

Lilia Teninty

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Number: APD-AR-16-007

Issue date: 1/22/2016

Topic: Developmental Disabilities

Due date: Resolution by
June 30, 2016

Subject: Conflict Free Case Management

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Aging and People with Disabilities | <input checked="" type="checkbox"/> Office of Developmental |
| <input type="checkbox"/> Self Sufficiency Programs | Disabilities Services(ODDS) |
| <input checked="" type="checkbox"/> County DD Program Managers | <input type="checkbox"/> ODDS Children's Intensive |
| <input type="checkbox"/> ODDS Children's | In Home Services |
| <input type="checkbox"/> Residential Services | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input type="checkbox"/> Child Welfare Programs | <input checked="" type="checkbox"/> Other (<i>please specify</i>): Brokerage |
| | Directors |

Action required: The Federal Home and Community Based Settings (HCBS) regulations require that conflict free case management be addressed. The Office of Developmental Disabilities Services (ODDS) expects that conflict free case management be in place on or before June 30, 2016. Temporary Oregon Administrative Rules implemented effective January 1, 2016 include the expectation for conflict free case management.

Services Coordinators (SC) and Personal Agents (PA) must be able to act as a conduit between state authorities, providers, and individuals who receive services. When the same entity provides both case management services that help an individual gain access to services and provides other funded services to that individual, there is a potential for a conflict of interest. A conflict might affect areas such as assuring and honoring free choice, providing unbiased information, and overseeing quality and outcomes.

Full freedom of choice from among the available types of supports, services and providers is a key tenet of person centered planning and is a requirement of Medicaid. An SC/PAs job is to help the person, family, representative and/or the ISP team (if applicable and invited by the person), become well informed about all choices that may

address the needs and outcomes identified in the plan. When there is a conflict of interest, conscious or unconscious “steering” of available choices can occur.

Monitoring the quality of services and individual outcomes can be compromised when an agency or an organization is charged with overseeing its own performance. This is referred to as “self-policing.”

An SC/PA may feel pressured to steer an individual to their own organization for the direct services. The financial benefit to the agency causes the conflict and in some cases, there may be subtle incentives to over utilize services that they authorized themselves to deliver.

Another relationship that may indicate the presence of a conflict of interest is a “subsidiary” relationship or an “affiliation.” This can be described as an agency that falls under a larger agency umbrella sharing a financial relationship, even when the financial relationship is an indirect one. The conflict becomes apparent when case management services are provided by one agency to the same individuals receiving the direct services from the related agency.

Eliminating even a perception of bias is critical for Oregon to meet CMS compliance.

ODDS has pulled names of individuals who are served by agencies where there appears to be a conflict of interest. There are approximately 30 individuals and 3 brokerages/providers that are impacted. ODDS will send a list of individuals to the brokerage or Community Developmental Disabilities Program (CDDP) who appear to have case management and direct services delivered by the same provider. ODDS will also send a letter directly to each person affected by this decision, alerting them of the conflict and the steps that will follow.

The following steps by the PA/SC need to take place, using person-centered practices:

1. Meet with the individual, their family or guardian, and/or ISP team where applicable, to explain the conflict in services and the requirement of moving to conflict free case management services. Explain that this can occur by changing who provides case management services; or who provides the direct services to the person.
2. Provide the individual with information regarding the various case management options available, including CDDPs or other available brokerages where applicable.
3. Provide the individual with information regarding the various direct service options available that match their needs and interests.
4. The person must choose an option, which resolves the conflict.

5. A Notification of Planned Action must be provided to the person, explaining the changes to either case management or provider services.

When asked why someone cannot choose to have case management and direct service provided by the same agency, CMS responded saying that "choosing to waive a regulatory requirement is not an option."

For individuals choosing to leave a brokerage and go to another, it is important to consider whether the other brokerage has capacity to serve the individual immediately. If not, the local CDDP should follow the actions described in AR-15-030.

CMS requires that people be provided a clear and accessible alternative dispute resolution process. At this time, a request for an Hearing, using the process identified through in the Notification of Planned Action, is the process that will be used. ODDS is seeking additional clarification from CMS on whether there are other expected steps.

Please refer questions to Marilee Bell. ODDS will be developing responses to questions as quickly as possible.

Reason for action: CMS Rule 441.301(C)(1)(vi)

Field/stakeholder review: Yes No

If yes, reviewed by: CDDPS and Brokerages

If you have any questions about this action request, contact:

Contact(s):	Marilee Bell		
Phone:	503 - 947-5262	Fax:	503-947-4245
Email:	marilee.bell@state.or.us		