

XIII. CONFLICT OF INTEREST POLICY

Background And Purpose

The purpose of this Conflict of Interest Policy is to protect the interests of Regional Center of Orange County, Inc. (RCOC) and ensure that the RCOC complies with all applicable law prohibiting conflicts of interest.

In 2011 the Lanterman Act was amended to provide revised conflict of interest obligations for regional centers. The current provisions regarding conflicts of interest in regional centers are set forth in Welfare & Institutions Code (WIC), Sections 4626, 4626.5, and 4627. In addition, on August 24, 2012, the Department of Developmental Services (DDS) announced that new conflict of interest (COI) regulations became effective on August 15, 2012. The new regulations are found at Title 17 California Code of Regulations, Sections 54500 through 54535. These regulations implement the 2011 changes in the Lanterman Act that modified the COI obligations for regional centers.

This policy is intended to supplement but not replace any applicable state and federal laws governing COI applicable to the RCOC.

General Scope of Conflict Laws

The RCOC shall comply with the new regulations (Title 17, Sections 54500-54535) that contain COI rules and obligations that apply to regional centers:

- (1) executive directors,
- (2) governing board members,
- (3) advisory committee board members,
- (4) employees,
- (5) contractors,
- (6) agents, and
- (7) consultants.

Governing Board Members

The provisions for handling COI Statements and conflicts by Board Members are contained in WIC, Sections 4626(a), 4626(g), and Title 17, Sections 54532, 54533, and 54534.

Executive Directors

The provisions for handling COI Statements and Conflicts by an Executive Director are also similar to those for Board Members. The precise provisions are contained in WIC, Sections 4626(a), 4626(g), and Title 17, Sections 54532, 54533, and 54534.

Advisory Committee Board Members

The new regulations also identify possible conflicts for Advisory Committee Board Members. Title 17, Section 54521 states that there is a COI when a regional center advisory committee board member (appointed pursuant to WIC, Sections 4622(i)) is in any of the following positions for a business entity, entity, or provider:

(a) a member of the governing board, (b) a board committee member, (c) an owner, (d) a partner, (e) a shareholder, (f) an agent, (g) a manager, (h) an employee, (i) a contractor, or (j) a consultant, for a business entity, entity or provider from which the regional center purchases, obtains or secures consumer services and that person (a) serves as an officer of the RC board or (b) votes on any fiscal matter affecting purchase of services from any RC provider or (c) votes on any matters where the member has a financial interest.

An “advisory committee board member,” as a board member, is required to complete a COI Reporting Statement just like all other board members (Title 17, Sections 54532, 54533, and 54534).

Employees

The provisions prohibiting conflicts of interest for employees are contained at Title 17, Sections 54526, 54527, 54528, 54529, and 52530. The basic concept is that regional center employees cannot place themselves in a position where their private, personal interests may conflict with their official duties (Title 17, Section 54529). Employees must be guided solely by the interests of the regional center and its consumers. They may not place themselves in a situation that creates a dilemma about advancing their personal interests instead of acting in the best interests of the regional center.

The new regulations generally provide that the only employees who will have a conflict are employees with “decision or policy making authority” (Title 17, Section 54526). This is generally defined to include all employees except those with purely secretarial or clerical duties. Service Coordinators are deemed to be employees with “decision or policy making authority.”

Contractors, Agents and Consultants

The provisions for handling COI Statements and Conflicts for Contractors, Agents and Consultants are also similar to those for employees. Title 17, Sections 54526, 54527, 54528, 54529, and 54530 identify what will constitute a conflict.

Finally, Title 17, Section 54533 addresses resolution of such conflicts.

Definitions

Decision or Policy Making Authority

The definition of “Decision or Policy-Making Authority” in Title 17, Section 54505(d) states that employees have such authority if they exercise judgment in making decisions that are not solely secretarial or clerical, including employees who make final decisions, compel decisions, make substantive recommendations, vote on obligations, or vote to approve selection of any director, trustee, agent employee contractor for his or her entity.

