

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HEALTH CARE BUREAU

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In the Matter of

Assurance No. 25-072

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

New York Quality Healthcare Corporation  
d/b/a Fidelis Care,

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) into certain business practices of New York Quality Healthcare Corporation (d/b/a Fidelis Care) (“Fidelis Care,” “Fidelis,” or “Respondent”) relating to Fidelis Care’s improper assessment of cost-sharing for coronavirus disease 19 (“COVID-19”) testing services and HIV screening preventive services. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

**OAG FINDINGS**

**I. BACKGROUND AND THE OAG’S INVESTIGATION**

1. Respondent Fidelis Care is a health insurer that conducts business in New York and is headquartered at 2501 Jackson Avenue, Long Island City, New York 11101.

2. Fidelis Care was aware New York and federal law prohibited health plans from assessing cost-sharing for medically necessary COVID-19 testing and related services or visits during the federal COVID-19 public health emergency that ended on May 11, 2023 (“PHE”).<sup>1</sup>

3. Fidelis Care was aware New York and federal law prohibits health plans from assessing cost-sharing for certain preventive services, including HIV screening.<sup>2</sup>

4. Fidelis Care incorrectly assessed cost-sharing for office visits related to these COVID-19 testing services and for certain HIV screening preventive services that were submitted to Fidelis Care with certain diagnosis codes.

5. Following Fidelis Care’s assessment of cost-sharing, certain providers incorrectly issued bills to consumers for office visits related to COVID-19 testing services, despite the above prohibition on consumer bills. In addition, following Fidelis Care’s assessment of cost-sharing, certain providers issued bills to consumers for the HIV screening preventive services that were coded as described in paragraph 4.

6. As a result, some consumers incurred out-of-pocket costs and made payments for services that should have been without cost-sharing to the consumer.

7. Starting in October 2021 and through August 2022, due to the configuration of its claims processing system, Fidelis Care incorrectly assessed cost-sharing for office visits related to COVID-19 testing services on 38,076 claims, relating to over 18,000 consumers.

8. One consumer reported to the OAG that Fidelis Care assessed over \$1,000 in cost-sharing for office visits related to two COVID-19 tests. The provider then billed the consumer for the same amount.

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<sup>1</sup> 11 NYCRR § 52.16(p)(1); Families First Coronavirus Response Act (“FFCRA”) § 6001; Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) § 3201.

<sup>2</sup> N.Y. Ins. Law § 4303(j); 42 USC § 300gg-13(a).

9. In December 2022, Fidelis Care reprocessed 34,340 of these COVID-19 testing claims to remove its assessment of cost-sharing, made \$2,388,385.59 in additional payments to providers, and paid \$199,377.39 in late payment interest to providers at a 12% interest rate to make them whole.

10. In June 2023, Fidelis Care reprocessed the remaining 3,736 COVID-19 testing claims to remove its assessment of cost-sharing and made \$90,050.22 in additional payments to providers. In July 2023, Fidelis paid an additional \$795.85 in late payment interest to providers.

11. Starting in January 2022 and through May 2023, due to the configuration of its claims processing system, Fidelis Care incorrectly assessed cost-sharing for HIV screening preventive services on 2,806 claims, relating to over 2,100 consumers.

12. One consumer reported to the OAG that in June 2022 Fidelis Care assessed over \$180 in cost-sharing for HIV screening preventive services. The provider then billed the consumer for the same amount.

13. In December 2022, Fidelis Care reprocessed claims for the abovementioned consumer to remove its assessment of cost-sharing. In addition, in January 2023, Fidelis Care notified the OAG that it had determined how many consumers were impacted by the same issue. In April and May 2023, Fidelis reprocessed the HIV screening preventive services claims for similarly impacted consumers to remove the assessment of cost-sharing. Fidelis made an additional \$148,035.68 in payments to providers relating to these reprocessed claims and paid an additional \$9,392.39 in late payment interest to providers.

14. Fidelis Care represents that it revised its claims processing system so that it would no longer assess cost-sharing for these office visits for COVID-19 testing services performed during the PHE.

15. Fidelis Care represents that it revised its claims processing system so that it would no longer assess cost-sharing for HIV screening preventive services claims coded as described in paragraph 4.

16. Fidelis represents that it issued a corrected explanation of benefits (“EOB”) for each COVID-19 testing services and HIV screening preventive services claim to each impacted consumer. These corrected EOBs indicated the consumer was not responsible for any out-of-pocket costs for the listed services.

17. Fidelis Care represents that it contacted all impacted providers to confirm each provider had refunded any payments by consumers and withdrawn any bills sent to consumers because of Fidelis Care’s improper assessment of cost-sharing. Fidelis Care represents that it has received written confirmation from over 220 providers impacted by the HIV cost-share issue and over 240 providers impacted by the COVID-19 cost-share issue.

