



CONFLICT FREE CASE MANAGEMENT

Susan Fout
October 30, 2014TE

Introduction

- History
- Targeted Case Management - Review
- Conflict Free Case Management –Definition
- Policy
- What is the problem & Questions to consider
- Potential conflicts
- Barriers
- Best Practices



History in Home and Community Based Services (HCBS)

- **1981** – OBRA Enabled states to offer HCBS as the alternative to institutionalization.
- **1990-1999** – Growth in HCBS – especially for individuals with I/DD.
- **1999** – *Olmstead* Decision – Increased growth in HCBS.
- **2005** – Deficit Reduction Act (after years of unprecedented growth CMS reforms of case management & Targeted Case Management)



History



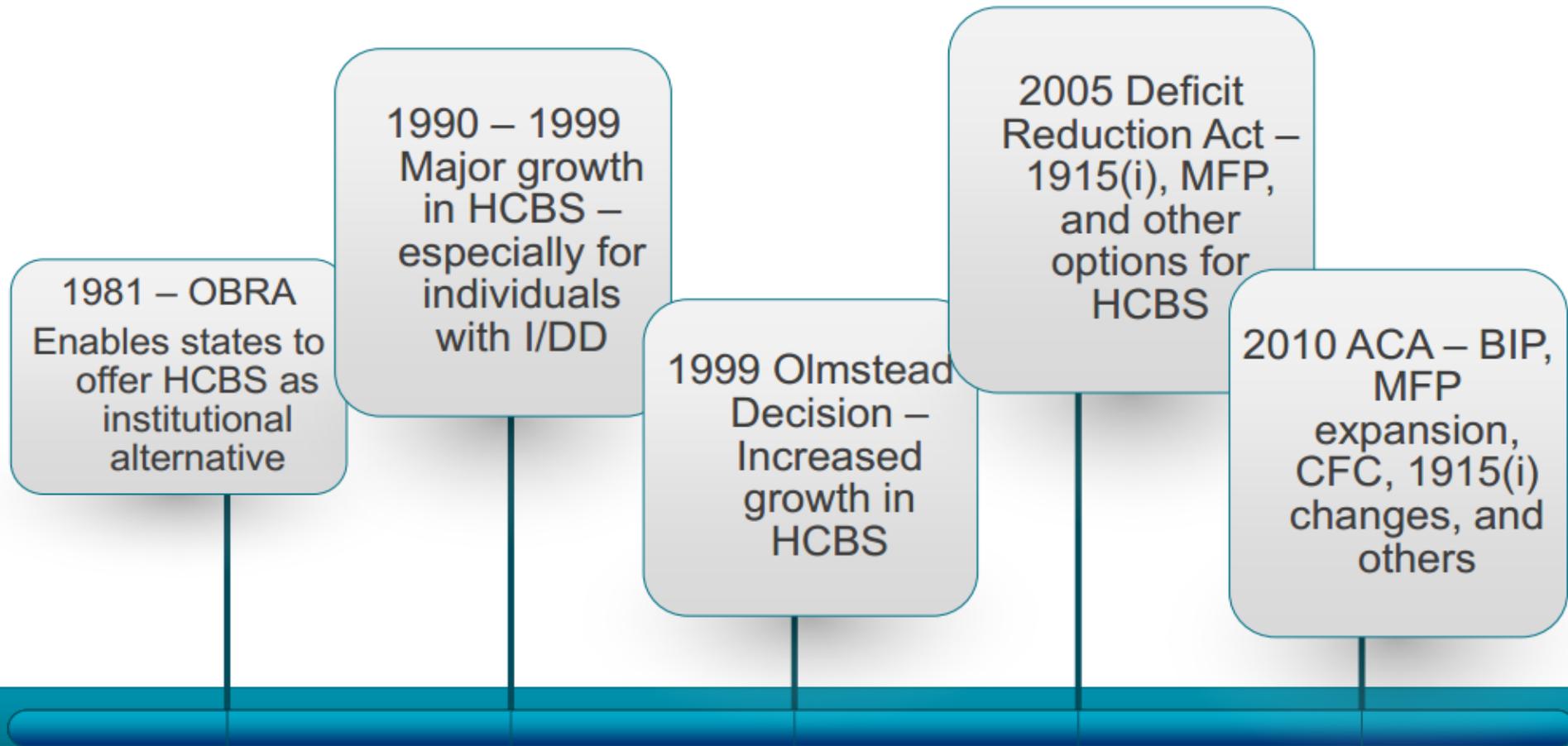
- 2008 report by Congressional Research Service (CRS), spending on Medicaid TCM increased from 1.4 billion to 2.9 billion dollars between 1999 and 2005.
 - Total Medicaid program spending increased by 87% during same time span.
 - Covering more than 2.7 million beneficiaries at an average annual cost of \$1,050 per beneficiary, it represents a significant line-item for state budgets
- **2008** – CMS redefines TCM, issues Final Rule (2011)
- **2014** – CMS issues Final Rule on Conflict Free Case Management

