



KDADS Conflict of Interest Policy

Question and Answers

June 1, 2015

- 1. Which court should consumers and families use to receive the needed documentation for conflict of interest determinations?**

A: For court-appointed guardians, the annual and special report should be submitted to the Probate Court where the guardianship is

- 2. What is the “criteria” for a rural setting and what agency/office provides an exception to the conflict of interest policy?**

A: An exception to the criteria may be granted by the State when a participant/guardian lives in a rural setting and the nearest agency-directed service provider available to provide services is in excess of 50 miles from the participant residence. The rural setting must be so remote that no other HCBS Program services would be available to the individual if the court-appointed guardian or activated durable power of attorney was not permitted to continue to be paid to provide support and allowed to direct the participant’s care.

- 3. There appears to be a confusion of roles, i.e. “the court” is tasked with assessing and mitigating a “conflict of interest” in Paragraph 1 and 2 of the Policy, but later the Policy definition of “conflict of interest” eliminates any discretion by “the court” by asserting that anyone who directs services and receives payment for such direction or delivery of services necessarily has a “conflict of interest”, without any recourse to the judgment of “the court”. Which is it?**

A: Kansas state law considers guardians who benefit financially from the ward to have an inherent conflict of interest. Under guardianship law, this conflict must be reported to the court every year for the court to consider whether there is a conflict of interest. The judge must accept the report and determine that there is no conflict of interest. If the judge does not accept the report or determines that there is a conflict of interest, the guardian must either hire someone else to provide the support or appoint a designated representative to direct the individual’s care in order to continue being paid to provide supports.

- 4. Since parents/guardians are the individuals who know the person best why would they not be able to be the paid caregiver for the consumer?**

A: The State recognizes the importance of family and friends providing support to consumers because of their relationships with the individual. This policy does not prevent parents, guardians or others from being paid to provide support. This policy provides safeguards and protections for vulnerable individuals when the court-appointed guardian or activated durable power of attorney directs the care for the consumer and also selects himself or herself to be the paid caregiver. This policy provides a way for the guardian or DPOA to continue providing supports by 1) having the court approve annually that there is no conflict of interest for the guardian to be pay himself or herself as the direct service worker for the ward or 2) appoint a designated representative who will not be paid to provide the supports who will be responsible for directing the care for the consumer, which will allow the guardian or DPOA to continue to be paid to provide supports.

5. Why is the state looking at conflict of interest now?

A: CMS issued a final rule March 17, 2014, that expects states to demonstrate a conflict-free system. Additionally, CMS requires the state to ensure the health, safety and welfare of participants on the waivers by mitigating potential conflicts that may arise when a provider also has a personal relationship with the participant and may benefit financially from the relationship.

6. Who should be appointed as the “Designated Representative” if there is no other family around to help with this function?

A: A Designated Representative can be any person the guardian, consumer or DPOA chooses who is able and willing to direct the care of the individual and supervise the guardian or DPOA who will be the employee. A Designated Representative can be a family member, friend, church member, volunteer, neighbor or other trusted individual who is not a targeted case manager, service provider, or staff of an agency that provides assessments or supports for the individual.

7. How are families to keep consumers at home/in their chosen community setting when caregivers other than family/guardians do not show up for work or quit?

A: This policy only applies to court-appointed guardians who are paid to provide supports. Families can continue to support individuals at home and in their communities through formal and informal support. If a court-appointed guardian also would like to be paid to provide supports, the court-appointed guardian must have this approved by the court or appoint an unpaid designated representative to direct the care that the guardian is providing.

8. What specific documents need to be submitted for review? Will the Stamped copy received back from the Probate Court indicating the information has been submitted to the court be acceptable?

A: The court-appointed guardian should provide the MCO Care Coordinator and FMS provider with a copy of the court order accepting the annual report and determining that there is no conflict of interest. If the judge does not provide an order determining that there is no conflict of interest, then the court-appointed guardian will need to appoint a designated representative or hire someone else to provide supports to the individual.

9. How will education for this be provided to consumers, families, providers and MCOs?

A: Information about the Conflict of Interest policy will be provided through the bi-weekly KanCare Ombudsman’s Lunch and Learn calls held on Wednesdays from 12:00 pm to 12:50 pm by conference call.

10. Can the timeline of the implementation be changed to a later date to allow all parties to better understand the changes?

A: The Conflict of Interest policy will become effective July 1, 2015. Court-appointed guardians and activated durable powers of attorney will need to be in compliance by **September 30, 2015** to continue to be paid to provide supports.

11. Does approval of this policy hinge on the waiver renewals? Would an extension on the waiver renewal push back the implementation of this policy?

A: The Conflict of Interest policy will become effective July 1, 2015. The extension of the waiver renewal may move the compliance deadline to a later date.

12. Will a policy and procedures document be given so that providers will be able to incorporate it into their client information process?

A: KDADS will develop additional guidance for MCOs and providers to incorporate into participant information.

13. Where and to whom do we send the completed and signed Appointed Designated Representative Forms to? What is the deadline for submitting the forms?

