



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

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

On

**Improving Care for Dually-Eligible Beneficiaries: A Progress Update
Thursday, December 13, 2012**

Submitted to:

The United States Senate Committee on Finance

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Introduction

The **Coalition to Protect the Rights of New York's Dually Eligible** (the Coalition) is comprised of disability rights and senior rights advocates, consumers, community-based organizations, and lawyers representing people with disabilities and older New Yorkers. Many of our organizations directly serve New Yorkers eligible for both Medicare and Medicaid, also known as dual-eligibles or duals. We know that these individuals are some of the most vulnerable people in our communities. They fall below the federal poverty level and are more likely to be in ill health than beneficiaries enrolled in only Medicare or only Medicaid. It is critical that any changes in health insurance and care delivery for this population prioritize better care management and address their numerous and complex health problems. We thank the Senate Committee on Finance (the Committee) for holding this hearing and providing our Coalition with the opportunity to speak directly to ways that the federal government can effectively serve dual-eligibles, through these state based demonstrations, while simultaneously reducing its health care costs.

Efforts to coordinate care for beneficiaries who are eligible for Medicare and Medicaid

New York State is currently in the process of changing the way in which 85,000 New York City residents receive their community-based long-term care services. Medicaid beneficiaries, who receive more than 120 days of community-based long-term care supports and services, including dually eligible beneficiaries, must move from a fee-for-service long-term care delivery system to a managed long-term care plan.

While, this change is currently taking place it affects, informs and serves as the building block for a proposed Medicare/Medicaid demonstration project. This demonstration project (the FIDA demonstration) would go a step further and in 2014 auto-enroll many of these same beneficiaries into a fully capitated managed care plan, called fully integrated dual advantage (FIDA) plans for their long-term care, Medicare, Medicaid, and prescription medication needs.

New York is one of twenty-five states proposing to partner with the Centers for Medicare & Medicaid Services (CMS) to test new health care models for dually eligible beneficiaries. We believe that these demonstrations, including New York's FIDA demonstration project, envisioned through the Affordable Care Act (ACA) offer a unique opportunity to address the numerous and complex health problems faced by dually eligible Americans but, we are concerned there are critical issues that must be addressed before many of these projects move forward. Since the Committee's last hearing, CMS has addressed some of these concerns in the demonstration Memoranda of Understanding (MOUs) with Massachusetts, Ohio and Washington State. However, further clarification and protections are needed to address the following:

- Demonstrations may save the states and the federal government money; however, the demonstration savings targets must be transparent and realistic. And, most importantly, access to services and quality of care cannot be compromised in order to save money.
- Inadequate provider buy-in may result in poor quality of care and limited access.

- The move from fee-for-service to insurance-based managed care may compromise care by disrupting provider relationships, destabilizing the current safety net and creating a care system based on networks rather than patient need.
- New regulations governing demonstration plans may undermine, ignore, or circumvent important beneficiary rights and protections grounded in the Medicare and Medicaid laws and in State and Federal Constitutions.
- There are currently inadequate requirements to ensure health plan compliance with the Americans with Disabilities Act (ADA) and inadequate penalties for health plans that fail to comply with the law.
- Demonstration plans, including New York's FIDA plans, may not meet the unique needs of subpopulations being served by programs tailored to those needs that currently exist in the Medicaid program.
- Quality and performance measures states develop must account for the specifics of the dually eligible population. Quality measures and performance ratings applied to managed care plans for younger and non-disabled adults are not appropriate markers for low income older and disabled adults. States should consult with organizations that have developed quality measures specifically for this population when developing its performance measures.
- Demonstration programs may have the unintended consequence of incentivizing institutionalization, in contradiction to the implementation of the Supreme Court's decision in *Olmstead v L.C.*, 527 U.S. 581 (1999).

Although these concerns require serious attention, so too do the promising practices developed through these proposals.

- **We support allowing existing models of care to coexist alongside new demonstration models.** New York, Washington and Oklahoma have proposed to create a fully capitated managed care plan for dual eligible beneficiaries but has also proposed to create a managed fee-for-service health home. Moreover in New York, other existing models such as PACE, Accountable Care Organizations (ACOs) and enhanced Primary Care Case Management (PCCM), are preserved in the FIDA demonstration. And in fact, PACE and ACO members will not be automatically decanted into a fully capitated plan. Allowing and supporting a number of care integration models will help ensure that New York State can compare multiple models of care and determine which achieved the best outcomes for dual eligible beneficiaries. We encourage other states to adopt similar approaches to ensure a meaningful analysis of the demonstration.
- **We support the creation of an independent participant ombudsman with broad authority to assist consumers.** An unbiased consumer ombudsman is needed given the enormous task of shifting dually eligible beneficiaries to new care models and care delivery systems at the

speed at which these changes are proposed to take place. As proposed by New York State in its FIDA demonstration, the independent ombudsman must be adequately funded to provide information to beneficiaries regarding FIDA plan coverage and advocate on behalf of aggrieved beneficiaries with plans and other providers.

- **We support the utilization of work groups to assist states in developing these new programs.** Feedback from beneficiaries, providers, and advocates is needed to ensure beneficiaries are able to make informed choices about which health care model and plan meet their needs. To that end, states like New York and California have created work groups which include a variety of stakeholders, including consumer advocates, to address several key areas, including integrated appeals, plan quality, and plan payment methodology. We strongly recommend that states create and utilize these workgroups or other broad-based stakeholder groups continue as demonstration implementation moves forward.

We appreciate the opportunity to provide testimony on this critical issue for dually eligible beneficiaries in New York and across the country. We look forward to working with the Committee and CMS as these demonstration proposals evolve and are implemented.

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