

SWMBH Operating Policy 10.10

Subject: Conflict of Interest Policy		Accountability: Compliance	Effective Date: 1/1/2014	Pages: 6
REQUIRED BY: Medicaid Managed Care Reg. _____ PIHP Contract Section _____ NCQA Standard _____ Other _____			Last Reviewed Date: 10/4/18	Past Reviewed Dates: 1/1/14 9/28/15 5/12/16 12/9/16 5/17/17
LINE OF BUSINESS: <input checked="" type="checkbox"/> Specialty Waiver (B/C) <input checked="" type="checkbox"/> 1115 Waiver <input checked="" type="checkbox"/> ABW Waiver <input checked="" type="checkbox"/> SUD Medicaid <input checked="" type="checkbox"/> SUD Block Grant <input checked="" type="checkbox"/> MI Health Link OTHER: _____	APPLICATION: <input checked="" type="checkbox"/> SWMBH Staff and Ops <input type="checkbox"/> Participant CMHSPs <input type="checkbox"/> SUD Providers <input type="checkbox"/> MH / DD providers <input type="checkbox"/> DD providers <input checked="" type="checkbox"/> Other: <u>See Scope</u>		Last Revised Date: 10/4/18	Past Revised Dates: 1/1/14 9/28/15 5/12/16 12/9/16 5/17/17
Approved by SWMBH Board 12/09/2016 <i>Mila C. Joda</i> Date: 10-11-18			Required Reviewer: Chief Compliance & Privacy Officer	

I. POLICY

It shall be the policy of Southwest Michigan Behavioral Health (the "Entity") to provide a means for any Covered Person to identify and report to the Entity's Board (the "Board") any direct or indirect Financial Interest and any actual or potential Conflict of Interest and, based on that information, to permit the Board to review such Financial Interests and Conflicts of Interest and provide a process for the Board to follow when managing Conflicts of Interest, all in accordance with applicable law.

II. OBJECTIVE

The objective of this policy (the "Policy") is to provide an effective oversight process to protect the interests of the Entity when contemplating a transaction, arrangement, proceeding or other matter that might benefit the private interest of an individual or another entity. The Policy accomplishes this objective by defining Conflict of Interest, identifying individuals subject to this Policy, facilitating the disclosure of actual and potential Conflicts of Interest and Financial Interests and setting forth procedures to manage Conflicts of Interest. This Policy is intended to supplement, but not replace, any applicable state or federal laws governing conflicts of interests in governmental entities or charitable, tax exempt, nonprofit organizations.

III. SCOPE

Individuals covered under this Policy include:

- Members of the Entity's Board;
- Entity officers,
- Members of committees of the Board with delegated authority from the Board, and
- Entity employees, independent contractors or agents who are responsible for the expenditure of federal or state government funds in excess of \$100 on behalf of the Entity.

These individuals are collectively referred to in this Policy as "Covered Person(s)."

IV. DUTIES OF COVERED PERSONS

A. Duty of Care.

Every Covered Person shall act in a reasonable and informed manner and perform his or her duties for the Entity in good faith and with the degree of care that an ordinarily prudent person would exercise under similar circumstances.

B. Duty of Loyalty.

Every Covered Person owes a duty of loyalty to act at all times in the best interest of the Entity and not in the interest of the Covered Person or any other entity or person. No Covered Person may personally take advantage of a business opportunity that is offered to the Entity unless the Board of Directors determines not to pursue that opportunity, after full disclosure and a disinterested and informed evaluation.

C. Conflicts of Interest.

No Covered Person may engage in any transaction, arrangement, proceeding or other matter or undertake positions with other organizations that involve a Conflict of Interest, except in compliance with this Policy. Covered Persons should avoid not only actual but the appearance of Conflicts of Interest as well. Every Covered Person shall:

1. Disclose all Financial Interests as set out below;
2. Unless a Conflict of Interest Waiver has been granted, recuse himself/herself from participating in discussions, deliberating or voting on any transaction, arrangement, proceeding or other matter in which he/she has a Financial Interest, and not be present when any such discussions, deliberations or voting. The Interested Person may respond to inquiries the Entity Board determines necessary for its discussions, deliberations, and/or decisions;
3. Comply with any restrictions or conditions stated in any Conflict of Interest Waiver granted for the Covered Person's activities; and
4. Recuse himself/herself from, and not be present for, discussions, deliberations and voting in any matter that the Interested Person cannot act in the best interests of the Region, regardless of whether a Conflict of Interest Waiver covers the matter at issue. In the event that the Interest Person recuses himself/herself, he/she may respond to inquiries the Entity Board determines necessary for its discussions, deliberations and/or decisions.

