

Medicaid

Medicaid Matters New York

Matters

May 23, 2018

Acting Attorney General Barbara Underwood
New York State Department of Law
120 Broadway
New York, NY 10271

VIA EMAIL: Fidelis.Transaction@ag.ny.gov

Dear Acting Attorney General Underwood:

Thank you for the opportunity to comment on the proposed asset sale by Fidelis Care to Centene Corporation. On behalf of Medicaid Matters New York, I submit the following comments with regard to this transaction, where Fidelis is selling substantially all of its assets to a for-profit insurance company, and proposing to create a charitable foundation to continue its nonprofit mission.

Medicaid Matters New York (MMNY) is the statewide coalition representing the interests of Medicaid beneficiaries. We are dismayed at the public process being provided under this major transaction proposed by the largest Medicaid plan in the state, which could have a significant impact on Medicaid consumers. A 14-day window for submitting comments to your office is far too short; the volume of material alone does not allow for adequate review and comment in this short timeframe. As communicated to your staff late last year, consumer advocates urge your office to provide adequate opportunity for public input. This should include public hearings around the state on the proposed transaction, and notification of all current Fidelis enrollees to let them know of the opportunity to comment.

We are also concerned that the state has not conducted an adequate assessment of potential impacts on consumers and the health care system overall. Conversions and asset sales by nonprofit health corporations have now become part of state budget negotiations. From a consumer advocacy perspective, this is problematic for many reasons. In this case, the state is taking \$2 billion of the proceeds from the transaction, raising questions about its ability to independently assess whether the deal is in the public's interest. Future health insurance conversions and asset sales should be handled independently by your office and the other regulatory agencies. New York would be better served by adopting a model state law governing conversions and sales of substantially all assets by a nonprofit health plan or hospital, to ensure that the public has meaningful input prior to approval of the transaction.

The Proposed Charitable Health Care Foundation Should Maintain a Priority Focus on Ensuring All New Yorkers have Access to Coverage and Care

Fidelis Care's health care assets should remain dedicated to high priority purposes that are consistent with its long-standing nonprofit charitable mission to expand health insurance coverage and access to care for New Yorkers, especially:

- Expanding health insurance coverage and care for people not currently served by existing 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; and,
- 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.

Fidelis Policyholders and Consumers Could Potentially Be Harmed by the Asset Sale

We are pleased to see in Exhibit 25 of the petition, Fidelis Care has agreed to pay for an independent annual report over a three-year period on the impact of the asset sale transaction on the Medicaid patient population, and make recommendations to the new Fidelis board based on the report. This monitoring of health care coverage and access in the community is very important for ensuring that any emerging issues can be brought to the attention of the board and addressed by Centene. It is unfortunate the provision would only be for three years, and encourage you to extend it as long as reasonably possible.

Fidelis Care's petition generally assumes and argues that consumers will not be unfairly disadvantaged by selling the nonprofit plan to the for-profit Centene Corporation. For the first several years, policyholders might see relatively few changes, due to continuity of management and regulatory agreements with the New York Department of Financial Services. However, it seems likely that operation of the health plan by Centene will take on a more commercial character in the years that follow, as Centene will have a fiduciary duty to make as much money for stockholders as possible.

In light of this reality, the Fidelis Care plan for redeployment of its assets to a charitable foundation needs to be carefully reviewed by the Attorney General, in terms of whether such a move may actually divert resources that are currently devoted to the ongoing and progressive expansion of insurance coverage to as many New Yorkers as possible. Fidelis is in effect changing its social mission to a broader form of health care philanthropy, assuming that there will be minimal adverse impacts on those who are currently covered, or intended to be covered. But in the future, there will no longer be a nonprofit Fidelis health care plan that works to hold down costs, and provide coverage to as many New Yorkers as possible.

The Mother Cabrini Foundation Has a Special Responsibility to Ensure Participation by the Community It Serves

Unlike foundations created by private wealth or corporate generosity, the proposed Mother Cabrini Foundation would hold assets already dedicated to the broader public interest, that have been accrued through support by Fidelis policyholders and New York state taxpayers.