A: A court-appointed guardian or durable power of attorney that completes and signs the Appointment of Designated Representative form should provide a copy to the MCO Care Coordinator and FMS provider. The forms should be submitted no later than August 1, 2015, to prevent any interruption in services and supports.

14. Being a guardian or DPOA does not make it any easier to take care of SPECIAL NEEDS person. It is a very difficult JOB! Does this policy take that into consideration?

A: This policy is specifically related to guardians or DPOAs who are paid to provide supports for the participant and who are also responsible for hiring, firing, directing, managing and monitoring direct support workers. Court-appointed guardians and DPOAs may continue to be paid to provide supports if the probate court determines there is no conflict of interest or if the guardian or DPOA appoints a Designated Representative to direct the participant's care and being responsible for the direct support workers.

15. Per the stakeholder teleconference on Friday, 5/15/2015, my suggestion is that the policy be revised to clarify that the stamped copy received back from the Probate Court once an annual or special report has been submitted is insufficient for KDADS needs. The policy as currently written is vague as to what is acceptable proof that a conflict does not exist.

A: Guardianship law requires the guardian to submit a report to the probate court every year for the court to determine if the guardianship should be terminated or continued without change. The annual report should include information about the potential conflict of interest because the guardian is benefitting financially from the ward. For the conflict of interest policy, the court-appointed guardian should provide the MCO Care Coordinator and FMS provider with a copy of the judge's order approving the annual report and determining that there is no conflict of interest.

16. If KDADS will require an annual court determination, can KDADS prepare a document that can be sent in with the annual report or special report that specifically asks the judge to sign the form either approving or not approving if there is a conflict of interest?

A: KDADS will take this comment into consideration.

17. Can the State specify and define the duties, the decision-making authority, and the limitations for each of the following individuals within the scope of this new Policy in a reference table for the reader who is bound to be thoroughly confused without such a table?

A: A formal tool to add to the provider manuals and consumer handbooks will be developed for this policy; however, the chart below can be used to help describe the duties of each individual.

Role	Responsibility	Duties
Court-Appointed Guardian	<p>A court-appointed guardian who is being paid to provide supports (benefitting financially from) the ward must report this to the probate court every year in the Annual Report.</p> <p>The guardian must get an order approving the annual report that states there is no conflict of interest. If not, the guardian must complete the Appointment of a Designated Representative form to continue being paid to provide supports</p>	<p>A court-appointed guardian who is being paid to provide supports should participate in the person-centered planning process, but cannot override the designated representative and participant's team related to HCBS Programs</p> <p>The court-appointed guardian who is not paid to provide supports can be the designated representative and can continue to service as a guardian.</p>
Durable Power of Attorney	<p>An activated Durable Power of Attorney who is being paid to provide supports for the participant must appoint a Designated Representative or a hire a direct support worker if the DPOA is currently authorized to make financial, medical or other decisions on behalf of the participant</p>	<p>An activated Durable Power of Attorney must complete the Appointment of a Designated Representative form to continue being paid to provide supports.</p> <p>The DPOA who is being paid to provide supports should participate in the person-centered planning process, but cannot override the designated representative and participant's team related to the HCBS Programs.</p>
Designated Representative	<p>A Designated Representative is authorized to act on behalf of the participant who is self-directing his or her HCBS program services</p> <p>A Designated Representative is responsible for hiring, firing, managing, directing and monitoring the direct support workers for the participant directing his or her care.</p>	<p>A Designated Representative participates in the person-centered planning process and signs the integrated service plan to authorize services for the HCBS program.</p> <p>A Designated Representative only has authority related to authorizing and managing services on the Integrated Service Plan for self-directing participants for the HCBS programs and does not act in place of a guardian or DPOA in other situations.</p>
MCO Care Coordinator	<p>The MCO Care Coordinator develops the integrated service plan and authorizes services and supports.</p> <p>The Care Coordinator will ensure the Designated Representative form is completed annually along with the integrated service plan and provide a copy to the FMS provider</p>	<p>The Care Coordinator ensures there is a current copy of the appointment of Designated Representative or the guardian's court order confirming there is no conflict of interest every year annually.</p> <p>The Care Coordinator will keep a copy of the documentation for their records and provide a copy to the FMS provider and monitor service delivery.</p>
Targeted Case Manager (IDD)	<p>The TCM is responsible for developing the person-centered plan, completing a needs assessment, monitoring the provision of services, and referring participants to supports and services as needed.</p>	<p>The TCM should notify the MCO Care Coordinator if the participant's needs change and an appointment of Designated Representative should be completed.</p> <p>The TCM ensures the person-centered support plan is up to date and reflects that the guardian or activated DPOA is paid to provide supports and monitors service delivery.</p>
Financial Management Services (FMS)	<p>The FMS provider is responsible for supporting the participant with information, referral and assistance and providing payroll supports.</p>	<p>The Financial Management Services (FMS) provider must maintain a copy of the court-order approving the guardian to be paid to provide supports or a copy of the Designated Representative form.</p> <p>The FMS provider may assist a participant in completing the Appointment for Designated Representative form when a participant's circumstances change. A copy of the new or updated Designated Representative form should be sent to the MCO Care Coordinator.</p>