PROVIDER SUPPORT CALL TRAINING
Conflict of Interest

WDH Division of Healthcare Financing
Developmental Disabilities Section
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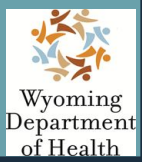

Today's training topic will be on Conflicts of Interest. Conflict of interest is a topic that is discussed a lot in passing, but that might not necessarily be something we always think about in a deliberate manner. Today I'd like us to take some time and situate conflict of interest in the context of the Waiver program, and how it impacts our work on a regular basis.

Training Agenda

Important Elements of Conflict of Interest:

- What is a conflict of interest and how is it defined?
- Why do we need to pay attention to conflicts of interest?
- Who is impacted by conflict of interest requirements?
- How can we identify conflicts of interest, and how can we mitigate those conflicts?

Before we jump into the meat of the training, I'd like to map out the major questions we are going to discuss today. I'd like to cover some of the what, the why, the who, and the how with conflict of interest. While some of these questions seem like they may be obvious, I think that spelling things out will help us to confirm that we have the same definitions, the same understanding, and can really get to the "why" or the "so what" related to conflicts of interest. Today we'll define conflict of interest, talk about who needs to be involved in conflict of interest requirements, who is impacted by these requirements, and how we can both identify and mitigate potential conflicts.

Wyoming Medicaid Rule Authority

- Wyoming Medicaid Rule, Chapter 45 Section 5(b)(ii): Case manager conflict of interest
- Wyoming Medicaid Rule, Chapter 45 Section 13(k): Provider conflict of interest
- Wyoming Medicaid Rule, Chapter 45 Section 31(k): Provider and relative provider conflict of interest

Of course, we always want to begin by situating ourselves within Wyoming Medicaid Rule, which governs our Waiver program. Chapter 45 of Wyoming Medicaid Rule contains several sections that speak to conflict of interest. For case managers, Section 5(b)(ii) talks about conflict of interest requirements, particularly the specifics of what it means for case managers to be "conflict free." Section 13(k) speaks to conflict of interest as it pertains to providers. Providers and case managers have different roles and responsibilities when it comes to conflict of interest, so it is important to understand those differences. Finally, Section 31(k) talks specifically about providers hiring relatives or legally authorized representatives, and how those conflicts of interest should be handled.

Why are Conflicts of Interest Important to Identify and Mitigate?

Why Are We Here?

- Conflict of interest could be more prevalent in smaller, well-connected communities.
- Understanding the why helps to form a common foundation.
  - The philosophies of the DD Waiver Program
  - Our agreed-upon standards for individuals we serve
- Protecting provider businesses, protecting each other, and protecting individuals we serve.

Everyone in Wyoming is aware of the joke that Wyoming is essentially one town with very long roads. This might be rather cliche, but it is true that Wyoming is very well-connected, and many communities within Wyoming are small and have lots of connections with families, friends, and colleagues. This, of course, is especially true of an industry that is specialized, such as the DD provider and case manager community. One of the great assets that we have in Wyoming is the close relationships and knowledge we possess from being able to know each other and work well together. However, when we have that closeness, there can also be potential conflicts of interest that we need to address. Understanding the "why" behind the requirements in rule can help us form a common foundation, consistent with the philosophies of our program that strive to serve individuals to the highest standard possible. We want to make sure that while we deliver quality services, we also protect our provider businesses, protect each other, and protect those individuals we are here to serve.

What is a Conflict of Interest?

- When an individual has competing interests or loyalties because of their duties to more than one person or organization.
- Bad intentions are not assumed. A conflict of interest exists even if no negative results occur.
- The potential for a conflict of interest, or the appearance of a conflict of interest, is also important to consider and address.

