

## Questions and Answers From the Conflict of Interest (COI) Compliance Webinar Related to the NHTD/TBI Waiver Program - January 9, 2018

1. Who will be required to fill out the Conflict of Interest (COI) compliance plan form? If a provider agency does not provide service coordination, does it have to fill out the form?

All providers are required to complete a COI Compliance Implementation Plan, except for those that solely provide Assistive Technology (AT), Environmental and Vehicle Modifications, Community Transitional Services (CTS), and Moving Assistance. The form should be completed by a manager or executive within the agency with the authority to make operational decisions on behalf of the organization.

2. May a CHHA or LHCSA provide service coordination within the same entity if lines of supervision and policies/procedures are in place to prevent Conflict of Interest (COI)? Based on the examples you provided in the webinar, it appears that the answer is “yes” – only individual service coordinators (not agencies) are barred from providing both SC and other services to the same individual.

Until January 2019, providers may provide multiple waiver services, as long as sufficient protections are in place to avoid conflict of interest. Approval of the COI Compliance Implementation Plan will support the agency’s protocols to avoid any conflict. Service Coordinators may not provide any other direct waiver service to individuals on their caseloads.

3. If the answer to this question is “yes,” is this merely a temporary decision for a transitional period, or do you expect that CHHAs and LHCSAs will be permitted to provide both SC and other services indefinitely?

Effective January 2019, providers must meet full conflict of interest compliance requirements.

4. You indicated that the Conflict of Interest (COI) issue is eliminated once the waivers are transitioned to MLTC. Is that correct? Does the same logic apply to Community First Choice Option benefits which are slated to be carved into MLTC on April 1? They are subject to a similar COI regulation (42 C.F.R. §441.555(c)). Many MLTCs contract with CHHAs or LHCSAs to conduct assessments and service planning. Would they be permitted to continue these relationships?

The current protocols are in place for approved 1915c TBI and NHTD providers. The current protocols are not designed to address the managed care environment or CFCO.

5. The Conflict of Interest Implementation Plan seems to assume that providers offer both service coordination and other services. We understand that some providers do not deliver both SC and other services. Can questions be skipped if they don't apply to the provider (e.g., if a provider does not offer SC, do questions 8, 11 and 12 apply)?

No. Regardless of the specific services provided, all providers are involved in the development and implementation of the Service Plan (ISP/RSP) and must ensure participant choice in provider selection.

6. How are the participant lists to be submitted? Is there a secure method for doing this?

Providers must submit information to the Regional Resource Development Center (RRDC) using routine encryption protocols. Lists may be submitted as a protected/encrypted Word document. Please discuss this process with the appropriate RRDC.

7. Is it likely that NHTD/TBI will be carved into MLTC?

As the waivers successfully transition to managed care in 2019, these specific conflict of interest protocols will no longer be required.

8. The webinar presentation implied that all providers of waiver services (with only a couple exceptions) are required to submit a compliance plan. Can you please verify this? As a HCSS or SADC provider, many questions are clearly “not applicable.” However, the instructions clearly state that N/A is not an acceptable response.

Each provider must do its best to adequately respond to the questions. SADC is not a waiver service and does not influence the response. If the provider does not provide Service Coordination but only Home and Community Support Services (HCSS), and/or Structured Day Program, the compliance plan must be completed in its entirety.

9. Question #4 of the Compliance Implementation Plan requests detailed information on the organization’s waiver services and clients served. If an organization provides Service Coordination (SC) as well as other waiver services (perhaps multiple), and if each provider of service submits a compliance plan from within the same organization, the responses to #4 will be entirely redundant. Assuming DOH is looking to establish total capacity or services, this will yield very inaccurate information when tabulated UNLESS it is manually sorted to eliminate redundant responses.

The COI Compliance Implementation Plan must include all services provided by one organization for each waiver. The provider is not required to complete a separate compliance plan for each service provided.

10. There are protocols within the NHTD/TBI program which prescribe the provider selection process and is overseen by the Regional Resource Development Specialist (RRDS). As “steering” is prohibited, it is unclear what additional protocols would be indicated. Further, in rural areas, the selection of a provider is typically based on which provider has capacity (i.e., staff). If the Service Coordinators are fully informed by the providers of their capacity (or lack of capacity), and that information is provided to the client, is that considered “steering”?

