



## **CONSUMER ADVOCACY STATEMENT Regarding the Proposed Centene Acquisition of Fidelis Care February 2018**

Four leading statewide consumer advocacy groups – Consumers Union, Health Care for All New York, Medicaid Matters New York, and New Yorkers for Accessible Health Coverage – are concerned about the proposed acquisition of the nonprofit Fidelis Care health plan by Centene Corporation, a national for-profit insurance company. The major concerns are:

- 1) Fidelis Care's charitable health care assets should be protected for the public's benefit, and remain dedicated to a social mission of expanding health insurance coverage and care for the medically underserved.
- 2) The State must provide fair, impartial and comprehensive oversight of any insurance conversions or acquisitions, to ensure they are in the public interest, and that consumers will not lose coverage or face higher prices as a result of the transaction.
- 3) Shortfalls in health care funding for Medicaid and other public health care programs are an urgent public matter. The State needs long-term funding streams for our state health care programs that are robust, renewable and reliable.

### **Background**

Since the mid-1990s, Fidelis Care has operated in New York State as a nonprofit health plan. Fidelis Care has played an important role in providing affordable, accessible health insurance to people throughout New York State through Medicaid, Qualified Health Plans, Child Health Plus, and the Essential Plan, as well as Managed Long Term Care, Fully Integrated Duals Advantage and Medicare Advantage. According to its website and nonprofit tax return, the mission of Fidelis Care is:

- To promote health through quality, accessible care and services for all;
- To join in partnership with health professionals to assist them in their healing work;
- To act as a facilitator to build linkages and systems for the coordination of care and services among healthcare, behavioral and social services, as well as educators and religious leaders, to address the spiritual, emotional, and physical needs of those we serve;
- To advocate for a health policy that accords true dignity and respect for all human persons, especially the poor and underserved.

This mission should inform the future use of its charitable assets.

Under New York's Not-For-Profit Corporation laws, nonprofit health insurers are Type B charitable corporations, whose resources must remain dedicated to their charitable missions of expanding access to health coverage and health service. The transformation of a nonprofit health plan to a for-profit insurance company is not just a corporate technical change; it is a significant decision about how to arrange and provide for health coverage in New York State that could heavily impact consumers and their access to coverage and services. By changing to for-profit operation, the managers of Fidelis Care/Centene would assume a fundamentally different fiduciary duty - to maximize returns for investors and owners – rather than a duty to carry out the mission for which Fidelis Care was founded.

### **Two Existing Proposals: Fidelis Care/Centene & Governor Cuomo**

Fidelis Care and Centene assert that: no major changes in operations are planned at this time; the current management team will remain in place; and that Fidelis Care's products and services will be enhanced and strengthened through the acquisition. Fidelis Care has further proposed to convey 100% of the proceeds of the sale of the assets to a charitable foundation to continue a mission of assisting uninsured and medically-underserved people. Fidelis Care has engaged philanthropic advisors to develop and elaborate the plan to create a charitable

foundation. The proposal is being reviewed by the NY Attorney General's office, and is at an early stage.

The Governor's FY 2019 budget proposes that 90% of the Fidelis Care/Centene sale profits should be deemed as a "public asset," to be spent on Medicaid and other state health care programs, and that 10% of the proceeds should be directed to the New York State Health Foundation, per a 2007 law that was passed when the EmblemHealth conversion was being considered. The Governor's budget calls for \$3 billion in funding to be redirected to the Health Care Reform Act (HCRA) Fund, at a rate of \$750 million a year per year for four years. The Governor proposes that \$500 million of the Fidelis Care proceeds should be allocated in FY 2019 for Medicaid, and \$250 million should be allocated to a "Healthcare Shortfall Fund," to assist with continuing programs that may be affected by the loss of federal funds. In order to effectuate this plan, the Governor's budget notes that additional legislative authority will be needed to deem the assets as a "public asset," since the nonprofit Fidelis Care operates with a Certificate of Authority under the Public Health Law, and was not technically covered by the law passed in 2007.

### **The Consumer Advocacy Response to the Transaction**

In general, New York State has strong laws governing the disposition of the charitable assets in nonprofit conversions and asset sales, that require those assets to remain dedicated to a nonprofit charitable mission. However, when it comes to asset sales or conversions by nonprofit health insurance companies, the state is asserting the right to take the lion's share of those assets for the state health care budget,. Thus, New York State's plan for the Fidelis Care assets is sharply different than the plan proposed by Fidelis Care, and it raises the possibility that there will be further negotiations and bargaining over the corpus of the assets.

