



Mitigating Conflict of Interest in Case Management: Outcomes to Date



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Webinar Objectives

- Brief review of the conflict of interest regulatory requirements
- Overview of conflict of interest across the national landscape
- State experiences in case management system redesign
- Promising practice and strategies
- Key takeaways to date

Case Management Activities and Conflict of Interest (COI)

When the same entity helps individuals gain access to services, monitors those services *and* provides services to that individual, there is potential for COI in:

- Assuring and honoring free choice
- Overseeing quality and outcomes
- The “fiduciary” (financial) relationship

Federal requirements to prevent and mitigate potential COI under 1915(c) Home and Community-Based Services (HCBS) Waivers

- 42 CFR 441.301(c)(1)(vi) requires that providers of HCBS for the individual must not provide case management activities or develop the person-centered service plan.
 - 42 CFR 431.10 requires that the State Medicaid Agency (SMA) be responsible for eligibility determinations, and eligibility determination *can only be delegated to another governmental agency with SMA oversight.* **
 - Case management activities must be independent of service provision. An entity, agency or organization (or their employees) ***cannot provide both direct service and case management activities to the same individual except in very unique circumstances set forth in regulation.***
 - Conflict occurs not just if the entity is a provider but if the entity has an interest in a provider or if they are employed by a provider
- ** Referenced in the 1915(c) Waiver Application, Appendix A: Waiver Administration and Operation

Federal requirements to prevent and mitigate potential COI under 1915(i) State Plan HCBS

- Federal regulations require that the SMA be responsible for eligibility determinations, and eligibility determination *can only be delegated to another governmental agency with SMA oversight.*
- *Under no circumstances can a direct service provider determine eligibility.* This exclusion applies to financial and service eligibility.

Individuals or entities that evaluate eligibility or conduct the independent evaluation of eligibility for State plan HCBS, who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the service plan cannot:

- Be related by blood or marriage to the individual or to any paid caregiver of the individual;
- Be financially responsible for the individual;
- Be empowered to make financial or health related decisions for the individual; or
- Have a financial interest in any entity paid to provide care to the individual.

Federal requirements to prevent and mitigate potential COI under 1915(k) Community First Choice

- Individuals or entities performing the assessment of need and developing the person-centered service plan cannot be:
 - Related by blood or marriage to the individual or a paid caregiver
 - Financially responsible for the individual
 - Empowered to make health-related decisions
 - Individuals who would benefit financially from service provision
 - Providers of State plan HCBS to the individual

Only Willing and Qualified Provider

- Demonstrate to CMS that the “only willing and qualified” entity or provider of case management activities for the individual is also, or affiliated with, a direct service provider for the same individual
- Establish safeguards covering activities specified in the HCBS Technical Guide to ensure state oversight, individual choice, and the availability of a “clear and accessible alternative dispute resolution process”

1915(k) CFC 42 CFR 441.540 (a)(5) Person-centered planning COI standards

1915(i) State plan HCBS: 42 CFR 441.730(b)(5) Only willing and qualified entity

1915(c) HCBS waiver: 42 CFR 441.301(c)(1)(vi) Only willing and qualified entity

The State of the States

- States are actively redesigning case management systems
- In a 2018 survey of agencies serving individuals with intellectual and developmental disabilities, of 45 respondents:
 - 34 states (including the District of Columbia) report their systems fully comport with the COI regulations
 - 11 other states indicate they are in the process of system redesign

The State of Three States: Redesign to Date

- For an update on their efforts to meet COI requirements, we checked in with:
 - Darryl Milner, Director, South Dakota Division of Developmental Disabilities (DDD)
 - Lee Grossman, Administrator, Wyoming Developmental Disabilities Section, Behavioral Health Division
 - Deb Etheridge*, Acting Director, Alaska Senior and Disabilities Services

