



SEGUE CONSULTING

Report of the Task Group on Conflict Free Case Management

October 31, 2014

Submitted to:

Colorado Department of Health Care Policy & Financing

Division for Intellectual & Developmental Disabilities

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Conflict Free Case Management Task Group
Report Draft – October 31, 2014

Background

The Division for Intellectual and Developmental Disabilities (DIDD) solicited individuals interested in participating in a multi-stakeholder task group (Group) in December 2013. In its notice, the DIDD indicated that the task group was being formed in response to a nationwide system change initiated by the Federal Centers for Medicare and Medicaid Services (CMS) proposed rule that addresses conflict of interest related to case management. The final rule was effective March 17, 2014 and 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 by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.”

The rule lists several reasons conflicts may exist, including but not limited to incentives for over- or under-utilization of services; interest in retaining individuals as clients rather than promoting independence; and issues where the focus is not person-centered.

In July 2012, Governor John W. Hickenlooper issued an Executive Order, creating the Office of Community Living within the Department of Health Care Policy and Financing (Department). This Executive Order also created the Community Living Advisory Group, which was charged with recommending ways to reform Colorado’s Long Term Services and Supports (LTSS) system. The Community Living Advisory Group released its final report and recommendations in September 2014. The report has final consensus recommendations of the Community Living Advisory Group and its five subcommittees.

Creating comprehensive access points for all LTSS is one final recommendation from the Community Living Advisory Group. This recommendation included information that “In some cases it may be impractical to separate the functions of eligibility determination, case management and service provision – for example, in rural and frontier areas, where there are few provider agencies. In those cases, the Department will need to create firewalls within agencies to minimize conflict of interest.

“Once eligibility has been determined individuals should have the freedom to choose their case management agency.” Once the case management agency is chosen, the recommendation also states that this model would allow case managers to conduct quality assurance to verify that consumers are receiving services as they expect.

Another recommendation from the Community Living Advisory Group is to tailor case management to individual needs and preferences. Encompassed within this recommendation is a restructuring of Colorado’s case management system so that people receiving services have as much choice as possible in case management agencies; that the level of case management is tailored to the individual needs and preferences of the person receiving services; and that training is provided to case managers.

The Task Group (Group) was charged with developing recommendations for consideration by the Department regarding a process to establish a conflict-free case management system for persons enrolled in Home and Community Based Services (HCBS) for Persons with a Developmental Disability (HCBS-DD), HCBS-Supported Living Services (HCBS-SLS) and HCBS-Children’s Extensive Support (HCBS-CES).

At its first meeting on February 19, 2014, the following goals were defined for the work of the Group:

- The charge of this Group is to make recommendations for a case management model (may have more than one) that is integrated, person-centered, transparent, and offers free choice of case management.
- The goal is to move from an agency based structure to a person-centered, conflict-free case management structure.
- The Group will not focus on the finer points of implementation, funding, Third Party Eligibility, and will not consider details of conflict of interest.

When first convened, the charge emphasized creating a system that offers free choice of case management. The Group’s charge expanded as a result of the release of a CMS final HCBS rule, 42 CFR § 441.301(c)(1)(vi), effective March 17, 2014. The final rule further emphasized the need for recommendations for a case management system which separates case management from direct service provision. As a consequence of its expanded scope, the Group’s timeframe for producing final recommendations was extended from July 2014 to October 31 2014.

Membership

The Department sent out a Communications Brief (Brief) on December 12, 2013 inviting individuals to serve on the Conflict Free Case Management (CFCM) Task Group. The Brief noted that:

The Task Group will develop recommendations for consideration by the Department regarding a process to establish a conflict-free case management system for persons enrolled in Home and Community Based Services (HCBS) for Persons with a Developmental Disability (HCBS-DD), HCBS-Supported Living Services (HCBS-SLS) and HCBS-Children's Extensive Support (HCBS-CES). The Task Group will hold six meetings between February 2014 and July 2014.

As noted above the timeframe for the Task Group was extended to October 31, 2014. The Department reviewed the Task Group Participation Interest Form that interested individuals were required to submit and selected sixteen members representing a spectrum of stakeholders. Individuals were selected rather than organizations; people were not able to substitute a voting proxy if they were not able to attend. During the nine months of the Task Group, one individual resigned. See Appendix 1 for a complete list of members.

The Task Group was staffed by Brittani Trujillo and Lori Thompson with the DIDD. In addition, Claire Brockbank, Segue Consulting, was contracted to facilitate the Task Group meetings as well as provide support to the DIDD as needed to address the substantive needs of the Task Group.

Meetings and Work Process

The Group met nine times, on:

- February 19, 2014
- March 18, 2014
- April 15, 2014
- May 20, 2014
- June 23, 2014
- August 20, 2014
- September 9, 2014
- October 8, 2014
- October 22, 2014

Meetings generally were scheduled for three hours and were accessible in-person or via teleconference. Starting with the May 20 meeting, all meetings were audiotaped, with the complete audio file/recording available on Drop Box and will be posted to the Department's website. See Appendix 2 for a complete set of Meeting Summaries and attachments from public comment.

All meetings were open to the public and guests were afforded an opportunity to provide comment and input at the end of every meeting. To ensure responsiveness and accountability, the Group established timeframes for setting meeting agendas, distributing meeting packets, and completing Meeting Summaries. See Appendix 3 for the Task Group's timeframes.

The Group's initial focus was on educating themselves regarding models being used by other states, a review of the Balancing Incentive Program (BIP), and gaining a better understanding of the CMS Final Rule. As a strong foundation was established the discussions evolved to identifying specific areas of concern and exploring possible options for consideration.

As the Group began discussing specific recommendations, it became clear that there would be areas of consensus but also important areas where no consensus would be achieved. The Group determined that all recommendations would be submitted to the Department, regardless of whether consensus was achieved.

Framing the Issue

The Group agreed that any modifications to the current Targeted Case Management (TCM) system must keep intact the four current components of TCM:

1. Comprehensive assessment and periodic reassessment of individual needs to determine the need for any medical, educational, social, or other services and completed annually or when the client experiences significant change in need or in level of support. These assessment activities include:
 - a. taking client history
 - b. identifying the client's needs, completing related documentation, and gathering information from other sources such as family members, medical providers, social workers, and educators as necessary, to form a complete assessment of the client
2. Development and periodic revision of a specific care plan that:
 - a. is based on the information collected through the assessment
 - b. specifies the goals and actions to address the medical, social, educational, and other services needed by the client
 - c. includes activities such as ensuring the active participation of the client, and working with the client (or the client representative) and others to develop those goals, and
 - d. identifies a course of action to respond to the assessed needs of the client
3. Referral and related activities to help a client obtain needed services including activities that help link a client with:
 - a. medical, social, educational providers, or
 - b. other programs and services including, making referrals to providers for needed services and scheduling appointments, as needed
4. Monitoring and follow-up includes activities that are necessary to ensure the care plan is implemented and adequately addresses the eligible individual's needs. Monitoring and follow up actions shall:
 - a. be performed when necessary to address health and safety services in the care plan
 - b. include activities to ensure:
 - i. Services are being furnished in accordance with the client's care plan
 - ii. services in the care plan are adequate, and
 - iii. necessary adjustments in the care plan and services arrangements with providers are made if the needs of the client have changed
 - c. Include direct contact and observation with the client in a place where services are delivered to a client in accordance with the following frequency:
 - i. Face to face monitoring shall be completed for a client enrolled in HCBS-DD at least once per quarter

- ii. Face to face monitoring shall be completed for a client enrolled in HCBS-SLS at least once per quarter
- iii. Face to face monitoring shall be completed for a client in HCBS-CES at least once per quarter, or
- iv. Face to face monitoring shall be completed at least once per six month period for children in Early Intervention Services

Although there is potential for many different types of conflict of interest in Colorado's Intellectual and Developmental Disability (I/DD) system, the Group focused specifically on the conflict of interest that can occur when case management and service provision are provided within a single organization or across multiple organizations that are not entirely independent of each other. This focus was consistent with the requirements of the new HCBS regulations.

Recommendations

Process for selecting final recommendations:

The Group developed and maintained a list of ongoing ideas for consideration. Over time, these ideas started to coalesce around several distinct options. The Group agreed during its initial meetings that a recommendation did not have to achieve consensus to be included in the final report. The Group did not take votes on its recommendations; discussions made it amply clear where there was and was not consensus. The Group felt that a vote count might over or under emphasize the complexity of the option regarding recommendations in a misleading manner.

Consensus Recommendations

There were several areas where the Group achieved consensus. These include:

- The Case Management Agency (CMA) will provide the following for all individuals receiving services:
 - Annual Assessment (as defined in the TCM rules, referenced above)
 - Service Plan development
 - Service Plan monitoring
- The CMA will provide referral and related activities to help an individual obtain needed services, though the family or individual may conduct these activities, without being paid, at the discretion of the individual unless guardianship is in effect. This option will be available when guardianship is in effect, at the discretion of the guardian.
- Family-provided case management: As noted above, Service Plan implementation can be done by the family, as mutually agreed upon and without pay, rather than the CMA. However:
 - Annual Assessment, Service Plan development and monitoring must be completed by a CMA
- The Department will need to actively support the creation of a new market sector for independent case management services.
 - A thriving and robust cadre of CMAs will provide choice of CMA and case manager for individuals receiving I/DD services in Colorado.
- Organizations providing case management services must comply with all federal regulations regarding separation from other entities providing services.

