



Global Commitment Register

October 22, 2021

GCR 21-083
CLARIFICATION

Home- and Community-Based Services Conflict of Interest

Policy Summary:

On Monday, October 18, 2021, representatives from the Centers for Medicare and Medicaid Services (CMS) met with representatives from the Vermont Agency of Human Services (AHS) Central Office, the Department of Disabilities, Aging, and Independent Living (DAIL), and the Department of Vermont Health Access (DVHA). This meeting was a culmination of effort over the last three years to assess the Vermont Medicaid program's compliance with home- and community-based services (HCBS) conflict of interest requirements.¹

At this meeting, CMS informed the Vermont team that DAIL's proposed Choice Model² is not fully compliant with HCBS conflict of interest regulations. CMS expects states to fully comply with HCBS requirements to separate eligibility, assessment, and case management from direct service provision. This applies to all HCBS programs regardless of their authority, and 1115 demonstration authority cannot waive beneficiary protections such as those related to conflict of interest. This means that while Vermont operates its HCBS-like programs through the Global Commitment to Health 1115 Demonstration, it still must fully comply with these requirements. This CMS guidance also applies to home- and community-based services typically authorized under 1915(c) waivers or 1915(i) State Plan Amendments for adults and children operated by the Department of Mental Health (DMH).³

Acknowledging the significant change that this represents for the people served in these programs, including the ongoing workforce issues providers have been experiencing, CMS is allowing Vermont to develop a multi-year plan to come into full compliance with requirements to separate eligibility, assessment, and case management from direct service provision. In this transition period, a Choice Model may be used as a step towards full compliance, meaning that

¹ Per 42 CFR 441.730(b), the State must define conflict of interest standards that ensure the independence of individual and agency agents who conduct the independent evaluation of eligibility for HCBS, who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the service plan. Agents may not be providers of HCBS for the individual or have an interest in or be employed by a provider of HCBS for the individual.

² Choice Model: informed by feedback from consumers, families, guardians, advocacy organizations, and providers, DAIL proposed to allow individuals a choice: they could either receive integrated case management from the same provider of direct services, or they could receive conflict-free case management from someone who is independent from the provider of direct services. The proposal also included beneficiary protections such as options counseling.

³ Community Rehabilitation and Treatment program for adults and Intensive Home- and Community-Based Services program for children under age 21.

Vermont can gradually transition individuals to conflict-free case management starting with those who choose to switch case managers. CMS has asked that Vermont submit an implementation timeline by December 17, 2021 detailing the steps it will take to bring each program into full compliance with conflict of interest regulations at 42 CFR 441.730(b).

As departments develop and carry out their implementation plans, they will continue to keep stakeholders involved and work to ensure that access to, and quality of, care is not compromised as the state implements revised conflict of interest standards.

Authority/Legal Basis:

[42 CFR 441.730\(b\)](#)

[Global Commitment to Health Waiver](#)

Population Affected:

Individuals receiving Home- and Community-Based Services in the following programs:

- Choices for Care Program
- Developmental Disabilities Program
- Brain Injury Program
- Community Rehabilitation and Treatment Program
- Intensive Home- and Community-Based Services Program