



**Department
of Health**

**Office of
Health Insurance
Programs**

Conflict of Interest Compliance

NHTD/TBI Waiver Unit Presentation

September 2023

Today's Discussion

- Centers for Medicare and Medicaid Services (CMS) Conflict of Interest
- Conflict of Interest Compliance
- Timeline
- Questions

1915(c) HCBS Waiver Conflict of Interest Requirements

- Requirements at 42 CFR 441.301(c)(1)(vi)
- Person-centered service plan development cannot be performed by the individual's provider of direct services unless there is no other willing and qualified entity available to that individual.
- 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.
- Case managers are able to develop service plans, as case management is **not** considered to be a direct service in conflict with person-centered planning.

The Final Rule

The Final Rule is very broad across HCBS Services. In part, it:

- Defines, describes, and aligns home and community-based setting requirements as they relate to 1915(c) HCBS waivers.
- Defines person-centered planning requirements for persons in HCBS settings under 1915(c) HCBS waivers.
- Defines conflict of interest provisions for 1915(c) HCBS NHTD and TBI waivers.

Case Management Conflict of Interest

CMS has defined Case Management Conflict of Interest (COI) as:

- When the same entity helps an individual gain access to services *and* provides services to that individual;
- When the same entity is responsible for assuring and honoring free choice of providers and is a service provider;
- When the same entity is responsible for overseeing quality and outcomes on behalf of the individual and is a service provider; and
- When the Case Management agency for an individual has a fiduciary relationship with a provider of services to that individual.

When Conflict of Interest is Present

- Assure that entities separate case management and service provision (different staff).
- Assure that entities provide case management and services to the same individual *only* with the express approval of the state.
- Provide direct oversight and periodic evaluation of safeguards.

When Conflict of Interest is Present-Continued

The Rule requires that the State ensure the following firewalls are implemented:

- Demonstrate to CMS that the only willing and qualified case manager for the individual is also, or is affiliated with, a direct service provider.
- Provide full disclosure to participants and assurances that participants are supported in exercising their right of free choice in providers.
- Describe individual dispute resolution process.

Conflict of Interest Compliance

Direct and Indirect Services

NHTD Waiver Services			TBI Waiver Services		
<i>Exempt from COI Services</i>	<i>Services Subject to COI</i>		<i>Exempt from COI Services</i>	<i>Services Subject to COI</i>	
Assistive Technology (AT)	Service Coordination	Independent Living Skills and Training	Assistive Technology (AT)	Service Coordination	Independent Living Skills and Training (ILST)
Moving Assistance (MA)	Community Integration Counselling (CIC)	Structured Day Program Services	Community Transitional Services (CTS)	Structured Day Program Services	Positive Behavioral Interventions and Support Services (PBIS)
Community Transitional Services (CTS)	Nutritional Counseling/Educational Services	Transportation Services	Environmental Modifications (E-Mods)	Substance Abuse Program Services	
Congregate and Home Delivered Meals (Meals)	Peer Mentoring	Wellness Counselling		Transportation Services	
Environmental Modifications (E-Mods)	Positive Behavioral Interventions and Support Services (PBIS)	Home and Community Support Services (HCSS)		Community Integration Counselling (CIC)	
	Respiratory Therapy	Home Visits by Medical Personnel		Home and Community Support Services (HCSS)	
	Respite			Respite	

Service Coordination

Service Coordination must be conflict free and may only be provided by agencies and individuals employed by providers who are not:

- Related by blood or marriage to the participant or to any paid service provider of the participant
- Financially or legally responsible for the participant.
- Empowered to make financial or health-related decisions on behalf of the participant.
- Sharing any financial or controlling interest in any entity that is paid to provide care for or conduct other activities on behalf of the participant.
- Individuals employed by agencies paid to render direct services (as defined by the Department) to the participant.

Only Willing and Qualified Provider Exemptions

42 CFR 441.301(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.

Requesting Only Willing and Qualified Provider Exemptions

- Service plan contains both direct services and service coordination from the same provider.
- Service coordinator will contact their RRDC to indicate that alternative providers cannot be found for either direct services or service coordination.
- The RRDC will review the plan from the Service Coordinator, canvass providers in the region, and document all attempts to secure other providers on the service plan. This documentation will be collected by DOH.
- Service Coordinator will complete a new provider selection form reflecting the participant's choice of the current provider.
- Provider selection form and service plan will be submitted to the RRDC for review and approval.
- The exemption is only good for 1 year and must be reviewed annually.

