

When Religion Compromises Women's Health Care

A Case Study of a Catholic Managed Care Organization

Miriam Hess, Principal Researcher and Author

Robert Jaffe, Deputy Director of NARAL/NY Foundation

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NARAL/NY Foundation
462 Broadway, Suite 540
New York, N.Y. 10013
www.naralny.org

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Foreword

Americans are entering an important discussion about the role that religious-affiliated institutions play in our society. Prompted by President Bush's efforts to increase governmental support for religious-based health and social service providers, we are examining basic questions regarding the separation of church and state and the appropriateness of funneling tax dollars to church-based institutions.

NARAL/NY Foundation's report, *When Religion Compromises Women's Health Care: A Case Study of a Catholic Managed Care Organization* offers insight into this emerging societal debate. The report examines the operations of Fidelis, a Catholic-run managed care plan, that refuses to cover birth control, sterilization and abortion services. Fidelis, which receives in excess of \$150 million in taxpayer revenues, has become the state's largest Medicaid managed care plan and the fourth largest plan covering uninsured children and adults.

The NARAL/NY Foundation report documents disturbing instances of Fidelis not educating enrollees about the company's family planning carve-out policy. Women describe how Fidelis' exclusion of family planning care leads to delayed and deferred medical care. Most disturbingly, data highlights the inferior quality of reproductive health care delivered by Fidelis compared to other managed care plans.

Policymakers must reexamine whether New York should permit a multi-million dollar managed care company to receive taxpayer funds, while embracing a religious doctrine that fundamentally contradicts an underlying promise of managed care — to provide better coordinated, comprehensive, cost-effective health care services. Approaches taken in other states allowing Catholic-run managed care plans to operate can be helpful guides, but only if they deliver family planning services in a seamless way that does not fragment and marginalize this critical care from other health services.

When Religion Compromises Women's Health Care is a case study of the problems that arise when taxpayer dollars flow to health or social service providers who carry their religious beliefs into the delivery of services. It is our hope that this report will motivate policymakers and health advocates to address, shape and influence how Fidelis, and other religious institutions, participate in the delivery of health and social services. We invite you to join us.

Kelli Conlin
Executive Director

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Overview

Over the last decade, many states have aggressively enrolled Medicaid beneficiaries into managed care programs. The states' goals are both to control costs and to provide higher quality and more accessible health care. Under managed care, Medicaid beneficiaries would have a "medical home"— a primary care provider and a place where they can receive their health care on a regular basis, allowing for better coordination and continuity of care.

However, Medicaid managed care plans affiliated with religious organizations do not always cover family planning services. This can have significant consequences on a woman's ability to access comprehensive health care. The New York State Catholic Health Plan, Inc. (doing business as Fidelis) is a Medicaid and Child Health Plus managed care plan that carves out family planning from its package of services. Due to religious objections, Fidelis does not provide its enrollees family planning services or make direct referrals for contraception, abortion, and sterilization.

By carving out vitally important and time-sensitive family planning services, Fidelis requires enrollees to take an extra step and go out of network to receive adequate reproductive health care. Yet many of these women may not understand, due to cultural, socio-economic and language barriers, the requirement to take this extra step or other limits of their Fidelis benefits. The Fidelis carve-out can result in significant health care consequences for a population of low-income women already besieged by high rates of unintended pregnancy and sexually transmitted disease.

Fidelis is a unique entity in New York State. It is the only plan in the State that, due to religious reasons, carves out family planning services under the Medicaid and Child Health Plus program, without providing beneficiaries a seamless alternative. There are 48 Catholic-run managed care plans in the United States.¹ Therefore, the implications of the Fidelis business model are applicable elsewhere.

The New York State Affiliate of the National Abortion and Reproductive Rights Action League Foundation (NARAL/NY Foundation) and other advocates throughout the country have worked over the past several years to establish policies and guidelines to ensure that religious-run managed care organizations serve as a beneficial part of the health care system, rather than as an impediment to care. Despite these efforts, the U.S. Congress included language, ironically placed in the patient protection section of the Balanced Budget Act of 1997, allowing managed care plans to refuse to pay for or arrange the delivery of family planning care. Efforts in New York State to address the family planning carve-out have also been thwarted. In

1998, NARAL/NY worked with the New York City Council to create legislation to ensure that women are properly informed about a plan's approach to family planning care and to restrict auto-enrollment in Medicaid managed care plans that carve out services.² Unfortunately, this legislation did not pass.

During the Summer of 2000, the NARAL/NY Foundation undertook a study of Fidelis. Its purpose was twofold: to understand the issues concerning Medicaid managed care plans that carve out family planning services and to evaluate the impact on health care quality for women enrolled in these plans. Results of the study conclude that the Fidelis family planning carve-out breaks the continuity of health care delivery, compromises the quality of care women receive, creates a disconcerting church/state relationship, and undermines the stated goals of managed care to provide comprehensive health care services.

The findings in this report underline Fidelis' failure to comply with state policies requiring the company to disclose the carve-out policy to prospective and current enrollees and to refer enrollees to family planning care when needed. *When Religion Compromises Women's Health Care: A Case Study of a Catholic Managed Care Organization* should prompt state and federal officials to examine closely the operations of Fidelis and take steps to address the significant problems associated with the plan's operations.

How this Study was Conducted

This study consists of an in-depth examination of Fidelis and its activities within New York State. NARAL/NY Foundation conducted this study in the following ways:

- Gathered information by filing Freedom of Information Act requests with the New York State Department of Health, the New York State Office of the Attorney General, and various county departments of health and social services. NARAL/NY also requested information from Fidelis' corporate offices.
- Facilitated focus groups throughout the state with women enrolled in Fidelis.
- Conducted a survey to procure information from health care providers within the Fidelis provider network.
- Analyzed State Health Department quality data comparing Fidelis and other managed care plans.

Medicaid and Managed Care: An Historical Perspective

In order to better understand the environment in which a Medicaid managed care plan such as Fidelis operates, an historical perspective on Medicaid and managed care offers useful context.

When Medicaid was created in 1965, it operated as a fee-for-service program; beneficiaries received a Medicaid card they could present to a physician or clinic participating in Medicaid. The doctor or clinic providing services then billed the state directly for the services. As the

Enrollment in Medicaid managed care substantially increased in New York with the 1991 passage of the Statewide Managed Care Act.

private health insurance market for medical services became dominated by managed care organizations (MCOs), several states, including New York, asked the federal government for permission to provide Medicaid services to their beneficiaries through managed care. In the mid-1980s, New York created demonstration projects, under federal approval, to enroll beneficiaries into managed care.

Enrollment in managed care did not reach substantial numbers in New York until passage of the 1991 Statewide Managed Care Act. This law required counties to participate in enrolling Medicaid beneficiaries in managed care. The law set an ambitious, and still unrealized, goal of enrolling half of all Medicaid beneficiaries in managed care within five years. However, the law did prompt state and county officials to concentrate on integrating managed care into Medicaid, and voluntary enrollment rose rapidly. A number of commercial HMOs, recognizing an opportunity to gain market share and profits, began to aggressively enroll Medicaid beneficiaries. At the same time health care providers — typically hospitals and community health centers — established MCOs to cater to the suddenly attractive Medicaid market. These health care plans, of which Fidelis is one, are known as Prepaid Health Services Plans (PHSPs).

Mandatory Enrollment in Medicaid Managed Care

With the election of Republican Governor George Pataki in 1994, New York's efforts to overhaul Medicaid by delivering services under a managed care model accelerated. The Pataki Administration sought a "waiver" from the federal government to allow the state to mandatorily enroll Medicaid recipients in MCOs. Under this waiver, the state planned to place 2.4 million of the state's then 3.5 million Medicaid beneficiaries in managed care plans by the year 2000. The waiver also included an auto-enrollment provision for those beneficiaries who do not select their own managed care plan. The waiver provides that all individuals "shall have 60 days after the receipt of information about managed care choices, in which to select a MCO. If eligible individuals fail to select a MCO within 60 days, the State may assign them to a MCO..."³

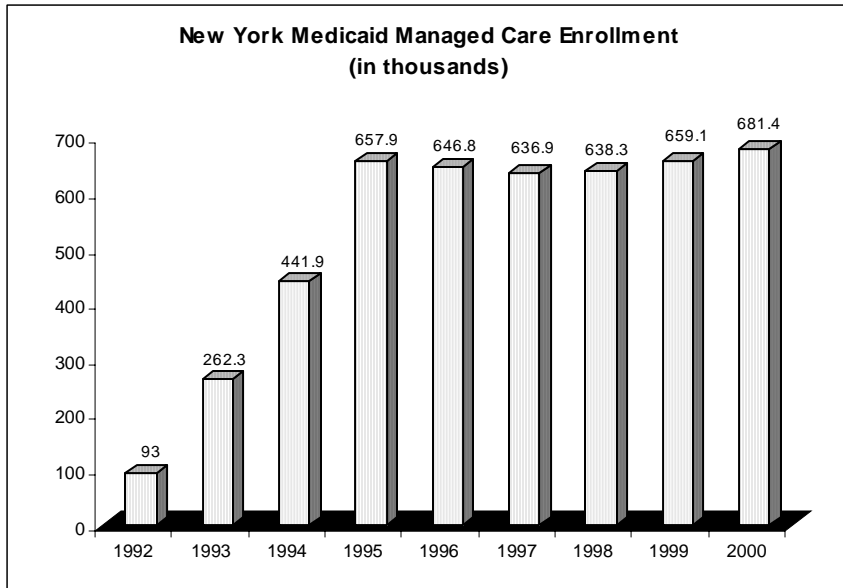
New York State formally requested this waiver, known as The Partnership Plan, in July 1996 and received approval in July 1997. The Partnership Plan was approved pursuant to “Terms and Conditions” set by the Health Care Financing Administration (HCFA), the federal agency responsible for overseeing Medicaid managed care; and in accordance with “Operational Protocols” developed by the state and approved by HCFA. Following lengthy negotiations between local, state, and federal government officials, mandatory enrollment began in October 1997 in 13 designated upstate counties — Albany, Broome, Columbia, Erie, Greene, Monroe, Niagara, Onondaga, Ontario, Oswego, Rensselaer, Saratoga and Westchester. In 1999, mandatory enrollment began in parts of New York City. Phased-in enrollment of beneficiaries continues today in New York City and upstate counties.

