

Medicaid and CHIP Payment and Access Commission May 19, 2016

Policy on Commissioner Conflicts of Interest

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Policy Objectives

- Articulate standards for potential Commissioner conflicts of interest
- Ensure transparency regarding commissioner interests, affiliations and conflicts
- Create a mechanism to identify and respond to potential conflicts of interest
- Delineate prohibited activities

Interests vs. Conflicts

- All members of advisory bodies and other similarly convened groups have interests
- A subset of interests may raise conflicts concerns
- A further subset of identified conflicts may warrant recusal from voting
- The policy applies this framework to the work of MACPAC

What Is A Conflict of Interest (COI)?

Policy definition:

“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.”

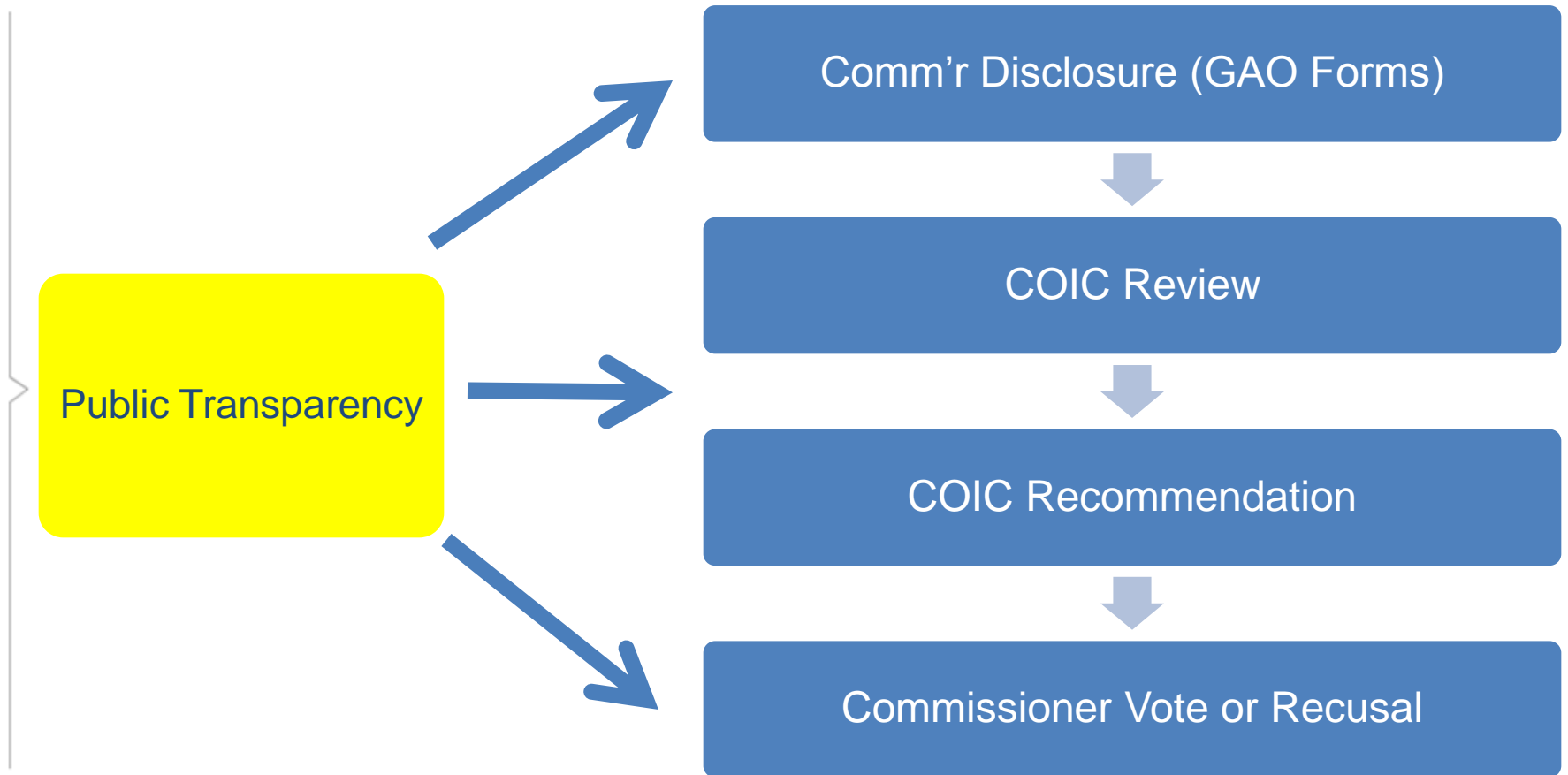
An Important Distinction

- Conflict of interest ≠ holding an opinion shaped or informed by one's intellectual framework, professional viewpoint, personal experiences, and business relationships

MACPAC: Diversity by Design

- MACPAC's authorizing statute explicitly requires that Commissioners be chosen in part for the diverse knowledge and viewpoints they possess as a result of their backgrounds, associations, expertise, scholarship, etc. (see 42 U.S.C. § 1396(c)(2)(A))
- Advisory bodies like MACPAC add value precisely because members bring diverse experiences and perspectives to the table

Process for Handling COIs



Process: Commissioner Disclosure

- Medicaid and CHIP Payment and Access Commission – Public Disclosure Report of Financial and Other Interests (GAO Form 675)
- Confidential Report of Substantial Advocacy, Political Activity, and Litigation (GAO Form 725)
- Policy would increase frequency of disclosures
 - Annually for both GAO Forms
 - Material change updates within 30 days

Process: Review by COIC

- Conflict of Interest Committee: 5-7 Commissioners (including Chair)
- Review 4 types of disclosed interests:
 - Equity > \$50,000 affected by vote
 - Gifts > \$5,000 from entity/individual financially interested in vote
 - Earned income > \$50,000 from entity/individual financially interested in vote
 - Service as director or officer of entity financially interested in vote
- *Affected/financially interested* = directly, predictably, and significantly affected by vote

Process: COIC Recommendation

- Determines whether any reviewed interest appears to pose a COI
- Recommends whether the commissioner should consider **recusal** from vote on proposed recommendation

Process: Vote or Recusal

- Need for vote on recommendation is known in advance of meeting
- Commissioner decides whether to recuse
- Even without COIC-identified conflict of interest, commissioners are expected to identify any COI concerning a proposed recommendation and decide whether to recuse; reminder from Chair at every meeting where a vote will be taken
- Commissioners may seek guidance from Chair or COIC as necessary

Process: Transparency

- Transparency = hallmark of integrity
- Interests of commissioners made transparent through:
 - Deliberative process among members
 - GAO reporting forms and disclosure of relevant information via website, meeting materials, etc.
 - Public disclosure at meetings of (1) all identified COIs, (2) abstentions from voting, and (3) reasons for abstentions

Prohibited Activities

- Threaten the trust that Congress and the public place in the independence of MACPAC's recommendations
- Litigation: Commissioner may 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
- Politics: Commissioner may not
 - Be a paid employee or consultant with a political campaign
 - Act as a formal surrogate for a campaign
 - Engage in sustained public involvement in forming policy positions on behalf of a candidate or officeholder

Questions

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