The law deems Service Coordinators to have “decision or policy-making authority.” This is because they generally participate on planning teams that make decisions, they make decisions about which programs and services to recommend to consumers and finally, Service Coordinators are listed in WIC, Section 4626(e), as persons who must complete the COI Reporting Statements.

Family Members

The regulations prohibit both the employee and a family member from holding certain positions and having certain financial interests, so the definition of a “family member” is critical. Most conflicts under these rules occur with family members. Title 17, Section 54505(f) states that the term “Family Member” includes the individual’s:

“spouse, domestic partner, parents, stepparents, grandparents, siblings, step-siblings, children, stepchildren, grandchildren, and parents-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law.” Cousins, aunts, uncles, nieces and nephews are not considered family members.

The RCOC’s employees should avoid conflicts before they occur. The best way to do so is to ensure that a family member does not accept a position that will create a conflict. If a family member does take such a position, it may threaten the position of the employee by creating a conflict.

Business Entity. Entity or Provider

Business Entity, Entity or Provider is defined as:

“...any individual, business venture, or state or local governmental entity from whom or from which the regional center purchases, obtains, or secures goods or services to conduct its operations. These entities or providers include, but are not limited to, residential facilities, intermediate care facilities, skilled nursing facilities, supported and independent living services, hospitals, medical groups, activity centers, housing providers, entities formed in support of the regional center, infant programs, clinics, laboratories, pharmacies, drug stores, ambulance services, furniture stores,

equipment and supply stores, physicians, psychologists, nurses, therapists, teachers, social workers, and contract case managers. For purposes of these conflict-of-interest regulations “business entity, entity or provider” does not include a consumer or family member of a consumer who receives vouchers for consumer services.”

Prohibited Conflicts

Conflict By Holding Position With Provider

A conflict exists when:

a Board Member,
an Executive Director,
or a family member of such person (Title 17, Section 54520),
an employee with decision making authority,
a Contractor,
an Agent,
a Consultant,
or family member of such person (Title 17, Section 54526),

is any of the following for a provider:

- (1) a governing board member,
- (2) a board committee member,
- (3) a director,
- (4) an officer,
- (5) an owner,
- (6) a partner,
- (7) a shareholder,
- (8) a trustee,
- (9) an employee,
- (10) an agent,
- (11) a contractor,
- (12) a consultant,
- (13) holds any position of management, or
- (14) has decision or policy making authority.

Conflicts By Financial Interest in Provider

A conflict exists if a Board Member, Executive Director, employee, contractor, agent or consultant attempts to make or influence a decision in which the person, or a family member, has an interest.

A financial interest is defined in Title 17, Sections 54522 and 54527 as follows:

Financial interest, as used in this section, includes any current or contingent ownership, equity, or security interest that could result, directly or indirectly, in receiving a pecuniary gain or sustaining a pecuniary loss as a result of the interest in any of the following:

- (1) business entity worth two thousand dollars (\$2,000) or more.
- (2) real or personal property worth two thousand dollars (\$2,000) or more in fair market value.
- (3) stocks or bonds worth two thousand dollars (\$2,000) or more.
- (4) intellectual property rights worth five hundred dollars (\$500) or more.
- (5) sources of gross income aggregating five hundred dollars (\$500) or more within the prior 12 months.
- (6) future interest for compensation of five hundred dollars (\$500) or more.
- (7) personal finances of two hundred fifty dollars (\$250) or more.

Conflict Making Contract in which Financially Interested

Under Title 17, Sections 54523 and 54528, Board Members, Executive Directors, and employees, contractors, agents, and consultants, shall not be guided by personal interests and shall not be financially interested in any contract they make in their official capacity. Such persons shall not make any contract which financially benefits a family member, unless benefits associated with the contract are available to regional center consumers or their families generally. In interpreting and applying this section, the common law doctrine against COI and the authorities interpreting the doctrine shall govern.

General Prohibitions Against Conflicts

Board Members, Executive Directors, employees, contractors, agents and consultants must also avoid the general prohibitions against conflicts in Title 17, Sections 54524 and 54529, which are:

General Integrity – Must discharge their responsibilities with integrity and fidelity, and must not place themselves in a position where their private, personal interests conflict with their official duties.