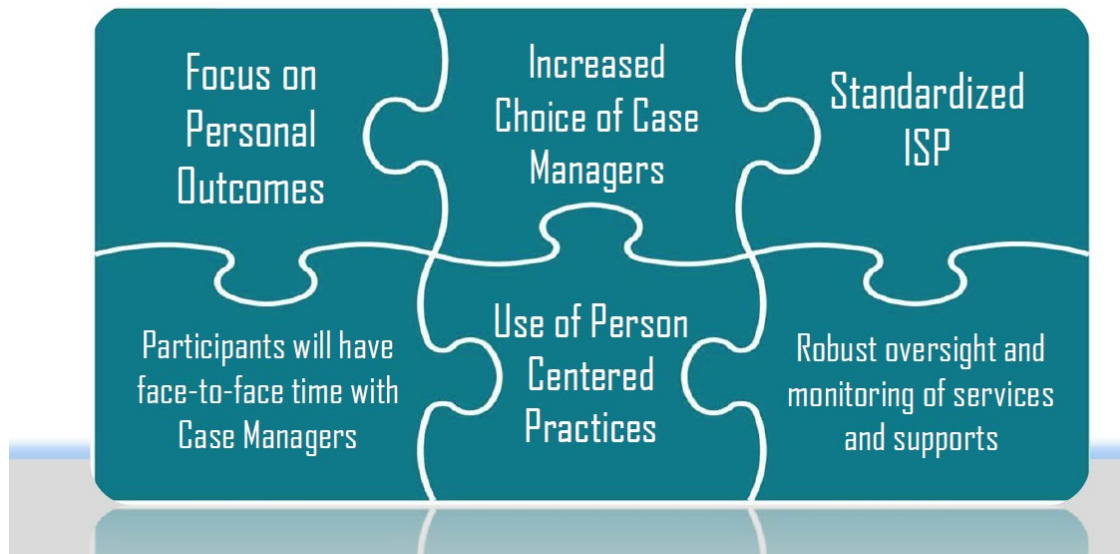
*and a number of other Alaska staff

South Dakota: Design Considerations

- Case management and multiple direct services were delivered to individuals with developmental disabilities by 19 Community Support Providers (CSPs)
- Concerns about choice and COI in person-centered planning were under discussion *before* the HCBS COI rules
- HCBS rules helped “nudge” the process
- Stakeholders were already engaged in discussions about case management
- Some parameters were already agreed upon...

Design Considerations: SD established intended outcomes of system change

Components of Optimal System



Courtesy SD DDD
Prepared by Dan Lusk

South Dakota: Design Considerations, cont.

- Additional system parameters :
 - The governor directed that the system redesign be budget neutral
 - No legislative “will” to use state employees
 - Stakeholders did not want to open up the State plan or use administrative case management, therefore,
 - Changes to the system would be managed through amending the HCBS waiver program to add the re-designed case management option

South Dakota Stakeholder Engagement

- State and stakeholders spent many months analyzing multiple case management options, especially the fiscal impact of separating case management from the regional agencies
- DDD sent out over 7,000 fliers inviting people to attend "Community Conversations" in 3 regions to learn about and provide input into the system redesign

South Dakota Stakeholder Engagement, cont.

- Most stakeholders agreed on a design that permitted all qualified case management providers who could demonstrate capacity to serve an entire region
- Over 500 people participated in the meetings or a webinar for people unable to attend the regional gatherings
- DDD provided a website for continuous input

South Dakota: Implementation Fiscal Considerations

- The re-design meant a significant loss of case management revenue for the CSPs
- In the end, due to on-going administrative and "internal" case management costs associated with services delivery, the CSPs retained 50% of their (former) case management funding to cover these activities
- New rates were developed for the CSPs and case management agencies
- The governor's requested budget-neutral shift to the new conflict-free case management system was achieved

South Dakota: Implementation Roles and Responsibilities

- Re-design meant redefining and clarifying the roles of the CSPs that formerly provided case management and direct services (to the same individual)
- Sorting out CSP and case management provider roles and responsibilities to everyone's satisfaction proved complicated
- The state and stakeholders developed a comprehensive, detailed document, the CSP and Case Management Responsibilities Chart, a "living" document updated as the system continues to evolve

[CPS and Case Management Responsibilities Chart](#)

