MAY 2019

The Future of CDPA

RECOMMENDATIONS TO THE WORKGROUP

Prepared by

THE CONSUMER DIRECTED PERSONAL ASSISTANCE ASSOCIATION OF NEW YORK STATE (CDPAANYS)

Executive Summary

The 2019-20 budget dramatically reconfigured the way Consumer Directed Personal Assistance (CDPA) is delivered. The Medicaid program that allows the disabled and seniors to recruit, hire, train, supervise, and, if needed, terminate their own staff, called personal assistants (PAs), will undergo a transformation as the Department of Health (DOH) redefines who can be a fiscal intermediary (FI), the agencies who administer the program on behalf of consumers, and what the FI's role is.

The budget created a workgroup to help with the implementation of this task. Specifically, the workgroup, comprised of fiscal intermediaries, managed care organizations, independent living centers, consumers, and statewide associations representing the above, will consider and make recommendations:

- **establishing best practices for FIs operating in New York;**
- **establishing criteria for the selection of FIs with whom the state will contract;**
- **identifying whether FI services are the same for all consumers, or if they may differ in certain circumstances;**
- **informing the creation of quality criteria for FIs in New York; and**
- **working with DOH to establish transition methodologies for consumers whose FIs cease operation.**

As the sole entity in the state representing both FIs and consumers in CDPA, the Consumer Directed Personal Assistance Association of New York State (CDPAANYS) convened internal workgroups, one comprised of FIs and another comprised of consumers, to consider these issues and make recommendations.

Of the DOH workgroup’s charges, CDPAANYS’ workgroups primarily focused on the criteria for the state contracting process and the definition of quality. This is due to the fact that other measures already have been considered by CDPAANYS or the committees determined they were not an overarching concern to the program.

Contracting

The state contracting process will consider:

- the ability to appropriately serve those who use the program;
- adequate geographic coverage to ensure access in rural and underserved areas;
- a demonstrated cultural and language capacity to meet the needs of consumers and their workforce;
- the ability to provide timely consumer assistance;
- the availability of peer supports;
- experience serving individuals with disabilities; and
- compliance with all applicable labor laws.

While many of these are inextricably linked, for instance, the ability to appropriately serve those who use the program, there are important points to pull out in each category. Specifically, we note that:

- Timeliness is critical at every level of the FI-consumer relationship; however, an understanding must be made that not every issue is within the control of the FI. Industry averages and goals should guide standards, recognizing that PA/consumer response plays a large role. Further, requirements should be revisited to see if efficiencies can be discovered.
- Cultural and language competencies must be considered within the mission and target population of each FI; but, disability culture must be universal.
- Experience serving people with disabilities must be thought of broadly to incorporate all disabilities and a critical component must be that FIs meet ADA requirements.
- Peer supports and other new requirements should be recognized as a new requirement, and at a time when reimbursement is being reimagined, it must provide for it.

Quality

The workgroup is charged with identifying new criteria to be used in quality reporting requirements. CDPAANYS supports such requirements; but specifically notes that quality cannot be thought of in the same way in which it is in the traditional health care universe.

“Quality” for FIs cannot expand beyond the ability of a FI to carry out defined FI services. However, this cannot and should not be included in the Value Based Purchasing (VBP) process. Some FIs are already working with MCOs to arrive at Level One VBP arrangements today. However, the terms of these arrangements will vary, and a group consisting of FIs, MCOs, consumers, and other stakeholders should work on ideas at bringing this to fruition.

Introduction

New York's 2019-20 budget contained a number of changes to one of the most popular long-term supports and services (LTSS) within the State's Medicaid program, Consumer Directed Personal Assistance (CDPA). The budget took steps to completely reimagine and reshape the program, including:

- redefining who can serve as a fiscal intermediary (FI), the agencies administering the program on behalf of the state and managed care organizations (MCOs);
- increasing the scope of required activities a FI must perform to include those that had previously been voluntarily or because they meant the FI was providing high quality customer service or support;
- creating new transition requirements for consumers when they change FIs, either voluntarily or because their FI is closing; and
- altering the system of reimbursement for FIs, likely to one that reimburses the agencies on a per member, per month (PMPM) basis for the administrative component of their work.