18. Fidelis Care cooperated with the OAG’s investigation, including taking the measures described in paragraphs 9 to 17.

## **II. RELEVANT LAW**

19. Federal and New York State law prohibited Fidelis Care from assessing cost-sharing on office visits related to diagnostic COVID-19 testing services during the COVID-19 PHE.

20. Effective March 18, 2020, and in effect for the duration of the COVID-19 PHE, the Families First Coronavirus Response Act (“FFRCA”) required health plans to provide coverage for and to “not impose any cost sharing (including deductibles, copayment and coinsurance) requirements” for COVID-19 diagnostic tests and for “items and services furnished during health

care provider visits [both in-person and telehealth visits], urgent care center visits, and emergency room visits” relating to the diagnostic COVID-19 test. FFRCA § 6001(a).

21. Effective March 27, 2020, and in effect for the duration of the COVID-19 PHE, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) amended FFRCA § 6001 to extend its coverage requirements and cost-sharing prohibitions to additional COVID-19 diagnostic tools and related services. CARES Act § 3201.

22. Effective March 13, 2020, and extended through May 11, 2023, the end of the COVID-19 PHE, New York State Department of Financial Services Regulation 11 NYCRR § 52.16(p)(1) prohibited health plans from imposing and from requiring insured consumers to pay “copayments, coinsurance, or annual deductibles” for certain COVID-19 laboratory tests and related in-network visits to out-patient providers, whether in-person or via telehealth. 11 NYCRR § 52.16(p)(1).

23. Federal and New York State law prohibit Fidelis Care from assessing cost-sharing for HIV screening preventive services.

24. New York Insurance Law § 4303(j) requires health plans to provide coverage for various preventive care services, including HIV screenings, and states “such coverage shall not be subject to annual deductible or coinsurance.” N.Y. Ins. Law § 4303(j).

25. The Affordable Care Act also requires health plans to provide coverage for various preventive care services, including HIV screenings, and states plans “shall not impose any cost sharing requirements.” 42 USC § 300gg-13(a).

26. The New York State Executive Law prohibits repeated “fraudulent or illegal acts” in the conduct of any business, trade or commerce, and allows the Attorney General to institute a

special proceeding for restitution, damages, and/or injunctive relief against any party that has committed such acts. N.Y. Exec. Law § 63(12).

27. The New York General Business Law prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York State. N.Y. Gen. Bus. Law § 349.

28. The OAG finds that Fidelis Care’s actions, as described above, failed to comply with the requirements of FFRCA § 6001(a), CARES Act § 3201, 11 NYCRR § 52.16(p)(1), Ins. Law §4303(j), 42 USC § 300gg-13(a), Executive Law § 63(12), and General Business Law § 349.

29. Fidelis Care neither admits nor denies the OAG’s finding that its actions violated the statutory and regulatory provisions cited above. Fidelis Care admits that the claims described above required adjustment to eliminate cost-sharing. This Agreement is not an admission of wrongdoing by Fidelis Care. Fidelis Care has agreed to this Assurance to resolve this matter and avoid the cost, burden, and distraction of litigation.

30. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), and General Business Law § 349, based on the conduct described above between October 2021 and May 2023.

**IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:**

**RELIEF**

31. General Injunction: Fidelis Care shall not engage, or attempt to engage, in conduct in violation of any applicable laws concerning the assessment of cost-sharing to office visits related to COVID-19 testing during the PHE or the assessment of cost-sharing for HIV screening preventive services coded consistent with the adjusted claim set described herein, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 30, *supra*, in addition to any other appropriate investigation, action, or proceeding.

32. Programmatic Relief:

a. *Claims Practices*:

- i. Fidelis Care shall not assess cost-sharing for COVID-19 testing services performed during the PHE, as required by state and federal laws in effect during the PHE.
- ii. Fidelis Care shall not assess cost-sharing for HIV screening preventive services coded consistently with the adjusted claim set described herein as required by state and federal laws.
- iii. If Fidelis Care learns of additional instances that it improperly assessed cost-sharing for COVID-19 testing services performed during the PHE or HIV screening preventive services coded consistent with the adjusted claim set described herein, Fidelis Care shall: within thirty (30) days: (1) reprocess the claim to remove the improper cost-sharing, (2) issue a corrected EOB to the impacted consumer, (3) notify the impacted provider of the issue and

demand the provider withdraw any resulting consumer bill and refund any consumer payments made as a result of Fidelis Care's assessment of cost-sharing, and (4) determine if a systems reconfiguration is required to prevent additional occurrences of the improper cost-sharing. Should Fidelis determine a systems reconfiguration is required, Fidelis Care shall complete the systems reconfiguration as soon as reasonably possible but no later than sixty (60) days following that determination, unless Fidelis Care alerts the OAG of the need for additional time to complete the reconfiguration, in which case the reconfiguration will be completed by an agreed-upon deadline.

