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June 16, 2016

Maria T. Vullo, Acting 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 – Fidelis – Individual – 130556139

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

Health Care for All New York (HCFANY) submits the following comments relating to Fidelis' proposed 8.1 percent increase for their 2017 individual rates. HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected in policy decisions.

HCFANY believes that a robust and public prior approval process is a vital consumer protection, and thanks you for the opportunity to submit comments. The first section below describes our market-wide concerns. The second section describes our specific concerns around Fidelis' rate application.

I. Market-Wide Issues

A. Carriers are not providing sufficient information to justify their proposed rate increases

HCFANY believes strongly in the public rate review process. Health insurance and health care are a major part of most New Yorker's budgets, and something over which consumers have poor information and limited freedom of choice. Public rate review provides some balance of power between consumers and carriers, and carriers must be expected to follow both the letter and the spirit of the law. That means providing transparent, reasonable justifications supported by evidence in order to receive rate increases.

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Many of the 2017 applications are opaque and rely on hidden assumptions. As described in our May 25, 2016 letter, some carriers inappropriately redacted important information, most notably Affinity, Oscar, Excellus, Fidelis, and Crystal Run. However, other carriers provided a good amount of information—for example, Independent Health's Actuarial Memo was clearly written and explained their assumptions with a reasonable amount of detail. However, almost all of the other applications in both the individual and small group market failed to provide cogent and clear justifications for their rate applications.

The increases requested this year represent millions of dollars for New York's consumers. HCFANY recognizes the need for carriers to make adjustments for legitimate administrative expenses and reasonable medical trend increases. However, most of New York's carriers have failed to provide adequate explanations for their requests. HCFANY urges the Department to scrutinize the carriers' respective actuarial memos closely and provide feedback about the transparency of their assumptions. In particular, the Department should provide clear and uniform guidance to the carriers and the general public about what information should be included in the carriers' actuarial memorandums. Future rate increases should be rejected whenever inadequate information is provided in the carriers' actuarial memorandums.

B. The 2017 risk pool will likely be the healthiest yet

The 2017 risk pool is likely to be healthier than prior years for two reasons: (1) younger and healthier people will be enrolling in plans because of the increased individual mandate penalty; and (2) the impact of the Basic Health Plan has essentially already been incurred.

First, the marketplace can expect an infusion this year of healthier and younger enrollees, including so-called “young invincibles,” who may have been willing to bear the modest tax penalties through 2015 but, when faced with a more than doubling of the maximum penalty (to \$695 per adult individual, \$2085 per family) for 2016. Those who paid the penalty for 2015 and thus became aware of the increased penalties for 2016 and beyond are likely to migrate into the marketplace during the next open enrollment period, improving the risk balance in the market. This was the effect of the increased tax penalties in Massachusetts in 2007.¹ We should expect a similar effect in New York.

Second, the Department should not allow three carriers to take their requested marketplace-wide adjustments for the impact of migration of many New Yorkers from the individual market to the Basic Health Plan (Essential Plan) program.² In some cases, these adjustments amounted to as much as a 3.6 percent increase in morbidity. Most plans already made an even higher adjustment of 4.3 percent (based on an earlier Deloitte Report

¹ The Importance of the Individual Mandate – Evidence from Massachusetts, <http://www.nejm.org/doi/pdf/10.1056/NEJMp1013067>, at 295.

² See, e.g., Empire, Excellus, HealthFirst, HIP, Actuarial Memoranda citing a non-public New York State Market Wide Risk Adjustment Simulation prepared by Wakely Actuarial for the New York State Department of Financial Services. See, also, Oscar and United Health's Exhibit 18 seeking second year adjustments for the Basic Health Program.



commissioned by the Department) when they filed their 2016 rate applications. Accordingly, nearly all plans should have an adjustment for the roll out of the Basic Health Plan already factored into their base index rates for their 2017 projections. In recognition of these prior adjustments, the Department should direct plans to address the impact of Basic Health Plan by removing the claims of these members as they build their initial index rates. This process should have occurred in advance of the Marketplace adjustments, consistent with the directions provided to the carriers in advance of this year's prior approval process. It should be noted that several plans did not seek another morbidity adjustment for the Basic Health Plan in their 2017 requests (*see, e.g.* MetroPlus).

HCFANY urges the Department to consider that these market-wide factors mean that the New York individual market risk pool will likely be its healthiest and ensure that the 2016 premiums are set accordingly, with reductions, rather than increases, based on projected morbidity.

