

To: Mark Kissinger, New York State Department of Health (NYSDOH)  
From: 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 5<sup>th</sup>, 2014

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CPRNYDE thanks NYSDOH for ensuring that consumer advocates have the opportunity to provide comments on the FIDA draft three-way contract. We would have welcomed additional time to review and provide comments on the draft contract, but considering the short timeframe, we write this memo to highlight the areas where we feel it is imperative for consumers that NYSDOH provide more detail and make changes. CPRNYDE member organizations have also prepared comments, and we are in full support of those comments as well. The comments we provide in this memo are not new—rather, we have brought these issues to the attention of NYSDOH before—and we are reiterating our concerns. Further, we are pleased to see that several provisions in this draft contract reflect our advocacy related to FIDA:

- The FIDA Plan will warmly transfer the Participant to the Enrollment Broker when the Participant directly contacts the FIDA Plan to request enrollment or disenrollment.
- The Comprehensive Assessment and all Comprehensive Reassessments must be performed in-person with the Participant in any setting.
- Benefits will continue pending an Appeal, and that should the FIDA Plan's Action be upheld, the Participant shall not be liable for the cost of any continued benefits. We are similarly pleased to see that while the FIDA Plan is required to participate in the Administrative Hearing, that same requirement does not appear to apply to the Participant.

As we've mentioned in previous letters to both NYSDOH and the Centers for Medicare and Medicaid Services (CMS), we believe there are several areas in which the FIDA program could be improved, including the following areas in the draft contract:

Passive Enrollment: CPRNYDE has always advocated against NYSDOH using passive enrollment in the FIDA Demonstration. However, if NYSDOH uses passive enrollment, we have insisted NYSDOH utilize an "intelligent assignment" algorithm, as mentioned in the FIDA MOU. The draft contract, however, makes no reference to the "intelligent assignment" algorithm for passive enrollment, nor does it outline how NYSDOH plans to consider Participants' previous Medicaid managed care enrollment and historic provider utilization when passively enrolling Participants into FIDA Plans. CPRNYDE strongly opposes the use of passive enrollment in FIDA, especially without the development and utilization of an "intelligent assignment" algorithm to ensure that Participants experience continuity of care to the greatest extent possible.

In addition, the draft contract does not define the "reasonable efforts" a FIDA Plan must make to contact a Participant's Out-of-Network providers during the initial 90-day continuity of care period. At the least, the FIDA Plan must document all efforts to contact Out-of-Network Providers and include the date and time of attempted contact, as well as the outcomes of all attempts.

Involuntary Disenrollment: As proposed in the Medicare-Medicaid Plan Final Enrollment Guidance, NYSDOH should require a 2 month minimum grace period for involuntary disenrollments due to non-payment of spenddown, and a 2 month deemed continuation period for individuals who lose Medicaid eligibility. Such protections will make FIDA rules consistent with Medicare Advantage and Part D, which provide a two-month grace period for premium payment, and provide a vital safety net for individuals who are late paying their spenddown or recertifying for Medicaid, due to circumstances beyond their control, such as hospitalizations or family emergencies.

Notices: The draft contract includes many references to the written notices that Participants will receive either from NYSDOH or the FIDA Plan. We reiterate the need for NYSDOH to convene a stakeholder workgroup of FIDA Plan representatives and consumer advocates to review readability, accessibility and cultural competency of FIDA notices. We also strongly request that NYSDOH draft standard notices and require that plans use standardized notices wherever possible, but especially for enrollment, disenrollment and denial notices. Additionally, all notices from either NYSDOH or the FIDA Plan should be available in accessible formats and all Prevalent Languages. If the Participant needs written materials in a language other than one that is considered a Prevalent Language, the FIDA Plan must be able to provide written materials in the Participant's language.

Participant Engagement and Education: The draft contract stipulates that NYSDOH will conduct an educational outreach effort for Participants and Participating Providers during the first 90 days of the Demonstration. It is imperative that education and outreach efforts take place well before the October 1 start date so that NYSDOH ensures Participants and Participating Providers are aware of the changes brought on by the Demonstration in advance of implementation and enrollment. In addition, NYSDOH must provide consumer stakeholders with details regarding the multifaceted approach it will use to locate, engage, and educate Participants so that Participants can participate effectively.

Participant Grievances and Participant Appeals: In filing a Grievance against the IDT or Care Manager, a Participant should not feel threatened, intimidated or otherwise pressured to dismiss his or her Grievance for fear of losing access to covered services or other adverse action by the FIDA Plan. NYSDOH should explicitly outline a process by which a Participant may file a Grievance against the IDT or Care Manager without involvement from either party, ideally through assistance from the Participant Ombudsman.

The draft contract requires a FIDA Plan to send written notice of its decision for standard and expedited Appeals within 2 calendar days of providing oral notice of its decision. However, the draft contract only requires a FIDA Plan to make a “reasonable effort” to provide prompt oral notice. As such, the timeframe under which the FIDA Plan is required to provide written notice should not be dependent on when the FIDA Plan provides oral notice. Instead, NYSDOH should require FIDA Plans to provide oral notice of decision within 2 calendar days *in addition to* requiring written notice within 2 calendar days of oral notice.

Additionally, we strongly believe that the final FIDA three-way contract should outline an approach for a fully integrated Medicare-Medicaid Appeals process that includes Medicare Part D appeals.

Interdisciplinary Team: The draft contract stipulates that the IDT “must authorize, arrange, integrate, and coordinate the provision of *all* Covered Items and Services.” However, the draft contract also states, “As described herein and in the IDT Policy, *the majority of* Covered Items and Services are authorized by the IDT.” In the event that NYSDOH plans to amend or has amended the current IDT Policy, we request that NYSDOH solicit comments on the new draft IDT Policy from all stakeholders, including FIDA Plans, Participating Providers and consumer advocates.

Consumer-direction: The draft contract provisions related to consumer-direction do not comply with NYSDOH’s Olmstead Plan. As this is the first plan contract to be finalized since the Olmstead Plan’s adoption, NYSDOH must demonstrate its commitment by requiring IDTs to assess each and every individual for their capacity to self-direct and, if they are not capable of self-directing, determine access to a designated representative. If they can self-direct or a designated representative can be found, the IDT should discuss the program and the Participant’s responsibilities and gauge a Participant’s interest in the program before any other long term supports and services are discussed or considered.

ADA Compliance and Reasonable Accommodations: 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, FIDA Plans should not only provide for reasonable accommodations, but also arrange for reasonable accommodations, auxiliary aids and services, and policy modifications as needed. Also, FIDA Plans must be required to provide not only translators for Participants who are Deaf or hard of hearing, but also certified American Sign Language interpreters and communications devices. Additionally, physical access for Participants with disabilities must include accessible diagnostic medical equipment.

In addition to the concerns identified above, we reiterate the need for the following changes to the draft contract, which we have brought to the attention of NYSDOH in previous letters and conversations:

- FIDA Plans should be required to include Participant representation on their boards of directors.
- Care Managers should be able to demonstrate experience, qualifications and training appropriate to the individual needs of the Participant. NYSDOH should stipulate the level of licensure or credentialing necessary for someone to be considered a care manager, including necessary training.
- NYSDOH should stipulate the appropriate Case Manager caseload.
- Participants should be allowed to maintain their non-network providers for at least 180 days after their enrollment in a FIDA Plan.