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Kari M. Bruffett, Acting Secretary

Sam Brownback, Governor

Information Memorandum
2014-09

To:

- Area Agencies on Aging
- Nutrition Project Directors
- Kansas Hospital Association
- Community Developmental Disability Organizations
- Kansas Health Care Association
- Kansas Advocates for Better Care
- Kansas Home Care Association
- Kansas Association of Centers for Independent Living
- Statewide Independent Living Centers, Inc.
- KS Department of Children and Families
- Kansas Department of Health & Environment
- Legal Service Providers
- Kansas Senior Center Director's Association
- Kansas Professional Nursing Home Administrators Association
- Other: Licensed I/DD providers, Community Service Providers

From: Susan Fout, Quality Assurance Program Manager, Home and Community Based Services Programs

Subject: IDD Licensees who are Guardians

Date: August 19, 2014

Effective Date: August 19, 2014

Supersedes: Supersede information from June 23, 2014

Notes: This information is to clarify the special report required by a guardian paid to provide services under the Guardianship Law.

Contact for Further Information: Susan Fout
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c: KDADS Commissioners
KDADS Directors

Community Services and Programs Commission
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Kari M. Bruffett, Acting Secretary
 Gina Meier-Hummel, Commissioner

Sam Brownback, Governor

INFORMATION MEMORANDUM
Revised

To: IDD Licensees, New and Renewing

From: Susan Fout, Quality Assurance Program Manager, Home and Community Based Services Programs

CC: Aquila Jordan, Director; Gina Meier-Hummel, Commissioner; Kari M. Bruffett, Acting Secretary

Date: June 23, 2014, amended August 18, 2014

Re: IDD Licensees who are Guardians

Authorities: K.S.A. 59-3068 and K.S.A 59-3083

Who is affected: This Information Memorandum (IM) applies to **licensed providers** for the IDD Program who are providing residential, day, or targeted case management who are guardians for individuals receiving those services. While all guardians must comply with the Guardianship statutes, this policy is specifically for guardians who have a limited license, license with requirements, full license, or temporary license through the Kansas Department for Aging and Disability Services (KDADS).

Summary: Licensed providers are expected to comply with Kansas law. Some licensed providers are also guardians. If a licensed provider of day, residential or targeted case management is also the paid caregiver for their ward or conservatee, a presumed conflict of interest exists. To mitigate any conflict of interest under the current law, a guardian must file a special report with the court explaining the potential conflict, and the judge must make a determination of whether a conflict of interest exists. A copy of the file-marked/stamped special report will be requested by KDADS field staff, Quality Management Specialist (QMS). There is no specific form or format for this special report. Information about the special report can be obtained from a provider's legal counsel or by contacting the court monitoring the case.

Licensee Information

KDADS is requiring copies of the special report filed as required by K.S.A. 59-3068 and K.S.A 59-3083 to assure applicants who are also guardians or licensees who are guardians providing care are in compliance with the requirements of Kansas law. This Memorandum is to provide each

licensee information about the request from QMS licensing staff related to guardians applying for or renewing licensure. Providers may want to refer to the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq.) **K.S.A. 59-3068** contains requirements for Courts considering **new** appointments of a guardian and or conservator. It applies to all new appointments whether or not a case is new or was filed prior to 2009.

- I. K.S.A. 59-3068 (a)(1)-(5) contains a mandatory priority list that District Courts are required to follow when considering who should be appointed as a guardian and or conservator.
- II. K.S.A. 59-3068 (b)(1) contains other considerations that Courts must look at before making an appointment.
- III. K.S.A. 59-3068(b)(2) limits appointments in certain situations. **These situations include any proposed guardian or conservator who provides care or other services, or is an employee of an agency, partnership or corporation, which provides care or other services to persons with a disability similar in nature to the condition or conditions which contribute to the impairment of the ward or conservatee.**

K.S.A. 59-3083 applies the “conflict” considerations in K.S.A. 59-3068(b) to cases where guardians/conservators are already serving. **All guardians must file annual reports with the District Court and all conservators must file annual accountings.** In addition to the annual reports and accountings, certain specified occurrences trigger **mandatory special reports and accountings.** These triggering events are specified in K.S.A. 59-3083(b) and include:

- I. K.S.A. 59-3083(b)(6) a change in the circumstances of the guardian, conservator, ward or conservatee that may constitute a conflict of interest. **A conflict of interest occurs where the guardian or conservator has some personal or agency interest that could be perceived as self-serving or adverse to the position or best interest of the ward or conservatee.**
- II. **Any guardian who provides care or other services, or is an employee of an agency, partnership or corporation, which provides care or other services to persons with a disability similar in nature to the condition or conditions which contribute to the impairment of the ward or conservatee has an obviously inherent conflict of interest. Such a conflict triggers the mandatory special report required by K.S.A. 59-3083(b).**

If the guardian/licensee/employee of licensee with a conflict of interest as defined above does not have a copy of the special report they filed with the District Court they should easily be able to obtain one by contacting the Clerk together with a copy of whatever order the District Court entered (if any) after reviewing their special report.

Links to the K.S.A. 59-3068 and K.S.A. 59-3083 follow:

http://www.kslegislature.org/li/b2013_14/statute/059_000_0000_chapter/059_030_0000_article/059_030_0068_section/059_030_0068_k/

http://www.kslegislature.org/li/b2013_14/statute/059_000_0000_chapter/059_030_0000_article/059_030_0083_section/059_030_0083_k/