

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES
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In the Matter of:

New York Quality Healthcare Corporation (d/b/a Fidelis
Care)
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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is entered into by and between the State of New York (the “State”), by its attorney, Letitia James, Attorney General for the State of New York, through the Medicaid Fraud Control Unit (“MFCU”) and New York Quality Healthcare Corporation (d/b/a Fidelis Care) (“Fidelis”), by its authorized representatives (together, the “Parties”).

WHEREAS, Fidelis is a New York corporation organized to support the provision of health care services and administers managed health care plans available to residents of New York, including individuals enrolled in the New York State Medical Assistance Program (the “Medicaid Program” or “Medicaid”). In particular, Fidelis administers a Medicaid managed care plan (the “Fidelis Plan”) under which it accepts a predetermined per-member, per-month capitation payment from the State for arranging health care services for the State’s Medicaid Program beneficiaries who are enrolled in the plan, and reimburses providers for such services;

WHEREAS, at all relevant times, Fidelis was under contract with the New York State Department of Health under the Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract (“the Model Contract”) that sets forth Fidelis’ obligation to ensure that the providers it enrolls into its network who provide Medicaid-reimbursed

services, and their owners, are appropriately licensed to practice by the State and/or have not been excluded from participation in the Medicaid Program;

WHEREAS, MFCU conducted an investigation of Fidelis and determined that from February 7, 2019 to July 30, 2021 (“the Relevant Period”), Fidelis engaged in the following conduct (which conduct is referred to in this Agreement as the “Covered Conduct”): (a) Fidelis included Cornerstone Herkimer LLC (“Cornerstone”) as a participating provider in Fidelis’ network, even though Cornerstone’s sole owner and Director, Ward Halverson (“Halverson”) had been excluded from participation in the Medicaid Program prior to the Relevant Period, on May 1, 2017, and had his license suspended by the New York State Education Department prior to the Relevant Period, on January 10, 2017; (b) by no later than December 14, 2018, Fidelis knew that Halverson had been excluded from participation in the Medicaid Program and continued to serve as principal at Cornerstone; and (c) but Fidelis did not terminate its agreement with Cornerstone, and continued to pay Cornerstone, until July 30, 2021; and

WHEREAS, Fidelis wishes to resolve its civil liability for the Covered Conduct.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

TERMS AND CONDITIONS

1. As repayment to the State for the Covered Conduct and to resolve claims related to the Covered Conduct, Fidelis shall pay to the State a total of Seven Million, Six Hundred Eighty-One Thousand, Seven Hundred and Ninety-Six Dollars and Forty-Four Cents (\$7,681,796.44) (the “Settlement Amount”) within twenty (20) days of the Effective Date of this Agreement, as defined in Paragraph 27, pursuant to written wire instructions to be provided by MFCU. The entire Settlement Amount constitutes restitution to the State.

2. By the Effective Date of this Agreement, Fidelis will determine the identity and exclusion status of all new participating providers, re-enrolled participating providers, current participating providers, any subcontractors, and any person with an ownership or control interest or who is an agent or managing employee of any participating provider or subcontractor, in its network, consistent with § 18.9(c)(i) of the Model Contract.

3. After the Effective Date of this Agreement, Fidelis will ensure on an ongoing basis that all new participating providers, subcontractors, and any persons with an ownership or control interest or who is an agent or managing employee of any participating provider or subcontractor, in its network, are not excluded from participation in the Medicaid Program.

4. With respect to any application for a new provider enrollment, Fidelis will conduct the checks identified in Paragraph 3 of this Agreement before enrolling the provider in its network or making any payments to such provider for services to Medicaid recipients. Fidelis will otherwise conduct the routine checks identified in Paragraph 3 of this Agreement no less frequently than on a monthly basis. The requirements in Paragraphs 2–4 herein do not supersede Fidelis’ obligations under the Model Contract.

5. Fidelis will review its affiliations with any entities or individuals identified through the checks identified in Paragraphs 2–4 of this Agreement as having been excluded from participation in the Medicaid Program, and terminate any participating providers and prohibited relationships as required pursuant to Section 21.5 of the Model Contract.

6. In the event that Fidelis materially fails to fulfill its obligations under this Agreement, including but not limited to failing to pay the Settlement Amount in a timely fashion or failing to comply with the terms of Paragraphs 2–5, the State, after providing notice pursuant to Paragraph 12 of this Agreement and giving Fidelis five (5) days to cure, may at MFCU’s sole

discretion, declare this Agreement void, retain all sums delivered to it prior to the date of non-compliance, and pursue all remedies existing prior to execution of this Agreement. Any sums retained will be applied as an offset to any future payment which is either agreed upon or determined by a court of law, but only as to the Covered Conduct and not related to any other violations of this Agreement, including of Paragraphs 2–5.

7. Subject to the exceptions in Paragraph 8 below (concerning reserved claims), and conditioned upon Fidelis’ full compliance with the terms of this Agreement, including full payment of the Settlement Amount to the State pursuant to Paragraph 1 above, the State releases Fidelis and all of its predecessors, successors, members, assigns, and corporations from any civil monetary cause of action that the State has for the Covered Conduct under Executive Law § 63-c and the common law theories of payment by mistake, unjust enrichment, money had and received, and breach of contract.