The Growth in Medicaid Managed Health Care

The transition to managed care is occurring in an increasingly complex health care environment. Welfare reform and an improved New York State economy are widely seen as causing a dramatic decline in the number of Medicaid beneficiaries. Moreover, despite earlier enthusiasm, a number of commercial HMOs have withdrawn from the Medicaid market. They expressed unwillingness to stay in a marketplace where premiums and administrative requirements set by the state compromised their ability to operate profitably. Today, the Medicaid program is increasingly dominated by small, nonprofit, provider-sponsored health plans that serve only low-income patients.⁴ There currently are 30 state-approved Medicaid MCOs operating in 49 of the state's 61 counties.

32% of eligible Medicaid beneficiaries are enrolled in managed care.

While the actual number of Medicaid beneficiaries has declined, the percentage of Medicaid beneficiaries enrolled in managed care is on the rise. Between 1992 and 1995, there was a six-fold increase in the number of Medicaid beneficiaries in managed care in New York, an increase from just over 90,000 to more than 650,000. As of October 2000, 681,435 Medicaid beneficiaries were enrolled in managed care, almost one-third (32%) of the total Medicaid eligible population.⁵ State Department of Budget officials project managed care enrollment to reach approximately 796,000 by March 2001 and 1.1 million by March 2002.⁶



Source: New York State Department of Health

Family Planning Care within New York’s Medicaid Managed Care Program

With the passage of the Medicaid program in 1965, Congress included family planning as a mandatory covered service. Under the program, the federal government reimburses states at a 90 percent rate for direct patient services, supplies, education, and counseling related to family planning. This reimbursement rate reflects the importance of family planning; it is significantly above the average federal reimbursement for Medicaid services of 57 percent.

Medicaid is the largest source of funding for family planning care for low-income women. In 1996, an estimated \$500 million was spent by Medicaid on family planning care. For low-income women, Medicaid is an essential source of financing family planning needs.

In New York State, family planning is defined as "...the offering, arranging, and furnishing of those services which enable individuals, including minors who may be sexually active, to prevent or reduce incidence of unintended pregnancy."⁷ New York’s Medicaid rules establish a comprehensive definition of family planning services including: all types of birth control; emergency contraception; sexually transmitted disease screening and treatment; sterilization (both tubal ligations and vasectomies); screening for cervical cancer, hypertension, breast disease, and pregnancy; and abortion.⁸

New York State’s “Free Access” policy allows enrollees to choose their own providers for family planning services, either within or outside their network.

Regarding family planning, New York State has implemented a “Free Access” policy.⁹ This policy allows Medicaid managed care enrollees to choose their own providers for family planning services, either within or outside their network, without referral or prior approval from their MCO or primary care provider. Chosen out-of-network providers must be qualified Medicaid providers. The “Free Access” policy covers only

family planning services and a limited array of routine services that are often delivered as part of a family planning visit, such as screening and treatment for sexually transmitted diseases; testing for cervical cancer, breast disease and hypertension; and HIV counseling and testing.

Under the Terms and Conditions, the state must ensure all enrollees have access to and are adequately informed of their right to access family planning services, including services provided by out-of-network providers. In addition, the state must establish procedures to monitor that enrollees have timely, appropriate access to family planning services.¹⁰ The state also requires MCOs to include information about the “Free Access” law in their member handbooks and to notify all enrollees of reproductive age of their right to obtain these services outside the MCO network.¹¹ The handbooks are reviewed and approved by the state.

Under New York’s rules, managed care plans can either provide or exclude coverage for family planning care. Plans are given two options:

1. Receive capitated payments for family planning services and accept responsibility and pay for these services when care is delivered by an in-network provider. When an enrollee visits an out-of-network provider, as allowed under the “Free Access” policy, the state reimburses the provider and recoups these funds from future MCO capitation payments.
2. Opt-out of providing family planning care and not receive money for family planning services in their capitation rate. Individuals enrolled in a plan that elects this option can obtain family planning services from a provider who bills Medicaid directly for reimbursement. Fidelis has selected this option and opts-out of providing family planning care.

Fidelis opts-out of providing family planning services, and is required to inform enrollees how to obtain this care.

In 1998, the State Health Department issued guidelines for plans such as Fidelis that do not provide family planning services under their capitation rate.¹² Under the guidelines, Fidelis is required to develop, with state approval, a policy and procedural memorandum describing the plan’s responsibility to inform enrollees and providers that Fidelis does not cover family planning services and describing procedures to take when an enrollee requests these services. The memorandum requires the plan to tell prospective and current enrollees about the carve-out policy in the plan’s written marketing materials, including

the member handbook, and to tell them orally at the time of enrollment and at any time an inquiry is made regarding family planning and reproductive health services. In addition, the guidelines require new members of Fidelis to receive both a letter explaining how to access family planning services and a list approved by the state or local government of family planning providers in the enrollee's region. Fidelis is also required to mail this information whenever a member or prospective member requests information about the carved-out services; Fidelis must maintain a log of all requests for this information. Fidelis also is required to inform network providers that if, in the provider's judgment, certain family planning services not offered through the plan are medically indicated, an appropriately trained professional should advise the enrollee and either: 1) offer these services on a fee-for-service basis; or 2) provide the enrollee with a copy of the list of family planning providers approved by the State Health Department or local government. Fidelis has incorporated these requirements into an administrative protocol.¹³

Family Planning Services and Women's Health

Family planning services are an essential part of women's health care. American women, regardless of income, experience high rates of unintended pregnancy and sexually transmitted disease. However, low-income women often face specific problems that heighten the difficulty of accessing care. These problems may include educational and linguistic barriers, as well as getting to a health care provider in a timely manner due to lack of transportation and appropriate child care. Additionally, low-income women often lack an ongoing relationship with a health care provider. As a result of these social and economic barriers, low-income women face greater risk of unintended pregnancy, sexually transmitted disease, and poorer birth outcomes. Adequate family planning care can significantly help to address these problems.

Many low-income women face linguistic and socio-economic barriers that heighten the difficulty of accessing family planning care.

Negative Effects of the Family Planning Carve-Out under Medicaid Managed Care

Like most states, New York sought to enroll Medicaid beneficiaries into managed care both to control costs and to provide higher quality and more accessible care than received under fee-for-service Medicaid. Managed care was seen as a vehicle to offer Medicaid beneficiaries a broader range of providers to choose from, particularly as commercial MCOs entered the Medicaid marketplace. Beneficiaries would have a "medical home"— a primary care provider and a place where they can receive their health care on a regular basis, allowing for better coordination and continuity of care. Under managed care, a patient's primary care provider

(PCP) could provide primary and preventive health care, direct the patient to specialty providers, and offer on-going coordination when care is delivered by different providers.

When a managed care plan opts-out of providing family planning care, the State's goal of providing coordinated, continuous care is compromised.

When a managed care plan, such as Fidelis, opts-out of providing family planning care, the State's goal of providing patients better coordinated, continuous care by offering a "medical home" is compromised. Women who normally would see their in-network Ob/Gyns or primary care physicians to avert unintended pregnancy, ensure healthy pregnancies, and prevent a range of health problems including cervical cancer and sexually transmitted disease, must now obtain these services from other providers.

Unfortunately, obtaining these services elsewhere, or even realizing that they must be obtained elsewhere, may not be easy for the patient. Managed care is characterized by tightly controlled access to health care through a gatekeeper or primary care practitioner. Carve-out policies are contrary to the underlying gatekeeper approach of managed care and, therefore, can be confusing to plan members, especially when policies are not made abundantly clear to enrollees.

An HMO that is morally opposed to contraception, sterilization, abortion, and other forms of birth control, can hardly be expected to voluntarily ensure that its enrollees receive these services. Afraid of deterring women from enrolling, the plan may not willingly or conspicuously inform women prior to enrollment that family planning services are uncovered. Women may enroll in the plan without realizing the MCO does not cover family planning services. Valuable time may then be lost as a woman must go outside the managed care network to obtain needed care.

The Fidelis model contributes to women's increased risk of unintended pregnancy and health risks associated with sexually transmitted diseases.

Under state rules, Fidelis can satisfy its obligation to afford access to family planning care merely by providing, upon an enrollee's request, a list of family planning providers in the enrollee's region. But these requirements do not guarantee access and fall far short of providing a proper referral to services. Even worse, as documented later in this report, Fidelis often does not follow these minimal procedures.

The Fidelis model denies women on Medicaid an opportunity to receive comprehensive, timely and appropriate information, services, and referral, which contributes to their increased risk of unintended pregnancy and health risks associated with sexually transmitted diseases. Under the Fidelis policy, a woman seeking emergency contraception from her in-network health care provider runs the risk of not receiving these time-sensitive services within the 72-hour window period in which emergency contraception works. Moreover, a woman enrolled in Fidelis cannot count on receiving full options counseling and referral if she has pregnancy-related

complications or is being treated for an existing condition that could be worsened by the pregnancy.

Negative Effects of the Family Planning Carve-Out on Adolescents

The Fidelis carve-out of family planning care also effects adolescents up to age 19 who are covered in the state-operated Child Health Plus program. This program, established on a limited basis by the state in 1990, expanded significantly with the passage in 1997 of the federal government's State Child Health Insurance Program (Title XXI of the Social Security Act). The State Child Health Insurance Program allocated \$257 million annually to New York State to provide health insurance to the state's uninsured children. Child Health Plus in New York State covers uninsured children up to age 19 in families earning up to 250% of the federal poverty level. Although there is crossover among those eligible for Medicaid and those eligible for Child Health Plus, there is no double enrollment.