That rationale is all well and good, but sounds a little disconnected to the real world, so let's talk about some basic definitions. What is a conflict of interest? At its most basic, it is recognizing that someone could have loyalties to more than one person or organization, and that those loyalties could pull people in multiple directions. We've all been in a place where we have those multiple loyalties, and understand how hard it can be to try to remain impartial in such situations. I want to make it clear that when we talk about conflict of interest, we are not assuming that folks have bad intentions, or that they are going to do something sneaky or devious--just the opposite. By focusing on identifying conflicts of interest, we can be open and honest about out intentions to do right by everyone involved in these situations. Additionally, we all know that reputation is important, so we want to consider not only actual conflicts, but want to pay attention to the appearance of a conflict or the potential for a conflict, and address those head on.

Conflict-Free Case Management in Wyoming

Case Manager Conflicts of Interest

- Role of Case Manager
  - Making sure to document on the individualized plan of care that he or she has no conflict of interest with the participant or family.
  - Meet all of the conflict of interest requirements, including:
    - The case management agency and any managing employee shall not own, operate, be employed by, or have a financial interest in or financial relationship with any other person or entity providing services to a participant.
  - Not providing waiver services to individuals for whom they are also the case manager.

As we are all aware, case management has been conflict-free in Wyoming for several years. Wyoming Medicaid Rule, Chapter 45 Section 5 talks about the role of the case manager, and what conflicts of interest case managers need to ensure that they are avoiding. We know that the case manager needs to be an advocate for the individual that they are serving, and that means that case managers are held to a high standard in being conflict-free, so other relationships or loyalties do not interfere with their advocate role. Some of the specific tasks assigned to the case manager per rule include making sure that the IPC has documented that the case manager does not have a conflict of interest with the participant or with the family. It would be best practice to make sure that this status has not changed on a regular basis, and provide updates on any such changes. Additionally, the case manager cannot have a financial interest in or a financial relationship with any other person or entity providing services to a participant. This is an important element to keep in mind, as often we see relationships grow and develop as people continue to work together over a sustained period of time. Another great element in our provider and case manager population is a willingness to help out or assist others in times of need. However, we need to keep an eye on such situations--offering to rent someone who is down on their luck a room or an apartment has now created a financial relationship. Investing in someone's independent business or great startup idea creates a financial interest.

Often these situations come from the best of intentions, but can also create conflicts of interest. Finally, of course, case managers cannot provide other waiver services to individuals they case manage.

Case Manager Agency Conflict of Interest

- Not employing case managers that are related to the participant being served. This rule includes, the participant's legally authorized representative or a relative within the third degree.
- Not making financial or health-related decisions on behalf of the participant receiving services from that agency, including but not limited to a guardian, representative payee, power of attorney, or conservator.
- Making sure that employees do not provide case management services for a participant served, or live in the same residence of any provider on a participant's individualized plan of care.

Additionally, case management agencies have another layer of complexity to conflicts of interest. Hiring and managing staff can often be a challenging situation in the best of times, but case management agencies need to be cognizant of their conflict of interest requirements. Case management agencies cannot employ case managers who are related to a participant the agency serves, including legally authorized representatives and relatives within the third degree--which includes siblings, aunts, uncles, grandparents, and others. We also need to make sure the case managers are not tasked with making financial or health decisions for an individual served by the agency, and need to make sure that no one for the organization lives in the same residence as a provider who is on the participant's plan of care. Essentially these requirements attempt to draw clear boundaries between the roles of different people on the plan of care team, making sure that while we are all working together, we still have the separation and independence to make good choices in the support of the participants we serve.

Case Management Conflict of Interest Exception

- Please keep in mind that there are exceptions for conflicts of interest in extreme situations. These circumstances and the requirements are found in Wyoming Medicaid Rule, Chapter 45 Section (5)(b)(ii)(E).
- If a rural area of the State does not have a case manager without a conflict of interest for a participant, the participant or legally authorized representative may request to have a case manager with a conflict.
- If the Division confirms that there are no other case managers available in the region, or a nearby region, to provide case management, then the conflicted case manager may be approved on an annual basis.
- There is additional oversight required, though, in order to mitigate conflicts of interest.

