

Policy Title: Conflict-Free Case Management (CFCM)

Policy Number: HH0012

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Applicable to: This policy pertains to children/youth enrolled in the Health Home Serving Children (HHSC) and Home and Community-Based Services (HCBS) Program.

Purpose

The New York State Department of Health (Department) is providing this policy guidance to Health Homes (HH) and HCBS providers to address the requirements for Conflict-Free Case Management (CFCM) for Health Home Servicing Children (HHSC) members and the process for which CFCM should be implemented.

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.

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 below).¹

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 leads to a person-centered POC.

Policy

The Department requires that HHSC establish and maintain the Conflict-Free Case Management (CFCM) principles provided by federal guidance. CFCM is designed to complement the goal of improving person-centered planning (Please refer to the [HH Plan of Care Policy #HH0008](#) and the [Person Centered Service Planning Guidelines](#), located on the [1915\(c\) Children's Waiver and 1115 Waiver Amendments](#) webpage under Plan of Care).

Per federal regulation §441.301(c)(1)(vi), states are required to separate case management (including the development of person-centered plans) from service delivery functions for services delivered under 1915(c) waivers. HHs must ensure case managers implement CFCM principles by designing strategies for implementation, monitoring, and oversight of those strategies. The principles for CFCM are based on a [NYS Balancing Incentive Program](#) (BIP) which is comprised of nine (9) principles. BIP outlines the following nine (9) principles for implementing CFCM.

- **Principle 1:** Home and Community Based Services (HCBS) Level of Care (LOC) eligibility determination is separated from HCBS delivery.
- **Principle 2:** Health Home Care Managers (HHCMs) are not related to the child/youth, their paid caregivers, or anyone financially responsible for the child/youth.
- **Principle 3:** There is robust monitoring and oversight established by HHs.

- **Principle 4:** HHs have developed clear, well-known, and accessible pathways for the child/youth/parent/guardian/legally authorized representative to submit grievances and/or appeals for assistance regarding concerns about choice, quality, eligibility determination, service provisions, and outcomes.
- **Principle 5:** Grievances, complaints, appeals, and the resulting decisions are adequately tracked and monitored.
- **Principle 6:** To ensure that consumer choice and control is not compromised, the Department will oversee HCBS LOC eligibility determination and HCBS business practices.
- **Principle 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.
- **Principle 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.
- **Principle 9:** Meaningful stakeholder engagement strategies are implemented which include child/youth, family members, advocates, providers, state leadership, and HHCM.

Procedure

Health Homes must provide monitoring and oversight of its network Care Management Agencies (CMAs) to ensure the agency administration has put a CFCM structure into place. CFCM requires agencies to put firewalls in place between key functions, in accordance with the principles outlined above. HHs must ensure these firewalls are properly in place and these functions are carried out by the appropriate staff.

Additionally, the CMA must ensure it has a "firewall" to ensure that those individuals establishing access to services are separate and apart from those individuals providing the services. Those that determine access and those that provide the services are separated by supervision, oversight, and decision makers in distinct departments.

Implementation Strategies

Principle 1: HCBS Level of Care (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 the same entity with firewalls in place.

- A HHCM gathers the necessary documentation to determine that the child/youth meets the required HCBS required elements; however, the HHCM nor other staff related to the HH can provide the diagnosis or be the approved Licensed Practitioner of the Healing Arts to complete the License Practitioner of the Healing Arts (LPHA) attestation form.
- HHCM conducting HCBS LOC eligibility determination should not have concurrent responsibility or oversight of finances or service provision at a HCBS organization.
 - In circumstances where there is overlap, appropriate firewalls (such as segregation of duties) must be in place so that there is no incentive or influence for care managers to affect the revenues for their organization.
 - 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 the HCBS with the proper firewalls and policies in place.
- Where possible, agencies should not provide both care management and direct services to a child/youth.
 - 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 not be required to transfer their care management to the other agency. The child/youth may continue to receive care management from one agency and HCBS or other services from a different agency, if they 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.
 - Health Homes will monitor and audit HH CMAs that also provide HCBS to ensure proper choice and consent was given to the member, parent, legal guardian, or legally authorized representative as documented on the [Freedom of Choice form – DOH-5276](#) (which can be found on the HHSC's 1915(c) Children's Waiver and 1115 Waiver Amendments [webpage](#) - under: Eligibility Forms).

Principle 2: HHCMs are not related to the child/youth, their paid caregivers, or anyone financially responsible for the child/youth.

- HHCM cannot perform the HCBS LOC or develop the POC if they are:
 - Related by blood or marriage to the served child/youth, residing in the same residence as the HCBS enrolled child/youth, or related 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
- Are financially responsible for the child/youth

Note: HCBS providers are subject to the same Principle 2 restrictions outlined above. To maintain the enrollee’s autonomy and Freedom of Choice, it is not allowable for a HCBS Provider to be related by blood or marriage to the served child/youth. Further, an individual residing in the same residence as the HCBS-enrolled child/youth would not be an appropriate HCBS provider. It is up to the agency to determine if a conflict of interest is present in a potential staffing relationship and whether the family believes there is an opportunity for Freedom of Choice.

