

# Policy on Commissioner Conflicts of Interest

## I. Introduction

The Medicaid and CHIP Payment and Access Commission (MACPAC) is responsible for providing data, reports, and policy recommendations to Congress, the U.S. Department of Health and Human Services, and the states concerning diverse aspects of the Medicaid program and the State Children’s Health Insurance Program (CHIP). It is a nonpartisan body. Congress relies upon MACPAC Commissioners to carry out their responsibilities accordingly and to develop and recommend policies on the basis of objective evidence. Commissioners are expected to be attentive to and transparent about their personal and political interests and refrain from voting on MACPAC recommendations if their interests could interfere with, or reasonably appear to interfere with, their judgment.

The purpose of this policy is to articulate the conflict of interest principles to which MACPAC Commissioners are subject<sup>1</sup> and to establish the procedures by which a conflict of interest on the part of a Commissioner shall be identified and addressed in advance of a vote upon any recommendation to which the conflict relates. It also sets forth certain activities in which MACPAC Commissioners may not participate during their tenure on the Commission. The policy proceeds from the disclosure system and standards of the U.S. Government Accountability Office (GAO). To the extent suited to MACPAC’s composition requirements and intended role under its enabling statute, this policy is informed by conflict of interest concepts, principles, and processes in use by other federal agencies and offices (*e.g.*, the Congressional Budget Office, Office of Government Ethics, U.S. Public Health Service) and under the Ethics in Government Act of 1978. It is also informed by standards and practices widely followed by nonprofit organizations, including organizations under federal charter.

This policy gives due recognition to the fact that MACPAC Commissioners typically hold positions and are professionally involved with many entities and organizations other than MACPAC. Their selection to serve on MACPAC is based in substantial part on the developed expertise and perspectives they bring from their individual professions, experiences, and affiliations. MACPAC’s authorizing statute specifically directs the Comptroller General to appoint Commissioners from a wide range of backgrounds and disciplines. By law, the members of MACPAC are to include “individuals who have had direct experience as enrollees or parents or caregivers of enrollees in Medicaid or CHIP and individuals with national recognition for their expertise in federal safety net health programs, health finance and economics, actuarial science, health

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<sup>1</sup> This policy does not apply to personnel employed as MACPAC staff. Staff are subject to “The Senate Code of Official Conduct” of the United States Senate as well as rules concerning conflicts of interest set forth in the MACPAC Employee Handbook.



plans and integrated delivery systems, reimbursement for health care, health information technology, and other providers of health services, public health, and other related fields, who provide a mix of different professions, broad geographic representation, and a balance between urban and rural representation.” 42 U.S.C. § 1396(c)(2)(A). Additionally, “the membership shall include (but not be limited to) physicians, dentists, and other health professionals, employers, third-party payers, and individuals with expertise in the delivery of health services” and “representatives of children, pregnant women, the elderly, individuals with disabilities, caregivers, and dually eligible individuals, current or former representatives of State agencies responsible for administering Medicaid, and current or former representatives of State agencies responsible for administering CHIP.” *Id.* at § 1396(c)(2)(B). Viewpoint biases that flow from this diversity are inevitable and integral to the design of advisory commissions. Such viewpoints are naturally shared in the course of deliberation and are themselves a force for collective balance in that they counter the dominance of any one perspective.

Unlike viewpoint diversity, biases driven by opportunities for financial gain or other personal advantage are not necessarily apparent and, rather than fulfilling the statutory mandate of the Commission, risk undercutting it. This policy is directed at protecting against such biases. It sets forth a process to reduce the risk that, in carrying out their charge, the Commissioners have competing loyalties that would undermine the trust Congress places in MACPAC’s recommendations.

## II. Definitions

- A. **Commissioner:** A member of MACPAC appointed by the Comptroller General of the United States pursuant to 42 U.S.C. § 1396(c).
- B. **Conflict of interest:** The existence of interests that could interfere with, or appear to a reasonable person to interfere with, the judgment that a Commissioner is obliged to exercise in the performance of MACPAC responsibilities.
- C. **Dependent child:** Any individual who is a son, daughter, stepson, or stepdaughter of a Commissioner and who is either (1) unmarried, under age 21, and living in the Commissioner’s household, or (2) a “dependent” of the Commissioner, as defined for federal income tax purposes by section 152 of the Internal Revenue Code, 26 U.S.C. § 152.
- D. **Reportable interest:** All interests required to be reported by Commissioners using the *Medicaid and CHIP Payment and Access Commission – Public Disclosure Report of Financial and Other Interests* (the “GAO Disclosure form”) and the *Confidential Report of Substantial Advocacy, Political Activity, and Litigation* (the “GAO Supplemental Disclosure form”), collectively referred to as the “GAO forms.” “Reportable interests” are not the same



as “conflicts of interest;” the great majority of reportable interests will not present conflict of interest concerns.

