NEW YORK STATE | Department of Health | Office of Health Insurance Programs

Stakeholder Review of Options and Models for Meeting Conflict of Interest Requirements Under the NHTD and TBI Waivers

May 14, 2019

Introductions

- *Centers for Medicare and Medicaid (CMS)*
- *New York State Department of Health (NYSDOH)*
- *NHTD/TBI Waiver Stakeholders and Providers*

Stakeholder Review of Proposed Models to Address Conflict of Interest

- NYSDOH has met with NHTD/TBI Waiver stakeholders (consumers and providers) to review CMS Conflict of Interest Requirements (COI) and to discuss and develop options for models that may potentially address COI requirements under the NHTD and TBI Waivers.
- COI requirements need to be in place for NHTD and TBI waivers no later than January 1, 2021.
- The purpose of today's discussion is to collectively review (consumers, providers, NYSDOH, CMS) the compiled options and receive feedback from CMS for stakeholder consideration in determining the path and next steps to COI compliance

Reminder of Important Due Dates for Actions Under CMS Approved Corrective Action Plan

COI Compliance Readiness Action	Due Date
CMS is anticipating that NYSDOH will present its final model for review.	6/1/2019
Operationalize single option for meeting COI, includes: - Policy guidance - Work flows - Rates - Communication strategy with providers and stakeholders - Review SC qualifications - Present amendment for NHTD/TBI waiver applications - Develop protocols to and criteria to ensure continuity of care	1/6/2020
Establish transition steps to operate under new service model.	4/13/2020
CMS is seeking for the implementation process to the new model to begin.	6/1/2020
Full implementation	**1/1/2021**

Review: Conflict of Interest Defined

42 CFR 441.301 defines conflict of interest

- Subpart (c)(1)(vi) states, in part:

  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.

  42 CFR 441.301(c)(1)(vi)

Options Proposed by Stakeholders for Consideration

- The options, pros and cons presented in the following slides were prepared by stakeholders and submitted to NYSDOH.
- The slides do not identify the stakeholder(s) that recommended each option. If you would like to identify yourself and present the option please let us know, otherwise NYSDOH will review the slides for the group.

Option A: Service Coordination Separation Model

- Providers continue to provide multiple services, but cannot provide service coordination and other direct waiver services to the same individual.
  - Functions of Service Coordinators (SCs) may remain the same.
  - An individual's SC cannot be employed by a provider who is also offering direct waiver services to that individual.
  - Service Coordination only providers and those who offer Service Coordination and other exempt services may continue business as usual.
  - DOH/RRDC maintains authority over provider designation and final plan approval.

Option A: Service Coordination Separation Model

- Providers of multiple services may continue to offer multiple services. However, they may only provide EITHER direct waiver services OR service coordination to any one participant. Providers cannot provide direct waiver services and service coordination to any one participant.
- ***Service Coordination*** activities must be independent of **direct waiver service provision**.
- Conflict occurs not just if the entity is a provider but if the entity:
  - Has an interest in a provider, or
  - Is employed by a provider.
- Requirements are located at 42 CFR 441.301(c)(1)(vi).

Option A: Service Coordination Separation Model: Pros/Cons

Pros	Cons
Functions of Service Coordinators may remain the same.	Participants may be required to change either their service coordination provider or their direct service provider and this may cause a disruption.
Providers can continue to provide service coordination services.	May create a significant capacity issue. - Providers have commented that service coordination is not typically financially sustainable on its own- this model provides little incentive for agencies to keep service coordination as a standalone service.
Service coordination only providers and those who offer service coordination and other exempt services may continue business as usual.	Participant choice is limited.
Prevents significant change to the system.	Potential for disruption in staffing.

Option B: Plan Development and Service Oversight Model

- Plan development agency develops initial, revised, and addenda to service plan; service broker identifies providers for the individual that are conflict-free, ready and willing.
- Plan development is included in the federal regulatory definition of Case Management. Therefore, a model that separates plan development from service coordination is not conflict free.
  - This includes wellness checks and health and safety oversight.
- CMS has indicated that providers of multiple services may continue to offer multiple services. However, they may only provide EITHER direct waiver services OR service coordination to any one participant. Providers cannot provide direct waiver services and service coordination to any one participant.

Option B: Plan Development and Service Oversight Model: Pros/Cons

Pros	Cons
Allows participant choice.	Splits service coordination into two services.
Maintains continuity and avoids disruption	Requires the identification of a new service with a separate rate structure.
Allows current SC to maintain higher caseloads because the plan writing aspect is removed	Requires recruitment and enrollment of new providers.

Option C: Statewide Organization Model

- A statewide organization provides Service Coordination only.
  - Service Coordination provider enrollment is limited to statewide Service Coordination agency/agencies.
  - Service Coordination only providers and those who offer Service Coordination and other exempt services may continue business as usual.
  - The statewide provider(s) offer no other direct waiver services.

Option C: Statewide Organization Model: Pros/Cons

Pros	Cons
Functions of Service Coordinators may remain the same.	A statewide organization may be unmanageable in terms of administrative oversight.
Sub-contract arrangements may allow service coordinators to maintain current caseloads.	Service coordinators would have to change employers.
Option may serve as back-up in areas where there are not a sufficient number of providers.	Participant choice is limited/least participant centered.
Prevents significant change to the system.	Potential for disruption in staffing.

Option D: Passive Parent Model

- Passive parent entity with its own governing structure appoints and oversees the boards of related affiliate agencies without assuming financial control.
  - Two affiliate corporate entities could provide SC and other direct waiver services with passive parent control of their boards.
  - Passive parent and affiliate entities cannot share board or executive leadership, but can share administrative functions.

Option D: Passive Parent Model

Passive parent cannot control budgets, operating policies, the medical or management staff nor engage in any of the following:

1. Appointment or dismissal of management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;
2. Approval of operating and capital budgets;
3. Adoption or approval of operating policies and procedures;
4. Approval of certificate of need applications filed by or on behalf of the entity;
5. Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
6. Approval of contracts for management or for clinical services; and
7. Approval of settlements of administrative proceedings or litigation to which the entity is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Passive Parent Model: Pros/Cons

Pros	Cons
Allows agencies to continue to provide services much as they do now – little disruption to participants.	Transparency of governance confusing to community and employees.
SC functions can remain the same.	Financial alignment is not complete: dependence without long-term sustainability can occur.
Providers may benefit from increased efficiency.	Challenging in terms of regulatory accountability.

Proposed System Changes to Achieve COI Compliance

A number of stakeholders submitted comments reflecting that they believe NYS is nearly in compliance as the system exists today and could achieve full compliance with system changes such as:

- Increasing SC rates to encourage new SC agencies to form, implement penalties/incentives for refusing to take/accepting clients.
- Increasing regulatory requirements for SC agencies and increase regulatory standards of the current surveillance system.
- Leveraging the RRDC to confirm participant free choice via a COI specialist or by contracting with an objective third party (such as Maximus).

Proposed System Changes to Achieve COI Compliance

- Changing staff qualifications to increase available pool of SCs.
- TBI/NHTD provider collaboration for the creation of new SC only entities.
- Revising roles of SC and ILST:
  - SC becomes Care Coordination – must not provide any other direct services to remain compliant.
  - ILST becomes enhanced ILST – includes the provision of training and assistance in the management of the daily life of the participant.
- Using the RRDCs to write plans and reauthorize services. SC ceases to exist. The support role of SC would be provided under the auspices of another 1915c waiver service, for example: ILST.