V. DEFINITIONS

A. **Conflict of Interest.** A Conflict of Interest arises when a Covered Person participates or proposes to participate in a transaction, arrangement, proceeding or other matter for the Entity, in which the Covered Person, the Covered Person's Family Member, or an organization in which the Covered Person is serving as an officer, director, trustee or employee has a Financial Interest.

B. **Family Member** means spouse, parent, children (natural or adopted), sibling (whole or half-blood), father-in-law, mother-in-law, grandchildren, great grandchildren and spouses of siblings, children, grandchildren, great grandchildren, and all step family members, and any person(s) sharing the same living quarters in an intimate, personal relationship that could affect decisions of the Covered Person in a manner that conflicts with this Policy.

C. **Financial Interest.** A Covered Person has a Financial Interest if he or she has, directly or indirectly, actually or potentially, through a business, investment or through a Family Member:

- (a) an actual or potential ownership, control or investment interest in, or serves in a governance or management capacity for, an entity with which the Entity has a transaction, arrangement, proceeding or other matter;

- (b) An actual or potential compensation arrangement with any entity or individual with which the Entity has a transaction, arrangement, proceeding or other matter; or
- (c) an actual or potential ownership or investment interest in, compensation arrangement with, or serves in a governance or management capacity for, any entity or individual with which the Entity is contemplating or negotiating a transaction, arrangement, proceeding or other matter.

Compensation includes direct and indirect remuneration, in cash or in kind.

D. **Interested Person** is a Covered Person who has a Financial Interest.

VI. PROCEDURES

A. Duty to Disclose

Each Covered Person has a duty to disclose to the Board the existence of a Financial Interest and all related material facts.

B. Disclosure of Financial Interests

Each Covered Person shall submit in writing to the Entity's Chief Executive Officer an Annual Financial Interest Disclosure Statement (Attachment A) listing all Financial Interests and affirming compliance with the Conflict of Interest Policy. Each Covered Person shall update his/her Annual Financial Interest Disclosure Statement each year on the date designated by the Board for updating, and promptly when any new Financial Interests or potential Conflicts of Interest arise. The Chairperson of the Board shall review and become familiar with all submitted Financial Interest Disclosure Statements and updates in order to guide his/her conduct regarding the disclosed information. The Vice Chairperson of the Board shall review and become familiar with the Financial Interest Disclosure Statement submitted by the Chairperson of the Board.

The Board of Directors may request that a Covered Person(s) appear before the Board or submit written information to supplement or to answer questions regarding information disclosed on the Annual Financial Interest Disclosure Statement.

C. Addressing Financial Interests and Conflicts of Interest

(a) **Board Deliberation.** After disclosing the Financial Interest, together with any additional oral or written presentation of material or discussion requested by the Board, the Interested Person shall leave the Board meeting while the Board discusses the information and votes whether a Conflict of Interest exists and, if so, regarding how to manage the Conflict of Interest and whether or not to grant a waiver. The Interested Person shall not take part in the Board's due diligence deliberations.

(b) **Appointment of Disinterested Person.** If the Board determines it is advisable, the Board may appoint a disinterested person to conduct further investigation regarding the reported Financial Interest and Conflict of Interest and make a report back to the Board.

(c) **Board Vote.** The Board, after exercising due diligence regarding the reported Financial Interest shall, by vote, make a determination as to whether a Conflict of Interest exists and, if so, whether or not the Entity can obtain a more advantageous transaction, arrangement, proceeding or other matter with reasonable efforts from another person or entity that would not involve the Interested Person, and the Financial Interest is so substantial as to be likely to affect the integrity of the services which the Entity may expect from the Interested Person. The Interested Person shall not take part in the Board's due diligence discussions, deliberations or any vote on how to manage the Conflict of Interest and whether or not to grant a waiver.