Going forward the RRDC will monitor capacity as related to provider selection. Providers that meet the criteria will be advised of rural exemptions. As long as the Service Coordinator provides the regional list of approved waiver providers who are willing and able to provide services to the participant, it would not be considered “steering.” The choice of the provider by the participant must be independent and not coerced or influenced by the Service Coordinator or any other service provider.

- 11.** There is a prescribed process within the NHTD/TBI program for complaints and dispute resolution that SC and providers must follow. Is this the process that is being requested? If not, what is this question directed at?

No. We are seeking a description of the agency's internal policies and procedures.

- 12.** Can you please provide more clarity in the policies being requested?

As indicated in the COI Compliance Implementation Plan form, providers are requested to attach copies of relevant policies and procedures developed and implemented by the agency as related to waiver services in order to avoid conflict of interest.

- 13.** It is my understanding that each specific service provider of NHTD/TBI services must submit its own plan/questionnaire. If they serve both NHTD and TBI, this would be two questionnaires per site. If the provider had multiple waiver eligible services (i.e., HCSS and SADC and SC), a distinct questionnaire would be submitted for each service.

Each agency must submit a plan for each waiver (NHTD and TBI) to each RRDC where they are approved to provide services. The plan is not completed for each service.

- 14.** Should all services provided by the organization be included in the Conflict of Interest Implementation Plan, or only those services for which the questionnaire is being submitted?

All waiver services for which the provider is approved to provide must be addressed in the COI Compliance Implementation Plan. NYSDOH recognizes that some of the responses may be redundant, but also presents that providers' waiver services may vary based on the regions and the approved services for each region.

- 15.** Who is considered "service staff" in question #3? Does this mean the scheduling coordinators for HCSS as well? Also, are you asking for the names of all the HCSS aides too?

Service staff are considered any employees of the organization hired to provide direct waiver services to waiver participants; this would not include scheduling coordinators.

- 16.** If an agency is approved in more than one region, does the form need to be completed in each region or just one per organization?

The COI Compliance Implementation Plan must be submitted to each RRDC where the provider is approved to offer waiver services. It should be noted that a provider may be approved for different services and/or waiver in multiple regions.

- 17.** Could you please give some advice for agencies dissolving one division or the other (ex. SC or HCSS) in order to be in full compliance and remain active for only one service?

The COI Compliance Implementation Plan needs to reflect the agency as it is currently operating. As changes occur in the organization, it may be amended. Providers are encouraged to seek legal counsel if they are considering re-structuring their corporation.

- 18.** If client receives PCA not HCSS, is it still a conflict of interest if they have SC from the same agency?

The COI Compliance Implementation Plan applies to waiver services only.

- 19.** Finding representative payees in the Adirondack region is very difficult. Our CFO does all the check writing for the participant, the participant works with their SC and ILST to develop a budget, if the only person handling the money is the CFO is this still considered a conflict, we do not charge for this service.

CMS has defined a conflict of interest situation to include situations where a Service Coordination agency for the participant has a fiduciary relationship with a provider of services to that individual. The example provided above would be identified as a conflict.

- 20.** Did you say there won't be Service Coordination (SC) after January 1, 2019?

The NHTD and TBI waivers are scheduled to transition to managed care effective January 2019. The current waiver transition plan provides for Service Coordination to continue as an enhanced managed care benefit. This will be subject to approval of the transition plan by CMS.

- 21.** When completed, is this template turned in directly to the DOH or to the RRDC?

All COI Compliance Implementation Plans are to be submitted to the appropriate RRDC by March 1, 2018. The RRDC will review and submit the final plans to NYSDOH by April 1, 2018.

- 22.** Will any of the questions on the template be answered by the RRDC?

All questions must be addressed directly by the providers.

- 23.** Will a recording of the January 9, 2018 webinar be provided?

No recording of the webinar is available.

- 24.** Please review item #9 of the Conflict of Interest Implementation Plan template.

Because freedom of choice and provider availability both play such a large role in COI compliance, it is important that NYSDOH understand the process used by agencies to determine how they accept cases.

- 25.** Can an agency that provides Service Coordination (SC) also provide Structured Day Program (SDP) as long as the SC is not providing any direct care?

Service Coordinators may not provide any other service to individuals on their caseload. These interim measures for compliance will remain in place until January 2019.

- 26.** Is it a conflict of interest (COI) if the same person owns one agency that provides SC and another agency that provides waiver services if they have separate boards and money does not cross between agencies?

The question as presented is too broad and additional case-specific information is required to adequately respond to the question. Providers are encouraged to seek legal counsel if they are considering re-structuring their corporation.

- 27.** Where Service Coordination is provided by a multi-level system, but segmented away from any service provider affiliate physically and direct reporting lines, would this represent a conflict of interest by virtue of corporate relationship only?

This information needs to be delineated within the COI Compliance Implementation Plan and will be determined upon review by the RRDC. The matter will require reconsideration after the interim measures terminate in January 2019. CMS has indicated that an entity cannot help an individual gain access to the same services they (or an entity they have a fiduciary relationship with) will be providing to that individual.

- 28.** If an agency is removed from the active provider list for not accepting new referrals, can that agency continue to provide SC for their active clients?

Yes. Technically, the provider is considered on "vendor hold" (as delineated in the NHTD and TBI program manuals) and will be restricted from accepting new cases until a plan of corrective action is approved by the RRDC/NYSDOH.

- 29.** So, you are not trying to assess what agencies are currently doing or current supervising structure? You want to know what we are planning to do moving forward?

The COI Compliance Implementation Plan must address the operations of the agency as it currently exists. As we move closer to January 2019, the interim measures will be adjusted to address the agency's individual operations and full compliance requirements.

- 30.** Who is considered an "authorized individual" that can sign the provider attestation?

The form should be completed by a manager or executive within the agency with the authority to make operational decisions on behalf of the organization. The signatory should be comparable to or the same individual who signed the Provider Agreement, such as the CEO, Executive Director or COO.

- 31.** How do we identify if the SC case also has other waiver services from the same agency?

This information would be reflected in the Service Coordination caseload list.

- 32.** If the SC agency is also affiliated with a LHCSA, however the LHCSA is a separate 501c3 and has separate provider numbers, would this still pose a potential conflict?

The COI Compliance Implementation Plan addresses waiver services only. If the LHCSA is approved to provide HCSS, there is potential for a conflict of interest and will require independent review.

- 33.** Can agencies provide Service Coordination and Home and Community Support Services (HCSS) to a participant as long as proof of choice is shown?

This will be permitted while interim measures are in place. Full compliance of conflict of interest criteria will not be implemented until January 2019.

- 34.** When will you provide the Plan info to CMS?

A corrective action plan was submitted and approved by CMS. NYSDOH provides monthly updates to CMS regarding the steps implemented to ensure compliance with conflict of interest criteria.

- 35.** Can a SC Supervisor carry a caseload?

Yes.

- 36.** Do we combine TBI and NHTD in the same document or separate them?

Separate plans for NHTD and TBI and each region are required.

- 37.** If the corporate structure includes the corporation being a managing entity for a LHCSA, should the LHCSA info be submitted under the overall corporate response or as two separate submissions?

At this time, the COI Compliance Implementation Plan must address waiver services only. If the LHCSA is approved to provide Home and Community Support Services (HCSS), then it must be included.

- 38.** Will a verified receipt be issued by DOH to confirm submission of COI plan? If the RRDC finds that the COI plan is unsatisfactory will time be permitted to correct submission without being placed on a vendor hold?

Should a provider fail to present an adequate COI Compliance Implementation Plan, the RRDC will return it to the provider requesting corrections/amendments. The provider will be placed on "vendor hold" (as delineated in the NHTD and TBI program manuals) until such time that a plan of corrective action is approved by the RRDC/NYSDOH.

- 39.** Can you give some examples of sufficient firewalls for LHCSAs that have a separate entity providing service coordination?

The current compliance plan applies to waiver services only. The question does not qualify if the LHCSA also provides waiver services.

- 40.** This all goes away once the waivers transition to MLTC, right?

The conflict of interest criteria as presented applies to the NHTD and TBI waivers only.

- 41.** Can you expand on cultural exemption?

A cultural exemption will be considered when a particular group of people can only be served by one provider due to cultural needs such as religion, language, social issues or

if there are limited providers available in a given region/area to serve that population. For either a cultural or rural exemption, NYSDOH will ultimately determine if the provider meets the criteria for an exemption.

- 42.** Please clarify again: Can the SC work for the same agency that provides another waiver service as long as the SC doesn't provide the other waiver service, is housed in a different location and has a Supervisor that is not related to the other waiver services?

The situation as presented meets the interim criteria which remains in effect until January 2019.

- 43.** Who will provide service coordination after the transition to managed care in 2019?

Care Managers. Additionally, NYSDOH is seeking to include service coordination as an expanded managed care benefit.

- 44.** As far as Special Needs Trusts (SNTs), many waiver participants do not have family and they need someone from an agency to fax requests to NYSARC on their behalf. They are not making the decision about what to spend, where, or how much - just faxing the request.

As established in our agreement with CMS, Service Coordinators, the provider agency and their staff may not be a Representative Payee, or trustee, for the waiver participant's financial interest.

- 45.** Outside of the rural hard to serve exemption, does the State see any way that a LHCSA providing HCSS can exist within the same company, or within the same company ownership group, as a Service Coordination agency?

There is not sufficient information to advise regarding this particular provider, but CMS has presented that this would not be a viable alternative to ensure compliance with conflict of interest criteria after January 2019.

- 46.** Can a SC provide PBIS to participants not on her caseload but receiving SC from her agency?

Yes, until January 2019.

- 47.** Was it stated that SCs cannot conduct functional assessments? If so, how is the SC working with the participant to make a determination on the level of services and type of services needed?

As established in the HCBS regulation, the Service Coordinator may review assessments and make service recommendations, but they may not complete the functional assessment on behalf of an individual on their caseload.

- 48.** If the waiver does not transition to managed care on 1/1/19 when full HCBS implementation occurs, will SC provider agencies continue to be able to provide other services to participants or will this no longer be permitted even with safeguards?

CMS has advised NYSDOH that full compliance of the HCBS regulations will be required after January 2019, should the waivers not transition to managed care.

- 49.** What if the participant is insistent on remaining with a SC who is hired by another SC agency...they must give this 3 months as the "cooling off" period or is this participant choice?

The Waiver Program ensures choice of providers and not specific staff.

- 50.** May participants elect to receive SC and HCSS/ILST from the same agency?

Yes, until January 2019, as long as sufficient firewalls are in place to avoid conflict of interest or the appearance of a conflict.

- 51.** We have a question related to #4 of the COI Implementation Plan where it asks for a geographic breakdown of all waiver services. When we develop the chart to answer this question, how should we record SDP? For example, a consumer who lives in Livingston County attends our SDP in Ontario County. Do I write that consumer in my chart as being served under Livingston county or Ontario County?

The county listed should be the county in which the service is provided in all cases.

- 52.** Our agency would most likely be applying for a rural exemption for this transition, but I do have a question regarding supervisors. If our agency provides both Service Coordination and HCSS to the same participant, can the Service Coordinator and the HCSS Aide have the same supervisor?

The chain of command between waiver services must be separate.

- 53.** When is that last time that an agency can take a case from its own Service Coordination department?

The interim measures will remain in effect until January 2019. At that time, providers will be expected to implement protocols to ensure full compliance with the regulation.

- 54.** What is the timeframe for COI compliance for agencies/participants? How are participants going to be notified that they will have to choose separate service providers?

Interim measures will remain in place until January 2019. During the transition process to full compliance providers, participants and stakeholders will be advised of upcoming changes through correspondence, webinars, town meetings, etc.



- 55.** What is the expectation with COI: will participants be forced to choose another provider or will participants be grandfathered in to ensure consistency?

At this point in time there are no provisions to “grandfather-in” any cases that would not be in full compliance after January 2019. The current interim measures were approved by CMS to facilitate the smooth transition to full compliance.

- 56.** If our agency is transitioning out of SC prior to 1/1/19 and continuing as only an HCSS provider, are we still required to complete the COI CIP?

All providers are expected to complete a COI Compliance Implementation Plan if they seek to continue to provide waiver services. The plan may be amended when the corporate structure changes and NYSDOH approval is obtained. Providers that solely provide Assistive Technology (AT), Environmental and Vehicle Modifications, Community Transitional Services (CTS), and Moving Assistance are not required to complete a COI Compliance Implementation Plan.