



Home and Community Based Services Conflict of Interest Policy – **Effective July 1, 2015**

KDADS established this policy for the purpose of compliance with Centers for Medicare and Medicaid Services (CMS). It is intended to mitigate conflict of interest that may exist where home and community based Medicaid services are provided. Participants can maintain control of services and conflicts of interest may be mitigated by securing Durable Power of Attorney or separating the “employer of record” from the “manager/worker” and the use of administrative firewalls to separate the two entities.

Consistent with 42 CFR 441.301, the State will ensure policies, processes and protocols are in place to support the person-centered planning process and to mitigate potential conflicts of interest. As a result, KDADS has established the following policy to address potential conflicts:

1. A court appointed legal guardian is not permitted to be a paid provider for the participant unless the probate court determines that all potential conflict of interest concerns have been mitigated in accordance with KSA 59-3068.
 - a. It is the responsibility of the appointed guardian to report any potential conflicts to the court in the annual or special report as required by guardianship law and to maintain documentation regarding the determination of the court.
 - b. A copy of the special or annual report in which the conflict of interest is disclosed will be provided to the MCO and FMS provider if along with the judge’s order approving the annual or special report and determining that there is no conflict of interest for the guardian to be paid to provide supports for the participant under the HCBS program.
2. If the court determines that all potential conflict of interest concerns have not been mitigated, the legal guardian can:
 - a. Select someone (family member or friend) to provide the HCBS services to the participant. If a family member or friend is not available, the participant’s selected MCO or FMS provider can assist the legal guardian in finding a direct support worker or seeking alternative HCBS service providers in the community; OR
 - b. Select someone (family member, friend, non-paid guardian) to appoint as a Designated Representative to develop the integrated service plan and direct the participant’s services under HCBS.
3. An activated durable power of attorney (A DPOA who is currently authorized to make financial, medical or other decisions on behalf of the participant) is not permitted to be a paid provider for participant unless a Designated Representative is appointed to direct the individual’s care (hire, fire, manage, training, and monitor direct support workers).
4. An exception to the criteria may be granted by the MCO 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 or the location is so remote that HCBS Program Services would otherwise not be available to the participant if the exception was not granted.

Action Required:

Legal guardians and activated durable powers of attorneys for adults receiving home and community based services must designate a representative to direct the services of an individual the guardian or DPOA represents and provides paid supports to, when a Conflict of Interest exists.

The attached documents define the following:

1. Conflict of Interest
2. Directing Care
3. Appointment of a Designated Representative
4. When an Appointed Designated Representative is required.

The attached forms will be required for the appointment of a Designated Representative and the signed form must be maintained in the individual's service record.

The Designated Representative document will also be posted on the KDADS website for access.

Service Coordinators and Personal agents who identify situations in which a conflict exists must provide the attached information to the individual and the legal guardian to address the conflict.

KDADS recognizes that families as paid care providers are an important part of our service delivery system. The above action allows legal guardians to address conflict of interest, when the legal guardian is chosen by the consumer or representative to be a paid care provider.

Reason for Action: To assure that conflict of interest is addressed when a person directing care on behalf of an HCBS Program participant is proposing to or is providing paid supports to the individual.

Effective Date: This policy is effective as of **July 1, 2015**, following public comment period from April 15th to June 15th. New authorizations for a court-appointed guardian or activated DPOA that wants to be paid to provide supports must be follow this policy effective immediately.

Compliance Date: Court-appointed guardians or activated durable power of attorneys that are currently paid to provide supports and who direct the care of the participant they provide supports to will need to comply with this policy no later than September 30, 2015.

Additional Information: For more information, please visit the Home and Community Based Services Programs pages on the KDADS website at www.kdads.ks.gov or email questions to HCBS-KS @kdads.ks.gov, Subject Line "Conflict of Interest Policy Questions"

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Designated Representative for Participant-Directed Services

A Designated Representative is defined as a parent, family member, guardian, advocate, or other person who is authorized in writing by the consumer or legal guardian to make determinations on the consumer's assessed care needs, where he or she prefers to live and which home and community based services will be delivered and by whom the services will be delivered. Individuals who chose to participant direct are presumed to have the ability to direct their own care.

Not all individuals receiving home and community based services require a designated representative. A designated representative is only required for individuals with court-appointed guardians (including conservators) or activated durable power of attorneys who are self-directing some or all of the individual's services to mitigate a conflict of interest exists. At no other time will an individual be required to appoint a designated representative. However, an individual may voluntarily decide to appoint a designated representative to perform employer functions related to hiring, firing, monitoring, training and managing direct service workers for participant-directed services

For minor children, legally responsible parent or legal guardian chooses, directs and plans the child's services and will not be required to complete the Designated Representative form. Federal law does not allow a parent or legal guardian of a minor child to be paid to provide services. A parent must comply with requests from the MCO or FMS provider to ensure compliance with federal requirements and establish legal authority.

Conflict of Interest

A conflict of interest exists when the person responsible for developing the integrated service plan to address functional needs is also a legal guardian, durable power of attorney (DPOA) or Designated Representative and that person is also a paid caregiver for the individual. Federal regulations prohibit the individual who directs services from also being a paid caregiver or financially benefitting from the services provided to an individual (42 CFR 441.505).

Therefore, a Designated Representative, activated durable power of attorney, or court appointed guardian shall not also be a paid care provider for the individual, either independently or as an employee or contractor with a provider agency.

