



Identifying, Disclosing, and Managing Board Members' Conflicts of Interest

As a collective, boards make critical decisions that shape a health center. For example, among other things, boards:

- Approve the selection and dismissal of a health center's Chief Executive Officer/ Project Director, and evaluate his or her performance
- Adopt policies for financial management practices and a system to ensure accountability for health center resources
- Approve the annual health center budget
- Monitor the financial status of the health center, review the results of the annual audit, and ensure appropriate follow-up actions are taken
- Select which services are provided, locations for service, and modes to deliver such services
- Assure that the health center is operated in compliance with applicable laws and regulations from federal, state, and local authorities
- Approve health center procurements of "major" significance as defined in the health center's policies (i.e., the purchase of items over a certain dollar amount or not part of the approved budget)

In making such decisions, every board member has a "duty of loyalty" to the health center. This means they must act in the best interest of the health center, and not in a

manner that advances his or her personal interests at the health center's expense.

Board members may have personal and/ or professional affiliations that involve the organization's operations. In these cases, there may be an actual or perceived "conflict of interest." This is relevant in the health center setting as board members are often nominated due to their active community involvement. Since it is integral to the health center's mission and services to include valued community leaders on the board, it is important to be aware of actual or apparent conflicts of interest that could arise and manage them appropriately to maintain "untainted" board decisions.

This Governance Legal Brief provides general advice for board members about how to identify, disclose, and manage conflicts of interest. This document also describes steps to ensure that a conflict does not impact board decision-making, which could expose the health center to potential risks and liabilities. This document explains how to:

- Identify the "nature" of a conflict of interest and determine when an actual or potential conflict is problematic

- Preserve health center confidentiality in a conflict of interest scenario
- Determine if a conflict of interest exists at the board level
- Prevent and manage conflicts of interest at the board level

At the end, readers are invited to “test” their knowledge regarding conflicts of interest at the board level.

IDENTIFY THE “NATURE” OF A CONFLICT OF INTEREST

Every health center board member has a “duty of loyalty” to act in the best interest of the health center, and not in his or her own personal interests at the center’s expense. When board members participate in making a decision for the health center, they are expected to offer their undivided allegiance to the health center. This type of impartial decision-making protects the health center’s assets and reputation.

It is common for actual and perceived conflicts of interest to arise. This means it’s important to establish and follow a process to identify and manage them. For example, if a board member is a professor at a local medical school that is negotiating with the health center to implement a training program, it could be perceived that the board member has a conflict of interest. If the board member discloses this potential conflict to the board and takes steps to recuse him or her from deliberation and voting on matters pertaining to the training program, then the decision-making process is untainted. In this case, the potential conflict of interest is not problematic. To the contrary, the board member’s medical and educational expertise and involvement in the medical school is likely to benefit the overall governance of the health center, and should be encouraged.

Suppose, however, that a conflict of interest arises because a board member owns a com-

pany that holds a contract with the health center for a particular service. If this financial interest is not disclosed to the board and the member participates in a decision related to their contract, then the decision-making process may be tainted. It is important to note that unless the health center’s policies or federal or state laws prohibits it, typical health centers and board members may conduct business together, as long as the transaction is fair to the health center and the conflict is disclosed and managed. Such arrangements can be very helpful for the health center. The arrangement is not necessarily the problem. A problem can arise when there is a failure to disclose and manage the conflict of interest.

As key health center decision makers, board members must identify when their personal and/or professional affiliations create an apparent or actual conflict of interest and take steps to ensure that the conflicting interest does not influence the board’s decision-making process.

PRESERVE HEALTH CENTER CONFIDENTIALITY

The duty of loyalty to act in the best interest of the health center also means that board members cannot inappropriately share (disclose) confidential health center information. This rule is relevant in a conflict of interest scenario. For example, if a board member’s brother submits a contract bid to the health center, he or she clearly cannot provide the brother with “inside” information on the bidding process or competitors. Further, the board member should not mention anything about the procurement process until the board approves communication.

As a general practice, board members should not communicate (formally or informally) confidential information about the health center without explicit board approval to do so.

DETERMINE IF A CONFLICT OF INTEREST EXISTS AT THE BOARD LEVEL

A conflict of interest may arise when a board member (or an immediate relative of a board member¹) has a business, financial, fiduciary, or personal interest that either is, or appears to be, inconsistent or at odds with the interests of the health center. It is not necessary for the board member to do anything for a conflict of interest to arise. All that matters is that the situation is perceived to be a conflict of interest by others.

