Coalition to Protect the Rights of New York's Dually Eligible - CPRNYDE

May 30, 2014

Mark Kissinger
Division of Long-Term Care
New York State Department of Health
Empire State Plaza, Corning Tower, 14th Floor
Albany, NY 11237

Edo Banach
Medicare-Medicaid Coordination Office
Centers for Medicare and Medicaid Services
7500 Security Blvd.
Baltimore, MD 21214

Re: Comments on Draft FIDA Enrollment Notices provided May 22nd

Dear Colleagues:

We appreciate the opportunity to comment on the four draft notices being sent to beneficiaries who are subject to passive enrollment into FIDA – the initial announcement notice and the 90-, 60-, and 30-day notices. Based on our review, we have concluded that the draft notices require significant revision, both in format and substance, before being distributed.

For the reasons addressed below, we do not believe the draft notices adequately inform consumers of the details or significance of the changes about to take place in the way they access services. We are concerned that the notices are still in such preliminary draft form just months before being sent to consumers. While we appreciate the work that was done to develop this draft of the notices, we believe that additional time and resources must be expended by both the Centers for Medicare and Medicaid Services (CMS) and the New York State Department of Health (NYSDOH) to fully develop a well-designed and thoroughly consumer-tested set of beneficiary notices, using the expertise of plain language specialists.

Preliminarily, it is quite challenging for us to comment on the notices since they reference a FIDA booklet that will be enclosed with the mailings, but that is still being drafted and not ready for release. Since this booklet will presumably include some of the content that is notably missing from the notices, we request an opportunity to revisit our comments below and the attached proposed revisions to the

draft notices once we review the FIDA booklet draft. We also request an opportunity to comment on the FIDA booklet before it is finalized.

Additionally, we urge NYSDOH to provide the draft notices directly to seniors and persons with disabilities for stakeholder review and comment. In particular, feedback on the draft notices should be sought from individuals living in a nursing facility, many of whom are not enrolled in MLTC plans and may have no familiarity with managed care concepts.

We have outlined our general comments on the notices below and on the Excel template you provided. We also enclose proposed revisions of the notices, including specific content, language and formatting changes. Due to time constraints, most of the markups are not discussed on the Excel template. As such, we ask you to consider the enclosed revised notices as a supplement to the Excel template. Given the short time frame for commenting on the notices, we were unable to have our proposed revisions tested for readability, comprehension and accessibility. Please understand that our revised notices are not intended to serve as the final notices without further revision and consumer testing. Rather, we propose the edits to assist in the drafting process by highlighting what critical content is missing, what is unclear, and what needs clarification.

Readability, Comprehension, and Accessibility

- We seek assurance that the notices have been written at no more than a sixth grade level pursuant to the Memorandum of Understanding Between the Centers for Medicare & Medicaid Services (CMS) and the State of New York Regarding a Federal-State Partnership to Test a Capitated Financial Alignment Model for Medicare-Medicaid Enrollees (MOU), Section III(E)(7).
- We ask for confirmation that the notices have undergone beneficiary testing and that testing has included beneficiaries with limited English proficiency, who are blind and visually impaired, who are deaf, and who have cognitive impairments. See CMS's "Toolkit for Making Written Materials Clear and Effective."
- We urge NYSDOH to include a prominent tagline at the beginning of the notices or an insert with the notices in the most common languages informing LEP beneficiaries how to obtain information in their primary language. While we appreciate that the notices direct beneficiaries to call NYMC if they need notices in another language, for this direction to be understood, it is important that it be provided to consumers in their primary languages.

- Pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act, DOH is obligated to ensure effective communication to individuals with disabilities and to offer auxiliary aids and services. See 28 CFR §§ 35.104, 35.160. The notices should, in addition to the alternate formats listed, include the availability of a reader, and accessible electronic formats. Also, TTY is infrequently used. The State is required to provide other effective communication options, such as video-remote interpreting.
- All notices should be in a sans serif font. Italics should not be used. See print guidelines for people with limited vision: http://www.lighthouse.org/accessibility/design/accessible-print-design/making-text-legible .
- The section of the notice offering alternative formats should be in 18-pt bold font to increase the likelihood that individuals with visual impairments can read the section.

