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

July 14, 2014

Edo Banach, Acting Director
Medicare-Medicaid Coordination Office
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington D.C. 20201

Mark Kissinger, Director
Division of Long Term Care
New York State Department of Health
Empire State Plaza
Corning Tower, 14th Floor
Albany, NY 12237

Re: Questions and Concerns about Enrollments in the Fully Integrated Duals Advantage (FIDA) Program

Dear Mr. Banach and Mr. Kissinger,

The Coalition to Protect the Rights of New York's Dually Eligible (CPRNYDE) would like to thank both of you for your willingness to engage consumer representatives on various issues related to the implementation of the FIDA demonstration. We are pleased to have had various opportunities to discuss specific items with both CMS and NYSDOH, and we look forward to continuing to work with both agencies to inform FIDA implementation on an ongoing basis.

As we head closer to FIDA implementation in January 2015, there continue to be outstanding questions about the proposed FIDA enrollment processes including passive enrollment, opting out and related transitions to other forms of insurance and involuntary disenrollments for FIDA Participants. We write to request a face-to-face meeting with relevant staff from both CMS and NYSDOH to discuss our questions and concerns related to FIDA enrollment, which are outlined below.

<u>Passive Enrollment</u>

- **Excluded Populations.** How does NYSDOH plan to ensure that dual eligible beneficiaries excluded from the FIDA demonstration or from passive enrollment into FIDA do not receive notices advising them about enrollment or end up being passively enrolled?

- **Intelligent Assignment.** How will the intelligent assignment algorithm work? We understand that in the three-way contract, eligible individuals will be passively enrolled into FIDA Plans based on historic Medicare and Medicaid provider utilization. Still unanswered, however, is which providers will be the basis for passive enrollment into a network—will someone's primary care provider trump his/her behavioral health specialist or home care provider? Will beneficiaries have the opportunity to convey which providers are of most importance to their health care needs?

- **Remedy for mistaken passive enrollment.** In the event that beneficiaries who opt out or are not eligible for passive enrollment into FIDA are inadvertently passively enrolled into a FIDA Plan, how does NYSDOH plan to remedy the situation and ensure that these beneficiaries have their personal choices effectuated? There must be a procedure for retroactive reinstatement into their previous coverage, whether original Medicare, a Medicare Advantage plan, and/or MLTC plan. Otherwise they will be wrongfully denied services, or their providers will be unpaid.

- **Passive Enrollment of Beneficiaries who rely on Non-Participating Providers.** If a beneficiary is currently being treated by a health provider that does not accept Medicare Advantage plans, will s/he still be eligible for passive enrollment into FIDA? If yes, will health providers that do not currently accept Medicare Advantage (cancer treatment centers, for example) be required to participate in the FIDA program, or will passively enrolled individuals receiving those services need to opt out /disenroll?
    - Similarly, since all nursing homes are not required to contract with a FIDA plan, will residents of non-participating nursing homes be exempt from passive enrollment?

- **Preventing Wrongful Mass Part D Plan Disenrollment.** In some states, Medicare Part D disenrollment notices were reportedly sent 7-10 days following the 60-day passive enrollment notice, with no reference to the states' dual demonstrations. This caused disruption in prescription drug access and great confusion. We understand that CMS plans to correct this problem with necessary systems changes requiring Part D Plans to send tailored notices by the end of the year. We question whether these tailored notices will be ready in time for FIDA implementation on January 1, 2015. What information will be included on these tailored notices? Will these notices be state-specific?

- **Duals Newly Applying for Medicaid Home Care Services after January 1, 2015.** Will dually-eligible beneficiaries newly seeking Medicaid home care services have the option to select an MLTC, MAP or PACE plan, as well as FIDA? If they choose to enroll in MLTC, will they be passively enrolled into FIDA at some later point, and if so, when, and what is the timeline and procedure?

- **Enrollment during 2015 Medicare Annual Enrollment Period—Relationship with 2015 FIDA Enrollment.** It is our understanding that a beneficiary's affirmative choice during the Medicare AEP, which will take place in late 2014 in advance of the FIDA enrollment in 2015, trumps his/her passive enrollment in FIDA. In the event that a beneficiary does not make an "affirmative choice" but remains in his/her Part D Plan because he/she has decided to maintain the previous years' Part D coverage, does passive enrollment into FIDA supersede the beneficiary's decision to stay in his/her Part D Plan?

- **Duals with Cognitive Impairments.** What accommodations will the State provide to dual eligibles with cognitive impairments who may not fully understand their options with regards to FIDA enrollment?

Voluntary Enrollment/Opt-Outs

Timing and Nature of Notices

- When is the earliest a beneficiary can receive an Announcement Notice if the demonstration effective date is January 1, 2015?
- It is our understanding that MLTC enrollees will receive a FIDA program announcement notice as well as a FIDA initial outreach notice—what is the FIDA initial outreach notice?