In addition, even if a board member's business, financial, fiduciary, or personal interest is aligned with the health center's interest, the nature of the aligned interest should be disclosed to the board. This way, the board may make an independent decision about the best next steps.

Consult State Law

To determine whether an interest creates a conflict, it helps to consult state law governing nonprofit corporations. Such laws may specifically prohibit a board member from being involved with transactions if he/she has a conflict of interest, unless the health center follows certain steps.

Some state laws do not prohibit voting when there is a known conflict of interest. However, it may be wise to limit the affected board member's involvement in related discussions. This is not required, but is good practice because a potentially conflicted board member may restrict open conversations among the other board members.

Consider Federal Law Requirements

Federal **Grant Requirements**² state that board members, employees, and agents of the health center may not participate in the selection, award, or administration of a contract supported by federal funds if there is a real or apparent conflict of interest. A conflict arises when the board member, employee or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of them, has a financial or other interest in the individual or organization selected for the award. Note: this restriction does not pertain to contracts paid with other funds (i.e., expenses that are not charged directly to the grant award), unless the health center's policies state otherwise.

Section 330-Related Requirements state that a health center must keep written standards defining how to address conflicts of interest. Specifically, the Health Resources and Services Administration (HRSA) has set forth requirements pertaining to identifying and managing conflicts of interest among board members in **[HRSA's Federal Financial Assistance Conflict of Interest Policy](#)** and in **Chapter 13** of the **HRSA Health Center Program Compliance Manual** (Compliance Manual).

Below is an excerpt from the Compliance Manual regarding how a health center would demonstrate compliance when there is a conflict of interest, for your reference.³

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- 1 HRSA's Federal Financial Assistance Conflict of Interest Policy defines "immediate family member" as including an individual's (1) spouse, and parents thereof; (2) children, and spouses thereof; (3) parents, and spouses thereof; (4) siblings, and spouses thereof; (5) grandparents and grandchildren, and spouses thereof; (6) domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and (7) any individual related by blood or affinity whose close association with the individual is the equivalent of a family relationship.
 - 2 The Grant Requirements do not apply to entities that have been determined by the Department of Health and Human Services (HHS) to meet the Section 330-Related Requirements to receive funding without actually receiving a grant ("health center look-alikes").
 - 3 For more information, see the HRSA Health Center Program Compliance Manual, Chapter 13: Conflict of Interest at <https://bphc.hrsa.gov/programrequirements/compliancemanual/chapter-13.html#titletop>.

Excerpt from HRSA Health Center Program Compliance Manual, [Chapter 13: Conflict of Interest](#). Please note the footnotes in this excerpt are from and link directly to the Compliance Manual.

Demonstrating Compliance

A health center would demonstrate compliance with these requirements by fulfilling all of the following:

- a. The health center has and implements written standards of conduct that apply, at a minimum, to its procurements paid for in whole or in part by the Federal award. Such standards:
 - Apply to all health center employees, officers, board members, and agents involved in the selection, award, or administration of such contracts;
 - Require written disclosure of real or apparent conflicts of interest;
 - Prohibit individuals with real or apparent conflicts of interest with a given contract from participating in the selection, award, or administration of such contract;³
 - Restrict health center employees, officers, board members, and agents involved in the selection, award, or administration of contracts from soliciting or accepting gratuities, favors, or anything of monetary value for private financial gain from such contractors or parties to sub-agreements (including **subrecipients** or affiliate organizations);⁴ and
 - Enforce disciplinary actions on health center employees, officers, board members, and agents for violating these standards.
- b. If the health center has a parent, affiliate, or subsidiary that is not a State, local government, or Indian tribe, the health center has and implements written standards of conduct covering organizational conflicts of interest⁵ that might arise when conducting a procurement action involving a related organization. These standards of conduct require:
 - Written disclosure of conflicts of interest that arise in procurements from a related organization; and
 - Avoidance and mitigation of any identified actual or apparent conflicts during the procurement process.
- c. The health center has mechanisms or procedures for informing its employees, officers, board members, and agents of the health center's standards of conduct covering conflicts of interest, including organizational conflicts of interest, and for governing its actions with respect to the selection, award and administration of contracts.
- d. In cases where a conflict of interest was identified, the health center's procurement records document adherence to its standards of conduct (for example, an employee whose family member was competing for a health center contract was not permitted to participate in the selection, award, or administration of that contract).

