

Public Input on Options to address

# **Conflict of Interest in Case Management**

In Developmental Disabilities Services

# Thanks to Kirsten Murphy of the Vermont Developmental Disabilities Council

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*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?

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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:

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**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!



**Dylan**

**XYZ Case Manager**

## Example #1

### Self-referral

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



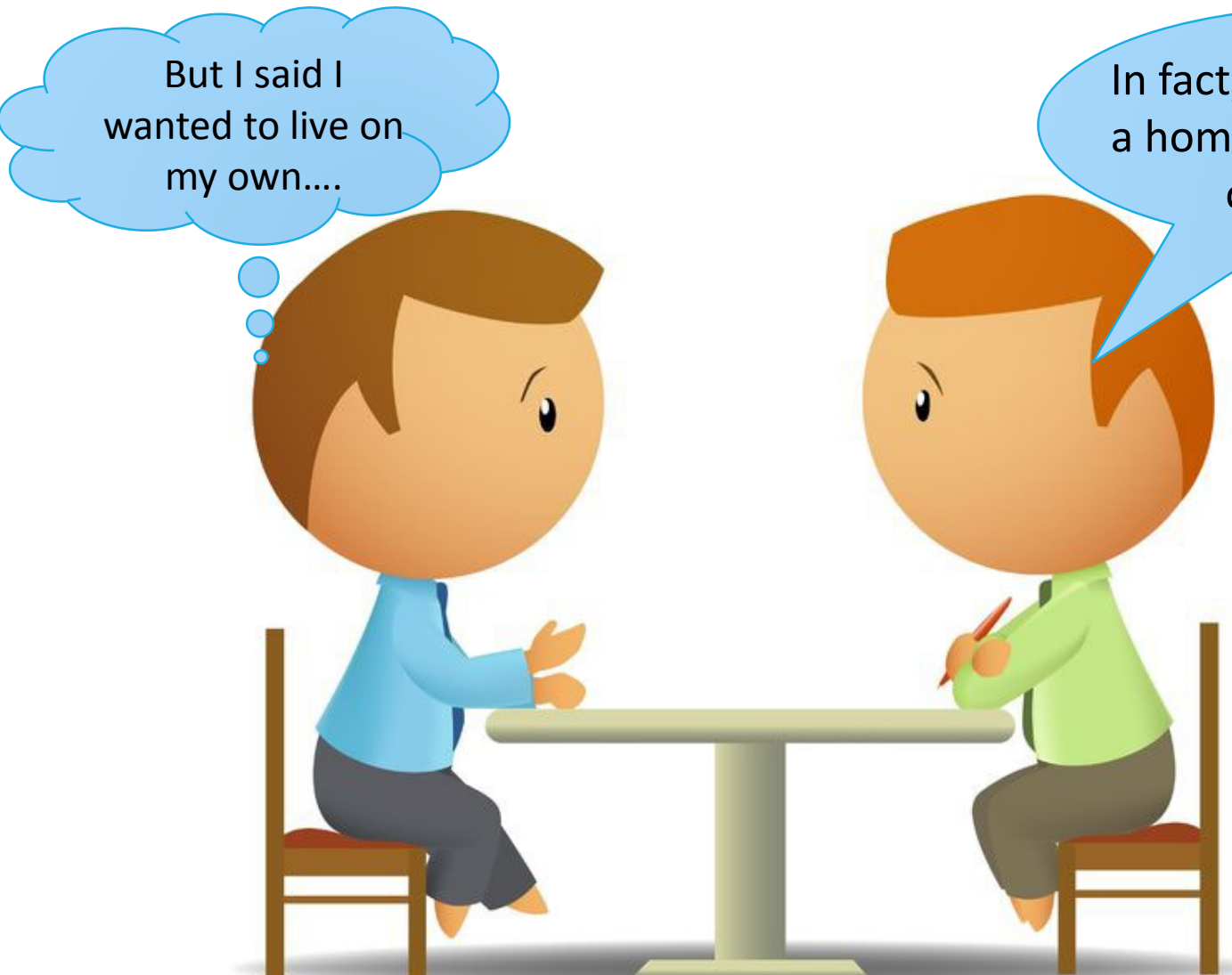


## Example #2

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### 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.
- Dylan is the next individual with a disability to develop a care plan.
- Dylan's care manager at Agency XYZ has a **conflict of interest**.