Non-Consensus Recommendations

The Group did not achieve consensus on the following due to some fundamental differences regarding the direction the Department should take to achieve conflict free case management. These include:

1. The need for case management to exist, in all cases, in an agency entirely independent of an agency providing direct service provision.
 - Independent Perspective: case management services should only be provided by an entity that does not provide direct services. This is the only way to truly ensure that conflicts of interest will not occur with respect to case management and direct services and is the most explicit way to align with the CMS final rule.
 - The need for a co-existing option which allows for both case management and HCBS direct services to be provided by the same entity.

Option 1: An agency¹ may provide both case management and service delivery but not to the same individual.

- a. In this situation, the individual must decide if he/she prefers to receive case management or service delivery from the agency; whichever is chosen, the individual must go to another qualified agency of his/her choice for the other.

Option 2: An agency may provide both case management and service delivery to the same individual.

- a. In this situation, the individual can receive case management and service delivery from the same agency; however, a robust informed choice process must be in place, which allows the individual to explicitly opt out of the CFCM protections.

2. The need for an exceptions process that anticipates the possibility of insufficient access to independent case management services.
 - Exceptions: In the case where an individual may not have access to a case manager such as rural or underserved areas, the final HCBS rule allows for the state to devise conflict of interest protections. Any exception must be approved by CMS, per the final regulation.
 - No Exceptions: Allows for more Case Management Agencies to emerge, offering maximum choice to individuals receiving services.

¹ Agency is used instead of Community Centered Board or CCB to reflect the agency delivering case management services regardless of what that agency is ultimately called. Although stakeholders currently know these agencies as CCBs, in the future this may not be the case.

3. The need for an exemption provision

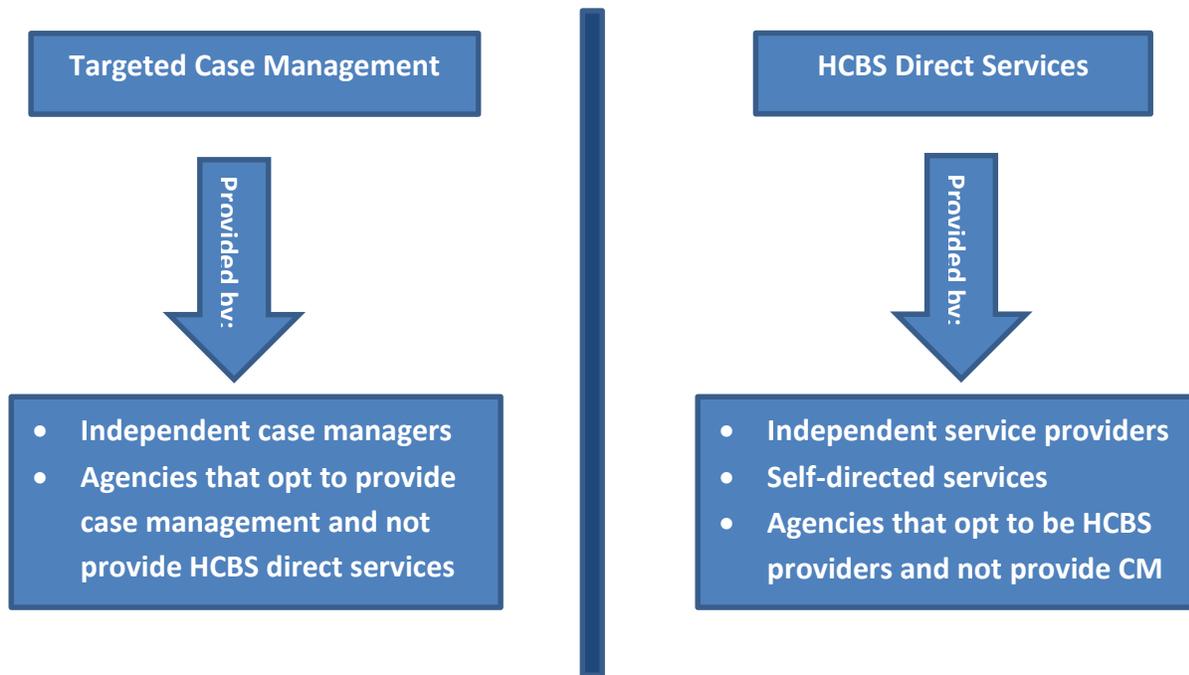
- Exemption Provision: In order to accommodate Person-Centered choice and minimize disruption, an exemption provision should be included for individuals who have a relationship with an agency that provides both CM and direct services and who does not want to terminate either relationship.
- No Exemption Provision: In the final HCBS rule, the only exemption provision is for rural and underserved areas where there are no other options for case management and/or Service Plan development and direct service provision. In this case, the State must devise conflict of interest protections.

