

# HCBS Technical Assistance RI TA Engagement

## Conflict of Interest and Case Management

# Conflict Free Case Management and Person Centered Planning Portions of HCBS Regulations

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*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)*

<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 of Interest

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

\*Black’s Law Dictionary, Eighth Ed., Thomson West, St Paul, MN (2004)

# Conflict of Interest

42CFR441.301(c)(1)(v) and (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.
- ▶ 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. ( we will come back to this)
- ▶ Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants

# Conflict of Interest

When the same entity helps individuals gain access to services *and* provides services to that individual, there is potential for COI in:

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

# Choice

- ▶ A key tenet of PCP -- and a key requirement for Medicaid -- is full freedom of choice of types of supports and services and individual providers.
- ▶ A case manager's job is to help the individual and family become well-informed about *all* choices that may address the needs and outcomes identified in the plan.
- ▶ COI may promote conscious or unconscious “steering.”

# Quality and Outcomes - What is Self Policing?

- ▶ Self-policing occurs when an agency or organization is charged with overseeing its own performance.
- ▶ 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.

# 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.



# Only Willing and Qualified Provider

- ▶ 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. Individuals must be provided with a clear and accessible alternative dispute resolution process.

42 CFR 441.301(c)(1)(vi)

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)

# 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.

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)

# Person Centered Planning and Case Management

- ▶ Person Centered Planning (PCP) depends heavily on quality case management.
- ▶ The case manager's core responsibility is to use the individual's preferences to identify:
  - ▶ What is important *to* and *for* the *person*
  - ▶ Key outcomes
- ▶ PCP is *not* “fitting” the person to the system, it's *finding a fit* between the person's needs and preferences and paid/unpaid/generic support and service responses.

# Importance of Case Management

- ▶ A “key” or “linchpin” service in the world of LTSS
- ▶ The “system” needs case management to keep the world running & the human services system rely on case management
  - ▶ Oversee provider performance
  - ▶ Operate front line on quality compliance/outcomes/safety
- ▶ Case managers play a pivotal role in ensuring that individuals are receiving the supports and services included in their service plan in a manner consistent with what is important to and important for the individual
  - ▶ A case manager's job is to help the individual and family become well-informed about *all* choices that may address the needs and outcomes identified in the plan
  - ▶ The individual and family need case management to help them build and sustain their lives.

# Person-Centered Planning Process

- The individual will lead the person-centered service planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless state law confers decision-making authority to the legal representative.
- In addition to being led by the individual receiving services and supports, the person-centered service planning process:
  - Includes people chosen by the individual;
  - Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions.

42 CFR §441.301(c)(1)

# Person-Centered Planning Process Cont.

- Is timely and occurs at times and locations of convenience to the individual;
- Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with 42 CFR [§435.905\(b\)](#);
- Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants;
- Offers informed choices to the individual regarding the services and supports they receive and from whom;
- Includes a method for the individual to request updates to the plan as needed; and
- Records the alternative home and community-based settings that were considered by the individual.

# Person-Centered Service Plan (1 of 4)

Commensurate with the level of need of the individual, and the scope of services and supports available under the state's HCBS waiver/benefit, the written plan must reflect:

- ▶ The setting in which the individual resides is chosen by the individual;
- ▶ The state must ensure that the setting chosen by the individual is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

# Person-Centered Service Plan (2 of 4)

- ▶ Reflect the individual's strengths and preferences;
- ▶ Reflect clinical and support needs as identified through an assessment of functional need;
- ▶ Include individually identified goals and desired outcomes;
- ▶ Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports;
  - ▶ Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports or 1915(i) State Plan HCBS;



# Person-Centered Service Plan (3 of 4)

- ▶ Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed;
- ▶ Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her;
- ▶ At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with 42 CFR §435.905(b);
- ▶ Identify the individual and/or entity responsible for monitoring the plan;

# Person-Centered Service Plan (4 of 4)

- ▶ Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation;
- ▶ Be distributed to the individual and other people involved in the plan;
- ▶ Include those services, the purpose or control of which the individual elects to self-direct;
- ▶ Prevent the provision of unnecessary or inappropriate services and supports; and
- ▶ For provider-owned or controlled residential settings, document that any modification of the additional conditions, under 42 CFR §441.301(c)(4)(vi)(A) through (D) and 42 CFR §441.710(a)(1)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.
- ▶ The person-centered service plan must be reviewed and revised upon reassessment of functional need, at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

# Resources

CMS Webinar Conflict of Interest in Medicaid Authorities:

[https://www.medicaid.gov/sites/default/files/2019-12/conflict-of-interest-in-medicaid-authorities-january-2016\\_0.pdf](https://www.medicaid.gov/sites/default/files/2019-12/conflict-of-interest-in-medicaid-authorities-january-2016_0.pdf)

CMS Webinar Mitigating Conflict of Interest:

[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)

CMS 1915 (c) technical guide: [https://wms-](https://wms-mmdl.cms.gov/WMS/help/35/Instructions_TechnicalGuide_V3.6.pdf)

[mmdl.cms.gov/WMS/help/35/Instructions\\_TechnicalGuide\\_V3.6.pdf](https://wms-mmdl.cms.gov/WMS/help/35/Instructions_TechnicalGuide_V3.6.pdf)

CMS Webinar Conflict of Interest Part II:

[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)