Dylan

Case Manager



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

# What has the state done so far?

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

All 15 DAs and SSAs provide both case management and direct services. Only the Transition-II does not.

All 15 DAs and SSAs develop the plan of support.

The 10 DAs conduct the initial assessment of need and develop proposed level of funding to meet need.

The 10 DAs and 5 SSAs conduct periodic reviews of need and adjust level of funding to meet need.

The 10 DAs provide information on the person's choices of agency providers and the options for management.

# 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



# 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 may be the driver of decisions, rather than the needs 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; high turnover of case managers; ISA goals do not reflect the goals of the individual receiving services.

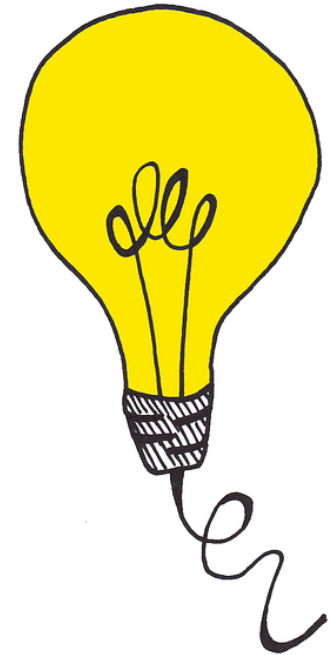




# Stakeholders' Suggested Solutions:

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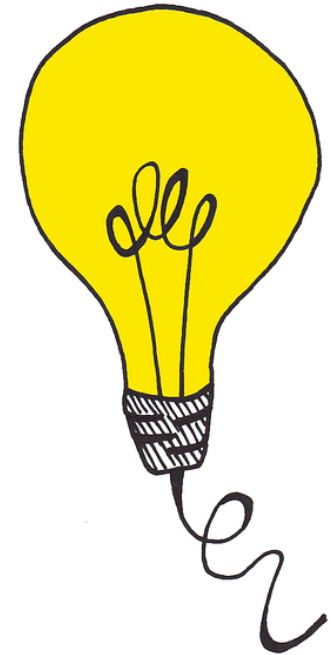
- Independent assessors outside of the agency complete the needs assessment, like in Choices for Care
- Have more choices in settings and provider options
- Make information about all available options more readily available
- Create a way for individuals and families to share information with each other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



# Stakeholders' Suggested Solutions:

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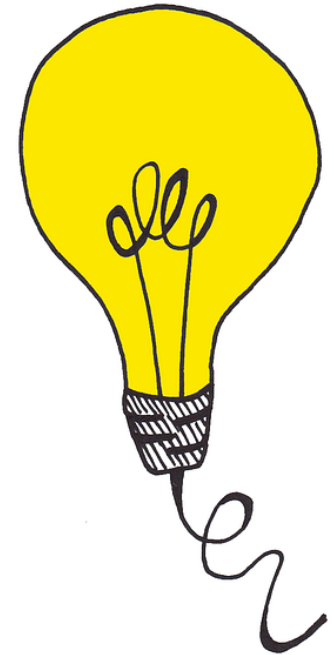
- Enhance training for case managers so they understand the full range of available options; teach motivational interviewing
- Ombudsman for Developmental Disabilities Services to address quality concerns
- Separate discussions of money from needs assessment and person-centered planning process
- Have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



# Stakeholders' Suggested Solutions:

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- 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.



