DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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MEDICARE-MEDICAID COORDINATION OFFICE

DATE: May 11, 2018

TO: New York Medicare-Medicaid Plans (FIDA and FIDA-IDD Plans)

FROM: Lindsay P. Barnette
Director, Models, Demonstrations and Analysis Group

SUBJECT: New York MMPs: Clarification on Part D transition requirements for FIDA and FIDA-IDD demonstrations

The purpose of this memorandum is to clarify the Part D transition requirements for Contract Year (CY) 2019 for Medicare-Medicaid Plans participating in the FIDA and FIDA-IDD demonstrations. On April 16, 2018, the Centers for Medicare & Medicaid Services (CMS) published a Final Rule (CMS-4182-F) that makes a change to the Part D transition requirements set forth in 42 C.F.R. §423.120(b)(3) effective beginning CY 2019. As further clarified in May 2, 2018 HPMS email, "CY 2019 Medicare Part D Transition requirements," the transition fill days' supply will now be a month's supply, as defined in the applicable Plan Benefit Package (PBP), for both the retail and long-term care settings.

Based on the regulatory change, and in advance of CMS, the New York State Department of Health (NYSDOH), and the FIDA and FIDA-IDD Plans amending three-way contracts to reflect all applicable regulation-related changes, FIDA and FIDA-IDD Plans should ensure that their CY 2019 PBPs and transition policies, due June 4, 2018, are consistent with the revised regulations.

Specifically, the FIDA and FIDA-IDD three-way contracts, sections 5.6.1 and 5.6.2, establish the order of precedence and order of priority to interpret the three-way contract, and section 5.6.3 of the FIDA contract and section 5.6.2.6 of the FIDA-IDD contract establish that when there is a conflict in any of the documents listed in section 5.6.2, between the federal requirements regarding this agreement and any State requirements, the federal requirements shall prevail.

In this instance, federal regulations in effect for January 1, 2019 that change the Part D transition to a one month supply in all settings (long-term care and retail pharmacy settings) will conflict with section 2.6.6.5 in both three-way contracts. In advance of CMS and NYSDOH, the FIDA and FIDA-IDD Plans executing a contract amendment, federal regulations will take precedence for contract year 2019.

During the next contract amendment window, section 2.6.6.5 of the FIDA and FIDA-IDD contracts will be amended to read as follows:

2.6.6.5. The FIDA Plan assures that, within the first ninety (90) calendar days of coverage, it will provide:

2.6.6.5.1. In outpatient settings, a temporary supply, consistent with 42 CFR § 423.120(b)(3), when the Participant requests a refill of a non-formulary drug (including drugs that are on the FIDA Plan's formulary but require Prior Authorization or step therapy under the FIDA Plan's Utilization Management rules) that otherwise meets the definition of a Part D drug during the first ninety (90) days following Enrollment in the FIDA Plan;

2.6.6.5.2. In long-term care settings, a temporary supply of non-formulary drugs including drugs that are on the FIDA Plan's formulary but require Prior Authorization or step therapy under the FIDA Plan's Utilization Management rules that otherwise meet the definition of a Part D drug, consistent with 42 C.F.R. § 423.120(b)(3).

Again, FIDA and FIDA-IDD Plans should ensure that 2019 PBP submissions and transition policies reflect the Final Rule, published in the Federal Register April 16, 2018 (CMS-4182-F, pages 16601-16604, 16738-16739). Submissions are due by June 4, 2018 at 11:59 pm Pacific.

For any questions, please send an email to MMCOCapsModel@cms.hhs.gov.