(d) **Notice to Interested Person.** If the Board determines, by majority vote of disinterested members, that it may, with reasonable efforts, obtain a more advantageous transaction, arrangement, proceeding or other matter from another person or entity not involving the

Interested Person, and/or that the Financial Interest is so substantial as to be likely to affect the integrity of the services which the Entity may expect from the Interested Person, the Board may vote to decline to waive the potential Conflict of Interest and shall not proceed with the proposed transaction, arrangement, proceeding or other matter and the Interested Person's participation in the matter. The Board's denial and reasoning shall be recorded in the Board Meeting Minutes pursuant to Section 5 of this policy.

(e) Granting a Conflict of Interest Waiver. If the Board determines that it is not able, with reasonable efforts, to obtain a more advantageous transaction, arrangement, proceeding or other matter from another person or entity not involving the Interested Person, and that the Financial Interest is not so substantial as to be likely to affect the integrity of the services which the Entity may expect from the Interested Person, the Board may vote to waive the potential Conflict of Interest and proceed with the proposed transaction, arrangement, proceeding or other matter and the Interested Person's participation in the matter. A Conflict of Interest Waiver shall be made in writing and signed by the Chairperson of the Board on the Entity's Conflict of Interest Waiver form (Attachment B). The Conflict of Interest Waiver may restrict the Interested Person's participation in the matter to the extent deemed necessary by the Board. Further, the Conflict of Interest waiver may cover all matters the Interested Person may undertake as part of his/her official duties with the Entity, without specifically enumerating such duties. All Conflict of Interest Waivers shall be issued prior to the Interested Person's participation in any transaction, arrangement, proceeding or other matter on behalf of the Entity.

For Interested Persons who serve as a member of the Entity Board or as a member of the Entity Operations Committee, the Conflict of Interest Waiver shall include a restriction that requires the Interested Person to recuse himself/herself from any and all discussions, deliberations, and voting in proceedings arising out of a dispute between the Entity and the Interested Person's CMHSP. The Interested Person may respond to any inquiries the Entity Board determines necessary for its discussions, deliberations and/or decisions.

(f) Factors for Consideration When Granting a Waiver. In making a determination as to whether a Financial Interest is substantial enough to be likely to affect the integrity of the Interested Person's services to the Entity, the Board shall consider, as applicable:

- (i) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, cash payment, job offer or enhancement of a spouse's employment);
- (ii) The identity of the person whose Financial Interest is involved, and if the interest does not belong directly to the Interested Person, the Interested Person's relationship to that person;
- (iii) The dollar value of the disqualifying Financial Interest, if known and quantifiable (e.g., amount of cash payment, salary of job to be gained or lost, change in value of securities);
- (iv) The value of the financial instrument or holding from which the disqualifying Financial Interest arises and its value in relationship to the individual's assets;
- (v) The nature and importance of the Interested Person's role in the matter, including the level of discretion which the Interested Person may exercise in the matter;
- (vi) The sensitivity of the matter;
- (vii) The need for the Interested Person's services; and
- (viii) Adjustments which may be made in the Interested Person's duties that would eliminate the likelihood that the integrity of the Interested Person's services would be questioned by a reasonable person.

- (g) Waivers Supported by Michigan Law. Michigan law specifically provides support for granting a waiver of a Conflict of Interest arising under the following Conflict of Interest exception scenarios:
- (i) A community mental health services program ("CMHSP") Board member may be a party to a contract with a CMHSP or administer or financially benefit from that contract, if the contract is between the CMHSP and the Entity;
 - (ii) A CMHSP Board member may also be a member of the Entity Board, even if the Entity has a contract with the CMHSP;
 - (iii) A CMHSP Board may approve a contract with the Entity, if a CMHSP Board member is also an employee or independent contractor of the Entity; and
 - (iv) CMHSP public officers (e.g., Board members, officers, executives and employees) may also be Board members, officers, executives and employees of the Entity, even if the Entity contracts with the CMHSP, subject to any prohibition imposed by the Michigan Department of Community Health in that regard.

