Actors Fund ☙ African Services Committee ☙ Children's Defense Fund-New York
Community Service Society of New York ☙ Consumers Union ☙ Empire Justice Center
Make the Road New York ☙ Medicare Rights Center ☙ Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ☙ New York Immigration Coalition ☙ Project CHARGE
Public Policy and Education Fund of New York/Citizen Action of New York
Raising Women's Voices-New York ☙ Schuyler Center for Analysis and Advocacy ☙ Young Invincibles

July 1, 2019

Linda A. Lacewell, Superintendent
Troy Oechsner, Deputy Superintendent for Health
John Powell, Assistant Deputy Superintendent for Health
NYS Department of Financial Services
One Commerce Plaza
Albany, NY 12257

RE: Requested Rate Changes – New York Quality Healthcare Corporation (Fidelis) – FCNY 131920331

Dear Superintendent Lacewell, Deputy Superintendent Oechsner, and Assistant Deputy Superintendent Powell:

Health Care for All New York (HCFANY) is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. HCFANY believes that the public rate review process is a vital consumer protection. We are grateful for the opportunity to submit comments and encourage consumers all over New York to do the same each year.

The comments below first address concerns about the market as a whole and second offer comments on the 6.8 percent increase requested by Fidelis.

I. Market-Wide Conditions

A. State Action is Needed to Continue Increasing Enrollment in the Individual Market

New York has successfully cut its uninsured rate in half since the implementation of the Affordable Care Act (ACA), from 10 percent to 5 percent.[1] This has been in part due to New York's robust embrace of the ACA, including the proactive and aggressive steps taken by State leaders to counter recent federal threats to the individual insurance market. Those steps include codifying the ACA into state law, continual efforts to create a seamless enrollment process, and

[1] New York State of Health, 2019 Open Enrollment Report, May 2019, https://info.nystateofhealth.ny.gov/sites/default/files/NYSOH%202019%20Open%20Enrollment%20Report_0.pdf.

investment in in-person assistance. Even though enrollment in Qualified Health Plans has declined in other states, on the New York Marketplace enrollment in Qualified Health Plans has increased three years in a row.[2] Experts attribute the enrollment increases seen in 2018 and 2019 to this leadership.[3]

Table 1. Total Enrolled in Qualified Health Plans in New York, On- and Off-Exchange[4]				
	On-Exchange	**Off-Exchange**	**Total**	**Percent Change**
2017	223,705	124,004	347,709	
2018	237,191	91,593	328,784	-5.4%
2019	254,634	71,272	325,906	-0.9%

HCFANY urges the state to carefully review the carriers' 2020 submissions and reject any increases based on the alleged degradation of the individual market—which simply did not happen. Each year, the carriers have incorrectly predicted eroding market conditions to justify large rate increases (most recently due to the elimination of the individual mandate tax penalty). And each year, these predictions do not materialize. It is true that there was a slight drop-off in off-exchange enrollment last year. However, an increase in on-exchange enrollment made up the difference, and the actual combined decline was less than one percent.

That said, the State could take actions to grow—not just stabilize—New York's individual market. There are more than a million New Yorkers remaining without health insurance. Table 2 indicates that health coverage is strongly associated with income, indicating that current prices are unaffordable to many New Yorkers.[5] Particularly relevant to enrollment in the individual market is the steep affordability cliff when eligibility for the public Essential Plan ends and consumers must shop for a private Qualified Health Plan. HCFANY commends the New York State of Health for its efforts to keep plans affordable, including the lower deductible that will be available to people who enroll in Silver plans next year. Nevertheless, individuals making just $25,000 a year (just over the Essential Plan cutoff) must pay around $1,800 annually in premiums for a plan with a $1,350 deductible. That's over 12 percent of their gross income before they can use their coverage. This cost is unmanageable for many and simply not worth it for others.