Under Child Health Plus, New York State contracts with insurance companies to provide managed care to enrollees. Whenever possible, the state contracts with insurance companies that also provide Medicaid managed care, to ensure plan continuity and allow beneficiaries to move between Medicaid and Child Health Plus programs without changing providers. Managed care providers are selected in every region of New York State to achieve statewide coverage.

Adolescents in Fidelis must contact an outside MCO to obtain family planning services essential to preventing sexually transmitted diseases and unwanted pregnancy.

New York's Child Health Plus program provides a complete range of family planning and reproductive health services, defined as contraceptive measures and devices, including abortion.¹⁴ Although reproductive services are covered, MCOs such as Fidelis are allowed to carve out such services. In these cases, the MCOs must coordinate with other organizations to provide the services. Unlike the requirements under Medicaid, there is no "Free Access" policy under Child Health Plus.

Enrollees are not allowed to go outside the network to obtain care from other Child Health Plus providers. Therefore, to meet state requirements to provide family planning care, Fidelis has entered into specific arrangements with three MCOs: HealthFirst in the New York City area; Genesis Health Plan in Nassau, Suffolk, Rockland, and Westchester; and Group Health Incorporated (GHI) in upstate New York. Child Health Plus enrollees who seek to obtain birth control or abortion care are instructed to contact these entities to obtain services from their providers.

New York State contracts with 30 health plans, including Fidelis, to insure approximately 537,111 children and teens throughout the state.¹⁵ Enrollees from ages 12-19 make up nearly one-third of the total Child Health Plus population.¹⁶ For this adolescent population, timely

access to family planning care and counseling is essential to help prevent sexually transmitted disease and unwanted pregnancy. Young men and women should be able to receive such care as part of a complete package of health care from their primary care physicians. Fidelis' carve-out policy fragments these services and creates potential barriers by requiring an adolescent to obtain care under a new MCO's rules and through a separate provider network. This creates obstacles that may interfere with or delay a young woman's timely access to critical reproductive health services, including emergency contraception, birth control, STD screening and treatment, and early abortion care.

A History of Fidelis

Fidelis is a religiously sponsored managed care plan founded to treat its members, of all religions, in accordance with the mission of the Roman Catholic Church. Fidelis serves only the Medicaid and Child Health Plus populations.

In 1993, Fidelis began operations under the auspices of the Catholic Medical Center of Brooklyn and Queens, Inc., as the Catholic Health Services Plan of Brooklyn and Queens, Inc. The corporation was formed to "...provide or arrange for the provision of comprehensive health services" on a prepaid capitated basis, to Medicaid beneficiaries.¹⁷ The plan initially sought to cover Medicaid beneficiaries in Brooklyn and soon after was granted approval to extend coverage to all of Queens.

Fidelis started enrollment in November 1993. In February 1996, Fidelis reincorporated as the New York State Catholic Health Plan, Inc. (D/B/A Fidelis Care New York). The new entity remained a New York not-for-profit corporation sponsored by the eight Roman Catholic Dioceses. Since then, Fidelis has expanded the number of regions where it offers health coverage, and has grown organically and through acquisition:

- In 1996, Fidelis extended its services to Medicaid recipients in several upstate counties.
- In 1997, Fidelis diversified into the Child Health Plus market.
- In 1997, Fidelis tripled its number of Medicaid managed care enrollees when it purchased the Better Health Plan, a financially ailing, for-profit prepaid health services plan with 40,000 members.
- In 2000, Fidelis acquired Partners Health Plan, a health plan with 5,900 Medicaid recipients and 2,100 Child Health Plus recipients, further extending its presence in the upstate region.

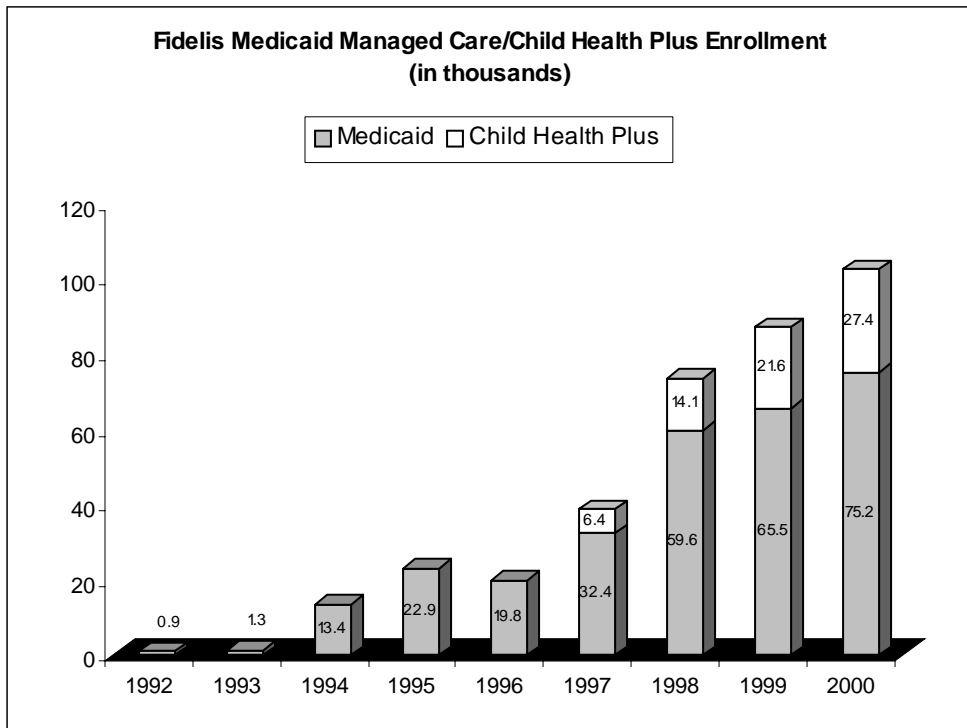
- In 2000, Fidelis was approved as a Special Needs Plan (SNP) for Medicaid beneficiaries living with HIV/AIDS.

Fidelis' Presence in the Health Care Market

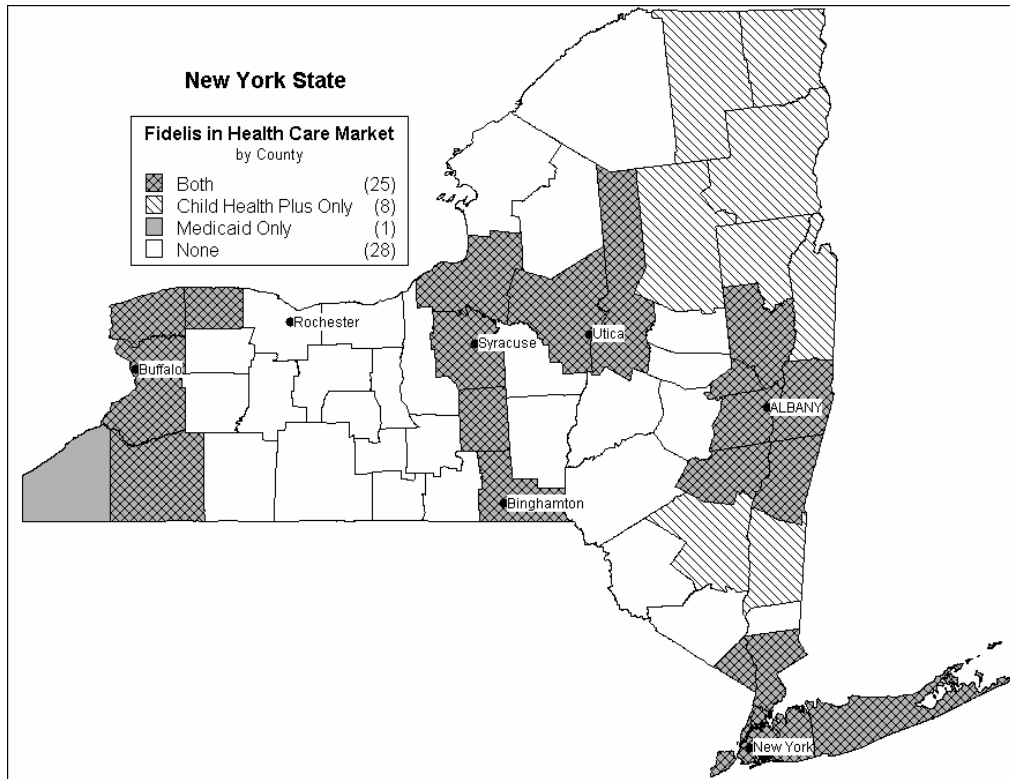
In the Medicaid market, Fidelis operates in 26 counties (including the 5 boroughs of New York City) and serves 75,242 Medicaid beneficiaries, or approximately 11% of the 681,435 enrollees in Medicaid managed care in New York State. As of October 2000, Fidelis was the largest Medicaid managed care plan in the state, with the greatest number of enrollees, and operating in more counties than any other plan.

Fidelis is the largest Medicaid managed care plan in New York State.

Fidelis began serving the Child Health Plus population in 1997 and is now the fourth largest managed care plan in this market. As of December 2000, Fidelis served 33 counties, including New York City's five boroughs.



Source: New York State Department of Health



Source: New York State Department of Health

Fidelis and the Catholic Church

Fidelis operates under the principles of the Roman Catholic Church, guided by the National Conference of Catholic Bishops' *Ethical and Religious Directives for Catholic Health Care Services*.¹⁸

Regarding family planning, the Directives state that "Catholic health institutions may not promote or condone contraceptive practices..."¹⁹ The Directives also prohibit Catholic institutions from providing direct sterilization of men or women, whether permanent or temporary, when its sole immediate purpose is to prevent conception.²⁰ In addition, abortion is never permitted under Catholic rules.²¹ In accordance with the Catholic Directives, Fidelis will provide only "natural family planning" and does not offer abortion, sterilization, and artificial contraception as a benefit.²²

In accordance with Catholic directives, Fidelis does not cover birth control, abortion, and sterilization.

