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Attorney General Requests Public Comments on Fidelis Sale

Last week, the New York Attorney General’s office announced a [request for public comment](#) as part of the office’s review of the sale of the New York State Catholic Health Care Plan, Inc. d/b/a Fidelis Care New York (“Fidelis”) to Centene Corporation (“Centene”). Most of the proceeds of the sale will be used to create an endowment for the new Mother Cabrini Health Foundation. The sale was approved by the Department of Health and Department of Financial Services last month.

Under the Not-for-Profit Corporation Law, the proceeds of the sale of charitable assets belong to the charity and must be used to further its charitable mission. The Attorney General is responsible for reviewing the transaction to determine whether the price and terms of the sale are fair and reasonable, and whether the purposes of the charity will be promoted by the sale.

The Charities Bureau has been conducting a review of the Fidelis petition. Public comments will be accepted through **May 23, 2018**. Comments should be sent to fidelis.transaction@ag.ny.gov with the subject line “In the Matter of Fidelis”.

For more information on the public comment period, including the verified petition, and comment requirements, click [here](#).

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Federal Government Agrees to Interim Payment to Fund Essential Plan

New York has entered into an agreement with the federal government on an interim payment of \$151 million to fund New York's Essential Plan.

New York, along with the State of Minnesota, [filed suit](#) earlier this year after federal government cut off funding for the Basic Health Program (“BHP”), which in New York is known as the “Essential Plan”.

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Managed Care Policy and Planning Committee Meeting

The Department of Health recently held the monthly Policy and Planning Meeting with the State's Medicaid Managed Care plans. Some highlights from the meeting include:

- **Mainstream Enrollment**: Statewide enrollment for April was 4,428,024, with 2,598,205 in NYC and 1,829,819 Upstate. This resulted in a -.15% statewide decrease.
- **MLTC Enrollment**: Now at 224,630, 222,828, an increase of 1,802 from last month, as MLTC enrollment continues to outpace projected enrollment. Virtually all new enrollment continues to be in the partially capitated program, which has 204,025 members compared to 202,513 one month ago and 200,799 members two months prior. Both FIDA and PACE experienced the third consecutive month of enrollment declines (FIDA: 3,969, vs. 4,037 (Mar.) and 4,117 (Feb.)); PACE (5,654 vs. 5,670 (Mar.) and 5,685 (Feb.)) but all other programs saw enrollment increase (MLTC partial cap: 204,025 vs. 202,513 (Mar.) and 200,799 (Feb.)); MAP: 10,164 vs. 9,812 (Mar.) and 9,495 (Feb.); and FIDA IDD: 818 vs. 796 (Mar.) and 764 (Feb.)). As the numbers illustrate, FIDA enrollment continues its decline though with PACE now appearing to trend in a similar direction.
- **HARP**: The availability of HARP on the NYSOH begins May 31, 2018. Plans can expect to begin seeing HARP passive enrollments beginning August 1, although members can choose to enroll as soon as July 1 by selecting a HARP voluntarily.
- **FIDA**: More information on the future of the integrated care product in NYS was expected to be provided at the May meeting. DOH said they would be reporting out to stakeholders over the next several weeks with a plan how they will be implementing the next integrated care program.
- **VBP CBO SDH Guidance**: The DOH VBP team is working on a new guidance document to communicate expectations relating to CBO and SDH contracts that are required in Level 2 and 3 VBP arrangements. One MLTC representative noted that SDH requirements need to be treated differently for MLTC partial cap plans because some services are already included in the benefit package.
- **Limit the Number of LHCSAs that Contract with MLTC Plans**: One plan representative raised that DOH's policy of pushing providers into IPA arrangements to facilitate VBP contracting, and interpreting the LHCSA contract cap as applying to each individual LHCSA provider included in an IPA arrangement, are in conflict, and do not serve DOH's long-term goal of moving entities into VBP arrangements. DOH appeared to follow the point but was non-committal regarding changing their policy.
- **MLTC Nursing Home Permanent Placement Benefit Limit**: CMS has yet to approve this benefit change and the benefit remains unchanged at this time.

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Moratorium on Licensed Home Care Services Agency (“LHCSA”) Applications

The Department of Health has issued [guidance](#) on the two-year moratorium on the processing and approval of applications seeking the licensure of Licensed Home Care Services Agencies (LHCSAs) that was included as part of the 2018-2019 state budget. The moratorium became effective on April 1, 2018 and will continue until March 31, 2020.