In addition, a Designated Representative, activated durable power of attorney, or court appointed guardian shall not also be a Targeted Case Manager for the individual, either independently or as an employee or contractor with a provider agency.

A court appointed guardian or activated durable power of attorney of an adult will, if they are a paid care provider, delegate the authority for directing services to a Designated Representative. The Designated Representative shall not select services for which they financially benefit, such as requiring services be provided through an agency or business that the Designated Representative operates.

To direct services means to determine, based on the assessed needs of the individual, where the services will be delivered and by whom the service will be delivered.

When a court appointed guardian or activated durable power of attorney proposes to or does provide services to the participant, the following actions must be documented in writing and maintained in the individual's service record:

1. A designated representative must be appointed by participant who is directing his or her care or the court-appointed guardian or activated durable power of attorney, if he or she is also a paid care provider. The appointment of a designated representative does not usurp or otherwise change the rights or responsibilities of a court-appointed guardian or as authorized in the durable power of attorney.
 - a. The designated representative must be appointed in writing
 - b. The appointment shall be at least for the period of the integrated service plan of care, but not to exceed one year.
 - c. The appointment will be documented in the individual's integrated service plan, in the individual's file and in the person-centered plan.
 - d. The appointment shall be made at least annually or when the designated representative changes.
2. The designated representative will:
 - a. Act as the approving agent for services provided, by verifying time and attendance for court appointed guardians or other direct service workers hired to provide services.
 - b. Hire, fire, manage, train, and monitor direct service workers, including the paid court-appointed guardian and other direct service workers.
 - c. Attend all ISP meetings and represent the individual receiving services for determination of service options and identifying qualified providers.
 - d. Attend all Individualized Education Plan (IEP) meetings with the school and individual's support team.
 - e. Participate in the person-centered planning process and make appropriate decisions regarding participant-direction.
3. The designated representative will not:
 - a. Serve in any other capacity as designated representative for the court appointed guardian.
 - b. Displace the guardian in legal and appropriate activities of a court appointed guardian including the appointment of a designated representative.
4. The court appointed guardian, paid to provide services to the individual, may:
 - a. Contribute information for the functional needs assessment.
 - b. Contribute information for the development of the integrated service plan of care and the person-centered support plan.
 - c. Participate fully in the ISP team as a team member.
5. The court appointed guardian, paid to provide services to the individual, may not:
 - a. Override team decisions, or contributions of the designated representative.
 - b. Determine the hours of service for which he or she will be paid
 - c. Determine his or her rate of pay
 - d. Sign the integrated service plan of care to authorize services
 - e. Serve as the employer of record and hire, fire, direct or manage the other direct service workers.



Home and Community Based Programs

Appointed Designated Representative Form (Effective: _____ to _____)

To be completed by the Individual receiving HCBS Program Services:

By signing below, I understand the following:

1. I have chosen the below-named person to act as my Designated Representative for the purpose of directing my Home and Community Based Services as identified in my integrated service plan of care;
2. This appointment lasts for no longer than one year from the date of my signature; or as indicated by the effective dates above; or unless I cancel this consent earlier.
3. I can cancel this consent at any time before its expiration by informing my Care Coordinator or Financial Management Services Provider that I wish to cancel this consent and by completing and signing the **Revocation of Designated Representative form.**
4. I understand that with supporting documentation this consent may be cancelled if it is determined that my designated representative is not acting in my best interest, does not show the ability to self-direct my services according to the integrated service plan of care or the HCBS program requirements, or if it is discovered that the appointed designated representative has a conflict of interest or has committed fraud, waste, and abuse.

Participant Signature _____ Date: _____

Printed Name _____ Participant Cannot Sign

Guardian/DPOA Signature _____ Date: _____

Guardianship Documents Attached DPOA Documents Attached

If the individual is unable to sign this appointment, a third party witness must sign. The third party witness may not be the Care Coordinator, Community Service Provider, Targeted Case Manager, Personal Care Attendant or the Designated Representative.

Witness Signature _____ Date: _____

Printed Name _____

Relationship _____



Home and Community Based Programs

Appointed Designated Representative Form (Effective: _____ to _____)

To be completed by the Appointed Designated Representative:

Name _____

Address _____

Phone _____

Email _____

Relationship to Participant _____

By signing below, as the designated representative, I certify:

1. I am an adult 18 years of age or older.
2. I am not prohibited from serving as a designated representative based on a background check, abuse, neglect, and exploitation check or Office of Inspector General Medicaid exclusion list check.
3. I understand and agree to direct home and community based services for the above named individual while engaging and supporting the individual, as much as possible, in choice and self-direction.
4. I understand that as the designated representative, I do not have authority, unless otherwise authorized, to act on the above named person's behalf in situations other than as the employer for directing home and community based services provided through KanCare.
5. I understand that as the designated representative, I have the duty to perform my duty and responsibility as the employer to hire, fire, manage, train, and monitor the direct service worker(s) and ensure compliance with program, state and federal rules and regulations on behalf of the participant without compensation.
6. I acknowledge that as the designated representative, I am prohibited from being paid with Medicaid dollars to provide supports to the individual represented.

Participant Signature _____

Date: _____

Printed Name _____

Participant Cannot Sign

Representative Signature _____

Date: _____

Printed Name _____