GUIDELINES FOR MEDICAID MCO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA)

I. Objectives

Title II of the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied access to the benefits of services, programs or activities of a public entity, or be subject to discrimination by such an entity. Public entities include State and local government and ADA and Section 504 requirements extend to all programs and services provided by State and local government. Since Medicaid is a government program, health services provided through Medicaid Managed Care must be accessible to all who qualify for the program.

MCO responsibilities for compliance with the ADA are imposed under Title II and Section 504 when, as a contractor in a Medicaid program, a plan is providing a government service. If an individual provider under contract with the MCO is not accessible, it is the responsibility of the MCO to make arrangements to assure that alternative services are provided. The MCO may determine it is expedient to make arrangements with other providers, or to describe reasonable alternative means and methods to make these services accessible through its existing contractors. The goals of compliance with ADA Title II requirements are to offer a level of services that allows people with disabilities access to the program in its entirety, and the ability to achieve the same health care results as any program participant.

MCO responsibilities for compliance with the ADA are also imposed under Title III when the MCO functions as a public accommodation providing services to individuals (e.g. program areas and sites such as marketing, education, member services, orientation, complaints and appeals). The goals of compliance with ADA Title III requirements are to offer a level of services that allows people with disabilities full and equal enjoyment of the goods, services, facilities or accommodations that the entity provides for its customers or clients. New and altered areas and facilities must be as accessible as possible. Whenever MCOs engage in new construction or renovation, compliance is also required with accessible design and construction standards promulgated pursuant to the ADA as well as State and local laws. Title III also requires that public accommodations undertake "readily achievable barrier removal" in existing facilities where architectural and communications barriers can be removed easily and without much difficulty or expense.

The state uses Plan Qualification Standards to qualify MCOs for participation in the Medicaid Managed Care Program. Pursuant to the state's responsibility to assure program access to all recipients, the Plan Qualification Standards require each MCO to submit an ADA Compliance Plan that describes in detail how the MCO will make services, programs and activities readily accessible and useable by individuals with disabilities. In the event that certain program sites are not readily accessible, the MCO must describe reasonable alternative methods for making the services or activities accessible and usable.

The objectives of these guidelines are threefold:

- to ensure that MCOs take appropriate steps to measure access and assure program accessibility for persons with disabilities;
- to provide a framework for managed care organizations (MCOs) as they develop a plan to assure compliance with the Americans with Disabilities Act (ADA); and
- to provide standards for the review of MCO Compliance Plans.

These guidelines include a general standard followed by a discussion of specific considerations and suggestions of methods for assuring compliance. Please be advised that, although these guidelines and any subsequent reviews by State and local governments can give the contractor guidance, it is ultimately the contractor's obligation to ensure that it complies with its contractual obligations, as well as with the requirements of the ADA, Section 504, and other federal, state and local laws. Other federal, state and local statutes and regulations also prohibit discrimination on the basis of disability and may impose requirements in addition to those established under ADA. For example, while the ADA covers those impairments that "substantially" limit one or more of the major life activities of an individual, New York City Human Rights Law

I. Objectives

deletes the modifier “substantially”.

II. Definitions

A. "Auxiliary aids and services" may include qualified interpreters, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for enrollees who are deaf or hard of hearing (TTY/TDD), video test displays, and other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments.

B. "Disability" means a mental or physical impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment; or being regarded as having such an impairment.

III. Scope of MCO Compliance Plan

The MCO Compliance Plan must address accessibility to services at the MCO's program sites, including both participating provider sites and MCO facilities intended for use by enrollee.

IV. Program Accessibility

Public programs and services, when viewed in their entirety, must be readily accessible to and useable by individuals with disabilities. This standard includes physical access, non-discrimination in policies and procedures and communication. Communications with individuals with disabilities are required to be as effective as communications with others. The MCO Compliance Plan must include a detailed description of how MCO services, programs and activities are readily accessible and usable by individuals with disabilities. In the event that full physical accessibility is not readily available for people with disabilities, the MCO Compliance Plan will describe the steps or actions the MCO will take to assure accessibility to services equivalent to those offered at the inaccessible facilities.

IV. Program Accessibility

A. Pre-enrollment Marketing and Education

Standard for Compliance:

Marketing staff, activities and materials will be made available to persons with disabilities. Marketing materials will be made available in alternative formats (such as Braille, large print, audio tapes) so that they are readily usable by people with disabilities.

