



**Conflict Free Case Management
Special Committee of the Kansas Legislature on
Targeted Case Management
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Conflict Free Case Management Portions of HCBS Regulations

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- CMS 2249-F and CMS 2296-F
- Published January 16, 2014
- Effective date and compliance date: March 17, 2014 for PCP & CFCM
- Official title published in the Federal Register:
 - *Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice (Section 1915(k) of the Act) and Home and Community-Based Services (HCBS) Waivers (Section 1915(c) of the Act)*

Source: <https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

Conflict Free Case Management: HCBS Regulations

42CFR441.301(c)(1)(vi)

- States are required to separate case management (person-centered service plan development) from service delivery functions.
- Conflict occurs not just if they are a provider but if the entity has an interest in a provider or if they are employed by a provider.

Conflict Free Case Management: HCBS Regulations

42 FR §441.301 (c)(1)(vi)

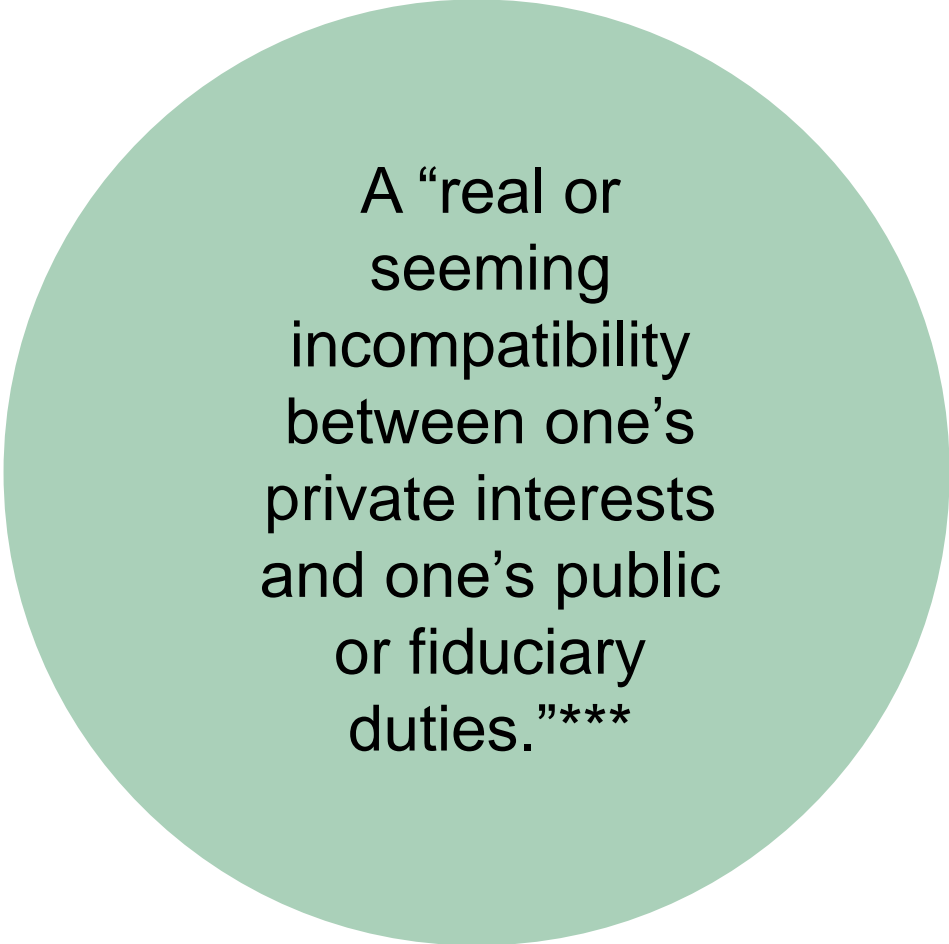
Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual, must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.

In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS.



What *is* conflict of interest? And why does it matter?

Conflict of Interest Definition



A “real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.”***

What is a “private interest”?

- “Private interests” are those natural to any business interested in its own survival in a competitive environment. For example, a provider might have an interest in:
 - Maximizing revenue (e.g., by increasing the number of people it serves and the amount it is paid for services),
 - Minimizing costs (e.g., minimizing the costs associated with meeting the needs of the people it serves), and
 - Improving its competitive position relative to others (e.g., promoting awareness of its service). ***

Source: *** Booth and Griffin., “Addressing Potential Conflicts of Interest Arising from the Multiple Roles of Colorado’s Community Centered Boards”, December 2007 , Muskie School of Public Service,p.10.

