

Public Input on Options to address

Conflict of Interest in Case Management

Department of Disabilities, Aging, and Independent Living (DAIL)

Thanks to Kirsten Murphy of the Vermont Developmental Disabilities Council

For help designing accessible slides

It's A Rule!

January 16, 2014:

The Centers for Medicare and Medicaid Services (CMS) issued final regulations on home- and community-based services (HCBS) requirements



What do the CMS regulations say?

Outlines person-centered planning practices

Ensures that people receive services in the most integrated setting of their choice

Defines what it means to live in a home and community setting.

Promotes community participation

REQUIRES THAT CASE MANAGEMENT BE PROVIDED WITHOUT UNDUE CONFLICT OF INTEREST.

When is the requirement in effect?

While some parts of the CMS Rules do not go into effect until 2022, the requirement that case management be free of undo conflict of interest has been in effect since 2014.

Here's the Rule:


42 CFR 431 (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. Individuals must be provided with a clear and accessible alternative dispute resolution process.

What is a CONFLICT OF INTEREST?

When a decision maker is pulled in two directions because of conflicting duties.

For Example, a Case Manager has a duty to the individual with a disability and to the agency.





So, what's the best place for me to get services?

I am going to send you to Agency XYZ. It's great!


Example #1

Self-referral

- Agency XYZ provides case management and direct services.
- There is another agency, Agency ABC, that could provide Ryan with services.
- Ryan's case manager at Agency XYZ has a **conflict of interest**.