Suggested Methods for Compliance

1. Activities held in physically accessible location, or staff at activities available to meet with person in an accessible location as necessary
2. Materials available in alternative formats, such as Braille, large print, audio tapes
3. Staff training which includes training and information regarding attitudinal barriers related to disability
4. Activities and fairs that include sign language interpreters or the distribution of a written summary of the marketing script used by plan marketing representatives
5. Enrollee health promotion material/activities targeted specifically to persons with disabilities (e.g. secondary infection prevention, decubitus prevention, special exercise programs, etc.)
6. Policy statement that marketing representatives will offer to read or summarize to blind or vision impaired individuals any written material that is typically distributed to all enrollees
7. Staff/resources available to assist individuals with cognitive impairments in understanding materials

Compliance Plan Submission

1. A description of methods to ensure that the MCO's marketing presentations (materials and communications) are accessible to persons with auditory, visual and cognitive impairments
2. A description of the MCO's policies and procedures, including marketing training, to ensure that marketing representatives neither screen health status nor ask questions about health status or prior health care services

IV. Program Accessibility

B. Member Services Department

Member services functions include the provision to enrollees of information necessary to make informed choices about treatment options, to effectively utilize the health care resources, to assist enrollees in making appointments, and to field questions and complaints, to assist enrollees with the complaint process.

B1. Accessibility

Standard for Compliance:

Member Services sites and functions will be made accessible to, and usable by, people with disabilities.

Suggested Methods for Compliance (include, but are not limited to those identified below)

1. Exterior routes of travel, at least 36" wide, from parking areas or public transportation stops into the MCO's facility
2. If parking is provided, spaces reserved for people with disabilities, pedestrian ramps at sidewalks, and dropoffs
3. Routes of travel into the facility are stable, slip-resistant, with all steps > ½" ramped, doorways with minimum 32" opening
4. Interior halls and passageways providing a clear and unobstructed path or travel at least 36" wide to bathrooms and other rooms commonly used by enrollees
5. Waiting rooms, restrooms, and other rooms used by enrollees are accessible to people with disabilities
6. Sign language interpreters and other auxiliary aids and services provided in appropriate circumstances
7. Materials available in alternative formats, such as Braille, large print, audio tapes
8. Staff training which includes sensitivity training related to disability issues [Resources and technical assistance are available through the NYS Office of Advocate for Persons with Disabilities - V/TTY (800) 522-4369; and the NYC Mayor's Office for People with Disabilities - (212) 788-2830 or TTY (212)788-2838]
9. Availability of activities and educational materials tailored to specific conditions/illnesses and secondary conditions that affect these populations (e.g. secondary infection prevention, decubitus prevention, special exercise programs, etc.)
10. MCO staff trained in the use of telecommunication devices for enrollees who are deaf or hard of hearing (TTY/TDD) as well as in the use of NY Relay for phone communication
11. New enrollee orientation available in audio or by interpreter services
12. Policy that when member services staff receive calls through the NY Relay, they will offer to return the call utilizing a direct TTY/TDD connection

Compliance Plan Submission

1. A description of accessibility to the member services department or reasonable alternative means to access member services for enrollees using wheelchairs (or other mobility aids)
2. A description of the methods the member services department will use to communicate with enrollees who have visual or hearing impairments, including any necessary auxiliary aid/services for enrollees who are deaf or hard of hearing, and TTY/TDD technology or NY Relay Service available through a toll-free telephone number
3. A description of the training provided to member services staff to assure that staff adequately understands how to implement the requirements of the program, and of these guidelines, and are sensitive to the needs of persons with disabilities

IV. PROGRAM ACCESSIBILITY

B2. Identification of Enrollees with Disabilities

Standard for Compliance:

MCOs must have in place satisfactory methods/guidelines for identifying persons at risk of, or having, chronic diseases and disabilities and determining their specific needs in terms of specialist physician referrals, durable medical equipment, medical supplies, home health services etc. MCOs may not discriminate against a potential enrollee based on his/her current health status or anticipated need for future health care. MCOs may not discriminate on the basis of disability, or perceived disability of an enrollee or their family member. Health assessment forms may not be used by plans prior to enrollment. (Once a plan has been chosen, a health assessment form may be used to assess the person's health care needs.)