A sample from the South Dakota CSP and Case Management Responsibilities Chart

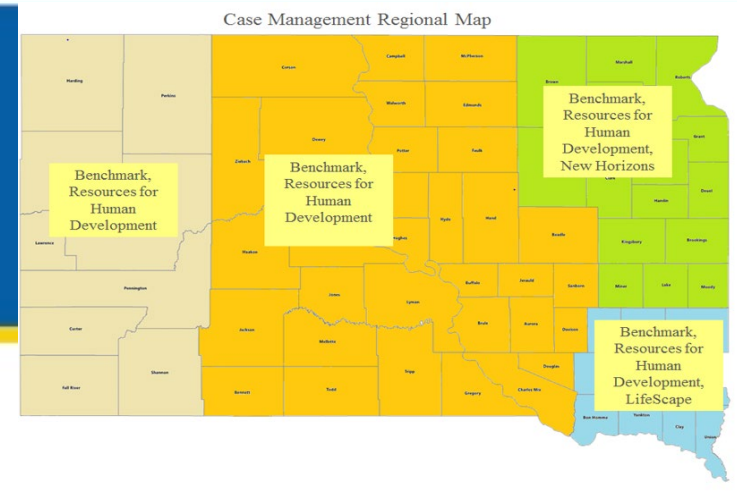


Conflict-Free Case Management

Responsibilities	Case Manager	Community Support Provider
<p>Point of Entry</p> <ul style="list-style-type: none"> Point of entry responsibilities <i>differ</i> when a participant transitions from an institutional setting (SDDC, nursing homes, HSC, etc.) Please refer to the SDDC manual for further instruction. 	<ul style="list-style-type: none"> Receive Referral Submit Funding Request to DDD Complete and submit DSS 240 or 265-e form to DSS Benefits Specialist Collect and submit LOC information to DDD CM is responsible to get to know the person, identify and coordinate services and supports as needed, CM identifies and writes the supports needed in the first 30 days at CSP until the initial ISP is held Assist the participant in application to preferred CSP(s) for direct services as requested Administer ICAP 	<ul style="list-style-type: none"> Review participant applications for direct services as received from CM Referral to CM organization in the event an applicant approaches a CSP first. CSP may provide a packet of information regarding CSP supports available as well as Case Management providers in the region Follow internal CSP process for new admissions (tours, staff matching, etc.)

South Dakota System Outcomes

- South Dakota now has two regional and two statewide case management only providers
- 20 Community Service Providers (CSPs provide direct services only)
- South Dakota, despite being a frontier state, did not use the rural “only willing provider option” as they were able to find case management providers with either regional or statewide capacity
- In only a two-year process, the South Dakota system achieved completely conflict-free case management
- The state attributes the success of an aggressive timeline to "years of real stakeholder engagement"



Individual Outcomes: Coming soon!

- Everyone (4,020 individuals) had to change to new case management agencies and individual case managers, but,
 - With intensive outreach and communication from DDD, 85% of individuals chose on their own
 - 15% of individuals were assigned case managers, but,
- All individuals have full freedom of choice to change case manager and/or case management provider agency at any time

Individual Outcomes: Coming soon! (cont.)

- Two (anecdotal) early outcomes noted are:
 - Waiver performance measures within the Service Plan Waiver Assurance have improved and
 - People are making more changes in service providers than previously, perhaps an early indicator of more awareness of choices
- South Dakota is just now looking at the impact of the change as reflected in the Council on Quality and Leadership (CQL) outcomes, the National Core Indicators (NCI) data and the state Systemic Monitoring and Reporting Technology (SMART) system

On-going Quality Improvement: Multiple Activities

- SD is invested in comprehensive Continuous Quality Improvement (CQI) using multiple approaches;
 - NCI data to benchmark system performance
 - SD has data from before change in case management
 - Just now (due to data lags) getting in data about after system change
 - Will look at impact on choice and case manager performance
- CQL
 - Provider performance and individual outcomes
- SMART
 - Initially focusing on compliance with case management requirements, such as conducting quarterly meetings and conducting face to face observations
 - As providers continue to meet the compliance requirements, will focus on quality, not just compliance measures

South Dakota: Lessons to Share

- Establish clear roles for the new and the former case management providers and re-visit this often
- Leverage federal mandate to achieve swift and effective change
- Have your IT system in place before you implement the changes
- Intensive and transparent stakeholder engagement is key to success

Alaska Senior and Disability Services (SDS): Design Considerations

- Alaska is big....
- Access to services is complicated by size and geography
- Agencies provided both direct services and care coordination to the same individual
- Eliminating COI entailed major changes for providers and individuals served, so design needed to be attentive to the disruptions
- Cross-disability effort including I/DD and A&D populations who use different models of service*

*Our focus is on A&D

Alaska Seniors and Disability Services (SDS): Design Considerations, cont.

