitive information or data, including customer or client information or data, to employees of Centene Markets & Products or any Centene line of

business the Magellan entities and lines of business shall have dedicated representatives from each of these shared services (i.e., individuals that exclusively handle the Magellan entities and lines of business-related information). To the extent that HCE is solely composed of Magellan entities and lines of business, any obligations in this section of the Undertaking may be carried out through HCE as a whole.

- ii. To the extent that an employee of a Magellan entity or line of business seeks to transfer to Centene's Markets and Products business line or to any Centene line of business, or vice versa, such transferring employees will sign a specific attestation, offer letter, or similar document agreeing not to disclose any confidential or proprietary information and data from their prior role. To the extent that HCE is solely composed of Magellan entities and lines of business, any obligations in this section of the Undertaking may be carried out through HCE as a whole. However, this provision shall not be interpreted so as to allow movement of employees between any Magellan line of business/entity and any Centene line of business/entity beyond what is allowed in the CAP.

(c) In addition, Magellan's and Centene's existing transactional, reporting, and information systems (which include access controls, host-based intrusion detection, and data management requirements) and related operational processes used to support their respective contractual portfolios (for the avoidance of doubt, in each case, other than as used for the provision of Corporate Shared Service Functions) shall continue to be maintained separately and shall prevent unauthorized access to confidential and proprietary information and data, including customer and client information and data, of Magellan entities and lines of business. Specifically:

- i. Magellan entities and lines of business will maintain control and oversight of their transactional and reporting systems, servers, data repositories, and any other information technology systems (for the avoidance of doubt, other than as used for the provision of Corporate Shared Service Functions), which shall be maintained separate and apart from transactional and reporting systems, servers, data repositories, and information technology systems of Centene Markets & Products or any Centene line of business or entities. Centene and Magellan will ensure, these systems shall continue to store and process data in a manner that supports segregation, to ensure that Centene Markets & Products personnel, or any other Centene personnel, cannot access proprietary information and data of Magellan entities or lines of business, including commercially sensitive data of any kind and any confidential information and data about Magellan customers and clients. No system connections between Magellan lines of business/entities on the one hand and Centene lines of business/entities on the other hand, inflows of data between Centene lines of business/entities on the one hand and Magellan lines of

business/entities on the other hand, and access from Centene lines of businesses/entities to Magellan lines of business/entities, shall be permitted, except as allowed in this Undertaking.

- ii. Magellan and Centene shall not share employees or managers, except as otherwise allowed in this Undertaking, after the proposed Transaction closes.
- iii. Magellan entities and lines of business will implement role-based access to ensure that its data and systems cannot be accessed by personnel of Centene Markets & Products or any other Centene entity or line of business. Magellan shall use the most current technological safeguards and standards to prevent unauthorized access to its informational technology systems and data.
- iv. To the extent Centene lines of business and entities possess proprietary technology that may be utilized by Magellan entities and lines of business, at Magellan's request, Centene shall issue a license (at cost, and with no margin) to such technology to Magellan and Magellan entities and lines of business shall have dedicated representatives from such Centene lines of business and entities (i.e., individuals that exclusively handle the Magellan entities and lines of business-related information) to implement such technology on Magellan's transactional and reporting systems, servers, data repositories, and any other information technology systems to the extent the implementation of such technology could expose confidential, commercially sensitive, or proprietary information and data of Magellan, including Magellan customer or client information and data, to employees of Centene Markets & Products or any Centene line of business.
- v. To the extent proprietary technology possessed by Centene lines of business and entities cannot be transferred to Magellan, with Magellan's approval, data of Magellan entities or lines of business required for the use of such technology may be accessed by the Centene entity that possesses such technology, provided however, that Centene, through that entity, and Magellan will ensure that that Centene entity shall continue to store and process data in a manner that supports segregation of Magellan data, to ensure that Centene Markets & Products personnel, or any other Centene personnel, cannot access proprietary information and data of Magellan entities or lines of business, including commercially sensitive data of any kind and any confidential information and data about Magellan customers and clients. The Centene entity shall have dedicated representatives (i.e., individuals that exclusively handle the Magellan entities and lines of business-related information) and under no

circumstances may those representatives share the information and data of Magellan lines of business and entities with non-Magellan personnel.

