



Region VIII

November 01, 2016

CO- CO COI (LJ)

Gretchen Hammer
State Medicaid Director
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203-1818

Re: Colorado Conflict of Interest Plan

Dear Ms. Hammer:

This letter responds to the “Colorado Conflict-Free Case Management for Home and Community Based Services (HCBS),” report developed by Navigant Consulting for the Department of Health Care Policy and Financing (HCPF) that the state sent to the Centers for Medicare and Medicaid Services (CMS) on July 6, 2016.

CMS has reviewed the report and found it to be very insightful in assessing the state’s system for the provision of case management services in Colorado HCBS. In March 2014, the HCBS final regulation became effective, 42 CFR 441.301(c) (1)(vi) requires:

Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.

CMS has reviewed the options Navigant describes in the report for coming into compliance with the regulations. These include:

1. The urban Community Centered Board’s (CCBs) only administer targeted case management functions and divest themselves of the direct services.
2. The urban CCBs only administer the direct services function and divest themselves of the case management function.
3. The CCBs would only provide targeted case management to Individuals with Developmental Disabilities receiving services from the Colorado Supported Living

Services Waiver (CO 0293), the Developmental Disabilities waiver (CO 0007), clients for whom they do not provide direct services.

4. The CCB does not provide targeted case management or direct services.

CMS concurs with the state's options to come into compliance with the regulation and also notes that accommodations can be made for states that are able to demonstrate that the only willing and qualified entity that provides case management and/or develops the person-centered service plan for a waiver participant in a specific geographic area also provides home and community-based services to this same waiver participant. In these cases, the state must explain the areas where this occurs in a waiver action that they submit to CMS for review, along with the conflict of interest protections the state will employ in accordance with the regulation requirements.

In the report, Navigant estimates a need for a three to five year transition for the state to come into compliance with the regulation. CMS does not have the authority to offer the state a transition period in which to come into compliance as that portion of the regulation went into effect in March 2014. CMS also reminds the state that while CMS does not intend to take compliance actions against the state at this time, Federal Financial Participation may be at risk for not complying with the regulation.

Please note enclosed is the CMS response date July 12, 2016, to a letter dated June 2, 2016, CMS received from the Colorado Congressional Delegation inquiring about the conflict free regulation. This letter contains additional information pertaining to the regulation Colorado may find helpful.

CMS looks forward to working with the state to reach the goal of compliance while continuing to provide service to individuals without disruption. Colorado should contact Laurie.Jensen at (303) 844-7126 or via e-mail at Laurie.Jensen@cms.hhs.gov to further discuss actions to comport with the requirements.

Sincerely,



Richard C. Allen
Associate Regional Administrator
Division of Medicaid and Children's Health Operations

Enclosure

cc: Ondrea Richardson, CMS