Table 2. New York's Uninsured by Income	
Income as Percent of Federal Poverty Level (Individuals)	**% of NY's Uninsured**
<138% ($17,235)	32%
138% -199% ($17,236 - $24,855)	16%

[2] New York State of Health, Open Enrollment reports for 2017, 2018, and 2019.
[3] Rachel Schwab and Sabrina Corlette, "ACA Marketplace Open Enrollment Numbers Reveal the Impact of State-Level Policy and Operational Choices on Performance, April 16, 2019, The Commonwealth Fund, https://www.commonwealthfund.org/blog/2019/aca-marketplace-open-enrollment-numbers-reveal-impact.
[4] Data provided by the New York State Department of Financial Services.
[5] American Community Survey, Health Insurance Status and Type of Coverage All People, 2008-2016.

200 - 399% ($24,856 – $49,835)	32%
400 - 599% (49,835 - $74,815)	12%
Over 600% (Over $74,816)	8%

HCFANY is also concerned about the number of New Yorkers who have insurance but say they still cannot afford care.[6] Insurance degradation is real.[7] In just a few years, premiums and deductibles have increased from 5.5 percent to 7.7 percent of an average New York family's income. And nearly half of New Yorkers who have insurance are going without medications or treatment. If this continues, many New Yorkers may decide to stop buying health insurance altogether.

To address this coverage crisis, New York can follow the lead of California, New Jersey, and other states by taking two important steps beyond the rate review process.

First, New York should create an individual mandate. Any revenue generated by the state individual mandate must be used to either fund robust state premium assistance for people between 200 and 400 percent of the federal poverty level or to provide a down payment for expanding coverage to immigrants. The Urban Institute estimates that an individual mandate would reduce individual market premiums by 10 percent and raise $271 million in New York.[8]

Second, the state should conduct targeted outreach to communities in which people are already eligible for cost-sharing reductions and premium assistance but are not enrolled. There are parts of the state with higher uninsured rates than others – additional outreach and enrollment funding should be targeted towards those communities. These two steps would result in an increase in the number of enrollees into the individual market and thus bring premiums down for both the existing and future enrollees there.

B. New York's Individual Market Carriers Do Not Need Another Big Rate Increase

The Department can also nurture the individual market by rejecting increase requests that are not based on actual market conditions. In their applications for 2020, plans asked for the smallest average increase in several years: 8.4 percent. However, as described in Table 3, this comes after several years of double-digit requests that turned out to be much higher than necessary. The Department has lowered those requests every year, but even those lower increases appear to have been too generous. For example, the average rate increase request in 2018 was 16.6 percent. The Department had lowered the carriers' average requests to 14.5

[6] Altarum Healthcare Value Hub, "New Yorkers Struggle to Afford High Healthcare Costs; Support a Range of Government Solutions Across Party Lines," Data Brief No. 37, March 2019, https://www.healthcarevaluehub.org/advocate-resources/publications/new-yorkers-struggle-afford-high-healthcare-costs-support-range-government-solutions-across-party-lines/

[7] New York State Health Foundation, "The Rising Cost Burden of Employer-Sponsored Insurance in New York," March 2018, https://nyshealthfoundation.org/wp-content/uploads/2018/03/rising-cost-burden-employer-sponsored-insurance-NY.pdf

[8] Linda Blumberg, Matthew Buettgens, and John Holahan, "How Would State-Based Individual Mandates Affect Health Insurance Coverage and Premium Costs?," July 20, 2018, https://www.commonwealthfund.org/publications/fund-reports/2018/jul/state-based-individual-mandate

percent, but that still meant double-digit premium increases for thousands of New Yorkers (see Table 2).

The carriers' argument that they need additional increases to respond to rising medical costs is belied by the fact that their average medical loss ratios for 2018 barely hover above the statutory minimum—and in several cases didn't even make that. The medical loss ratio (MLR) shows what proportion of premiums carriers spend on medical care for their members. In 2018, the average MLR for New York's individual carriers was only 83 percent, barely above the minimum 82 percent required by State law (see Table 3).

Table 3. Individual Market Rate Changes and Medical Loss Ratios, 2016-2019

	Average Request	Average Approved	Number of Carriers	Average Medical Loss Ratio[9]
2015[10]	12.5%	5.7% (-54%)	17	104.4%
2016[11]	10.4%	7.1% (-32%)	17	102.0%
2017[12]	18.0%	16.6% (-8%)	17	95.6%
2018[13]	16.6%	14.5% (-13%)	15	83.0%
2019[14]	24.0%	8.6% (-72%)	14	N/A

Further, carriers in New York have continuously improved their performance in the individual market despite receiving significantly lower rate increases than they argued for. This suggests a habit of overstating their needs. Nationally, 2018 was the most profitable year yet for the individual markets created by the ACA.[15] This looks to be true in New York as well. The requests for 2020 may be smaller than in prior years–but they are still likely too high considering this history of rate inflation and the increasingly strong financial performance of companies participating in New York's individual market.