Of course, there is an exception when a case manager without a conflict of interest cannot be located. Chapter 45, Section 5(b)(ii)(E) envisions a situation where, perhaps in a rural part of the state, there might be an extreme situation. If a case manager can't be located, the person legally responsible for the participant may request a case manager who could have a conflict of interest. In this extreme situation, the Division must verify the situation, and an neutral third party must conduct oversight to ensure that conflicts of interest are not impacting the services the individual is receiving.

Case Manager Conflicts of Interest: Examples

- Sally provides case management services to Charlie, a Waiver participant. Sally also owns a duplex and rents to Linus, a provider listed on Charlie's IPC. Sally now has a financial relationship with Charlie, which is a conflict of interest.
- Doug owns Case Management ABC, a case management agency that provides case management services to Judy, a Waiver participant. Judy's uncle Phil is a great case manager who has recently left his previous employer. Phil submits an application to Case Management ABC, but hiring Phil would be a conflict of interest for the agency.

The following slides have some examples of conflicts of interest a case manager or case manager agency might experience.

Case Manager Conflicts of Interest: Examples

- Sally is Joe's case manager. Recently, Joe has had issues with spending money and paying his bills. Sally begins helping Joe pay all of his bills, is helpling him budget, and is now keeping Joe's checkbook and his debit card. She is also going to the bank with Joe to allow him use of the debit card to withdraw spending money. Sally now has control over Joe's finances which is a conflict of interest.

- Joe is his own guardian and lately has had many health issues. Joe's doctor encourages Joe to choose a medical power of attorney to assist with making medical decisions. Joe asks his case manager Sally to be his medical power of attorney, stating she is the only person he trusts. Sally agrees to be his medical power of attorney. Sally now could have to make medical decisions for Joe which is a conflict of interest.

Provider Conflicts of Interest

Provider Conflict of Interest

- Wyoming Medicaid Rule requirements for provider conflicts of interest include several obligations:
  - Identify conflicts of interest in writing
  - Address how these conflicts will be mitigated
  - Provide this information to potential participants and legally authorized representatives prior to being chosen to provide services

Conflicts for providers are handled a little bit differently. Wyoming Medicaid Rule, Chapter 45 Section 13, does not directly prohibit the same types of conflict of interest that rule does for case managers. Instead, rule requires providers to identify potential conflicts of interest, address how those conflicts will be mitigated, and provide the information to participants and legally authorized representatives prior to being chosen as the provider. I encourage you to read the information about provider conflicts of interest closely, as it defines several types of problematic conflicts of interest, and is of great help when crafting policies and procedures for your organization. Please keep in mind that rule is very clear that this identification, mitigation, and notification needs to happen prior to everyone agreeing to the provider being on the plan of care. If you have not documented these steps, please make sure to do so as soon as possible. It is also best practice to revisit potential conflicts, as well will discuss in later slides.

Conflict of Interest Among Employees

- What might count as a conflict of interest among employees?
  - *Relatives of participants*
  - *Relatives of other providers*
  - *Employees moonlighting with other organizations*
- What are some ways conflicts could be identified?
  - *Employees self-identifying or self-disclosing during the hiring process*
  - *Training sessions to educate employees about conflicts of interest*
  - *Discussion with participants/representatives*
  - *Creating a culture that encourages self-identifying or self-disclosing potential conflicts*

The first type of conflict of interest a provider needs to consider as outlined in rule is potential conflict of interest among employees. It is important to understand some of the ways that employees could have conflicts of interest. Employees may be related to those who work at other organizations, or may be related to participants themselves. They may have second jobs with other organizations, which would present complications. The best methods for addressing conflict of interest among employees include taking a hard look at the hiring and training processes, and making sure that you have policies in place that require and encourage self-disclosure of potential conflicts of interest. Regular discussion about the importance of being open about conflicts of interest can help to create a culture that promotes this self-disclosure, as can attention to this topic in your code of conduct within your organization. Finally, it is always helpful to regularly check-in about conflicts of interest that could change or develop over time.