- Need to be cognizant of the balance between creating access and assuring quality
- Alaska initially took a flexible/situational approach to what is permissible
- Tried not to be too proscriptive in order to allow for different models of service including independent and agency-based care coordinators

Alaska: Implementation

- Alaska SDS and stakeholders developed a statewide plan to eliminate/mitigate COI, establishing conflict-free independent care coordinators and dedicated care coordination agencies
- As case management is a waiver service, their Adults with Physical and Developmental Disabilities waiver was amended
- As part of the amendment SDS received permission from CMS to conduct a time-limited study looking at the impact of increased payment rates on competence and staff retention:
 - enhanced care coordination rate for a limited number of agencies in specific areas
 - additional training, quality oversight, and supervision
 - outcomes-focused data collection

Alaska: Implementation, cont.

- The overall new system structure separated case management (care coordination) from direct services:
 - Independent care coordinators
 - Agency-based care coordination
- New requirements, especially for independent care coordinators who were previously “embedded” in agencies:
 - Certification
 - Must meet standards for program administrators
 - Business requirements
- Allowing individual independent care coordination requires state structure for oversight and monitoring:
 - SDS approves all plans of care and authorizes all services
 - SDS conducts regular outreach and training for care coordinators
 - SDS participates in monthly care coordination network meetings

Criteria for granting the “only willing and qualified” provider option (only in specified census areas)

- (1) The number of conflict-free care coordinators could not meet the capacity for the number of recipients in the census area.
- (2) The number of conflict-free care coordinators certified by waiver type could not meet the capacity to serve recipients by waiver type.

Alaska: Only Willing Provider Protections

Alaska was granted the use of the only willing provider option due to the rural nature of many areas and got approval of a set of safeguards including:

- provider entities must administratively separate direct care and case management activities, including separate oversight
- care coordinators must take required training on person-centered planning and identifying conflict of interest
- care coordinators must assure they do not have a conflict of interest and do not provide any direct services to anyone
- all plans of care are reviewed and approved by SDS personnel
- individuals are informed of their rights, including filing a grievance

Alaska Pilot: Testing New Quality and Outcome Measures

- Care coordinators had sufficient time to ensure that waiver services were delivered and acceptable to the recipient in protecting the recipient's health, safety, and welfare
- Waiver services assisted the recipient in goal attainment
- Percentage of plans of care submitted on time and complete
- Number and type of staff learning objectives met
- Retention rate of care coordinators
- Percentage growth in number of certified care coordinators
- Cost reporting, submit annual cost survey data to the Office of Rate Review
- Coordinate annual 3rd party consumer satisfaction survey of recipients with results sent directly to SDS

Alaska: On-going Quality Monitoring of Care Coordination

- The pilot was approved for two years, but the state determined it did not have sufficient data to decide whether the pilot was effective.
- CMS approved waiver amendments for an extension of the pilot to run an additional two years, through 6/30/20.

Alaska: System Outcomes

- New care coordination agencies formed
- Individual practitioners needed guidance to manage their own small businesses
 - SDS provided assistance to become small businesses
 - SDS was flexible during the first year (2016) but has since tightened the compliance
 - Despite efforts, the number of individual care coordinators went from 400 to 250, although some have joined new agencies
- COI and only and willing qualified option
 - So far, five agencies have qualified for the only willing provider option with conflict of interest protections. Four of them are Alaska Native Health care providers

Wyoming Before Re-design.....

- Wyoming certified all providers as independent contractors, either as individuals or agencies
- Both could provide case management and other waiver services they were qualified for to anyone on their caseload
- No real advocacy
- Conflicts of interest
 - Case managers and case manager agencies essentially monitored themselves (self-policing)
 - Case managers hired by agencies were often faced with the dilemma between advocating or keeping their job
 - Individual case managers who were self-employed were often promoting their own waiver services (self-referral)

Wyoming: Design Considerations

- Moving to a conflict free system meant major re-design as case management for individuals with I/DD was provided by agencies that also provided direct services to the same individuals
- Assure that Wyoming complied with CMS conflict of interest provisions
- Minimize the number of rural exceptions to conflict of interest provisions

Wyoming: Design Considerations, cont.

- Minimize disruption to individuals
- Assure access to enough qualified case management providers to provide for choice
- Maintain a high quality network of case managers

Wyoming: Implementation

- Being a frontier state, Wyoming was concerned about possible gaps in case management coverage
- In reviewing data on case management providers, the state found that so far the network is adequate to promote choice, but,
- The state reviews the ratio of case management providers to individuals every six months taking into account the geographic location

Wyoming: Implementation, cont.