Perform with Diligence – Must exercise powers conferred on the employee with disinterested skill, zeal and diligence for the benefit of regional center consumers.

Conflicts Not Addressed by Regulations - When a person becomes aware of a present or personal COI regarding a particular transaction that the regulations do not address, action must be taken. In that situation, the person must not participate in any discussion and must refrain from making any recommendation or decision regarding the present or potential COI that has not been specifically addressed in the regulations.

Conflicts Working with Family Members

Under Title 17, Section 54530(a), a COI exists where a regional center employee participates in the evaluation of an application for employment or bid for position or contract at the regional center, submitted by a family member. Under Title 17, Section 54530(b) a potential COI also exists when a regional center employee supervises his or her family member.

Obligations For a Regional Center To Identify Conflicts

New COI Reporting Statement (Form DS 6016)

As required by WIC, Section 4626(e), DDS also issued a new DDS COI Reporting Statement that the RCOC will use.

Persons Who Must Submit Conflict Statements

WIC, Section 4626(e), provides that this statement must be completed annually by;

“...each regional center governing board member and each regional center employee specified in the regulations, including, at a minimum, the executive director, every administrator, every program director, every service coordinator, and every employee who has decisionmaking or policymaking authority or authority to obligate the regional center’s resources.”

Further, Section 54531(b) of Title 17 provides:

“Each regional center employee, contractor, agent, and consultant, who has authority to act on behalf of the regional center, or who has decision or policy-making authority.., shall complete and file an annual COI Reporting Statement with his or her respective regional center, whether or not the individual has identified a present or potential COI, by August 1 of each year.”

Since some of the conflicts identified do not depend on having “decision making” authority, all employees of the RCOC must complete the COI Reporting Statement.

Process For Submission of Statements

Annually: Regional Center Board Members, the Executive Director, and employees, contractors, agents and consultants shall complete and file an annual COI Statement by August 1 of each year (Title 17, Sections 54532(a) and 54531(b)). The statute mandates this for every employee referenced in WIC, Section 4626(e) (WIC, Section 4626(g)).

New Board Members, Executive Directors, Employees, Contractors, Agents and Consultants: Such new persons shall file a COI statement within 30 days of assuming the position (Title 17, Sections 54532(c) and 54531(c); WIC, Section 4626(f)).

Change in Status: Board Members, Executive Directors and regional center employees, contractors, agents and consultants shall complete and file a COI Reporting Statement with the regional center within 30 days of any change in status that creates a COI under Title 17, Sections 54532(d) and 54531(d). “Change in status includes, but is not limited to, a change in financial interests, legal commitment, regional center or board position or duties, or both, or outside position or duties, or both, whether compensated or not” (WIC, Section 4626(h)).

Executive Director Review: The Executive Director shall review each COI Reporting Statement that is submitted and within ten (10) working days of receipt of the statement shall determine whether a COI exists (Title 17, Sections 54531(e); WIC, Section 4626 (k)). Under Title 17, Section 54532, statements submitted by Board Members and the Executive Director must be submitted to DDS within ten (10) working days of receipt.

Obligations When COI Discovered: When a present or potential COI is identified for a Board member, Executive Director, employee, agent or consultant, RCOC must either (1) require the employee or other person to eliminate the conflict, or (2) mitigate and manage the conflict through a Conflict Resolution Plan, or the individual shall resign (Title 17, Section 54533(a)).

RCOC Must Submit Conflict Resolution Plan to DDS: When a present or potential COI has been identified and RCOC decides to mitigate and manage the conflict through a Conflict Resolution Plan, it must submit a copy of the completed COI Reporting Statement and a proposed Conflict Resolution Plan to DDS within 30 calendar days of receipt of the statement (Title 17, Section 54533(a) and (b)).

Submission of COI Policy to DDS and Posting on Website

The regional center must submit a COI policy to DDS by July 1, 2011, and shall post the policy on its website by August 1, 2011 (WIC, Section 4626.5).

