

Informational Memorandum

Date: November 8, 2017

To: HCBS Waiver Providers

From: Amy Penrod, Commissioner

RE: Conflict of Interest Mitigation

Pending review and implementation of the Conflict of Interest policy, the following guidance is being provided regarding mitigating identified conflicts of interest. The HCBS waivers state the following:

The home and community based services final rule prohibits providers of 1915(c) waiver services and those with an interest in or employed by a provider of HCBS services from developing the person-centered services. Since the individuals or entities responsible for person-centered plan development must be independent of the HCBS provider, a legal guardian, durable power of attorney, and other legally responsible individuals who receive payment for providing HCBS may not be responsible for development of the person-centered plan.

There are two categories of responsible individuals:

1. Those who are court-appointed as responsible individuals (Guardians/Conservators)
 - a. Court appointed guardians/conservators shall go through the special report process and file the designated representative form through the courts (K.S.A. 59-3083(b)(6)).
 - b. Documentation of when the court feels a conflict of interest exists and the resolution of the conflict are documented in these reports (K.S.A. 59-3084 (4)(c)).
 - i. As stated in the HCBS waivers, court-appointed legal guardians of adults receiving Medicaid-funded home and community-based services must comply with state law regarding guardianship and reporting of potential conflicts of interest to the court (K.S.A. 59-3068). If a conflict of interest exists, legal guardians of adults receiving Medicaid-funded home and community-based services must designate a representative to direct the services of a participant the guardian provides supports to and represents. The appointment of the designated representative is subject to court review and approval. Annually, the legal guardian will provide the State and the designee with a court file-stamped copy of the court's resolution decision in which

the conflict of interest is disclosed.

- ii. If the court determines that all potential conflict of interest concerns have not been mitigated, the legal guardian can:
 1. Select another provider of HCBS services. If a family member or friend is not available, the participant's selected MCO or Financial Management Service (FMS) provider can assist the legal guardian in finding a direct support worker or seeking alternative HCBS service providers in the community; OR
 2. Appoint an individual with no potential conflicts as a Designated Representative to develop the person-centered service plan and direct the participant's HCBS services.
- iii. A copy of the Designated Representative form filed with the court shall be maintained in the participant's provider file maintained by the participant's MCO.

2. Those responsible individuals not appointed through the court (DPOA – “other” responsible individuals)

- a. The DPOA and “other” legally responsible individuals shall complete the designated representative form which shall be maintained in the participant's MCO provider file.
- b. The court is not involved in providing authority conveyed by the participant or the participant's representative to another individual.