- In order to assure access to enough case managers, Wyoming decided to permit individual independent case management practitioners
- Provider qualifications, one of the following:
 - (a) Master's degree from an accredited college or university in one of the following related human service fields: Counseling; Education; Gerontology; Human Services; Nursing; Psychology; Rehabilitation; Social Work; Sociology; or a related degree, as approved by the Division; or
 - (b) Bachelor's degree in one of the above related fields from an accredited college or university, and one year work experience as a case manager or in a related human services field; or
 - (c) Associate's degree in one of the above related fields from an accredited college, and four years of work experience as a case manager or in a related human services field.

Wyoming Implementation: Fiscal Considerations

- Because Wyoming chose to allow for individual independent case managers, the state had to revisit and establish rates that didn't assume the case manager was part of an agency
- Wyoming did a comprehensive rate study that led to incremental increases in payment rates that brought case management rates to covering costs

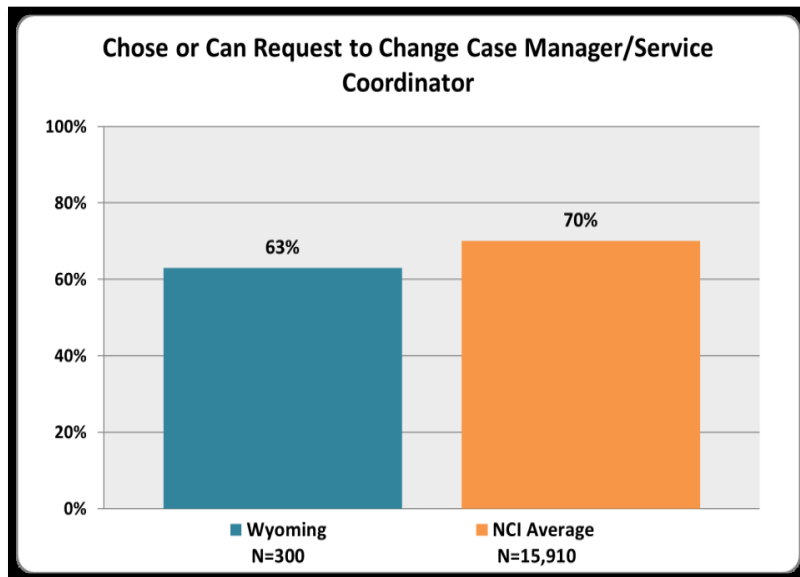
[WY SFY 2019 DD and ABI Waiver Rate Study](#)

Wyoming: Ongoing Quality Monitoring

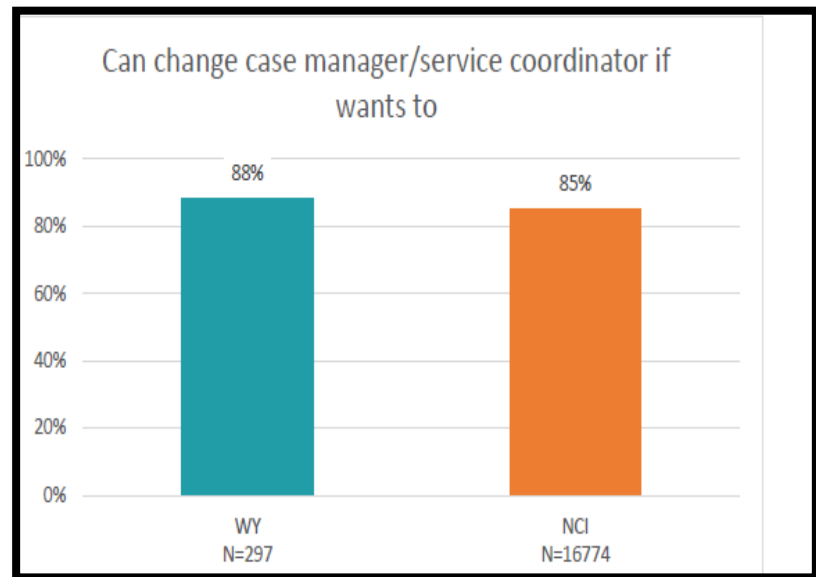
- Wyoming needed to redesign some quality monitoring in order to provide state oversight of the individual, independent case managers
 - State staff review one third of the individual service plans annually
 - Case managers get a quarterly report card to pinpoint issues
- Wyoming is initially focused on ensuring compliance with HCBS rules, but moving to outcomes next
- Wyoming joined the NCI and now has two years of data to use to assess case management and wider system performance

