July 28, 2021

Attorney General Letitia James
New York State Department of Law
120 Broadway
New York, NY 10271

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

Dear Attorney General James:

Thank you for the opportunity to comment on the proposed asset sale by Affinity Health Plan, Inc. (Affinity) to Molina Healthcare, Inc. (Molina). On behalf of Medicaid Matters New York, Health Care for All New York, and The Legal Aid Society, we submit the following comments with regard to this transaction, where Affinity is selling substantially all of its assets to a for-profit insurance company, and proposing to distribute the charitable assets in line with its mission.

We are dismayed at the public process being provided under this major transaction proposed by a Medicaid plan in the state, which could have an 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. Consumer advocates urge your office to provide adequate opportunity for public input. This should include public hearings within the Affinity footprint on the proposed transaction, and notification of all current Affinity 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. In this case, the state is taking $110 million 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 the public has meaningful input prior to approval of the transaction.

<u>Affinity Policyholders and Consumers Could Potentially Be Harmed by the Asset Sale</u>

The petition does not appear to include a plan for independent assessment of the impact on Affinity policyholders and consumers. In its 2018 petition for sale to Centene Corporation, Fidelis Care 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 important for ensuring that any emerging issues can be brought to the attention of the board and addressed by Molina. It is unfortunate Affinity's petition does not propose a similar plan for independent review.

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

Although redeploying assets to Federally Qualified Health Centers (FQHCs) is in itself a positive step, it does not directly address the issue of whether Molina will provide access to comprehensive, accessible, and culturally competent health care to its members, even when that is counter to its profit motive. Although FQHCs play an essential role in the provision of health care for uninsured and insured New Yorkers, they should not have to depend on grant funding when providing medically necessary care for individuals with Medicaid – this should be covered by Medicaid. It is essential that Molina provide all needed care to its members and that there are safeguards applied to this sale to ensure that that continues to happen.

In light of this reality, we would remiss if we did not point out that the Affinity plan for redeployment of its assets to the FQHCs that make up its board, as well as one-time grants to community-based organizations diverts funding away from the purpose of a public health plan, which is the ongoing and progressive expansion of insurance coverage to as many New Yorkers as possible. The assets are being devoted to the mission of the FQHCs that formed Affinity, which is important and laudable. However, in the future, there will no longer be a non-profit health plan that works to hold down costs, and provide coverage to as many New Yorkers as possible.

Molina Must Provide Accessible, Consumer-Oriented Services

It is incumbent on Molina to administer its public programs in the best interest of the New Yorkers enrolled in them. Provider networks must be broad and provide easy access to specialists, in addition to ready access to primary and preventive care for all, regardless of where they are, the needs they have, disability status, primary language spoken, etc. Member services must be fully accessible and must provide accessible, readable notices and be readily available. For all intents and purposes, enrollees should not experience any diminution of services as a result of their plan going from being not-for-profit to for-profit.

Use of Funds to the New York Health Care Transformation Fund

A portion of the assets resulting from this transaction - $110 million – will go to the New York Health Care Transformation Fund. While the petition points out that the purpose of the fund is to support the health care delivery system, we are concerned about an infusion of funds to the Transformation Fund. Funds of this nature are often considered by the New York State Division of the Budget (DOB) to be fungible. It is incumbent on DOB to ensure this one-time infusion of funding resulting from the sale of a plan that was created to serve New Yorkers enrolled in public health insurance programs be used to help providers address critical unmet needs within the footprint of Affinity in New York City and Rockland, Orange, Westchester, Nassau and Suffolk Counties. It must not be used to fill budget holes or balance the Medicaid budget.

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

Sincerely,

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Medicaid Matters New York

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The Legal Aid Society

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On behalf of Health Care for All NY