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. Health Homes must work alongside the Department to ensure that the expectations for monitoring and oversight are clearly established.
 - The lead HHs have a CFCM policy requirement for their network partners and HHs verify that all CMAs have a CFCM policy in place
 - CFCM is part of the HHs oversight and monitoring for their CMAs
 - There are CFCM triggers audit review as outlined in Principle 1
- Oversight should include monitoring for evidence that the HHCM developing the POC for HCBS provided the youth/child with:
 - A list of agencies that provide similar services in the child/youth’s service area
 - A statement specifying the child/youth/family has a right to make an independent choice of HCBS providers through the [Freedom of Choice form – DOH-5276](#) (which can be found on the HHSC’s 1915(c) Children’s Waiver and 1115 Waiver Amendments [webpage](#) - under: Eligibility Forms) and has been given options of available providers in their area.
- Monitoring and oversight must demonstrate evidence of external referrals.

Principle 4: HHs have developed clear, well-known, and accessible pathways for the child/youth/parent/guardian/legally authorized representative to submit grievances

and/or appeals for assistance regarding concerns about choice, quality, eligibility determination, service provisions, and outcomes.

- HH 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, Medicaid Managed Care Plan (MMCP), or Department for assistance regarding concerns about choice, quality, eligibility determination, service provision, and outcomes.
 - [Notice of Decision Eligibility](#),
 - [Notice of Decision Discontinuance](#),
 - [Freedom of Choice Form](#),
 - [Participant Rights](#)
 - [Grievance and Complaints Policy](#)

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. HH and CMAs must work collaboratively with the Department, MMCP, and HH leadership in establishing these tracking monitoring mechanisms.
- Information obtained is used to inform program policy and operations as part of the continuous quality management and oversight system.
- Refer to the HH Grievances and Complaints Policy

Principle 6: To ensure that consumer choice and control is not compromised, the Department will oversee HCBS LOC eligibility determination and HCBS business practices.

- The Department will provide oversight and monitoring of HCBS LOC eligibility determination.
- Random or targeted sample audits should be utilized to determine whether assessment/eligibility determination findings match actual service needs.

Principle 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.

- 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: 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.

- Document in the member's record/case file that the entity will ensure its employees act in the best interest of the participant and mitigate potential conflict of interest
- Specify methods of communication required to inform the child/youth about the potential for conflict through the [Freedom of Choice form – DOH 5276](#)
- Document through the [Freedom of Choice form – DOH 5276](#) that the child/youth was informed about their freedom of choice, received the Participant's Rights document, and that the care manager discussed that they must act in the best interest of the child/youth and disclose any potential conflict of interest.
- 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. 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 such cases, the child/youth still has the right to be notified of the potential conflict of interest, their options to receive services, and the process for filing a grievance.

Principle 9: Meaningful stakeholder engagement strategies are implemented which include child/youth, family members, advocates, providers, state leadership, and HHCM. Health Homes are encouraged to leverage existing forums, if available, that:

- Include the child/youth and their advocates in the evaluation of the current infrastructure.
- Identify existing policies and procedures within the stakeholder network

that may be the building blocks of the firewall.

- Collect stakeholder feedback to 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).
- Use stakeholder input when developing communication plans related to firewalls and safeguards.

Implementation Measures

- Refinement of care management requirements, qualifications, and training
- Increased monitoring and enforcement
- Development of network with other care management agencies or HHs
- Changes to reimbursement strategies for care management services

Quality Assurance

HHs must have a quality assurance process in place to ensure that staff members and CMAs comply with HH policies and procedures (please see [HH Quality Management Program Policy #HH0003](#)).

HH quality monitoring activities must include evaluation of CFCM analysis of each member's POC but are not limited to:

- Completion of required documents (e.g., assessments, eligibility)
- Validation of qualified staff members and trainings
- Appropriate billing activities
- Ensuring member's POC was collaboratively produced and person-centered in focus
- Monitoring that each child/youth has a Freedom of Choice form on file
- Members receive Participants Rights document
- Notification of member's care team and outcome of case reviews
- Ensuring member's POC was updated and reviewed as required
- Ensuring referrals, evaluations, and assessments were sought and used to ensure eligibility to programs, with consideration for time as needed for

waitlists and other barriers to service provision

- Ensuring appropriate training is provided to HH and CMA staff in response to outcomes identified through the HH's quality monitoring activities

Additional Resources

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](#).

For more information about CFCM in New York, refer to the NYS Department of Health [Conflict Free Case Management](#) webinar from February 2021.