Ryan

XYZ Case Manager

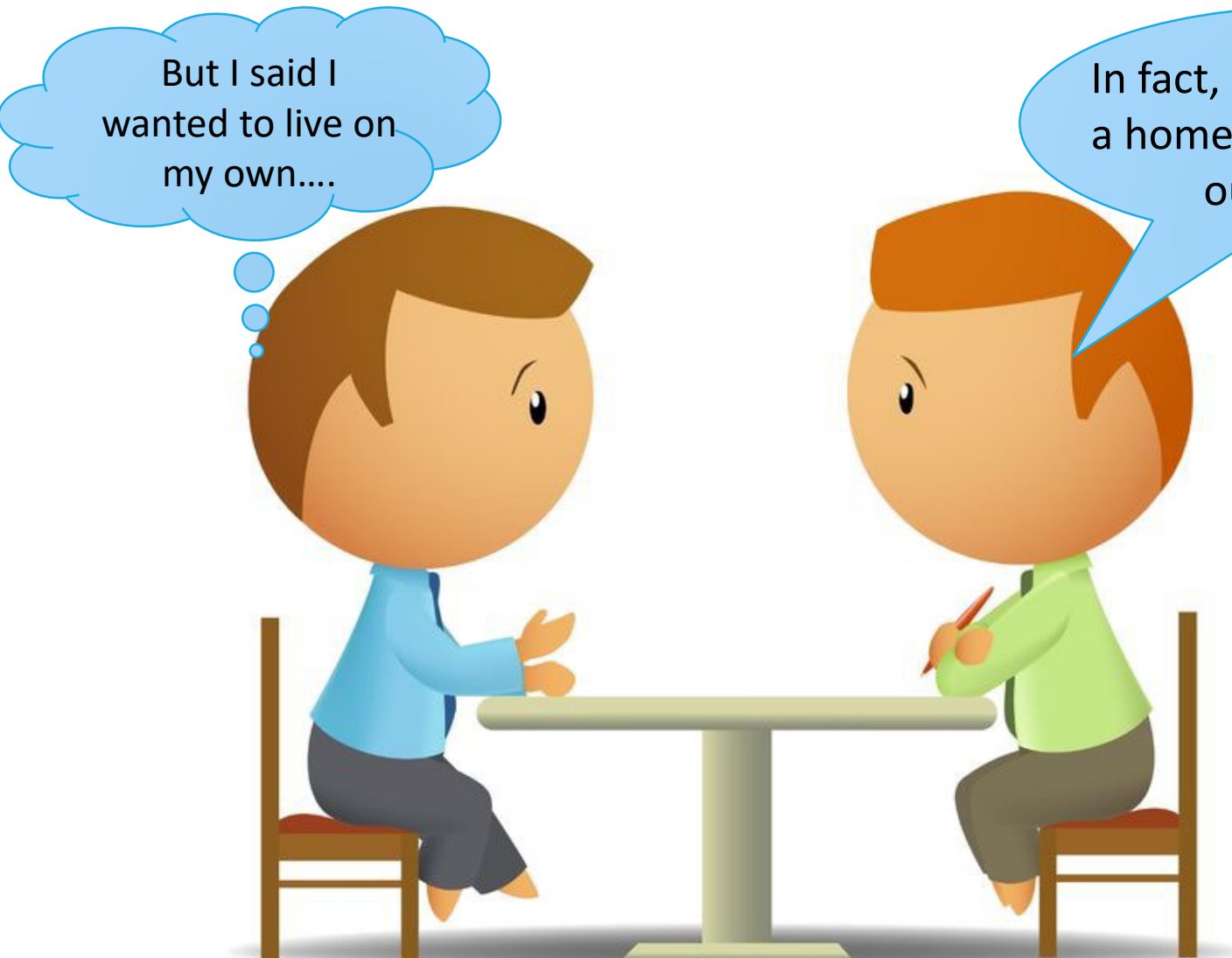


I don't want our agency to look bad....

Example #2

Quality Oversight

- A case manager for Agency XYZ has to assess the performance of direct support staff
- Since they are her co-workers, she goes easy on them
- She has a Conflict of Interest



But I said I
wanted to live on
my own....

In fact, we already have
a home provider picked
out for you.

Example #3

Steering

- Agency XYZ has a home provider that they have not yet assigned.
- Ryan is the next individual with a disability to develop a care plan.
- Ryan's case manager at Agency XYZ has a **conflict of interest**.

Ryan

Case Manager

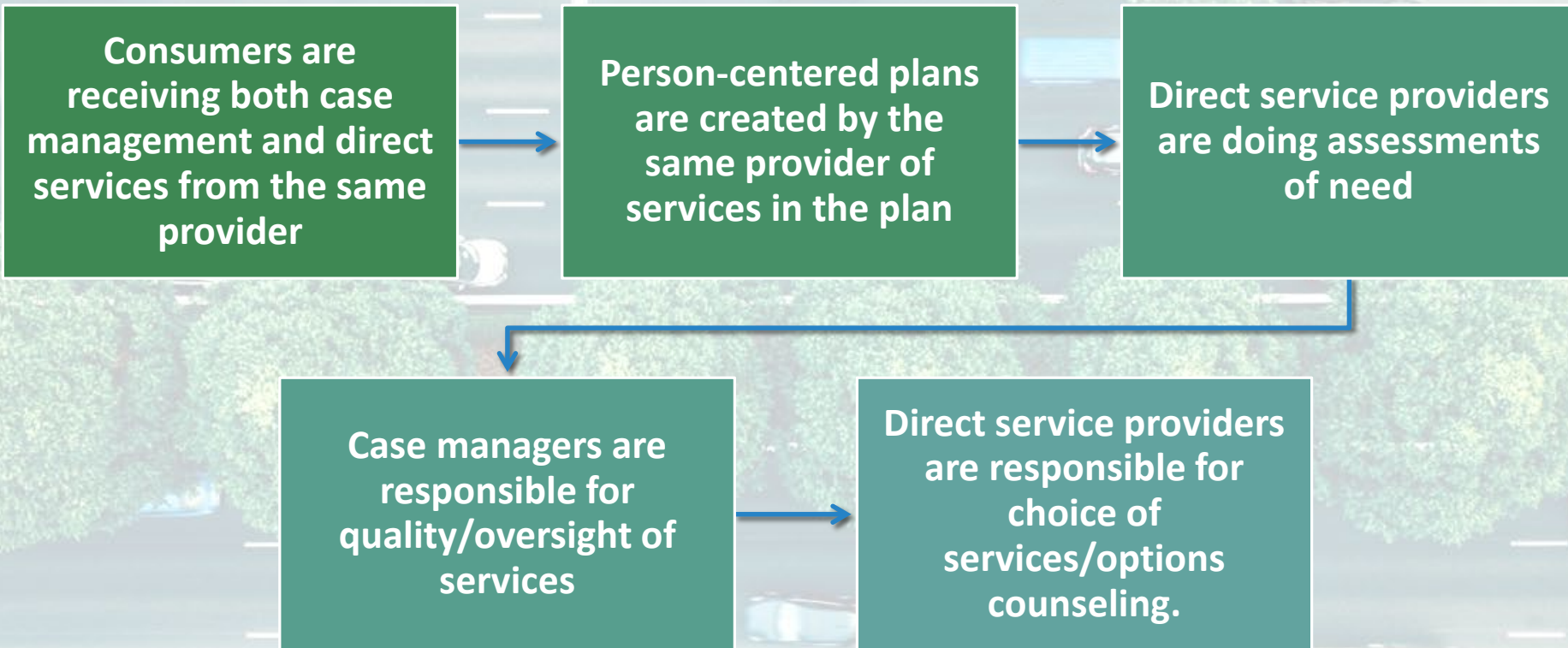


Phase I: Taking a Deep Dive, Case Management in Vermont

What has the state done so far?