As described in detail below, the Department should reject premium increases where the carriers fail to control medical costs or their administrative expenses or simply fail to make the statutory minimal payments on medical claims. Moreover, the Department should not provide

[9] MLRs are reported in Exhibit 13a, section D. The averages in Table 3 were calculated using the MLRs submitted in 2018 and 2019 for all carriers. Exhibit 13a provides MLRs for three years beginning with the first year in which data is complete, thus 2019 is not yet available.
[10] Department of Financial Services, 2015 Individual Market Rate Action – Overall Summary, https://myportal.dfs.ny.gov/web/prior-approval/summary-of-actions-premium-requests.
[11] Department of Financial Services Press Release, July 31, 2015, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1507311.
[12] Department of Financial Services Press Release, August 5, 2016, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1608051.
[13] Department of Financial Services Press Release, August 15, 2017, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1708151
[14] Department of Financial Services Press Release, August 3, 2018, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1808031.
[15] Rebecca Pifer, "Payers had best individual market performance in 2018 since ACA began," Healthcare Dive, May 8, 2019, https://www.healthcaredive.com/news/payers-had-best-individual-market-performance-in-2018-since-aca-began/554366/

"repeater" adjustments annually for one-shot policy changes, such as the elimination of the individual mandate or the cost sharing reduction payments.

1. **Medical trend estimates vary too much, and the State should require a standardized trend for either the entire state or the different rating regions**

New York's carriers need to do a better job controlling medical inflation. Their medical trend estimates in the 2020 rate applications range from 5.2 percent (Oscar) to 9.2 percent (United) with an average of 7 percent. Even when carriers work in the same region, they often estimate different trends. For example, Independent Health and Excellus both operate in Western New York, but estimate medical trends of 5.4 percent and 7.2 percent respectively. Further, for at least the third year in a row, the carriers argue that medical trend in New York will be higher than that expected by experts like Petersen-Kaiser (4.3 percent) or PwC (6 percent).[16] Yet they provide no evidence about why this should be so year after year.

Medical Trend Estimates	
Petersen-Kaiser (2019)	4.3%
Milliman Medical Index[17] (2018)	4.5%
PwC[18] (2020)	6.0%
Segal Company[19] (2019)	6.6%
CVS/Caremark (2019)	8.4%

Another concern is that carriers' predictions of medical trend often exceed actual medical trend.[20] Over time, this means that they have accumulated excessive rates. Even an overestimate of 1 percent every year is integrated into the new base rate and adds up to big increases over time that were not needed to accommodate medical needs.

Consumers, and the State, depend on health insurers to negotiate with providers and pharmaceutical companies to keep prices down. In New York, too many insurers argue that they cannot do this. This indicates that the State should take a more aggressive role in controlling prices. The Department should consider stepping in by imposing a standard medical trend on the entire market of 4.3 percent per the Petersen-Kaiser estimate cited by HealthFirst. Insurers and providers would then negotiate prices with the understanding that overall medical trend must stay at that rate. If this is not possible, the Department could consider imposing regional benchmark medical trends and holding the carriers to them.

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[16] PwC, "Medical cost trend: Behind the numbers 2020," June 2019, https://www.pwc.com/us/en/industries/health-industries/library/behind-the-numbers.html.
[17] Christopher Girod, Susan Hart, and Scott Weltz, "2018 Milliman Medical Index," May 21, 2018, http://www.milliman.com/mmi/.
[18] PwC, "Medical cost trend: Behind the numbers 2020," https://www.pwc.com/us/en/industries/health-industries/library/behind-the-numbers.html
[19] Segal Consulting, "Increases in Medical and RX Costs Projected to Be Lower for 2019," Fall 2018, https://www.segalco.com/annual-health-plan-cost-trend-survey/2019/#PublicSector.
[20] Segal Consulting, "Increases in Medical and RX Costs Projected to Be Lower for 2019," Fall 2018, https://www.segalco.com/annual-health-plan-cost-trend-survey/2019/#PublicSector.