Employee Conflicts of Interest: Examples

- Joe is an employee for ABC services, he is also the Legally Authorized Representative of his niece who receives community living services at ABC. Although this may be allowed as long as Joe does not provide direct care or supervision to his niece, the agency must have a policy in place addressing the conflict.

- Suzie's sister is one of the Managers of ABC Services and schedules all staff to their assigned work areas. Suzie receives all of her waiver services from ABC Services and is very vocal about employees she likes and dislikes. Due to the potential conflict of interest the provider would need to have a policy in place that addresses the conflict of interest.

Here are a couple examples of conflict of interest among employees.

Conflict of Interest Among Other Providers on the Plan

- Why do we have rules about conflict of interest among other providers on the Individualized Plan of Care?
  - Ensuring that there are no competing loyalties
  - Keeping the participant's interests first
  - Supporting true participant choice
- What might count as a conflict of interest among other providers on the Individualized Plan of Care?
  - Co-owned organizations
  - Relatives working for other organizations
  - Investors, rental agreements, or other financial connections
- What are ways that conflicts might be identified?
  - Communication, communication, communication
  - Self-disclosure of potential conflicts
  - Keeping all parties up to date regarding changes
  - Involving everyone in the planning process

Again, Wyoming is a small state, and we often know and have working relationships with others in our field. However, conflicts of interest among other providers on the plan of care is another type of conflict that is addressed in rule. We want to ensure that at all times our network of supports is keeping the interest of the participant in focus, and supporting participant choice. A few examples of conflicts of interest with other providers on the plan of care could be those financial connections we discussed previously; relatives or former business partners who now own or provide services through another organization; or possibly individuals who co-own businesses or own multiple businesses. Communication is of course the most crucial element in identifying such conflicts of interest, and being open about those potential conflicts with those involved.

Other Provider Conflicts of Interest: Examples

- Bill works for 123 Provider Agency, providing services to Jim. Bill is also independently certified as a provider, and Jim would like Bill on his IPC to provide occasional Respite. Prior to being added to the IPC, Bill needs to identify his potential conflict of interest, and develop a plan to mitigate potential conflicts. Bill will need to make sure he discloses this information and the plan to Jim, 123 Provider Agency, and the team.

- Olivia is the owner of Olivia's Provider Agency, which provides services to June, a waiver participant. Olivia's brother, Oscar, owns Oscar's Home Modification Company. June lives in a small town, and Oscar's company is the only one in town that is able to provide her with the appropriate services. June chooses to add Oscar's company to the IPC. Oscar and Olivia have potential conflicts of interest that they need to disclose.

Let's talk about a few examples of conflicts of interest between providers on a plan of care.

Conflict of Interest Among Participant Relatives/LARs

- If a provider wishes to hire a participant's relative or legally authorized representative, they need to make sure they have safeguards in place.
- Written policy
  - Identifying the conflict/potential conflict
  - Addressing a plan for how the conflicts will be addressed
  - Sharing with the participant and legally authorized representative
- The participant's relative or legally authorized representative cannot provide services to the participant in this arrangement.

The final type of conflict of interest is when a provider wishes to hire the relative or legally authorized representative of an individual they serve. This situation is addressed directly in Wyoming Medicaid Rule, Chapter 45, Section 31. It is important to keep in mind that a policy related to this situation needs to be in place in order to safeguard the situation. Additionally, the participant's relative or legally authorized representative cannot provide services to the participant in this situation.

Participant Relative/LAR Conflicts of Interest: Example

- Jim lives with his provider Paulene who provides 24 hour Community Living Services (CLS) to Jim. Recently Jim has a new guardian who lives on the property where Jim lives. This would be considered a conflict of interest. The provider would need to have a policy in place identifying the conflict, identifying how the conflict will be handled, as well as ensuring that the guardian is in no way financially benefiting directly or indirectly from Jim.

Addressing/Mitigating Conflict of Interest Concerns

- Establishing a policy
  - Be proactive
  - Identify what risks might be present
  - How are you going to avoid getting into a sticky situation?