What is a “Fiduciary Relationship”?

- Incentives for either over- or under-utilization of services
- Possible pressure to steer the individual to their own organization.
- Possible pressure to retain the individual as a client rather than promoting choice, independence, and requested or needed service changes.

Case management Conflict of Interest

When case management systems have the same entity both assisting an individual to gain access to services and providing services to that individual, there is potential for conflict of interest in:

- **Assuring and honoring free choice**
- **Overseeing quality and outcomes**
- **The “fiduciary” relationship**

Conflict of Interest: Choice

- Person centered planning is about informed choice
- Case managers have the responsibility to support informed choice
- CMS Medicaid *requirements include* full freedom of choice for types of supports and services and individual providers
- In conflicted situations, service “steering” may consciously or unconsciously occur, affecting choice

Quality and Outcomes: Self Policing

- Self-policing occurs when an agency or organization is charged with overseeing its own performance.
- Self-policing puts the case manager in the difficult position of:
 - Assessing the performance of co-workers and colleagues within the same agency
 - Potentially having to report concerns to their mutual supervisor or executive director.

Self-Policing Does not Work Because...

- The case manager may have to negatively assess the performance of their co-workers, supervisors and leadership
- Case managers do not have the position or degree of authority within the organization to require changes of other staff
- On a personal level, case managers may find themselves reluctant to criticize co-workers. Self-policing puts the case manager in a VERY difficult position.
- May lead to a focus on the convenience of the service provider rather than being person-centered—if the service is “good enough” may be no impetus to assist someone to change, even if they could benefit from the change



What Happens if There is a Conflict?

If There is a Conflict

- Demonstrate to CMS that the only willing and qualified case manager is also, or affiliated with, a direct service provider
- Provide full disclosure to participants and assurances that participants are supported in exercising their right of free choice in providers.
- Describe individual dispute resolution process.
- Assure that entities separate case management and service provision (different staff).
- Assure that entities provide case management and services *only* with the express approval of the state.
- Provide direct oversight and periodic evaluation of safeguards.

Safeguards

In certain circumstances, we may require that states develop "firewall" policies, for example, separating staff that perform assessments and develop person-centered service plans from those that provide any of the services in the plan; and meaningful and accessible procedures for individuals and representatives to appeal to the state.”

Examples of Safeguards

- Full disclosure to participants and assurance that participants are supported in exercising their right to free choice of providers and are provided information about the full range of waiver services, not just the services furnished by the entity that is responsible for the person-centered service plan development;
- An opportunity for the participant to dispute the state's assertion that there is not another entity or individual that is not that individual's provider to develop the person-centered service plan through a clear and accessible alternative dispute resolution process

Source: HCBS 1915 C Technical Guide

Examples of Safeguards Cont.

- Direct oversight of the process or periodic evaluation by a state agency;
- Restricting the entity that develops the person-centered service plan from providing services without the direct approval of the state; and
- Requiring the agency that develops the person-centered service plan to administratively separate the plan development function from the direct service provider functions.

And.....

- The requirements listed are the minimum; states may impose additional ones.
- As you are aware, CMS is actively engaged in conversations with states about how states will meet these requirements.

COI and Managed Care Entities

- Managed Care Entities (MCEs) can provide case management and perform functional assessments.
- BUT: If MCEs do operate direct LTSS services and provide case management, they must demonstrate to CMS that they are the only willing and qualified case manager. If the MCE contracts but doesn't operate or own direct services, it is not considered a conflict of interest for the MCE to perform case management.
- MCEs cannot determine eligibility for programs. If an MCE performs direct assessments that result in scores that determines level of care (LOC), the state must perform representative sampling to ensure accuracy of LOC. This is a requirement of all Medicaid programs.
- Appeals process must be in place to avoid decreases in care – must include entities outside MCEs who support individuals in appeals process.
- MCEs must provide freedom of choice within their networks. Integrated networks are acceptable if individuals can leave service at any time.

Only Willing and Qualified Provider

The basis for using this option could be:

- Rural/frontier area that naturally limits the pool of available providers
- Cultural considerations requiring expertise that limits the provider pool, or
- Linguistic considerations that require special competencies to effectively communicate with and serve certain population.