The board of directors of a foundation endowed with these unique charitable health care assets should determine how to spend the funds entrusted to it through meaningful consultation with the public. Grant making institutions are most effective when all of their elements - board, staff, and program operations - are highly interactive with the communities they intend to serve. To be successful, a foundation created to enhance and promote access to health care will need active cooperation and consultation with leaders in the community who understand and can advance the needs of vulnerable and underserved populations. The foundation's board of directors is also much

more likely to see itself as responsible to the diverse consumers that Fidelis Care historically sought to serve if the interests of those patients are fully represented on the board.

For these reasons, we believe the board of the new foundation should consist of members who reflect the interests of the diverse range of consumers who are served and intended to be served by Fidelis Care. These include: children, seniors, people with chronic illness and disabilities, working people (especially those who lack affordable coverage), and Medicaid beneficiaries. They also include the uninsured, the under-insured and the medically underserved, who are statistically much more likely to be young, poor, chronically ill, and members of minority groups. The board needs to include geographic diversity from Fidelis Care's service area, and include members who are familiar with health care needs in urban, rural and suburban settings.

The Proposed Mother Cabrini Foundation Board of Directors Does Not Currently Include a Significant Voice for Patients and Community Organizations

The initial board proposed by Fidelis Care includes many people from financial companies, including Visa, Morgan Stanley, and the New York Stock Exchange, and four hospital executives. We urge you to require that at least one-third of the board seats be set aside for consumers (Fidelis policyholders) and consumer advocates.

There should also be designated seats on the board for people with expertise in the areas the foundation intends to fund, such as social determinants of health, address the opioid crisis, and more. Diversity of board members must be emphasized, including but not necessarily limited to: people of color; people with lower-income; and professionals from fields other than finance and large health care facilities, such as community-based providers and community-based organizations

In addition, we are concerned that it is a conflict of interest to appoint board members from hospitals that negotiate with Centene for provider rates.

The Mother Cabrini Foundation Should Establish an Ongoing Community Advisory Committee

To promote good communication with nonprofit organizations and stakeholder groups statewide, the foundation should establish an ongoing community advisory committee. Linking the foundation closely to the community it serves can be facilitated by providing in the by-laws for a permanent Community Advisory Committee with one or more of the following functions:

- To serve as an outside nominating committee to fill vacancies on the foundation board of directors (as well as a training ground for potential board members);
- To act as an ongoing liaison with the community, particularly with respect to identifying community needs and priorities for future efforts of the foundation; and
- To conduct critical assessments of the foundation's interaction with the community it serves and periodic reviews of the performance of the foundation in meeting its mission, from the community's perspective.

The Mother Cabrini Foundation Should Work to Promote a Greater Voice for Consumers in the Health Care System

The proposed foundation should prioritize efforts to address the current lack of voice for Medicaid patients and health insurance consumers in health care institutions and public policy. To improve medical outcomes, New York needs strategies and initiatives to help people be more engaged in their care, and to become involved in giving feedback on weaknesses and gaps in the current system.

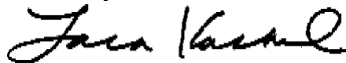
The foundation should fund advocacy and policy work by New York nonprofits, to help close gaps in medical coverage and health care access. The Grant Program Guide provides an example of a potential project to support Inclusive and Culturally Competent, Quality Healthcare. The project described in point #8 would "...Help to ensure through advocacy efforts that Federal regulatory and policy action do not jeopardize enrollment rates, access or affordability for low-income New Yorkers, and that the needs of undocumented uninsured are addressed." We would urge the new foundation to support advocacy and policy work on behalf of patients and vulnerable populations at the state level, where provider groups are heavily represented, but consumers and their advocates have little voice.

The Mother Cabrini Foundation Should Be Independent from the New For-Profit Centene Health Plan

To best ensure community responsiveness and public accountability, charitable foundations should be free from influence by the resulting for-profit corporation. Although providing for continuity in stewardship of the nonprofit mission is sometimes a consideration, foundation independence is a strong value for most communities, and limiting connections to the converting nonprofit or undue influence by government officials is, therefore, also important. Because some current Fidelis staff members may continue on with Centene, it is not clear how such ties might affect what the foundation decides to fund.

Thank you very much for the opportunity to comment, and for your consideration of consumer interests in this proposed transaction.

Sincerely,



Lara Kassel
Coalition Coordinator