

## Recommendations

The Task Force recommendations were designed to address the seven areas subject to potential conflicts of interest initially identified by the University of Southern Maine in the study, Addressing Potential Conflicts of Interest Arising from the Multiple Roles of Colorado's Community Centered Boards and outlined in the June 2009 Performance Audit Conducted by the Legislative Audit Committee, Controls Over Payments, Medicaid Community-Based Services for People with Developmental Disabilities, Department of Health Care Policy and Financing and Department of Human Services Performance Audit.

1. Information and Referral—CCBs are the focal point for clients and families to learn of available services and supports in the community. As a direct provider of care, the CCB has the discretion to limit access to information about other service provider agencies in favor of its own providers.
2. Eligibility Determination—CCBs conduct level-of-care determinations giving the CCB discretion to limit equitable access to services and providing CCBs an opportunity to screen out difficult-to-serve individuals.
3. Administration of the Waiting List—CCBs are responsible for managing waiting lists for services. This gives the CCB discretion to favor one individual over another or to fill openings in its own service provider agencies prior to filling vacancies at private service provider agencies.
4. Service Planning—CCBs create service plans and could identify service needs that benefit its own service providers or steer consumers to the CCB versus private providers for services.
5. Provider Selection—CCBs are responsible for assuring that clients are informed of all qualified providers in their area, however, the CCB could steer clients to the CCB's providers rather than to private service providers.
6. Rate Negotiation—CCBs can set different payment rates for providers that choose to have the CCB process all Medicaid billings on their behalf. This allows CCBs to pay its own providers more for the same service than it would pay other service provider agencies that choose to bill through the CCB.
7. Monitoring Services—CCBs are responsible for monitoring the implementation of the client's individualized plan, tracking and responding to client complaints, and reporting incidents. This role could allow CCBs to enforce a different standard for quality of care for its own providers versus for private providers.

For the purposes of this Task Force, the Departments utilized the following definition of conflict of interest: “A “conflict of interest” is a “real or seeming incompatibility between

<sup>1</sup> BLACK'S LAW DICTIONARY, Eighth Ed., Thomson West, St Paul, MN (2004) in Addressing Potential Conflicts of Interest Arising from the Multiple roles of Colorado's Community Centered Boards (2007), Booth, M. & Griffith, E., Institute for health Policy, Muskie School of Public Service, University of Southern Maine.

one's private interests and one's public or fiduciary duties.”<sup>11</sup> This definition clarifies that conflicts may exist in a system whether or not they are acted upon at any given time. The Task Force decided that they would attempt to reach consensus in decision-making regarding their recommendations and would make decisions by a majority vote if they could not. They also determined that in any cases where votes were taken, their report would reflect the vote taken and briefly describe the respective positions of the majority making the recommendation and any substantial minority opinion. It is the belief of the Task Force that this will give the Departments the most thorough information to consider regarding their deliberation process.

Specific recommendations, regarding how each individual function should be addressed are presented first. There is a general recommendation regarding the separation of certain functions overall, that follows. There is a final recommendation regarding the need for fiscal analysis of all recommendations prior to any implementation. This section will end with a list of topics the Task Force would like the Departments to consider when making their decisions.

## **Information and Referral**

### **Recommendation 1 (16 votes)**

**Formal information and referral functions regarding all DD Waivers, services, supports and Medicaid programs be assigned to either, existing single access point entities (SEPs), or a similar system of entities contracting with the State to provide initial information and referral for persons wishing to access any of these identified services.**

- **The SEPs or contractors will function completely independently from (separate finances and governance) any service providers.**
- **These SEPs or contractors will be available in local geographic areas throughout the State.**

**This change resolves the conflict of interest issues inherent in the formal information and referral process.**

- **16 of 17 voting Task Force Members believe this formal information and referral function should be coupled with eligibility determination.**

Since only one Task Force member voted against this recommendation, no formal minority position was identified.

## **Eligibility Determination**

### **Recommendation 2 (Full Consensus)**

Eligibility determination for all DD Waivers, services, supports and Medicaid programs, be assigned to either, existing single access point entities (SEPs), or a similar system of entities contracting with the State to provide eligibility determination for persons wishing to access any of these identified services.