Fidelis makes its position clear through its bylaws and contracts with individual counties in New York State. For example, in a 1999 contract with Westchester County to provide prepaid Medicaid services, Fidelis states it will not be involved in the provision of any care that does not conform to the Bishops' doctrine. The contract states, "Nothing contained in this Agreement shall require or cause Fidelis to pay, reimburse, arrange or provide any service or participate in any activity which is not in accordance with the Ethical and Religious Directives for Catholic Health Care Services issued by the United States Catholic Conference as interpreted by the Bishop of the Diocese in which DOH renders services to Enrollees."²³

Fidelis' Board of Directors

A board of directors controls Fidelis, according to its corporate by-laws. The by-laws require 23 members on the board. These 23 members are appointed by the Membership of the Corporation. The Corporation's membership consists of the Diocesan Bishops of the State and Ecclesiastical Province of New York. The Archbishop of New York acts, *ex officio*, as the President of the Membership. Of these 23 members, the Bishops of eight dioceses in New York appoint 18. One board member is the President/Chief Executive Officer of Fidelis who is a non-voting member of the Board of Directors. The remaining four board members, selected by the Members of the Corporation (the Bishops), must be enrollees in the Medicaid managed care program. The Bishops, rather than the Board of Directors of Fidelis, are granted exclusive authority to "interpret, finally and definitively, the *Ethical and Religious Directives for Catholic Health Care Services*, published by the National Conference of Catholic Bishops as those Directives apply to the activities of the Corporation."²⁴

Fidelis' Board of Directors must agree to accept the religious directives of the Catholic Bishops, leaving them no authority to change the company's policy on family planning policy.

Fidelis' corporate by-laws require that such persons elected to the Board of Directors must have "accepted the principle that the Corporation shall operate in conformity with the *Ethical and Religious Directives for Catholic Health Care Services*." This requirement, which is also placed on the enrollees elected to the Board of Directors, virtually removes all independent decision making on the part of these board members, since their votes on any issues must conform to the Catholic Directives. For example, the board does not have the authority to contravene the religious directives regarding the provision of family planning care.

Ironically, this requirement of conformity runs in direct conflict with Fidelis' pledge to "build upon its partnership with all providers, including Catholic and non-Catholic..."²⁵ Although Fidelis claims to embrace a religious and ethnically diverse community, its policies reflect a

rigid adherence to the Catholic Directives. This leaves a great number of Fidelis enrollees and providers under-represented by Fidelis' board.

Because the Fidelis board of directors is so homogenous, it is especially important that state and local communities maintain an adequate regulatory structure. Government and the public must be able to ensure that Fidelis, as a business, operates in a manner that allows enrollees adequate access to all health care services.

Fidelis' Corporate Status and Financial Holdings

Fidelis is a corporation, a Medicaid managed care provider that assumes insurance risk from the State of New York for payment. It is organized as a not-for-profit Medicaid managed care plan that qualifies as a tax exempt organization under § 501(c)(3) of the Internal Revenue Code and is treated as a not-for-profit corporation under New York's Not-for-Profit Corporations Law § 102(a)(5) and is a type B corporation under § 201.

Fidelis has grown considerably as revenues generated from premiums paid by the state have increased. In fiscal year 1994, for example, Fidelis posted \$19,935,011 in revenues earned under capitation agreements. As recently as 1999, Fidelis posted total premium revenue of \$126,508,848, a growth of over 600 percent in six years.

Fidelis' Reporting Shortfalls and Exemptions

Generally, in the State of New York, corporations report yearly on their business dealings and financial arrangements. This information is housed by the Secretary of State or the Attorney General's office and maintained as public record. Consumers often rely on this information to learn about corporations with whom they do business.

Due to its incorporation status, Fidelis adheres to fewer governmental reporting requirements.

Fidelis, however, does not bear the same responsibility of sharing information as other Medicaid managed care organizations in New York State. Due to its incorporation status, Fidelis adheres to few governmental reporting requirements other than those in Article 44 of the New York State Public Health Law and in its independent contracts with counties. In addition, because of its not-for-profit status, Fidelis is not required to file annual reports with the Secretary of State's office.

As a not-for-profit, Fidelis would normally be required to file with the Attorney General's Charities Bureau under § 8-1.4 of the New York State Estates, Powers and Trust Law. However, § 8-1.4 (b)(3) of the law exempts "corporations organized under the religious

corporations law and other religious agencies and organizations, and charities, agencies and organizations operated, supervised or controlled by or in connection with a religious organization..." from such reporting.

Although Fidelis is not incorporated under the Religious Corporations Law, it is considered an "other religious agency" as stated above, and therefore does not file with the Attorney General's Charities Bureau. This status, determined in 1996 by former New York State Attorney General Dennis Vacco, does seem to be in line with the statutory language, yet the result is concerning. Fidelis is the only Medicaid MCO in New York State that falls under such an exception, making it the only Medicaid MCO not required to report information such as sources of income, financial holdings, and governance to the Attorney General.

New York State would not approve such reporting exemptions for non-religiously affiliated managed care plans. Yet Fidelis, a Medicaid managed care organization that operates as a business and arguably should be held to a higher reporting standard due to its carve-out policy, receives greater leniency.

Lack of Quality Information Available to Fidelis Members

The Medicaid population is often unfamiliar with managed care issues and unable to decipher the complex array of information provided when having to choose a plan. This is due to a number of social and cultural issues such as illiteracy and language barriers.²⁶ Therefore, Medicaid beneficiaries need managed care information presented in clear and descriptive language, a number of times, and in a variety of ways, particularly in situations such as the Fidelis carve-out, where lack of consumer understanding can delay access to care and have adverse consequences on the quality of health care received.

Fidelis does not appropriately educate its beneficiaries or providers to the nature and consequences of the family planning carve-out.

Fidelis does not appropriately educate either its beneficiaries or its providers to the nature and consequences of the family planning carve-out. Fidelis marketing materials and the Fidelis member handbook do not display Fidelis' exclusion of family planning care in a prominent manner, leaving Medicaid beneficiaries in the dark about this unique and potentially disruptive policy.

Fidelis Buys an HMO: Consumers are Misled

In 1997, a number of New York State advocacy groups joined together to examine Fidelis' success in informing potential and current enrollees of Fidelis' family planning carve-out policy. The coalition consisted of 10 organizations, including The Legal Aid Society, NARAL/NY, Gay Men's Health Crisis, Planned Parenthood of New York City, the New York City Task Force on Medicaid Managed Care, and others.

Fidelis made false statements regarding its coverage to the beneficiaries of an HMO it purchased.

In 1997, the coalition alerted the U.S. Health Care Financing Administration (HCFA) about issues concerning the failure of Fidelis to adequately inform beneficiaries. The coalition was concerned with a letter sent to 40,000 Better Health Plan beneficiaries following Fidelis' purchase of that company.²⁷ In the letter, Fidelis gave information that was not only misleading but also false. The letter began by welcoming Better Health beneficiaries to Fidelis and congratulating them on their new and better health plan. It went on to state, "*Fidelis Better Health will continue to give you the same health care you are now receiving.*" This statement, the coalition pointed out to the HCFA, is false. Fidelis does not provide family planning and other services previously provided under the Better Health plan. In its initial communication with these new members, the company failed to inform beneficiaries of this fact. The coalition expressed to HCFA concern that the Fidelis letter "violates both the spirit and letter of Section 649 of New York's General Business Law (deceptive acts and practices) and Section 364-j(4)(a)(iii)(C) of the New York's Social Services Law."²⁸ HCFA expressed concern about the Fidelis letter, but did not take punitive action against the company.

Fidelis' Confusing Marketing Materials

The Fidelis marketing brochure is problematic as well.²⁹ Its question-and-answer format obscures the fact that Fidelis does not provide family planning services. The brochure,

Fidelis' marketing materials do not describe the company's carve-out policies, creating difficulties for potential beneficiaries to make informed decisions.

prepared in 1999, highlights a number of services covered by Fidelis, including dental care, eye exams, prescription drugs, and maternity services. Under a general question that reads, "Are there services for which I will need a Medicaid card?" the brochure states that family planning services, among other services (such as methadone maintenance) are not covered by Fidelis. The brochure does not describe the company's carve-out policy, and does not use clear and descriptive language to help potential beneficiaries make an informed decision. Consumers would benefit if the company explicitly and prominently stated that it does not cover birth control, sterilization, or abortion care.

Information Buried in Fidelis' Member Handbook

Fidelis provides extensive information to its new enrollees in a 35-page member handbook. Although informative in many ways, this handbook fails to adequately inform Fidelis beneficiaries of the family planning carve-out. A Fidelis beneficiary is not even introduced to the Fidelis policy until almost halfway through the member handbook. On page 18 of the handbook, the second page of the "self referral" section, Fidelis states, "Fidelis does not provide family planning. Use your Medicaid card to get these services from any doctor or clinic who provides these services and accepts Medicaid."³⁰ However, Fidelis does not define family planning in this handbook, and fails to deliver the information in a prominent way, leaving a significant gap in information and a large number of women in the dark regarding their reproductive health care.

Fidelis Provides Ambiguous Child Health Plus Insurance Information

The information Fidelis provides to Child Health Plus beneficiaries is unclear as well. Both the Fidelis marketing brochure and leaflet for the Child Health Plus program fail to mention that Fidelis does not cover family planning care and these services must be obtained by contacting another MCO.³¹ Additionally, the Fidelis TenderCare Subscriber Contract lists family planning services in a subsection of the "Prescription and Non-prescription Drugs" category labeled "Exclusions and Limitations." Although family planning is listed in this section, it is not defined and the reader is referred to Section 20 of the handbook.³² Section 20, entitled "Family Planning Services" is located on page 33, the last page of the handbook. Here it states, "Fidelis does not provide family planning, except Natural Family Planning, when appropriate" and informs beneficiaries to call other managed care organizations for the provision of such services. Again, Fidelis fails to define family planning services, presents the information in a hidden manner and does not provide beneficiaries the information or instructions they need to easily access family planning care. The referral mechanism is awkward and would require a young woman to phone another MCO to obtain a list of participating family planning providers. The lack of an appropriate referral to a critically important preventive health service is alarming.