This situation raises three urgent priority concerns for consumer advocates and community organizations:

#### **1) Fidelis Care's charitable health care assets should be protected for the public's benefit, and remain dedicated to a social mission of expanding health insurance coverage and care for the medically underserved.**

We are concerned that both proposals may have serious flaws that could undermine the goal of expanding health insurance coverage and care. Community members and taxpayers have contributed to Fidelis Care's success over many years, supporting it by enrolling as customers, contributing to its operations by paying taxes for public health programs, and providing tax benefits by virtue of its nonprofit charitable status. Both the State and Fidelis Care must fully disclose in advance of the acquisition -- and be held accountable for -- any plan to redeploy these assets for other purposes, including public funding of government health care programs. State government is responsible for funding a vast range of health care programs, not all of which are consistent with the purposes for which Fidelis Care was established. The long-term interests of New York consumers and patients must be fully and transparently considered, with multiple opportunities for public and stakeholder input.

We believe Fidelis Care's health care assets should remain dedicated to high priority purposes that are consistent with its long-standing nonprofit charitable mission, such as:

- Expanding health insurance coverage and care for people not currently served by existing state and private programs.
- Reducing barriers to coverage affordability and health care access, including addressing high levels of cost sharing in insurance plans.
- Overcoming gaps and barriers to care for medically underserved patients and vulnerable populations, including children, seniors, women, people of color, immigrants, people who are LGBTQ, and people with chronic illnesses and disabilities.
- Supporting consumer assistance programs to ensure patients are enrolled and can stay continuously enrolled, make informed choices, and successfully use and navigate the health care system to get the care they need.
- Improving the consumer experience of care by ensuring that safe, quality, accountable care is provided to everyone who needs it, while minimizing administrative costs, medical billing hassles, faulty networks and other structural problems that waste money and contribute to poor medical outcomes.

Only a carefully developed asset deployment plan with an explicit mission of pursuing these particular areas of endeavor would appropriately carry forward Fidelis Care's mission. The State's and Fidelis Care's conflicting

proposals lack specifics, and do not give us comfort that the mission will truly be sustained.

**2) The State Attorney General, Department of Financial Services, and Department of Health must perform fair, impartial and comprehensive oversight of any insurance conversions or acquisitions, to ensure they are in the public interest, and that consumers will not lose coverage or face higher prices as a result of the transaction.**

Advocates perennially monitor access to services administered by managed care plans and raise concerns when plans' practices adversely impact consumers. The proposed major transaction involving Fidelis Care-Centene represents a major change in the health insurance marketplace, and is deserving of close regulatory scrutiny and thorough public oversight, similar to other major health care policy decisions in our state. The State must ensure this change at least does no additional harm, and preferably includes guarantees to improve the quality of services provided through this insurer.

In order to determine whether the transaction is in the public interest, regulators should address a series of questions including:

- How can consumers be assured that Centene will maintain and improve upon the Fidelis Care network of existing providers so that consumers will face little disruption in access to care? This is a salient concern since Centene is essentially an unknown entity in New York State. Moreover, we are cognizant of the January 11, 2018 announcement of a consumer class action lawsuit against Centene alleging that it misrepresents the extent of its provider network, leading consumers to incur unnecessary out-of-pocket health spending.<sup>1</sup>
- How will adding profit requirements to the plan's operations impact Fidelis Care's current insurance offerings?
- Will administrative costs for profits, taxes, marketing and administration go up? Will the medical loss ratio change, with funding for medical care decreasing?
- What health care services might be prioritized or discontinued under for-profit operation? Will a full range of reproductive health services be covered, in conformance with state policy?
- Would the new entity re-evaluate Fidelis Care's current commitment to providing coverage in every region of the state? Might they abandon operations in less-profitable regions?
- What would be the implications for New York consumers and Medicaid patients if the company were acquired by yet another large out-of-state health insurance company?
- Will the State lose policy and regulatory options it now has access to, if Fidelis Care is no longer a New York-based nonprofit? Will the new company be less likely to share data, or commit to long-term initiatives to improve access to primary care or improve care quality?