An Overall Systems Perspective

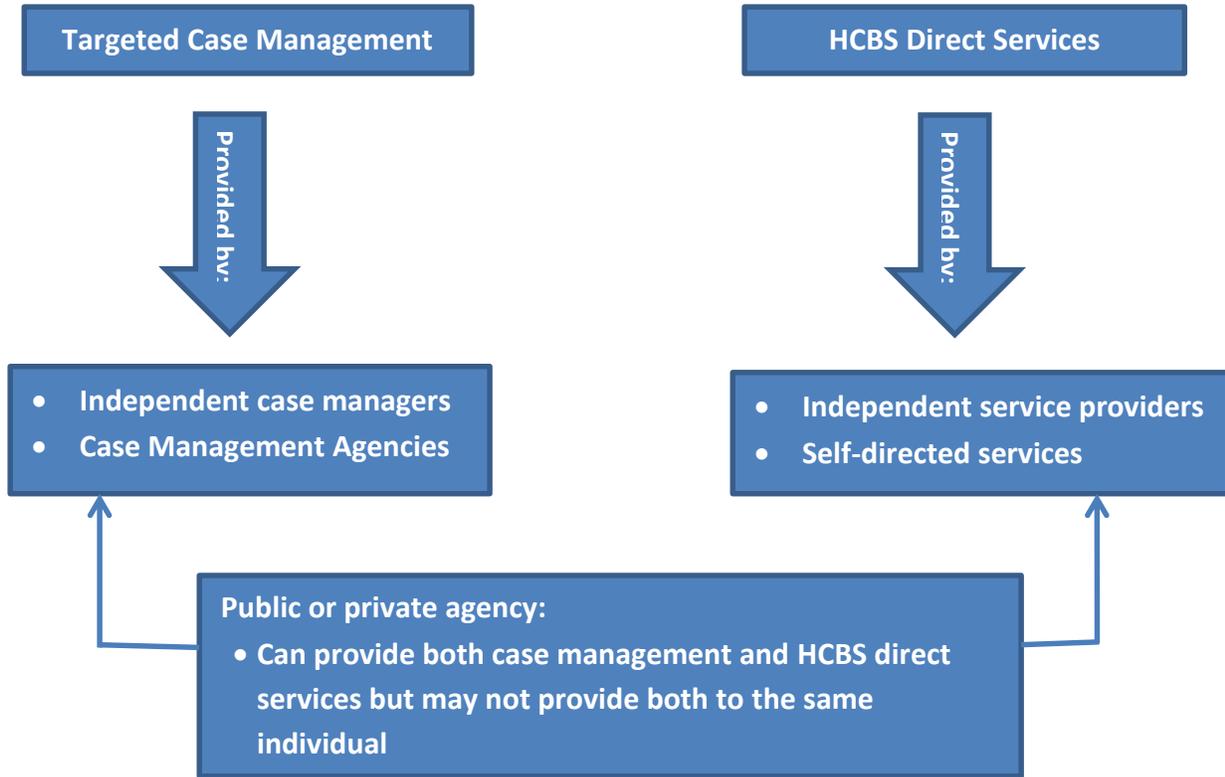
These individual recommendations function together in three distinct options for the Department to consider as recommendations to achieve Conflict Free Case Management. These are represented graphically below, but each specific component is described in the recommendations above.

Option One: Complete Separation

Agencies must decide whether to provide case management or HCBS direct services.

