

Patricia Baxter
Authorized Signature

Number: APD-AR-13-085
Issue Date: 11/5/2013

Topic: Developmental Disabilities

Due Date:

Subject: Conflict of Interest and Appointment of Designated Representative

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input checked="" type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Children, Adults and Families | <input type="checkbox"/> Seniors and People with Disabilities |
| <input checked="" type="checkbox"/> County DD Program Managers | <input checked="" type="checkbox"/> Other (please specify): ODDS, DD
licensing, DRO, ORA, SEIU, DD Council,
Brokerage Directors and Personal
Agents, CDDP Services Coordinators |

Action Required:

Legal guardians of adults with intellectual or developmental disabilities must designate a representative to direct the services of an individual the guardian represents and provides paid supports to, when a Conflict of Interest exists.

The Office of Developmental Disabilities along with stakeholders have developed guidance to families regarding Conflict of Interest that exists when a legal guardian is directing care on behalf of an adult with Intellectual or Developmental Disabilities.

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 form 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 Departments K plan website for access.

ODDS request agencies share this information with families having concerns related to this issue. Additional up to date information can be located at the ODDS Facebook page at: <https://www.facebook.com/pages/Oregon-Developmental-Disabilities/179862702153136>

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.

ODDS 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, while retaining the right 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 adult with I/DD is proposing to or is providing Department funded paid supports to the individual.

Field/Stakeholder review: Yes No

If yes, reviewed by: **CMS implementation team**

If you have any questions about this action request, contact:

Contact(s):	Shelly Reed		
Phone:	503-945-5828	Fax:	503-373-7273
E-mail:	Shelly.M.Reed@state.or.us		

Designated Representative For Adults with I/DD

October 2013

A Designated Representative is a parent, family member, guardian, advocate, or other person authorized in writing by the individual, or their legal guardian to determine, based on the assessed needs of the individual, where his or her Department funded services will be delivered and by whom the services will be delivered. Individuals are presumed able to direct their own care. Not all individuals receiving Department funded services require a designated representative. A designated representative is only required when a conflict of interest exists. At no other time will an individual be required to appoint a designated representative.

For minor children, the Department assumes that any legally responsible parent or legal guardian chooses, directs and plans that child's services and will not need to complete the Designated Representative form. Instead, they must comply with Department requests to verify that they are the legally responsible parent or guardian for the particular child.

Conflict of Interest

A conflict of interest exists when the legal guardian or Designated Representative 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 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.

A court appointed guardian 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 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.

Individuals, who do not have a court appointed guardian or designated representative, shall rely on majority agreement of the ISP team for decision making purposes.

When a court appointed guardian proposes to or does provide Department funded supports the following actions must be documented in writing and maintained in the individual's service record:

1. A designated representative must be appointed by the court appointed guardian 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.
 - a. The designated representative must be appointed in writing
 - b. The appointment shall be at least for the period of the service plan year.
 - c. The appointment will be documented in the individual's service record.

2. The designated representative will:
 - a. Attend all ISP meetings and represent the individual receiving services for determination of service options and identifying qualified providers.

3. If the individual does not otherwise have an employer of record the designated representative will:
 - a. Act as the approving agent for services provided, by signature on time cards for court appointed guardians or other care providers.

4. The designated representative may not:
 - a. Serve in any other capacity as designated representative for the court appointed guardian.
 - b. Displace the guardian in the legal and appropriate activities of a court appointed guardian including the appointment of a designated representative.

5. The court appointed guardian may:
 - a. Contribute information for the functional needs assessment.
 - b. Contribute information for the development of the Individual Support Plan.
 - c. Participate fully in the ISP team as a team member.

6. The court appointed guardian may not:
 - a. Override team decisions, or contributions of the designated representative.
 - d. Determine the hours of service for which he or she will be paid
 - e. Determine his or her rate of pay.

6. Court appointed guardians may be paid to provide a service if the individual served is able to direct his or her own care.

7. Court appointed guardians living in areas 50 miles or greater from an accessible designated representative, after documenting reasonable efforts taken to secure a designated representative, may contact ODDS County Liaison for an exception to this requirement. The County Liaison will:
 - a. Respond to the request by email to the CDDP or brokerage.
 - b. Require the team to assure consensus in all service documents and individual service plan.
 - c. Require that the reason for exception and demonstration of effort are recorded in the individual's service record.



Office of Developmental Disabilities Services

Appointment of Designated Representative For Adults with Intellectual and Developmental Disabilities

Individual's Name:
Designated Representative:
Relationship to the Individual:

To be completed by the Appointed Designated Representative:

By signing below, I indicate:

1. I am an adult 18 years of age or older

- 2, I understand and agree to direct Community First Choice (K Plan) services for the above named individual while engaging and supporting the individual, as much as possible, in choice and self-direction.

3. 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 the provision of Community First Choice services provided through the Oregon Department of Human Services.

4. As a Designated Representative, I acknowledge that I am prohibited from being paid with Medicaid dollars to provide supports to the individual represented.

Printed Name:	Signature:
Email Address:	Telephone Number:
Address:	

Appointment of Designated Representative For Adults with Intellectual and Developmental Disabilities

To be completed by the Individual receiving CFC (K Plan) Services:

If the individual is unable to sign this appointment, a third party witness must sign. The third party witness may not be the Services Coordinator or Personal Agent.

By signing below, I acknowledge the following:

1. I have chosen the above named person to act as my Designated Representative for the purpose of directing Community First Choice (K Plan) services;
2. This appointment lasts for one year from the date of my signature unless I revoke this authorization earlier.
3. I can revoke this authorization at any time before its expiration by informing my Services Coordinator or Personal Agent that I wish to revoke this authorization.
4. I understand that the Oregon Department of Human Services, my Services Coordinator or my Personal Agent with supporting documentation may revoke this authorization if they determine that my designated representative is not acting in my best interest or if they uncover that the appointed designated representative has a conflict of interest.
5. If I am a guardian providing paid supports, the designated representative may also act as employer of record, unless the individual has an employer of record already established, to verify the hours of paid supports provided to the above named individual.

Individual's Signature:	Date:
Witness Signature:	Date:
Services Coordinator/Personal Agent:	Date: