



COLORADO

Department of Health Care Policy & Financing

Department Responses **to the** **Report of the Task Group on Conflict Free Case Management**

In February 2014, the Department of Health Care Policy and Financing (the Department) convened a Task Group of stakeholders charged with developing recommendations for the implementation of a conflict free case management system in Colorado. The Task Group submitted a report consisting of policy recommendations for the implementation of conflict free case management. The Task Group did not have consensus on all recommendations, however, decided that all recommendations would be submitted. This report was submitted to the Department on October 31, 2014 for review and consideration. The Department reviewed the recommendations submitted by the Task Group and considered the financial impact, sustainability, and systemic impact of each recommendation. Based on these considerations, the Department developed responses to each recommendation submitted by the Task Group. The Department acknowledges, with appreciation the time and dedication of Task Group members in developing these recommendations.

Task Group Members:

Amy Ibarra - Horizons Specialized Services
Amy Taylor - Parker Personal Care Homes
Beverly Winters - Developmental Disabilities Resource Center
Bob Ward - Parent
Danny Villalobos - Self-Advocate
David Ervin - The Resource Exchange
Edward Arnold - Parent
Hanni Raley - The ARC of Aurora
Joe Manee - Self-Advocate
Kathy Hill - Goodwill Industries of Denver
Leslie Rothman - Imagine!
Linda Medina - Envision
Maureen Welch - Parent
Paul Spragg - Developmental Disability Consultants
Rob Hernandez - Provider

Task Group Recommendations and the Department's Responses:

Task Group Recommendation

1. Option One: Complete Separation of Case Management from direct services

Agencies must decide whether to provide case management (CM) or HCBS direct services, but may not provide both.

Department Response:

This option is in compliance with the federal Centers for Medicare and Medicaid Services (CMS) regulation effective March 17, 2014, regarding separation of Home and Community Based Services (HCBS) case management from direct service provision. The federal regulation states that, "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. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process." (42 CFR § 441.301(c)(1)(vi)). Option One is a viable option.

Task Group Recommendation

2. Option Two: Internal Co-existing Case Management and HCBS Direct Services

Department Response:

Option Two complies with the CMS' regulation. Agencies may offer both case management and HCBS direct services but not to the same individual.

Task Group Recommendation

3. Option 3: Person-Centered Choice Informed Consent Opt-out of Conflict Free Case Management

Individual makes an informed consent to opt-out of separate case management and HCBS direct services.

Department Response:

Option Three does not comply with the CMS federal regulation cited above. The regulation states the only situation in which a person can receive both HCBS case management and

direct service provision from the same agency is when there is no other willing and qualified provider. This situation must be demonstrated by the state and approved by the CMS. Additionally, the CMS has provided direction that the individual must be offered informed choices regarding the services and supports they receive and from whom. However, there cannot be any conflict of interest. The CMS has further stated that the regulations for person-centered planning encompass the regulations pertaining to conflict of interest. In order to continue receiving the Federal Medical Assistance Percentage (FMAP) that provides 51.01% of funds currently supporting Home and Community Based Services waivers, the Department must comply with the federal regulation. Option Three is not a viable option.

Task Group Recommendation

4. The Case Management Agency (CMA) will provide the following for all individuals receiving services:

- Annual Assessment, as defined in the Targeted Case Management (TCM) Rules
- Service Plan Development
- Service Plan Monitoring

Department Response:

The definition is not changing. The definition of TCM includes comprehensive assessment, service plan development and revision, referral and related activities, and monitoring and follow-up. The case manager will continue to perform all TCM activities, regardless of the conflict free case management model implemented.

Task Group Recommendation

5. The CMA will provide referral and related activities to help an individual obtain needed services, though the family or individual may conduct these activities, without being paid, at the discretion of the individual unless guardianship is in effect. This option will be available when guardianship is in effect, at the discretion of the guardian.

Department Response:

Case managers are responsible for providing referral and related activities, as part of TCM. This can be done at a minimum if the individual, his or her family, and/or guardian choose to be more active in this process. In this situation, the case manager can provide as much or as a little assistance as needed, as long as the case manager performs his or her general responsibilities as required per TCM regulations. For all Medicaid HCBS needed services, the case manager must complete the Prior Authorization Request (PAR) before services can begin.

Task Group Recommendation

6. Family-provided case management: As noted above, Service Plan implementation can be done by the family, as mutually agreed upon and without pay, rather than the CMA.

Department Response:

Correct. However, Annual Assessment, Service Plan development and monitoring must be completed by a CMA which must remain with a qualified case manager.

Task Group Recommendation

7. The Department will need to actively support the creation of a new market sector for independent case management services.

A thriving and robust cadre of CMAs will provide choice of CMA and case manager for individuals receiving Intellectual and Developmental Disabilities (I/DD) services in Colorado.

Department Response:

The Department will develop a plan with stakeholders over the course of the next year to transition from the current model for case management delivery to a new model. That model will be developed in compliance with the new federal regulations requiring conflict free case management and include the accepted recommendations from the CFCM Task Group and the Community Living Advisory Group that are consistent with the new regulations.

Task Group Recommendation

8. Organizations providing case management services must comply with all federal regulations regarding separation from other entities providing direct services.

Department Response:

All federal regulations along with state statute and regulations must be followed when providing HCBS case management.

Task Group Recommendation

9. The need for an exceptions process that anticipates the possibility of insufficient access to independent case management services.

- Exceptions: In the case where an individual may not have access to a case manager such as rural or underserved areas, the final HCBS rule allows for the

state to devise conflict of interest protections. Any exception must be approved by CMS, per the final regulation.

- No Exceptions: Allows for more Case Management Agencies to emerge, offering maximum choice to individuals receiving services.

Department Response:

The federal CMS regulation requires the state to prove that there is no other willing and qualified entity to provide case management and/or develop the person-centered service plan separately from providing HCBS direct services. The request to allow one entity to provide both must be approved by the CMS and the state must devise conflict of interest protections.

Task Group Recommendation

10. The need for an exemption provision.

- Exemption Provision: In order to accommodate Person-Centered choice and minimize disruption, an exemption provision should be included for individuals who have a relationship with an agency that provides both CM and direct services and who does not want to terminate either relationship.
- No Exemption Provision: In the final HCBS rule, the only exemption provision is for rural and underserved areas where there are no other options for case management and/or Service Plan development and direct service provision. In this case, the State must devise conflict of interest protections.

Department Response:

HCBS case management must comply with the federal regulation regarding separation of case management from direct service provision. An individual will not have the choice to receive case management and direct services from the same agency, with the exception of an agency serving an area where no other option is available. In the case where no other option is available, the Department must demonstrate to CMS that no other agency is available and receive approval from CMS for that agency to provide both case management and direct services.

Conclusion

The work of the Task Group was difficult, requiring a commitment of time, energy and effort as they grappled with long standing practice and cultural issues in order to consider various options for best practices in case management services that also comply with new federal regulations. Ultimately, their work will serve to inform the planning process to transition from the current system to a new system of case management services. The Department gratefully acknowledges their work and commitment to developing the best systems to support individuals with intellectual and developmental disabilities to live everyday lives in their communities.