Fidelis' failure to adequately inform beneficiaries potentially violates New York State law.

These examples clearly illustrate Fidelis' failure to adequately inform beneficiaries as required by New York State. This failure potentially violates the law. Appendix E of the New York State Department of Health Member Handbook Guidelines explicitly states, "...the writing should...explain certain technical or unfamiliar terms to assure accuracy."

The Fidelis writings fail to explain unfamiliar terms such as family planning, and, therefore, do not conform to state requirements. Ultimately, the Fidelis materials fail to serve their purpose — to educate consumers — due to their failure to present information in a clear and descriptive manner that is sensitive to the needs of the Medicaid and Child Health Plus populations.

Findings of Focus Groups with Fidelis Beneficiaries

In association with Gordon and Gordon Associates, Inc., NARAL/NY Foundation conducted a series of focus groups with women enrolled in Fidelis. Between February 1998 and June 2000, NARAL/NY conducted six focus groups: three in Brooklyn, one in Syracuse, one in Hempstead, and one in Buffalo. In total, 32 women participated in the focus groups.

NARAL/NY conducted six focus groups of women either currently or previously enrolled in Fidelis.

Each participant was a Medicaid beneficiary and was either currently enrolled in Fidelis or had been enrolled in the past for at least one year. Their ages ranged from 18-46 years. Of these women, 27 were African-American; four were white; and one was Latina.

These groups followed a series of focus groups conducted by the Center for Reproductive Law and Policy (CRLP). The CRLP focus groups revealed glaring deficiencies in Fidelis' dissemination of information related to family planning care. Women participating in these focus groups did not receive information from Fidelis about the carve-out — information that is necessary to self-refer and access family planning care.³³

Prior to Enrollment: Women Not Informed About Carve-Out

In the NARAL/NY focus groups, only one participant remembered being informed about Fidelis' family planning policy either before or since her enrollment. The vast majority were uninformed about Fidelis' refusal to provide family planning and abortion services, as well as options for procuring such services. Despite specific requirements that mandate Fidelis' employees inform women orally and in writing about the carve-out policy, the women had not read or been told about the Fidelis carve-out or New York State's "Free Access" policy.

No, Nobody told me [that Fidelis did not provide family planning] until this day.
(Buffalo, 6/20/00)

[Fidelis will provide] everything. You don't have to worry. You'll get the same thing as Medicaid. (Brooklyn, 10/26/99)

I was told [by a Fidelis representative] they would provide everything but dental.
(Syracuse, 3/17/99)

He [Fidelis representative] gave me a form and signed me up. He never said nothing about family planning. (Brooklyn, 5/29/98)

They didn't say you can't get depo or any other contraception. I got onto the plan not knowing about family planning coverage. (Syracuse, 3/17/99)

When asked if anyone told them what services Fidelis would provide, an enrollee stated the response from a Fidelis representative was:

Everything. You don't have to worry. You'll get the same thing as Medicaid. (Brooklyn, 10/26/99)

They [Fidelis representative] don't tell you about other plans and won't tell you what services they don't provide. (Brooklyn, 5/29/98)

After Enrollment: No Education or Information

Following enrollment, a number of focus group members failed to receive any information regarding Fidelis and their policies.

A woman who had been automatically assigned to Fidelis one year ago was not informed about the carve-out policy of Fidelis or the "Free Access" law.

I've been on [Fidelis] a year. I've not received anything...nothing but a card. (Buffalo, 6/2/00)

I never got anything except new cards in the mail...I had no idea what services were stopped or what I was entitled to. (Hempstead, 5/6/99)

...What I found annoying is that I got no letter welcoming me or anything...I got no handbook, only a three page brochure. (Syracuse 3/24/99)

After Enrollment: Most Enrollees Never Saw a Member Handbook

Most women said they had never seen a Fidelis handbook. Of those who had they did not recall seeing any reference to family planning care. Even those members who did receive handbooks did not know of the Fidelis family planning policies.

...someone had gone through the handbook with me at the time of enrollment, but never told me anything about birth control (Syracuse, 3/17/99)

He [Fidelis Representative] didn't go through it [the handbook] — he still hasn't said anything about contraception. (Syracuse, 3/17/99)

Ex-Better Health Plan Enrollees: Not Informed About Carve-Out

Women who were formerly with Better Health Plan had not been informed about the exclusion of family planning services under Fidelis and the “Free Access” requirements. When asked if anyone had told them about the change in policy they said:

No. Nobody told me till this day. (Buffalo, 6/2/00)

I went for a visit to have that done [Depo Provera injection] and they said “oh no, we don’t do that.” I had been on it before when I was with Better Health. So, I figured it would be the same...they did send me a letter telling me that Better Health would be switched over to Fidelis—that it’s a Catholic—I can’t remember what the letter said—but I kind of figured it would be the same, you know. (Syracuse, 3/17/99)

One woman from Long Island who had been transferred to Fidelis without advance warning, stated:

I haven’t heard anything from Fidelis...I think I got a letter but can’t recall whether it said anything about family planning. (Hempstead, 4/19/99)

Another Long Island woman said she had been transferred to Fidelis without advance warning after being enrolled in the Better Health Plan for four years. She said she never received any written or oral notification from Fidelis about what services were covered.

I never got anything except new cards in the mail...I had no idea what services were stopped or what I was entitled to. (Hempstead, 5/6/99)

Barriers to Care: No Coverage, No Information, No Referrals

Women trying to obtain family planning services have run into a litany of problems with Fidelis employees and providers who are misinformed about the “Free Access” requirements. This leaves women without hope of obtaining family planning care when initially denied treatment. In every focus group there were complaints about the inability to get timely abortions, or obtain information about abortion coverage, the “Free Access” policy, or referrals to abortion services.

One former Better Health Plan enrollee who had been on Depo Provera was denied the injections by her Fidelis gynecologist:

I complained to my doctor to let him know. “How can I go from getting shots [from Better Health] and not getting shots?...I shouldn’t even come here. The fact is, you’re my gynecologist—Hello—I should be having birth control or something.” He explained about the Bishop and stuff, and things like that. (Syracuse, 3/17/99)

One Fidelis enrollee, who asked if she could be sterilized when she was approximately seven months pregnant with her third pregnancy, was informed by her primary care doctor that her plan did not cover sterilizations. This was a woman whose primary care doctor had told her in her second pregnancy that he could not give her birth control because it was a “Catholic system.” She states:

I was told Fidelis did not do it [sterilization]. I wasn't given any further information about where I could go for one, or that Medicaid would still cover it. (Brooklyn, 5/29/99)

They told me I had to have three children before I could have my tubes tied. (Brooklyn, 10/26/99)

Upon requesting a sterilization, [I was told] you have to go to a psychiatrist first. (Brooklyn, 10/26/99)

I had a pregnancy test at a Catholic clinic and was asked if I wanted an abortion. When I said I did, they gave me classes and stuff and told me not to have the abortion. (Brooklyn, 2/27/98).

Another Fidelis enrollee said that when she was pregnant she developed pneumonia and had to go to St. Mary's Hospital Emergency Room. She told the staff she didn't want to continue the pregnancy. She states:

I was told they didn't do [abortions] because it was a Catholic Hospital. I was never told I could go to another Medicaid provider for one. (Brooklyn, 2/27/98)

Fidelis' enrollees experienced a demonstrated lack of conformance with state laws, as well as standards of obstetrical and gynecological practice. One example is that of a woman who told her physician that she didn't want to "keep the baby" but was given vitamins only, and no pregnancy counseling or referrals. The physician allowed her to leave without advising her about the "Free Access" Law and without providing for a follow-up appointment or referral to another provider who could perform the abortion. In fact, there appeared to be no effort to assure continuity of care as required. As a result, she was left on her own to find a provider who would perform the abortion. This woman was five months pregnant at the time the abortion was performed and needed a saline procedure. She returned to Kings County Hospital with an infection and was hospitalized for several more days. She states:

What made me mad...I first went to St. John's where they gave me an appointment to come back. I waited so long...another 3 weeks. You be so far up. The day I came back they said I was too far gone. They can't do it. Then I went to another hospital and was told the same thing. I went to Kings County Hospital and they helped me. (Brooklyn, 2/27/98)

Another woman explained that she was denied assistance in obtaining an abortion by her primary care doctor when she was approximately two to three months pregnant with her third baby. She states:

He just gave me vitamins and iron pills and said "We don't do that here." He never referred me to another doctor or offered any help at all with getting an abortion. I was scared. I found a hospital that does abortions through a friend. When I went to the hospital they told me to come back in a few weeks. When I went back I was about 5-6 months and they told me that I would have to have a saline abortion. I didn't want that. By then everyone knows you're pregnant. So I had the baby but never got any prenatal care until very late. The baby was born prematurely. (Brooklyn, 2/27/98)

Complaints About Fidelis: Women Angry About the Carve-Out Policy

I don't understand—you are trying to prevent getting pregnant and that's your business, right? That's your own personal problem. They are supposed to be helping you with medical issues. That's a contradiction. (Brooklyn, 10/26/99)

Everyone is not that religion. (Brooklyn, 10/26/99)

Under certain religions they have to respect that...I'm not trying to make an excuse for them, but the fact that they don't refer you to someone else, I feel that is wrong. (Brooklyn, 10/2/99)

Although you don't practice birth control because of your religion that shouldn't deny me the right to get it. (Brooklyn, 10/26/99)

When we sign up for it they should ask to see if we would want it or not. They should tell that you that when you sign up. (Brooklyn, 10/26/99)

There are those of us who have our religious beliefs. For us Fidelis would be good. But as Mary says, this is my life, my body...and I want an abortion...there are medical plans that would accommodate you and in this case Fidelis would not be a good medical plan for someone who has that view. (Brooklyn, 10/26/99)

Then Fidelis should be held accountable for not directing sister Mary to a plan where she could get her medical care. (Brooklyn, 10/26/99)

It's the fault of the medical plan that they are using you to get money and not servicing you. (Brooklyn, 10/26/99)

These experiences illustrate a serious problem. Access to family planning services — including birth control as well as medical procedures such as abortion and sterilization — is essential to

Due to Fidelis' policies, many women in the focus groups experienced delays accessing essential family planning services.

the health care needs of women. Focus group participants gave numerous examples of delays in needed care due to lack of information about Fidelis' carve-out policy, refusal to provide referrals or information about the "Free Access" Law, and lack of continuity of care. Clearly women in the Fidelis plan are not properly informed of their reproductive health care options and may not know how to access needed care; as a result, they suffer significant health consequences.

