



## POLICY AND PROCEDURE MANUAL

SUBJECT Conflict of Interest	ACCOUNTABILITY NMRE, NMRE Governing Board, NMRE Network Providers	Effective Date: February 7, 2020	Pages: 3
REQUIRED BY	BBA Section: 42 CFR 438 PIHP Contract Section: Section 30.0 Other: listed under "Legal Authorities"	Last Review Date: July 29, 2015	Past Review Date:
Policy: <input checked="" type="checkbox"/> Procedure: <input type="checkbox"/>	Review Cycle: Annual Author: Compliance Officer	Responsible Department: Compliance	Reviewers: NMRE Governing Board

### Definitions

**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 NMRE, 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.

**Community Mental Health Services Program (CMHSP):** For the purposes of this document, a CMHSP member is one or more of the following: AuSable Valley Community Mental Health Authority, Centra Wellness Network, North Country Community Mental Health, Northeast Michigan Community Mental Health Authority, and Northern Lakes Community Mental Health Authority.

**Covered Person:** Any person employed by the Northern Michigan Regional Entity (NMRE), NMRE Board Members and Substance Use Disorder Oversight Board Members, NMRE contractual staff, network providers, and crisis services vendor.

**Family Member:** 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 the NMRE Conflict of Interest Policy.

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

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

- (2) An actual or potential compensation arrangement with any entity or individual with which the NMRE has a transaction, arrangement, proceeding, or other matter; or
- (3) 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 NMRE is contemplating or negotiating a transaction, arrangement, proceeding, or other matter.

**Compensation:** Direct and indirect remuneration, in cash or in kind. A Financial Interest is not necessarily a Conflict of Interest. A person who has a Financial Interest only has a Conflict of Interest if the NMRE Governing Board decides that a Conflict of Interest exists.

**Interested Person:** A Covered Person who has a Financial Interest.

**Northern Michigan Regional Entity (NMRE) Governing Board:** The Governing body of the Entity, appointed by the Member CMHSPs. Each Member CMHSP appoints three (3) Members of its own Board to the NMRE Governing Board. The Board does not directly operate the NMRE; it only determines policy which is executed by the NMRE's Chief Executive Officer. Also known as "NMRE Board of Directors."

#### Purpose

The purpose is to provide an effective oversight process to protect the interests of the NMRE when contemplating a transaction, arrangement, proceeding, or other matter that might benefit the private interest of an individual or another entity. This 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.

#### Policy

The Northern Michigan Regional Entity (NMRE) will provide a means for any Covered Person to identify and report to the NMRE Governing 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.

#### Other Related Policies and/or Procedures

Standards of Conduct

#### LEGAL AUTHORITIES

The Policy is based on the following legal authorities:

A. State

1. Michigan Constitution of 1963, Article VII, Section 28

2. Michigan Constitution of 1963, Article III, Section 5
3. Mental Health Code, 1974 PA 258, MCL 330.1222(4), (5), (6)
4. The Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122
5. 1978 PA 566, MCL 15.181 to 15.185 (incompatible public offices)
6. 1968 PA 317, MCL 15.321 to 15.330 (contracts of public servants with public entities)
7. 1968 PA 318, MCL 15.301 to 15.310 (conflicts of interest)
8. 1973 PA 196, MCL 15.341 to 15.348 (standards of conduct for public officers and employees)

B. Federal

1. 42 USC § 1396a (Federal Medicaid Statute)
2. 41 USC Chapter 21 (Federal Conflict of Interest)
3. 18 USC § 207 (Federal Conflicts of Interest)
4. 18 USC § 208 (Federal Conflicts of Interest)
5. 42 CFR Part 438 (Federal Managed Care Regulations)
6. CMS State Medicaid Manual (Publication 45 – Paper based manual) Section 2450, Conflict of Interest

C. Other

- A. Michigan Medicaid State Plan
- B. Michigan Medicaid Provider Manual, Mental Health/Substance Abuse Chapter, Sections 1.2 and 1.3
- C. AFP 2000-2002 and 2013
- D. 1915(b) Waiver 2011 Medicaid Managed Specialty Supports and Services Concurrent 1915(b)/(c) Waiver Program Agreement.

Approval Signature



NMRE Chief Executive Officer

2/7/2020

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Date

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## Procedure

### **A. Duty of Care**

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

### **B. Duty of Loyalty**

Every Covered Person always owes a duty of loyalty to act in the best interest of the NMRE 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 NMRE unless the Board of Directors determines not to pursue that opportunity, after full disclosure and disinterested and informed evaluation.

