



July 17, 2019

VIA ELECTRONIC SUBMISSION

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Re: Comments – FIDA Demonstration Phase-out Plan

The Coalition to Protect the Rights of New York's Dually Eligible (the Coalition or CPRNYDE) appreciates the opportunity to submit comments on the New York State Department of Health (NYSDOH) FIDA phase-out plan. The phase-out plan is informative and useful for the Coalition member organizations to plan how to assist and educate New York's dually eligible population currently enrolled in FIDA. The following comments include questions, observations, and recommendations.

Beneficiary Transition

Beneficiary Assignment and Coverage Options

The phase-out plan identifies that the passive enrollments in MAP or a partial capitation plan will be effective January 1, 2020. However, it must be clearly stated in this plan by what date a FIDA member must actively make an enrollment choice that takes precedence over the passive enrollment. Previous MLTC plan terminations and market alterations where transitioning members were permitted to make an enrollment selection, it had to occur by the 20th of the month during the last month prior to the plan's termination effective date. Will a FIDA member have until December 20, 2019 or until the end of the month (December 31, 2019) to select and enroll in a MAP or partial capitation plan?

Since all current FIDA plans have an existing MAP plan, we assume that all FIDA plans will apply for the ability to conduct passive enrollments into their MAP product. However, are there any FIDA plans in any counties that are not applying for the ability to do this? We ask that plan requests for permission to do passive enrollment and whether this request was granted be made publicly available. Without this information, it will be difficult for stakeholders to provide complete information to FIDA members and their caregivers on the transition.

We compliment NYSDOH for outlining the multiple scenarios that FIDA members may face and for providing the helpful charts. The Group 3 and Group 4 charts reference FIDA members with

Medicaid recertifications under review for October 10-December 10, 2019 and for those with Medicaid recertifications still under review as of December 15, 2019. The Coalition has seen examples, in previous market alterations, where consumers encounter obstacles to proceed with enrollment into a new plan while their recertification is pending. There have also been issues for consumers whose Medicaid cases are up for recertification soon after the scheduled market alteration effective date. For example, the lack of at least six months of Medicaid from the plan closing date has led to complications with enrollment into a new plan, and, therefore, impacted the ability for affected people to continue receiving necessary home care services. It appears that the phase-out plan takes into consideration FIDA members with recertifications under review prior to the FIDA plan closing, but we urge NYSDOH to also identify and address any potential issues for consumers with Medicaid recertification dates that are less than six months after January 1, 2020 in order to avoid disruption of services and to allow for a smooth, seamless transition into their new coverage upon their FIDA plan ending.

Continuity of Care

CPRNYDE applauds NYSDOH for providing the same continuity of care rights under MLTC Policy 17.02 to FIDA members transitioning to a new Medicaid plan due to the demonstration ending. “The transferring enrollee’s new plan must continue to provide services under the enrollee’s existing plan of care, and utilize existing providers, for the earlier of the following: (i) one hundred twenty (120) days after enrollment; or (ii) until the new plan has conducted an assessment and the enrollee has agreed to the new plan of care.” However, it is concerning that these continuity of care rights are only available to FIDA members transitioning to a new Medicaid plan effective October 1, 2019. Some FIDA plans have been conducting outreach to their FIDA members and informing them of the FIDA plan closure and the option to enroll into the plan’s MAP product in 2019. Other FIDA members are hearing about the end of FIDA and considering disenrolling from FIDA prior to the end of the year. These FIDA members who are changing their enrollment based on the end of FIDA should also be afforded the same continuity of care rights as those enrolling in a new plan effective October 1, 2019. Most of these FIDA members would remain in FIDA but for the closing of their plan; therefore, FIDA members should be provided continuity of care rights regardless of when they enroll in a new Medicaid plan in 2019. It cannot be guaranteed that these FIDA members were made aware of the offering of continuity of care rights if they delayed their new Medicaid plan enrollment until October 1, 2019.

In addition, if an enrollee “agrees” to a reduction, the phase-out plan should specifically remind the Medicaid plan to give written advance notice of the reduction, with the opportunity to appeal and receive aid continuing, and adequate reasons for the reduction consistent with *Mayer v. Wing* codified in 18 NYCRR §§505.14(b)(5)(v)(c)(2)(i)-(iv), 505.28(h)(5)(ii)(a)-(f) and discussed in MLTC Policy 16.06.

The Coalition recognizes that Medicare Part D contains continuity of care protections for beneficiaries to access their medications and appreciates the inclusion of this in the phase-out plan. It is recommended that if a FIDA member is being passively enrolled into Part D coverage that their medication needs and uses be considered when assigning them to a new plan. It is important that these beneficiaries be enrolled in Part D coverage that includes all of their medications on the plan formulary. Unless the plan covers their medications, members would

have to pay out-of-pocket after the temporary transition period or go without needed medications if they are unable to afford the costs.

Lastly, will FIDA members who are passively enrolled into a Medicaid plan effective January 1, 2020, still receive the remainder of their continuity of care rights if they then make an active choice to enroll in a different plan? We recommend that the NYSDOH allow for this as has been permitted in other MLTC market alteration plan closures.