C. Medical trend is increasing slowly and should be more standardized.

Medical costs are increasing at a slower rate than before the enactment of the Affordable Care Act. For 2017, the Milliman Medical Index projects an increase in medical costs of only 4.7 percent overall.³ This is the lowest annual increase since the index was first calculated in 2001. PriceWaterhouse Cooper's Health Research Institute projects an increase in medical costs of 6.5 percent for 2016.⁴ Accordingly, an appropriate medical trend adjustment for 2017 should be somewhere between 4.7 and 6.5 percent.

For the most part, however, the New York 2017 rate filings include estimates that are much higher than these national expert estimates. (*See, e.g.*, Empire 12.5 percent, Affinity 9.1 percent, United 9 percent and Care Connect 8 percent). In addition, carriers filed medical trends that vary widely, meaning that some plans are asking for much larger increases than other plans in New York: the individual market applications' trend range from 3.5 percent (MetroPlus) to 12.5 percent (Empire) and the small group market applications' trend range from 4.3 percent (MetroPlus) to 12 percent (Aetna).

New York State should require greater standardization amongst the plans being sold on the New York State of Health (NYSOH) Marketplace. Carriers have some control over the two primary components of medical trend, which are prices and utilization. While there are differences in the circumstances carriers face within New York State and within a standard structure like the NYSOH, the large variation in medical trend projections indicates either that some of the plans are not managing medical trend as well as others, or that plans are not basing projections on appropriate data. On prices, for example, carriers can negotiate favorable

³ Chris Girod et al., "2016 Milliman Medical Index," at 15. May 25, 2016, <http://www.milliman.com/uploadedFiles/insight/Periodicals/mmi/2016-milliman-medical-index.pdf>. Their estimates by type of service are: 4.2 percent for inpatient, 5.5 percent for outpatient, 2.5 percent for professional services, and 9.1 percent for pharmacy.

⁴ Health Research Institute, "Medical Cost Trend: Behind the Numbers 2016," June 2015, <http://pwchealth.com/cgi-local/hregister.cgi/reg/pwc-hri-medical-cost-trend-2016.pdf>.



contracts. However, the largest plans which are presumably in the best position to negotiate for lower prices, are projecting some of the biggest increases in medical trend (for example, Aetna in the small group market and Empire in the individual market).

Assertions about increases in utilization should be scrutinized carefully. There is no convincing reason that the 2017 individual or small group pool will be less healthy than the 2016 pool or need more health services. In fact, as described earlier, the pool is likely to be healthier than ever. There was no large change in the insured rate compared to the first years of ACA implementation. Inpatient hospital utilization, the biggest component of medical claims, has been decreasing for years and experts at Milliman suggest that there is unlikely to be any increase in 2017.⁵ Additionally, some of the state's payment and delivery system reform efforts should start to pay off in 2017 through decreases in utilization. Many of the quality improvement efforts underway through the State's DSRIP and SHIP programs, for example, will benefit everyone who uses the associated hospitals without requiring an investment from carriers.

Projected increases in pharmacy utilization and prices are of special concern. Several carriers suggest that new expensive drugs will drive up both costs and utilization. Many of those same carriers requested (and received) rate increases last year in response to the new Hepatitis C drugs, yet offered no evidence that these drugs were actually approved for use by their members. Indeed, independent evidence is to the contrary. New York's Attorney General recently investigated and reached a special agreement with seven of the plans requesting increases this year to over their failure to fairly cover Hepatitis C treatment, and is suing an eighth, Capital District Physicians' Health Plan.⁶ Moreover, those carriers who received increases because of the Hepatitis C drugs last year should not receive an increase for a second year, absent specific evidence of increased utilization by their memberships.

We urge the Department to carefully scrutinize the filings of plans with outsized medical cost trend projections in light of their filings in prior years as well. It seems clear that some have over-estimated anticipated costs in the past, leading to their failure to meet either projected or statutory minimum medical loss ratios, and an obligation to refund premium overpayments to their enrollees. The methodology of those plans should be treated with particular skepticism. They should be requested to explain to the Department both how their past projections have proved so unreliable and how their methodology has changed.

D. Administrative costs should be decreasing and should be more standardized

Administrative costs range widely from 8.4 percent (MetroPlus) to 28.7 percent (Oscar) in the individual market and 9.6 percent (MetroPlus) to 27.5 percent (Crystal Run) in the small group market. Generally, administrative costs should be decreasing. As HCFANY argued last

⁵ Chris Girod, at 14.

⁶ Press Release: A.G. Schneiderman Announces Major Agreement With Seven Insurers to Expand Coverage of Chronic Hepatitis C Treatment for Nearly All Commercial Health Insurance Plans Across New York State, April 26, 2016, <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-major-agreement-seven-insurers-expand-coverage-chronic> and Ed Silverman, "New York attorney general sues insurer for restricting hepatitis C drugs," April 18, 2016, *Stat*, <https://www.statnews.com/pharmalot/2016/04/18/hepatitis-drug-prices-gilead-merck/>.



year, the New York State of Health site greatly eases the administrative burden on plans because New York State conducts marketing, outreach, and enrollment for all of the plans that sell there. Carriers have had several years of experience with the changes required by the ACA and should by now have fully developed systems for managing those plans.