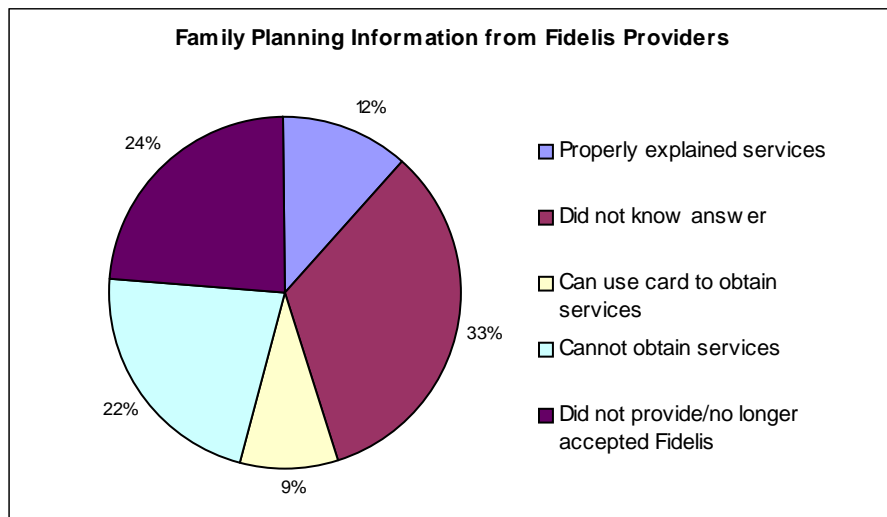
Fidelis Providers Are Misinformed and Fail to Refer

During Summer 2000, NARAL/NY Foundation conducted a survey to study individual providers in the Fidelis network. Its purpose was to determine whether or not female beneficiaries received correct information regarding family planning. In the study, a group of women volunteers called providers' offices and presented themselves as Fidelis enrollees trying to

A NARAL/NY survey of Fidelis providers revealed that only 12% of providers properly explained how women could obtain family planning services.

obtain birth control. The survey consisted of three questions and took approximately one minute of phone conversation. Callers asked providers whether or not family planning services were covered, then requested information about where such services could be procured. The survey volunteers generally spoke only to the person answering the phone unless transferred by personnel in the office.

The study sample size was 219 (approximately 25%) of Fidelis' women's health care providers. The sample was randomly selected from the Fidelis 1999 provider list. Of the sample, 75 offices were unreachable or duplicate practices.



Source: NARAL/NY Foundation Survey, 2000

The survey results were disappointing. Only 17 (12%) of providers properly explained that although Fidelis did not cover family planning services, beneficiaries could use their Medicaid cards to obtain such services. Forty-four (31%) providers gave incorrect information. The incorrect information fell into two categories. Thirteen (9%) of providers said that Fidelis beneficiaries could use their Fidelis card to obtain birth control; 31 (22%) said that with Fidelis, there was no way for a beneficiary to obtain family planning services. Forty-eight of the providers (33%) simply did not know whether or not Fidelis provides family planning services. The remaining providers (24%) either did not provide birth control or no longer accepted Fidelis.

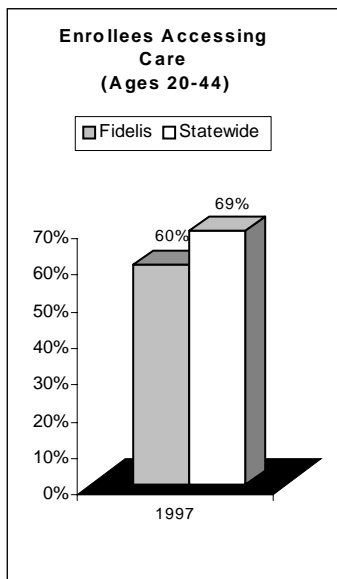
These results illustrate serious issues in Fidelis' provision of family planning services. Providers serve on the front line of medical care and must be educated to understand the intricacies of Fidelis' carve-out policy. It is the responsibility of Fidelis and the State of New York to educate providers to help ensure that all beneficiaries receive clear and repetitive messages about the carve-out and how to access family planning services.

Quality of Care Provided by Fidelis

Perhaps the most important issue to address is the quality of health care that women receive from Fidelis when compared to other Medicaid managed care organizations. Although Fidelis claims to provide adequate health care services, its record leads to a different conclusion.

Despite claims that it provides adequate health care services, Fidelis falls far below the average standard of care in a number of women's health categories.

Care provided by Fidelis fell far below the average standard of care in a number of women's health categories, as reported by New York State in the 1995, 1996, 1997 and 1998 Quality Assurance Reporting Requirements (QARR), *A Report on Managed Care Performance*. The QARR is an annual publication of the New York State Department of Health, based on a series of measures designed to determine managed care performance in the state. The performance of each HMO is measured in different areas of service, assigned a percentage score, and compared to one another. The QARR serves as an important barometer in measuring managed care performance. The data collected from the period 1995 through 1998 displays several deficiencies in Fidelis' performance.



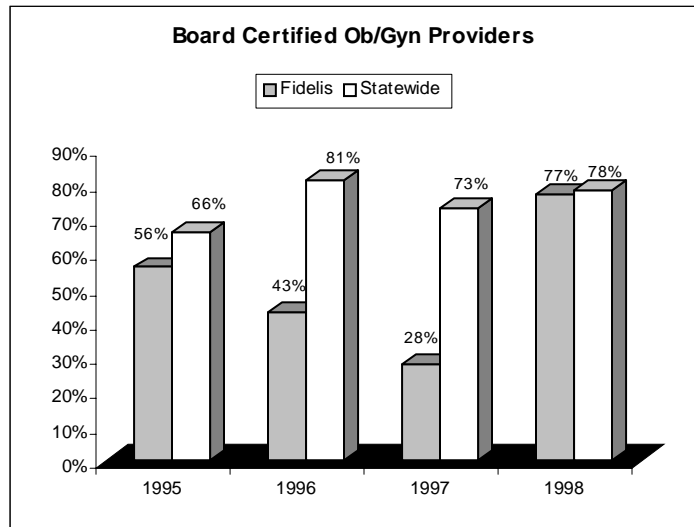
Source: NYS Department of Health

Fidelis and Access to Quality Care

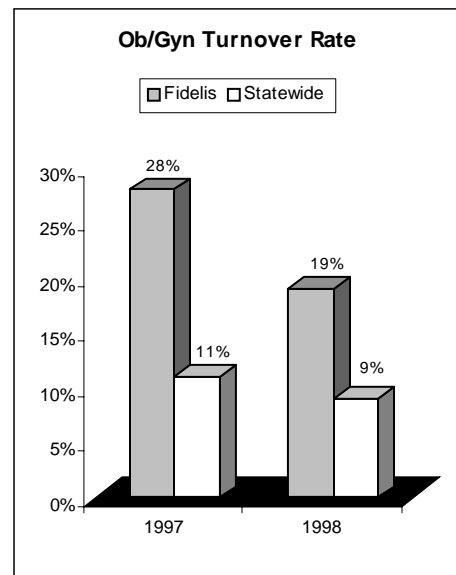
Fidelis enrollees lagged behind the rest of the state in accessing care. In 1997, only 60% of enrollees age 20 to 44 years accessed care, compared with the statewide average of 69%. In the same year, Fidelis' rate of adolescent well child visits was 21 per 100 enrollees versus a statewide average of 39. In each case, Fidelis rates were well below the statewide average. In 1998, Fidelis failed to report reliable data.

Fidelis scored poorly in a number of other categories in the QARR, especially those related to women's health, such as Ob/Gyn board certification rates and the Ob/Gyn turnover rate. For example, in 1997, only 28% of Fidelis Ob/Gyns were board certified, compared with a statewide Medicaid average of 73%. In fact, Fidelis, in 28th place, had the lowest percentage of board certified Ob/Gyns among all Medicaid managed care plans in the state. In 1998, the percentage of board certified Ob/Gyns rose considerably, but the plan continued to fall below the statewide average in board certified Ob/Gyns. This data suggests that Fidelis has difficulty delivering quality care to women, allowing physicians who may be less qualified or less educated to treat the majority of its insured population.

In 1997 and 1998, Fidelis again failed to create an environment of comprehensive care. Fidelis' Ob/Gyn turnover rate of 28% in 1997 was significantly higher than the state average of 11%; and, the 1998 turnover rate of 19% was significantly higher than the state average of 9%. Almost one out of five Fidelis enrollees experienced a change in their Ob/Gyn. This change makes it difficult for physicians and patients to develop the knowledge and relationship necessary to ensure the highest quality comprehensive care.



