



**Department
of Health**

**Office of
Health Insurance
Programs**

Conflict of Interest Compliance Implementation Plan

NHTD/TBI Waiver Unit Presentation

January 2018

Today's Discussion

- Centers for Medicare and Medicaid Services (CMS) Conflict of Interest
- Conflict of Interest Compliance Implementation Plan
- Provider Attestation

1915(c) HCBS Waiver Conflict of Interest Requirements

- Requirements at 42 CFR 431.301(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 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

The Rule requires that the State:

- Demonstrate to CMS that the only willing and qualified case manager for the individual is also, or 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.
- 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.

Conflict of Interest Compliance Implementation Plan

To ensure fair and equitable treatment of all providers, NYSDOH has developed the Conflict of Interest Compliance Implementation Plan form.

As per NYSDOH agreement with CMS and included in the State's approved Corrective Action Plan (CAP):

- Temporary measures which include firewalls to avoid conflict must be in place immediately;
- Full compliance with COI must occur by January 1, 2019.
- NYSDOH is required to provide oversight of plan implementation.

Content of the plan to be completed by providers

Current and Approved Providers

Conflict of Interest Compliance Implementation Plan

Number:

1. *Approved regions, locator codes assigned to those regions and services approved for those regions.*
 - Purpose: to acquire up-to-date information, to confirm waiver services agencies are approved for, and to assess regional capacity and coverage.
 - Action: agencies must provide information on what regions they are approved to provide waiver services for, the waiver services they are approved to provide for those regions and the locator code assigned for each region.

Corporate Structure

Conflict of Interest Compliance Implementation Plan

Number:

2. *Identify any other corporate entities within this corporate structure (e.g. LHCSA and CHHA)*

- Purpose: to identify waiver services other than service coordination provided by the agency (e.g. LHCSA and CHHA) in order to identify areas of conflict of interest.
- Action: agencies must list all other corporate entities that fall within their corporate structure. For firewall creation, provider agencies must ensure that there is no conflict of interest between the corporate entities within their corporate structure.

Service Coordinators

Conflict of Interest Compliance Implementation Plan

Number:

3. *Are Service Coordinators physically co-located with any other service staff provided by the organization? ___ Yes ___ No. If yes, please identify addresses, staff assigned to that address and their function(s).*
- Purpose: to identify the physical location of service coordination staff in order to identify potential conflicts of interest.
 - Action: if Service Coordinators are stationed at the same location as other waiver service staff, the agency must list the addresses where that co-location occurs, the staff assigned to those addresses and what functions those staff members serve.
 - Identification of co-located SC and other waiver service staff may require a change in physical location in order to prevent conflict of interest.

Current and Approved Services Provided

Conflict of Interest Compliance Implementation Plan

Number:

4. *Attach a chart indicating the geographic breakdown of ALL waiver services currently provided by the organization by county, including the number of individuals served by county.*
 - Purpose: to acquire up-to-date information regarding waiver services agencies are providing by county and the number of people accessing services in each county.
 - Action: agencies must provide a chart illustrating all waiver services that are currently being provided by the agency, labeled and organized by county. This chart must include the number of individuals the agency serves in each county for each waiver service.

Service Coordinators

Conflict of Interest Compliance Implementation:

5. *Breakdown of all Service Coordinator caseloads: Provide a complete listing of all Service Coordinator assignments. Identify Service Coordinators, their caseload (name and CIN of each participant) and who supervises each Service Coordinator. Please attach as a separate document.*
 - Purpose: to identify each Service Coordinator, their supervisors, and their caseload. This will assist in identifying conflicts of interest and creating firewalls.
 - Action: agencies must provide a complete list identifying all Service Coordinators, their caseload (including the name and CIN of each participant on their caseload) and the name of the SC's supervisor.

Rural or Cultural Exemptions

- **Rural exemption:** An exemption from certain conflict of interest requirements may be granted in geographic areas with limited providers in order to ensure that waiver services are provided to all waiver participants.
- **Cultural exemptions:** An exemption from certain conflict of interest requirements may be granted when a specific cultural community can only be served by one provider or if there are limited providers in a region.
- NYSDOH will determine if rural or cultural exemptions are appropriate according to the information provided through the completed Conflict of Interest Compliance Implementation Plan.