Suggested Methods for Compliance

1. Appropriate post enrollment health screening for each enrollee, using an appropriate health screening tool
2. Patient profiles by condition/disease for comparative analysis to national norms, with appropriate outreach and education
3. Process for follow-up of needs identified by initial screening; e.g. referrals, assignment of case manager, assistance with scheduling/keeping appointments
4. Enrolled population disability assessment survey
5. Process for enrollees who acquire a disability subsequent to enrollment to access appropriate services

Compliance Plan Submission

1. A description of how the MCO will identify special health care, physical access or communication needs of enrollees on a timely basis, including but not limited to the health care needs of enrollees who:
   - C are blind or have visual impairments, including the type of auxiliary aids and services required by the enrollee
   - C are deaf or hard of hearing, including the type of auxiliary aids and services required by the enrollee
   - C have mobility impairments, including the extent, if any, to which they can ambulate
   - C have other physical or mental impairments or disabilities, including cognitive impairments
   - C have conditions which may require more intensive case management

IV. PROGRAM ACCESSIBILITY

B3. New Enrollee Orientation

Standard for Compliance:

Enrollees will be given information sufficient to ensure that they understand how to access medical care through the plan. This information will be made accessible to, and usable by, people with disabilities.

Suggested Methods for Compliance

1. Activities held in physically accessible location, or staff at activities available to meet with person in an accessible location as necessary
2. Materials available in alternative formats, such as Braille, large print, audio tapes
3. Staff training which includes sensitivity training related to disability issues [Resources and technical assistance are available through the NYS Office of Advocate for Persons with Disabilities - V/TTY (800) 522-4369; and the NYC Mayor's Office for People with Disabilities - (212) 788-2830 or TTY (212)788-2838]
4. Activities and fairs that include sign language interpreters or the distribution of a written summary of the marketing script used by plan marketing representatives
5. Include in written/audio materials available to all enrollees information regarding how and where people with disabilities can access help in getting services, for example help with making appointments or for arranging special transportation, an interpreter or assistive communication devices
6. Staff/resources available to assist individuals with cognitive impairments in understanding materials

Compliance Plan Submission

1. A description of how the MCO will advise enrollees with disabilities, during the new enrollee orientation on how to access care
2. A description of how the MCO will assist new enrollees with disabilities (as well as current enrollees who acquire a disability) in selecting or arranging an appointment with a Primary Care Practitioner (PCP)
   - C This should include a description of how the MCO will assure and provide notice to enrollees who are deaf or hard of hearing, blind or who have visual impairments, of their right to obtain necessary auxiliary aids and services during appointments and in scheduling appointments and follow-up treatment with participating providers
   - C In the event that certain provider sites are not physically accessible to enrollees with mobility impairments, the MCO will assure that reasonable alternative site and services are available
3. A description of how the MCO will determine the specific needs of an enrollee with or at risk of having a disability/chronic disease, in terms of specialist physician referrals, durable medical equipment (including assistive technology and adaptive equipment), medical supplies and home health services and will assure that such contractual services are provided
4. A description of how the MCO will identify if an enrollee with a disability requires on-going mental health services and how MCO will encourage early entry into treatment
5. A description of how the MCO will notify enrollees with disabilities as to how to access transportation, where applicable

IV. PROGRAM ACCESSIBILITY

B4. Complaints and Appeals

Standard for Compliance:

The MCO will establish and maintain a procedure to protect the rights and interests of both enrollees and managed care plans by receiving, processing, and resolving grievances and complaints in an expeditious manner, with the goal of ensuring resolution of complaints and access to appropriate services as rapidly as possible.

All enrollees must be informed about the complaint process within their plan and the procedure for filing complaints. This information will be made available through the member handbook, the SDOH toll-free complaint line [1-(800) 206-8125] and the plan's complaint process annually, as well as when the MCO denies a benefit or referral. The MCO will inform enrollees of: the MCO's complaint procedure; enrollees' right to contact the local district or SDOH with a complaint, and to file an appeal or request a fair hearing; the right to appoint a designee to handle a complaint or appeal; the toll free complaint line. The MCO will maintain designated staff to take and process complaints, and be responsible for assisting enrollees in complaint resolution.

The MCO will make all information regarding the complaint process available to and usable by people with disabilities, and will assure that people with disabilities have access to sites where enrollees typically file complaints and requests for appeals.

Suggested Methods for Compliance

1. 800 complaint phone line with TDD/TTY capability
2. Staff trained in complaint process, and able to provide interpretive or assistive support to enrollee during the complaint process
3. Notification materials and complaint forms in alternative formats for enrollees with visual or hearing impairments
4. Availability of physically accessible sites, e.g. member services department sites
5. Assistance for individuals with cognitive impairments

Compliance Plan Submission

1. A description of how MCO's complaint and appeal procedures shall be accessible for persons with disabilities, including:
   - C procedures for complaints and appeals to be made in person at sites accessible to persons with mobility impairments
   - C procedures accessible to persons with sensory or other impairments who wish to make verbal complaints, and to communicate with such persons on an ongoing basis as to the status or their complaints and rights to further appeals
   - C description of methods to ensure notification material is available in alternative formats for enrollees with vision and hearing impairments
2. A description of how MCOs monitor complaints and grievances related to people with disabilities. Also, as part of the Compliance Plan, MCOs must submit a summary report based on the MCO's most recent year's complaint data.

