

Handout #1**Developmental Services Program – Analysis of Proposals to Address Potential for Conflict of Interest**

The Department of Disabilities, Aging, and Independent Living (DAIL) has considered a series of proposals to prevent or reduce conflict of interest in the home- and community-based services (HCBS) programs it operates. This analysis of proposals for the Developmental Services (DS) program is based on the information and federal requirements described on [Vermont Medicaid’s HCBS conflict of interest website](#).

This analysis has a 2-stage approach to assessing DS program proposals:

Stage 1 proposals are about the case management structure of the DS program. This means that these proposals are about how case management providers relate with direct service providers.

Stage 2 proposals are different ways the DS Program could be changed to potentially increase consumer choice and reduce the potential for conflicts of interest.

This analysis includes:

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Criteria used to assess proposals:

Each proposal has been assessed by DAIL staff using the criteria below. The result of the assessments begins on the following page.

CMS Compliance:

The program must comply with federal regulations requiring conflict-free case management in HCBS programs, even though this may require changes in how case management is provided. Failure to comply with the federal requirements could result in the loss of federal funding, and either shrink or discontinue the program. State staff estimated the likelihood that each proposal would be approved by the federal government.

Alignment with Stakeholder Feedback:

The State received [comments from several different people and organizations](#). While comments expressed different opinions, State staff attempted to describe how each proposal aligns with most of the comments received.

System Disruption:

State staff estimated the level of change that each proposal would require of consumers, providers, and the system.

Payment Reform Alignment:

State staff estimated the degree to which each proposal aligns with the general direction of the Developmental Services payment reform initiative, which is now under way.

Timeline to Implement:

State staff estimated the time necessary to plan, design, and carry out each proposal - for consumers, providers and the State.

Cost:

State staff estimated the general financial impact of each proposal, including costs to providers and to the State. Because the proposals are not fully designed, no specific cost estimates are available.

Consumer Choice/Control:

State staff estimated the impact of each proposal on consumers' ability to make their own choices and to have control over the services and supports they receive.

Administrative Complexity:

State staff estimated the impact of each proposal on consumers' ability to understand and use the program, providers' ability to manage services, and the State's ability to administer and provide oversight for the program.

Scoring for Stage 1 proposals

--	-	0	+	++
Negative Impact		Neutral/Unknown	Positive Impact	

	Proposals	CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
Stage 1 Proposals (case management structure)	1) State responsible for splitting off case management by contracting with one or more case management providers via RFP	+	-	-	0	-	-	0	-
	2) Designated Agencies responsible for splitting off case management and/or ensuring independent agency exists	+	-	-	0	--	-	+	--
	3) Expand case management options for consumer choice, with Stage 2 protections	0	+	+	+	0	0	++	-
	4) Status quo (no separation) with Stage 2 protections	0	+	+	+	0	0	+	0
	5) Status quo	--	0	+	0	++	++	-	+

Scoring for Stage 2 proposals for additional protections

	Proposals	CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
Stage 2 Proposals (Additional Protections)	Ombudsman	0	+	+	+	+	-	+	0
	Options Counseling/Peer Navigation	0	+	+	+	+	-	+	0
	Options/Resource List	0	+	+	+	+	0	+	+
	Independent Assessment of Eligibility for Program	+	0	0	0	-	-	+	-
	Independent Needs Assessment for Person-Centered Plan	+	0	-	+	-	-	+	-
	Additional Training for Providers	0	+	+	+	-	-	+	0

Stage 1 proposals about case management structure
1) State responsible for splitting off case management by contracting with one or more case management providers via RFP

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
+	-	-	0	-	-	0	-

This option would require the state to contract with one or more case management providers to allow for case management to be provided separately from direct services. Currently, case management is provided by the same provider agency that provides the direct service in all areas of the state. This would require a clear definition of the roles of case managers and program oversight functions within direct service providers. It would need to be determined exactly how the cost of the new case management providers would be covered, but it would likely involve shifting some funds from current providers to fund the new case management providers based upon the responsibilities that are being shifted. This would represent a significant change for both providers and individuals. This option is fully compliant with the federal CMS rule. No additional protections would need to be put into place to address conflict of interest.

2) Designated Agencies responsible for making sure rule is followed by splitting off case management and/or ensuring independent agency exists

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
+	-	-	0	--	-	+	--

This option would put responsibility for separating case management from direct services on the provider agencies. This is a solution used in New Hampshire. Designated Agencies for each region were tasked with coming up with a local solution for separating case management from direct service. Different solutions were found. Some agencies became case management only providers while others were direct service only providers. In areas where there was more than one provider, providers made arrangements where case management and direct service were provided by separate providers. In some areas where there was only one provider, the designated agency recruited new case management providers for their region. CMS allowed for 30% of individuals within a provider to have same provider for case management and direct service. Cost and level of system change would be similar to option number 1. If all case management and direct service were provided by separate providers, this would be fully compliant with the CMS rule. If any individuals have one provider for both case management and direct service, conflict of interest protections would be needed. Protections required by CMS:

- i. Must separate case management and provider functions within the provider agency
- ii. Individuals must be provided with a clear and accessible process for resolving disagreements, including that there is no other case management available
- iii. People provided choice of providers and info about full range of services
- iv. State oversight where conflict exists

Additional protections listed under Stage 2 below could be considered as well.