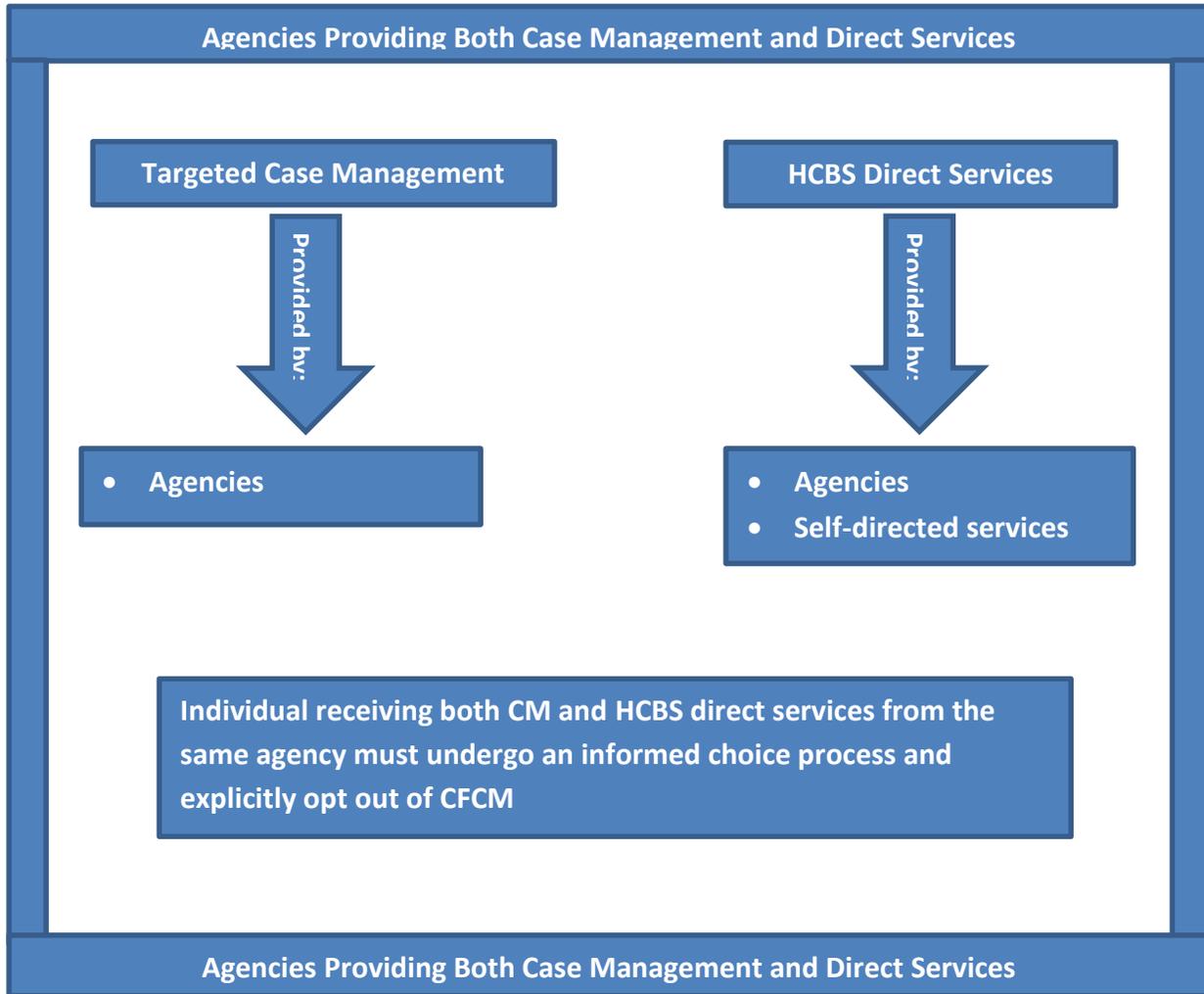


Option Two: External Separation – Internal Co-existing CM and HCBS Direct Services
Agencies may offer case management and HCBS direct services but not to the same individual.



Option Three: Person-Centered Choice Informed Consent Opt-out of Conflict Free Case Management

Individual makes an informed consent to opt-out of separate case management and HCBS direct services.

