NEW YORK STATE | Department of Health | Office of Mental Health | Office of Addiction Services and Supports | Office of Children and Family Services | Office for People With Developmental Disabilities

Conflict Free Case Management

For Health Home Care Managers (HHCM) & Home and Community Based Services (HCBS) Providers

February 2021

Agenda

- ✓ Overview of Conflict Free Case Management (CFCM)
- ✓ CFCM Roles and Responsibilities
- ✓ 9 Principles for Implementing CFCM
- ✓ CFCM Scenarios
- ✓ Appendix
  - ❖ CFCM Defintions

HCBS Children's Waiver Training Overview

HCBS Overview	LOC/ Eligibility Determination	Waiver Enrollment	POC Development	Referral	Maintaining Waiver Enrollment / Service Delivery	Transfer / Disenroll
Children's Medicaid System Overview / Children's Waiver Overview	CANS-NY/ Eligibility Assessment	Capacity Management	Plan of Care/Person-Centered Planning Requirements	HCBS POC Workflow and MMCP Authorization	Care Management Requirements	Waiver Disenrollment
Health Home Care Management	NODs and Fair Hearing	Participant Rights and Protections / Conflict Free Care Management	Service Delivery		Service Delivery Requirements	Transferring to Adult Services or OPWDD waiver
HCBS Provider Requirements	Children and Youth Evaluation Services (C-YES) – the Role of the Independent Entity	Conflict Free Case Management				
Medicaid Overview / Medicaid and the Children's Waiver						
Service Definitions						

Required for only Health Home Care Managers
Required for only HCBS Providers
Required for Both
Optional for Both

Overview of Conflict Free Case Management

February 2021

What is Conflict-Free Case Management?

- Conflict-free case management (CFCM) means that the entity assisting a child/youth to gain access to services (e.g. Health Home, Care Management Agency) **should be different** than the entity actually providing those services (e.g. HCBS provider agency), as a potential conflict may exist if the same entity is providing both care management and the referred service(s).

What is the perceived Conflict?

- If the entity that is determining eligibility for a service and then that same entity provides the service
  - Determining who gets services,
  - Making own referrals to themselves,
  - Making their own business.....
- There **MUST** be a SEPARATION between the entity determining eligibility for a services from the entity providing the service

Additional information can be found in Conflict-Free Case Management (CFCM) Policy

Conflict of Interest vs. Conflict Free

The federal government of Centers for Medicare and Medicaid Services (CMS) – actually want what is Conflict of Interest within State Medicaid services.

Conflict of Interest is a high level of separation between entity determining eligibility and entity providing services.

Conflict of Interest: a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." When the same entity is both assisting an individual to gain access to services and providing services to that individual, the role of the entity staff has potential to be conflicted. This is a higher threshold than the requirements of conflict-free; and to avoid a conflict of interest, the same entity ***would not be allowed*** to serve in both capacities.

Why Conflict Free?

In NYS there are so many providers and organizations that provide a multitude of services, therefore NYS had to work with CMS to implement Conflict Free standard to ensure there were enough providers to maintain services

- **Conflict-Free Case Management:** when the same entity is both assisting an individual to gain access to services and providing services to that individual, **there must be appropriate safeguards and "firewalls" in place to mitigate risk of potential conflict**.

- Additionally, the entity has the "firewalls" in policies and practice to ensure that those establishing access to services are not the same individuals providing the services.

What is Conflict-Free Case Management?

- Conflict-free case management (CFCM) means that the entity assisting a child/youth to gain access to services (e.g. Health Home, Care Management Agency) **should be different** than the entity actually providing those services (e.g. HCBS provider agency), as a potential conflict may exist if the same entity is providing both care management and the referred service(s).

- ***All HCBS participants have the right to conflict-free case management***; it is a Federal requirement to separate case management from the actual delivery of 1915(c) waiver services.

- Those individuals that determine access and those that provide the services are separated by supervision, oversight, and decision-makers, as outlined in the 9 principles on the following slides.