**Phase II:**  
Public Feedback  
on Potential  
Solutions



# What is the State doing?

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- Hosting 5 forums around the state (see invitation handout for locations)
- Providing information on website

<http://dvha.vermont.gov/global-commitment-to-health/conflict-of-interest-home-and-community-based-services>

- Webinar on website
- Printable comment form on website and available today. Can hand in today or send in later
- Link to electronic survey to provide written comments
- Send comments by **10/7/19**



# Potential Solutions:

Four Proposals for  
Structure of Case  
Management

*and*

Some other tools  
to protect against  
conflict

(see Handout #1  
for more details)





# Case Management Structure: Option #1

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

- State would be responsible to contract with one or more Independent Case Management Agencies and/or allow for independent individual case managers
- There would need to be a clear definition of roles of case managers from “program managers” i.e. staff at service provider agencies who oversee services delivery



# Case Management Structure: Option # 2

**SEPARATION by DESIGNATED AGENCIES: Case managers work for a different organization from service providers**

- Designated Agencies would be responsible for ensuring that there were separate case management and direct service providers available for people in each region.
- Decisions made at local level about how to structure separation. Different solutions for different regions.
- **Special protections** required by CMS if anyone receives case management and direct service from same agency



# What sort of Special Protections?

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## Protections required by CMS:

- Must separate case management and provider functions within the provider agency
- 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



## Case Management Structure: Option #3

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**MORE CHOICE:** Individual can choose between having independent case management or case management that remains with their direct service provider.

- Would require the creation of separate case management providers
- If case management remains with direct service provider, required protections would need to be in place



## Case Management Structure: Option #4

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**CASE MANAGEMENT WITH DIRECT SERVICE (status quo) WITH SPECIAL PROTECTIONS:** Submit a proposal for approval from Federal CMS for an exemption to the Rule. State would have to prove

- that Vermont's Das and SSAs are the "only willing and qualified provider ... in the geographic region" and,
- that special protections against conflict of interest are in place.

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

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Other Tools to consider (*more description later*)

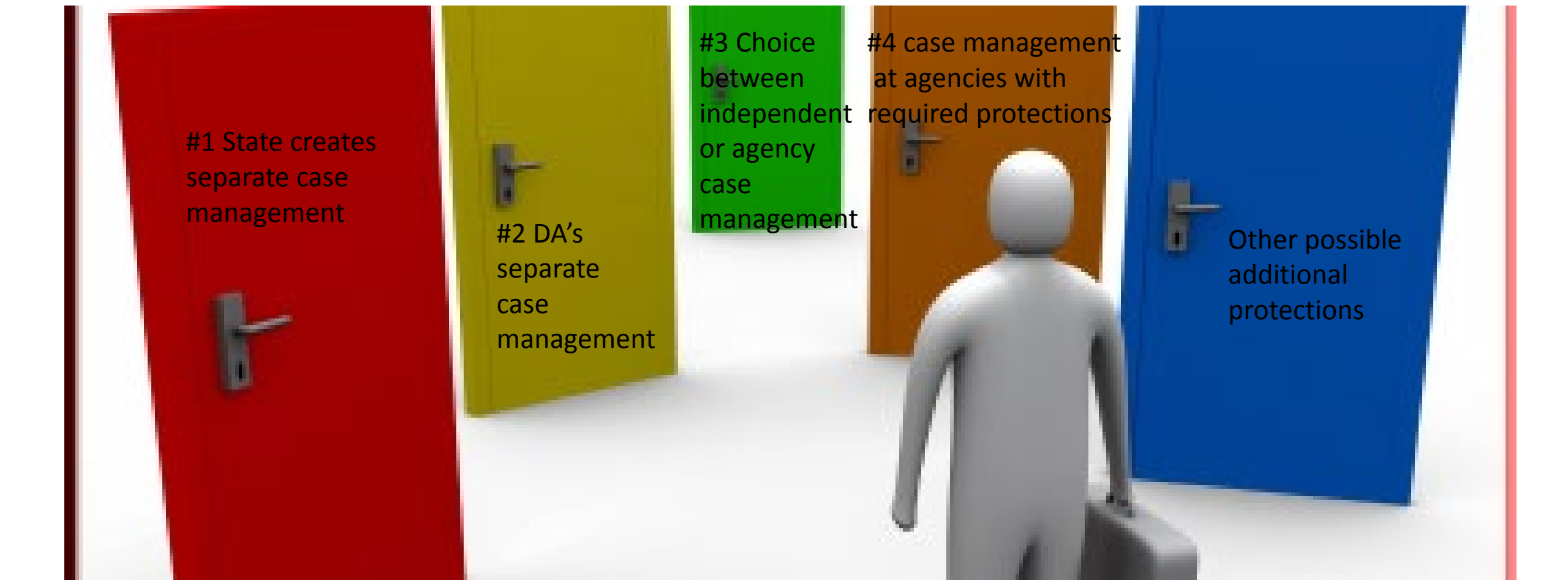
- Ombudsman
- Options Counseling/Peer Navigation
- Options/Resource List
- Independent Assessment of Eligibility for Program
- Independent Needs Assessment for Service Plan development (State or Contractors)
- Additional Training for Providers