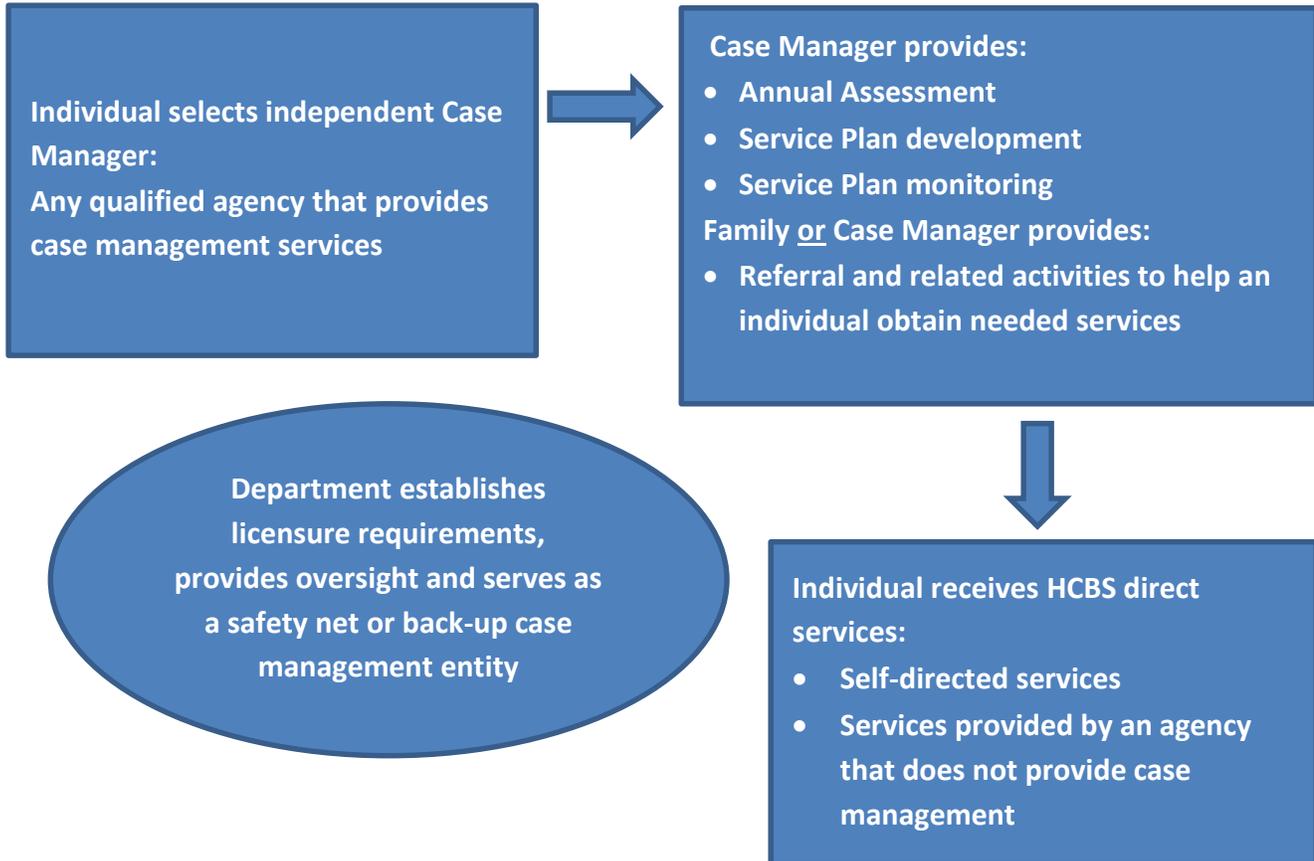


An Individual's System Perspective

The three options presented for consideration can also be viewed from the perspective of the individual being served by the system.