Rural or Cultural Exemptions, Continued

Conflict of Interest Compliance Implementation Plan

Number:

6. *Are there any conditions present that support a rural or cultural exemption within your organization? Please specify by county/cultural population. Provide a detailed explanation why a request for an exemption is appropriate.*

- Purpose: to assist NYSDOH in determining whether a cultural or rural exemption is warranted in a region or for a population in the state.
- Action: if the agency believes they qualify for a rural or cultural exemption as a result of the conditions of the population or area they serve, the agency must provide justification for that exemption. This justification must clearly specify the population for which the exemption is being requested.

Corporate Structure

Conflict of Interest Compliance Implementation Plan

Number:

7. *Organizational Chart: Provide a copy of the agency's organizational chart that delineates the lines of supervision for all services provided in the organization. Delineate Waiver service provision staff and the chain of supervision. Please attach as a separate document.*
 - Purpose: to identify areas in the organizational structure where the chain of command or corporate structure presents a potential conflict of interest.
 - Action: agencies must provide a copy of their organizational chart detailing all lines of supervision for each waiver service provided. This chart must delineate waiver service provision staff and the chain of supervision related to these staff.

Provider Selection Process

Conflict of Interest Compliance Implementation Plan

Number:

8. *Explain provider selection process: What protocols does the organization have in place to ensure participant/applicant choice of providers and service selection? What protections are in place to ensure that your staff do not steer business to your agency?*

- Purpose: to assess processes in place ensuring participant choice of providers and service selection.
- Action: agencies must explain what protocols they have in place which ensure participant choice of providers and service selection. Agencies must also explain what protections are in place in order to ensure that participants are not steered to the agency.

Case Acceptance Determination

Conflict of Interest Compliance Implementation Plan

Number:

9. *What criteria does the agency use to determine if it will accept a case? (e.g. case load capacity, location of the participant)*
- Purpose: to document and guarantee a fair acceptance process and assist provider agencies in creating firewalls that ensure a fair acceptance process.
 - Provider agencies that consistently deny cases will be put on vendor hold until such time that they are able to accept cases again.
 - Provider agencies may not accept/deny cases based on the waiver participant's personal history, whether medical or otherwise and may not receive any participant's personal information until after a case has been accepted.
 - Action: agencies must provide a detailed description of the criteria and process they employ when determining whether or not to accept a case.

Service Plan

Conflict of Interest Compliance Implementation Plan

Number:

10. Explain what assessments related to waiver services are completed by the provider and how the assessment findings are included in the Service Plan.

- Purpose: to determine the methods used by the agency to develop Service Plans.
 - As of the most recently approved TBI application (approved September 1st, 2017), the UAS-NY must be considered, along with any other assessments, when creating a participant's Service Plan.
 - Action: agencies must describe the waiver-related assessments they complete and how the findings from those assessments are incorporated in the Service Plan.
- ❖ Note: Service Coordinators cannot complete functional assessments.

Service Plan, Continued

Conflict of Interest Compliance Implementation Plan

Number:

11. Describe the process for Service Plan submission and approval and indicate time-lines, sign-off protocols and identify responsible staff.

- Purpose: to ensure that the Service Plan approval process is free of conflicts of interest.
- Action: agencies must describe Service Plan submission and the process through which the Service Plan is then approved. Agencies must indicate the time-lines involved in this process, describe the sign-off protocols and detail what staff are responsible in the Service Plan submission and approval process.

Service Plan, Continued

Conflict of Interest Compliance Implementation Plan

Number :

12. Describe who reviews service limits, frequency and duration of services in conjunction with the Service Plan reviews. What is the relationship of that staff to the Service Coordinator?

- Purpose: to identify potential conflicts of interest in various service review processes at the agency.
- Action: agencies must describe who is responsible for reviewing service limits, frequency and duration of services in conjunction with Service Plan review. This must also include a description of the relationship of this staff to the Service Coordinator.

Dispute Resolution Process

Conflict of Interest Compliance Implementation Plan
Number:

13. Describe the agency's dispute resolution process.

- Purpose: to identify and assess the agency's dispute resolution and ensure that it is adequate.
- Action: agencies must describe how disputes are addressed and how they are then resolved.
 - Outline dispute reporting process
 - Name and title of staff member who handles disputes
 - Process by which disputes are resolved
 - What occurs after dispute resolution
 - Process for documenting disputes and their resolutions

Complaints

Conflict of Interest Compliance Implementation Plan

Number:

14. Describe the internal mechanisms to accept complaints from Service Coordinators and/or waiver participants regarding the agency's service provision.