- Evaluated where potential conflict exists in the current Home- and Community-Based Services System
- Provided information to a variety of stakeholder groups and asked for feedback
- Summarized the comments received
- Drafted some ideas to address conflict



Current Areas of Potential Conflict

Summary of Comments:



What works well:

- Case managers know people well
- Ongoing, regular contact with the case manager
- Continuity of care
- Case managers have direct oversight of services
- Case manager is the point of contact for accountability for services
- Team-based care

Summary of Comments:

What does not work well – *possible conflicts of interest*:

- Steering people to resources familiar to the case manager, especially those at the case manager's own agency.
- People do not learn about the full range of options available to them.
- Funding or agency goals may be the driver of decisions, rather than the needs/goals of the person.



Summary of Comments:

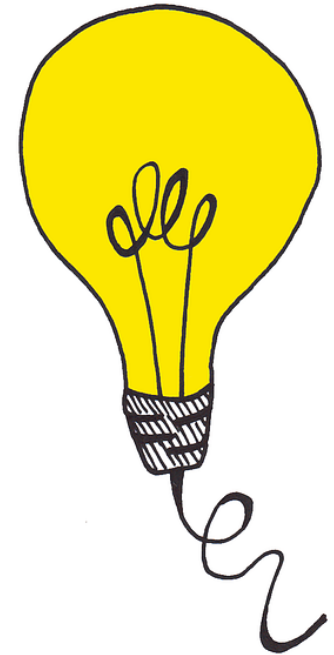
What does not work well – *continued*

- Case manager may be unable to advocate on behalf of individuals – for example, in school team meetings.
- Quality Issues – individual/family not involved in reassessments; planning is not person-centered.
- Staffing Issues – high turnover for agency and contracted staff.



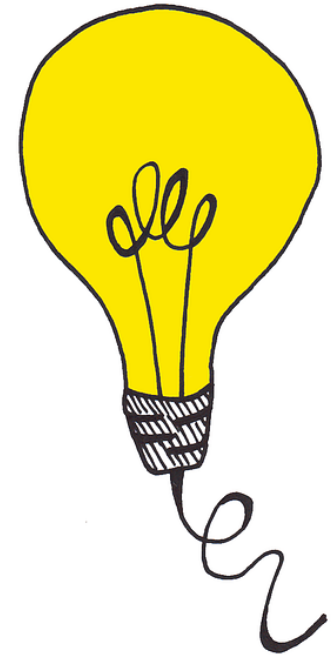
Stakeholders' Suggested Solutions:

- **Independent assessors** outside of the agency complete the needs assessment, like in Choices for Care
- Have **more choices** in settings and provider options
- Make **information** about all available options more **readily available**
- Create a way for **individuals and families to share information** with each other about service options
- Develop **quality ratings** of providers so individuals & families can compare options



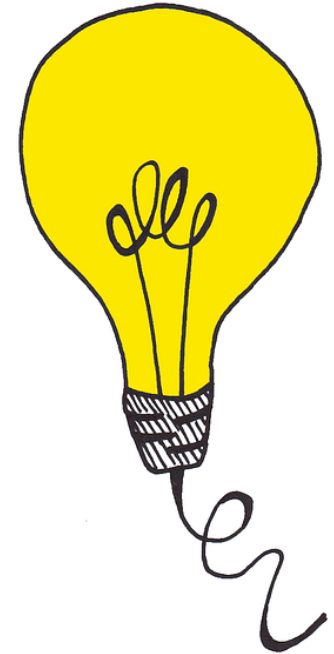
Stakeholders' Suggested Solutions:

- Enhance training for case managers so they understand the full range of available options; teach motivational interviewing
- Ombudsman to address quality concerns
- Separate discussions of money from needs assessment and person-centered planning process
- Have peer navigators to help people understand their options, especially for self-direction



Stakeholders' Suggested Solutions:

- Offer **Independent Options Counseling** outside of direct service provider agencies
- Enhance the **quality oversight** of services
- **Appeal rights** should be explained to individuals/families regularly and whenever decisions are made
- **Separate roles:** There needs to be a clean and separate person to do eligibility determination and initial planning, then options counseling, then a final service plan, and then the selection of a service provider.



What are other states up to?



CMS highlighted 3 of the most rural states

- Wyoming, South Dakota, Alaska
- All states separated case management from direct service
- Exception for most rural areas in Alaska: 4 of 5 providers granted exceptions serve Alaska Natives (language barrier)

New Hampshire has a corrective action plan with CMS

- Must comply by 7/1/2022
- Designated Agencies asked to find best way(s) to comply
- Rural providers allowed to be up to 30% conflicted if criteria met
- ‘Lowest bar possible’

What if we get an exception?



Protections required by CMS:

- Must separate case management and provider functions within the provider agency, including separate oversight
- Individuals must be provided with a clear and accessible process for resolving disagreements
- People provided choice of providers and info about range of services
- State oversight where conflict exists

The state's plan for these protections must be approved by CMS

Phase II:
Public Feedback
on Potential
Solutions



Potential Solutions:

Four Proposals for
Structure of Case
Management

(Stage-1 Proposals)

and

Some other tools
to protect against
conflict

(Stage-2 Proposals)





Case Management Structure: Option #1

SEPARATION BY STATE: Case managers work for a different organization from direct service providers

- State responsible for contracting with one or more Independent Case Management Agencies and/or allows for independent individual case managers.
- Existing providers offering both case management and direct services would need to separate.



Case Management Structure: Option #2

SEPARATION BY LOCAL AGENCIES/PROVIDERS: Case managers work for a different organization from service providers

- Similar to New Hampshire solution.
- Decisions made at local level about how to structure separation. Different solutions for different regions.
- Local communities would be responsible for ensuring that case management and direct service providers are separated and available for people in each region.
- If someone is set up with case management and direct services from the same provider, **required protections** would be needed.

What sort of Required Protections?



Protections required by CMS:

- Must separate case management and provider functions within the provider agency, including separate oversight
- Individuals must be provided with a clear and accessible process for resolving disagreements
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- State oversight where conflict exists

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Case Management Structure: Option #3

STATUS QUO WITH MORE CHOICE AND SPECIAL PROTECTIONS: Individual can choose between having independent case management or case management that remains with their direct service provider.

- Would require the creation of new, separate case management-only providers. They would be either agency-based or individual providers.
- If individual chooses case management and direct service from the same provider, **required protections** would need to be in place.
- Even with additional Stage-2 protections to ensure choice (more on this later), it is not clear CMS would approve this.



Case Management Structure: Option #4

STATUS QUO WITH SPECIAL PROTECTIONS: Keep everything the same but add special protections to ensure choice.