Source: NYS Department of Health

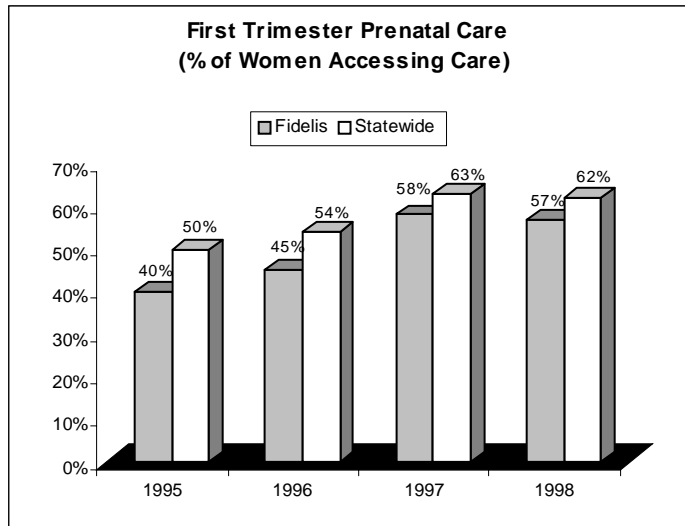


Source: NYS Department of Health

Fidelis and Access to Prenatal Care

Over a four-year period of QARR data, Fidelis was the only MCO whose performance fell below the statewide average every year when measuring the plan's ability to deliver prenatal care to women in the first trimester. The State Health Department has noted that managed care plans can reduce the barriers to access in receiving prenatal care.

Compared to other plans in New York, Fidelis has not successfully performed outreach and education, which are essential to ensure that women receive early prenatal care.



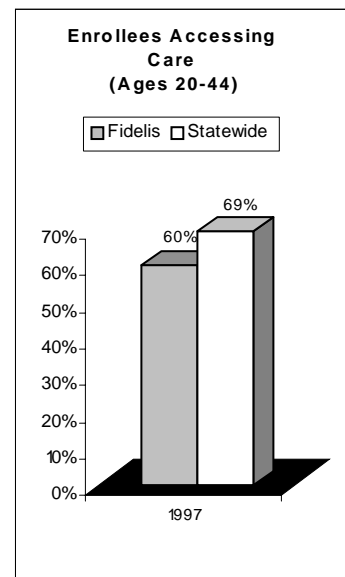
Source: NYS Department of Health

Fidelis and HIV Testing of Pregnant Women

HIV counseling and testing of pregnant women can lead to early medical interventions to help a woman maintain her health and reduce the risk of HIV transmission to her newborn child.

Despite troubling deficiencies in care, Fidelis was selected by the state to provide coordinated care to enrollees living with HIV/AIDS.

In 1997 and 1998, Fidelis performed significantly below the statewide average in testing pregnant women for HIV. In addition, a review of the State Health Department's Statement of Deficiencies and Statements of Findings stemming from its Article 44 survey of Fidelis conducted in November 1999 indicated that Fidelis had an insufficient number of HIV/AIDS specialists in its provider network and had difficulties in the early identification of HIV amongst its enrollees. Fidelis also was cited for failure to develop adequate primary prevention strategies for uninfected members as evidenced by a variety of educational,

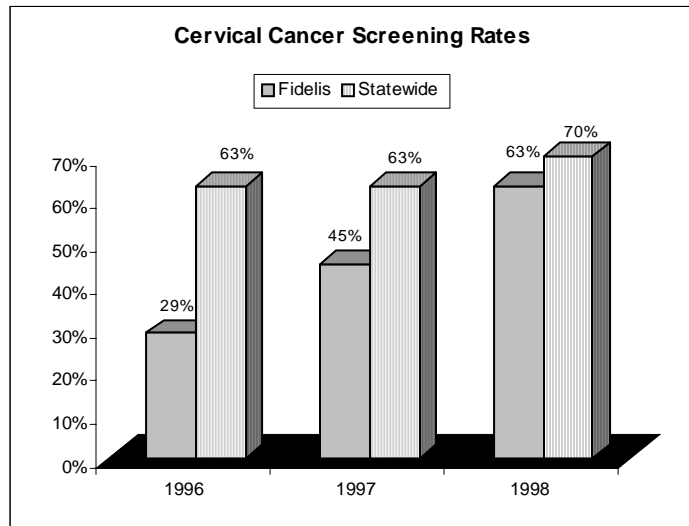


Source: NYS Department of Health

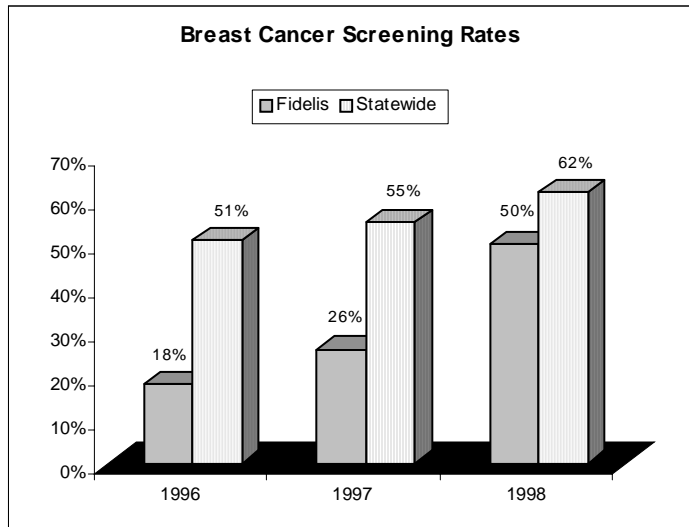
outreach, and training activities.³⁴ Despite these troubling statistics and deficiencies identified by state officials, the State Health Department selected Fidelis to be one of eight Medicaid Special Needs Plans to provide coordinated care to Medicaid enrollees living with HIV/AIDS.

Fidelis and Cancer Screenings

A review of Fidelis' cervical and breast cancer screening numbers reveals serious difficulties in Fidelis' ability to deliver vitally important women's health services. Early detection of cervical and breast cancer is critical to reducing cancer-related deaths; failure to adequately screen women for cancer reflects an inability to properly deliver basic preventive health services to women. Again, Fidelis falls below state averages in both categories in the years 1996-98.



Source: NYS Department of Health



Source: NYS Department of Health

Fidelis Fails to Obtain Independent Certification

The quality of care issue with Fidelis becomes magnified when considering the lack of adequate monitoring of Fidelis operations. To gain the confidence of individual and corporate health care purchasers, many managed care plans choose to be certified by the National Committee for Quality Assurance (NCQA), a private organization that certifies managed care organizations meeting specific quality assurance standards. MCO quality data is collected by NCQA and disseminated to allow employers and consumers to compare the performance of MCOs. Approximately 50% of the nation's MCOs apply for accreditation from this organization.

When considering a managed care plan for accreditation, NCQA reviews the plan based on more than 50 standards, including preventive health efforts, quality management, and how physicians are evaluated. In addition to certification, NCQA ensures that managed care organizations continue to strive for excellence in service to maintain the NCQA seal of approval. Fidelis has not applied for NCQA certification, further illustrating their indifferent view towards quality assurance.

Fidelis and Adolescent Health Care

Fidelis' approach to adolescent health care ignores professional guidelines that instruct health providers to counsel young people regarding sexual health issues, including providing comprehensive information to avoid unintended pregnancy, sexually transmitted disease, and

Fidelis' approach to adolescent health care ignores professional guidelines that instruct health care providers to counsel young people regarding condom use leaving this population at higher risk for disease and unwanted pregnancy.

HIV/AIDS. Despite the position taken by a wide-range of health organizations, including the American College of Obstetricians and Gynecologists,³⁵ the American Academy of Pediatrics³⁶ and the Society of Adolescent Medicine,³⁷ Fidelis instructs their health care providers to inform young men and women about sexual health issues in a way that jeopardizes their health. Specifically, Fidelis in their Fall 1999 publication entitled, *Adolescent News*, recommends that, "All adolescents should receive health information regarding

the responsibility of sexual behaviors. Health guidance for sexual responsibility should include: 1) counseling that abstinence is the most effective way to prevent pregnancy, as well as STDs; 2) counseling on HIV, its dangers and its transmission; and, 3) counseling should also be included for adverse sexual experiences."

Fidelis fails to instruct its providers to counsel sexually active adolescents regarding the use of safer sex practices, specifically latex condoms, which can prevent pregnancy, STDs, and HIV/AIDS. Providers relying on Fidelis' guidelines are being misinformed regarding the clinical guidelines in the proper delivery of care to adolescents. Sadly, *Adolescent News* is included in

the Fidelis Plan of Correction submitted to the State Health Department to address the plan's failure to develop adequate primary prevention strategies for HIV/AIDS.³⁸ Providers relying on Fidelis' approach to adolescent health care would be leaving young people unarmed to prevent this disease. Remarkably, the State Health Department has ignored Fidelis' unwillingness to take sound measures to prevent HIV/AIDS in adolescents and has selected Fidelis to be one of the specialized managed care providers of HIV/AIDS services.

Summary of Quality of Care Findings

The QARR numbers now available suggest that Fidelis fails to sufficiently address the health care needs of adolescents and women, two populations particularly in need of health care screening. In addition to the family planning needs ignored by Fidelis for ethical and religious reasons, Fidelis lacks a program that adequately provides for complete and consistent care for women.

Conclusion

In the United States, religious health care organizations play a significant role in delivering health care to medically underserved, poverty-stricken communities. Catholic institutions have shown a sincere commitment to deliver health care to some of the poorest, most vulnerable Americans. Yet, as important as their role in the health care delivery system is, religious organizations cannot be allowed to introduce religious doctrine into the delivery of health care in ways that compromise patients' health.

The fusion of religious doctrine and health care presents ethical questions about the delivery of services, and creates a situation of discontinuous and inferior care — especially for the vast majority of American women who require family planning care. Concerns about reproductive health, birth control, pregnancy, and sexually transmitted disease must be addressed in the context of overall women's health, rather than be carved out and delivered in a fragmented way. These health care services are not incidental to women; rather, family planning care is central to a woman's physical and emotional well-being.

While New York State has sought through managed care to offer a “medical home”— a site where health care is delivered in a seamless, coordinated, comprehensive fashion — to Medicaid enrollees, it has facilitated the development of a managed care plan that severs reproductive care from the rest of a person's health care needs.

