

Care Coordination Organizations Amendments to 14 NYCRR Subpart 635-11

FINAL REGULATIONS

Effective Date: August 22, 2018

- **Subpart 635-11 is amended as follows:**
- Enrollment in Medicare Prescription Drug Plans, Care Coordination Organizations, and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD)
- **New subparagraph 635-11.1(a)(1)(iii) is added as follows:**
 - (iii) services provided by a Care Coordination Organization (CCO) designated by the New York State Department of Health pursuant to section 365-l of the Social Services Law; or
- **Existing paragraph 635-11.1(a)(2) is amended as follows:**
 - (2) who can pursue grievances, complaints, exceptions and appeals in such plans or services.
- **New paragraph 635-11.1(b)(1) is added, and all remaining paragraphs are renumbered accordingly.**
 - (1) Act in the CCO review process means doing any of the following within a CCO:
 - (i) filing a grievance;
 - (ii) submitting a complaint to the quality improvement organization or to federal or state government regulatory agencies;
 - (iii) filing and requesting appeals and dealing with, or participating in, any part of the appeals process;

Note: New material is underlined and deleted material is in [brackets].

- **New paragraph 635-11.1(b)(4) is added, and all remaining paragraphs are renumbered accordingly.**
- (4) CCO means a Care Coordination Organization which is designated by the New York State Department of Health, in conjunction with the Office for People With Developmental Disabilities, pursuant to section 365-l of the Social Services Law to provide Medicaid health home care coordination services or Basic HCBS Plan Support.
- **Existing subparagraph 635-11.1(b)(5)(i) is amended as follows:**
 - (i) a PDP; [and/or]
- **Existing subparagraph 635-11.1(b)(5)(ii) is amended as follows:**
 - (ii) a FIDA-IDD plan[.]; or
- **New subparagraph 635-11.1(b)(5)(iii) is added as follows:**
 - (iii) a CCO.
- **New section 635-11.8 is added as follows:**

Section 635-11.8. CCO enrollment and reviews for persons residing in a residential facility operated or certified by OPWDD or a family care home

- (a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may
 - (1) enroll himself or herself in a CCO Plan;
 - (2) act in the CCO review process;
 - (3) disenroll himself or herself from a CCO;
 - (4) appoint another party to take actions on his or her behalf; or
 - (5) seek assistance with the above decisions and actions.

Note: New material is underlined and deleted material is in [brackets].

- (b) If a person lacks the ability to enroll in a CCO, disenroll from a CCO, or act in the CCO review process, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.
- (c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:
- (1) an actively involved (see section 633.99 (ax) of this Title) spouse;
 - (2) an actively involved parent;
 - (3) an actively involved adult child;
 - (4) an actively involved adult sibling;
 - (5) an actively involved adult family member;
 - (6) the Consumer Advisory Board for the Willowbrook Class members, but only for members of the Willowbrook Class;
- (d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.
- (e) If more than one party exists within a category in subdivision (c) of this paragraph utilizing the standard of active involvement, consent shall be sought first from the party with a higher level of involvement or, when the parties within a category are equally actively involved, consent shall be sought from any of such parties.
- [(e)] (f) If a person lacks the ability to choose a CCO, does not have a guardian lawfully empowered to enroll him or her in a CCO, and there are no parties identified in (c) above, then the chief executive officer (CEO) (see section 635-99.1 of this Part) of the agency operating the person's residential facility or sponsoring the family care home, or a designee of the CEO, may take any of the actions enumerated in subdivision (a) of this subpart. For the purposes of this subsection only, if the person's residential facility is operated by OPWDD, the CEO of the agency is the director of the DDSOO that operates the residential facility.

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[(f)] (g) If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

[(g)] (h) If the CEO enrolls the person in the CCO or acts in the CCO review process, he or she shall give written notice of such enrollment and/or action to (1) the person's correspondent or advocate, if one is available; (2) the person's Medicaid service coordinator, or other person identified as that person's care coordinator; (3) the DDRO director for the region encompassing the person's residence.

[(h)] (i) For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

[(i)] (j) The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:

- (1) the identified decision-maker; and
- (2) OPWDD, if necessary.

[(j)] (k) The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

• **New section 635-11.9 is added as follows:**

Section 635-11.9. CCO Enrollment and reviews for persons not residing in a residential facility or a family care home

(a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may:

- (1) enroll himself or herself in a CCO;
- (2) act in the CCO review process;

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- (3) disenroll himself or herself from a CCO;
 - (4) appoint another party to take actions on his or her behalf; or
 - (5) seek assistance with the above decisions and actions.
- (b) If a person lacks the ability to choose a CCO, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.
- (c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:
- (1) an actively involved (see section 633.99 (ax) of this Title) spouse;
 - (2) an actively involved parent;
 - (3) an actively involved adult child;
 - (4) an actively involved adult sibling;
 - (5) an actively involved adult family member;
 - (6) the Consumer Advisory Board for the Willowbrook Class members, but only for the members of the Willowbrook Class;
- (d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.
- (e) If more than one party exists within a category in subdivision (c) of this subparagraph utilizing the standard of active involvement, consent shall be sought first from the party with a higher level of active involvement or, when the parties within a category are equally actively involved, consent shall be sought from any of such parties.
- [(e)] (f) If a person lacks the ability to choose a CCO: does not have a guardian lawfully empowered to enroll him or her in a CCO; and there are no parties identified in (c) above, the DDRO
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director for the region encompassing the person's residence, or his or her designee may take any of the actions enumerated in subdivision (a) of this subpart.

(g) If the DDRO director or designee enrolls the person in the CCO, acts in the CCO review process, or disenrolls the individual from a CCO, he or she shall give written notice of such enrollment, disenrollment and/or action to the person's correspondent or advocate, if one is available.

[(f)] (h) If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

[(g)] (i) For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

[(h)] (j) The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:

- (1) the identified decision-maker; and
- (2) OPWDD, if necessary.

[(i)] (k) The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

• **A new Section 635-11.10 is added as follows:**

Section 635-11.10. Other responsibilities and rights of CEOs and DDSOO and DDRO directors or designees regarding CCO enrollment and reviews

(a) No CEO or DDRO or DDSOO director or designee shall solicit, accept or receive from a CCO or Managed Care Plan operator, or an agent of the CCO or Managed Care Plan, for personal use or benefit (other than for the personal use or benefit of the person being enrolled), any

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payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a CCO or Managed Care Plan.

- (b) No CEO or DDRO or DDSOO director or designee shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a CCO or Managed Care Plan, for providing advice and assistance in choosing a CCO or Managed Care Plan or for acting for the person in the CCO or Managed Care Plan review process.
- (c) When a CEO or DDRO or DDSOO director or designee is authorized to act by this section or appointed to act in the CCO or Managed Care Plan review process for a person, the director or designee may appoint a party outside of the agency to act in the CCO or Managed Care Plan review process for the person.
- (d) When a CEO or DDRO or DDSOO director or designee enrolls a person in a CCO or Managed Care Plan, disenrolls a person from a CCO or Managed Care Plan, or acts in the CCO or Managed Care Plan review process for a person he or she shall act based on the best interests of the person, and shall fully document the reasons for such enrollment decision or action.

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