- E. **Spouse:** The marriage partner of a Commissioner, excluding a permanently separated marriage partner or a marriage partner living separate and apart with the intent of terminating the marriage.

### III. Reporting Financial and Other Interests

Commissioners are required to report certain interests to the GAO at the time of their candidacy and on an annual basis thereafter using the GAO disclosure form. In addition, Commissioners are required at the time of their consideration for appointment or reappointment to MACPAC or to a leadership position within MACPAC to report information concerning their involvement in litigation and political activities using the GAO supplemental disclosure form. These reportable interests form the basis of the information that may be evaluated under this policy to determine if any conflicts of interest exist with respect to the Commission’s vote on a proposed recommendation. For purposes of the conflict of interest review process described in Part IV of this policy, Commissioners shall complete the GAO supplemental disclosure form on an annual basis and submit it to the MACPAC executive director. Commissioners shall also be required to notify the executive director of any material change in the information contained in the GAO Forms as soon as possible but no later than thirty (30) days after the material change.

### IV. Identification of and Response to Conflicts of Interest

#### A. Conflict of Interest Committee

The MACPAC chair shall annually appoint a Conflict of Interest Committee (COIC) consisting of at least five (5) but no more than seven (7) Commissioners, including the vice chair, who shall also serve as the chair of the COIC. The COIC shall be composed of a subset of Commissioners that reflect, to the extent possible, the mix of professions, backgrounds and perspectives present on the full Commission. In advance of any meeting of the Commissioners at which a proposed recommendation will be put to a vote, the COIC will review the reportable interests on file for each Commissioner, and any other information it deems relevant, in relation to the proposed recommendation. The purpose of the review performed by the COIC is to determine whether a Commissioner may have one or more reportable interests, further described in Part IV.B of this policy, that are recognized as being more likely to constitute conflicts of interest and, if so, to evaluate whether such reportable interests may, in fact, constitute conflicts of interest. To the extent



necessary, the COIC shall be supported in its work by the executive director and shall have the ability to consult with outside counsel.

The members of the COIC shall not participate in, and shall recuse themselves from, the review and discussion of their own reportable interests. The vice chair shall appoint another member of the COIC to chair the committee during the review and discussion of the vice chair's reportable interests.

## B. Reportable interests that trigger COIC review

The following situations are considered to present reportable interests for which there is a heightened risk of a conflict of interest and, as such, will be reviewed by the COIC to determine whether a conflict of interest may exist:

1. The Commissioner or the Commissioner's spouse or dependent children own equity in a health care company that supplies goods, services or technologies for use in health care, or in a publicly traded corporation of any type, and the value of the equity (1) exceeds \$50,000 in the aggregate, and (2) will be particularly, directly, predictably, and significantly affected by the outcome of the recommendation vote. Equity held through an investment vehicle over which an investor exercises no control with respect to portfolio holdings or timing of trades – such as a mutual fund, pension fund, certain blind trusts, and so forth – shall not be counted for this purpose.
2. The Commissioner or the Commissioner's spouse or dependent children received gifts in the preceding 12 months exceeding \$5,000 in the aggregate from any one individual or entity whose financial interests will be particularly, directly, predictably, and significantly affected by the outcome of the recommendation vote. A gift is anything of value – unless received in exchange for something of equal value given to the donor – and includes tangible items, debt forgiveness, and in-kind transportation, food, lodging, and entertainment.
3. The Commissioner or the Commissioner's spouse received income reportable on Part I ("Earned Income") of the GAO disclosure form which in the preceding 12 months exceeded \$50,000 in the aggregate from any one individual or entity whose financial interests will be particularly, directly, predictably, and significantly affected by the outcome of the recommendation vote.
4. The Commissioner serves (whether on a compensated or uncompensated basis) as a director or officer of an entity whose financial interests will be particularly, directly, predictably, and significantly affected by the outcome of the recommendation vote.



