



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

July 13, 2014

### PUBLIC COMMENT

#### Quality Strategy for the New York State Medicaid Managed Care Program

2014

The Coalition to Protect the Rights of New York's Dually Eligible (CPRNYDE) is pleased to see the State's plan for quality improvement within Medicaid managed care. Since CPRNYDE's focus is dual eligibles and long-term care, the Coalition will not comment on portions of the draft Quality Strategy pertaining to primary and acute care provided by mainstream Medicaid managed care plans or through the OPWDD waiver. We support the comments submitted by the Legal Aid Society and other consumer organizations on these issues.

As several of the managed care products being implemented by the State are new, we reiterate the need for robust and accurate quality measurement and reporting in order to ensure that these managed care programs are providing high quality care for the high-need populations that depend on them.

#### Long Term Care issues

It is widely recognized that the nationally used quality measurement systems such as HEDIS have not been updated to usefully measure quality of long-term care service delivery by managed care plans. This impacts Managed Long Term Care (MLTC), Fully Integrated Duals Advantage (FIDA), and the delivery of long term care services by mainstream plans. The draft 2014 Quality Strategy does not specifically address this gap in measures for long term care. Last year, CPRNYDE published a critique of the NYSDOH 2012 Managed Long Term Care Report (see "*Incomplete Picture*" report, posted at <http://www.wnylc.com/health/download/401/>). We incorporate this report and its recommendations by reference. We also urge the Department to draw recommendations from:

- AARP, American Association on Health and Disability, American Association of People with Disabilities, et al., *Is It Working? Recommendations for Measuring Rebalancing in Dual Eligible Demonstrations and MLTSS Waiver*, January 2014, available at <http://archive.constantcontact.com/fs103/1102816858078/archive/1116248257475.html> (with links to 2014 CMS Guidance issued on MEDICARE-MEDICAID CAPITATED FINANCIAL ALIGNMENT MODEL REPORTING REQUIREMENTS, etc).
- National Senior Citizens Law Center, *Identifying and Selecting Long Term Services and Supports Outcome Measures*, January 2013, available at <http://www.nsclc.org/wp-content/uploads/2013/02/Guide-LTSS-Outcome-Measures-Final.pdf>.

For example, it is striking that the only mention of delivery of services in integrated services settings, a requirement of the Americans with Disabilities Act (ADA) as held in the *Olmstead* decision, is regarding the OPWDD waiver (see p. 34 of the Quality Strategy). We are not commenting here about whether the OPWDD monitoring on this issue is sufficient. However, the lack of an express system for measuring and monitoring whether MLTC, FIDA and managed care plans are delivering long term care services in a way that ensures the most integrated setting must be rectified.

### **Other ADA Compliance Issues – Reasonable Accommodations**

In addition to *Olmstead* compliance, NYSDOH must conduct dedicated quality monitoring and enforcement to ensure Medicaid managed care plans accommodate the disabilities of their members in all of their policies and procedures. For more examples of how this should be done, please see (1) Center for Independence of the Disabled, NY (CIDNY), Letter to Mark Kissinger, Dep. Commissioner NYS DOH, dated Oct. 5, 2012, posted at <http://tinyurl.com/CIDNY-MLTC-ADA>; (2) referencing Chart Comparing MLTC ADA Plan Compliance, posted at <http://tinyurl.com/CIDNY-MLTC-ADA-chart-xls>. The State must not only analyze plans' ADA compliance plans on paper, but also assess managed care organizations' compliance in carrying out those plans.

### **FIDA**

The Quality Strategy makes reference to a new type of FIDA Plan for people with intellectual and developmental disabilities (FIDA-IID). The Coalition requests that the State release a timeline for implementation of this new managed care product. The FIDA demonstration is still currently under development and will not be implemented until January 2015. As such, we believe it is in the State's best interest to determine the effectiveness of FIDA before creating another managed care product based on the model. We also request that the State give more details regarding the relationship between the FIDA-IID Plan and DISCOs.

Additionally, while the State has finally agreed to perform independent and conflict-free assessments within the MLTC and FIDA programs beginning October 2014, the quality strategy makes no reference to independent assessments as part of the State's movement towards providing high-quality managed care. We believe it would benefit the State to include independent and conflict-free assessments as part of the 2014 Quality Strategy, as well as plans to ideally move these assessments to independent, community-based organizations.

### **Monitoring of Due Process Compliance -- Notice and Hearing Rights**

As stated by the Legal Aid Society in its comments, many managed care members do not know they have the right to file grievances, request hearings, or complain to the State. Consumer advocates have

brought many examples to the State of instances where mainstream plans and MLTC plans reduce or even terminate long term care services with no notice whatsoever or with poorly written and formatted notices that fail to meet due process standards of adequacy. Notice is essential to apprise people of their right to appeal, the procedures for requesting an appeal, and the time limits for appealing. Moreover, when a plan is reducing or terminating services, advance notice affords the due process right to receive “aid continuing” while the appeal is pending.

With long term care services, denial of the right to aid continuing can have dire consequences. The State must enforce these rights through monitoring, but not solely monitoring of complaints against managed care plans—only a small percentage of members overcome the barriers to filing a complaint. The State must conduct “secret shopper” surveys to observe plan response to members attempting to file appeals or learn their rights. The State must also monitor all fair hearing requests and decisions (not mentioned in the proposed Quality Strategy document) so that any finding of an inadequate notice or violation of procedural rights triggers an investigation of the plan’s procedures and practices. Any complaint should not be seen as a one-off problem but as a “canary in the coal mine” and trigger investigation and enforcement. Also, all measures should be reported publicly.

**We appreciate the opportunity to provide comments to the State’s quality strategy for the Medicaid managed care program, and we look forward to reviewing the State’s final product.**

*CPRNDYE is a coalition of over 45 consumer advocacy organizations led by the Medicare Rights Center and part of Community Catalyst’s Voices for Better Health Initiative. For more information, please contact Krystal Knight at 212-204-6219 or [kknight@medicarerights.org](mailto:kknight@medicarerights.org)*