Because CDPA was created in New York, by the disabled community, for the disabled community, there is a strong sense of ownership by the community of this program. This led to strong concern with many of the Department of Health's (DOH) proposed changes. In response, some of the original proposals were refined to address concerns - such as the elimination of the potential for one single statewide FI. To address concerns about continuity of care as FIs cease operation, the aforementioned transition rights were added.

However, one of the more sweeping changes was the addition of a workgroup comprised of DOH officials, fiscal intermediaries, independent living centers, statewide associations representing fiscal intermediaries and independent living centers, managed care organizations, and consumers. This workgroup was charged with providing input to the DOH on a range of topics, including:

- establishing best practices for FIs operating in New York;
- establishing criteria for the selection of FIs with whom the state will contract;
- identifying whether FI services are the same for all consumers, or if they may differ in certain circumstances;
- informing the creation of quality criteria for FIs in New York; and
- working with DOH to establish transition methodologies for consumers whose FIs cease operation.

The Consumer Directed Personal Assistance Association of New York State (CDPAANYS), a disability led organization representing FIs and consumers and an organization whose singular focus is CDPA, has long provided education to FIs, MCOs, and DOH on the topic of Best Practices within CDPA. The Association's recognition as a thought leader on CDPA has even extended to DOH directing multiple MCOs to utilize the organization for educational training sessions for their care managers. This expertise is not unfounded; the members of CDPAANYS played a critical role in the program's creation in 1995, and it was CDPAANYS' recommendations that informed the development of regulations for the program in 2011.

CDPAANYS' expertise and established role in the industry is further bolstered by the fact that, while the member list for the FI Workgroup is not yet public, it will contain at least five representatives of CDPAANYS, including the organization's Executive Director, Bryan O'Malley; Board President, Elizabeth Martin (Consumer Directed Choices); Board Treasurer, Carlos Martinez (BRIDGES of Rockland County); Denise DiNoto, consumer representative on the workgroup and CDPAANYS Board member); and Anthony Caputo (Concepts of Independence) and Douglas Hovey (Independent Living, Inc.), both founding organizations in CDPAANYS with representatives on the Board of Directors. Of course, as the list is not public, there could be other members the Association is not aware of at this time.

Because of our history with this critical service, CDPAANYS wished to provide input to the committee in advance of the first meeting. The Association established a working group comprised of many of our provider FIs to give input on the topics that would be discussed. These FIs represented the full spectrum of entities, with diversity in profit-making status, duration of operation, type of organization, and geographic area of representation.

Simultaneously, CDPAANYS convened its Consumer Advisory Workgroup to examine to discuss the same issues as the provider workgroup. This workgroup has previously produced reports for CDPAANYS on the impact that low wages have within CDPA (see, The High Cost of Low Wages) and consumer recommendations on the rollout of electronic visit verification, as such is required by the Federal CURES Act (see, EVV and Self Direction: A Consumer Perspective).

Over the course of a month, these groups met to discuss in detail the different components that the workgroup would examine. They did not consider best practices, as CDPAANYS already has guidelines on this topic. They also did not consider transition policies, as CDPAANYS congratulates the DOH and the Legislature on the creation of new transition rights for consumers in the budget, and is of the opinion that those should guide any discussion on that topic.

Finally, while the groups did consider whether or not differences between consumers should impact the manner in which FI services are delivered, the resounding answer was that it should not. Although we noted that there are always subtle differences in how a FI might interact with consumers, based on a notion of meeting the consumer where he or she is, cultural and language considerations, and other factors; none of these merit differences in the manner in which the service itself operates, or the primary functions of the FI.

That left the implementation of quality standards and the criteria for the selection of FIs through the State's contracting process as the primary topics of consideration for the workgroups. This paper will examine each independently.

Contracting

The SFY 2019-20 budget eliminated existing provisions that would have required DOH authorize FIs in order for them to operate in New York. This was replaced with new contracting requirements that require the DOH to undertake a "mini-bid" procedure that does not meet the full criteria of a traditional Request For Proposals (RFP); but, which does require the Department to have established criteria by which they are measuring FIs and retain records as to factors that led to the choice of one FI over another.