- b. *Cooperation:* Fidelis Care agrees to continue to cooperate with the OAG to promptly resolve all COVID-19 testing and HIV screening preventive services-related consumer complaints that the OAG submits to Fidelis Care, or that otherwise come to the attention of Fidelis Care, in compliance with federal or state requirements. This cooperation includes the relief described in paragraph 32 (a)(iii).
- c. *Periodic Compliance Reporting:* Upon written request from the OAG, Fidelis Care shall within sixty (60) days provide all documentation and information necessary for the OAG to verify compliance with this Assurance.



33. Monetary Relief:

a. *Penalties:*

- i. Within thirty (30) days of the Effective Date, Fidelis Care shall pay \$175,000 in penalties to the State of New York. Payment shall be made by wire transfer in accordance with the instructions provided by the OAG.
- ii. Fidelis Care shall pay to the State of New York a stipulated penalty of up to \$500 for each and every material default in the performance of any obligation under this Assurance occurring after the Effective Date of the Assurance.

34. Compliance with Other Obligations: In the event that Fidelis Care reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any federal or state law or regulation that may be enacted or adopted after the Effective Date of this Assurance such that compliance with both this Assurance and such provision of law or regulation is not possible, Fidelis Care shall notify the OAG promptly and the Parties shall meet and confer at their earliest convenience to attempt to resolve such alleged conflict.

**MISCELLANEOUS**

Subsequent Proceedings

35. Fidelis Care expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 42, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance;
  - b. the OAG may use statements, documents or other materials produced or provided by Fidelis Care prior to or after the Effective Date of this Assurance;
  - c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Fidelis Care irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue;
  - d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).
36. Acceptance of this Assurance by the OAG is not an approval or endorsement by the OAG of any of Fidelis Care's policies, practices or procedures, and Fidelis Care shall make no representation to the contrary.
37. If a court of competent jurisdiction determines that Fidelis Care has violated the Assurance, Fidelis Care shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

38. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Fidelis Care. Fidelis Care shall include any such successor, assignment, or transfer agreement a provision that binds the successor, assignee, or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

39. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

40. Any failure by the OAG to insist upon the strict performance by Fidelis Care of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Fidelis Care.

Communications:

41. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 25-072, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Fidelis Care, to:

- Justin Davis, Interim President & CEO of New York Quality Healthcare Corporation d/b/a Fidelis Care.
- Shari Riley, Interim VP Compliance of New York Quality Healthcare Corporation d/b/a Fidelis Care.

2501 Jackson Avenue  
38th Floor  
Long Island City, NY 11101

If to the OAG, to: Eve Woodin, or in their absence, to the person holding the title of Bureau Chief, Health Care Bureau.

Representations and Warranties:

42. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Fidelis Care and its counsel and the OAG's own factual investigation as set forth in paragraphs 1 through 28, above. Fidelis Care represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Fidelis Care or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

43. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Fidelis Care in agreeing to this Assurance.

44. Fidelis Care represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles:

45. Unless a term limit for compliance is otherwise specified within this Assurance, Fidelis Care's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Fidelis Care of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

46. Fidelis Care agrees not to take any action or to make or permit to be made any public statement denying any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

47. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Fidelis Care violates the Assurance after its Effective Date.

48. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

49. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

50. Fidelis Care acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

51. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

52. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

53. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

54. This Assurance is effective on the date that it is signed by the Attorney General or her authorized representative ("Effective Date").

LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, NY 10005

By: Eve Woodin  
Eve Woodin  
Assistant Attorney General  
Health Care Bureau

Dated: 12/18/2025

NEW YORK QUALITY HEALTHCARE  
CORPORATION D/B/A FIDELIS CARE

By: \_\_\_\_\_

Justin M. Davis  
Interim President & CEO of New York Quality  
Healthcare Corporation d/b/a Fidelis Care

Dated: December 11, 2025

STATE OF Florida )  
COUNTY OF Hillsborough ) ss.:

On the 11th day of December in the year 2025 by means of on-line notarization, came Justin M. Davis to me known, who, being by me duly sworn, did depose and say that he is a duly authorized officer and representative of the Respondent, New York Quality Healthcare Corporation d/b/a Fidelis Care, the entity described in and which executed the above instrument; and that he signed his name thereto by like authority.

Sworn to before me this  
11th day of December, 2025

Betsy Rosa  
NOTARY PUBLIC