Enrollment Functions

Responsibilities

The Coalition seeks clarification about the process for FIDA members to enroll into a MAP plan. It is unclear if the accepting MAP plan will be facilitating all aspects of the enrollment. For example, will the MAP plan communicate with CMS to enroll the beneficiary into the D-SNP? Is the FIDA member required to call NYMC to enroll in the Medicaid portion of the MAP and then also call Medicare to enroll into the MAP participating D-SNP? If the FIDA member has the option of either having the MAP plan facilitate both the Medicare and Medicaid plan enrollment or independently completing the enrollment with NYMC and Medicare, then the FIDA member needs to be provided with clear instructions about what plan name and plan number in which they must enroll as well as how to time their enrollment so they don't have different effective dates for the D-SNP and the MLTC enrollments. We have witnessed beneficiary confusion around MAP enrollment and frustration around being enrolled in the D-SNP the first of the following month but having to wait an additional month for the start of the long-term care services from the new plan. Therefore, we encourage NYSDOH to continue exploring the use of aligned enrollment for dually eligible individuals who are enrolling in integrated Medicare-Medicaid products.

Enrollment Timeline

As stated above, we seek clarification about the deadline for FIDA members to make an independent, active choice to enroll in a plan prior to either being passively enrolled into the FIDA plan organization's MAP or their MLTC plan effective January 1, 2020.

Beneficiary Communications

Sequence of Notices

We are pleased to see that the phase-out plan includes 90-, 60-, and 30-day notices to be mailed to FIDA members eligible for passive enrollment. Past experience highlights the need for multiple notices to truly allow beneficiaries the time to understand how their health coverage is changing and what options they have. We ask that these notices include the plan identification number and not just the name of the plan the beneficiary will be enrolled in if they do not take action. As advocates, providers, and family members try to assist beneficiaries, plan names can lead to confusion since some plan organizations have multiple plans with the same name. Unlike FIDA plan names, which include the word "FIDA", MAP plans are not always clearly identified, which is why including the plan identification number is so important.

The phase-out plan suggests that FIDA members who are not eligible for passive enrollment will receive the October 2, 2019 notice (90-day notice) about their plan ending. Will these FIDA members receive additional 60- and 30-day notices informing them of their options to select a new plan or the result if they do not actively enroll in new coverage? The Coalition recommends that FIDA members not eligible for passive enrollment also receive the same sequence of 90-, 60-, and 30-day notices informing them about the FIDA plan closing, their enrollment options, and that this information be specified in the phase-out plan.

Content of Notices

The Coalition recommends that the notices include clear descriptions of both the Medicare and Medicaid plan options, including options for Original Medicare with Part D, and a partial capitation MLTC plan. Beneficiaries, providers and caregivers are often confused by the multiple plan options and how they differ. Clear timelines should be provided in the notices that outline when active enrollment decisions must be made. Notices should include information about continuity of care rights and the continuation of the rights if a beneficiary changes plans after being passively enrolled. In addition, the notices should include information for beneficiaries subject to passive enrollment about their ability to utilize special enrollment periods if they are not satisfied with the plan in which they are passively enrolled. The Coalition requests the opportunity to review the draft notices and provide feedback before they are finalized.

Training Schedule for Beneficiary Support

We are pleased that NYSDOH will provide ICAN, NYSOFA, HIICAP, and MAXIMUS with copies of each member communication used during the transition period. In order for these beneficiary supports to be most useful to beneficiaries, we recommend that these communications be shared in advance of their mailings to FIDA members. These beneficiary supports may also be able to provide useful input on these notices prior to their finalization based on their expertise and experiences working with beneficiaries. We encourage NYSDOH to seek stakeholder comments on the communications used during the transition period.

Customer Services Scripts

See comments on Attachment A.

Public Information Strategy

We encourage NYSDOH to make information publicly available about the number of long-stay nursing facility residents in FIDA and information about the number of FIDA members passively enrolled in MAP or MLTC as well as information about the number of FIDA members who made an active, independent enrollment choice.

Attachment A

The Coalition appreciates NYSDOH including the FIDA closing script in the phase-out plan. It is very helpful to be made aware of the information being provided to consumers calling about FIDA. It would be beneficial to also see the script mentioned in Section 1 that includes the information provided about MAP plans available in a person's area. As advocacy organizations we are also informing people about their options, including MAP. This Section 1 script may

better inform advocates, and advocates may also be able to provide suggestions to the language or information provided in the script.

Attachment B

The Coalition recommends that this script include information about continuity of care and what a FIDA member should expect if, upon receiving this outreach call, they decide to enroll in the MAP plan. The FIDA member should be informed about how their services may change and what, if any, continuity of care rights they are afforded prior to October 1, 2019. If there are no continuity of care rights provided prior to October 1, 2019, then FIDA members should be told this and informed of the option to delay an enrollment change to later in the year when they can have a guarantee to continuity of care rights.

Also, as mentioned previously, if FIDA members are being provided instructions about how to independently enroll in the MAP Medicaid plan and the MAP participating D-SNP, the FIDA member should also be provided the plan numbers in addition to the plan names for reasons stated previously in these comments.

CPRNYDE is a coalition of over 45 consumer advocacy organizations led by the Medicare Rights Center. For questions/comments related to these comments, please contact Fred Riccardi at 212-204-6241 or friccardi@medicarerights.org.