In addition to the above **Grant Requirements** and **Section 330-Related Requirements**, maintaining a conflicts of interest policy is a key component of corporate compliance for the tax-exempt charitable organizations. For example:

- In February of 2008, the Internal Revenue Service (IRS) published guidance, [Governance and Related Topics -501\(c\)\(3\) Organizations](#), stating that the IRS encourages a charity's board to adopt and regularly evaluate a written conflict of interest policy that:

- Requires board members and staff to act solely in the interests of the charity without regard for personal interests;
- Includes written procedures;
- Includes written procedures for determining whether a relationship, financial interest, or business affiliation results in a conflict of interest; and
- Prescribes a course of action if a conflict of interest is identified.

- The IRS tax information return for charitable organizations (i.e., Form 990), asks whether the charitable organization has a written conflict of interest policy.⁴ If the respondent answers yes, then the charitable organization must describe:
 - Whether officers, board members or trustees, and key employees are required to annually disclose their interests and those of their family members that could give rise to conflicts of interest;
 - The practices for monitoring proposed or ongoing transactions for conflicts of interest; and
 - The steps to dealing with potential or actual conflicts, whether discovered before or after the transaction has occurred.

Review the Health Center's Conflict of Interest Policy

As noted above, health centers are required to maintain a conflict of interest policy (commonly referred to as the “Standards of Conduct”) that explains how conflicts of interest are identified and managed, especially when payments are made with federal funds. The conflict of interest policy must further describe disciplinary actions if a board member, employee, or agent violates the policy. For board members, this typically includes suspension or removal from the board.

Establishing a conflict of interest policy is an important way for health centers to prevent tainted decision-making, which protects health center assets and assures accountability for health center resources. A conflict of interest policy also informs board members (and staff) of disclosure obligations. It establishes the steps the board must follow when

reviewing a potential conflict of interest. The conflict of interest policy should be discussed during board member training, and during new board member orientation. The consistent enforcement of the Standards of Conduct is critical.

PREVENT AND MANAGE CONFLICTS OF INTEREST

The process to prevent and manage conflicts of interest should begin with the selection of new board members. Specifically, nominees should be required to complete a disclosure form listing their personal and private affiliations, which should be reviewed by the full board. If the board identifies a conflict of interest that may prevent the nominee from being able to meet their duty of loyalty, the board may decide that the nominee should not be selected to serve on the board.

Reviewing the affiliations of board member nominees also reminds current board members to disclose and update their own conflicts of interest. For board members to fulfill their duty of loyalty to the health center, the board must imbed a culture of ongoing honesty to monitor and manage conflicts of interest.

Steps to Manage Conflicts of Interest If and When They Arise

To identify and manage board members' conflicts of interest, there are several steps all boards should take, each of which is described in detail below:

- **Step 1.** Disclosure
- **Step 2.** Discussion and Consultation
- **Step 3.** Management
- **Step 4.** Documentation

⁴ The 2019 Form 990 IRS instructions specify as follows: “A conflict of interest arises when a person in a position of authority over an organization, such as an officer, director, manager, or key employee can benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated. For this purpose, a conflict of interest doesn't include questions involving a person's competing or respective duties to the organization and to another organization, such as by serving on the boards of both organizations, that don't involve a material financial interest of, or benefit to, such person.”

Step 1: Disclosure

Board members should:

- Annually complete a disclosure form that lists personal and professional affiliations, thus ensuring that conflicts of interest are assessed on a regular, periodic basis;
- Have disclosure forms reviewed by one or more designated board members (with the support of health center management); and
- Be required to disclose any potential conflicts of interest that arise from new and/or previously undisclosed situations that occur after the filing of the annual disclosure forms.

Step 2: Discussion and Consultation

If a potential conflict of interest is disclosed or discovered, the board should:

- Discuss the nature of the apparent or actual conflict, and assess whether and how it can be appropriately managed;
- Consider whether a reasonable person with knowledge of the relevant facts would question the board member's impartiality if he/she participated in the matter;
- Consult the applicable federal procurement law (i.e., the ***Grant Requirements***), state law, the health center's bylaws, and/or the health center's conflict of interest policy for guidance; and
- If appropriate and allowed under the health center's conflict of interest policy, permit the potentially conflicted board member to speak to the board regarding the potential conflict, to answer pertinent questions.

Step 3: Management

- If the board determines that a board member does not have an actual or apparent conflict of interest, the board can permit that member to participate in discussing and/or voting on the matter. To make this determination, the board must decide that the member's other interest is not, or does not appear to be, at odds with the health center's interests. His or her participation in the process may affect the health center's reputation; or
- If the board determines that the board member has an actual or apparent conflict of interest, and their impartiality would be questioned, then the member should be excluded from voting. The board may also decide that board member should not join in discussions on the matter.