2. **Carriers not meeting the state minimum MLR (or in danger of not meeting it) should not receive rate increases**

Underscoring HCFANY's belief that the Department has been too generous with rate requests in the past is that the following four carriers failed to meet the State's minimum MLR of 82 percent in 2018: CDPHP, Excellus, Healthfirst, and Independent Health. A fifth, Fidelis, barely managed to meet the minimum at 82.4 percent. HCFANY has argued in past rate comments that the Department not allow the carriers to treat the minimum as a goal, but instead as an absolute floor to be avoided. Thus in our individual comments, HCFANY has asked that the Department reject an increase—and consider rate cuts—for each of these carriers.

HCFANY also asks that the Department look closely at the track record carriers have in estimating their MLR. For example, in its rate application for 2018 CDPHP said its goal was an MLR of 89.9 percent; its actual MLR (according to its 2020 application) was 81.3 percent. Similarly, Fidelis estimated its MLR would be 90 percent in 2018 when its actual MLR was 82.4 percent. HCFANY respectfully requests that the Department approve smaller increases than requested or even rate decreases for carriers that have a history of overestimating their MLRs.

3. **Carriers that previously received upward adjustments for cost-sharing reductions and losing the individual mandate penalty should not receive duplicative adjustments this year**

None of the carriers asking for rate increases due to the loss of the individual mandate penalty or the federal government's failure to pay for cost-sharing reductions explain why they should get a further adjustment for those factors. When those federal actions were taken, the Department stepped in to help the carriers respond. The adjustments the Department provided at that time are now incorporated into the carriers' base rate. If the carriers have data showing that previous rate adjustments were inadequate, they should provide that in their application. Otherwise, it appears that most of the carriers have already incorporated the conditions of no mandate and no cost-sharing reduction payments into their base rates. HCFANY respectfully urges the Department to reject duplicative rate adjustments.

4. **The Department should look closely at administrative costs for New York's plans and not approve premium increases for the plans with the highest administrative costs**

There is excessive variation in expense ratios within the 2020 applications, which range from 8 percent (MetroPlus) to 15.7 percent (Healthfirst). Health insurers should demonstrate that they can control administrative costs before requesting premium increases, especially those that have expense ratios that are higher than the other carriers like Healthfirst. Further, most of the carriers report that their expense ratios are increasing. Controlling and lowering administrative costs is key to being good shepherds of consumers' premium payments. HCFANY respectfully requests that the Department closely scrutinize carriers that are moving in the wrong direction and consider setting a state goal for administrative costs that is no higher than 10 percent.

II. Specific Issues in Fidelis' Application

Fidelis is by far the largest carrier in New York's individual market with almost 104,000 members. It has increased its membership for two years in a row and operates statewide. Fidelis has the second lowest average rates in the market ($512 per-member per-month) and expects to make a large payment into the risk adjustment pool.

HCFANY asks the Department to pay special attention to the Fidelis filing because of its large market share and the impact a rate increase would have on so many New Yorkers. While its request of 6.8 percent is lower than average, it comes on top of a 13.7 percent increase in its 2019 rates and an 8.5 percent increase in its 2018 rates. Fidelis members are feeling the effects of these increases. One wrote:

> "I recently received a letter stating that Fidelis wants to raise the price of my plan by 6.9 percent… This rate of increase is unsustainable and weighs heavily on the American public. Education and health care costs are increasing at an unprecedented rate. We can buy cheap phones and tablets, but we can't sustain the brains and bodies of our citizens. Fidelis cites higher medical and pharmacy costs as the primary reason for the increase. But they are the ones with the power to negotiate on our behalf! If insurers fail to push back against sky-high hospital and medication costs, the common people lose…. Patients have no ability to negotiate, because medicine is an opaque and non-free market. If we can't have a free market or a single payer system, we need to at least hold the current players accountable. But we never do."