IV. PROGRAM ACCESSIBILITY

C. Case Management

Standard for Compliance:

MCOs must have in place adequate case management systems to identify the service needs of all enrollees, including enrollees with chronic illness and enrollees with disabilities, and ensure that medically necessary covered benefits are delivered on a timely basis. These systems must include procedures for standing referrals, specialists as PCPs, and referrals to specialty centers for enrollees who require specialized medical care over a prolonged period of time (as determined by a treatment plan approved by the MCO in consultation with the primary care provider, the designated specialist and the enrollee or his/her designee), out of plan referrals and continuation of existing treatment relationships with out-of-plan providers (during transitional period).

Suggested Methods for Compliance

1. Procedures for requesting specialist physicians to function as PCP
2. Procedures for requesting standing referrals to specialists and/or specialty centers, out of plan referrals, and continuation of existing treatment relationships
3. Procedures to meet enrollee needs for, durable medical equipment, medical supplies, home visits as appropriate
4. Appropriately trained MCO staff to function as case managers for special needs populations, or sub-contract arrangements for case management
5. Procedures for informing enrollees about the availability of case management services

Compliance Plan Submission

1. A description of the MCO case management program for people with disabilities, including case management functions, procedures for qualifying for and being assigned a case manager , and description of case management staff qualifications
2. A description of the MCO's model protocol to enable participating providers, at their point of service, to identify enrollees who require a case manager
3. A description of the MCO’s protocol for assignment of specialists as PCP, and for standing referrals to specialists and specialty centers, out-of-plan referrals and continuing treatment relationships
4. A description of the MCO’s notice procedures to enrollees regarding the availability of case management services, specialists as PCPs, standing referrals to specialists and specialty centers, out-of-plan referrals and continuing treatment relationships

IV. PROGRAM ACCESSIBILITY

D. Participating Providers

Standard for Compliance:

MCOs networks will include all the provider types necessary to furnish the benefit package, to assure appropriate and timely health care to all enrollees, including those with chronic illness and/or disabilities. Physical accessibility is not limited to entry to a provider site, but also includes access to services within the site, e.g. exam tables and medical equipment.

Suggested Methods for Compliance

1. Process for MCO to evaluate provider network to ascertain the degree of provider accessibility to persons with disabilities, to identify barriers to access and required modifications to policies/procedures
2. Model protocol to assist participating providers, at their point of service, to identify enrollees who require case manager, audio, visual, mobility aids, or other accommodations
3. Model protocol for determining needs of enrollees with mental disabilities
4. Use of Wheelchair Accessibility Certification Form (see attached)
5. Submission of map of physically accessible sites
6. Training for providers re: compliance with Title III of ADA, e.g. site access requirements for door widths, wheelchair ramps, accessible diagnostic/treatment rooms and equipment; communication issues; attitudinal barriers related to disability, etc. [Resources and technical assistance are available through the NYS Office of Advocate for Persons with Disabilities -V/TTY (800) 522-4369; and the NYC Mayor's Office for People with Disabilities - (212) 788-2830 or TTY (212)788-2838]
7. Use of ADA Checklist for Existing Facilities and NYC Addendum to OAPD ADA Accessibility Checklist as guides for evaluating existing facilities and for new construction and/or alteration.

Compliance Plan Submission

1. A description of how MCO will ensure that its participating provider network is accessible to persons with disabilities. This includes the following:
   - Policies and procedures to prevent discrimination on the basis of disability or type of illness or condition
   - Identification of participating provider sites which are accessible by people with mobility impairments, including people using mobility devices. If certain provider sites are not physically accessible to persons with disabilities, the MCO shall describe reasonable, alternative means that result in making the provider services readily accessible.
   - Identification of participating provider sites which do not have access to sign language interpreters or reasonable alternative means to communicate with enrollees who are deaf or hard of hearing; and for those sites describe reasonable alternative methods to ensure that services will be made accessible
   - Identification of participating providers which do not have adequate communication systems for enrollees who are blind or have vision impairments (e.g. raised symbol and lettering or visual signal appliances), and for those sites describe reasonable alternative methods to ensure that services will be made accessible
2. A description of how the MCO's specialty network is sufficient to meet the needs of enrollees with disabilities
3. A description of methods to ensure the coordination of out-of-network providers to meet the needs of the enrollees with disabilities
   - This may include the implementation of a referral system to ensure that the health care needs of enrollees with disabilities are met appropriately
   - MCO shall describe policies and procedures to allow for the continuation of existing relationships with out-of-network providers, when in the best interest of the enrollee with a disability