### **C. Conflicts of Interest**

No Covered Person will 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 NMRE policy. Covered Persons will avoid not only actual, but the appearance of, conflicts of interest. Every Covered Person will:

1. Disclose all Financial Interests as described in Section (E) of this procedure;
2. Unless a Conflict of Interest Waiver has been granted, recuse him/herself from voting on any transaction, arrangement, proceeding, or other matter with which he/she has a Financial Interest, and not be present when any such vote is taken; and
3. Comply with any restrictions or conditions stated in any Conflict of Interest Waiver granted for the Covered Persons' activities.

### **D. Duty Disclose**

Each Covered Person will have a duty to disclose to the NMRE Governing Board the existence of a Financial Interest and all related material facts.

### **E. Disclosure of Financial Interests**

Each Covered Person will submit in writing to the NMRE Chief Executive Officer (CEO) a Financial Interest Disclosure Statement (Attachment A) listing all Financial Interests and affirming compliance with NMRE policy. Each Covered Person will update his/her Financial Interest Disclosure Statement annually on the date designated by the Board, and promptly when any new Financial Interests or potential Conflicts of Interest arise. The Board Chairperson will review and become familiar with all submitted Financial Interest Disclosure Statements and updates to guide Board Members' conduct

regarding the disclosed information. The Board Vice-Chairperson will review and become familiar with the Financial Interest Disclosure Statement submitted by the Board Chairperson.

The Governing Board may request that a Covered Person(s) appears before the Board, submits supplemental written information, or answers questions regarding information disclosed on the Financial Interest Disclosure Statement.

### **C. Addressing Financial Interest and Conflicts of Interest**

#### **1. 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 will leave the Board meeting while the Board discusses the Financial Interest and votes on whether a Conflict of Interest exists. If it is deemed that a Conflict of Interest exists, the Board will discuss how to manage the Conflict of Interest and whether a waiver will be granted. The Interested Person will not take part in the Board's due diligence deliberations.

#### **2. 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 potential Conflict of Interest and make a report back to the Board.

#### **3. Board Vote**

After exercising due diligence regarding the reported Financial Interest, the Board will vote to decide whether a Conflict of Interest exists. If it is deemed that a Conflict of Interest exists, the Board will determine whether the NMRE 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 not give rise to a Conflict of Interest. The Interested Person will not take part in the Board's due diligence deliberations, vote on how to manage the Conflict of Interest or whether to grant a waiver.

#### **4. 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, it will notify the Interested Person and may pursue such other transactions, arrangements, proceedings, or other matters or restrict the Interested Person's participation in the matter, as the Board determines appropriate.

#### **5. Granting a Conflict of Interest Waiver**

If the Board determines, by majority vote 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 NMRE 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/or the Interested Person's participation in the matter. A Conflict of Interest Waiver will be made in writing and signed by the Board Chairperson on the NMRE Conflict of Interest Waiver form.

The Conflict of Interest Waiver may restrict the Interested Person's participation in the matter to the extent deemed necessary by the Board or the Conflict of Interest Waiver may cover all matters the Interested Person may undertake as part of his/her official duties with the NMRE, without specifically enumerating such duties. All Conflict of Interest Waivers will be issued prior to the Interested Person's participation in any transaction, arrangement, proceeding or other matter on behalf of the NMRE.

**6. Factors for Consideration When Granting a Waiver**

In deciding whether a Financial Interest is substantial enough to be likely to affect the integrity of the Interested Person's services to the NMRE, the Board will consider, as applicable:

- a. 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);
- b. 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;
- c. 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);
- d. 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;
- e. 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;
- f. The sensitivity of the matter;
- g. The need for the Interested Person's services; and
- h. 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.

**7. 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:

- a. 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 NMRE;
- b. A CMHSP Board Member may also be a member of the NMRE Board, even if the NMRE has a contract with the CMHSP;
- c. A CMHSP Board may approve a contract with the NMRE, if a CMHSP Board Member is also an employee or independent contractor of the NMRE; and
- d. CMHSP public officers (e.g., Board members, officers, executives and employees) may also be Board Members, officers, executives, and employees of the NMRE, even if the NMRE contracts with the CMHSP, subject to any prohibition imposed by the Michigan Department of Health and Human Services (MDHHS) in that regard.