Wyoming: Individual Outcomes

NCI Adult Consumer Survey 2015-16
Chose Case Manager: 63%

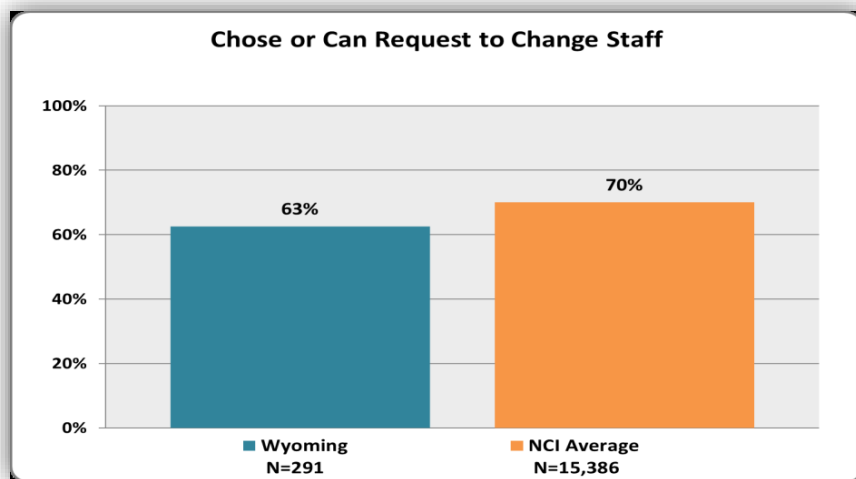


NCI Adult Consumer Survey 2016-17
Chose Case Manager: 88%

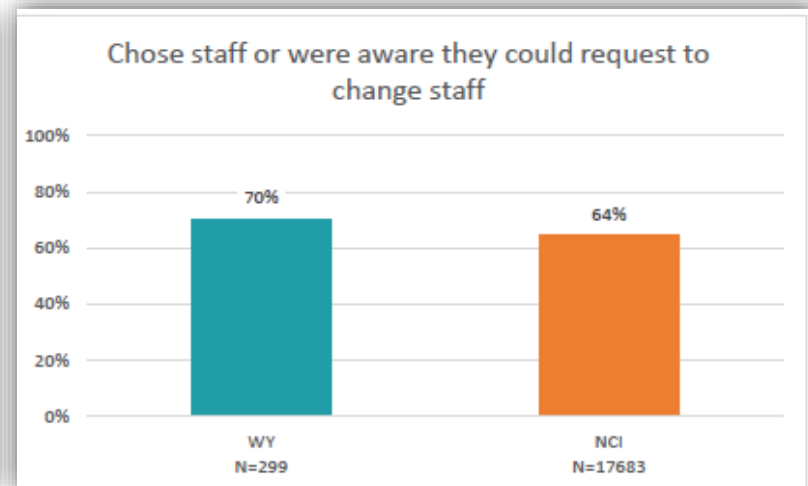


Wyoming: Individual Outcomes, cont.

NCI Adult Consumer Survey 2015-16
63% changed staff



NCI Adult Consumer Survey 2016-17
70% changed staff



Wyoming: System Outcomes

- Four years “in” the state reports good feedback from consumers
- Initial impact data
 - NCI data show improvements in many measures case management affects
 - Some measures unchanged, and
 - Room for improvement here and there
- Cost-based payment rate established
- Have an adequate network of providers
 - Allowing for independent practitioners makes sense in frontier areas

Wyoming: Lessons to Share

- Really engage your stakeholders, take the time to “bring everyone along”
- Put the HCBS rules to good use. Even though Wyoming started their re-design before the new HCBS rules, the rules helped move the effort along
- Assuring quality in a system that has independent practitioners not attached to agencies requires a different type of monitoring
- Work closely with direct service providers and case managers to ensure clearly defined roles and responsibilities as you redesign the system

Other Promising Practices: Using Data to Inform and Assess System Change

- Tapping data sources already in use (data mining)
 - Items from the Consumer Assessment of Healthcare Providers and Systems (CAHPS) HCBS Survey
 - Items from accrediting bodies such as Council on Quality and Leadership (CQL) and Commission on Accreditation on Rehabilitation Facilities (CARF)
 - Items from National Core Indicators (NCI) and NCI-AD (Aging and Disabilities)
- Waiver data and performance measures
 - Choice
 - Changes in service provider (ex. # individuals changed from agency that provided both case management and services)
 - Person-Centered Planning measures
- “Home-grown” sources
 - State-designed consumer surveys
 - State-designed system/individual outcome measures