- The State will have final authority to approve eligibility.
- The SEPs or contractors will function completely independently from any service providers (separate finances and governance).
- These SEPs or contractors will be available in local geographic areas throughout the State.

This change resolves the conflict of interest issues in the eligibility determination process.

- 16 of 17 voting Task Force Members voted that eligibility determination should be coupled with formal information and referral functions.

### **Administration of the Waiting List**

#### **\*Recommendation 3 (Full Consensus)**

Wait List administration, including case management necessary while someone is on the Wait List and initial notification, up to the point when the consumer is referred for service planning, be done by an independent third party who is not a service provider.

- The third party could be the State Division for Developmental Disabilities or the Department of Health Care Policy and Financing.
- Consideration to geographic location of the consumer should be considered as well as length of time on the wait list when openings in services occur and people can be removed from the wait list and begin receiving services.

This change will resolve the conflict of interest issues in administration of the Wait List.

This change could result in more consistent administration throughout the State and in data that is more meaningful about who is actually currently waiting for needed services and who is on the wait list for future needs.

\*The Division for Developmental Disabilities in CDHS is currently managing the waiting list for all HCBS DD Waiver programs with the exception of the Supported Living Services Waiver. Waiting list case management is currently being conducted by CCBs.

## **Service Planning (Case Management)**

### **Recommendation 4 (9 votes)**

**Service planning (case management) will be done by an entity (or entities) that can provide local availability of case management services and is independent, with separate finances and governance, from those entities responsible for eligibility determination or service provision.**

- **These entities will assist the self-advocate or family with provider selection and monitor individual service plan implementation.**
- **This change should be implemented by a ‘phasing in’ process with as little disruption to consumers and families as possible.**
- **Careful consideration should be given to needs and conditions of rural and frontier communities with a possible process for formal exceptions in some small or remote locations.**

**This separation of functions will resolve conflict of interest issues.**

**Disruption to consumers and families receiving service planning in the current structure could be minimal. It is possible, and even likely in some circumstances, that the same Case Managers would be working with the same consumers, but be employed by different organizations.**

**Offering consumers and families a choice to seek services in a system where potential conflicts of interest exist does not address or resolve the conflicts of interest.**

### **Minority Position (8 votes)**

CCBs continue to offer both service planning (case management) and direct service provision. Consumers and families would have a choice between the CCB and another entity (the local SEP or another identified third party), to provide service planning.

- The entity that provides service planning, either the CCB or another entity, would monitor individual service plan implementation.

This option offers consumers and families choice.

It leaves much of the existing structure intact, which could cause less disruption to families.

It recognizes that the majority of consumers and families report being satisfied with their current service planning (case management).

Separation of functions will not prevent personal favoritism by individual case managers for specific service providers.

While this option does not resolve conflicts of interest, it may mitigate the likelihood that they will occur.

## **Provider Selection**

### **Recommendation 5A (9 votes)**

**Assistance with provider selection will be done by local entities that are independent, with separate finances and governance, from those responsible for eligibility determination or service provision.**

- **These entities will also conduct service planning (case management).**
- **Careful consideration should be given to needs and conditions of rural and frontier communities with a possible process for formal exceptions in some small or remote locations.**

**This separation of functions will resolve conflict of interest issues.**

**Offering consumers and families a choice to seek services in a system where potential conflicts of interest exist does not address or resolve the conflicts of interest.**

### **Minority Position (8 votes)**

CCBs continue to offer both assistance with provider selection and direct service provision. Consumers and families would have a choice between the CCB and another entity (the local SEP or another identified third party), to assist with provider selection.

- These entities would also conduct service planning.

This option offers consumers and families choice.

It recognizes that that the majority of consumers and families report being satisfied with their current service planning (case management).

Separation of functions will not prevent personal favoritism by individual case managers for specific service providers.

While this option does not resolve conflicts of interest it may mitigate the likelihood that they will occur.