- vi. To the extent Magellan and Centene agree to pursue joint research and development projects, Magellan and Centene may create a joint venture that aggregates more granular information and data from Magellan and Centene lines of business and entities, provided however, that the joint venture will maintain control and oversight of its transactional and reporting systems, servers, data repositories, and any other information technology systems, which shall be maintained separate and apart from transactional and reporting systems, servers, data repositories, and information technology systems of Centene Markets & Products or any Centene line of business or entities. Centene and Magellan will ensure, through the joint venture, that the joint venture's systems shall continue to store and process data in a manner that supports segregation, to ensure that Centene Markets & Products personnel, or any other Centene personnel, cannot access proprietary information and data of Magellan entities or lines of business, including commercially sensitive data of any kind and any confidential information and data about Magellan customers and clients. The joint venture may report the results of its research and development projects to both Centene and Magellan, provided however, that any reporting only includes summary level information and data from Magellan entities or lines or business, and nothing more granular.
- vii. To the extent data of Magellan entities or lines of business is required for financial reporting or other entity-wide purposes, all such data shall be aggregated to the broadest extent possible consistent with proper accounting practices (e.g., not customer- or client- specific) before being reported to any manager or officer with any responsibility for any Centene line of business.
- viii. Only summary level financial, administrative, and operational reporting information from Magellan entities or lines of businesses, and nothing more granular, may be reported to Centene executives that oversee both Centene lines of business/entities/products and Magellan lines of business/entities/products (e.g., the Chief Executive Officer of Centene or the General Counsel of Centene, after the proposed Transaction closes).
- ix. The Independent Monitor shall be afforded a reasonable opportunity to review and report on any modifications in user-based security that may affect the obligations of these Undertaking before those modifications are implemented. The Independent Monitor shall also be afforded a reasonable opportunity to review and report on any access list of individual employees who have access to confidential or proprietary

information and data of Magellan lines of business/entities, including those employees involved in training or who have investigative functions, prior to finalization of the list.

(d) In the event that the parties need to request any new exceptions to the prohibitions of this Undertaking, the parties shall file a petition with the Independent Monitor requesting a report and recommendation as to such a new exception, with a copy of that petition to be filed with the Department. In considering the petition, the Independent Monitor shall consider the following: the parties' claimed benefits for any such new exception to any customers, consumers, or markets involving their products, including the existence and nature of any evidence supporting those benefits; whether the new exception is reasonably necessary to realize any of the parties' claimed benefits; whether there is evidence of any negative effects of the new exception on any customers, consumers, or markets involving their products, including the nature of any such evidence; and whether the claimed benefits significantly outweigh any negative effects of the new exception. In its sole discretion, the Department may present evidence of any negative effects of the new exception to the Independent Monitor. The Investigative Monitor shall commence an investigation upon receipt of the petition and within no more than one hundred twenty (120) days of receiving the petition, the Independent Monitor must issue a report and recommendation as to whether the petition should be granted, conditionally granted, or denied. The Department shall review the report and recommendation and make a final decision on the petition no more than sixty (60) days after the receipt of the Independent Monitor's report and recommendation on the petition.

(e) Magellan's lines of businesses/entities and Centene's lines of business/entities shall provide training and education programs for each of their employees regarding the treatment of confidential or proprietary information. Such training and educational programs shall happen on an annual basis except for newly hired employees, who shall be required to go through such training or educational programs as immediately as is feasible upon starting work. Each employee shall be required to attest to their completion of these trainings. Both Centene and Magellan shall maintain compliance programs, including appropriate disciplinary measures, the appointment of an internal compliance officer, and reporting system for potential breaches, in order to prevent the exchange and misuse of confidential, proprietary, or any otherwise commercially sensitive information. All Centene and Magellan lines of business and entities shall also comply with applicable laws relating to protected health information, including, but not limited to, HIPAA.

