

State Questions Regarding Conflict-Free Case Management and Conflict of Interest Requirements

1/21/2015 Balancing Incentive Program National Call

1. Managed care has been implemented in the state, but the MCOs are not yet responsible for the state's 1915(c) waivers. Can private providers (Medicaid providers) provide both case management and functional assessments?

Yes, entities can conduct functional assessments and provide case management. Under the conflict of interest standards, those same entities cannot also be the direct service providers, except when a state Medicaid agency demonstrates to CMS that the only willing and qualified entity to perform independent assessments and development of person-centered service plans in a geographic area is also a direct service provider and devises conflict of interest protections. A functional assessment can be conducted to determine eligibility and/or inform the person-centered service plan.

2. Are the conflict free case management guidelines under BIP aligned with the HCB "Final Rule" requirements for waivers?

No. Under the Balancing Incentive Program requirements, if the same entity conducts case management/assessments and direct services, the state must implement mitigation strategies to reduce conflict. See [example mitigation strategies](#). The conflict of interest requirements in the HCBS final rule are different. Case management must be conducted by a different entity than the provider that renders direct services, unless there are no other willing or qualified entities. In the case of no other willing or qualified entities, the state must devise conflict of interest protections, which must be reviewed and approved by CMS. Just because the state's processes meet Balancing Incentive Program requirements does not mean that the state meets requirements under other authorities. States may view these different requirements as a staged process, where they first come into compliance with Balancing Incentive Program requirements and then gradually come into compliance with the conflict of interest requirements of other authorities.

3. How do conflict free case management requirements align with the thinking around the Health Homes and the integration of primary health care and behavioral health care?

Under Balancing Incentive Program requirements, the same entity may conduct case management/assessments and direct services as long as there are mitigation strategies in place.

4. The state's HCBS Adult DD Waiver provides for independent entities to provide the assessment, case management functions, and monitoring of implementation of the service plan, however; the HCBS provider develops the person-centered service plan. In reviewing the new BIP and new HCBS regulations, pg. 3030 (vi) it states, "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.” Based on the HCBS regulations, it appears that the HCBS provider cannot develop the person-centered service plan.

Yes, the conflict of interest regulations do not allow the provider of HCBS for the individual to conduct the person-centered service plan, except when a state Medicaid agency demonstrates to CMS that the only willing and qualified entity to perform independent assessments and development of person-centered service plans in a geographic area is also a direct service provider and devises conflict of interest protections.

5. Which agency in the state must provide oversight for conflict of interest under 1915(c) waivers?

Yes, the Medicaid agency is responsible for oversight of administrative and operational functions. As with any Medicaid authority, the Medicaid agency can delegate certain functions to other entities. However, the Medicaid agency is still accountable and responsible for oversight of delegated functions. States are required to describe and receive CMS approval of the waiver’s administrative and operational functions in the 1915(c) waiver application.