Step 4: Documentation

- Any disclosed potential conflict of interest, and any subsequent board discussion and voting regarding the conflict should be clearly described in the board minutes;
- The process of reviewing and managing conflicts of interest should be transparent and well-documented; and
- All disclosure forms should be filed and maintained with other board records.

TESTING YOUR CONFLICTS OF INTEREST KNOWLEDGE

Readers can test their ability to identify and manage potential conflicts of interest in the following scenarios involving Ben, a board member at his local community health center.

#1: Question:

A candidate for the Chief Executive Officer (CEO) position at Health Center ABC is Ben's close friend, Lin. Ben intends to vote for Lin because of Lin's experience in the health care industry and her commitment to the community. Ben believes that approving Lin for the CEO position is in the health center's best interests and does not feel that he has a personal interest in Lin's appointment. Is Ben precluded from voting for the CEO position?

Response:

Even though Ben does not have an actual conflict of interest, he may have an apparent conflict of interest because others may perceive that his support for Lin is influenced by their close friendship. Ben should disclose this potential conflict of interest, and the board should consider whether Ben should recuse himself from any discussion and voting related to the CEO position. If appropriate, Ben may be given the opportunity to speak with the board about why he believes he does not have an apparent or actual conflict of interest. If the board concludes (by vote that does not include Ben) that Ben has an actual or apparent conflict of interest, he should be required by the center's conflict of interest policy to recuse himself from the board's vote to select the CEO. The board has discretion to determine whether to recuse Ben from some or all of the deliberations regarding Lin and the other candidates.

#2: Question:

Ben's son, Frank, owns a construction company and submitted a bid for a contract to renovate Health Center ABC's facility. The contract will be paid for using funds awarded under the health center's federal Section 330 grant. Is Ben permitted to participate in board decisions pertaining to the construction contract?

Response:

The transaction is for the procurement of services using federal funds, and is therefore governed by the federal government's procurement standards, as described above. Because Ben's immediate family member, Frank, has a financial interest in the construction company, Ben is prohibited from participating in the selection, award, or administration of the contract under the health center's standards of conduct.

#3: Question:

Ben is also on the board of a local nonprofit organization that provides counseling services to individuals living with HIV/AIDS. The state Department of Public Health announced a grant funding opportunity that both Health Center ABC and the local HIV/AIDS nonprofit organization are eligible to apply for. The other organization is unaware of the grant funding opportunity. May Ben participate in board matters related to the grant proposal?

Response:

Ben should disclose this apparent conflict of interest. Because he will not have undivided allegiance to Health Center ABC in any deliberations or decision-making, and may feel conflicted about sharing information gained in service to one board or the other, Ben should recuse himself from participating in matters related to the grant proposal.

CONCLUSION

In making decisions, every health center board member must uphold a “duty of loyalty” to act in the best interests of the health center, and not in a manner that furthers personal interests at the health center’s expense. Impartial decision-making is critical for effective health center governance. Identifying and managing actual and perceived conflicts of interest is a key to this process.

As described in this document, identifying and managing conflicts of interest can be achieved by implementing a conflict of interest policy that sets steps to disclose, review, and manage conflicts of interest.

These steps will not only help board members uphold their duty of loyalty, but ultimately they can help prevent exposing the health center to potential risks and liabilities arising from tainted decision-making.

The term “**health center**” refers to public or private nonprofit entities that: (1) receive grants under Section 330 of the Public Health Service Act (Section 330), including Sections 330(e), 330(f), 330(g) and 330(h) (collectively “Health Center Program Grantees”); and (2) entities that have been determined by the Department of Health and Human Services (DHHS) to meet the Section 330-Related Requirements to receive funding without actually receiving a grant (“health center look-alikes”).

- The term “**Section 330-Related Requirements**” refers to requirements set forth in:
- Health Center Program Statute
- Program Regulations: [42 CFR Part 51c](#) and [42 CFR Parts 56.201-56.604](#)
- Health Center Program Compliance Manual: <https://bphc.hrsa.gov/programrequirements/compliancemanual/introduction.html>

- HRSA’s Federal Financial Assistance Conflict of Interest Policy

The term “**Grant Requirements**” refers to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: 2 CFR Part 200, as adopted by DHHS at 45 CFR Part 75.

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