The Attorney General, DFS and/or DOH should commission an independent analysis of the potential impacts on health care and health services for people served and intended to be served by Fidelis Care, to be fully considered and publicly released before the transaction is approved.

Regulators must also ensure that:

- The board of the converting or selling entity has done its due diligence, and has thoroughly considered alternatives to for-profit operation before selling or converting the organization to a for-profit company;
- The public, including Fidelis Care patients and family members, and community, health advocacy and stakeholder groups, are able to meaningfully participate in state review of the proposed acquisition, through full public disclosure of the details of the proposed sale and the opportunity to provide comment in public hearings;
- The transaction is in the public interest, including enforceable mechanisms that ensure that consumers will not incur disruption in their provider networks nor face rising health plan premiums costs that are inconsistent with Fidelis Care's past rate requests;
- The nonprofit charitable assets of the converting or selling plan have been fairly valued by independent financial experts under contract to New York State, and will remain dedicated to a suitable charitable mission;
- New Yorkers previously enrolled in Fidelis Care would, under Centene ownership, have full access to the full range of health services they need, including reproductive health services unrestricted by Catholic ethical

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<sup>1</sup> See, K. Keith, Health Affairs, *Consumers Sue Centene Over Network Adequacy, Transparency*, January 15, 2018.

- principles, HIV-related services and care, and end-of-life care;
- Any charitable foundation that is formed or funded through the proposed acquisition will continue an appropriate and consistent mission of providing coverage and care to patients, especially low- and moderate-income people, people with chronic illnesses and disabilities, the medically underserved and other vulnerable populations;
  - The board and governance structures of any proposed foundation(s) are appropriate and representative of the diverse communities that Fidelis Care serves and the foundation intends to serve;
  - There are no financial or operational conflicts of interest between the foundation(s) and the successor for-profit corporation; and
  - Fidelis Care and Centene executives, board members, corporate insiders and investors do not reap an inappropriate windfall from converting the company to for-profit operation, through increases in stock options and executive compensation.

**3) Shortfalls in New York health care funding for Medicaid and other public health care programs are an urgent public matter. The State needs long-term sustained funding streams for our state health care programs that are robust, renewable and reliable.**

The proposed use of nonprofit insurance plan assets for a Healthcare Shortfall Fund raises concerns about feasibility and practicality of relying on marketplace transactions that are still under regulatory review, and may not come to fruition. In 2007-2008, the State considered a similar controversial plan to fund health care programs with proceeds from the proposed EmblemHealth conversion, but EmblemHealth withdrew its proposal.

This underscores the point that insurance conversions and asset sales are episodic, uncertain and highly contingent on other consumer and stakeholder concerns being addressed, before conversions or asset sales can be allowed. If economic and business conditions change, it is conceivable Centene could withdraw its proposal, and the state would be left with a significant funding gap. A Healthcare Shortfall Fund may provide temporary relief, but the State must act to ensure it will not be quickly depleted, and that it be used to ensure New York is moving ahead to assure affordable, quality health coverage for all New York residents, including immigrants.

We urge New York State policymakers to consider additional options to raise ongoing, regularly recurring revenues to adequately fund Medicaid and state health care programs, so that taxpayers and consumers can be assured that those programs will be viable and stable and not face the threat of discontinuation if insurance plan transactions do not materialize. For example, the Governor has proposed that the State institute a new assessment on insurers to help fund the state's existing and new health care programs going forward.

## **Conclusion**

All aspects of the Fidelis Care/Centene transaction – both in terms of the marketplace and consumer impacts of the operations of the new for-profit company and the charitable asset disposition plan – need to be clearly understood and spelled out, before making any decision as to whether the sale is in the public interest. Just as it would be wrong for the State to proceed before fully reviewing the impacts on Fidelis Care customers, it would also be wrong for the State to proceed without fully specifying how the money would be used and spent and by whom.

To the extent the State may end up playing any direct and/or indirect role in the use of insurer asset sales or conversions over the short or longer term, it should be in a manner that results in new public programs that are additive and carry forward Fidelis Care's mission of expanding access to coverage and care as outlined above, and above all, be specific. Further, such decisions should be made in a public and deliberative process involving consumer advocates.

**For more information, contact:**

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