Visual History of CFCM

** Mercer presentation, Sept. 19, 2013, NASUAD conference*

Conflict Free Case Management

History – Origins in Home and Community Based Services (HCBS)



Growth of HCBS often relied on existing infrastructure from state, county, and provider levels.

Case Management

- **Definitions:**
 - **Case management consists of services** which help beneficiaries gain access to needed medical, social, educational, and other services.
 - **“Targeted” case management services** are those aimed specifically at special groups of enrollees such as those with **Intellectual/ developmental disabilities** or chronic mental illness.
- Case management services are comprehensive must include all of the following (42 CFR 440.169(d)):
 - (1) assessment of an eligible individual (1);
 - (2) development of a specific care plan;
 - (3) referral to services; and
 - (4) monitoring activities

CMS Final Rule: Conflict Free Case Management



Federal requirements for a CFCM System in different regulations

- Older Americans Act
- Balancing Incentive Program
- Federal HCBS Rule
- Affordable Care Act

Conflict Free Case Management

The statutory provisions for CFCM were the product of many years of experiences/issues in a number of states' LTSS systems.

Undo Influence Over Goals

Compromised Individual Choice of Services

Misaligned Financial Incentives

Provider Self Referral

The language regarding conflict of interest in the new CMS Rules is as follows

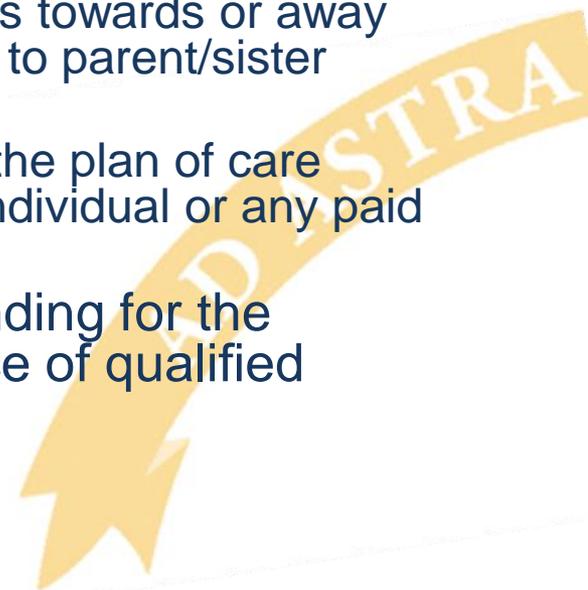
- *Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case 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*

- 42 CFR §441.301(b)(1)

DEFINITION

According to the Centers for Medicare and Medicaid Services (CMS), case management services must be “conflict free”, which has the following characteristics:

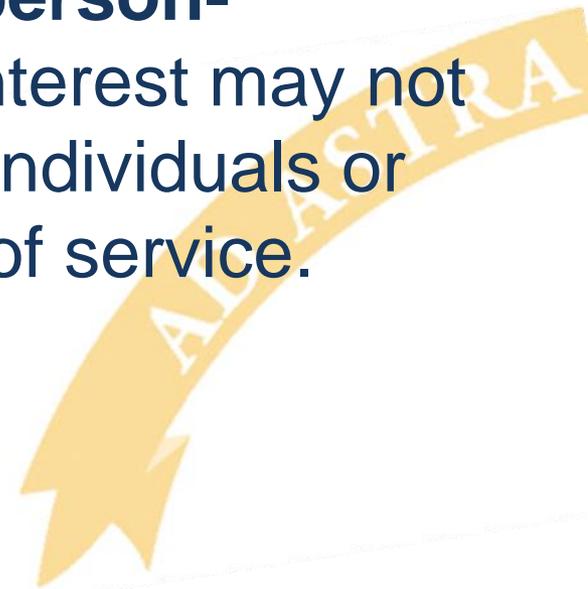
- Separation of duties – freedom from coercion
 - Separation of case management from direct services provision
 - Separation of eligibility determination from direct service provision
- Free from potential conflicts
 - No method to coerce, incentive, or steer individuals towards or away from certain choices (such as self-referral, referral to parent/sister company for services, etc.)
 - Anyone conducting evaluations, assessment and the plan of care cannot be related by blood or by marriage to the individual or any paid caregiver.
- Case managers do not establish the levels of funding for the individual or try to influence the individual’s choice of qualified providers/access to services



Conflict Free Case Management

Conflicts can arise from incentives for either over- or under-utilization of services; subtle problems such as **interest in retaining the individual as a client rather than promoting independence**; or issues that **focus on the convenience of the agent or service provider rather than being person-centered**. Many of these conflicts of interest may not be conscious decisions on the part of individuals or entities responsible for the provisions of service.

- *Excerpt from the 1915(i) Proposed Rule CMS 2249-P2 (page 47):*



General Rule

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,

Exception: when the State demonstrates (to CMS) 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.

- §441.301(1) (vi)

Components of Conflict Free Case Management

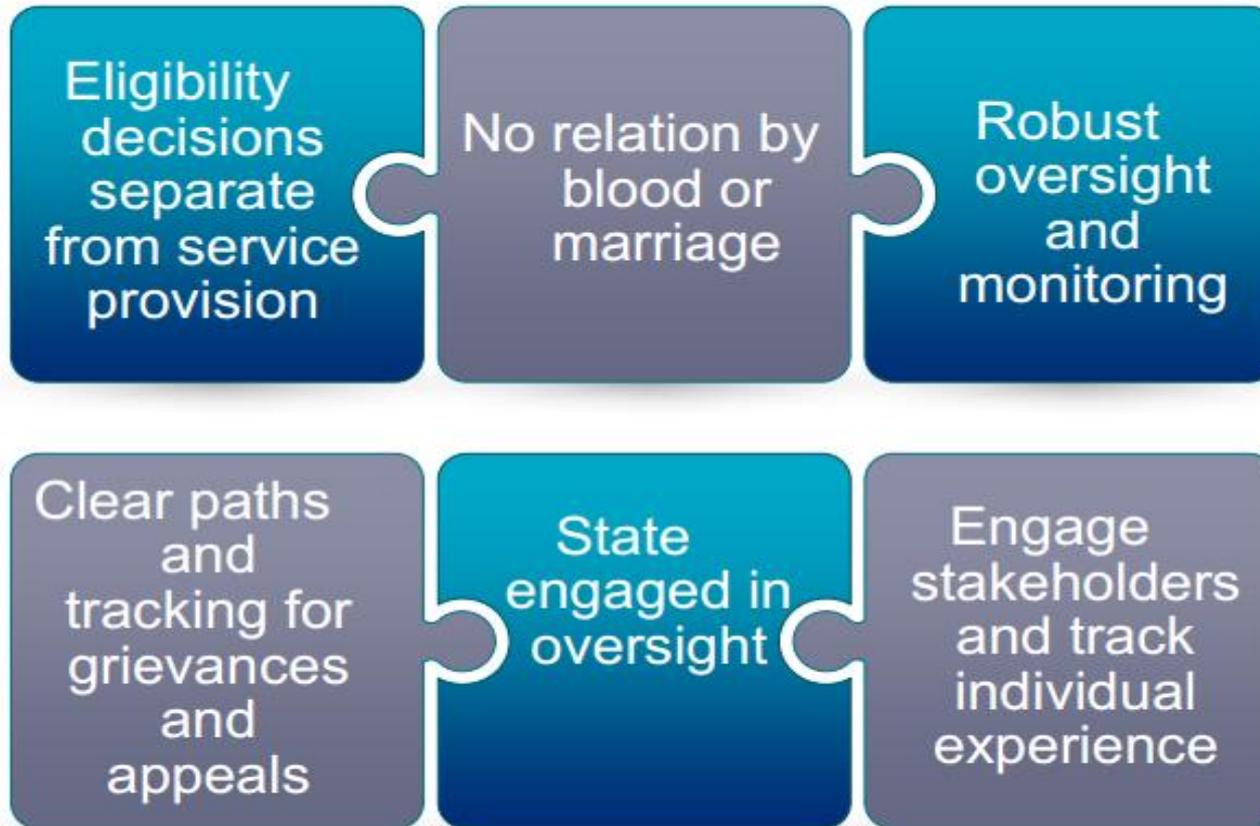
CMS has created common expectations for CFCM