Headings and Envelopes

We urge DOH to utilize headings that draw attention to and are explicit about the specific changes that the notice addresses.

We recommend that each notice have an introductory heading that expressly alerts readers that the way in which an individual receives health care from Medicaid and Medicare is changing, and that they must act. The use of the generic "Important Notice About Your Managed Care Plan" on the current 60-day notice does little to draw attention to the significance of the upcoming change. We have provided sample language on the attached draft notices, but further work is needed to fine tune our proposed headings.

The outside of the envelopes in which the notices are mailed should include a statement identical to the introductory heading.

Other headings should be used to further understanding of the various concepts. As the notices progress to the 30-day notice, the imminence of the auto-assignment must be made clear.

Headings should be in a larger bold font for emphasis.

Introductory Section

We object to language that promotes FIDA without clearly explaining how FIDA changes Medicare and Medicaid coverage. The changes being introduced by FIDA are so inherently confusing that all precious space in the notices must be used to clearly and simply explain what FIDA is. Beneficiaries need objective statements about the differences between receiving services as they do currently and FIDA. Without more objective information about benefits and changes from existing coverage, we think that saying benefits will be "easier for you to receive" or that FIDA "promotes your health and your goal to live independently" is too vague, reads more like marketing materials than objective information, and could be misleading.

Consistency

It is unrealistic to assume that every individual will thoroughly read each of the four proposed notices. The assumption should be that only one notice will be read. Therefore, it is critical that they be consistent with each other, use the same terminology, and that each contain identical key information. Key information that must be in all notices includes:

1. An explanation of the three options available to consumers (choose a FIDA plan, allow passive enrollment, or opt out). The drafts do not make these three options clear;
2. The consequences of being passively enrolled as a result of not opting out or selecting a FIDA plan;
3. The right to disenroll from FIDA at any point; and
4. The availability of transition services.

Tailoring of notices

These notices should be tailored to the unique situations of the beneficiaries who receive them.

It is difficult to explain the impact that FIDA will have on access to services without actually describing what the individual has now and how it will change with FIDA. Since the individual could be in MLTC, Medicaid Advantage Plus, or a nursing home without any type of managed care, it is impossible to use a one-size-fits all notice.

We propose that three versions of the notices be adapted for the following populations:

1. Current MLTC enrollees receiving community based LTSS or residing in a nursing home. The notices they receive should explain what they have now – MLTC, Original Medicare or Medicare Advantage, and FFS Medicaid – and how the FIDA plan is different.
2. Medicaid Advantage Plus enrollees. The notices they receive should explain how FIDA will be different from Medicaid Advantage Plus.
3. FFS nursing home residents who are not in an MLTC or Medicaid Advantage Plus plan.

One term that the draft 60- and 30-day notices did tailor for the individual consumer was insertion of the name of the FIDA plan in which the individual would be passively enrolled. While the name of the plan needs to be specified in the context of explaining that the individual will be passively enrolled, the draft notices insert the FIDA plan name throughout when describing the FIDA program generally. However, individuals have the right to select ANY FIDA Plan, not just the one named in the notice. It is confusing for the notice to repeat the name of one plan, even though the individual may select a different plan. We suggest that the name of the plan should only be used where the notice states that the individual will be enrolled in [NAME] FIDA Plan if they do nothing, etc. Everywhere else it should refer generically to "a FIDA plan."

Explanation of FIDA

1. Who is affected

The draft language, "FIDA is for eligible adults age 21 and older who have disabilities or long term health problems and who have both Medicare and Medicaid" omits the key element that FIDA is only for people who receive long term care. Moreover, since that term is commonly misunderstood, it must be explained in such terms as "home care" or "nursing home." One example of a good format is this Part D notice: http://www.cms.gov/Medicare/Prescription-Drug-Coverage/LimitedIncomeandResources/downloads/11209.pdf, which begins "you are getting this notice because…" The consumer must understand why he or she is being sent the FIDA notices.

2. Services Covered

The draft states, "You will continue to have access to all of the services and supplies you have now plus additional items and services you don't have now, all within one managed care plan." This language is too vague. Notices need to clarify that all Medicaid and Medicaid services must now be obtained through the FIDA plan. If there are additional services not covered by MLTC, Medicare, and Medicaid, they should be spelled out.

