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Authorized Signature

Number: APD-PT-15-009

Issue Date: 3/3/2015

Topic: Developmental Disabilities

Transmitting (check the box that best applies):

- New policy
 Policy change
 Policy clarification
 Executive letter
 Administrative Rule
 Manual update
 Other: _____

Applies to (check all that apply):

- All DHS employees
 County Mental Health Directors
 Area Agencies on Aging
 Health Services
 Aging and People with Disabilities
 Office of Developmental
 Children, Adults and Families
 Disabilities Services (ODDS)
 County DD Program Managers
 Other (*please specify*): Support Services
 Brokerage Directors

Policy/rule title:	Conflict of Interest		
Policy/rule number(s):		Release no:	
Effective date:		Expiration:	
References:	42 CFR §441.505		
Web Address:			

Discussion/interpretation:

This policy replaces the previous transmittal on this topic SPD-AR-13-085 “Conflict of Interest and Appointment of Designated Representative.”

A conflict of interest exists when there is a situation in which a person is in a position to derive personal benefit from actions or decisions made in their capacity. There are many opportunities for a conflict of interest to arise in the delivery of services funded by the Office of Developmental Disabilities Services (ODDS).

ODDS addresses situations that present a conflict of interest in several of the Oregon Administrative Rules (OARs), in the Home and Community Based Services (HCBS) Waivers, and the Community First Choice State Plan (k-plan). ODDS must also follow

the Code of Federal Regulations (CFRs) that apply to the HCBS Waivers and k-plan.

Most of these situations involve a person serving in a capacity that may influence the amount and type of services included in an Individual Support Plan (ISP) while also serving as providers being paid to provide those services.

When a situation presents a conflict of interest the Service Coordinator or Personal Agent must work with the ISP team to resolve that conflict. There are a variety of strategies available to resolve conflicts of interest. Below is a table of common situations that present a conflict of interest and strategies to resolve that conflict. These conflicts are not allowed by the program OARs that an individual is enrolled in.

Conflict of Interest Scenario	Resolution Strategy
Employee is also the Employer of Record	The individual or their legal or designated representative must select a separate Employer of Record to fulfill the employer duties for that employee.
Employee is the Legal Representative	The individual or their legal representative must delegate the responsibility to direct the provision of ODDS funded services (ISP authorization and employer responsibilities) to a designated representative.*
Employee is the parent of a minor child	The parent must select a different, non-parent provider of ODDS funded services.
Employee is the Designated Representative	The individual or their legal representative must select either a different designated representative or a different employee.
Employee has Power of Attorney for Medical or Financial decisions	The individual or their legal representative must select either a different Power of Attorney or a different employee.
Direct Support Professional (agency employed) is the Legal Representative	The individual or their legal representative must delegate the responsibility to direct the provision of ODDS funded services (ISP authorization and employer responsibilities) to a designated representative.*
Direct Support Professional (agency employed) is the Designated Representative	The individual or their legal representative must select either a different designated representative or a different provider.
Agency Employee is the Designated Representative and the agency is contracted to provide ODDS funded services	The individual or their legal representative must select either a different designated representative or a different provider.

Agency Employee is the Legal Representative and the agency is contracted to provide ODDS funded services	The individual or their legal representative must delegate the responsibility to direct the provision of ODDS funded services (ISP authorization and employer responsibilities) to a designated representative.*
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* Legal representatives may be limited in their authority to delegate the responsibility to direct the provision of services to a third party designated representative by their court ordered guardianship authority. ODDS, CDDPs, and Support Services Brokerages are unable to provide legal advice regarding whether any individual legal representative has this authority. If a legal representative does not believe that their guardianship authority allows for designating a representative to direct the provision of services the legal representative may select a separate employee or provider to provide the ODDS funded supports or seek further legal advice.

Implementation/transition instructions: ODDS recognizes that families as paid care providers are an important part of our service delivery system. The above action allows legal representatives and others to address conflict of interest, while retaining the ability to be a paid care provider.

The following list is examples of documentation that would demonstrate the resolution of a situation that presents a conflict of interest.

If the individual is not directing the provision of their own ODDS funded services:

- Copy of Guardianship or Power of Attorney in the individual’s file when a legal representative has the responsibility to direct the provision of ODDS funded services (ISP authorization and employer responsibilities).
- If a legal representative delegates the responsibility to direct the provision of ODDS funded services (ISP authorization and employer responsibilities) it must be in writing on the Appointment of Designated Representative form. The Designated Representative must also accept their responsibilities on the same form.
- If the individual delegates the responsibility to direct the provision of ODDS funded services (ISP authorization and employer responsibilities) to a designated representative it should be in writing on the Appointment of Designated Representative form. If the individual is not able to complete the designation in writing the ISP should reflect the designated representative and the evidence available that the individual made this choice. The Designated Representative must also accept their responsibilities on the Appointment of Designated Representative form. These forms must be completed annually or whenever there is a change in the Designated Representative.

If the individual is choosing not to fulfill part or all of the employer responsibilities but is authorizing the ISP:

- ISP documentation or STEPS program document that delegates employer responsibilities to a non-employee
- ISP documentation and IRS requirements designating the employer of record

Exceptions to this policy may only be made by ODDS. Requests for exception must be submitted to the Funding Review Committee. Requests should include a demonstration of effort to resolve any conflicts of interest through a thorough exploration of service setting options, a thorough exploration of available providers, and an inability to locate a qualified and willing designated representative.

Training/communication plan: Program Manager or Brokerage Director review with staff

Local/branch action required: Implement use of new Designated Representative forms and continue to resolve conflicts of interest as needed through case planning.

The forms are attached and immediately available for use. These forms will be available on the DHS Forms site and translated in the future.

Central office action required:

Field/stakeholder review: Yes No

If yes, reviewed by: Support Services Brokerage Directors and CDDP
Program Managers

Filing Instructions:

If you have any questions about this policy, contact:

Contact(s):	Chrissy Fuchs		
Phone:	503-947-4142	Fax:	
E-mail:	Chrissy.fuchs@state.or.us		



Office of Developmental Disabilities Services

Appointment of Designated Representative

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 ODDS funded services for the above named individual while engaging and supporting the individual, as much as possible, in choice and self-direction.
3. I agree to participate in the development and authorization of the above named individual's Individual Support Plan including evaluating service options and identifying qualified providers.
4. I agree to serve as the employer of record if the individual or their legal representative does not appoint a separate employer of record. This includes the employer responsibilities outlined in OAR 411-340-0135, 411-330-0065, 411-308-0135, 411-350-0075, or 411-300-0615
5. I understand that as the designated representative, I do not have authority, unless separately authorized, to act on the above named person's behalf in situations other than the provision of ODDS funded services provided through the Oregon Department of Human Services.
6. As a Designated Representative, I acknowledge that I am prohibited from being paid with ODDS funds to provide supports to the individual represented.

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



Office of Developmental Disabilities Services

Appointment of Designated Representative

To be completed by the Individual receiving ODDS Funded Services or their legal representative:

If the individual is unable to sign this appointment, a third party witness must sign. Personal Agents and Service Coordinators may not serve as the third party witness. Legal guardians must sign this appointment.

Individual's Name:
Designated Representative:

By signing below, I acknowledge the following:

1. I have chosen the above named person to act as Designated Representative for the purpose of directing ODDS funded 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, if they uncover that the appointed designated representative has a conflict of interest, or is violating any laws, rules, policy or published guidelines
5. If I am a guardian providing paid supports, the designated representative may also act as employer of record, unless a separate employer is appointed, to validating services provided to the individual by signature on timesheets or other records.

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