Additional information can be found in Conflict-Free Case Management (CFCM) Policy

CFCM Roles and Responsibilities

CFCM Roles and Responsibilities

Health Homes

- Conduct HCBS Eligibility Determination for provision of services provided by a separate entity
- Develop a Person-Centered Plan of Care
- Review Choice and Rights with Participant to choose their own providers
- Establish and monitor CFCM policies and procedures
- Have quality assurance processes in place

HCBS Providers

- Ensure proper firewalls are in place if providing **Both** HCBS and HHCM
- Develop a Person-Centered Service Plan
- Ensure that if additional services are need by the participant, the HHCM works with the participant about choice of provider
- Review Choice and Rights with Participant

Medicaid Managed Care Plans (MMCPs)

- Ensure a network of providers for the participant to have choice of service providers
- Ensure accessible pathways for submitting grievances/ complaints and/or appeal
- Work collaboratively with all parties regarding the tracking and monitoring of grievances, complaints, appeals, and the resulting decisions

NYS

- Establish guidance and appeal mechanisms, and accessible pathways to the appeal process
- Oversees HCBS LOC Eligibility Determination and HCBS business practices
- Oversight and monitoring of HH and HCBS policies, procedures, and practices
- Tracks and documents the participants's care coordination and care management measures

All service referred to do not need to be with one provider, unless it's the participant's choice

9 Principles for Implementing CFCM

9 Principles for Implementing CFCM

1. HCBS LOC eligibility determination is separated from HCBS delivery
2. HHCMs are not related to the child/youth, their paid caregivers, or anyone financially responsible for the child/youth
3. There is robust monitoring and oversight established by HHs
4. HHs have developed clear, well-known, and accessible pathways for the child/youth/parent/guardian to submit grievances and/or appeals for assistance regarding concerns about choice, quality, eligibility determination, service provisions, and outcomes
5. Grievances, complaints, appeals, and the resulting decisions are adequately tracked and monitored
6. To ensure that consumer choice and control is not compromised, the department will oversee HCBS LOC eligibility determination and HCBS business practices
7. The Department will track and document the child/youth's experiences with measures that capture the quality of care coordination and care management services
8. In circumstances when one entity is responsible for providing care management and HCBS delivery, appropriate safeguards and firewalls exist to mitigate risk of potential conflict
9. Meaningful stakeholder engagement strategies are implemented which include child/youth, family members, advocates, providers, state leadership, and HHCM

Principle 1 - HCBS LOC eligibility determination is separated from HCBS delivery

- The HHCM is responsible for conducting the HCBS Eligibility Determination for the provision of services to be provided by a separate entity or if the same entity with firewalls in place.
- The HHCM conducting HCBS Eligibility Determination should not have concurrent responsibility or oversight of finances or service provision for HCBS or HCBS organization.
- Where possible, agencies should not provide both care management and direct services to a child/youth.

Principle 2 - HHCMs are not related to the child/youth

- HHCM cannot perform the HCBS Eligibility Determination or develop the POC if they are:
  - Related by blood or marriage to the served child/youth, or to any paid caregiver of the child/youth
  - Empowered to make financial decisions or health-related decisions on behalf of the served child/youth
  - Hold a financial interest in any entity that is a direct service provider to the child/youth
  - Are paid caregivers to the child/youth (unless program enrolled)
  - Are financially responsible for the child/youth

Principle 3 - There is robust monitoring and oversight established by HHs

- A CFCM system must include strong oversight and quality management to promote child/youth/family's choice. HHs must work with the Department to ensure that the expectations for monitoring and oversight are clearly established.
- Oversight should include monitoring for evidence that the HHCM developing the POC for HCBS provided the child/youth with appropriate information.
- Monitoring and oversight must include data collection demonstrating evidence of external referrals.
- If an agency provides both care management and HCBS, it must:
  - Document in the POC / case file that it will ensure its employees act in the best interest of the participant and mitigate potential conflicts of interest
  - Develop a CFCM plan
  - Specify methods of communication required to inform the child/youth about the potential for conflict
  - Document that the child/youth was informed about their freedom of choice

Principle 4 - Accessible pathways for members to submit grievances and/or appeals

- HHs and CMAs must work collaboratively with the Department in establishing guidance and appeal mechanisms and the responsibilities of providers, payers, and State agencies in those processes.
- The child/youth must be clearly informed about their right to appeal decisions about plans of care, eligibility determination, and service delivery.
- Clear, publicized, and accessible pathways are established and provided to the child/youth with instruction for submitting a grievance/complaint and/or appeal to the lead HH, MMCP, or Department for assistance regarding concerns about choice, quality, eligibility determination, service provision, and outcomes.

Principle 5 - Grievances, complaints, appeals, and the resulting decisions are adequately tracked and monitored

- Data related to grievances, complaints, appeals, and the resulting decisions must be tracked and monitored. HHs and CMAs must work collaboratively with the Department, MMCP, and HH leadership in establishing these tracking monitoring mechanisms.
- HCBS providers must also have mechanisms and policies in place to track and monitor grievances, complaints, and appeals.
- Information obtained is used to inform program policy and operations as part of the continuous quality management and oversight system.

- Complaint and Grievance Policy for Home Community Based Services (HCBS) Providers
- Complaint and Grievance Policy for Health Homes Serving Children

Principle 6 - To ensure that consumer choice and control is not compromised

- The Department will provide oversight and monitoring of HCBS LOC Eligibility Determination and HCBS business practices.

- Random or targeted sample audits should be utilized to determine whether assessment/eligibility determination findings match actual service needs.

Principle 7 - Measures that capture the quality of care coordination and care management services

- The Department will track and document the child/youth's experiences through measures
- Data must be collected to document the child/youth's experiences with assessment, planning and service provision, and coordination.
- Measures should include the child/youth's satisfaction, freedom of choice, and referral patterns to identify potential conflict.

Principle 8 - Appropriate safeguards and firewalls exist to mitigate risk of potential conflict

- Person-centered POC must include documentation that the choice of service providers was offered to the child/youth, with indicators that measure the frequency with which a choice other than the CMA is selected for service provision.

- The Department is aware that in some rural areas, there may only be one provider available to serve as both the care management and service provider agency. In these instances, the Department requires HHs to articulate how they will mitigate potential conflicts of interest, potentially including additional oversight of the situation by the Department.

- HHs must work closely with the Department to determine circumstances in the existing payer/provider systems where a rural exception would apply. In such cases, the child/youth still has the right to be notified of the potential conflicts of interest, their options to receive services, and the process of filing a grievance.

Principle 9 - Meaningful stakeholder engagement strategies are implemented

- Inclusion of child/youth, family members, advocates, providers, state leadership, and HHCM
- Include the child/youth and their advocates in the evaluation of the current infrastructure.
- Identify existing policies and procedures that may be the building blocks of the firewall.
- Determine what additional costs or unintended consequences could be incurred when implementing the components of a firewall (i.e. lack of efficiency, impact on the child/youth).

CFCM Scenarios

Conflict Free Case Management Scenarios

Scenario 1: Child/youth is enrolled in Health Home care management agency for HCBS with a provider that also provides foster care and Article 28 (Health Clinic) clinical services……

- Is this permissible?
- What firewalls need to be put in place to make this permissible?

HH CMAs that also provide other services such as foster care, behavioral health clinic, Article 28 clinic, prevention services, etc. could utilize staff and/or LPHAs within these services to assist with diagnosis, the HCBS LPHA attestation, or be the provider of HCBS **with the proper firewalls and policies in place.**

- Care manager, supervisors, program staff, directors, etc. for the Health Home program can not work, have oversight, etc. of the HCBS
- The LPHA that signs the LPHA Attestation form cannot work for the HH program and should be a professional already involved and or working with the child/youth professionally

Conflict Free Case Management Scenarios

Scenario 2: Child/youth lives in a rural area with a limited number of providers and is receiving both care management and direct HCBS through the same provider …….

- Is this permissible?
- What firewalls need to be put in place to make this permissible?

Any time there is a gap in services providers or limited choice of HCBS providers, the child/youth/family must be notified of the potential conflict of interest, their options to receive services, and the process for filing a grievance/complaint.

The organization that provides both services MUST have firewalls and policies in place that clearly outline the different staff for each program and their roles and responsibilities. Policies must articulate how they will mitigate potential conflicts of interest,

HHs must work closely with the Department and Managed Care Organizations, as applicable, to identify service areas with limited access and to identify solutions to address those gaps. In these instances, the Department requires HHs to articulate how they will mitigate potential conflicts of interest, potentially including additional oversight.

Conflict Free Case Management Scenarios

Scenario 3: An HH CMA refers a child/youth to another agency for HCBS. The other agency is also an HH CMA and tells the family that they are required to transfer their care management service to the other agency.

- Is this permissible?
- What firewalls need to be put in place to make this permissible?

If a HH CMA refers a child/youth to another agency for HCBS, and that other agency is also a HH CMA, the child/youth **must <u>not</u>** be required to transfer their care management service to the other agency.

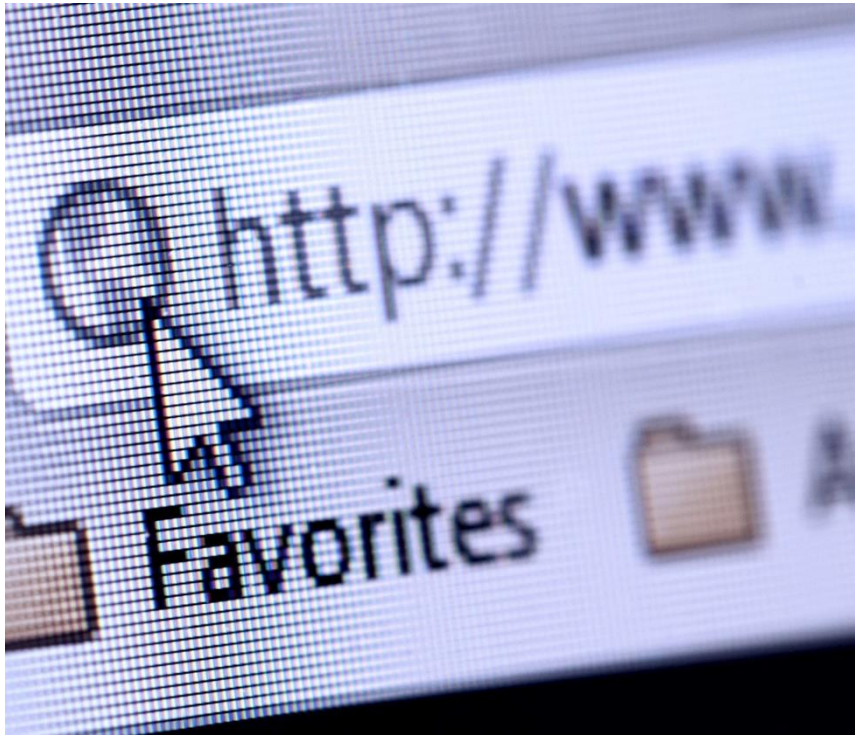
It is actually preferred that the child/youth continue to receive care management from one agency and HCBS or other services from a different agency, if child/youth/family so choose.

The child/youth/family has the right to choose their providers, whether it is the same agency for care management and other direct services, as long as the choice is clearly documented, including discussion of any potential conflicts of interest that could arise.

- Even the discussion that the child/youth/family should/must move to the other agency to get their care management because that agency will be providing HCBS, is a conflict of interest and in violation of the CFCM policy. Choice would have already been discussed with the child/youth/family by the HHCM.

Resources and Questions

- Specific Questions/Comments regarding Transition services BH.Transition@health.ny.gov
- HCBS Settings Final Rule Questions: ChildrensWaiverHCBSFinalRule@health.ny.gov
- Questions, comments or feedback on Health Homes Serving Children to: hhsc@health.ny.gov or contact the Health Home Program at the Department of Health at 518.473.5569
- Subscribe to the HH Listserv http://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/listserv.htm

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Appendix

Resources

1915(c) waiver
https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/docs/1915c_waiver.ny.4125.r05.06.pdf

Conflict Free Case Management Policy
https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/policy/docs/hh0012_conflict_free_care_management_policy.pdf

The Centers for Medicare & Medicaid Services (CMS) trainings *Mitigating Conflict of Interest in Case Management: Outcomes to Date, Conflict of Interest Part II* and *Medicaid HCBS Case Management, and Conflict of Interest in Medicaid Authorities* are available here:
https://www.medicaid.gov/medicaid/hcbs/training/index.html#conflict

Department of Health Complaints

- Enrollees and providers may file a complaint regarding managed care plans to DOH
  - 1-800-206-8125
  - managedcarecomplaint@health.ny.gov
- When filing:
  - Identify plan and enrollee
  - Provide all documents from/to plan
  - Medical record not necessary

- Issues not within DOH jurisdiction may be referred

- DOH is unable to arbitrate or resolve contractual disputes in the absence of a specific governing law

- File Prompt Pay complaints with Department of Financial Services: https://www.dfs.ny.gov/insurance/provlhow.htm

Children and Youth Evaluation Service
Your Connection to Home and Community-Based Services

Referral Form Instructions

- The Children and Youth Evaluation Service (C-YES) accepts referrals from individuals and providers including a parent, wider family member, doctor, therapist, school guidance counselor, CBOs and others:

- Individuals and families should call C-YES so that we can send you a Referral Form and a pre-paid return envelope in the mail right away! You can mail back the form in the envelope at no cost to you. Call C-YES at 1-833-333-CYES (1-833-333-2937). TTY: 1-888-329-1541

- Providers and Organizations with secure email protocols can download the Referral Form below. Return the form to: CYESREFERRAL@MAXIMUS.COM. Be sure to include the child/youth's name and contact information.

- C-YES Referral Form

CFCM Definitions

The following definition(s) are provided as guidance when conducting activities related to Conflict-Free Case Management.

- **Assessment & Eligibility/Resource Allocation:** process for determining eligibility and assigning budgets, hours, or other units of services.
- **Caregiver**: a person who helps care for someone who is ill, disabled, or aged. Some caregivers are relatives or friends who volunteer their help. Some people provide caregiving services for a cost.
- **Case Management**: an activity that assists individuals to gain access to needed care and services appropriate to the needs of an individual which would include support coordination services and care coordination.

CFCM Definitions (con't)

- **Conflict of Interest:** a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." When the same entity is both assisting an individual to gain access to services and providing services to that individual, the role of the entity staff has potential to be conflicted. This is a higher threshold than the requirements of conflict-free; and to avoid a conflict of interest, the same entity *would not be allowed* to serve in both capacities.
- **Conflict-Free Case Management:** when the same entity is both assisting an individual to gain access to services and providing services to that individual, there must be appropriate safeguards and "firewalls" in place to mitigate risk of potential conflict. Additionally, the entity has the "firewalls" in policies and practice to ensure that those establishing access to services are not the same individuals providing the services. Those individuals that determine access and those that provide the services are separated by supervision, oversight, and decision-makers (as outlined in the 9 principles).

CFCM Definitions (con't)

- **Direct Supports and Service Delivery:** the supports and/or services provided to the individual in accordance with the person-centered POC.
- **Monitoring & Service Coordination:** process for ensuring that services are delivered according to guidance included in the POC. Activities include coordinating services, monitoring the quality of the services, and monitoring the participant (i.e. observing for changes in needs or preferences).
- **Person-Centered Plan of Care (POC):** includes individually identified goals and preferences; identifies the specific services and the service providers used to meet stated goals as well as their frequency, amount (scope), and duration; and is individualized and understandable to the enrollee/recipient.
- **Plan Development:** process that lead to a person-centered Plan of Care (POC).