

CONFLICT-FREE CASE MANAGEMENT

HOME AND COMMUNITY BASED SERVICES

INTRODUCTION

On January 16, 2014, the Centers for Medicare and Medicaid Services (CMS) issued [final regulations on home- and community-based services \(HCBS\) requirements](#) (79 FR 2947). The rule supports enhanced quality in HCBS programs, outlines person-centered planning practices, and reflects CMS's intent to ensure that people receiving services and supports under different federal authorities can fully participate in their community and can receive services in the most integrated setting of their choice. A key part of these new HCBS requirements is the assurance that case management is provided in a conflict-free manner. This brief:

- 1) summarizes the concept of conflict-free case management,
- 2) details CMS expectations regarding conflict-free case management,
- 3) describes HCBS programs offered by Vermont Medicaid, and
- 4) outlines the next steps the State is taking to ensure compliance.

WHAT IS CONFLICT-FREE CASE MANAGEMENT?

Conflict of Interest Definition: 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. Some examples of possible conflict of interest are described below.

[The CMS rule \(42 CFR § 441.301\(c\)\(1\)\)](#) requires that HCBS programs use a person-centered planning process which includes ways to solve conflict or disagreement and that the guidelines around conflict of interest are clear to everyone involved in the planning process.

The rule also requires that providers of HCBS, or those who have an interest in or are employed by a provider of HCBS, may not provide case management to or develop the person-centered service plan for people receiving services. **

****Exception:** CMS allows for an exception to the rule above 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 create conflict of interest protections which must be approved by CMS. People must be provided with a clear and accessible way to solve any issues.

[42 CFR § 431.10 State Medicaid Agency](#) requires that the State Medicaid Agency be responsible for eligibility determinations and eligibility determination can only be delegated to another governmental agency. This applies to Medicaid eligibility determinations; not service authorizations.

[42 CFR 441.730\(b\) Conflict of Interest Standards](#) gives more detail on what CMS sees as a conflict of interest. Such as:

EXAMPLES OF CONFLICT OF INTEREST AS OFFERED BY CMS

- 1) **Self-referral:** An organization provides both case management and direct services. There are two other organizations that could serve people. The case manager has a potential incentive to refer people to services within his/her own organization as opposed to an outside agency that could be a better fit 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 service plan.

- 3) Steering: A case manager may, due to their conscious or unconscious opinion on the best interest of a beneficiary, steer towards or away from certain providers or services, which could artificially limit the available pool of providers or set of available services.

GENERAL SOLUTIONS

While there is the potential for conflict of interest in the provision of home- and community-based services, there are strategies for preventing or reducing such conflict. Below are some examples of how conflict can be addressed.

- 1) Robust laws and regulations in support of individual choice and the person-centered planning process.
- 2) Uniform assessment and referral tools and procedures to ensure equal treatment across providers.
- 3) Ongoing quality oversight and monitoring by state staff, including the use of corrective action plans as needed.
- 4) Separation of case management providers from direct service providers through internal organization structure (firewalls, supervision structure, secondary reviewers, etc.) or by requiring separate organizations to perform the tasks.
- 5) Payment reform and service delivery approaches that promote person-centered planning and quality outcomes as opposed to a fee-for-service concept where providers are reimbursed for each service provided.
- 6) Payment reform and service delivery approaches which do not incentivize providers to seek out or avoid certain people due to their needs.
- 7) Creation or recruitment of new case management or direct service providers.

VERMONT HCBS PROGRAMS

The Agency of Human Services (AHS) has been progressive in pursuing a home- and community-based continuum of care that offers meaningful community integration, choice, and self-direction, and strives to promote health, wellness, and improved quality of life. The following HCBS programs which support these goals are authorized through the [1115 Global Commitment to Health waiver](#):

- 1) Choices for Care Moderate, High and Highest Needs Groups
- 2) Developmental Disabilities Services Program
- 3) Traumatic Brain Injury Program
- 4) Community Rehabilitation and Treatment
- 5) Enhanced Family Treatment (Intensive Home and Community Based Services)

NEXT STEPS

AHS is in the process of assessing the status of conflict-free case management in the HCBS programs mentioned above with the goal of ensuring compliance with applicable federal regulations. In 2016, AHS asked CMS for guidance on how to best ensure compliance with the requirements above. Though AHS did not receive a direct formal response, the Agency has moved forward with an internal assessment of HCBS case management.

The following attachments 1 through 5 summarize the VT HCBS programs and strategies used to mitigate the potential for conflict of interest. As part of this assessment, the Agency seeks feedback from stakeholders on their experience with each of these programs in 2 phases:

- 1) Feedback will be collected to inform ways in which the potential for conflict of interest in HCBS case management can be prevented or reduced. AHS seeks feedback and is not proposing changes in this phase.
- 2) AHS will re-engage stakeholders following the collection of this feedback, and if any changes are needed, AHS will explain the change(s) and ask for formal stakeholder input in this phase. Changes could vary by program.