### **Recommendation 5B (Full Consensus)**

**There should be a uniform, standardized, criteria-based and transparent process utilized by every entity assisting with provider selection throughout the State.**

- **This process must include informed consumer and family choice of providers.**
- **This process must include a statewide tracking system to identify which providers are serving which consumers.**

**This change will promote fair and equitable access to service provision throughout the State.**

**This change will also improve local communities' abilities and the State's ability to do more effective development and recruitment of providers and community planning.**

### **Rate Negotiation**

#### **\*Recommendation 9 (Full Consensus)**

**The State will set rates for all services for people with developmental disabilities.**

**Independent contractors and other service providers should be able to bill the State directly or contract with the State through a third party billing and payment entity (OHCDS or other billing agent).**

- **The OHCDS function should remain with CCBs.**

**This system addresses conflicts of interest by instituting a common rate system based on intensity of service.**

**It allows small independent providers to have assistance with difficult and complicated Medicaid billing that might eliminate them from providing services if they were required to do it themselves.**

**\*The Departments have completed this recommendation. Standardized rates have been set.**

### **Monitoring Services**

#### **Recommendation 6 (9 votes)**

**Service monitoring should be an included function in the duties of the entity that provides service planning (case management) separate from service provision.**

**The separation of functions will resolve conflict of interest issues.**

### Minority Position (8 votes)

If service planning (case management) is not separated from service provision and families can choose a CCB or another entity to provide service planning, service monitoring should be provided by the State Division for Developmental Disabilities or another independent third party contractor.

This would promote unbiased monitoring of services.

### **Recommendation 7 (Full Consensus)**

**Incident investigations involving mistreatment, abuse, neglect or exploitation (MANE investigations) should be conducted by an unbiased entity, either a State agency or contractor unaffiliated with either the involved service provider or consumer.**

**This will promote fair and unbiased investigations in these serious circumstances.**

### **Recommendation 8 (Full Consensus)**

**An independent third party entity should handle complaints about quality of services and appeals of decisions affecting services. The third party entity should be unaffiliated with either the complaining or appealing consumer or the entity about which the complaint or appeal is being made.**

- **This would not be the same entity that conducts MANE Investigations.**

**Independence in addressing complaints and appeals promotes a fair and unbiased process.**

### **General Recommendation**

#### **Recommendation 10 (9 votes):**

**Formal Information and Referral, Service Planning, Provider Selection and Monitoring of Services must be separated from Service Provision.**

- **Governance and financial direction of entities providing services should be independent from entities providing any of these functions.**
- **Consideration of rural or frontier communities must be given if this change is made.**

**This separation of functions will resolve conflict of interest issues. Multiple recommendations regarding how to separate each of these functions were presented earlier in this report.**

**Offering consumers and families a choice to seek services in a system where potential conflicts of interest exist does not address or resolve the conflicts of interest.**

Minority Position (8 votes):

CCBs continue to provide all of these functions simultaneously and offer each family a choice between their local CCB for all functions (in 19 of 20 CCB service areas) and an additional option for Formal Information and Referral, Service Planning, Provider Selection and Monitoring of Services.

- This option could include a different CCB in a different area, a 21<sup>st</sup> CCB designed to offer consumers and families choice throughout the State or another third party depending on the function.

This option would offer consumers (and families) choice.

This option would leave much of the existing structure intact, which may cause less disruption to families.

It recognizes that the majority of consumers and families report being satisfied with all of the functions they are currently receiving.

Separation of functions will not prevent individual favoritism by individuals providing different functions.

## **Additional Recommendation**

### **Recommendation 11 (Full Consensus)**

**These recommendations are being presented without a clear indication of their fiscal impact (either positive or negative) to the State. The Task Force recommends that the Departments and any implementation group created to address these recommendations complete a comprehensive fiscal analysis of these recommendations prior to implementation to ensure that adequate resources are available and that services to people with developmental disabilities will not be negatively impacted.**

- **The Departmental Representatives on the Task Force indicated that the first responsibility of the Task Force was to make recommendations based on the best possible outcomes for individuals with developmental disabilities, rather than eliminating options based solely on anticipated costs.**
- **While the Task Force did address some components of cost and funding in their analysis of issues, they did not have sufficient time to complete a comprehensive fiscal analysis of these recommendations.**