



# CONFLICT OF INTEREST UNDER MEDICAID HCBS FACT SHEET

## Conflict of Interest Fast Facts

**Definition** Conflict of interest is when a person has competing influences that could affect a decision or action.

### Federal Requirements

42 CFR 431.301(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.

42 CFR 441.730(b): Requires that case management activities, including the development of the person-centered plan, must not be performed by any individual or entity who is employed by or has an interest in a provider of services included in the person-centered plan.

42 CFR 431.10: Eligibility determinations can only be conducted by a government agency.

**Conflict of Interest in Rhode Island** Approximately 7,500 of RI's Medicaid HCBS participants, who fall under CMS's HCBS Final Rule, receive case management that is not conflict-free.

## WHAT IS CONFLICT OF INTEREST?

Conflict of interest refers to a real or seeming incompatibility between the private interests and the official responsibilities of a person in trust. In other words, a conflict of interest is when a person has competing influences that could affect a decision or action.

## HOW DOES CONFLICT OF INTEREST APPLY TO MEDICAID HCBS?

CMS requires that providers of Medicaid home and community-based services (HCBS), or those who have an interest in or are employed by a provider of Medicaid HCBS, may not provide case management to or develop the person-centered plan for participants receiving services. CMS requires that states have conflict-free case management (CFCM) which means that case management is delivered conflict free (i.e., the case manager does not provide direct services to the same participant).

Conflict of interest does not apply to:

1. State agency staff (unless the state agency staff member is related to or married to the participant).
2. Medicaid programs that have authorized restrictions (such as managed care).

## CMS EXAMPLES OF CONFLICT OF INTEREST

1. **Self-Referral:** An organization provides both case management and direct services to the same participant when there are other organizations that could also serve the participant. The case manager has a potential incentive to refer participants to services within his/her own organization as opposed to an outside agency that could be a better fit for the participant in terms of services provided or location.
2. **Quality Oversight:** In the same situation as above, due to the case manager needing to assess the performance of coworkers, there is also potential for conflict of interest for the case manager in ensuring that supports and services are being provided in a high-quality manner in accordance with the person-centered plan.
3. **Steering:** A case manager may, due to their conscious or unconscious opinion in the best interest of a participant, steer towards or away from certain providers or services, which could artificially limit the available pool of providers or set of available services.

## WHAT WILL RHODE ISLAND DO TO PREVENT CONFLICT OF INTEREST?

1. Implement conflict-free case management for Medicaid HCBS participants starting January 2024.
2. Create uniform assessment and referral tools to ensure equal treatment across HCBS providers.
3. Provide ongoing quality monitoring and oversight by state staff.
4. Continue to conduct all Medicaid HCBS eligibility determinations by state staff.