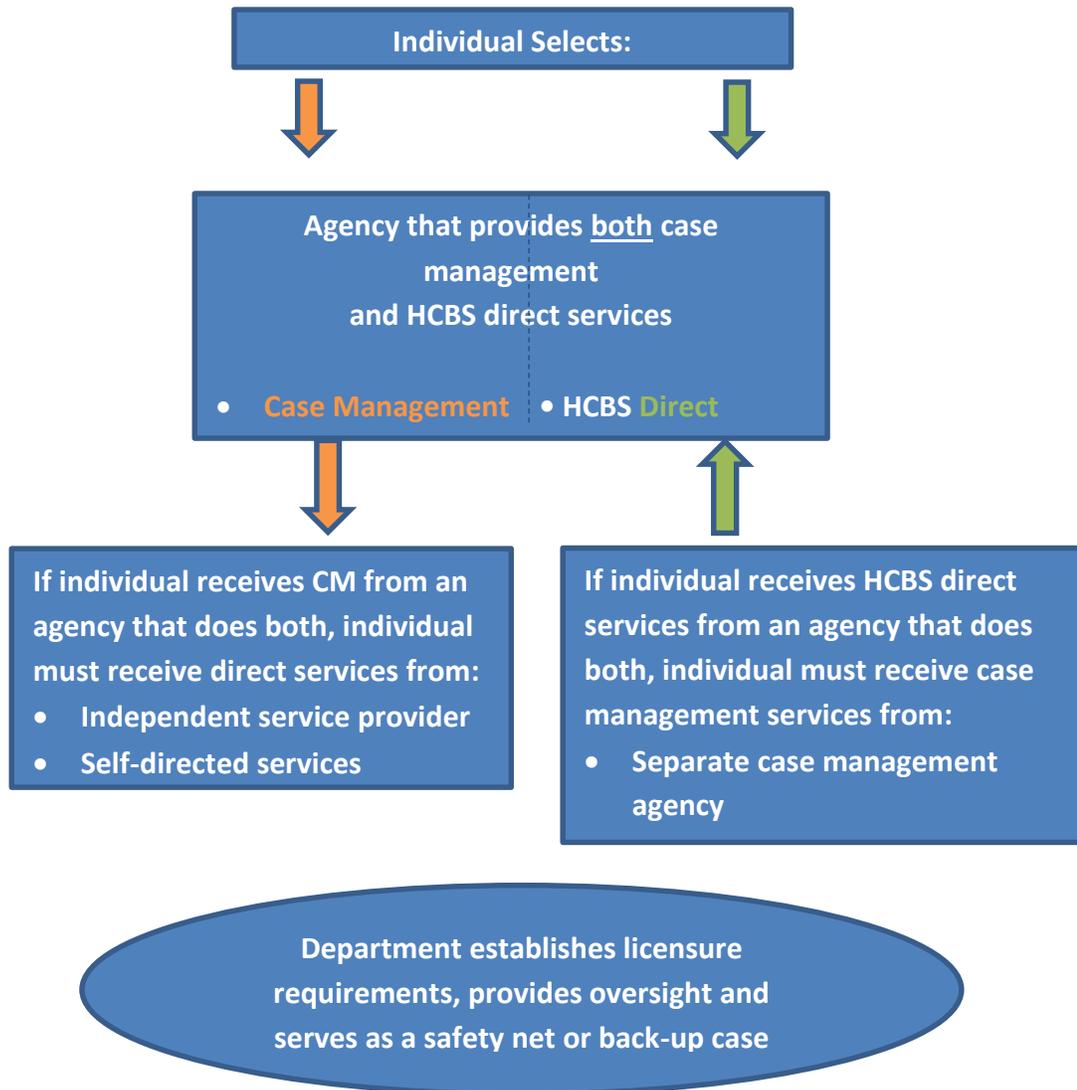
Option One: Complete Separation

No matter what course an individual receiving services takes, he/she will receive CFCM.



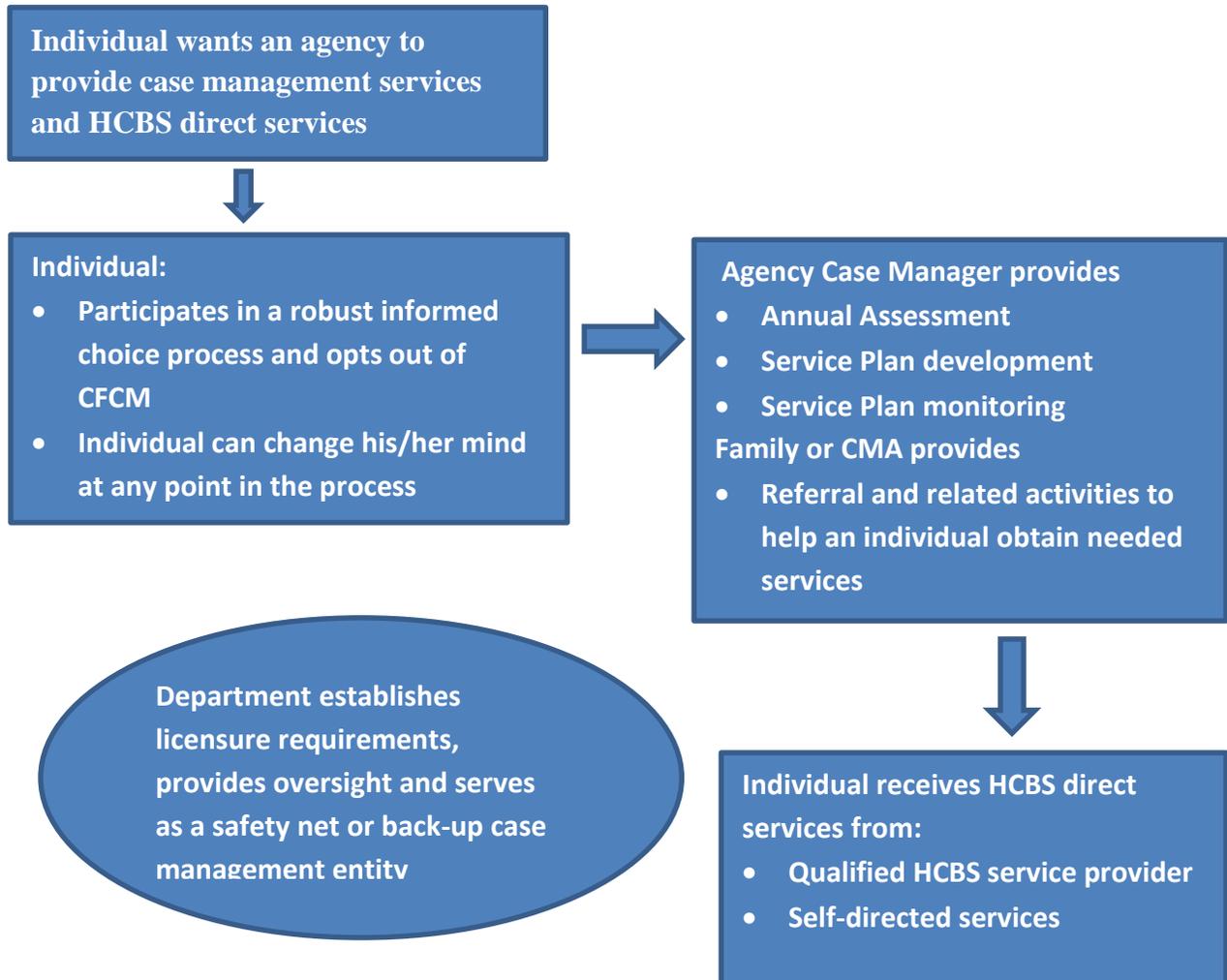
Option Two: External Separation – Internal Co-existing of CM and HCBS Direct Services

