




SCAN TO ME 

STATE OF COLORADO

Governor Bill Ritter, Jr

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TO: All Interested Parties

FROM: Jean G. McAllister, Facilitator on behalf of the Conflict of Interest Task Force, Colorado Departments of Human Services and Health Care Policy and Financing

SUBJECT: Forum to Provide Public Comment Regarding the Redesign of the System for Developmental Disabilities in Colorado

DATE: May 18, 2010

The Colorado Department of Human Services (CDHS) and the Colorado Department of Health Care Policy and Financing (HCPF) has assembled a Task Force of stakeholders from the developmental disabilities system to develop recommendations for a resolution to the conflict of interest issues inherent in the Developmental Disabilities system.

Results of the State Auditor's Office 2009 Audit of the Home and Community Based Services waiver for People with Developmental Disabilities indicated that the potential for conflict of interest initially raised by the Centers for Medicare and Medicaid Services, and further examined in a December 2007 study by the University of Southern Maine (USM), Muskie School of Government titled "Addressing Potential Conflicts of Interest Arising from the Multiple Roles of Colorado's Community Centered Boards" had not been resolved or sufficiently addressed. The 2009 Audit referenced above categorized those potential conflicts in seven areas on pages 43 and 44 of the Audit: Information and Referral, Eligibility Determination, Administration of the Waiting List, Service Planning, Provider Selection, Rate Negotiation and Monitoring Services.

Consequently, the charge of the COI Task Force is to evaluate options to resolve conflict of interest issues and to make recommendations to CDHS and HCPF. The task force is to recommend new statutory requirements for C.R.S. 27-10.5, if necessary. The Task Force will evaluate all options presented to them or

developed by the Task Force, as well as the system options identified in the USM report, and recommend the best option for the system that resolves the conflict of interest issues.

The Task Force is interested in hearing public comment regarding options that will resolve conflict of interest issues inherent in the developmental disabilities system. It has set aside the following date and time for any interested persons to provide comment to the Task Force.

**Tuesday, June 1, 2010
1:00 pm to 5:00 pm**

Please save this date and time. In the interest of allowing as many stakeholders as possible access to provide input, the Task Force will be taking comment through a video teleconference with multiple sites throughout the State. Sites are confirmed in four areas of the State at the following locations.

Denver: The Auditorium at Fort Logan Campus
3520 W. Oxford Ave.
Denver, CO 80236

Grand Junction: The Facilities Conference Room at Grand Junction
Regional Center
2800 Riverside Parkway
Grand Junction, CO 80501

Pueblo: The Colorado Mental Health Institute, Conference Room A
1600 W. 24th Street
Pueblo, CO 81003

Sterling: Logan County Human Services
508 S. 10th Avenue
Sterling, CO 80715

The University of Southern Maine (USM), Muskie School of Government report, "Addressing Potential Conflicts of Interest Arising from the Multiple Roles of Colorado's Community Centered Boards" and the State Auditor's Office 2009 Audit of the Home and Community Based Services Waiver for People with Developmental Disabilities are attached to this email. These reports identify potential conflicts of interest that must be addressed by this Task Force.

If there are any specifically identified options being considered prior to the Public Comment Meeting, they will be sent in a separate memo.

Time to speak may be limited, so that all parties wishing to provide comment to the Task Force will have time to do so. It would be helpful if a written version of the testimony could be provided at the time comments are made. The Task Force will also take written comment from anyone who is not able to attend the public

forum on June 1st. Written comment will be accepted through May 31st (or at the meeting on June 1st) and should be directed to:

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Ms McAllister will distribute all comments to the Task Force. If there is time, written comments will be read into the record on June 1st.

If anyone needs special accommodations for the public forum (e.g., interpreter services), please contact Roberta Aceves at 303-866-7030 or Roberta.Aceves@state.co.us

- b. The Department of Human Services will provide quarterly reports on training and technical assistance to the CCBs.
- c. The Department of Human Services will submit monthly and quarterly reports on service provision, quality, and financial accountability.

HCPF will communicate deficiencies to the Department of Human Services when there is non-compliance and will require specific plans for remediation

CCB Roles and Responsibilities

The current system of service provision for the developmental disabilities waiver programs in Colorado presents the potential for conflicts of interest for the CCBs. The CCB acts as the 'single entry point' for qualifying individuals to receive developmental disabilities waiver services within each CCB's service area. CCB staff conduct evaluations and eligibility determinations for the CCB's clients. The CCB also conducts all case management functions and has control over information that clients receive on services and the service providers available to them. CCBs also act as direct providers for services at 19 of the 20 CCBs.