- Eligibility decisions are separate from service provision.
- No relation by blood or marriage.
- Robust oversight and monitoring.
- Clear path for tracking grievances and appeals.
 - Established for consumers to submit grievances and/or appeals to the managed care organization and State for assistance regarding concerns about choice, quality, eligibility determination, service provision and outcomes.
- Track and document consumer experience.



Visual Overview of Components

** Mercer, Sept. 19, 2013, NASUAD conference*



CMS has created common expectations across all HCBS, though there may be some authority-specific requirements in addition to these basic elements.

The Problem



- an increased possibility for conflict of interest exists when
 - the assessor is also the provider because s/he may be more likely to recommend treatments and care options that are more expensive, whether or not they are necessary.
 - Even when the case management and provider (i.e. homemaker services or group home) units are separate but contained in the same organization, the risk is high
 - Over time, as reimbursement models changed, providers had incentive to get individuals to choose more complex, expensive services



Potential Conflicts



- **Assessment**

- there may be an incentive during the assessment to assess for more or less services than the consumer needs.
- The HCBS provider, its employees and related entities, cannot provide service planning or case management for the beneficiary.

- **Financial interest**

- May be more interested in a care plan that retains the consumer as a client than rather than independence.
- May not suggest outside providers for concern of lost revenue.

- **Convenience**

- Provider may develop the POC that is more convenient for the provider than a plan that is person-centered.

- Adapted from Balancing Incentive Program Manual, available at: www.balancingincentiveprogram.org/resources/example-conflict-free-case-management-policies

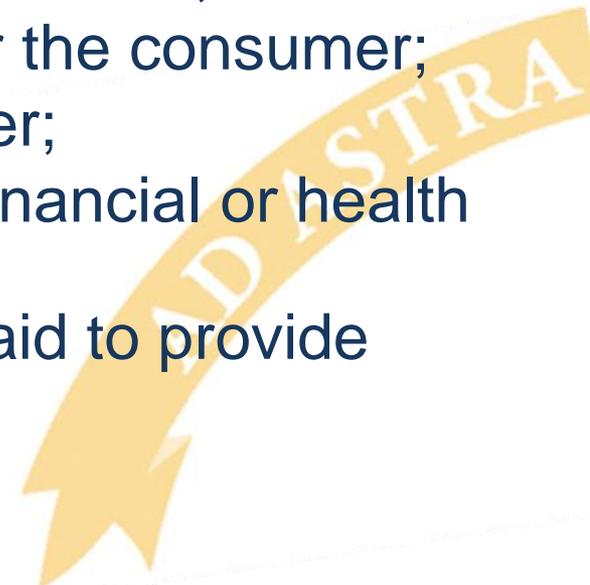


Conflict of Interest Safeguards

In general, an HCBS provider, its employees and related entities, cannot provide service planning or case management for the beneficiary. HCBS state-plan services require conflict of interest standards.

At a minimum, assessor, case manager, and agent determining eligibility cannot be:

1. related by blood or marriage to the consumer;
2. related to any paid service provider for the consumer;
3. financially responsible for the consumer;
4. empowered to make the consumer's financial or health related decisions; or
5. hold a financial interest in any entity paid to provide "care" for the consumer.