Many others wrote to the Department to describe their inability to afford care even with Fidelis coverage. They talk about taking out credit cards, using up their savings, or limiting their grocery shopping to pay for their Fidelis premiums. New Yorkers are counting on the Department to closely scrutinize this request and disallow components of it that are unfair to consumers.

A. Fidelis only made the State's statutory MLR minimum by .4 percent.

Fidelis predicts that its MLR will be 89 percent in 2020, but this goes against their experience of declining MLRs since 2016. In 2018, their MLR was only 82.4 percent, very close to being noncompliant with New York State law. Fidelis reached this low MLR after receiving an 8.5 percent increase for its 2018 rates. For 2019 it received an even bigger increase of 13.7 percent.

Those increases were not used to provide more medical care to Fidelis members. Many Fidelis members wrote to the Department to describe their inability to get care despite being covered by Fidelis. For example, one said "…it is extremely difficult to find a quality doctor near me that will accept this insurance. This particular insurance forces people to scrape the bottom of the barrel as far as doctors go, and makes the locations of these doctors inaccessible to people

that have to rely on public transportation. When I required medication… I had to pay for it out of pocket because Fidelis did not cover it. Their range of coverage is very limited, and they do not cover alternative medicines when… conventional drugs cause negative reactions."

Fidelis should not get a rate increase when the quality of its coverage has gone down. The Department should consider reducing their 2020 request or even reducing their rates for 2020.

B. Fidelis suggests its annual claims trend will be the second highest in New York despite having the biggest market share

Fidelis expects its annual claims trend to be 8.6 percent, higher than the trend estimated by the major actuarial firms and higher than the 7 percent average. It is the second highest claims trend expected in New York. Fidelis provides more detail about the different components leading to this trend rate than other carriers (for example by breaking it out by service type) but does not explain why its trend should be worse than other carriers.

The Department should reject any premium increased based on this estimated trend rate. Given its relative market share, Fidelis should be able to use its market power to secure economies of scale. Only a significant downward adjustment will incentivize Fidelis to do just that.

C. Fidelis is asking for a possibly duplicative rate adjustment for federal actions that the Department already addressed

Fidelis asks for 2020 rate adjustments for both losing the individual mandate penalty and the CSR payments. The Department already approved a rate adjustment to make up for the cost-sharing reductions in Fidelis' 2018 rates. Further, Fidelis requested a very large increase for the loss of the individual mandate in its 2019 rates. While it is unclear how much of an adjustment they were actually granted for 2019, the Department likely already assessed the effect losing the mandate would have and granted them what it considered a reasonable increase in response.

It is not clear why Fidelis or any other carrier would need adjustments for those federal actions year after year. Because New York elected to offer the Basic Health Plan option, there are very few people receiving CSRs and those that do are simply receiving a slightly smaller deductible. The CSR portion of Fidelis' 2020 request is very small, less than one percent – but small unnecessary increases in premiums compound over time. Three plans (Independent Health, Healthfirst, and Health Plus) do not seek any adjustment for the CSR change that occurred in 2018. Further, there was no great migration from New York's individual market in response to the loss of the individual mandate. Fidelis is one of only three plans that appears to have asked for an additional adjustment for the individual mandate change.

HCFANY therefore strongly urges the Department to disallow any adjustment for loss of CSR payments in 2020 or for changes in the market due to losing the mandate penalty, whether across the entire individual market or specifically for Fidelis.

D. Fidelis does have a low expense ratio, but is asking for a higher profit margin than other carriers and includes broker costs in its rates

Fidelis asks for an expense ratio of 9.1 which is lower than average. HCFANY also appreciates that Fidelis is expecting a lower expense ratio in 2020 than last year. However, there are two areas in which Fidelis might be able to lower their expenses even further.

First, Fidelis is asking for a profit margin of 2 percent. Most other carriers asked for 1.5 or 1 percent. Given its low MLR, HCFANY asks that the Department consider reducing the projected profit margin it allows Fidelis.

Second, Fidelis spends some of its customers' premiums on broker costs. New York State makes strong investments in marketing the individual market plans and providing enrollment assistance. HCFANY believes that this makes broker costs redundant and that they should not be allowed as a component of premiums.

Thank you for your attention.

Very truly yours,

Amanda Dunker
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Community Service Society of New York