

SAN GABRIEL/POMONA REGIONAL CENTER

CONFLICT OF INTEREST POLICY FOR REGIONAL CENTER EMPLOYEES AND BOARD MEMBERS

The Welfare & Institutions Code (“WIC”) and Title 17 of the California Code of Regulations (“Title 17”) prohibit members of the board of directors from having any financial interest which might pose an actual or potential conflict of interest with regional center operations. If you have any questions about whether any of these laws or regulations present a conflict of interest or potential conflict of interest for you, it is extremely important that you bring them to the Board's attention. Your failure to do so could result in sanctions against the Regional Center by the Department of Developmental Services and your removal from the board of directors. If it is determined that you knowingly misstated a conflict or potential conflict of interest, you could face a potential fine of up to \$50,000.

Under **WIC § 4626**, a director or member of the program policy committee cannot be any of the following:

1. An employee of the State Department of Developmental Services (“DDS” or the “Department”) or any state or local agency which provides services to a regional center client, if the employee has administrative or policy-making responsibility or responsibility for regulation of the regional center.
2. An employee or member of the State Council or an Area Board.
3. An employee or board member of any regional center provider. This includes any entity which receives regional center funding, including but not limited to nonprofit housing organizations and any IRS 501(c)(3) nonprofit organization supporting the regional center.

This section does not prevent a person with a developmental disability who receives employment services through a regional center provider from serving on the board, if that is his or her only conflict or potential conflict of interest. It also does not apply to the Director designated by the Service Provider Advisory Committee, who can only act in a limited capacity as a Director of the Regional Center. (WIC § 4622, discussed below.)

4. Except for consumers, any person who themselves or through their family members might benefit financially from a Regional Center decision, as defined in Government Code § 87103.ⁱ [See endnote i for the full text of Govt. Code § 87103.]

WIC § 4622, subd. (k) prohibits the board member designated by the service provider advisory committee from: (1) serving as an officer on the board; (2) voting on any fiscal matter affecting the purchase of services from any regional center provider; and (3) voting on any other issue in which the member has a financial interest as defined in Government Code § 87103 (see

endnote i), and determined by the regional center board. That member must provide a list of his or her financial interests, as defined in Government Code § 87103, to the regional center board and must provide ongoing information about any changes.

Title 17 § 54520 specifies additional conflicts of interest or potential conflicts of interest for regional center board members as follows:

“(a) The following constitute conflicts of interest for regional center governing board members:

“(1) A conflict of interest exists when a member of the governing board or a family member of such person is a director, officer, owner, partner, shareholder, trustee or employee of any business entity or provider, holds any position of management in any business entity or provider, or has decision or policy-making authority in such an entity or provider, except to the extent permitted by Welfare and Institutions Code, Section 4626(a)(3) and (b). These conflict of interest provisions are in addition to those stated in Welfare and Institutions Code, Sections 4622(a)(9) and 4626.

“(2) A conflict of interest exists when the advisory committee board member, appointed pursuant to Welfare and Institutions Code, Section 4622(a)(7), is an employee or member of the governing board of a provider from which the regional center purchases client services and engages in the activities prescribed in Welfare and Institutions Code Section 4622(a)(9). Such member is therefore prohibited from serving as an officer of the regional center governing board and from voting on the matters or issues described in Section 4622(a)(9). Furthermore, the member is subject to disclosure under Section 54522 of these regulations in addition to providing a list of his or her financial interests, as defined in Government Code Section 87103. Fiscal matters, as used in Welfare and Institutions Code Section 4622(a)(9) include, but are not limited to, setting purchase of service priorities, transferring funds to the purchase of service budget, and establishing policies and procedures with respect to payment for services.

“(3) A conflict of interest exists when a governing board member is any individual described in Welfare and Institutions Code Section 4626. A financial interest in regional center operations, as used in Welfare and Institutions Code Section 4626(a)(4), exists if it is reasonably foreseeable that the member's interest, or the member's decision regarding that interest, will have a material financial effect, on the board member's interest in, or relationship with, the business entity or provider pursuant to Government Code, Section 87103. The financial effect is material if the decision will result in a benefit, detriment, gain, loss or profit to the member, entity or provider.