CAHPS HCBS Survey

- CAHPS develops the Patient Experience Surveys (PES)*
- CAHPS notes: “Patient experience surveys focus on how patients experienced or perceived key aspects of their care, not how satisfied they were with their care.”
- The CAHPS HCBS survey has at least two sections that could be used to assess the impact of moving to conflict-free case management
- Selected questions from the survey could be used as indicators of the impact of mitigating COI

*<https://www.medicaid.gov/medicaid/quality-of-care/downloads/cahps-home-and-community-based-services-survey-10-english.pdf>

CAHPS HCBS Survey: Your case manager

- Selected examples of “indicator” questions
 - In the last 3 months, did you ask this {case manager} for help in getting any changes to your services, such as more help from {personal assistance/behavioral health staff and/or homemakers if applicable}, or for help with getting places or finding a job?
 - In the last 3 months, did this {case manager} work with you when you asked for help with getting other changes to your services?

CAHPS HCBS Survey: Choosing your services

- Since choice of provider may be compromised by conflict of interest, these measures may offer information about how your system functions.
- In the last 3 months, did your [program-specific term for “service plan”] include:
 - 1 None of the things that are important to you,
 - 2 Some of the things that are important to you,
 - 3 Most of the things that are important to you, or
 - 4 All of the things that are important to you?
- In the last 3 months, who would you have talked to if you wanted to change your [program-specific term for “service plan”]? Anyone else?
 - 1 Case Manager
 - 2 Other Staff
 - 3 Family/Friends
 - 4 Someone Else, Please Specify _____
 - 5 Don't Know

HCBS Waiver: Performance Measures as indicators of mitigating COI

- Number and percent of waiver participants whose records documented an opportunity was provided for choice of waiver services and providers.
- Number and percent of participants whose needs changed and whose service plans were revised accordingly
- Number and percent of waiver participants who have their personal goals addressed in the service plan through waiver funded services or other funding sources or natural supports.
- Number and percent of waiver participants who have their assessed needs addressed in the service plan through waiver funded services or other funding sources or natural supports.

National Core Indicators: Questions relevant to COI and case management system performance

- Can change their case manager/service coordinator if wants to*
- Case manager/service coordinator asks person what s/he wants*
- Services and Supports help person live a good life*
- Person was able to choose services they get as part of service plan*
- Proportion of people who receive the services that they need**
- Proportion of people whose case manager talks to them about their unmet needs **

* NCI In-Person Survey 2017-18 Final Report: https://www.nationalcoreindicators.org/upload/core-indicators/17-18_IPS_National_Report_PART_I.pdf

**NCI-AD: https://nci-ad.org/images/uploads/NCI-AD_Indicators_only_18-19_FINAL.pdf

Acronym Key

- A&D Aging and Disability
- CAHPS Consumer Assessment of Healthcare Providers and Systems
- CARF Commission on Accreditation of Rehabilitation Facilities
- CMS Centers for Medicare & Medicaid Services
- COI Conflict of interest
- CQL Council on Quality and Leadership
- CSP Community Services Provider
- HCBS Home & Community Based Services
- ICF/IID Intermediate Care Facility for Individuals with Intellectual Disabilities
- I/DD Intellectual and Developmental Disabilities
- ISP Individual Service Plan
- NCI National Core Indicators
- NF Nursing Facility
- SDS Senior and Disabilities Services
- SPA State Plan Amendment

Where to Find Help

- CMS Website:

<https://www.medicaid.gov/medicaid/hcbs/guidance/index.html>

- Engage with the Regional and Central Office staff

- Request TA:

<http://www.hcbs-ta.org/form/request-technical-assistance>

- For additional information:

<http://www.hcbs-ta.org>

Wrap up and Questions/Answer Period

Please complete a brief (7 question) survey to help CMS monitor the quality and effectiveness of our presentations.

Please use the survey link to access the survey:

<https://www.surveymonkey.com/r/MitigatingCOI>

(The survey link CAN'T be opened within the webinar platform)

WE WELCOME YOUR FEEDBACK!