Source: [CMS Webinar Conflict of Interest part 2: https://www.medicaid.gov/sites/default/files/2019-12/conflict-of-interest-outcomes-date-july2019_0.pdf](https://www.medicaid.gov/sites/default/files/2019-12/conflict-of-interest-outcomes-date-july2019_0.pdf)



How are State's Addressing COI?

State Snapshot's on COI

- States are actively redesigning case management systems
- In a 2018 survey of agencies serving individuals with intellectual and developmental disabilities, of 45 respondents:
 - 34 states (including the District of Columbia) report their systems fully comport with the COI regulations
 - 21 states indicated they have had to make changes to comply with COI rules
 - 11 other states indicate they are in the process of system redesign

State Focuses

- States are focusing on:
 - Support plan vs. implementation plan.
 - Monitoring requirements for case manager vs. service provider.
- Handling transition from current to the compliant system

South Dakota

- the individuals supported were not unhappy with the system...but it did not comport with the HCBS rules
- SD shifted case management from 19 regional entities that were created in the 1970's to serve individuals coming out of institutions
- The entities provided case management and multiple services
- SD shifted to dedicated case management agencies
- Through a transparent and inclusive stakeholder engagement process SD transformed their system with 100% of individuals choosing a conflict-free case manager in their open enrollment period

South Dakota's New System

- South Dakota now has two regional and two statewide case management providers
- 20 CSP's provide direct services
- South Dakota, despite being a frontier state, did not use the rural exception as they were able to find providers with either regional or statewide capacity
- In only a two-year process the South Dakota system achieved completely conflict free case management
- The state attributes the success of an aggressive timeline to "years of real stakeholder engagement"

Wyoming

- Individuals and/or agencies were permitted to provide case management and other waiver services as long as they met provider qualifications to anyone on their caseload
- WY concerned about:
 - Case managers and case manager agencies were essentially monitoring themselves
 - Case managers hired by agencies were often forced with the dilemma between advocating or keeping their job
- WY new system has agency based and independent individual case managers

Wyoming's New System

- In order to assure access to enough case managers, Wyoming decided to permit individual independent case management practitioners
- The state had to revisit and establish rates that didn't assume the case manager was part of an agency
- Wyoming did a comprehensive rate study that led to incremental increases in payment rates that have brought rates to covering costs

Alaska

- Alaska is big....Access to services is complicated by size and geography
- Eliminating COI entailed major changes for providers and individuals served, design needed to be attentive to the disruptions
- Cross-disability effort including I/DD and A&D populations who use different models of service
- Need to be cognizant of the balance between creating access and assuring quality
 - Flexible/situational approach to what is permissible
 - Tried not to be too prescriptive to allow for different models of service including independent and agency-based care coordinators
- The overall new system structure separated case management (care coordination) from direct services
 - Independent care coordinators
 - Agency-based care coordination
- New requirements, especially for independent care coordinators who were previously “embedded” in agencies
 - Certification
 - Must meet standards for program administrators
 - Business requirements
- Allowing individual independent care coordination requires state structure for oversight and monitoring
 - State holds monthly care coordination network meetings
 - Monthly and quarterly provider agency meetings with SDS
 - SDS authorizes all plans of care

Alaska's New System

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Colorado

- Services and case management for individuals with intellectual and/or developmental disabilities (I/DD) in place prior to waivers and Medicaid funding
 - Community Centered Boards (CCBs) don't just provide case management
 - The “go-to” place for all things IDD
 - Organized Health Care Delivery System (OHCDS)
 - State Funded Programs

Colorado New System

- Complete separation of case management from direct service provision
- Individuals will be afforded choice in case management agency and in direct services
- Real or perceived conflict of interest will no longer exist
- The way in which case management is delivered and reimbursed was redesigned
 - Individuals can receive the level of case management they need
 - Case management can be reimbursed accordingly
- Increase in provider capacity

In Closing

- CMS is serious about conflict of interest
- If we are serious about protecting individuals' choice of supports this is an opportunity to reform our systems
- We have the opportunity to create dedicated, stand-alone organizations whose only mission is case management.
- The exception is really that and CMS seems to be holding firm in their expectations



THANK YOU!



Questions?

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