

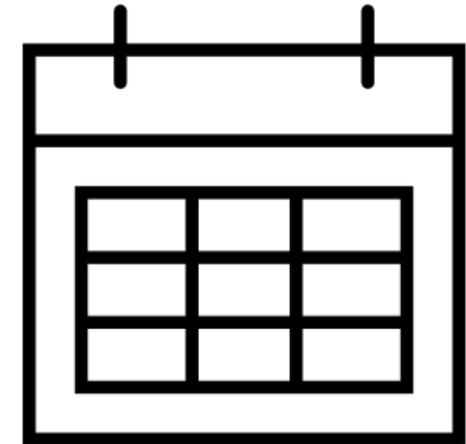
# HOME- AND COMMUNITY- BASED SERVICES CONFLICT OF INTEREST

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November 2021

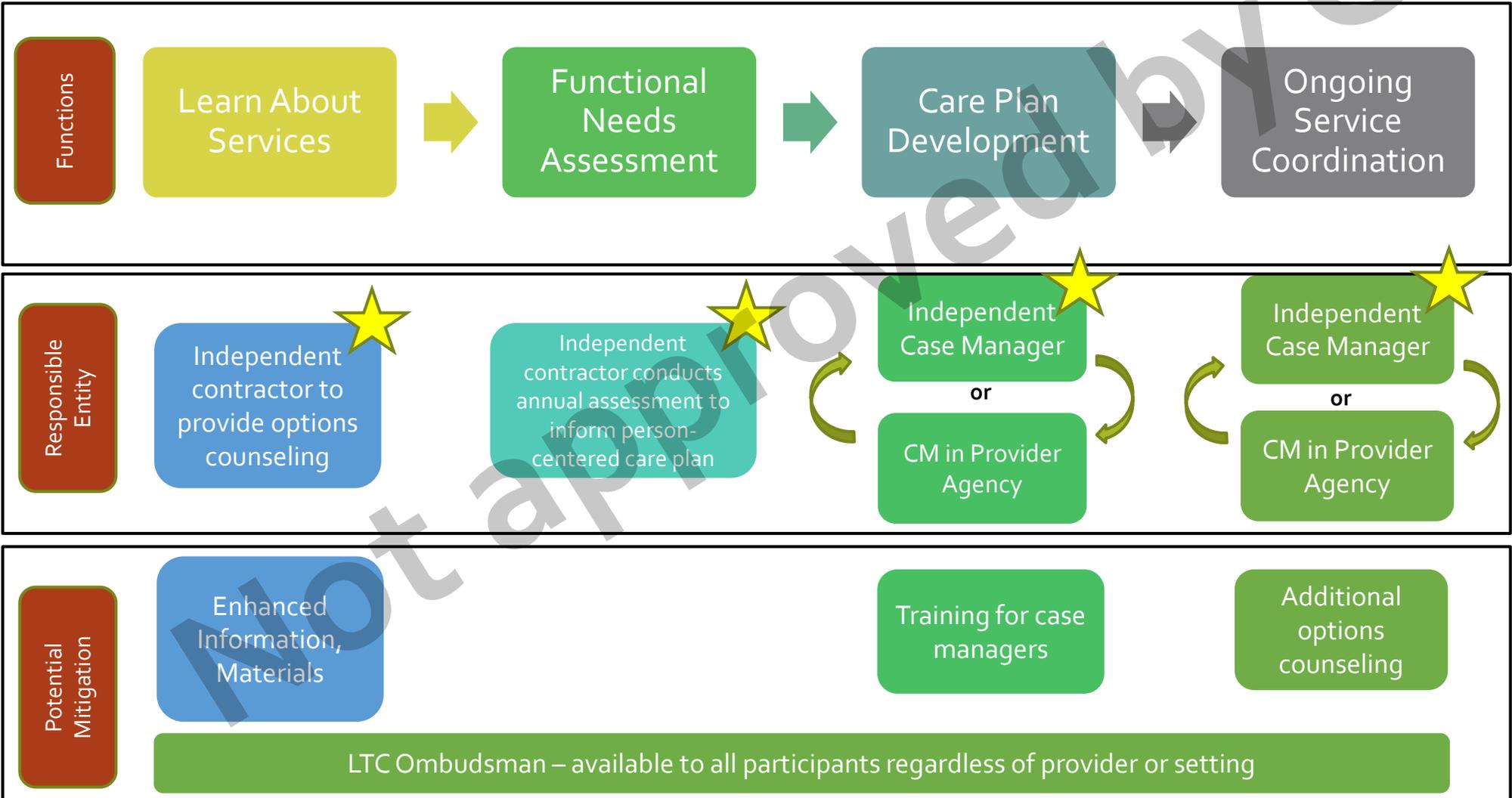
# Vermont History

- **January 16, 2014:** the Centers for Medicare and Medicaid Services (CMS) issued final regulations on home- and community-based services (HCBS) requirements (79 FR 2947).
- **2016:** AHS asked CMS for guidance on how to best ensure compliance with person-centered planning requirements.
- **2018:** AHS initiated workgroup to assess HCBS conflict of interest.
- **February 2019:** Began stakeholder engagement effort to educate and begin to collect feedback on potential solutions.
- **September 2019:** Starting with Developmental Disabilities, proposed a menu of options to stakeholders and collected feedback.
- **January 2020:** Presented 'choice' model to CMS; paused efforts due to COVID response.
- **2021:** Held additional meetings with CMS; provided additional info as requested.
- **October 2021:** CMS informed Vermont that the proposed 'choice' model is not an acceptable end state, and that Vermont must pursue separation of HCBS case management from HCBS service provision. For DAIL this applies to Choices for Care, Developmental Disabilities, and the Brain Injury Program.



# Maintaining/Expanding Choice:

Provide *all* individuals the option to choose a case manager that is separate from the agency overseeing direct service delivery or is a part of the agency that oversees direct service delivery.



## Primary Mitigation Strategies:

**Options counseling** – An entity contracted by the state to assist people to understand their options and/or navigate the system.

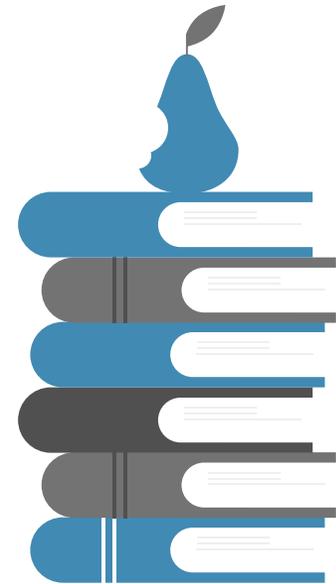
**Annual Assessment for Person-centered Care Plan** – An entity contracted by the state to conduct the annual Independent Living Assessment used to develop the care plan.

**Independent Case Management** – The State will expand the choice for independent case management that most home-based participants have.

**\*\* “Independent” means** and entity that is independent from direct service provision.

# CMS Guidance

- The 'choice' model of allowing people to choose to receive case management from their direct service provider is not allowed.
