

Traumatic Brain Injury Program – Analysis of Proposals to Address Potential for Conflict of Interest

The Department of Disabilities, Aging, and Independent Living (DAIL) has considered a series of proposals to prevent or mitigate conflict of interest in the home- and community-based services (HCBS) programs it operates. This analysis of proposals for the Traumatic Brain Injury (TBI) program is based on the information and federal requirements described on [Vermont Medicaid's HCBS conflict of interest website](#).

This analysis has a 2-stage approach to assessing TBI program proposals:

Stage-1 proposals are about the case management structure of the TBI program. This means that these proposals are about how case management providers relate with direct service providers.

Stage-2 proposals are different ways the TBI program could be changed to potentially increase consumer choice and mitigate the potential for conflicts of interest.

This analysis includes:

- 1) Description of criteria used to assess proposals – page 2
- 2) Scoring matrix for Stage-1 and 2 proposals – pages 3 and 4
- 3) Description of Stage-1 proposals about case management structure – pages 5 and 6
- 4) Description of Stage-2 proposals to mitigate conflict of interest in HCBS programs – pages 7 and 8

Criteria used to assess proposals:

Each proposal has been assessed using the criteria below. The results of the assessments begin on the following page.

CMS Compliance:

The program must comply with federal regulations requiring conflict-free case management in HCBS programs, even though this may require changes in how case management is provided. Failure to comply with the federal requirements could result in the loss of federal funding, and either shrink or discontinue the program. State staff estimated the likelihood that each proposal would be approved by the federal government.

Alignment with Stakeholder Feedback:

The State received [comments from several different people and organizations](#). While comments expressed different opinions, State staff attempted to describe how each proposal aligns with most of the comments received.

System Disruption:

State staff estimated the level of change that each proposal would require of consumers, providers, and the system.

Timeline to Implement:

State staff estimated the time necessary to plan, design, and carry out each proposal - for consumers, providers and the State.

Cost:

State staff estimated the general financial impact of each proposal, including costs to providers and to the State. Because the proposals are not fully designed, no specific cost estimates are available.

Consumer Choice/Control:

State staff estimated the impact of each proposal on consumers' ability to make their own choices and to have control over the services and supports they receive.

Administrative Complexity:

State staff estimated the impact of each proposal on consumers' ability to understand and use the program, providers' ability to manage services, and the State's ability to administer and provide oversight for the program.

Scoring matrix for Stage-1 proposals

--	-	0	+	++
Negative Impact		Neutral/Unknown	Positive Impact	

	Proposals	CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
Stage 1 Proposals (case management structure)	1) State responsible for contracting with one or more independent case management agencies through a request for proposals.	+	0	--	--	0	+	-
	2) Status quo with additional Stage 2 mitigation proposals	0	+	-	-	-	+	-
	3) Status quo	--	0	+	++	++	-	0

Scoring matrix for Stage-2 proposals

	Proposals	CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
Stage 2 Proposals (mitigation strategies)	Ombudsman	0	+	+	-	-	+	0
	Options Counseling/Peer Navigation	0	+	-	-	-	+	-
	Options/Resource List	0	+	0	0	0	+	0
	Independent Assessment for Person-Centered Plan	+	-	-	-	-	+	-
	Additional Training for Providers	0	+	0	-	-	+	0

Stage-1 proposals about case management structure

1) State responsible for contracting with one or more independent case management agencies through a request for proposals.

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
+	0	--	--	0	+	-

This option would require the state to contract with one or more case management providers to allow for case management to be provided separately from direct services. Currently, case management is provided by the same provider agency that provides the direct service in all areas of the state. This would require a clear definition of the roles of case managers and program oversight functions within direct service providers. It would need to be determined exactly how the cost of the new case management providers would be covered, based upon the responsibilities that are being shifted. This would represent a significant change for both providers and individuals. This option is fully compliant with the federal CMS rule. No additional protections would need to be put into place to address conflict of interest.

2) Status quo with additional Stage-2 proposals to reduce potential conflict of interest

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
0	+	-	-	-	+	-

This option would require the state to submit a proposal for approval from Federal CMS for exception demonstrating:

- a. that agencies are the “only willing and qualified provider ... in the geographic region” and,
- b. that protections against conflict of interest are in place as described in the “Scoring Matrix for State 2 Mitigation Strategies” table.

This option would require program changes and the creation of additional system supports for providers but would provide approximately 80 consumers with additional choice and control.

CMS approval of exceptions has been rare and limited in scope to date. It is unlikely that this option would be approved. Even Alaska, which is sparsely populated only received the exception in the most northern areas of the state.

Stage 1 proposals about case management structure (continued)

3) Status quo

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
--	0	+	++	++	-	0

Status quo is not an option. CMS will not approve an exception without clear mitigation strategies.

Stage-2 proposals to mitigate potential for conflict of interest in HCBS programs:

Any Stage 1 proposal that does not fully separate case management providers from direct service providers is required to have the following: 1) administrative separation (firewalls) of the case management and direct service functions within the agency, including separate supervision, 2) a clear and accessible dispute resolution process for conflicts, 3) documentation in plan of care that the consumer was given full range of options, and 4) state oversight where conflict exists.

Additionally, Stage 1 proposals that do not fully separate case management could have one or a combination of the below mitigation proposals to ensure choice.

A. Ombudsman Program:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
0	+	+	-	-	+	0

An independent person who helps people resolve problems they have with the care they are getting in the program. An ombudsman can help people if they have problems with their case managers or direct service providers. Under this proposal, the State would contract with an independent entity to provide ombudsman services statewide.

B. Options Counseling/Peer Navigation:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
0	+	-	-	-	+	-

An independent person who helps people understand different provider, service, and setting options. An options counselor or peer navigator who is separate from case management and service delivery would ensure that people receive unbiased advice and information on what is available. Under this proposal, the State would contract with an independent entity to provide this service statewide.

C. Options/Resource List:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
0	+	0	0	0	+	0

Create a single resource for people to understand the services, providers, and settings available to them under the program with detailed information on both regional and statewide resources. While this information currently exists, there are ways to make it more accessible by creating uniform regional, and statewide brochures, a dynamic website that could populate information based on zip code, or both. Under this proposal, the State would either use existing staff resources to compile this information or pay contractor specializing in this area for this work.

D. Independent Needs Assessment for Person-Centered Plan:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
+	-	-	-	-	+	-

Separate the role of person-centered plan and functional needs assessments from case management and direct service providers. Under this proposal, the State would either contract with an independent entity to do the person centered plan and functional needs assessments, or state staff would do it.

E. Additional Training for Providers:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
0	+	0	-	-	+	0

Create a statewide training program available to all HCBS providers focused on person-centered planning and program-specific information. While HCBS providers are currently required to be trained and qualified to perform the services or tasks they are responsible for, a statewide training program may enhance quality and outcomes. Under this proposal, the State would contract with an independent entity to offer a statewide training program, or state staff would do it.