

# Quick Reference Handout 8.4: Managing Conflict of Interest

## Definition and Requirements

**Conflict of interest** occurs when individuals have competing professional or personal interests or duties, and may be unable to make a fair decision because they will be personally or professionally affected by the result.<sup>1</sup> Conflict of interest for members of a Ryan White HIV/AIDS Program (RWHAP) Part A planning council or planning body (PC/PB) can occur when other interests or affiliations compromise their duty to make decisions for the benefit of people with HIV in the service area who receive or need RWHAP services.

### Defining Conflict of Interest in RWHAP

- The Part A Manual defines a conflict of interest as “an actual or perceived interest in an action that will result – or has the appearance of resulting – in personal, organizational, or professional gain.”<sup>2</sup>
- Serving as a staff member, paid consultant, or Board member of a Part A subrecipient or an entity seeking Part A funds creates a possible conflict of interest in PC/PB decisions and voting.
- Individuals may serve as “unaligned” or “unaffiliated” consumer members of the PC/PB only if they receive RWHAP Part A services and do not have such a relationship with a provider (i.e., they are not a staff member, consultant or board member of a service provider).
- Being a client of a subrecipient does not create a conflict of interest.

The legislation requires that, to serve on the PC/PB, individuals must agree that if they have “a financial interest” or are employees or members of “a public or private organization” seeking RWHAP Part A funds, they will not “participate (directly or in an advisory capacity) in the process of selecting entities” to provide services. The conflict of interest (COI) policy is usually outlined in the PC/PB’s Bylaws, and detailed requirements and implementation procedures are provided in the PC/PB’s policies and procedures.<sup>3</sup>

The Health Resources and Services Administration’s HIV/AIDS Bureau (HRSA HAB) expects all PC/PBs to have a written COI policy and procedures. An actual or perceived conflict of interest may be caused by the dual role played by PC/PB members who are also affiliated with Part A subrecipients or providers seeking Part A funding. COI affects many aspects of PC/PB work, including decisions about PSRA, needs assessment, evaluation of services, and integrated/comprehensive planning.

## COI Policies and Procedures

The PC/PB's COI policy and procedures should specify strategies it will use to minimize COI and its negative effects, and should be consistently applied and enforced. Expectations include the following:<sup>4</sup>

- The PC/PB's COI policy should require members who have affiliations that may create a COI to declare them both in writing at least annually, and orally at the start of a meeting, and/or when a situation involving possible COI arises.
- COI policy and procedures should address how COI is managed in discussion and decision making. For example, conflicted members should not vote on decisions where they have a conflict, should not name or discuss the work of their organization, and should not attempt to influence the votes of other members to benefit their organization. Discussion should focus on service categories, not individual providers.
- The PC/PB may not name, recommend, or approve particular entities for Part A funding or be involved in the management of contracts – procurement and contract management are recipient responsibilities.
- Individual PC/PB members must not participate in the review of Part A funding applications or selection of service providers, which means that they should not serve on external review panels that help to select subrecipients.

### Components of a PC/PB COI policy include the following:

- *Definition of a conflict of interest* – which should be consistent with the HRSA HAB definition but may include additional detail or explanation; for example, some PC/PBs consider volunteering for a funded provider more than a specified number of hours per week to be a potential conflict of interest, though this is not a HRSA HAB requirement.
- *Who is covered* – usually both the member and close relatives as defined by the PC/PB (e.g., spouse or domestic partner, sibling, parent, or child).
- *A COI declaration form* – a listing of affiliations of the individual member and covered family members that could create a COI, which is completed and signed by each member annually and updated whenever affiliations change.
- *A requirement to publicly declare COI at specified times* – for example, at the beginning of a meeting or during PSRA discussions.
- *What situations are covered by the policy* – while PSRA should be a focus, the policy should address any decision-making where there could be actual or perceived COI.
- *How the conflicted member is expected to behave* when decisions are being made about service categories or other issues with which there is a potential COI – for example:
  - Abstain from voting
  - Participate in the discussion only to answer direct questions
  - Not participate in the discussion.

- *Who manages COI during meetings* – who asks that conflicts be announced, helps ensure sound strategies for COI management, and intervenes when a conflicted member appears to be violating the policy; this could be the Chair, a committee chair, the PC/PB support manager, or someone else.
- *How the PC/PB will deal with COI violations* – including what committee or other body is responsible for reviewing them and what sanctions may be applied.

## **Managing Conflict of Interest in Priority Setting and Resource Allocation**

Managing COI in PSRA is especially important – and can be challenging. The PC/PB must “develop procedures to assure that decisions concerning service priorities and funding allocations are based upon community and client needs and not on the financial interests of individual service providers or the personal or professional interests of individual planning council members.”<sup>5</sup> PSRA policies and procedures for priority setting, resource allocation, directives, and reallocation must address conflict of interest management.

PC/PBs address this issue in different ways, but often use strategies such as the following during PSRA-related discussion and decision making:

- Any provider member that receives or is seeking funds under RWHAP Part A should have limited participation in discussion and should not vote on motions involving service categories where there is a COI. One exception is that such members are usually permitted to vote on the full slate of service priorities or allocations.
- Subrecipients can provide input to the process during town halls or a provider forum – events that occur before and separately from decision-making meetings. This enables providers to share their expertise and relevant data as part of the information-gathering process rather than during decision making.
- A subrecipient with a conflict of interest is not permitted to initiate discussion during PSRA decision-making sessions.
- Content questions about a service category are directed to PC/PB support staff or recipient personnel rather than to funded providers.

### **An Example of COI Management**

A PC/PB member works for a substance abuse treatment provider that receives RWHAP Part A funds. The PC/PB's COI policies state that this member may not participate in decision-making about priorities, allocations, or directives related to substance abuse treatment. However, like other members, this individual is encouraged to share insights and expertise freely at appropriate times in a non-voting context – during town hall meetings or other community input sessions, or as part of a data presentation. All members benefit from the diverse perspectives and expertise provided by this and other PC/PB members, which are provided at activities before – not during – the decision-making meetings.

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#### End Notes

<sup>1</sup>Based on definition in the Cambridge Dictionary.

<sup>2</sup>Part A Manual, 2013, Section X. Planning Council Operations, Chapter 8: Conflict of interest, especially pp 143-144.

<sup>3</sup>Public Health Service Act, Article XXVI, §2602(b)(5)(B).

<sup>4</sup>Part A Manual, 2013, p 144.

<sup>5</sup>Planning Council Primer, June 2018, p 18.