



Actors Fund ☞ 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 ☞ Small Business Majority  
Young Invincibles

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](mailto:Fidelis.Transaction@ag.ny.gov)

Dear Acting Attorney General Underwood,

Thank you for providing a forum for public comment on the sale of Fidelis Care to Centene Corporation and the proposal to create a charitable foundation to continue Fidelis Care's nonprofit mission. The following comments are submitted on behalf of Health Care for All New York, a statewide coalition of over 170 community organizations that advocates for access to quality, affordable health care. Our comments are focused on two issues, the public process itself and the structure and mission of the new foundation.

**I. The Public Did Not Have Adequate Opportunities to Participate in the Discussion.**

While we are grateful for the chance to provide input, we also feel that the public process was not adequate. The 14-day window for public comment was not long enough considering the volume of materials in need of review. Fidelis Care members were neither informed about the transaction nor the opportunity to comment. Because there was not enough notice and a short comment period, community organizations did not have enough time to publicize the opportunity. A meaningful public discussion of this issue requires more time and more notice. A public hearing would allow more open discussion about the potential impacts the sale will have on consumers and New York's overall healthcare system.

A strong public process is especially important because nonprofit conversions have now become part of state budget negotiations. In this case, \$2 billion in proceeds from the sale are integrated into the state budget. This may compromise the state's ability to independently assess whether the deal is in the public's interest. Future conversions and asset sales should be handled independently by the Attorney General's office and other regulatory agencies separately from the budget process. New Yorkers may be better served in the future by adopting a law to govern



conversions and sales of assets by nonprofit health plans and hospitals to ensure that the public has meaningful input before a transaction is approved and its terms settled.

## **II. The Foundation Should Focus on Financial Barriers to Care and Giving Consumers a Voice in the Health Care System.**

Fidelis Care's petition argues that consumers will not be unfairly disadvantaged by its sale to the for-profit Centene Corporation. We are pleased to see that Centene Corporation has made several continuity of management and regulatory agreements with the New York State Department of Financial Services that will protect policyholders for the first few years after the sale. But we are concerned that the health plan may take on a more commercial character after those agreements end, consistent with Centene's fiduciary responsibility to its shareholders. The potential harms to New Yorkers from the sale are reduced affordability and access to care. The assets produced from the sale are being used to create a charitable foundation; we urge the foundation to address those harms specifically.

The current proposal for the foundation includes a much broader mission based on the assumption that the people currently covered by Fidelis or who would have used Fidelis in the future will experience minimal disruption. We applaud all efforts to improve our broader health care delivery system and reduce inequalities. But the role Fidelis plays in keeping costs down and providing coverage for as many New Yorkers as possible is vital. It is plausible that the new plan will have higher cost sharing and higher premiums. The assets produced by the sale should be used to address that specific loss. To that end, we respectfully urge your office to consider the following recommendations with regard to the foundation:

### **A. The impact study should continue beyond three years.**

We are pleased to see that in Exhibit 25 (p. 4-6), Fidelis Care has agreed to pay \$300,000 to the Attorney General to hire an independent expert to prepare an 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 foundation 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. We encourage you to extend it as long as reasonably possible.

### **B. The foundation should focus on coverage and affordability for consumers.**

The foundation's mission should have a laser-like focus on the following:

- Expanding health insurance coverage and care for people not currently served by existing state and private programs;
- Making coverage affordable and reducing financial barriers to care, 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.

Another appropriate focus area for the foundation could be creating a greater voice for consumers within the health care system and in creating public policy. New York (and the foundation) cannot succeed in improving access to care without input from consumers.

**C. Consumers and community groups should have a much greater role in the foundation's board, as should experts in the policy issues the foundation's mission is meant to address.**

Unlike foundations created by private wealth or corporate generosity, this foundation will hold assets that were dedicated to the public interest and have been accrued in part through the support of New York State taxpayers. Decisions about how the foundation spends its funds should be made through meaningful consultation with the public. This is not only an obligation arising from the nature of the foundation's assets; grant making institutions are also more effective when their board and staff are highly interactive with the communities they are meant to serve.

The current proposal for the foundation's board is unlikely to produce this dynamic. As far as we can discern, no consumer representatives have been added to the board. It includes many representatives from the finance industry, including Visa, Morgan Stanley, and the New York Stock Exchange, and four hospital executives. The inclusion of hospital executives is especially concerning given the potential conflict of interest it creates to have board members who are also negotiating with Centene on provider rates.

We urge you to require that at least a third of board seats be set aside for consumers (especially Fidelis policyholders) and consumer advocates. The board should reflect the interests of the diverse group 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, and Medicaid beneficiaries. The board members should reflect the diversity of the population served by Fidelis, including people of color and people with low incomes. Diversity on the board also requires professionals from fields other than finance and large health care facilities. We urge you to set aside seats on the board for experts in issues like the social determinants of health or the opioid crisis that the foundation will address. This should include community-based organizations working on these issues.



**D. The foundation by-laws should include a community advisory committee.**

To further ensure that the foundation is held accountable to the public, its by-laws should include a community advisory committee. The committee should have the following functions:

- Nominate board members to fill vacancies and train potential new board members;
- Act as a community liaison that can identify community needs and priorities with respect to the foundation's grant-making; and
- 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.

**III. The Foundation Should be Independent from the New For-Profit Health Plan**

It appears that some Fidelis staff members may continue on with Centene. It is not clear how such ties might affect what the foundation decides to fund. It is important that the foundation's decisions are not influenced by anything other than community needs. We urge you to carefully consider any potential conflicts of interest when developing the board or the by-laws of the foundation.

Thank you again for the opportunity to comment and your attention to our concerns.

Sincerely,

Health Care for All New York