- CMS expects states to fully comply with HCBS requirements to separate eligibility, assessment, and case management from direct service provision.
- CMS has asked Vermont to submit a transition plan to full compliance by 12/17/2021.
  - This will include high-level milestones for each DAIL HCBS program.
  - CMS has said that it may allow up to 5 years for this transition



# Next Steps

- DAIL is meeting regularly to develop a high-level roadmap to full implementation of the HCBS conflict of interest requirements.
- Goal: Develop a roadmap by mid-December that:
  - Includes milestones and decision points for implementing conflict of interest requirements,
  - Ensures adequate time and process for stakeholder input on those decisions points,
  - Improves quality of care, and
  - Ensures the stability of the provider system.



# Federal Rule: 42 CFR 441.730(b)

- **Conflict of interest standards.** The State must define conflict of interest standards that ensure the independence of individual and agency agents who conduct (whether as a service or an administrative activity) 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. The conflict of interest standards apply to all individuals and entities, public or private. At a minimum, these agents must not be any of the following:
  - (1) Related by blood or marriage to the individual, or to any paid caregiver of the individual.
  - (2) Financially responsible for the individual.
  - (3) Empowered to make financial or health-related decisions on behalf of the individual.
  - (4) Holding financial interest, as defined in § 411.354 of this chapter, in any entity that is paid to provide care for the individual.
  - (5) Providers of State plan HCBS for the individual, or those who have an interest in or are employed by a provider of State plan HCBS for the individual, except when the State demonstrates that the only willing and qualified agent to perform independent assessments and develop person-centered service plans in a geographic area also provides HCBS, and the State devises conflict of interest protections including separation of agent and provider functions within provider entities, which are described in the State plan for medical assistance and approved by the Secretary, and individuals are provided with a clear and accessible alternative dispute resolution process.