Corporate Structure related to Only Willing and Qualified Provider Exemptions

- Conflict of interest protections must include separation of service coordination functions and the functions of other direct services.
- Service Coordinator and Service Coordinator Supervisor must be separate from direct service provision.
- Upper-level management may be shared between service coordination and direct services.

Service Plan Run Out Allowance

- Plans with conflict may be approved up to November 11, 2023 under the existing protocol.
- Conflicted plans will be allowed to complete the natural cycle of their current plan year.
- Upon renewal or review, all plans will have to be COI compliant post November 11, 2023.

Service Plan Run Out Implementation

- Joseph Snodgrass's service plan expires on October 15, 2023. He receives Service Coordination and Structured Day Program from the same provider agency. His plan can be approved as is for the upcoming plan year. By October 15, 2024 this plan will need to be COI compliant either by separating services or by receiving an exemption.
- Mary Smith is applying for the NHTD waiver. Her discharge from the Nursing Home is expected to occur November 13, 2023. Her Initial Service Plan will need to be COI compliant.

Protocols for termination of a waiver service or as waiver provider & the transfer of service to another provider

- An approved waiver service provider may choose to terminate one or all of their approved waiver service(s) by submitting a Letter of Intent to terminate to the appropriate RRDC and NYSDOH.
- Written notice must be submitted at least sixty (60) calendar days prior to the date of expected termination in accordance with the Provider Agreement. This Letter of Intent must identify where service records will be kept for six (6) years post termination and must be made available upon request by NYSDOH and other oversight entities.
- The terminating waiver service provider is responsible for sending the new waiver service provider(s) the following copies of all evaluations: ISRs, Detailed Plans and an update on the participant's accomplished goals.
- The provider must ensure that all documentation, services and assessments are current at the time of the transition. The RRDC must ensure that all applicable documents (e.g., ISP, current Service Plan, evaluations, current level of care, ISRs, Detailed Plans) are transferred from the current provider to the new provider.

Protocols for termination of a waiver service or as waiver provider & the transfer of service to another provider (con't.)

- Upon notification to the RRDC and NYSDOH, the waiver service provider must also notify their participant(s) that they will no longer continue to provide the service(s) to them. For all waiver service providers, regardless of waiver service, the notice must be sent at least thirty (30) calendar days prior to the end of waiver service provision.
- The notice must direct the participant to contact their Service Coordinator to select other waiver service provider(s). The Service Coordinator must assist the participant(s) in choosing a new waiver service provider and complete the Request for Change of Provider form (DOH-5750) to the RRDC.
- The Service Coordinator will assist the participant(s) and the terminating waiver service provider through the period of transition from current to new waiver service provider(s).
- In situations where the service being withdrawn is Service Coordination, the notice must direct the participant to contact the appropriate RRDC to select another Service Coordination agency. The RRDC must assist the participant in completing the Change of Service Coordination Agency Request form (DOH-5731).
- The waiver service provider must continue all service provision until such time that the case(s) have been successfully transitioned to new service providers or the participant no longer wishes to receive the service.

Complaint and Dispute Resolution Process in COI cases

- In the event that a participant has a conflicted service plan, and has a complaint or dispute against the provider of direct service, the Service Coordinator will not be able to investigate.
- That complaint must be addressed by the RRDC at their complaint line, or by the Department of Health Waiver complaint line.

Timeline

- Notice to Waiver Participants - What does Conflict of Interest Mean and how will it impact my services- Mid-September
- Webinar with providers/stakeholders: review of milestones, process and timeline for compliance- September 6, 2023
- Development of audit and surveillance protocols-September 7, 2023
- **Provider agencies in full compliance with Conflict of Interest (COI) Standards- November 11, 2023**

Questions

- NYSDOH encourages all providers to work with their RRDC.
- Questions may be sent to the Waiver Transition BML at:
waivertransition@health.ny.gov