Compliance Plan Submission
4. Submission of ADA Compliance Summary Report (see attached - county specific/borough specific for NYC) or MCO statement that data submitted to SDOH on the Health Provider Network (HPN) files is an accurate reflection of each network's physical accessibility

IV. PROGRAM ACCESSIBILITY

E. Populations Special Health Care Needs

Standard for Compliance:

MCOs will have satisfactory methods for identifying persons at risk of, or having, chronic disabilities and determining their specific needs in terms of specialist physician referrals, durable medical equipment, medical supplies, home health services, etc. MCOs will have satisfactory systems for coordinating service delivery and, if necessary, procedures to allow continuation of existing relationships with out-of-network provider for course of treatment.

Suggested Methods for Compliance

1. Procedures for requesting standing referrals to specialists and/or specialty centers, specialist physicians to function as PCP, out of plan referrals, and continuation of existing relationships with out-of-network providers for course of treatment
2. Contracts with school-based health centers
3. Linkages with preschool services, child protective agencies, early intervention officials, behavioral health agencies, disability and advocacy organizations, etc.
4. Adequate network of providers and subspecialists (including pediatric providers and sub-specialists) and contractual relationships with tertiary institutions
5. Procedures for assuring that these populations receive appropriate diagnostic workups on a timely basis
6. Procedures for assuring that these populations receive appropriate access to durable medical equipment on a timely basis
7. Procedures for assuring that these populations receive appropriate allied health professionals (Physical, Occupational and Speech Therapists, Audiologists) on a timely basis
8. State designation as a Well Qualified Plan to serve OMRDD population and look-alikes

Compliance Plan Submission

1. A description of arrangements to assure access to specialty care providers and centers in and out of New York State, standing referrals, specialist physicians to function as PCP, out of plan referrals, and continuation of existing relationships (out-of-plan) for diagnosis and treatment of rare disorders
2. A description of appropriate service delivery for children with disabilities. This may include a description of methods for interacting with school districts, preschool services, child protective service agencies, early intervention officials, behavioral health, and disability and advocacy organizations.
3. A description of the pediatric provider and sub-specialist network, including contractual relationships with tertiary institutions to meet the health care needs of children with disabilities

V. ADDITIONAL ADA RESPONSIBILITIES FOR PUBLIC ACCOMMODATIONS

Please note that Title III of the ADA applies to all non-governmental providers of health care. Title III of the Americans With Disabilities Act prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation. A public accommodation is a private entity that owns, leases or leases to, or operates a place of public accommodation. Places of public accommodation identified by the ADA include, but are not limited to, stores (including pharmacies) offices (including doctors' offices), hospitals, health care providers, and social service centers.

New and altered areas and facilities must be as accessible as possible. Barriers must be removed from existing facilities when it is readily achievable, defined by the ADA as easily accomplishable without much difficulty or expense. Factors to be considered when determining if barrier removal is readily achievable include the cost of the action, the financial resources of the site involved, and, if applicable, the overall financial resources of any parent corporation or entity. If barrier removal is not readily achievable, the ADA requires alternate methods of making goods and services available. New facilities must be accessible unless structurally impracticable.

Title III also requires places of public accommodation to provide any auxiliary aids and services that are needed to ensure equal access to the services it offers, unless a fundamental alteration in the nature of services or an undue burden would result. Auxiliary aids include but are not limited to qualified sign interpreters, assistive listening systems, readers, large print materials, etc. Undue burden is defined as "significant difficulty or expense". The factors to be considered in determining "undue burden" include, but are not limited to, the nature and cost of the action required and the overall financial resources of the provider. "Undue burden" is a higher standard than "readily achievable" in that it requires a greater level of effort on the part of the public accommodation.

Please note also that the ADA is not the only law applicable for people with disabilities. In some cases, State or local laws require more than the ADA. For example, New York City's Human Rights Law, which also prohibits discrimination against people with disabilities, includes people whose impairments are not as "substantial" as the narrower ADA and uses the higher "undue burden" ("reasonable") standard where the ADA requires only that which is "readily achievable". New York City's Building Code does not permit access waivers for newly constructed facilities and requires incorporation of access features as existing facilities are renovated. Finally, the State Hospital code sets a higher standard than the ADA for provision of communication (such as sign language interpreters) for services provided at most hospitals, even on an outpatient basis.