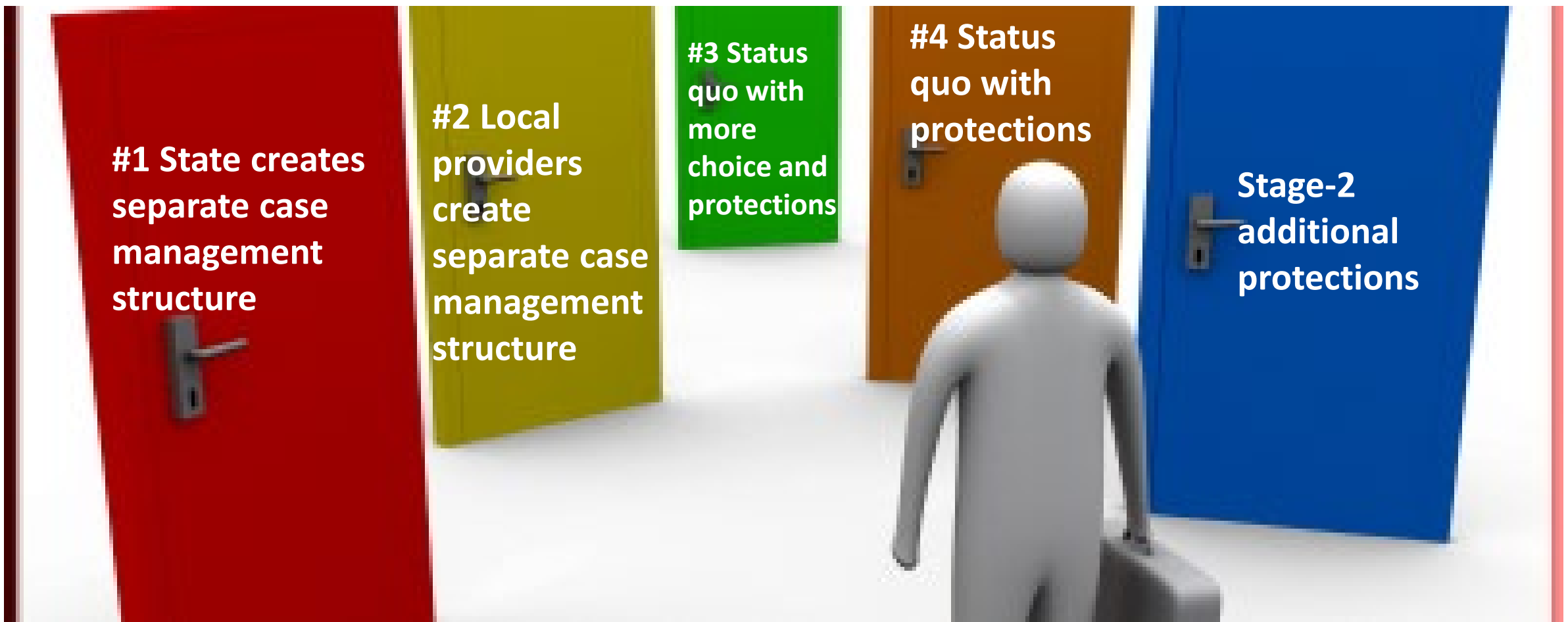
- Submit a proposal for approval from Federal CMS for an exemption to the Rule.
- Would have to prove that Vermont's HCBS providers are the "only willing and qualified provider ... in the geographic region" and,
- that **required protections** against conflict of interest are in place.
- Even with additional Stage-2 protections to ensure choice (more on this later), CMS would not approve this.

What additional protections could be used to increase choice and address potential conflicts?



Stage-2 proposals to consider

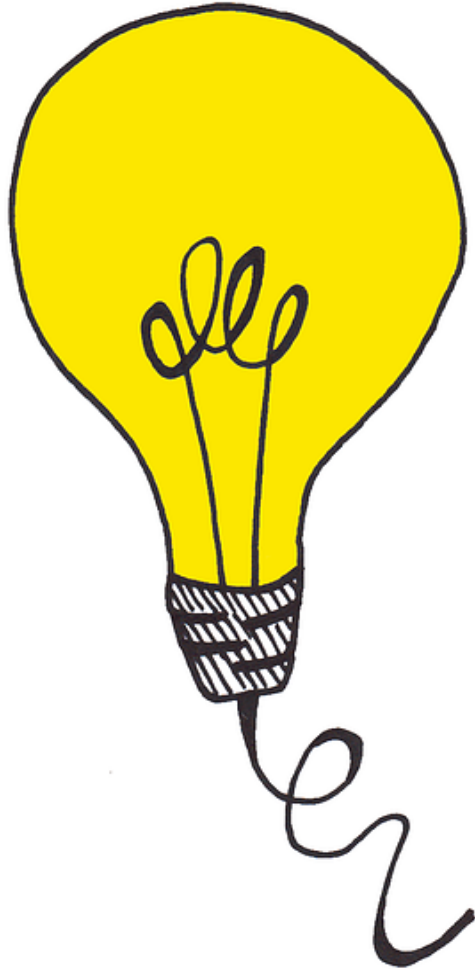
- Ombudsman
- Options Counseling/Peer Navigation
- Options/Resource List
- Independent Assessment of Eligibility for Program
- Independent Needs Assessment for Service Plan development (State or Contractors)
- Additional Training for Providers



To Summarize:

4 general proposals & some additional Stage-2 protections

We are asking for your feedback...



- What are all these documents?
- Let's talk about the pros and cons of these options by program

For more information and to provide additional feedback:

- Vermont Medicaid conflict of interest website:
- <http://dvha.vermont.gov/global-commitment-to-health/conflict-of-interest-home-and-community-based-services>
- Link to electronic Survey Monkey to provide additional feedback.
- Printable form can be mailed or emailed to the State.
- Developmental Services Program webinar explaining options for those who cannot attend forums – recommended before providing feedback.