The guidance provides clarification on the types of applications that fall within the limited exceptions to the moratorium. Applications that are exempted from the moratorium include:

- Applications seeking licensure of a LHCSA that is submitted with an application for an Assisted Living Program (ALP).
 - The ALP application must have been submitted to the Department and an application number issued.
 - Ownership of the LHCSA must be identical to the ownership of the ALP.
 - Approval will be limited to serving the residents of the associated ALP. Therefore, the application may request only the county in which the ALP resides as the county to be served.
 - The application must include an attestation acknowledging that the approval will be limited to serving the residents of the associated ALP.
- Applications seeking approval to transfer/change ownership for an existing LHCSA that has been licensed and operating for a minimum of five years for the purposes of consolidating the licenses of two or more LHCSAs;
 - Only changes in ownership that consolidate two or more LHCSAs may be accepted during the moratorium. Consolidation means reducing the number of LHCSA license numbers, not a reduction in the number of sites operated under a license number. The application must include all sites of the to-be-acquired agency.
 - LHCSAs to be acquired must be currently operational and have been in operation at least five years.
 - The application must include an attestation and statistical report data verifying the seller(s) is/are operational and has/have been for a minimum of five years.
 - If an existing LHCSA is purchasing one or more LHCSAs, the buyer must also currently be operational. The application must include an attestation and statistical report data verifying the buyer is currently operational.
- Applications seeking licensure of a LHCSA where the applicant demonstrates that the application addresses a serious concern, such as a lack of access to home care services in a geographic area or lack of appropriate care, language and cultural competence or special needs services.
 - There is a presumption of adequate access if there are two or more LHCSAs already approved in the proposed county. Approved LHCSAs include those that are operational and those approved but not-yet operational. If there are two or more LHCSAs in the requested county:
 - the applicant must articulate the population to be served for which there is a lack of access to licensed home care services;
 - the applicant must submit substantial, data-driven proof of lack of access to the population;
 - the applicant must provide satisfactory documentation that no existing LHCSA in the county can provide services to the population;
 - if more than one county is requested, the application must include all required material for each county individually;
 - the applicant may request to operate in up to five counties, only.

The revised LHCSA application and instructions are now available on the Department's website, [here](#).

The Department has indicated that applicant's with already-submitted applications will be contacted individually with instructions.

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DOH to Conduct All CON Architectural Reviews Electronically

The Department of Health recently [announced](#) that, effective **June 15, 2018**, all certificate of need ("CON") reviews, modifications and waivers performed by the Bureau of Architecture and Engineering ("BAER") will be conducted via electronic review. Paper copies will no longer be accepted and, after August 30, 2018, paper copies will no longer be accepted.

As part of the transition, the state will be using PROject extranet ("ProjNet"), an internet-based design review checking system, for all CON reviews, modifications, and waivers. Applicants and designated representatives on the NYSECON system will have access to review and respond to comments in ProjNet. There will be no additional fee to use ProjNet.

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Assembly to Hold Hearing on Opioid Antagonist Access

The New York State Assembly Committees on Health, Insurance, and Alcoholism and Drug Abuse will be holding a [public hearing on opioid overdose reversal drugs](#). The hearing will examine access to and availability of opioid overdose reversal drugs, such as naloxone, and to identify, if necessary, means by which to expand access and availability statewide

The public hearing will take place on **Thursday, May 17, 2018** at 11:00 a.m. in the Assembly Hearing Room, 19th Floor, 250 Broadway, New York, NY. Persons wishing to testify should complete and return the reply form by **Monday, May 14, 2018** at 1:00 p.m.

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Health Home Update

Health Home Plus Program Guidance for High-Need Individuals with Serious Mental Illness

The Department has issued [guidance](#) outlining populations considered to have the highest care management needs within the Serious Mental Illness (SMI) population and who qualify for HH+ services. The guidance includes program requirements and care management models that meet those requirements.

Prior to May 2018, the ability to serve and bill the HH+ rate code for individuals meeting HH+ eligibility criteria were limited to former Office of Mental Health (OMH) Targeted Case Management (TCM) providers, or OMH Legacy CMAs. Effective May 2018, OMH has established HH+ CMA Credentials that must be met by any non-OMH Legacy CMAs and non-Legacy CMAs who will serve the HH+ population and receive the HH+ reimbursement.