(f) For the avoidance of all doubt, the Medi-Cal RX CAP shall not be affected or diminished in any way by this undertaking. Similarly, the duration of this undertaking shall not be affected by any DHCS' termination of its relationship with Magellan. But in the event DHCS terminates its administration of Medi-Cal pharmacy benefits with

respect to Centene's specialty pharmacies, the Competition Related Undertakings (i.e., Undertakings 29-34) shall fully apply.

(g) For the avoidance of doubt, nothing in this Undertaking shall:

- (i) prevent Centene from entering into contracts with Magellan under which Magellan acts as a vendor for the provision of services, so long as such contracts are made on an arm's length basis and with substantially the same terms and conditions provided to entities unaffiliated with Centene. Contracts between Centene and Magellan as allowed under this subdivision (i) shall not allow Centene to have access to: (1) disaggregated information and data of California licensed health plans not owned by Centene; or, (2) information and data that Centene could use to learn confidential or proprietary data regarding other California licensed health plans not affiliated with Centene that contract with Magellan (e.g., data Centene could "reverse engineer" to discern confidential information regarding other California health plans not owned by Centene).
- (ii) prevent employees or contractors of Centene from obtaining Magellan data necessary for the limited purpose of performing the functions listed below so long as: (1) the employee(s) or contractor(s) do not share such data, directly or indirectly, with other Centene-owned entities, Centene employees, or Centene personnel in a way that could vitiate the Competition Undertakings and (2) confidential or proprietary information regarding any Magellan customer is not disclosed, directly or indirectly, to any Centene-owned California health plan or to any person who makes decisions regarding the premiums or benefit designs of any Centene-owned California health plans:
  - To enable true, complete and accurate reports, attestations, certifications of compliance and the like to be provide to auditors, regulatory authorities, and quasi-governmental bodies (including the Securities and Exchange Commission ["SEC"] and the New York Stock Exchange;
  - Responding to due diligence requests from, negotiating purchase and sale agreements with, or providing certifications to, in each case, third-party buyers (that are not "affiliates" of Centene) with respect to the Magellan entities or lines of business;
  - Financial reporting (including common general ledger platform), accounting (including accounting payable);
  - Compliance with applicable actuarial standards of practice;
  - Internal controls, testing and internal audits;

- Tax reporting and tax sharing;
- Treasury, investments and cash management;
- Insurance purchasing;
- Legal and regulatory compliance;
- Information security;
- Consolidated budgeting and forecasting;
- Conversion of shares of Magellan Health, Inc. and ongoing administration of Centene Corporation shares and award to certain Magellan employees;
- Procurement functions;
- Facilities/lease portfolio management; and
- HR/payroll.

***32. Other undertakings related to recommendations from the independent competitive expert's report***

(a) After the proposed Transaction closes, Magellan's lines of business/entities (including but not limited to., HAI-CA and MHSC), or Centene's lines of business/entities ( including but not limited to Centene Markets & Products) shall not enter into contractual arrangements with behavioral health care providers who provide services in California that expressly or implicitly restrict, or impose implicit or express exclusivity on, those providers' ability to contract with employers, insurers and health care service plans.

(b) After the proposed Transaction closes, Magellan lines of business/entities (i.e., HAI-CA) shall continue to provide access to behavioral healthcare services for non-affiliate health care service plan customers (e.g., Blue Shield of California as of the time of entry of these Undertakings) for a period of two years after a contract is terminated with any price increases post-termination being limited for each year of that two year period to the rate of inflation, as measured by the Consumer Price Index for Medical Care for California.

***33. Corporate Reorganization of Centene Lines of Businesses/Entities/Products and/or Magellan Lines of Business/Entities/Products***

Centene and Magellan may not engage in any material corporate reorganization, financing, assignment, or restructuring that would have the effect of vitiating any of the above Competition-Related Undertakings, i.e., Undertakings 29-33, without the prior

approval of the Department.<sup>6</sup> The Department may request the Independent Monitor investigate and issue a report and recommendation on any corporate reorganization, financing, assignment, or restructuring to determine if it is material and would have the effect of vitiating any of the above Competition-Related Undertakings. In the event that any corporate reorganization, financing, assignment, or restricting occurs that is material and would have the effect of vitiating any of the above Competition-Related Undertakings, the Department may in its sole discretion, in addition to any other remedy it has in these Undertakings, reopen these Undertakings and impose additional Undertakings to address this issue.

