

1915(i) MEDICAID STATE PLAN AMENDMENT

Conflict of Interest Standards 510-08-20

This policy contains the following information about the federal conflict of interest standards:

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APPLICABILITY

This policy is for members receiving 1915(i) services, service providers rendering 1915(i) services, and Human Service Zones.

DEFINITIONS

Care coordinator – means the professional responsible for plan of care development and coordinating access to needed services.

Conflict of interest – means that care coordinators are independent or separate from providers of other 1915(i) services.

Department – means North Dakota Department of Health and Human Services.

Employer Identification Number (EIN) – means a number that identifies your business for tax purposes.

Human Service Zones – means local offices in the counties (formerly known as county social service offices) who have professionals that can help people who need services and supports.

Managed Care Organization (MCO) – means a health care delivery system that provides Medicaid health benefits and additional services through a contracted arrangement between the Department and the Managed Care Organization that accept a set per member per month (capitation) payment for these services.

Plan of care – means a document that identifies the supports and services provided to address the needs of a member.

Reside – means a member’s permanent home.

Service authorization – means prior approval of the service by the Department.

CONFLICT OF INTEREST STANDARDS

The Department must comply with the federal conflict of interest standards at [§ 441.730](#). The standards apply to all individuals and entities, public or private. At a minimum, care coordinators and Human Service Zone employees must not be any of the following:

1. Be related by blood or marriage to the member, or any paid caregiver of the member.
2. Be financially responsible for the member.
3. Be empowered to make financial or health-related decisions on behalf of the member.
4. Have a financial interest, as defined in [§ 411.354](#), in any entity paid to provide care for the member.
5. Providers of other 1915(i) services for the member, or those who have interest in or are employed by a provider of other 1915(i) services.

EXCEPTION: When the only willing and qualified provider to serve as a care coordinator in a geographic area also provides the other 1915(i) services and the provider complies with the Department’s [conflict of interest protections](#).

The regulation requires independence or separation of the following functions:

- [independent evaluation of eligibility](#), performed by the Human Service Zone.

- [the assessment of need and plan of care development](#), performed by the care coordinator.
- [provision of other 1915\(i\) services](#) (excluding care coordination), performed by service providers.

ENSURING INDEPENDENCE OR SEPARATION PER THE CONFLICT OF INTEREST REQUIREMENTS

Independent Evaluation of Eligibility

The point of entry to enroll in 1915(i) services is the Human Service Zones. The written agreement between the Department and the Human Service Zones requires that the Human Service Zone employee determining eligibility is not related by blood or marriage to the member, or any paid caregiver of the member; financially responsible for the member; or empowered to make financial or health related decisions on behalf of the member.

Assessment of Need and Plan of Care Development

Care coordination agencies cannot provide the care coordination service, which includes the assessment of need and development of the plan of care, and provide other 1915(i) services to the same member unless an exemption applies due to:

1. a provider shortage area.
2. a common language or cultural background.

Exemption 1: Provider Shortage Area

A care coordination agency may provide care coordination and other 1915(i) services to the same member when:

- the member resides within a county designated as a community-based behavioral health provider shortage area¹, and
- the provider is the only willing and qualified provider in a community-based behavioral health provider shortage area.

¹ All ND counties, except Burleigh and Cass, are considered community-based behavioral health provider shortage areas for 1915(i). All counties in Minnesota, other than Clay County, are considered community-based behavioral health provider shortage areas for 1915(i).

Exemption 2: Common Language or Cultural Background

A care coordination agency may provide care coordination and other 1915(i) services to the same member when:

- the provider is the only willing and qualified provider with experience and knowledge to serve the member due to a common language or cultural background.

Providers Who Meet Requirements for Exemption 1 or 2

If the requirements under either exemption are met, the care coordination agency must submit justification to the Department showing evidence they are either:

1. the only willing and qualified provider in a community-based behavioral health shortage area, or
2. the only willing and qualified provider with experience and knowledge to serve the member due to a common language or cultural background.
 - See the [Conflict of Interest Procedure Guide](#) for instructions on submitting justification.

If the Department approves the justification, the care coordination agency must:

- document the use of different individual providers and supervisors for provision of the care coordination service and different individual providers and supervisors for provision of the other 1915(i) services in the plan of care, and
- implement the protections listed in the [Conflict of Interest Protections](#) section below.

Provision of Other 1915(i) Services

An individual service provider affiliated with an agency may provide any combination of the other 1915(i) services, excluding the care coordination service. This means the same individual provider may provide peer support, non-medical transportation, or any of the other 1915(i) services, just not care coordination.

An individual provider affiliated with multiple provider enrollment groups or agencies cannot provide care coordination under one agency and provide the other 1915(i) services under a different agency to the same member if that individual provider is employed by both agencies. Example, an individual provider cannot provide care coordination under Badlands Care

Coordination Agency and peer support under Roughrider Support Agency to the same member if that individual provider is employed by both agencies.

CONFLICT OF INTEREST PROTECTIONS

To ensure conflict of interest standards are met, the following protections must be in place:

Member

1. The member's care coordinator will provide written documentation explaining the member's right to choose providers for each of the services specified in the plan of care and their right to change their care coordination provider or any other service provider at any time. The member selects all service provider(s) from a list of available service providers.
2. The member, and their family or guardian when applicable, are provided a form containing the following dispute resolution process:
 - If a member is uncomfortable reporting any problems or concerns to their care coordinator, they may contact the Behavioral Health Division or Medical Services Division by emailing nd1915i@nd.gov, or the North Dakota Protection & Advocacy Project by calling 701-328-2950. Care coordinators are instructed to remind members of this option at their care coordination meeting, and at a minimum of quarterly thereafter.
3. Members who receive 1915(i) services from the same agency that provides the care coordination service are protected by the following safeguards:
 - fair hearing rights,
 - the ability to change providers, and
 - the ability to request different individual providers from within the same agency.
4. The plan of care must indicate the member was notified of the conflict of interest standards and the dispute resolution process, including appeal rights, and the member has exercised their right in free choice of provider after notification of the conflict of interest standards. The member signs an acknowledgment on the plan of care indicating their free choice of provider.

Provider

1. Providers must receive prior service authorization for all services from the Department for Traditional Medicaid members and from the Managed Care Organization (MCO) for Expansion members.
2. Providers are required to have written conflict of interest standards and written policy to ensure the independence of individual providers and supervisors providing the care coordination service and independence of individual providers and supervisors providing the other 1915(i) services to the same member.

Department

1. The Department or MCO will confirm a provider is the “only willing and qualified” provider prior to approving the plan of care and the service authorization.
2. The Department will directly oversee and periodically evaluate conflict of interest protections.
3. The Department will engage in quality management activities to promote adherence to service delivery practices including individual choice and direction in the development of the plan of care, selection of service providers, and preference for service delivery.

AGENCIES CREATING SEPARATE ENTITIES

The conflict of interest standards refer to who employs (meaning the legal entity) the care coordinator and who employs the service provider. Care coordinators cannot have an interest in or be employed by a provider of any of the other 1915(i) services to the same member unless an exemption, as identified above, applies.

For purposes of this policy, separately employed means employed by a legal entity with a separate Employer Identifier Number (EIN).

RESOURCES

[§ 441.730 Conflict of Interest Standards](#)
[Conflict of Interest Procedure Guide](#)

POLICY UPDATES

- 5/20/2024