As a check in the system, the Comptroller retains authority to review contracts.

When making the selection of who will be awarded a FI contract, the law instructs the DOH to consider "criteria reasonably related to" the FIs ability to provide FI services. The statute further instructs that these shall include, but not be limited to:

- the ability to appropriately serve those who use the program;
- adequate geographic coverage to ensure access in rural and underserved areas;
- a demonstrated cultural and language capacity to meet the needs of consumers and their workforce;
- the ability to provide timely consumer assistance;
- the availability of peer supports;
- experience serving individuals with disabilities; and
- compliance with all applicable labor laws.

CDPAANYS feels strongly that many of these factors are linked. For instance, the ability to appropriately serve consumers is linked to every other category in the group. Often, underserved areas may be in densely populated settings; but, be underserved due to cultural or language reasons. The ability to offer peer supports provides a level of experience working with people with disabilities.

Timeliness

Timeliness is a critical standard, as it relates to starting services, billing, consumers' personal assistants (PAs) getting paid, and more. However, as was apparent in both groups, it can be difficult to establish precise timelines.

While it is tempting to say that timeliness will mean new cases start within 48 hours, there are too many variables that can influence these decisions, many of which are outside the control of the FI and/or the consumer. Such factors can include how long it takes the PA to obtain their health assessment, whether or not additional titres are necessary to demonstrate immunizations, and the methods by which MCOs provide authorization.

Timeliness should not be measured universally. Recognition must be provided for the fact that some services can and should be provided more quickly than others. Onboarding of both the consumer and the PA are much more important than timeliness of communications about a consumer's continued ability to qualify for the program (the latter not being a mandatory duty of the FI and, in fact, primarily being the responsibility of the MCO).

Similarly, if a consumer calls with a generic programmatic question, it is not as urgent and should not be treated as such, as if he or she were to call with a payroll issue for his or her PA(s).

The importance of timeliness must be balanced against the extent to which such factors are within the FI's control. Hard and fast measures, particularly as they relate to onboarding of consumers and PAs, must be avoided. There are too many variables that can influence the process (the timeliness of the consumer or the PA in obtaining required documentation or tests) and which are either programmatic requirements with built-in times that are established by science (tuberculosis checks, vaccinations boosters) or controlled by other entities (authorization renewals from MCOs).

Timeliness should also reflect the different ways in which consumers may wish to interact with their FI. For instance, the length of time it may take to respond to an e-mail can and will differ from that of a phone call, and both will be faster than a desired face-to-face meeting.

CDPAANYS therefore recommends general standards for timeliness, within which industry averages and goals shall be used to establish the generally accepted goals. Such standards are common in the establishment of other quality criteria and should not be difficult for the FI to report or DOH to measure.

Further, CDPAANYS recommends measures to streamline the process. For instance, if a consumer has not taken action to move their case forward in over 30 days, that case should automatically be redirected back to the MCO or Local Department of Social Services for reassessment. Similarly, the DOH should reexamine some standards to determine their effectiveness and whether efficiencies could be created. For instance, many states and industries have eliminated Tuberculosis tests, and reauthorizations for consumers, a burden for all three parties, should be moved to annually from every six months.

Cultural and Language Competency

Cultural and language competencies are one of the strengths of CDPA; but, must be considered in the context of the program. Because consumers hire their own PAs, CDPA virtually eliminates some of the traditional concerns about the lack of an available workforce that speaks a particular language or understands particular cultures. However, this is not inherently true of all FIs, nor does it need to be.

It is well assumed that to work in a culturally competent manner with consumers, one must have staff integrated at all levels of the organization who understand the aspects of life that shape the culture of the individuals they serve. Every FI should have an understanding of disability culture and the dynamics that impact the decisions people with disabilities make at all stages of life. This should be tempered with the demographics of the particular population(s) they serve or focus on (aging, younger physically disabled, developmentally disabled).