The General Assembly recognized the potential for conflicts of interest in the CCB service delivery system and addressed this concern through legislation. Specifically, statute [Section 27-10 5-105 (b) and (h), C.R.S.] requires that CCBs encourage competition among service providers in their service area to enhance the number and quality of service options available to their clients. Statute further requires that CCBs "take steps to notify eligible persons, and their families as appropriate, regarding the availability of services and supports." Since providing services in-house increases a CCB's revenue, CCBs have incentives to steer clients to in-house services without providing full access to outside providers.

In response to these concerns, the Division commissioned the University of Southern Maine to perform a study of potential conflicts of interest in the CCB system of service provision. The study, completed in December 2007, confirmed that potential conflicts of interest exist throughout the HCBS-DD waiver program and categorized those conflicts in seven areas, including

Information and Referral—CCBs are the focal point for clients and families to learn of available services and supports in the community. As a direct provider of care, the CCB has the discretion to limit access to information about other service provider agencies in favor of its own providers.

Eligibility Determination—CCBs conduct level-of-care determinations giving the CCB discretion to limit equitable access to services and providing CCBs an opportunity to screen out difficult-to-serve individuals.

Administration of the Waiting List—CCBs are responsible for managing waiting lists for services. This gives the CCB discretion to favor one individual over another or to fill openings in its own service provider agencies prior to filling vacancies at private service provider agencies.

Service Planning—CCBs create service plans and could identify service needs that benefit its own service providers or steer consumers to the CCB versus private providers for services.

Provider Selection—CCBs are responsible for assuring that clients are informed of all qualified providers in their area, however, the CCB could steer clients to the CCB's providers rather than to private service providers.

Rate Negotiation—CCBs can set different payment rates for providers that choose to have the CCB process all Medicaid billings on their behalf. This allows CCBs to pay its own providers more for the same service than it would pay other service provider agencies that choose to bill through the CCB.

Monitoring Services—CCBs are responsible for monitoring the implementation of the client's individualized plan, tracking and responding to client complaints, and reporting incidents. This role could allow CCBs to enforce a different standard for quality of care for its own providers versus for private providers.

The study analyzed the current operations and controls in place at the Division and based on that information, determined whether there was a potential for the CCB to act in its own self-interest above the interest of the client. Although the study concluded that controls were not adequate to prevent or mitigate conflicts of interest in each of the areas noted above, the University of Southern Maine did not determine if actual conflicts of interest had occurred with specific CCBs.

In addition to the findings, the University of Southern Maine proposed solutions to these potential conflicts of interest for the Division and HCPF to consider. The final study was presented to the Division in December 2007. The Division and HCPF jointly responded to each recommendation and fully or partially agreed with nearly all recommendations. The Division is currently working to develop an implementation plan to address the recommendations. Further, HCPF states that its Quality Improvement Strategy (QIS) includes components that will enable the Division to provide additional oversight and review of CCB activities that will

prevent conflicts of interest; however, the QIS process has not yet been implemented.

Conflict of interest is a significant concern that could affect client choice, the availability of providers, and the quality and cost of services. The Division needs to work with HCPF to complete a comprehensive implementation plan that identifies the specific changes to the system of service provision and controls that will be made to prevent or mitigate conflicts of interest, and a timeline for how and when changes will be made. The plan should incorporate milestones to measure progress toward implementation of changes.

Recommendation No. 9:

The Department of Human Services, Division for Developmental Disabilities should work with the Department of Health Care Policy and Financing to complete its implementation plan to address the recommendations made by the University of Southern Maine study on potential conflicts of interest in the Colorado developmental disabilities community-based service provision system. The plan should include a description of specific actions planned, a timeline for implementing planned changes, and a mechanism for ensuring that implementation is progressing timely.

Department of Human Services Response:

Agree. Implementation Date: October 2009.

The Department of Human Services will work with the HCPF to create an implementation plan by October 2009.

HCPF and the Department of Human Services spent the Spring of 2008 developing responses to the recommendations from the study. The initial plan was to implement safeguards around waiver participant issues in Fall 2008 and begin a review of possible system re-design changes in July 2009, e.g., separation of case management functions from service provision. However, during the Summer 2008, CMS and HCPF began the development of an overarching strategy for quality improvement for all the Colorado Medicaid Waivers, called the global Quality Improvement Strategy (QIS).

While the Department of Human Services had already implemented or was in the process of implementing many of the University of Southern Maine recommendations, the Department of Human Services decided to

wait to address the specific recommendations that would be affected by the QIS. The QIS has been submitted to CMS for approval and implementation beginning July 1, 2009.

**Department of Health Care Policy and Financing
Response:**

Agree. Implementation Date: October 2009.

HCPF has already begun working with the Department of Human Services to address many of the recommendations outlined in the University of Southern Maine study. A complete work plan will be developed by October 1, 2009.