For purposes of this policy, the outcome of a recommendation vote “particularly” affects an individual’s or entity’s financial interest if the outcome has an effect on the financial interest that is largely distinctive to the individual or entity, as distinguished from an effect on the financial interests of a class or broader group of which the individual or entity is a member. For example, a recommendation to reduce Medicaid payment to disproportionate share hospitals (DSH) would, if adopted, affect the financial interests of all DSH entities as a class. A Commissioner who served on the board of directors of a DSH would ordinarily not be considered to have a reviewable interest under this principle, since the financial interests of the particular DSH hospital would not be specially affected as compared with the financial interests of DSH entities in general.

For purposes of this policy, the outcome of a recommendation vote “directly” affects a financial interest if there would be a close causal link between the recommendation if adopted and the effect on the financial interest. An effect may be direct even though it does not occur immediately. The outcome of a recommendation vote does not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the adoption or rejection of the recommendation. The outcome of a recommendation vote that has an effect on a financial interest only as a consequence of its effect on the general health care economy does not have a direct effect within the meaning of this policy.

For purposes of this policy, the outcome of a recommendation vote “predictably” affects a financial interest if there is a real, as opposed to a speculative, possibility that the recommendation if adopted will affect the financial interest. It is not necessary that the magnitude of the gain or loss be known. For example, a Commissioner’s equity in a nursing home corporation would not be directly affected by a vote to encourage states to create performance incentives to improve the quality of nursing home care, because the impact of such a policy change on the value of the nursing home corporation would be speculative.

For purposes of this policy, the outcome of a recommendation vote “significantly” affects an individual’s or entity’s financial interest if the outcome could increase or decrease the absolute size or amount of the financial interest to a degree that a reasonable person would consider notable or important.

## C. COIC responses to identified conflicts of interest

The COIC shall recommend the response to conflicts of interest identified through its review. In determining its recommended response, the COIC may consider, among other things, whether an identified conflict of interest on the part of one Commissioner has already been disclosed, or is known, to other



Commissioners, and the degree to which the conflict of interest is the result of interests or involvements that contribute to or emanate from the Commissioner's qualifications to bring viewpoint diversity to MACPAC. All conflicts of interest, if still existing at the time of the Commission's vote on a relevant recommendation, must be publicly disclosed at the meeting.<sup>2</sup>

In addition to public disclosure of the conflict of interest at the time of the vote, the COIC may advise the affected Commissioner that recusal also may be warranted. The recommendations of the COIC are advisory in nature. The decision of whether to recuse rests with the Commissioner. If the Commissioner is recused, any abstention from the vote and the grounds on which the abstention is based shall be publicly disclosed and recorded in the meeting transcript and in the report that includes the recommendation.

## D. Commissioner self-identification of potential conflicts of interest

The review performed by the COIC does not relieve Commissioners of their ongoing responsibility to be mindful of the influence their interests may exert on their performance of MACPAC functions. If a Commissioner believes for any reason that he or she has a conflict of interest in connection with voting on a proposed recommendation, whether or not so found by the COIC, the Commissioner should publicly disclose the Conflict of Interest at the relevant meeting and, if the Commissioner believes it appropriate, abstain from participating in the vote, or take other action to mitigate or eliminate the Conflict of Interest. Commissioners are encouraged in such instances to seek guidance from the chair and vice chair or, through the vice chair, the COIC in advance of the meeting if possible.

At the start of each meeting of the Commissioners at which a recommendation is to be voted on, the Chair shall remind the Commissioners of their ongoing responsibility to identify and disclose conflicts of interest.

## V. Prohibited Activities

Certain activities, while not necessarily creating conflicts of interests, may not be undertaken by Commissioners during their appointment to MACPAC because they create a significant risk of undermining the public trust in the credibility and independence of the Commission's recommendations.

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<sup>2</sup> A Commissioner may, through divestiture, resignation or other elimination technique, eliminate a conflict of interest in advance of a vote to which it pertains, thus eliminating the need for disclosure.



1. A Commissioner shall not participate as a party or *amicus curiae* in litigation, the subject of which is a federal health care program, in which either house of Congress is a named party and a real party in interest.
2. A Commissioner shall not be a paid employee or consultant with a political campaign or act as a formal surrogate for a campaign, or engage in sustained public involvement in forming policy positions on behalf of a candidate or officeholder such that the Commissioner is, or reasonably could be perceived as being, a spokesperson for the candidate or officeholder. It is not prohibited for Commissioners to endorse a candidate, express agreement with some views of a candidate or officeholder, or provide occasional advice to a candidate or officeholder.

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