A few carriers mention decreasing administrative costs in their applications as part of discussions on their strategies for keeping rates low. HCFANY believes that there should be much more emphasis on this strategy by all plans, and that plans requesting rate increases (especially large, double-digit increases) should provide a detailed discussion of their efforts to keep administrative costs down.

Additionally, carriers should provide more information about the components of their administrative spending. Analyzing the variances between spending on things like executive salaries, commissions, advertising, government relations, processing appeals, and utilization management would allow for more meaningful comments. A related consideration ought to be whether plans are accumulating excess reserves which might more appropriately be applied to premium reductions.

E. The Medical Loss Ratio requirement should be a floor, not a goal, and plans should honor the requirement before requesting increases.

HCFANY believes that the 82 percent minimum medical loss ratio (MLR) required by New York State should be a floor, not a goal. A number of plans in both the individual and the small group market did set goals above 82 percent this year, but HCFANY urges the Department to closely review the submissions of those carriers that project MLRs of only 82 percent or slightly above, and especially those carriers that failed to provide an estimate in their public applications (which includes Excellus, HIP, MVP, and Fidelis).

Carriers who have failed to meet medical loss ratios over the years should not be eligible for increases this year. The Department should carefully review their applications for an assessment of whether their premiums are either too high or they are paying too little on medical claims, or both. For example, in the individual market, Affinity and Empire failed to meet the 82 percent minimum in both 2014 and 2015. (Affinity's MLR in 2014 and 2015 was 58 percent and 77 percent, respectively; Empire's MLR was 79 percent in both years). In the small group market, Capital District Physicians Health Plan, Empire, HealthFirst, and Oxford failed to meet the statutory MLR in both years. Other plans have failed to meet the MLR in one year or the other. None of the plans offer any discussion about why that failure occurred or how they will improve in their rate filings. This failure demonstrates either poor stewardship of consumers' premium dollars or previous rate increases granted upon inappropriate data and assumptions. Therefore, these plans should not be eligible for rate increases in 2017.

F. Carriers with small provider networks should do more to decrease rates.

Although HCFANY does not endorse narrow networks and has serious concerns about consumers' inability to find appropriate care within the networks in which they are enrolling, it is



clear that insurers have been engaged in concerted efforts to create narrow networks, particularly for marketplace products. The overall size of networks in New York State is small: 39 percent were classified as small in a 2015 study that looked at silver-level plans, meaning that the network included only 10 to 25 percent of area physicians.⁷ Very few plans made any adjustment for the size of their provider networks, but it is likely that overall network size has been decreasing in New York's market as it has nationally.

Carriers which have reduced their networks should likewise be reducing their premiums charged to consumers consistent with their network reductions. For example, the Kaiser Family Foundation estimates that the smallest networks can save carriers 20 percent.⁸

Overall, the Department should require carriers to provide much more information about their changes in network size from year to year. Carriers should also be required to identify those products that use narrow networks when requesting increases. Consumers are unable to judge the size of networks before purchasing plans and therefore cannot make meaningful decisions about the tradeoffs between network size and premium expense. This means that the Department has to be especially vigilant about this aspect of rate setting.

Each carrier filing must be considered in the context of the above mentioned environmental factors. Our specific concerns about Fidelis' rate application are described below.

II. Specific Issues in Fidelis' Rate Application

Fidelis has 58,935 people enrolled in its individual market plans in New York State, making it the second largest individual insurer in the state.⁹ While the 8.1 percent rate increase requested on their application is modest compared to the 18.1 percent statewide average, given their relatively healthy population and historically low MLR, HCFANY urges the Department to closely review Fidelis' proposed increase and consider a premium reduction. Our concerns are based on the following aspects of Fidelis' rate application.

A. Risk Adjustment

Fidelis reports a 36 percent increase in its federal risk adjustment calculation, indicating that it continued to have substantially healthier and lower-cost enrollees than other health insurance carriers.¹⁰ This figure is the highest out of all carrier rate applications for 2017, indicating that Fidelis has the best risk in the state. It is unclear how Fidelis will be affected by

⁷ Leonard Davis Institute of Health Economics, "State Variation in Narrow Networks on the ACA Marketplaces," August 2015, <http://ldi.upenn.edu/sites/default/files/rte/state-narrow-networks.pdf>.

⁸ Gary Claxton and Larry Levitt, "What to Look for in 2017 ACA Marketplace Premium Changes," Kaiser Family Foundation, May 5, 2017, <http://kff.org/private-insurance/perspective/what-to-look-for-in-2017-aca-marketplace-premium-changes/>.