- Purpose: to acquire information on how complaints regarding service provision are addressed within each provider agency.
- Action: agencies must describe how they receive complaints from Service Coordinators and/or waiver participants regarding the agency's service provision
 - How the agency has made the reporting of complaints accessible for all Service Coordinators and waiver participants
 - What happens to the complaints after they are received
 - How quickly each complaint is addressed and the timeframe in which the complainant is notified
 - How each complaint is addressed

Participant Satisfaction Survey

Conflict of Interest Compliance Implementation Plan

Number:

15. Describe the organization's participant satisfaction survey process and how the agency responds to the data/issues presented.

- Purpose: to acquire information on how each agency handles their participant satisfaction survey process and how each agency then responds to the participant information attained.
- Action: agencies must describe their participant satisfaction survey process, how they collect this data and how often this data is collected.
 - Provide the agency's process for responding to the data and/or issues that were presented in the survey responses.

Quality Assurance

Conflict of Interest Compliance Implementation Plan

Number :

16. What quality assurance protocols do you have in place to confirm that services identified in the Service Plan are provided?

- Purpose: to confirm that agencies have quality assurance measures in place which ensure that participants are receiving all services identified in their Service Plan.
 - Action: agencies must describe what quality assurance protocols they have in place to ensure that the services identified in the Service Plan are being adequately provided.
- ❖ **Quality assurance protocols:** protocols which work to prevent mistakes in service provision as well as ensure there is no lack of waiver service provision to participants when service is available.

Conflict of Interest Protections

Conflict of Compliance Implementation Plan

Number:

17. Attach copies of relevant personnel and procedural guidelines developed/implemented to avoid Conflict of Interest.

- Purpose: to determine what policies and procedures are in place at the agency which prevent conflict of interest.
- Action: agencies must provide copies of all policies and procedures which exist within the agency and serve the purpose of avoiding conflict of interest. These policies do not need to have been specifically created for the purpose of avoiding conflict of interest.

Provider Attestation

The Provider agrees:

- Individuals providing Service Coordination and other waiver services
 - Are not related by blood or marriage to individuals on their caseload;
 - May not receive any financial benefit other than their employment from the provision of services;
- Service Coordinators (SC), the provider agency and their staff
 - May not be Representative Payees or trustees for waiver participants' financial interests;
 - May not serve as a guardian, Power of Attorney, Health Care Proxy to a waiver participant, emergency backup or participate in any financial relationships with waiver participants;

Provider Attestation, Continued

- Service Coordinators (SC), the provider agency and their staff, continued
 - Who terminate employment with a corporation/provider must have a “cooling off” period which includes a period of at least 3 months before the participant may choose to move to the new agency where their former SC is now employed. If a rural exemption exists, the cooling off period may not apply. It should be noted that participants choose a provider agency not a specific staff person;

Provider Attestation, Continued

The Provider agrees:

- Service Coordinators and Service Coordinator Supervisors
 - May not complete functional assessments for individuals on their caseloads;
 - May not provide other waiver services to people on their caseloads;
- To notify the RRDCs of all Service Coordinator and Service Coordinator Supervisor staff terminations and the date employment with the provider ended within 30 days of separation;
- To be removed from the active provider list by the RRDC if the agency consistently refuses to interview new referrals or accept new participants until such time that they have the capacity and willingness to accept new cases;

Provider Attestation, Continued

The Provider agrees, continued:

- To assign Service Coordinators and Service Coordinator Supervisors titles that distinguish staff as an approved Medicaid service provider and not a representative of the New York State Department of Health or the Regional Resource Development Center;
- Effective January 1st, 2019, Service Coordination providers will implement full compliance with HCBS regulation related to Conflict of Interest.
- The Regional Resource Development Center, as designees of the NYSDOH, shall have full access to all provider and participant records regarding the provision of HCBS Waiver services.
- The plan must be signed and authorized.

Timeline

- Conflict of Interest (COI) Compliance Implementation submitted to the Regional Resource Development Center- March 1, 2018
 - Agencies who have not submitted their COI Compliance Implementation plan by this date will be put on vendor hold by the New York State Department of Health (NYSDOH).
- Conflict of Interest (COI) Compliance Implementation submitted to the New York State Department of Health (NYSDOH)- April 1, 2018
- Provider agencies in full compliance with Conflict of Interest Standards- January 1, 2019

Questions

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