3. In-Network Requirement

The draft notices do not clearly state that all services must now be obtained in network, with the few exceptions of the 90-day transition period, in emergencies, and for dialysis, etc. Our proposed edits attempt to make this clearer, and explain what happens after the 90-day transition period. Since this is a major change affecting access to Medicare services, it must be made clear.

The notices should include information on how individuals can enroll in FIDA and keep their current home care aide and doctors. The notices should advise consumers that they should ask their preferred home care and medical providers if they belong to a FIDA network, and to seek out a plan that includes their preferred providers. It must be made clear that passive enrollment may affect their ability to remain with their provider(s).

4. Consumer Options

The notice must lay out clearly the consumer's three options – selecting a FIDA plan on their own, opting out, and doing nothing, which will result in passive enrollment into FIDA – and must explain the consequences of each option. The letters should encourage the consumer to learn more and to become engaged and make an active, informed choice. One notice that is a good example of explaining consumer options and their consequences is the Part D reassignment notice: http://www.cms.gov/Medicare/Prescription-Drug-Coverage/LimitedIncomeandResources/downloads/11209.pdf. It provides a better template than the drafts provided. The notice sets out the three options giving a clear roadmap of choices.

5. Transition Period Rights

We appreciate that there is some discussion of transition rights, but this discussion needs to be highlighted with a heading and include the following critical information in addition to the rights described in the draft regarding prior authorization:

- Home care and medical services, as well as prescription drugs, continue without any interruption during the transition period.
- Access to out of network providers will, for the most part, end after the 90-day transition period ends.
- Beneficiaries may change plans or disenroll if they discover that their preferred providers are not in a plan's network.

6. **Right to disenroll from FIDA.**

The draft notices omit any reference to the right to disenroll at any time. (MOU App. 7 III(d)(iv).) Information on the right to disenroll should be added.

In addition, the consequences of disenrolling should be explained. We could not suggest language because we do not know the proposed disenrollment procedures, which should be designed to ensure a seamless transition. Among the outstanding questions about disenrollment are: Will the consumer be automatically re-enrolled in their prior MLTC plan, if any, or will they need to apply to an MLTC as a new member? Will people who were in Medicare Advantage prior to FIDA automatically revert to their prior Medicare Advantage plan or will they get Original Medicare? For those returning to Original Medicare, will they be automatically enrolled in their prior Part D plan or will they have to choose a new one?

7. **Description of IDT and Care Coordination**

While important, the drafts give too detailed an explanation of the IDT process, at the expense of omitting other key components of the FIDA model and enrollment process.

Referrals for Counseling

In addition to referring to NYMC, the drafts refer to 1-800-Medicare. We propose that the notices also refer to the FIDA Ombuds program. If the Ombuds program is not operational, FIDA roll-out should be suspended until it is ready.

Final Section

This section should explain next steps, and be a call for action, laying out the options and resources clearly. The tone should encourage investigation and informed decision-making. This is especially important in the 60- and 30-day notices, as these are the final opportunities to communicate with consumers about significant changes to their Medicare and Medicaid services, including the home care services on which they rely.

We look forward to learning about the testing that the drafts have undergone or will undergo. We also request the brochure draft for comments.

Sincerely,

Steering Committee of the Coalition to Protect the Rights of New York's Dually Eligible:

Consumer Directed Personal Assistance Association of New York State

Center for Disability Rights

Center for Independence of the Disabled/NY

Community Services Society

Empire Justice Center

Legal Aid Society NYC

Medicare Rights Center

New York Association on Independent Living

New York Legal Assistance Group

Contact:

Valerie J. Bogart, Director

Evelyn Frank Legal Resources Program

New York Legal Assistance Group

7 Hanover Square, 18th Floor

New York, NY 10004

212-613-5047

vbogart@nylag.org

Krystal Knight

New York State Policy Director

Medicare Rights Center

520 Eighth Ave, North Wing, 3rd Floor

New York, NY 10018

212-204-6219

kknight@medicarerights.org