[Attestation Process for CMAs to serve HH+ for Members with SMI](#)

Lead Health Homes are responsible for submitting written attestation to Department of Health (DOH)/OMH of all contracted CMAs who will provide HH+ and that meet credentials, staff qualifications and core competencies outlined in the Health Home (HH) Care Management Agency (CMA) Credentials to Serve Health Home Plus (HH+) for Members with Serious Mental Illness (SMI) [guidance document](#). Each Health Home will receive an attestation form with their currently identified HH+ CMAs included. The Health Home will update this form with information for additional CMAs who will serve HH+ for members with SMI and attest that they meet the credentials to serve this population.

CANS-NY In-person Training Now Required

NYS will now require that all HHSC care managers and supervisors participate in an in-person CANS-NY general training, as well as an in-person supervisory training for all supervisors. To begin this transition to this requirement, all 1915c waiver care managers and supervisors for B2H, OMH HCBS, OPWDD CAH and DOH CAH I & II transitioning to HHSC care managers and care management supervisors must complete an in-person general training and for supervisors also an in-person supervisory training by December 31, 2018.

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Legislative Spotlight

The Legislature will be in session on Monday, May 14 through Wednesday, May 16. The Senate Finance, Local Government, and Corporations, Authorities, and Commissions Committees will meet on Tuesday, May 15. The Assembly Health Committee will meet on Tuesday, May 15.

Bills of potential interest include:

- [S.5880-B/A.7719 \(Murphy/Abinanti\)](#): This bill would grant Westchester Health Care Corporation state action immunity from liability under federal and state antitrust laws. This bill is on the Senate Corporations, Authorities, and Commissions Committee Agenda.
- [S.2489-A/A.7219-A \(Hannon/Abinanti\)](#): This bill would authorize pharmacists to substitute any generic epinephrine auto-injector when a brand epinephrine auto-injector has been prescribed. This bill is on the Senate Finance Committee Agenda.
- [S.2816-B/A.587-C \(Hannon/Rosental\)](#): This bill would add testing of cytomegalovirus to the list of testing that must be performed on a newborn. Such testing would only be required if a newborn infant is identified as or suspected of having a hearing impairment. This bill is on the Senate Finance Committee Agenda.
- [S.363-B/A.7717-B \(Little/Jones\)](#): This bill would require health insurers to directly reimburse all ambulance service providers regardless of network participation. The bill would also require that reimbursement to non-participating ambulance service providers be provided at the “usual and customary charge”. This bill is on the Senate Local Government Committee Agenda.
- [A.10476-A \(Gottfried\)](#): This bill would add physician assistants to the list of health care professionals authorized to act in relation to orders pertaining to life sustaining treatments and orders not to resuscitate. This bill is on the Assembly Health Committee Agenda.
- [A.10604 \(McDonald\)](#): This bill would codify the existing process for Medicaid beneficiaries to access complex rehabilitation technology (“CRT”) and would require the Department of Health (“DOH”) to update Medicaid billing codes for CRT with the new codes added for CRT to the Medicare billing system. For managed care, the bill would require that DOH establish minimum benchmark reimbursement rates to be paid by managed care plans for CRT. This bill is on the Assembly Health Committee Agenda.

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Upcoming Calendar

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| <i>Tuesday, May 15, 2018</i> | Continuing Care Retirement Community (CCRC) Council 10:30 a.m. New York State Department of Health, 875 Central Avenue, Main Conference Room, Albany, NY |
| <i>Wednesday, May 16, 2018</i> | Public Health and Health Planning Council Joint Meeting of the Public Health Committee and the Ad Hoc Committee to Lead the Prevention Agenda 10:00 a.m. to 2:30 p.m. New York State Department of Health, 90 Church Street, 4th Floor, Conference Rooms 4A and 4B, New York, NY |
| <i>Wednesday, May 16, 2018</i> | NYS All Payer Database Stakeholder Forum Meeting 11:00 a.m. to 3:15 p.m. Empire State Plaza, Concourse Meeting Room 6, Albany, NY |
| <i>Thursday, May 17, 2018</i> | Committees of the Public Health and Health Planning Council 10:00 a.m. New York State Department of Health, 90 Church Street, 4 th Floor, Rooms 4A and 4B, New York, NY |

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