# CMS approval of exceptions has been rare and limited in scope

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- For DD programs, 79% of states already have separate case management and service providers. (NASDDD survey of 45 states).
- South Dakota, a state with similar overall population but a much larger territory, developed separate case management entities, did not ask for exception.
- Alaska received approval of exception in specific low-population areas.
- New Hampshire received approval for allowing 30% of individuals to have case manager from a provider agency in some rural areas of the state.





#1 State creates separate case management

#2 DA's separate case management

#3 Choice between independent or agency case management

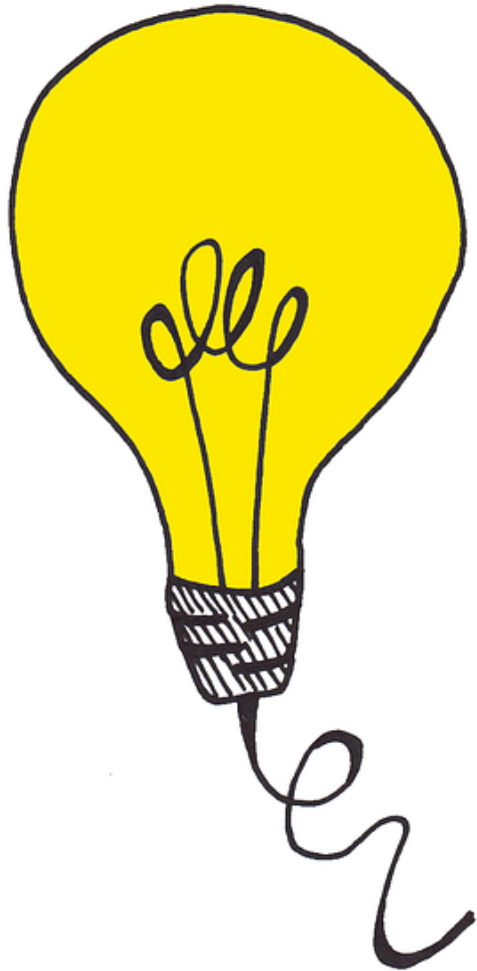
#4 case management at agencies with required protections

Other possible additional protections

To Summarize:  
4 Proposals & Some Useful Tools

# We are asking for your feedback...

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- Let's talk about the pros and cons of each option
- See handouts #1 and 2

# Overview of the Analysis Handout #1

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- Page 2: Criteria State use to assess proposals
- Page 3: Scoring of proposals for structure of case management
- Page 4: Scoring of proposals for other protections to increase choice and reduce conflict of interest
- Page 5-7: Descriptions of proposals for structure of case management
- Page 8-10: Description of proposals for additional protections



# Case Management Structure: Option #1

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## **SEPARATION by STATE: Case managers work for a different organization from direct service providers (see page 5 of Handout #1)**

- The **State** would be responsible for splitting off case management from the provider agency and contracting with one (1) or more case management providers.
- The State would use a **request for proposals (RFP)** to find organizations or individuals willing to provide case management.