- Developing a plan to mitigate
  - Be proactive
  - Making sure we have a plan in place
  - Making sure we follow the plan
  - Periodically re-evaluating that plan to see if circumstances have changed, or if the plan needs to be updated

- What counts as "mitigating"?
  - Not every conflict of interest will be resolved
  - Transparency is important

The next step in the process after identifying a conflict of interest is to make a plan. Of course, we don't want to plan until we are neck-deep in a situation; instead, we rely on the policy that we have established. This policy should be proactive in identifying conflicts and have a process for developing a plan to address those conflicts. A good policy should have been based on identifying potential risks, and mapping out how to avoid those risks. Once we get to a specific plan for an identified conflict of interest, it is important to again be proactive. We shouldn't wait and see if a conflict of interest creates problems; instead, we should be planning on how to avoid those problems from happening in the first place. Any good plan has specific steps to follow, a way to determine if the plan is being followed, and re-evaluation to see if circumstances have change or if the plan needs to be updated. However, it might be a little unclear on why we are talking about "mitigating" conflicts of interest, instead of "avoiding" or "solving" them. The reality is that not every conflict of interest can be completely avoided or resolved; instead, we need to do our best in making sure the impact of such conflicts can be managed and decreased, and that we are open and transparent about our efforts to do so.

Sharing the Information

- We've identified potential conflicts of interest and have a plan to mitigate. Now, who do we share the information with, and how?
  - Who:
    - Participant, legally authorized representative
    - Plan of care team
    - Anyone involved/playing a role in the mitigation plan
  - How
    - Prior to engaging in providing services
    - Documented manner
    - On a regular basis as best practice

So, after identifying potential conflicts of interest and developing a plan, we need to make sure that the appropriate people are also informed and kept up-to-date. Rule requires such notification, and our plans can only be effective if everyone is on board. The participant, the legally authorized representative, and anyone else involved or playing a role in our mitigation strategies need to be notified. Additionally, if plans are dependent on the actions of others, please involve them in the development and execution of the plan. We also will need to ensure the plan is acceptable to the participant and the LAR, and should involve the plan of care team, particularly if the potential conflict of interest is between providers on the plan. One thing that everyone on this call also knows is that folks at the Division are fanatics for documentation. Please be sure to document these discussions rather than relying on memory, so that you can demonstrate compliance as needed and have a handy reference. Also keep in mind that rule requires these steps to occur prior to engaging in services, and that is it best practice to revisit this topic on a regular basis.

Conflicts of Interest: What Next?

- Is the Division saying that a provider can't ever have a potential conflict of interest?
  - No. The Division is providing clarity on what is required of providers and case managers to identify and mitigate potential conflicts of interest. These requirements make sure that our system supports the goals and philosophies of the Waiver program.
- Make sure to revisit your conflict of interest policy. Does it have the elements required by Rule? Are you and your employees up-to-date on the policy, and how to ensure it is followed?
- Please also review conflicts of interest on a regular basis. Situations can change, and new conflicts could arise. Be proactive!

A few key takeaways from this presentation: while Rule is clear about some conflicts of interest not being allowed, the Division wants to be clear--we need to support identifying and mitigating conflicts of interest, because it is not possible to eliminate them entirely. Some of the best steps that providers can take include taking a hard look at the conflict of interest policy, and asking critical questions. Does the policy serve your organization, and comply with Wyoming Medicaid Rule? Is it put into action consistently, and are you sure it is upheld? If the Division requested documentation of your policy and how it is implemented, would you be able to provide that information? If the answer to any of these questions is no or is unclear, please make sure to reevaluate and update the policies as needed. Finally, keep in mind that conflict of interest is not a one-and-done situation. Circumstances can change, new conflicts can arise, and it is best to be proactive in addressing these situations before they can cause any type of challenge.

Questions?

Contact Information:

Elizabeth Forslund
307-777-8761
elizabeth.forslund1@wyo.gov

Or contact your local
Provider Support Specialist