

# Community Support Network, Inc.

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## CSNI Position Statement on Conflict Free Case Management and Direct Provider Pay

December 2017

New Hampshire's service delivery system for individuals with intellectual disabilities and acquired brain disorders is facing significant change as a result of federal rules that govern conflicts of interest and that allow for service providers to receive Medicaid reimbursement directly without having it "pass through" an Area Agency. The Centers for Medicare and Medicaid Services (CMS) has determined that New Hampshire's service system does not comply with these rules, and as a result, New Hampshire is operating its Developmental Disability and Acquired Brain Disorders Medicaid Waivers under a Corrective Action Plan.

The applicable CMS rule prohibits agencies from providing direct services and case management to the same individuals. 42 CFR 431.301(c)(1)(vi). But the rule does include an exception 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 direct services. In the case of that exception, the rule indicates that the State must devise conflict of interest protections including separation of case management and provider functions within the entities, which must be approved by CMS. All that said, because the rule's requirements re: agency conflict are tied to individuals, it allows an agency to provide both direct services and case management, as long the agency is not providing both to the same individual/s.

Due to the infancy of most state's data models related to conflict free strategies, there is no data to support one model of conflict mitigation (agency election to provide case management *or* direct services but not both) over another (agency election to provide case management *and* direct services but not to the same individuals).

As the association of NH's ten Area Agencies, CSNI has adopted the following positions relative to this Corrective Action Plan and the CMS rules governing conflicts of interest in case management and provider direct pay.

1. CSNI believes that any corrective actions being considered should be studied to understand their impact on current and future individuals and families served, including the potential threat of destabilizing the current system of supports, prior to implementation. Family input into such actions is vital. All changes must consider consumer experience and outcomes, at the forefront.
2. All corrective actions should only be approved based on their ability to increase the amount of choice available to individuals and families. CSNI opposes any actions that limit choice and self-determination.
3. CSNI believes that the current system of supports is built on the concept that Area Agencies can deliver services when no other provider is willing to. Eliminating this option will have the unintended effect of weakening the safety net for individuals who require supports but for whom there is no qualified provider willing to offer services.

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4. Individuals and families should have the ability to choose who provides their services, including an agency that also provides case management, so long as that agency is able to demonstrate that they continue to implement safeguards to ensure that families are fully informed about all of the service options available to them.
5. Individuals and families should have easy access to methods that reduce or eliminate any perceived conflict of interest, without the need to provide concrete proof of a perceived conflict.
6. The corrective action plan should consider regional differences in population, geography and service capacity.
7. Area Agencies should have the means necessary to ensure that contracted service providers are fulfilling their responsibility under each individual's service agreement, including the authority to stop Medicaid payment to a service provider if it deems this necessary.
8. Medicaid reimbursement rates for Area Agency services, including case management, should be based upon an understanding of the full cost of providing the functions that are necessary to operate the Organized Health Care Delivery System in each region. Rates should incorporate the costs of regional training, nursing, quality monitoring, Individual Service Agreement monitoring and other functions, and should include a regular cost of living adjustment to ensure that agencies remain financially viable.
9. The State of New Hampshire should adopt laws, rules, and reimbursement methods that encourage expansion of service options available to meet the needs of individuals and families. Such methods should include strategies to improve access to safe, affordable housing and a reimbursement structure that helps to expand the workforce in home and community-based services.