8. **Reporting to the State**

The NMRE will promptly notify the Division of Program Development, Consultation, and Contracts, Behavioral Health and Developmental Disabilities Administration (BHDDA) division of the Michigan Department of Health and Human Services (MDHHS) if:

- a. Any disclosures are made by providers with regard to the ownership or control by a person that has been convicted of a criminal offense described under sections 1128(a) and Medicaid Managed Specialty Supports and Services Concurrent 1915(b)(c) Waiver Program, 29 1128(b)(1), (2), or (3) of the Act, or that have had civil money penalties or assessments imposed under section 1128A of the Act. [42 CFR 1101.1001(a)(1)]; or
- b. Any employee, director, or manager of the NMRE, individual with beneficial ownership of five percent (5%) or more, or an individual with an employment, consulting, or other arrangement with the NMRE has been convicted of a criminal offense described under sections 1128(a) and 1128(b)(1), (1), or (3) of the Act, or that have had civil money penalties or assessments imposed under section 1128A of the Act. [42 CFR 1101.1001(a)(1)]

**D. Policy Enforcement**

1. 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 will 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.
2. 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 will take appropriate corrective action.

**E. Records of Proceedings**

The minutes of the Board and all committees with Board-delegated authority will contain:

1. 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 regarding the matter. If a written waiver of a Conflict of Interest is granted, a copy of the written waiver will be attached to the minutes of the meeting during which it was granted.
2. The names of all persons who were present for discussion and vote 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.
3. If the Board grants a waiver of a Conflict of Interest, the waiver will be in writing and will be signed by the Board Chairperson, and will 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. Financial Interest Disclosure Statement**

Annually, on a date to be determined by the Board, each Covered Person will complete, sign, and date an NMRE Financial Interest Disclosure Statement (Attachment A). The Financial Interest Disclosure Statement affirms that the Covered Person:

1. Has received a copy of the NMRE Conflict of Interest Policy;
2. Has read and understands the NMRE Conflict of Interest Policy;
3. Has agreed to comply with the NMRE Conflict of Interest Policy;
4. Has disclosed on the Financial Interest Disclosure Statement all financial interests which the Covered Person currently has; 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.

**G. Affirmation of Conflict of Interest Policy**

Each Covered Person will sign an Affirmation of Conflict of Interest Policy agreeing that he/she:

1. Has received a copy of the NMRE Conflict of Interest Policy;
2. Has read and understands the NMRE Conflict of Interest Policy;
3. Understands that he/she is a Covered Person under the NMRE Conflict of Interest Policy;
4. Agrees to comply with the NMRE Conflict of Interest Policy;
5. Has disclosed all Financial Interests which he/she has on a Financial Interest Disclosure Form;
6. Will update the information he/she has provided on the Financial Interest Disclosure form if the information changes and/or a new Financial Interest arises.

Approval Signature



NMRE Chief Executive Officer

2/7/2020

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Date

**NORTHERN MICHIGAN REGIONAL ENTITY**

**FINANCIAL INTEREST DISCLOSURE**

**Disclosure #1**

Name and Contact Information for Individual with Financial Interest:

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Individual's Relationship to You:  Self

Other, specify: \_\_\_\_\_

Description of Financial Interest:

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**Disclosure #2**

Name and Contact Information for Individual with Financial Interest:

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Individual's Relationship to You:  Self

Other, specify: \_\_\_\_\_

Description of Financial Interest:

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Disclosure #3

Name and Contact Information for Individual with Financial Interest:

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Individual's Relationship to You:  Self

Other, specify: \_\_\_\_\_

Description of Financial Interest:

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I certify that the above information is accurate and complete to the best of my knowledge, information and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title/Position with Entity

**Please return this form, signed and dated, to the Chief Executive Officer.**

**NORTHERN MICHIGAN REGIONAL ENTITY**  
**CONFLICT OF INTEREST WAIVER**

**Review of the Disclosed Financial Interest**

In accordance with the requirements of the Northern Michigan Regional Entity's (the "Entity") Conflict of Interest Policy, the Board of Directors has undertaken appropriate due diligence review and deliberation regarding the Financial Interest disclosed by [insert name] on the Financial Interest Disclosure Statement (the "Statement") attached as Attachment A.

**Board Resolution Granting Conflict of Interest Waiver**

At the conclusion of such due diligence review and deliberation, at its meeting on [insert date], the Board passed a resolution in which it determined that it is not, with reasonable efforts, able to obtain a more advantageous transaction or arrangement from a person or entity other than [insert name], and the Financial Interest disclosed on the Statement is not so substantial as to be likely to affect the integrity of services which the Entity may expect from [insert name] and granted this Conflict of Interest Waiver under the terms described below.

**Conflict of Interest Waiver Terms and Conditions**

**Name of Interested Person:**

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**Description of Financial Interest:**

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**Description of the Transaction, Proceeding or Matter to which the Financial Interest Applies:**

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**Interested Person's Role in the Transaction, Proceeding or Matter:**

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**Scope of Waiver and Restrictions, if any:**

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**Authorized Signature:**

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Governing Board Chair

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Date

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Typed or Printed Name