Managed Care

- Three levels of integration:
 - Integrating PH/BH/LTSS
 - Integrating Medicare and Medicaid
 - Integrating individuals into the community
- Integration happening through variety of formal mechanisms:
 - Health Homes, MCOs, ACOs
 - Financial interests are aligned with coordination of care
- Integration includes development of comprehensive care plans

Key Question: How do you construct CFCM without undue interest for self-referral and having person-centered planning processes with integrity in integrated care?

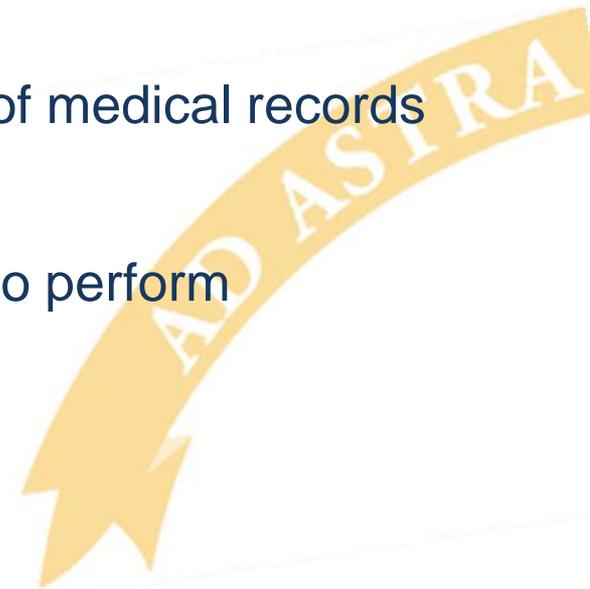
Paradox? Conflict of Interest? Not necessarily

In these arrangements, when one entity is responsible for, or in some cases “at risk” for, the services provided to the individual, tailored strategies to ensure objectivity, conflict mitigation, truly person-centered approaches to care delivery and positive outcomes must be constructed.



Conflict Free Case Management

- **Kansas must take steps to ensure that program and monitoring will ensure CFCM**
 - Keep individuals at the center of the system
 - Promote optimal outcomes and quality of life for individuals; and
 - External quality review organization reviews validation of performance measures.
 - Ombudsman Programs
- **Some tools in use by states include:**
 - External quality review organization reviews of medical records and validation of performance measures;
 - Ombudsman Programs;
 - Independent Community Entities contracted to perform certain oversight functions; and
 - Individual participants.



Conflict Free Case Management

Questions to consider.

- State retention of certain functions.
- Are there administrative firewalls between organizations for certain functions.
- What potential conflicts do we see in Kansas?

States Developing CFCM systems

No clear conflict-free case management template.

Note: A Managed Care system does not necessarily violate the conflict free case management mandates because CMS puts in additional safeguards, reviews and expectations of states under Managed Care and states must ensure appropriate administrative safeguards.





Person Centered Care Planning

If the person centered planning is honored, the potential for case management conflict may be limited

Choice



- Providing meaningful choice to consumers entails more than simply providing a list of potential agencies, offering the county versus one other agency, or offering two different agencies.
 - **Desirable structures include opportunities for individuals and families to meet potential case managers, and to have clear guidance for the decision-making process.**

Goals

- Consumer Choice
 - Meaningful
 - Person-centered
- Consumer Direction
 - Services directed by consumer/guardian
- Care Coordination
- NO conflict of interest



AD ASTRA

Barriers To Changes

- Resistance to change
- Change for providers and impact on revenue
- Impact on frontier, rural and underserved areas
- Ensuring/Monitoring self-disclosure of conflicts
- Quality Assurance/Monitoring



AD ASTRA

Efforts to Improve Case Management



- **Quality Assurance**

- Other states have taken efforts to improve case management by addressing the design and effectiveness of a state's quality assurance system,
- standardizing performance measures across funding streams and disability groups,
- standardizing caseload size, and
- coordinating efforts across all disability groups.