The individual receiving services may select an agency for either case management or direct services but not for both.



Option Three: Person-Centered Choice Informed Consent Opt-out of Conflict Free Case Management

The individual receiving services makes an informed consent to opt-out of separate case management and direct services.



Considerations for Implementation of any Model

Regardless of the model chosen, the Group identified recommendations for quality service delivery. Although the charge to the group was to provide recommendations to the Department regarding options for CFCM, the Group had a deep understanding that “how” these recommendations are implemented will be critical to the success of any effort to reduce the opportunity for conflict of interest in a new system and to minimize unintended consequences. As such, it maintained a list of issues and recommendations for responsible and conscientious consideration in the move to implementation

- The model will contain a process by which individuals receiving services and their families experience continuity during transition to the new model.
- All individuals enrolled in the HCBS waivers should be afforded conflict-free case management options.
- Reimbursement must be sufficient to support the commitment and expertise required to maintain a stable case management sector.
- **Qualifications and Training:** The Department will ensure Case Management Agencies and Case Managers meet qualifications by successfully completing their training and on-going training. The Department will provide training on the waiver and state plan requirements, regulations, and administrative processes.
- Transition from the current system to a new system should be conducted strategically to ensure continuity for the individuals enrolled in the waivers.
- A fiscal impact analysis should be conducted to determine the cost of the system to change to CFCM.
- **A systems analysis should be conducted to determine the impact on the roles and responsibilities of the current Community Centered Board service delivery system and the implications on the multiple functions they perform for the state unrelated to TCM and the individuals, families, and communities served.**

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- Centers for Medicare and Medicaid Services, CFR-2011-Title 42-vol12-sec441-18 Case Management Services
- Centers for Medicare and Medicaid Services, Technical Assistance Tool Optional State Plan Case Management, 4/18/08
- Colorado Home and Community-Based Services (HCBS) Medicaid Waivers: Adult Waivers, Updated June 2013
- Department of Health and Human Services, Federal Register, January 16, 2014: HCBS Final Rule
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Reports and Studies

- Addressing Potential Conflicts of Interest Arising from the Multiple Roles of Colorado's Community Centered Boards, December 2007, University of Southern Maine
- Colorado Department of Human Services Division for Developmental Disabilities and Department of Health Care Policy and Financing Long Term Benefits Division: Conflict of Interest Task Force Report, September 15, 2010
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- Feasibility Analysis of Community First Choice in Colorado, Mission Analytics Group, December 2013
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- Innovative Models and Best Practices in Case Management and Support Coordination, University of Minnesota, April 2008
- The Balancing Incentive Program: Implementation Manual, Mission Analytics Group, October 2011

Task Group Meeting Material

- Administrative Case Management (ACM) Overview, Prepared by Division for March 21, 2014 Task Group meeting
- Targeted Case Management (TCM) Overview, Prepared by Division for March 21, 2014 Task Group meeting

State Models

- Conflict Free Case Management State Models Spreadsheet

- Arkansas: Structural Change BIP Application
- Kansas Department of Health and Environment,
 - Amendment to the KanCare Medicaid Section 1115 Demonstration
 - Targeted Case Management Activities, Memo September 5, 2013
- Massachusetts: BIP Application
- New Jersey: Conflict Free Policy for The Supports Program,
- Ohio: Conflict Free Case Management Strategies for Integrated and Managed Care Long-Term Services and Supports Environment, September 5, 2013
- Wyoming Best Practice CFCM Briefing, April 2013
- Wyoming BHD Conflict-free Case Management Model, November 6, 2013