Beyond that, FIs should not be excluded because they do not meet particular cultural or linguistic thresholds. More, examination should be undertaken to see if a specialization on a particular cultural or language background offers a group within the FI's service area a higher degree of service, and such should be considered a positive in consideration of the application as a part of their ability to appropriately serve a population (not the entirety of it). Understanding the history behind how people access the health system, the thought process behind the decisions they make on LTSS, hospitalizations, the provision of supports by family, and other factors greatly enhances not only the FIs ability to work with a consumer; but, for that consumer to achieve better overall outcomes. It is not though, and cannot be viewed as, the only factor.

Experience serving people with disabilities

Two factors rose to prominence as CDPAANYS groups focused on this factor, which is closely tied to cultural competency. First, core to experience serving people with disabilities is the capacity to serve individuals with disabilities. Second, we must not look at "individuals with disabilities" as a narrow class or population. Indeed, it is broad, with different populations meeting the definition just by qualifying for the program.

Critically, and a factor that must rise to the level of a disqualifying factor for those FIs that cannot meet it, a FI must be accessible by standards at least minimally equal to those required by the Americans with Disabilities Act (ADA). Office spaces must at least be partially accessible to consumers, paperwork be translated in Braille and produced in accessible mediums for screen readers, and accommodations made for the deaf, to name a few common issues. If a FI does not meet this threshold, it cannot be granted the ability to continue.

Peer Supports

Having successfully administered two separate peer mentoring grants and demonstrated the success of peer mentoring on success of consumers in the program, CDPAANYS is happy to see an official recognition of this critical support. We must; however, note that the requirement is new and coming at a time when administrative funds used to finance such measures are in a tremendous state of flux. Therefore, we acknowledge that not all FIs have peer supports in place, and funding must consider the addition of these services.

Quality Standards

The discussion of quality is a complicated one in CDPA. While FIs do not provide a health care service, the quality with which they provide CDPA services, and the creativity they use to deliver those services, has a direct impact on health. Further, as is the case with Community Based Organizations (CBOs), FIs can either shape the delivery of their FI services or introduce other, complementary services to strengthen the health and well-being of consumers.

Further, often the consumer's idea of quality can vary tremendously from the FI's, as regulatory requirements, other programs sharing similar terminology, and a desire for higher wages, overtime, and other decisions that are often outside the control of the FI influence this decision.

In general, when making decisions about quality, we must realize that, realistically, a FI can only be judged on the quality in which they deliver items defined as FI services under the law. While decidedly more than payroll, other factors that are calculated when considering "quality" must meet the FI's core responsibilities.

This does not mean that FIs cannot or should not be thinking outside of this. There is no reason, moving forward, that FIs would not be included in Value Based Purchasing (VBP), in fact many FIs already are pursuing such agreements on a range of services.

However, inclusion of CDPA in a value-based world requires active conversations between DOH, MCOs, and FIs. What measures would be utilized that can account for the fact that FIs do not have control over what happens in the home? Does Potentially Avoidable Hospitalizations remain the defining standard?

These questions merit a lot of thought, but are outside the scope of this Workgroup at this time. CDPAANYS would maintain that, as is the case in other industries, DOH should not define or limit what a FI can or cannot do in a VBP agreement.

Instead, FIs and MCOs should be encouraged to work creatively to identify new solutions, or adopt established VBP techniques and adapt them to this program.

Conclusion

While CDPAANYS would have preferred the continued use of the authorization tool to determine the ability to participate in CDPA as a FI, the contracting process is the future and presents us with a unique opportunity to fix a broken program. We must recognize that preconceived notions about the program are not all true. Not all FIs that existed before the shift to managed care operated well. Not all of those who opened after 2012 operate poorly or are corrupt.

We must also allow that some FIs, while potentially engaging in behavior that the DOH does not endorse, are operating sound programs well within the confines of the law and should not be penalized for doing so.

As the experts on CDPA, CDPAANYS brings a voice to this workgroup and the other processes that will unfold over the Summer and Fall that is critical. Our combined input from the FIs who administer the program and the consumers who utilize it gives a unique perspective. We look forward to participating in the workgroup created by the budget and hope that these recommendations can help inform the discussion and serve as a place to work from.