### **34. Anti-Retaliation Provision**

Retaliation or threats of retaliation based on any customers and clients of Centene, customers and clients of Magellan, competitors of Centene or Magellan, employees of Magellan, employees of Centene, having provided information in conjunction with these conditions to any party, the Department, the Independent Monitor, or the Attorney General, is prohibited.<sup>7</sup> The Independent Monitor will establish a confidential hotline by which employees of Centene or Magellan can report allegations that the Competition-Related Undertakings (*i.e.*, Undertakings 29-34), have been, are being, or are about to be violated.

## **Community Investments**

### **35. Charitable Contributions**

Centene shall contribute \$10 million to the Purchaser Business Group on Health (PBGH), a nonprofit 501(c)(3) foundation, to support PBGH's California Quality Collaborative's initiative to accelerate behavioral health integration in primary care practices. The total contribution per this undertaking shall be made over five (5) years as follows:

- Year 1: \$1.5 million
- Year 2: \$2.5 million
- Year 3: \$2.5 million
- Year 4: \$2.25 million
- Year 5: \$1.25 million

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<sup>5</sup> The references to Centene and Magellan in this Undertaking apply to both their lines of business and entities. However, a single annual report may be issued on behalf of all of the Centene entities and lines of business, and another single annual report may be issued on behalf of all of the Magellan entities and lines of business.

<sup>7</sup> The references to Centene and Magellan in this Undertaking apply to their lines of business and entities.

Furthermore, Centene agrees to continue Health Net's sponsorship of the California Quality Collaborative through and including calendar year 2026 at a level commensurate with Health Net's sponsorship in 2021.

The contributions per this Undertaking shall be made within the first quarter of each calendar year during which this Undertaking is operable. Within 30 calendar days of making a contribution as required by this paragraph, Centene shall submit a report to the Department demonstrating compliance with this undertaking.

### **General Undertakings**

#### ***36. Reports to the Department***

- (a) HAI-CA and MHSC shall notify the Department of the Acquisition closing date by submitting an Amendment filing through the Department's eFiling portal within five (5) business days of the closing.
- (b) HAI-CA and MHSC shall submit all reports required by these Undertakings through the Department's eFiling portal.
- (c) Unless otherwise specified in these Undertakings, the Parties shall submit an annual report to the Department by March 1 informing the Department of activities and compliance regarding these Undertakings during the preceding calendar year. These reports shall be organized by Undertaking and shall provide sufficient detail for the Department to determine whether the Parties are compliant with each Undertaking. The first report is due March 1, 2022.

#### ***37. Enforceability of Undertakings***

The Undertakings set forth herein shall be enforceable to the fullest extent of the authority and power of the Director of the Department under the provisions of the Act, including all civil, criminal, and administrative remedies (such as Cease and Desist Orders, freezing enrollment, and assessment of fines and penalties). The Undertakings shall act as an Order of the Director.

The Parties acknowledge that the Act's enforcement remedies are not exclusive and may be sought and employed in any combination deemed advisable by the Department to enforce these Undertakings

#### ***38. Terms and conditions of Undertakings***

The Undertakings set forth herein shall be subject to the following terms and conditions:

- (a) **Binding Effect.** The Undertakings set forth herein shall be binding on the Parties and their respective successors and permitted assigns. If the Parties fail to fulfill their obligations to the Department as provided under the Undertakings set forth herein, the Parties stipulate and agree that the Department shall have the authority to

enforce the provisions of these Undertakings in a California court of competent jurisdiction.