CMS Compliance	Reflects Stakeholder Feedback	System Disruption	Aligns with Payment Reform	Timeline to Implement	Cost	Improves Consumer Choice	How Complex to Administer
+	-	-	0	--	-	+	--

# Case Management Structure: Option #2

**SEPARATION by DESIGNATED AGENCIES: Case managers work for a different organization from direct service providers (see page 5-6 of Handout #1)**

- Designated Agencies would be responsible for ensuring that there were separate case management and direct service providers available for people in each region.
- Decisions made at local level about how to structure separation. Different solutions for different regions.
- Special protections required by CMS if anyone receives case management and direct service from same agency

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

# Case Management Structure Option #3

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**CHOICE:** Individual could choose between having independent case management or case management that remains with the direct service provider. (see page 6 of Handout #1)

- Would require creation of independent case management providers
- Special protections required by CMS for those who receive case management and direct service from same agency

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

# Case Management Structure Option #4

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**CASE MANAGEMENT WITH DIRECT SERVICE (status quo) WITH SPECIAL PROTECTIONS: Submit a proposal for approval from Federal CMS for an exemption to the Rule. (see page 6-7 of Handout #1)**

State would have to prove:

- that Vermont's Das and SSAs are the "only willing and qualified provider ... in the geographic region" and,
- that special protections against conflict of interest are in place.

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

# Stage 2 Proposals for Additional Protections

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- For any Stage 1 proposal where case management and direct service are provided by same provider, the proposal must include the CMS required protections
- Stage 2 proposals are additional protections that could be put in place to reduce conflict of interest and enhance choice
- Let's review each proposal

# Additional Protection Option A

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**OMBUDSMAN: an independent person who helps people resolve complaints/problems about case managers or service providers(see page 8 of Handout #1)**

➤ State would contract with an independent organization to provide this service statewide.

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

# Additional Protection Option B

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**OPTIONS COUNSELING OR PEER NAVIGATION:** an independent person who helps people understand different service options(see page 8 of Handout #1)

- State would contract with an independent organization to provide this service statewide.

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

# Additional Protection Option C

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**OPTIONS/RESOURCE LIST: A comprehensive list of programs and service options in an accessible format (see page 9 of Handout #1)**

- Create uniform regional, and statewide brochures, a dynamic website that could populate information based on zip code, or both.
- State staff or contractor to do this work

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



# Additional Protection Option D

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**INDEPENDENT ASSESSMENT OF ELIGIBILITY FOR PROGRAM:** state or contractor to assess of whether person has a developmental disability and meets criteria to receive Home and Community-based Services (see page 9 of Handout #1)

- Separate this from both direct services providers and case management providers

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

# Additional Protection Option E

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**INDEPENDENT ASSESSMENT OF NEED BY STATE STAFF:** State staff would conduct the needs assessment that leads to the development of the service package or funding amount (see page 10 of Handout #1)

- Separate this from both direct services providers and case management providers
- Case managers would still develop detailed person-centered plan (ISA)

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

# Additional Protection Option F

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**INDEPENDENT ASSESSMENT OF NEED BY CONTRACTOR:** An independent contractor would conduct the needs assessment that leads to the development of the service package or funding amount(pg 10 of Handout #1)

- Separate this from both direct services providers and case management providers
- Case managers would still develop detailed person-centered plan (ISA)

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

# Additional Protection Option G

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**ADDITIONAL TRAINING FOR PROVIDERS:** A statewide training program available to all HCBS providers focused on person-centered planning and program-specific information (see page 10 of Handout #1)

➤ State staff or contractor to provide this training

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

# For more information and to provide additional feedback:

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Department of Vermont Health Access (DVHA) website:

<http://dvha.vermont.gov/global-commitment-to-health/conflict-of-interest-home-and-community-based-services>

Printable form and link to electronic survey to provide additional feedback to the Department of Aging and Independent Living is on that page. Forms available here – can fill out and leave with us now or mail in.

Webinar explaining options for those who could not attend – recommended before providing feedback.