Any option that is less than full compliance requires CMS approval. CMS approval of exceptions has been rare and limited in scope to date.

3) Expand case management options for consumer choice, with Stage 2 required protections and additional protections proposal(s)

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
0	+	+	+	0	0	++	-

This option would be to expand options for an individual to choose between having independent case management or case management that remains with the direct service provider. This would require the creation or expansion of independent case management providers. Either the state or local designated agencies could be responsible for arranging for additional providers as described in option #1 & 2. In situations where the same provider provides both case management and direct service, conflict of interest protections as noted in #2 above would be needed. Any option that is less than full compliance requires CMS approval. CMS approval of exceptions has been rare and limited in scope to date.

4) Status quo (no separation of case management from direct service provider) with Stage 2 required protections and additional protections proposals

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
0	+	+	+	0	0	+	0

This option would maintain case management and direct service within the same provider and would require the state to submit a proposal for approval from Federal CMS for exception demonstrating:

- a. that agencies are the “only willing and qualified provider ... in the geographic region” and,

b. that protections against conflict of interest are in place as described in #2 above.

CMS approval of exceptions has been rare and limited in scope to date. It is unlikely that this option would be approved. Even Alaska, which is sparsely populated only received the exception in the most northern areas of the state.

5) Status quo

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Consumer Choice/Control	Administrative Complexity
--	0	+	0	++	++	-	+

Status quo is not an option. CMS will not approve this.

Stage 2 Proposals for additional protections to reduce potential for conflict of interest in HCBS programs:

As noted above, any Stage 1 proposal that does not fully separate case management from direct service for an individual is **required** by CMS to have the following protections: 1) administrative separation (firewalls) of the case management and direct service functions within the agency, including separate supervision, 2) a clear and accessible dispute resolution process for conflicts, 3) documentation in plan of care that the consumer was given full range of options, and 4) state oversight where conflict exists.

Additionally, Stage 1 proposals that do not fully separate case management from direct service could have one or a combination of the below possible additional protections to increase choice and address potential conflicts.

A. Ombudsman:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
0	+	+	+	+	-	+	0

An independent person who helps people resolve problems they have with the care they are getting in the program. An ombudsman can help people if they have problems with their case managers or direct service providers. Under this proposal, the State would contract with an independent entity to provide ombudsman services statewide.

B. Options Counseling/Peer Navigation:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
0	+	+	+	+	-	+	0

An independent person who helps people understand different provider, service, and setting options. An options counselor or peer navigator who is separate from case management and service delivery would ensure that people receive unbiased advice and information on what is available. Under this proposal, the State would contract with an independent entity to provide this service statewide.

C. Options/Resource List:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
0	+	+	+	+	0	+	+

Create a single resource for people to understand the services, providers, and settings available to them under the program with detailed information on both regional and statewide resources. While this information currently exists, there are ways to make it more accessible by creating uniform regional, and statewide brochures, a dynamic website that could populate information based on zip code, or both. Under this proposal, the State would either use existing staff resources to compile this information or pay contractor specializing in this area for this work.

D. Independent Assessment of Eligibility for Program:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
+	0	0	0	-	-	+	-

Separate the role of program eligibility assessments from case management and direct service providers. Under this proposal, the State would either contract with an independent entity to assess whether person has a developmental disability and meets the criteria to receive Home and Community-based Services, or State staff would do it.

E. Independent Needs Assessment for Person-Centered Plan by State staff:

F. Independent Needs Assessment for Person-Centered Plan by contractor of State

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
+	0	-	+	-	-	+	-

Separate the role of person-centered plan needs assessments from case management and direct service providers. Under this proposal, State staff or an independent contractor would conduct the needs assessment that leads to the development of the service package or funding amount. Case managers would continue to develop the more detailed person-centered plan (Individual Service Agreement).

G. Additional Training for Providers:

CMS Compliance	Stakeholder Feedback Alignment	System Disruption	Payment Reform Alignment	Timeline to Implement	Cost	Improves Customer Choice/Control	Administrative Complexity
0	+	+	+	-	-	+	0

Create a statewide training program available to all HCBS providers focused on person-centered planning and program-specific information. While HCBS providers are currently required to be trained and qualified to perform the services or tasks they are responsible for, a statewide training program may enhance quality and outcomes. Under this proposal, the State would contract with an independent entity to offer a statewide training program, or state staff would do it.