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DIVISION OF LONG TERM SUPPORTS AND SERVICES
BUREAU OF DEVELOPMENTAL SERVICES

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February 4, 2019

Firewall Policy, Approved by the Center for Medicare and Medicaid, February 1, 2019

It is the policy of the NH Department of Health and Human Services, Division of Long Term Supports and Services, Bureau of Developmental Services (BDS) that services shall be conflict free, in accordance with 42 CFR 431.301 (c) (1)(vi).

For those situations for which the only willing and qualified provider is both the provider of both case management and direct services, the following firewalls shall be in place to ensure that there is a separation of functions within the organization as follows.

1. The organization demonstrates that there is an administrative separation between those doing assessments, service planning, and those delivering direct services. The agency shall provide to BDS, at a minimum:
 - a. Organizational Chart for these functions, demonstrating the administrative separation of the positions, including, but not limited to: separation of supervision, reporting structure, and duties.
2. Case Management and Direct Services are located in different departments within the organization, are in different locations within the organization, and report to different (and equal) organizational leadership. The agency shall provide BDS at a minimum:
 - a. Organizational Chart, with names, for Case Management and Direct Services Supervisors, including the Executive Leadership structure as it relates to these functions; and
 - b. Office plan, indicating the physical location where the employees listed above have their work station/office within the organization.
3. The Direct Services Department/Providers will not develop the client's plan of care. At a minimum the agency shall have the following:
 - a. Agency policies, approved by Department of Health and Human Services, Bureau of Developmental Services (BDS) that outline:

- a. Provider Selection Process, demonstrating how the agency makes information available regarding all qualified providers;
 - b. Choice in service delivery options;
 - c. Cultural Competency; and
 - d. Dispute Resolution Process
- b. Documentation of:
- a. Case Management Orientation and Training, approved by BDS, that outlines, at a minimum: their role as a neutral facilitator of the team process, how to offer choice, how to continually assess and offer choice, and how to assist individuals, families, and guardians in the choice process;
 - b. If needed, agency plans to increase provider capacity in the region to meet its responsibility to maintain a comprehensive service delivery system.
 - c. How the agency ensures all consumers, their families, and guardians have accurate and accessible information on qualified providers (website, resource directory, brochures, etc.); and
 - d. How the agency monitors that choice is given to consumers, families and guardians.

For those situations for which the Only Willing and Qualified Provider in accordance with 42 CFR 431.301 (c) (1)(vi) provides both case management and direct service, the organization shall provide the above documentation as the time of the request and annually as part of the Governance Audit, unless there have been changes. Subsequent requests shall not require the above documentation be attached, as long as the agency certifies there have not been any changes.

All approved requests are subject to ongoing monitoring by BDS to ensure that all Firewalls remain in place and any conflict is mitigated.

To ensure that clients and families are made of aware of providers within the State of New Hampshire, BDS will have this information available and updated regularly on its website. In addition, State rule and contracts will be amended to include the expectation that agencies will make this information readily available.

Annually, BDS will review and analyze the number of conflicted situations regionally and statewide to ensure the number does not increase from the baseline as part of New Hampshire's compliance date of August 31, 2021. Information will be gathered from the agencies as part of the Prior Authorization Request that is completed for each individual seeking Home and Community Based Services.