New York's approach to Fidelis is unique. A recent study by the NARAL/NY Foundation's Institute for Reproductive Health Access explored the delivery of family planning services under Medicaid managed care in all 50 states. In 13 states, Catholic-run Medicaid managed care plans have been established. A subsequent report released by Catholics for Free Choice revealed the presence of 48 Catholic-run HMOs operating in the United States, serving nearly 2.5 million Americans, including 15 Medicaid managed care plans. Guided by state policy, Catholic-run plans have taken different approaches to the delivery of family planning services. Most strikingly, in some states, Catholic-run plans are required to establish business arrangements that permit enrollees to obtain family planning services under the plan's coverage, but payment for these services comes from an independent third-party, typically another insurance plan. These arrangements allow plans to operate within the Catholic Directives, and still provide seamless services to enrollees. The fragmentation of care experienced by New York's Fidelis enrollees is not as prevalent nationally.

Fidelis receives more than \$150 million in government-paid health insurance premiums. The company has enjoyed rapid growth and has become the largest Medicaid managed care

organization operating in the state. State and federal policymakers have accommodated Fidelis' carve-out policy by allowing the company to expand into the Child Health Plus market. The state now appears willing to accept Fidelis' carve-out of family planning care in an emerging market. Under a pending waiver application submitted to the federal government to establish the Family Health Plus program — a program that will offer coverage to more than 600,000 low-income uninsured adults — New York would allow Fidelis to exclude family planning care. Under Family Health Plus, the state would enter into a separate contractual arrangement with another MCO for the provision of these services, creating disruption and time delays for women as they seek these services.

As evidenced in this study, the Fidelis family planning carve-out breaks the continuity of health care delivery, compromises the quality of care women receive, creates a disconcerting church/state relationship, and undermines the stated goals of managed care to provide comprehensive health care services. A review of marketing and enrollment materials, coupled with the findings of focus group participants, show Fidelis hiding information about the family planning carve-out from prospective and current enrollees. Fidelis has a disturbing pattern of delivering substandard care, particularly in key women's health areas, as shown by an analysis of the quality data collected by the New York State Department of Health.

In light of the findings in this report, now would be the time for state and federal officials to examine whether Fidelis' approach to family planning compromises women's health and whether the company is complying with state and federal laws that assure access to family planning care. Fidelis' religious objections to family planning care cannot be allowed to supersede state and federal laws that assure Medicaid beneficiaries have adequate enrollment information, continuity of care, proper referrals and timely and appropriate reproductive health care.

Recommendations

To ensure that women enrolled in Medicaid managed care plans operated under religious rules are able to access family planning and reproductive health care, advocates must carefully and creatively address issues and promote alternatives and solutions. The following actions are recommended:

- Fidelis should not be permitted to increase enrollment or expand their business in either Medicaid, Child Health Plus or Family Health Plus without a closer examination by state and federal officials of the impact of Fidelis' family planning policy on women's health. Fidelis' record raises disturbing questions about the company's full compliance with state law, its ability to honestly communicate with potential and current enrollees and to deliver basic women's health services.
- If a plan carves out services, the plan should establish written agreements with third party payors ensuring that a sufficient number of medical services providers are available to provide timely, seamless and geographically accessible reproductive health and family planning services to all enrollees. New York should examine the approach taken in other states, such as Pennsylvania, that allows Catholic-run plans to operate within their religious guidelines without creating fragmented services for enrollees.
- Medicaid beneficiaries should not be auto-enrolled in managed care plans that do not provide a full range of services. More than 20% of women are automatically enrolled in a managed care plan because they do not voluntarily choose a plan. Allowing women to be involuntarily enrolled in plans that do not provide family planning care is inappropriate and poses risks for women who need access to timely reproductive health care services.
- Plans that carve out services must notify prospective and current enrollees in a clear and repetitive fashion, both orally and in writing, at the time of enrollment and in all marketing materials, member handbooks, and other publications.

NOTES

- ¹ Catholics for a Free Choice; Catholic HMOs and Reproductive Health Care; Washington, D.C.: 2000.
- ² New York City Council; Introduction 395; July 28, 1998.
- ³ "The Partnership Plan: Operational Protocol," (July 1997) at 7-1.
- ⁴ David R. Sandman "Health Care in New York City: Understanding and Shaping Change," *The Commonwealth Fund*, Issue Briefs; New York: September 1999.
- ⁵ New York State Department of Health; "Recipients Eligible for Enrollment in Managed Care: Enrollment Status by Aid Category and County, and Total Percent Enrolled by Provider Plan"; www.nys.gov.
- ⁶ New York State Executive Budget, New York State Division of the Budget, January 2001.
- ⁷ "The Partnership Plan: Operational Protocol," July 1997 at 7-1.
- ⁸ "The Partnership Plan: Operational Protocol," July 1997 at 7-2, 4-8.
- ⁹ New York Social Services Law, Section 364-J(4)(a)(iii)(C); The Partnership Plan: Operational Protocol (July 1997) at 7-3. The original "Free Access" policy was incorporated into New York's earliest Medicaid managed care demonstration projects authorized in 1984 (Chapter 738 and 904, Laws of 1984) and was subsequently incorporated into the Statewide Managed Care Act of 1991. (Section 364 (j) (6) (a), Social Services Law; Chapter 165, Laws of 1991). New York's "Free Access" policy later served as a model for amending federal Medicaid law. When originally enacted, Section 1915 (b) of the Social Security Act authorized the Secretary of Health and Human Services to permit Medicaid managed care demonstration projects by waiving requirements allowing Medicaid beneficiaries to have a choice of provider. In 1986, the waiver provisions were amended to ensure that even if the Secretary waived the provider choice requirements for all other services, Medicaid recipients would retain the freedom to choose family planning providers, thereby putting into federal law a "Free Access" provision. (Public Law 99-509, Section 9508 (1986); 42 U.S.C. Section 1396 n (b)).
- ¹⁰ Partnership Plan Terms and Conditions (July 1997) (D-6) at 20.
- ¹¹ 1999 Model Contract Guidelines for the Provision of Family Planning and Reproductive Health Services.
- ¹² New York State Department of Health; Office of Managed Care; Guidelines for Policy and Procedures for Plans That Do Not Provide Family Planning Services in Their Capitation; February 19, 1998.
- ¹³ Fidelis Care New York, *Administrative Services Policy and Procedure Manual*, Policy AS 1.0; Provision of Family Planning Services by the New York State Medicaid Program; 1/22/98.
- ¹⁴ NY State Plan § 6.2.6 and § 6.2.9.
- ¹⁵ NYS DOH data, October 2000, www.nysdoh.gov.
- ¹⁶ Conversation with New York State Department of Health Staff. Name withheld upon request.
- ¹⁷ Certificate of Incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc, March 22, 1993, Section 3.
- ¹⁸ By-Laws of New York State Catholic Health Plan, Inc. (D/B/A Fidelis Care New York); Revised January 19, 1998; Section 1.02.
- ¹⁹ National Conference of Catholic Bishops; *Ethical and Religious Directives for Cathol Health Care Services*; December 15, 1994; Directive No. 52.
- ²⁰ *Ibid*, Directive No. 53.
- ²¹ *Ibid*, Directive No. 45.
- ²² Fidelis Care New York Administrative Services Policy and Procedure Manual; *Provision of Family Planning Services by the New York State Medicaid Program*; Policy: AS 1.0
- ²³ Westchester County Public Health Services Agreement with Fidelis Care New York. February 2, 1999.
- ²⁴ By-Laws of the New York State Catholic Health Plan, Inc., Article 3, Section 3.03.01
- ²⁵ See, New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York, History and Description.
- ²⁶ Kaplan SA, Greene J, Molnar C, Bernstein A, and Ghanbarpour, S; *Educating Medicaid Beneficiaries About Managed Care: Approaches in 13 Cities*; The Commonwealth Fund; New York: May 2000.
- ²⁷ Fidelis Care New York, Member Services Department, Letter to Better Health Plan Members, November 28, 1997.
- ²⁸ Letter to Judith Berek, Administrator, Health Care Financing Administration, December 10, 1997.
- ²⁹ Fidelis BetterHealth, Brochure in Question and Answer Format, March 1998.
- ³⁰ Fidelis Better Health Member Handbook, FBH009 rev2/00, p.18.
- ³¹ Fidelis/Child Health Plus brochure, GMRO124-EN: Fidelis/Child Health Plus leaflet, SPFTC-0003 NYS, Jan. 2000.
- ³² Fidelis Tendercare™; Fidelis TenderCare Subscriber Contract; March 2000; p. 33.
- ³³ Center for Reproductive Law and Policy Removing Barriers/Improving Choices: A Case Study on Reproductive Health Services in Managed Care Settings, New York: 1996.
- ³⁴ New York State Department of Health; Office of Managed Care: Article 44 Statement of Deficiencies and Fidelis' Plan of Correction; March 20, 2000.
- ³⁵ American College of Obstetricians and Gynecologists; *Policy Statement on Access to Reproductive Health Care for Adolescents*; 2000.
- ³⁶ American Academy of Pediatrics; *Policy Statement of the Committee on Adolescence*; Pediatrics; 1995: Vol. 95, No. 2; 281-285. American Academy of Pediatrics; *Policy Statement of the Committee on Pediatric AIDS and Committee on Adolescence*; Pediatrics; 2001: Vol. 107, No.1; 188-190.
- ³⁷ Society for Adolescent Medicine; *Policy Statement on HIV Infection and AIDS in Adolescents*; July 1994.
- ³⁸ Fidelis Care New York's Plan of Correction; Letter from Mark Lane, President and CEO of Fidelis to Mark Adler, Assistant Program Director of the Managed Care Program of the New York State Department of Health; March 20, 2000.



The NARAL/NY Foundation
462 Broadway, Suite 540
New York, NY 10013
212-343-0114
www.naralny.org