



Conflict of Interest in Medicaid Authorities

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Overview: Questions to be Addressed

- What is case management, and why is it important?
- How can conflict arise in case management?
- What problems arise when case management is conflicted?
- How can conflict be eliminated?
- What are CMS's new requirements for eliminating conflict of interest (COI)?

What is Case Management?

Case Management Is...

- A “key” or “linchpin” service in the world of long term supports and services (LTSS)
- Both the human services system *and* the individual/family rely on case management.
 - The “system” needs case management to keep the program running.
 - The individual and family need case management to help them build and sustain their lives.

Case Management System Functions

(Some of which work for individuals as well)

- Oversee provider performance
- Operate front line on quality compliance/outcomes/safety
- Uphold key Medicaid requirements, such as:
 - Informed choice and freedom of choice
 - Assuring rights
- Assure compliance with regulations
 - Keep the required records which...
 - Keeps the money flowing by supporting activities such as:
 - Level of care screenings
 - CMS required annual reviews
 - Assuring people keep financial eligibility for Medicaid
 - Assuring individual plans match billing, etc.

Individual and Family Functions

- On behalf of the individual and family, case managers:
 - Engage in high quality, person-centered planning that keeps the full focus on the person.
 - Serve as the front line for information and assistance.
 - Provide a source of knowledgeable and thoughtful strategies to help individuals make decisions about what is important *to* them and *for* them.
 - Help individuals and families “navigate” the system.
 - Serve as the front person for addressing problems related to outcomes and quality.

Case Management and PCP

- Person Centered Planning (PCP) depends heavily on quality case management.
- The case manager's core responsibility is to use the individual's preferences to identify:
 - What is important *to* and *for* the *person*
 - Key outcomes
- PCP is *not* “fitting” the person to the system, it's *finding a fit* between the person's needs and preferences and paid/unpaid/generic support and service responses.

Requisites for Good Case Management

- Case managers are only as strong as the skills, support, technical assistance, and authority they have.
- Therefore:
 - Case management standards, values, and expectations must be clear and consistent.
 - The state must provide continuous training and oversight.

Requisites for Good Case Management

- Caseload sizes that match scope of responsibility and account for the level of support individuals will need.
- Accessible supervision and consultation.
- Freedom from budget decisions—using resource allocation so that the person and case manager already know the budget and can just get to work.

Requisites for Good Case Management

- Responsibility *and* authority
 - Case managers must be able to act as the conduit between state authorities and the providers & individuals who receive services
 - Case managers must receive adequate support from their supervisors and the state.
 - When case managers are seen as “just” another kind of service provider, they cannot effectively exercise authority.

Sources of Conflict in Case Management

Case Management COI

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

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

Choice

- A key tenet of PCP -- and a key requirement for Medicaid -- is full freedom of choice of types of supports and services and individual providers except where the program has authorized restrictions (such as managed care).
- A case manager's job is to help the individual and family become well-informed about *all* choices that may address the needs and outcomes identified in the plan.
- COI may promote conscious or unconscious “steering.”

Quality and Outcomes: “Self-Policing”

- Self-policing occurs when an agency or organization is charged with overseeing its own performance.
- Puts the case manager in the difficult position of:
 - Assessing the performance of co-workers and colleagues within the same agency.
 - Potentially having to report concerns to their mutual supervisor or executive director.

Fiduciary Conflicts

- Incentives for either over- or under-utilization of services
- Possible pressure to steer the individual to their own organization.
- Possible pressure to retain the individual as a client rather than promoting choice, independence, and requested or needed service changes.

Consequences of Conflict: Example

According to National Core Indicators (NCI) in one state that allowed direct service providers to supply case management:

- Individuals or their representatives indicated satisfaction with their case managers.
- 90% say case manager helped with getting what they need or want.
- **But** only 33% indicated they can make changes to their services and budget if needed – versus the national average of 73%.
- **Although** the state's system is based on full freedom of choice of case management agency, only 53% of respondents indicated they chose their case manager.

CMS Conflict of Interest Requirements

Recent CMS Rule

- Published in the Federal Register January 16, 2014.
- 79 FR 2948
- “Medicaid Program; State Plan Home and Community-Based Services, 5- Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community- Based Services (HCBS) Waivers”

COI under 1915(c) Home and Community Based Services (HCBS) Waiver: Basics

- Requirements at 42 CFR 431.301(c)(1)(vi)
- States are required to separate case management (person-centered service plan development) from service delivery functions.
- 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.

COI under 1915(c): When Conflict Present, State Must:

- Demonstrate to CMS that the only willing and qualified case manager 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 *only* with the express approval of the state.
- Provide direct oversight and periodic evaluation of safeguards.

COI Under 1915(c): Additional Points

- The requirements listed are the minimum; states may impose additional ones.
- CMS is actively engaged in conversations with states regarding situations that arise as states submit applications and renewals, about how states will meet these requirements.

COI Under 1915(i)HCBS State Plan Services:

- All of the requirements of 1915(c) apply.
- Additional requirements at 42 CFR 441.730(b)
- Under no circumstances can a direct service provider determine eligibility – this applies to financial *and* functional eligibility.
- Individuals or entities that evaluate eligibility or provide case management services *cannot*:
 - Be related by blood or marriage to the individual;
 - Be empowered to make decisions for the individual; or
 - Have a financial interest in any entity paid to provide care to the individual.

COI Under 1915(k) Community First Choice (CFC): Basics

- Requirements at 42 CFR 441.550(c)
- Not directly connected to COI requirements for 1915(c) or 1915(i).
- Individuals or entities providing case management (developing 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

COI Under 1915(k): Exception

- Providers of CFC can provide case management *only* when:
 - The state demonstrates that they are the only willing and qualified entity/entities in a geographic area;
 - The state devises conflict of interest protections, including separation of assessment/planning and HCBS provider functions within entities; and
 - Individuals are provided with a clear and accessible alternative dispute resolution process.

COI and Managed Care Entities (MCEs)

- MCEs can provide case management and perform functional assessments.
- BUT: If MCEs own and operate direct LTSS services (such as personal care or Nursing Facility) and provide case management, they must demonstrate to CMS that they are the only willing and qualified case manager. If the MCE contracts for but doesn't operate or own direct services, it is not considered a conflict of interest for the MCE to perform case management.
- MCEs cannot determine eligibility for programs. If an MCE performs direct assessments that result in scores that determines level of care (LOC), the state must perform representative sampling to ensure accuracy of LOC. This is a requirement of all Medicaid programs.
- Appeals process must be in place to avoid decreases in care – must include entities outside MCEs who support individuals in appeals process.

Summary

- Conflict of Interest requirements vary by the authorizing authority (1915(c), 1915(i), 1915(k), MLTSS)
- All conflict of interest regulations are in effect
 - They are not authorized to be part of a transition plan submitted to CMS for home and community-based settings
- Technical Assistance is available upon request
- CMS will be holding additional webinars to address COI implications

Additional Resources on Medicaid.gov

- Recent guidance: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>
- Page with webinars: <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/hcbs-training.html>

Questions?