AD ASTRA

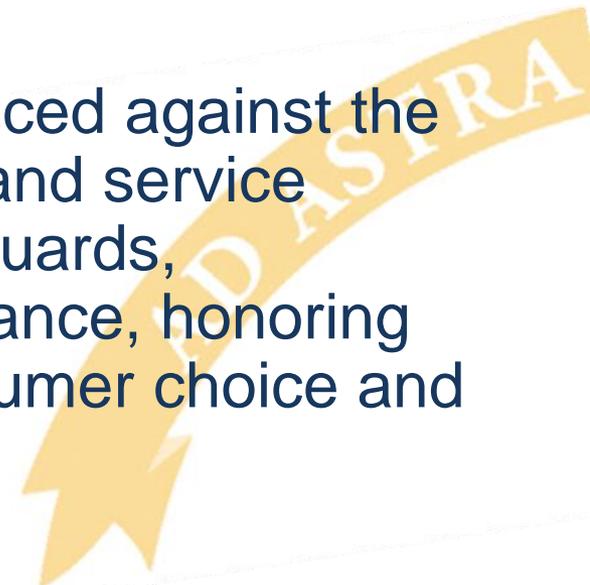
Efforts to Improve Case Management (cont'd)

- **Funding:**

- Some states are also addressing their funding of case management by reevaluating their balances between administrative claiming, service claiming, and use of the targeted case-management funding stream.

- **Access/Availability:**

- Finally, reform efforts should be balanced against the basic principles of improving access and service availability while assuring basic safeguards, improving accountability and performance, honoring individualization, and promoting consumer choice and self-determination



Best Practices



- **Assessment**

- Assessment designed to include a process that leads to a determination of an individual allocation and intensive support for individuals with disabilities to design the supports
- Maximizing the use of informal support mechanisms before or along with using paid services.

Best Practices

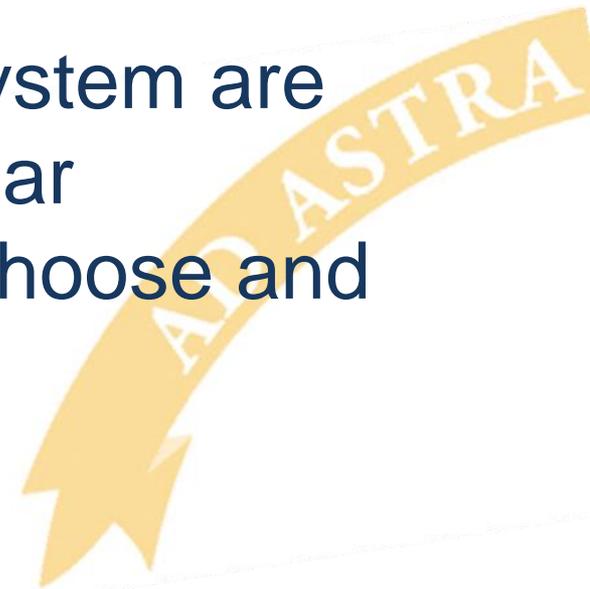
- **Promoting Consumer Choice**

- Clear delineation of responsibility for gatekeeping i.e. eligibility determination, assessment of need and monitoring of roles.
 - There should be **no conflict of interest in any service decision.**
- Meaning Choice
 - Choices should be in ways meaningful to and easily negotiated by the consumer and his or her family.
 - **Entails more than providing a list of potential agencies, Should include opportunities for individuals and families to meet potential case managers and to have clear guidance for the decision making process.**



Best Practices

- **Provided Locally**
 - Case Management should be provided locally by individuals who know local community resources.
- **Accountability**
 - Assure case managers and system are held accountable including clear understanding of the right to choose and change case managers



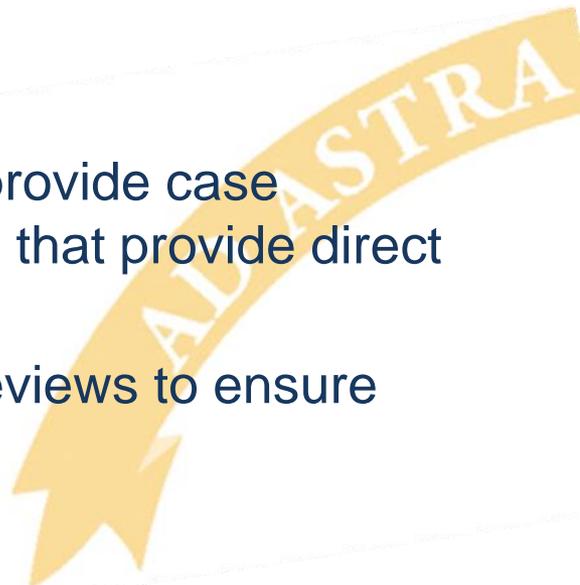
What Other States are Doing...

LOUISIANA

- State makes eligibility decisions; MCO does needs assessment
- Assessors are not providers on the plan and assessment units are administratively separate from utilization review units and functions
- MCO established consumer council to monitor issues of choice.
- State oversees MCO to assure consumer choice and control are not compromised and documents consumer experiences

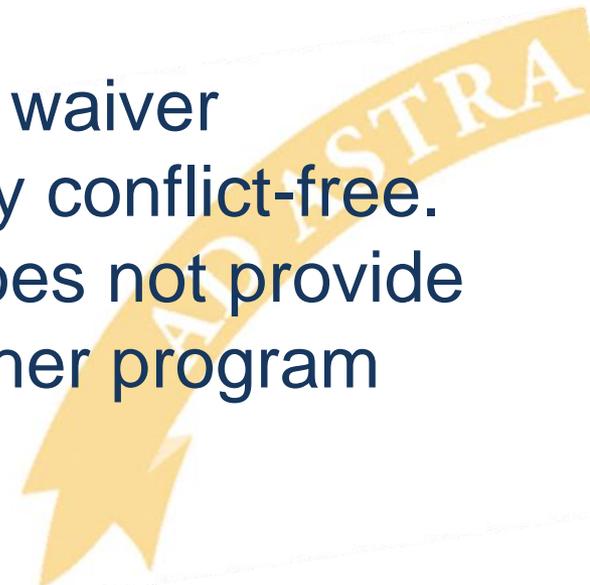
TEXAS

- Entities that conduct eligibility determinations and provide case management are wholly independent of the entities that provide direct services.
- State monitors providers and conducts utilization reviews to ensure individuals receives services and supports



What Other States are Doing...

- **Illinois:** the entity that determines eligibility and provides case management services are separate from the entities that provide direct services.
- **Nevada:** Case Management System is conflict free (Already in place)
- **Georgia:** GA has five long-standing waiver programs, three of which are already conflict-free. One (Georgia Pediatric Program) does not provide case management services. One other program will be conflict-free



Review CFCM Design elements

- **Separation of Duties.** Eligibility is separated from direct service provision
- **Clear Role Definitions.**
 - Case manager cannot make financial or health-related decisions on consumer's behalf
 - Case managers/assessors are not related (by blood or marriage) to :
 - Consumer;
 - Any of the consumer's paid caregivers; or
 - Anyone financially responsible for the individual or
- **Robust Monitoring/Oversight.** Monitor eligibility and service provision practices to ensure consumer choice and control are not compromised
- **Consumer Complaint System.** way to submit grievances and/or appeals and the State ensure they are adequately tracked and monitored
- **Administrative Firewalls.** *In circumstances when one entity is responsible for providing case management and service delivery, the State must assure appropriate safeguards and firewalls exist to mitigate risk of potential*

Mitigation Strategies



- **Quality Assurance**

- State Audits
- Data driven assessments
- Measurement: State calculates measures on beneficiary satisfaction, freedom of choice, referral patterns, acuity of care etc. to identify potential conflict.

- **Administrative Firewalls**

- The agency does not case manage the clients to whom it provides services. Case management is still part of the agency's portfolio of services, but there is no conflict for a given client.
- The governing structure should be transparent with stakeholder involvement.
- Staff should not be rewarded or penalized based on care planning results.
- Case management functions and direct service provision should be located in different departments, different leadership, different reporting structures, different accounts
- Agency should have a conflict of interest policy available for consumers
- Agency should have and maintain a beneficiary complaint system and track and monitor complaints that are reported to the State/MCO for follow up

Discussion



QUESTIONS

