1915(i) Policy

Conflict of Interest Standards 510-08-20

Individuals or entities that evaluate eligibility or conduct the independent evaluation of eligibility for the 1915(i), who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the service plan; cannot:

1. Be related by blood or marriage to the individual, or any paid caregiver of the individual.
2. Be financially responsible for the individual.
3. Be empowered to make financial or health-related decisions on behalf of the individual.
4. Have a financial interest in any entity paid to provide care to the individual.

Providers can enroll to provide any or all of the 1915i services. This policy pertains to the provision of those services.

Group providers of 1915(i) HCBS services cannot complete the WHODAS, provide the care coordination service which includes the development of the plan of care, and provide other 1915(i) services to the same individual unless the State requests an exception to this regulation and CMS approves the request. The State requested and was granted the following two exceptions to the Conflict of Interest Standards:

Exception #1

A group provider may complete the WHODAS, provide care coordination, and other 1915(i) services to the same individual when they document the use of different individual providers for administration of the WHODAS, provision of the care coordination service, and provision of the *other 1915(i) services, and:

- the 1915(i) member resides within a county designated as a community-based behavioral health provider shortage area; and
- the 1915(i) group provider implements the protections listed in the Conflict of Interest Protections section below.

*The same individual provider affiliated with the group, excluding the WHODAS administrator or care coordinator, may provide any combination of any of the other eleven 1915(i) services.

The following counties are designated as community-based behavioral health provider shortages areas

Divide, Williams, McKenzie, Billings, Golden Valley, Slope, Hettinger, Stark, Bowman, Adams, Grant, Oliver, Mercer, Dunn, McLean, Burke, Renville, Bottineau, Rolette, Towner, Cavalier, Ramsey, Walsh, Nelson, Griggs, Pierce, McHenry, Benson Wells, Sheridan, Kidder, Eddy, Foster, Pembina, Steele, Trail, Barnes, Stutsman, Richland, Ransom, Dickey, Sargent, Emmons, Logan, Lamoure, Sioux,

McIntosh, Ward, Morton, Grand Forks, and Mountrail in North Dakota, and Clay in Minnesota.

The following counties are not community-based behavioral health provider shortage areas:

Burleigh and Cass Counties in North Dakota, and all counties in Minnesota other than Clay.

Exception #2:

A group provider may complete the WHODAS, provide care coordination, and other 1915(i) services to the same individual, regardless if the individual resides in a designated community-based behavioral health provider shortage areas, when they document the use of different individual providers for administration of the WHODAS, provision of the care coordination service, and provision of the *other 1915(i) services, and:

- The group provider is the only willing and qualified provider to perform assessments and develop POCs with experience and knowledge to serve the individual who shares a common language or cultural background; and,
- The group provider submits a written request to the State Medicaid Agency providing evidence they are the only willing and qualified provider with experience and knowledge to serve the individual who shares a common language or cultural background; and,
- The State Medicaid Agency approves the request; and,
- The 1915(i) provider implements the protections listed in the Conflict of Interest Protections section below.

*The same individual provider affiliated with the group, excluding the WHODAS administrator or care coordinator may provide any combination of any of the other eleven 1915(i) services.

Conflict of Interest Protections

To ensure conflict of interest standards are met, the following protections must be in place whenever either Exceptions #1 or #2 are used:

1. Different individual providers affiliated with a group provider must be used to administer the WHODAS, provide the care coordination service which includes developing the plan of care, and provide the *other 1915(i) services to the same individual.

   *The same individual provider affiliated with the group, other than the care coordinator or WHODAS administrator, may provide any combination of any of the other eleven 1915(i) services.

2. Group providers must document the use of different individual providers and supervisors for administering the WHODAS, providing the care coordination service which includes developing the plan of care, and providing the *other 1915(i) services to the same individual.

   *The same individual provider affiliated with the group, other than the care coordinator or WHODAS administrator, may provide any combination of any of the other eleven 1915(i) services.

3. Providers must receive prior service authorization for all services from the State Medicaid Agency for Traditional Medicaid Members and from the MCO for Expansion Members.

4. The plan of care must indicate the individual was notified of the conflicts and the dispute resolution process, including appeal rights, and that the individual has exercised their right in free choice of provider after notification of the conflict. The Department ensures the client has agreed to receive 1915(i) services from the same provider who performed their assessment and developed their Plan of Care. The client signs an acknowledgment on the Plan of Care indicating their free choice of provider.

5. NDDHHS will require providers to have written conflict of interest standards and written policy to ensure the independence of persons administering the WHODAS, providing the care coordination service which includes developing the plan of care, and providing the other 1915(i) services to the same individual.

6. Recipients who receive state plan HCBS from the same agency that provided the assessment or plan of care development are protected by the following safeguards:
   a. fair hearing rights,
   b. the ability to change providers, and
   c. the ability to request different professionals from within the same agency.

7. The department will provide direct oversight and periodic evaluation of conflict of interest safeguards.

8. The point of entry to enroll in 1915(i) services is the Human Service Zones. The written agreement between the NDDHHS and the Human Service Zones requires them to notify the individual of their right to choose their care coordination provider and their right to appeal, and to assure the Human Service Zone employee determining eligibility is not related by blood or marriage to the individual/participant; to any of the individual's paid caregivers; or to anyone financially responsible for the individual or empowered to make financial or health related decisions on the individual/participant's behalf.

9. During the Medicaid eligibility process, the Human Service Zones have the individual sign a Medicaid application which verifies the individual has been informed of their rights and responsibilities with opportunities for fair hearings and appeals in accordance with 42 CFR 431 Subpart E. The Human Service Zones will also provide the individual with a list of all available care coordination providers, who are responsible for the development of the POC, currently enrolled in their areas. The individual can choose to request care coordination services for any of those providers listed. In some areas of the state, there may be only one willing and qualified provider.

10. The individual's care coordinator will also provide written documentation explaining the individual's right to choose providers for each of the services specified on the plan of care and their right to change their care coordination provider or any other 1915(i) service provider at any time. The participant selects all service provider(s) from a list of available service providers.

11. The State 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.

12. The individual, and their family or guardian when applicable, will develop and lead the plan of care team with assistance from the Care Coordinator. The individuals on the team consist of service providers, community supports, and natural supports.

13. The NDDHHS will require all providers who assert they are the only willing and able qualified provider with experience and knowledge to provide services to individuals who share a common language or cultural background to submit a request to the NDDHHS, along with evidence to support the assertion. The NDDHHS will review the evidence and either approve or deny the request. All providers rendering both care coordination and other 1915(i) services to one individual due to their residing in a community-based behavioral health provider shortage area will be required to notify the Department via email, and also by the inclusion of the services they will provide in the Individual Goals & Services portion of the Person-Centered Plan of Care. The Department will confirm the provider is the "only willing and qualified" provider in a geographical area prior to the approval of the Person-Centered Plan of Care and the service authorization.

14. In addition to the conflict-free measures identified above, the dispute resolutions include:

    Individuals, and families when applicable, are provided a fact sheet containing their right to choose services and providers, and the following dispute resolution process:

        If the individual is uncomfortable reporting any problems/concerns to their Care Coordinator, they may contact the Behavioral Health Division

or Medical Services Division of the DHHS by emailing nd1915i@nd.gov, or the North Dakota Protection & Advocacy Project by calling 701-328-2950. Care coordinators are instructed to remind individuals of this option at their care coordination meeting, and at a minimum of quarterly thereafter.