

CMS Response Regarding Conflict of Interest Rule

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Background

- CMS regulation effective 3/17/14 indicates that that providers of HCBS cannot also be responsible for case management, unless no other providers are available within the geographic region
- Initial proposal to CMS was to permanently “grandfather” all individuals currently served by boards. This proposal was rejected.
- In December 2014, CMS requested Ohio submit a Correct Action Plan.
 - County boards would be prohibited from providing both case management and HCBS unless no other options were available.
 - Timeframes for the CAP would be less than 5 years.
- DODD responded in January with a request to allow an extended timeframe (2024) for Ohio to comply.

CMS Feedback

- No response to Ohio's proposal was received until 6/12/15.
 - DODD was asked to insert specific language into all four waiver applications.
 - This language is considered the Corrective Action Plan for conflict-free case management.
 - Deadline for submission was 6/16/15.
- What did it say?
 - Ohio has voluntarily made significant progress over the past 7 years.
 - It acknowledged that sufficient provider capacity does not exist in all areas.
 - Ohio was granted an extended timeline to comply.
 - CMS essentially agreed with the proposal DODD submitted in January.

Timeline

- Ohio has until 2024 to come into full compliance!
- By March 2020, no more than 30% of individuals receiving case management from the county boards may be receiving HCBS from the boards.
 - Today county boards provide 48.25% of ADWS and NMT.
 - Some counties are only the “provider of record,” and the actual service provider is a private entity.

Intermediate Steps

- In accordance with 5123:2-9-11 (Free Choice of Providers), boards must:
 - Ensure administrative separation of staff developing services plans and those providing HCBS.
 - Establish and implement annual benchmarks for recruitment of sufficient providers.
 - Establish and implement annual benchmarks for reducing the number of people for whom the board is the provider of HCBS.
 - Benchmarks are subject to approval by DODD.
 - Report twice per year on progress on achieving benchmarks (June/December)
- Initial benchmarks and implementation plans are due 9/1/15.
- DODD will be sending data to boards for consideration in setting benchmarks.

What does this mean?

- Boards have 9 years to assist individuals with transitioning to other providers.
- Boards may continue to offer services to individuals when no other qualified/willing provider is available.
 - Qualified = certified
 - Evidence is required to show that no qualified provider would agree to serve the individual.
 - Until sufficient capacity is developed, boards may be the only provider available for some services, such as Supported Employment.
- Boards may assume additional oversight/monitoring responsibilities of ADWS/NMT providers when boards are no longer providers of HCBS.

Monitoring Progress

- DODD will review semi-annual reports submitted by boards to monitor progress toward achieving the 30% benchmark by 2020, as well as achieving total compliance by 2024.
- DODD will verify progress reports by reviewing HCBS claims data.
- Progress will be measured by statewide, aggregate reduction in the number of individuals receiving HCBS by county boards.

What should be occurring now?

- New individuals who are already planning to participate in county board programs may proceed with these plans. For example, recent graduates who intend to receive ADWS from boards in the fall may do so.
- For individuals whose plans do not include the county board as a provider, SSAs should be initiating the process of searching for alternate providers.

Conclusion:

The Director, Lori Horvath and Kate Haller will attend the SEC meeting on July 10th to answer any questions.