D. Policy Enforcement

- (a) If the Board has reasonable cause to believe that a Covered Person has failed to disclose actual or potential Financial Interests or Conflicts of Interest, the Board shall inform the involved Covered Person of the basis for such belief, and afford the Covered Person an opportunity to explain the alleged failure to disclose.
- (b) If, after hearing the Covered Person's response and after making such further investigation as may be required, the Board determines that the Covered Person has in fact failed to disclose an actual or potential Financial Interest or Conflict of Interest, the Board shall take appropriate corrective action.
- (c) Regardless of whether a Financial Interest has been disclosed or a Conflict of Interest Waiver granted, if a matter arises that an Entity Board Member reasonably believes may create a Conflict of Interest for another Interested Person, the Entity Board Member has a duty to inquire of that Interested Person to determine if the Interested Person can act in the best interests of the Region with regard to the matter at issue.

E. Records of Proceedings

The minutes of the Board and all committees with Board-delegated powers shall contain:

- (a) The names of Covered Persons who disclosed or otherwise were found to have a Financial Interest, the nature of the Financial Interest, any due diligence investigation of the Financial Interest and potential Conflict of Interest, and the Board's decision with regard to the matter. If a written waiver of a Conflict of Interest is granted, a copy of the written waiver shall be attached to the minutes of the meeting at which it was granted.
- (b) The names of all persons who were present for discussion and votes related to the transaction or arrangement involved in the Financial Interest, a summary of the content of the discussion, including any alternatives proposed to the transaction or arrangement, and a record of any vote taken in connection with the matter.
- (c) If the Board grants a waiver of a Conflict of Interest, the waiver shall be in writing and shall be signed by the Chairperson of the Board, and shall describe the Financial Interest, the proceeding, transaction or matter to which the Financial Interest applies, the Interested Person's role in the proceeding, transaction or matter, and any restriction on the Interested Person's participation in the proceeding, transaction or matter.

F. Compensation Committees

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- (a) A voting member of the Board or any Board committee whose scope of authority includes compensation matters and who receives compensation, directly or indirectly, from the Entity, is precluded from voting on matters pertaining to his/her own compensation from the Entity.
- (b) No voting member of the Board or any Board committee whose scope of authority includes compensation matters and who receives compensation, directly or indirectly, from the Entity, is prohibited, individually or as part of a group, from providing information to the Board or any committee regarding compensation.

G. Annual Financial Interest Disclosure Statement

- (a) Annually, on a date to be determined by the Board, each Covered Person shall complete, sign and date a Financial Interest Disclosure Statement (see Attachment A). The Financial Interest Disclosure Statement affirms that the signor:
 - 1. Has received a copy of this Policy;
 - 2. Has read and understands this Policy;
 - 3. Has agreed to comply with this Policy;
 - 4. Has disclosed on the Financial Interest Disclosure Statement all Financial Interests which the signor currently may have; and
 - 5. Will update the information on the Financial Interest Disclosure Statement promptly should a new Financial Interest arise, by completing a new Financial Interest Disclosure Statement.

V. LEGAL AUTHORITIES

The Policy is based on the following legal authorities:

- Mental Health Code, 1974 PA 258, MCL 300.1001 to 300.2106
- 1978 PA 566, MCL 15.181 to 15.185 (incompatible public offices)
- 1968 PA 317, MCL 15.321 to 15.330 (contracts of public servants with public entities)
- 45 CFR Part 74 (Federal Procurement Regulations)
- 45 CFR Part 92 (Federal Procurement Regulations)
- 42 USC 1396a (Federal Medicaid Statute)
- Michigan Medicaid State Plan
- 18 USC 208 (Federal Conflict of Interest Statute)
- IRS Conflict of Interest Guidelines, Policies and Pronouncements for Charitable Tax Exempt Nonprofit Entities

VI. RELATED POLICIES AND PROCEDURES

- A. SWMBH Operating Policy 10.10a – Conflict of Interest Waiver Policy