- (b) **Governing Law.** The Undertakings set forth herein and their validity, enforcement, and interpretation, shall for all purposes be governed by and construed in accordance with the laws of the State of California.
- (c) **Venue.** The proper venue of any dispute arising from the Undertakings set forth herein shall be Sacramento, California.
- (d) **Invalidity.** In the event any Undertakings or any portion of any Undertaking set forth herein shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction, such Undertaking or any portion of any Undertaking, to the extent declared invalid or unenforceable, shall not affect the validity or enforceability of any other Undertakings, and such other Undertakings shall remain in full force and effect and shall be enforceable to the maximum extent permitted by applicable law.
- (e) **Duration.** The Undertakings set forth herein shall become effective upon the closing date of the Acquisition, and except as to those provisions of the Undertakings that contain separate termination provisions, shall remain in full force and effect for four (4) years, ending on the fourth anniversary of the closing date of the Acquisition.
  - (i) In the event of a change, directly or indirectly, of a controlling interest, in one or more Magellan health plans licensed by the Department by an entity that is not an affiliate of Centene, these Undertakings shall cease to apply to such divested entity upon the close of such sale. The Parties agree that prior to such change of a controlling interest, the parties to the transaction must file a material modification with and obtain an order of approval from the Department. The Parties further agree that the Department may deny such a material modification if the Department determines the acquisition is not an arm's length transaction or a purpose of the acquisition is to circumvent these Undertakings.
  - (ii) For the purpose of this subdivision (e), the following definitions apply:
    - "affiliate" means any person controlling, controlled by, or under common control with, or whose decision-making is influenced by, Centene. Additionally, a person is an "affiliate" of Centene if such person:
      - is a director, trustee or a member of Centene's or any Centene subsidiary's executive committee or other governing board or committee;
      - is an officer of Centene or any Centene subsidiary or holds any other position involving responsibility and authority similar to that of an officer of Centene or any Centene subsidiary; or,

- holds five percent (5%) or more of outstanding equity securities in Centene or any Centene subsidiary (including a combined share of 5% or more in Centene's and/or its subsidiaries' outstanding equity securities).
  - "control," "controlling," "controlled by," and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Centene or any Centene affiliate, whether through the ownership of voting shares, debt, by contract, or otherwise.
- (f) **Third-Party Rights.** Nothing in the Undertakings set forth herein is intended to provide any person other than the Parties and the Department, and their respective successors and permitted assigns, with any legal or equitable right or remedy with respect to any provision of any Undertaking set forth herein.
- (g) **Amendment.** The Undertakings set forth herein may be amended only by written agreement signed by the Parties and approved or consented to in writing by the Department, except insofar as these Undertakings provide otherwise.
- (h) **Assignment.** No Undertaking set forth herein may be assigned by the Parties, in whole or in part, without the prior written consent of the Department.
- (i) **Specific Performance.** In the event of any breach of these Undertakings, the Parties acknowledge that the State of California would be irreparably harmed and could not be made whole by monetary damages. It is accordingly agreed that the Parties shall waive the defense in any action for specific performance that a remedy at law would be adequate, and the Department should be entitled to seek an injunction or injunctions to prevent breaches of the provisions of these Undertakings and to seek to specifically enforce the terms and provisions stated herein. The Department's right to seek an injunction does not supersede the remedies available to the Director.

**CENTENE CORPORATION**

Signature: ORIGINAL SIGNED BY

Date: December 28, 2021

Print Name: Christopher A. Koster

Print Position Title: General Counsel

**MAGELLAN HEALTH, INC.**

Signature: ORIGINAL SIGNED BY

Date: December 28, 2021

Print Name: David P. Bourdon

Print Position Title: SFO, Magellan Health

**MAGELLAN HEALTH SERVICES OF CALIFORNIA, INC. – EMPLOYER SERVICES**

Signature: ORIGINAL SIGNED BY

Date: December 28, 2021

Print Name: Tosha Larios, DO/DPM, MPH, MBA-HCA

Print Position Title: VP/COO, Interim President

**HUMAN AFFAIRS INTERNATIONAL OF CALIFORNIA**

Signature: ORIGINAL SIGNED BY

Date: December 28, 2021

Print Name: Tosha Larios, DO/DPM, MPH, MBA-HCA

Print Position Title: VP/COO, Interim President