

To: Mark Kissinger, New York State Department of Health (NYSDOH)
From: CIDNY, with support from the Coalition to Protect the Rights of New York's Dually Eligible (CPRNYDE)
Re: **Comments on the Fully Integrated Duals Advantage (FIDA) Draft Three-Way Contract**
Date: May 2nd, 2014

Thank you for the opportunity to comment on the FIDA draft three-way contract, although the time allotted has not been sufficient for us to make a thorough study of the document. We attach specific language amendments to aid the drafters in making changes to the document.

We are pleased to see that NYSDOH has incorporated many of our recommendations related to ADA compliance and reasonable accommodations in the draft contract. However, we are obliged to point out some important issues with the current language:

- Assessment must include collection of information on functional needs and a record of reasonable accommodations that the plan will arrange and that will be required to access care from providers. This information should be updated as necessary upon reassessment or material change in functional need status.
- FIDA Plans should not only provide for reasonable accommodations, but both provide and assist with arrangement of reasonable accommodations, auxiliary aids and services, and policy modifications from providers as needed.
- Programmatic access is required for all people with disabilities and this must be made clear—it cannot be limited to those with physical and sensory disabilities.
- Any reference the draft contract makes to reasonable accommodations should also assume the FIDA Plan will provide and arrange for not only reasonable accommodations, but also auxiliary aids and services and policy modifications required for an individual to access care and services.
- FIDA Plans must be required to provide certified American Sign Language interpreters and language suggesting that these interpreters are used by people who are blind should be stricken unless it is modified to mean interpreters for people who are Deaf/blind.
- Communications methods should include reference to video phones and texting as well as certified American Sign Language interpretation.
- Additionally, physical access for participants with disabilities must include accessible diagnostic medical equipment.
- Participating providers must provide not only physical access, they must also provide auxiliary aids and services, reasonable accommodations, and policy modifications.
- To the extent that providers are not accessible in any dimension, they must be required to supply a plan of correction with a timeline for completion for plan monitoring.
- The IDT must be able to consult provider attestation surveys and information, and participants must have access to this information to determine whether a participating provider can meet their needs.
- Provider guidance must indicate that providers must comply with the ADA including not only physical accessibility and communications access, but programmatic access.
- It must be clear that participants may use out-of-network providers if network providers do not provide physical, communications and programmatic access in compliance with the ADA—including the provision of accessible medical diagnostic equipment and other kinds of accommodations such as flexible scheduling when required as an accommodation for a disability.
- Providers must be advised that they must provide services to people with disabilities in the most integrated setting.

- Procedures for individuals to challenge or appeal FIDA plan “adverse actions” should clearly indicate that an individual can use these procedures to appeal failure to provide a decision concerning a reasonable accommodation, auxiliary aid or service, or policy modification determination.
- It must be made clear that reasonable accommodations, auxiliary aids and services, or policy modifications must be available in the participant grievance and appeal process.
- Where participant rights are described, these must include discussion of the availability of certified American Sign Language interpreters during appointments with the plan and providers—free of charge.
- In addition, individuals must be advised of the availability of reasonable accommodations, auxiliary aids and services, modifications of policies and procedures and how to obtain them.
- In addition to the concerns identified above, we believe that FIDA Plans should be required to include participant representation on their boards of directors.

Finally, we endorse the comments provided in the submission from our coalition, the Coalition to Protect the Rights of New York’s Dually Eligible, and the separate comments of its members.