8. Notwithstanding the releases given in Paragraph 7 above, or any other term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- a. Any liability arising under state tax codes;
- b. Any administrative liability, including mandatory or permissive exclusion from the State’s Medicaid Program;
- c. Any civil liability under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*, Social Services Law § 145-b, Executive Law § 63(12), or common law fraud;
- d. Any civil or administrative liability that Fidelis has or may have to the State or to individual consumers or State program payors under any statute, regulation or rule not expressly covered by the releases in Paragraph 7 above;

e. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;

f. Any liability for personal injury, patient abuse, or neglect arising from the Covered Conduct;

g. Any liability which may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of Fidelis to the State for the Covered Conduct;

h. Any liability of individuals; and

i. Any liability based upon obligations created by this Agreement.

9. Fidelis, including any and all predecessors, successors, and members, together with their current and former officers, directors, trustees, servants, employees, and assigns, fully and finally release the State, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Fidelis has asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

10. Fidelis agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Fidelis, including its present or former officers, directors, employees, and agents in connection with:

i. the matters covered by this Agreement;

- ii. the State's audit(s) and civil investigation(s) of matters covered by this Agreement;
- iii. Fidelis' investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil investigation(s) in connection with matters covered by this Agreement (including attorneys' fees);
- iv. the negotiation and performance of this Agreement; and
- v. any payment Fidelis makes to the State pursuant to this Agreement, including expenses, costs and attorneys' fees;

are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Fidelis, and Fidelis shall not charge such Unallowable Costs directly or indirectly to any contracts with the State or to any State Medicaid program or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Fidelis or any of its subsidiaries or affiliates to the Medicaid Program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within ninety (90) days of the Effective Date of this Agreement, Fidelis shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this paragraph) included in payments previously sought by Fidelis from the State Medicaid Program if applicable. Fidelis agrees that the State, at a minimum, shall be entitled to recoup from Fidelis any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment if applicable. Any payments due shall be paid to the State. The State reserves its right to audit, examine, or re-examine Fidelis' books and records

and to disagree with any calculation submitted by Fidelis or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Fidelis, or the effect of any such Unallowable Costs on the amounts of such payments.

d. Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine Fidelis' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

11. Fidelis agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as the Covered Conduct.

12. All non-electronic payments shall be delivered to the Medicaid Fraud Control Unit, Finance Department, 13th Floor, 28 Liberty Street, New York, New York 10005. Any other notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be delivered both by (a) hand, express courier, or postage-prepaid mail and (b) by email, and shall be addressed as follows:

TO NEW YORK STATE:

Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
Telephone: (212) 417-5300
MFCUNotices@ag.ny.gov

TO FIDELIS:

Michael A. Berlin
GREENBERG TRAURIG, LLP
1 Vanderbilt Avenue

New York, NY 10017
Telephone: (212) 801-9200
Michael.Berlin@gtlaw.com

13. Fidelis agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Fidelis': (a) testimonial obligations or (b) right to take contrary legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

14. Fidelis waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

15. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

16. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of any relevant statutes or regulations, and the Agreement shall not be construed as an admission by the State as to any contested issue encompassed by the State's investigation.

17. This Agreement is binding upon all Parties and upon the assigns, transferees, purchasers, and any successors-in-interest of Fidelis.

18. Each Settling Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the

State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

20. This Agreement is governed by the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties consent to the jurisdiction of the Supreme Court of the State of New York in any action brought by the State to enforce or interpret this Agreement.

21. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

22. This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Agreement may not be amended except by written consent of the Parties.

23. Fidelis acknowledges that it has entered this Agreement freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

24. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and the entities indicated below.

25. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

26. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

27. The effective date of this Agreement is the date of the last signature affixed hereto.

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their signatures.

Agreed to by:

THE STATE OF NEW YORK

Dated: New York, New York

September 4, 2024

LETITIA JAMES

Attorney General for the State of New York

By:



Tiffany Castleman-Smith

Special Assistant Attorney General

28 Liberty Street, 13th Floor

New York, NY 10005

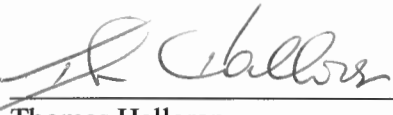
(212) 417-5394

Attorney for the State of New York

FURTHER SIGNATURES APPEAR ON THE FOLLOWING PAGE

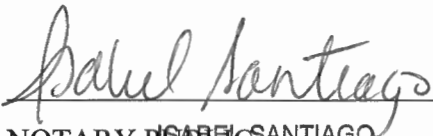
FIDELIS

Dated: New York, New York
August 27, 2024

By: 
Thomas Halloran
Chief Executive Officer

State of New York)
) ss:
County of Queens)

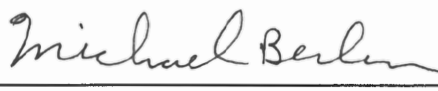
On the 27 day of August, in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas Halloran, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same individually, and in his capacity as Chief Executive Officer of New York Quality Healthcare Corporation (d/b/a Fidelis Care) and that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.


NOTARY PUBLIC SANTIAGO
Notary Public, State of New York
No: 01SA4795151
Qualified in Queens County
My Commission Expires October 31 2025

APPROVED AS TO FORM BY:

Dated: New York, New York
September 3, 2024

GREENBERG TRAURIG, LLP

By: 
Michael A. Berlin
GREENBERG TRAURIG, LLP
Counsel to Fidelis