Seamless Transitions to MLTC for People Disenrolling from FIDA

- If a beneficiary enrolled in MLTC is passively enrolled into a FIDA Plan and then disenrolls, will s/he be automatically returned to his/her former MLTC Plan, with a seamless transition? If s/he is required to affirmatively enroll in an MLTC plan, there is a risk of a gap in enrollment and services. What procedures will ensure a seamless transition?
- If a beneficiary who was never enrolled in MLTC enrolls in a FIDA plan when s/he comes to need Medicaid home care services after January 2015, and then later disenrolls from FIDA, will s/he be passively enrolled into an MLTC Plan? What procedures will ensure a seamless transition to an MLTC plan without a gap in services?
- In what situations is it not possible for CMS to restore a beneficiary to his/her previous coverage once s/he opts out of FIDA?
- Will beneficiaries who disenroll from FIDA into MLTC have a 90-day transition period to maintain access to their FIDA long-term care providers and services once they are in MLTC?
- In other states, it is reported that people who opted out of the duals demo were nevertheless disenrolled from their former Medicaid plan. In New York State, this could mean mistaken disenrollment from MLTC plans and disruption of home care services. What will prevent such occurrences?

FIDA and Part D Enrollment—Seamless Transitions back to Part D PDP and MA-PD Plans

- How will CMS auto-enroll beneficiaries into a Medicare Part D Plan once they've disenrolled from FIDA? When will they be notified of whether they will be (1) re-enrolled into their previous coverage or (2) auto-assigned into Original Medicare and a Medicare PDP? Will beneficiaries have appeal/transition rights in this case?
- It is our understanding that if a beneficiary voluntarily disenrolls from FIDA once s/he has started receiving Medicare/Medicaid services through the FIDA Plan, CMS does not reinstate the beneficiary back to his/her previous Part D or MA/MAPD Plan. What does it mean to be "receiving Medicare/Medicaid services"? If a beneficiary is enrolled in a FIDA

Plan for six weeks, but does not receive an assessment, and accesses providers solely during the transition period, is s/he "receiving Medicare/Medicaid services" through the FIDA Plan? Would this member therefore be ineligible to be reinstated into his/her previous coverage upon voluntary disenrollment?

- Other states have experienced Part D Plans informing beneficiaries that they could not keep their Medicare Part D Plans without a letter verifying that they'd opted out of the demonstration. What is the correct protocol in this case? Do beneficiaries need to provide proof of opt out?

Transitions to and from FIDA – Impact on Medigap Coverage

- How will beneficiaries with a Medigap be notified of the potential negative consequences of enrolling in FIDA (e.g., they may lose their Medigap and not be able to reinstate it because of the prohibition against selling policies to Medicaid recipients; they may need to repurchase at different premium rates, etc.)? "Voluntary" enrollment requires informed consent with knowledge of these consequences.
- Will beneficiaries who voluntarily disenroll from FIDA prior to receiving Medicare and Medicaid services have their Medigap policies automatically reinstated? Or will affirmative steps be required to reenroll in Medigap?
- Will beneficiaries who voluntarily disenroll from FIDA after receiving Medicare and Medicaid services have guaranteed issue rights for Medigap?
- Will the prohibition against selling Medigap policies to Medicaid recipients be waived for anyone disenrolling from FIDA who had a Medigap policy prior to their FIDA enrollment?

Transitions between FIDA and Nursing Home Transition & Diversion Waiver

- What happens when someone on the NHTD waiver disenrolls from FIDA? Will they be reinstated to the NHTD or must they reapply? If they must reapply, will they be automatically approved to return to NHTD, or will there be instances in which people may lose NHTD?
- How will NHTD waiver participants be informed that there is currently no housing subsidy available in FIDA? Will they receive such information in time to give it due consideration before making the decision to voluntarily enroll into FIDA?

Impact of FIDA on Employer or Retiree Group Health Insurance Coverage

- What protections will ensure that beneficiaries will not voluntarily enroll, or be passively enrolled into FIDA, if enrollment will result in loss of employer or retiree group health coverage of the enrollee, spouse or other family member?

Involuntary Disenrollment

- In MLTC, beneficiaries are involuntary disenrolled upon no longer needing a certain level of care, as well as for other reasons (allegedly "unsafe" at home, for example). Will the same be true in FIDA? How will these involuntary disenrollments be processed, and will beneficiaries be entitled to advance written notice, with the right to request a hearing and aid continuing?
- How will beneficiaries who are involuntarily disenrolled access Medicare and prescription drug coverage? Will they have fee-for-service Medicaid coverage for prescription drugs until being auto-assigned to a Part D Plan through the established process for duals?
- What will be the FIDA Plan's role in ensuring that beneficiaries are not involuntarily disenrolled for failure to pay Medicare Part B premiums?
- Can a beneficiary be disenrolled from a FIDA Plan after the 90-day care coordination period if s/he continues to use an out-of-network provider?

We look forward to meeting with you and your staff in the near future to discuss and receive clarification on the above issues. Again, thank you for the opportunity to provide meaningful input on FIDA enrollments and other processes that have substantial impact on how dual eligibles access care in this demonstration. If you have any questions or comments about this letter, please contact Krystal Knight at 212-204-6219 or kknight@medicarerights.org.

Sincerely,

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

Steering Committee

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