⁹ Department of Financial Services website. Available at <https://myportal.dfs.ny.gov/web/prior-approval/new-york-state-catholic-health-plan/ind-onx-hmo-fcny-130556139>.

¹⁰ Fidelis Rate Application, Exhibit 18, line 20.



the elimination of the risk corridor payment. However, without evidence, they assert that medical costs will increase as a result of the loss of this federal program.¹¹

The latest report published by the Centers for Medicare and Medicaid Services (CMS) on this subject indicates that Fidelis paid into Federal Risk Corridor for the 2014 plan year.¹² No other data are available about the 2015 plan year payments or charges. If Fidelis paid into the program, and continues to cover a health population, it is unclear why they would be due an increase in their rates to compensate for the end of this federal program.

Fidelis makes a 36 percent upward adjustment from their index rate to cover its federal risk adjustment payments, which is the single highest estimate in the individual market.¹³ This adjustment reflects an expected per member per month payment of \$96.70, although Fidelis does not describe how this estimate is derived.

We ask the Department to carefully review this upward adjustment. Fidelis is passing nearly 100 percent of the costs of federal risk adjustment on to consumers. While this practice may be permissible, we ask the Department to consider if it is appropriate and in the best interest of consumers. There is little detail in the filing to explain why Fidelis anticipates having a risk pool that is much healthier than other carriers and if it will remain so in 2017. HCFANY also requests that the Department monitor Fidelis' 2017 experience and ultimate risk adjustment payment if this large adjustment is full incorporated into their 2017 rates. If it is too high, that should be factored into their rate filing for 2018, or any savings should be passed on to consumers through a rebate.

HCFANY urges the Department to closely scrutinize Fidelis' risk adjustment projections as it considers Fidelis' 2017 rate application.

B. Medical Loss Ratio

In 2015, Fidelis had a medical loss ratio (MLR) of 84 percent, slightly above the 82 percent statutory minimum required by New York State law. In 2014 the MLR was 74 percent, which was less than the state mandated minimum. Fidelis provides no evidence that a rebate for missing their mandated MLR in 2014 has been included in this year's rate request. The Department should require this accounting and ensure that rebates are publically described in future rate filings.

Fidelis projects a huge increase in their MLR for 2017, estimating 91.7 percent in this application.¹⁴ This increase is far out of line with its historical experience. Fidelis provides no

¹¹ Actuarial Memorandum, p3.

¹² CMS, "Risk Corridors Payment and Charge Amounts for Benefit Year 2014", published November 19, 2015, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RC-Issuer-level-Report.pdf>

¹³ Exhibit 18, Line 20.

¹⁴ Actuarial Memorandum, p5.



evidence or discussion in its actual memorandum and the difference between its actual 2015 MLR of 84 percent and its projected 2017 MLR of 91.7 percent.

HCFANY urges the Department to carefully review Fidelis' application in light of these concerns.

C. Other pricing factors

A crucial piece of evidence in Fidelis' application is the use of medical utilization trend information, which is estimated to be While two firms are mentioned by name, no proper citation to a report or documentation (including title, date, etc.) can be found anywhere in its' the rate application.¹⁵ It is impossible to verify the medical utilization trend data that are used to support Fidelis' request for higher rates.

Two pricing components should be scrutinized as well. First, Fidelis breaks out broker commissions, which it says contribute to 0.24 percent of costs.¹⁶ These should be part of the overall administrative expense load. Second, Fidelis is a non-profit, but they are seeking a profit target of 2.05 percent, which is substantially larger than targets sought by other non-profit carriers on the individual market, who are seeking increases of no more than 1 percent.¹⁷ In the past, Fidelis has sought and received a 1.72 percent increase.

Accordingly, HCFANY believes the target profit rate for Fidelis is too high and should be examined. Consumers should not pay large rate increases to support unusually a high profit margin for a non-profit plan.

For the reasons set forth above, HCFANY urges the Department to carefully review Fidelis' rate application. Thank you for your attention to these comments. Please contact me with any questions at adunker@cssny.org or 212-614-5312.

Sincerely,

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¹⁵ Milliman and Segal are the two firms mentioned on p3 of the Actuarial Memorandum.

¹⁶ Actuarial Memorandum, p5.

¹⁷ For example, see individual plan rate applications for CDPHP <https://myportal.dfs.ny.gov/web/prior-approval/cdphp/ind-bothx-hmo-capd-130489765>, or NorthShore-LIJ CareConnect Insurance Company, Inc. <https://myportal.dfs.ny.gov/web/prior-approval/northshore-lij-careconnect-insurance-company-inc./ind-bothx-epo-nssc-130554999>.