Obligation to Resolve Identified Conflicts

When a conflict is identified either through a COI Reporting Statement or by notification of DDS, the Executive Director then has a specific obligation to resolve the matter, and to take certain action.

Executive Director Reviews Conflict Statements

Under Title 17, Section 54531(e), a regional center Executive Director is required to review the completed COI Reporting Statement of each employee within ten (10) working days of receipt and determine whether a present or potential conflict exists.

Regional Center Must Eliminate Conflict or File Conflict Resolution Plan

Under Title 17, Section 54533(a) a Board member, Executive Director, employee, contractor, agent or consultant with a present or potential COI must eliminate the conflict, or if the regional center permits, manage and mitigate the conflict through a Conflict Resolution Plan, or the individual shall resign. There is no legal obligation to submit a Conflict Resolution Plan, since it is merely an option the regional center may choose to select. The regional center has every right to simply require that the conflict be eliminated.

Submission of Conflict Resolution Plan

Whether the Executive Director learns of a conflict either through review of submitted COI Reporting Statements, or from DDS, under Title 17, Section 54533(b) the Executive Director shall either require the conflict to be eliminated, or shall submit an employee's COI Reporting Statement and proposed Conflict Resolution Plan to DDS (1) within 30 days of receipt of the COI Reporting Statement or (2) within 30 days of receipt of DDS' notification of a conflict.

Content of Conflict Resolution Plan

Title 17, Section 54533(g) identifies the requirements of Conflict Resolution Plan. It must describe the precise nature of the conflict, including the type of conflict, the relationship between the individuals involved (when a family member is involved), and the roles and identity of each person, i.e., the employee and the family member (Title 17, Section 54533(g)(1)).

Under Title 17, Section 54533(g)(2) the plan must then identify the actions the regional center will take to eliminate or mitigate and manage the conflict. This can involve either, resignation of the family member creating the conflict, refraining from participation in a certain category of matters that create the conflict, a change of position, duties, or assignment, or a divestiture of financial interests.

Further, the plan must "provide a detailed explanation of how each of the proposed actions will eliminate, mitigate or manage the conflict (Title 17, Section 54533(g)(3)). The Plan must provide the name, position, and duties of the individuals who will be responsible for monitoring the plan, (Title 17,

Section 54533(g)(4)), and the Plan must be signed by the individuals subject to the Plan under Title 17, Section 54533(g)(4).

Posting on Web Site of Conflict

Under Title 17, Section 54533(f), the regional center shall post on the internet each COI Reporting Statement that identifies a present/potential COI that cannot be resolved within 30 calendar days. This posting shall continue until the conflict has either been eliminated or the individual has resigned.

Role Of DDS In Monitoring Conflicts

Review of Conflict Resolution Plan by Department

Under Title 17, Section 54534(f), DDS shall issue a modification, approval or denial of the proposed Conflict Resolution Plan in writing to the regional center governing board or regional center designated party within 30 calendar days of receipt of a proposed Conflict Resolution Plan.

Title 17, Section 54534(g) provides that if DDS denies a Conflict Resolution Plan, the individual shall have 30 calendar days to eliminate the conflict or to resign.

If a Conflict Resolution Plan is approved, the employee shall fully comply with all the elements set forth in the approved Conflict Resolution Plan (Title 17, Section 54534(j)).

In addition, under Section 54534(k), a new Conflict Resolution Plan shall be submitted to DDS on an annual basis, and upon any change of status that creates a COI.

Submission of Conflict Resolution Plan Does Not Authorize Continued Activities that Create Conflict

The submission of a Conflict Resolution Plan does not authorize the employee to engage in the activities that created the conflict. In the words of the regulation, “Individuals shall not engage in activities in which there is a present or potential COI except in accordance with the terms of an approved Conflict Resolution Plan” (Title 17, Section 54534(d)).

Sanctions

The RCOC will be vigilant to eliminate and resolve conflicts, since if DDS finds a violation of these provisions, it can provide 30 days to eliminate or resolve the violation. If the violation is not so resolved or eliminated, DDS may “take immediate action to commence procedures for termination or nonrenewal of the regional center contract pursuant to W&I Code, Section 4635.”

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