“(b) The regional center governing board shall not enter or authorize the regional center to enter into any contract or any other type of agreement for pecuniary gain with any entity or provider in which a member has a conflict of

interest as set forth in subsection (a)(1) and (a)(3) above, nor shall the board or board member allow the regional center to refer a client or prospective client to such an entity or provider.

“(c) No regional center governing board member who has a conflict of interest shall continue to serve as a board member in violation of these provisions unless the board member has eliminated the conflict of interest or obtained a waiver pursuant to these regulations. This prohibition does not apply to the extent it is precluded by Welfare and Institutions Code, Sections 4626(a)(3) and (b).

Title 17 § 54505 states definitions of terms used in Section 54520, above, as follows:

“(a) ‘Area Board’ means the organization of individuals established and constituted according to Welfare and Institutions Code, Section 4570 et seq.

“(b) ‘Board Member’ or ‘Member of the Governing Board’ means an individual serving on a governing board of a regional center.

“(c) ‘Business Entity, Entity or Provider’ means any individual or business venture from whom or from which the regional center purchases/obtains 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, hospitals, medical groups, activity centers, independent living facilities, 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.

“(d) ‘Client’ means the individual described in Section 56551(e), Chapter 3, Subchapter 4, Article 1, Title 17, California Administrative Code.

“(e) ‘Decision or Policy-Making Authority’ means the authority an individual possesses whenever the individual:

“(1) makes a final decision; or

“(2) may compel a decision or may prevent a decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may or may not be overridden; or

“(3) makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another person or entity or provider; or

“(4) votes on matters, appoints or hires people, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

“This authority does not include actions of the individuals which are solely secretarial or clerical.

“(f) ‘Department’ means the Department of Developmental Services.

“(g) ‘Governing Board’ means the board of directors of a private nonprofit corporation which contracts with the State for the purpose of establishing and operating a regional center and which is constituted in accordance with Section 4622 of the Welfare and Institutions Code.

“(h) ‘Potential Conflict of Interest’ means a situation which, based upon circumstances reasonably expected to occur at a point in the future, may result in a conflict of interest, as specified in Sections 54520 or 54521 of these regulations, at that time.

“(i) ‘Present Conflict of Interest’ means a conflict of interest, as specified in Sections 54520 or 54521 of these regulations, which currently exists.

“(j) ‘Prospective Client’ means any person who has presented himself or herself, at the regional center, as requiring services for the developmentally disabled but who has not yet gone through the initial intake and assessment process.

“(k) ‘Regional Center’ means a diagnostic, counseling, and service coordination center for persons with developmental disabilities and their families which is established and operated pursuant to Chapter 5 of Division 4.5 of the Welfare and Institutions Code by a private nonprofit corporation acting as a contracting agency.

“(l) ‘Regional Center Employee’ means any person who performs services for wages, salary or a fee under a contract of employment, express or implied, with the regional center. For purposes of these regulations, a business entity, entity or provider as defined in Section 54505(c) herein, is not a regional center employee.

“(m) ‘Regional Center Operations’ means those activities or services which regional centers are required by law, regulation, or contract with the State to provide, obtain, or purchase. Such activities include, but are not limited to: case finding, outreach, prevention, intake and assessment, individual program planning, case management, community programs, program development, and client advocacy and protection.

“(n) ‘State Council’ means the organization of individuals established and constituted pursuant to Welfare and Institutions Code, Section 4520 et seq.”

Title 17 § 54522 provides clarification on the conflict of interest statement as follows:

“(a) Within 60 calendar days of the effective date of this Article, each regional center employee who has decision or policy-making authority, as defined in Section 54505(e) herein, and each member of the governing board, including the board member designated by the regional center provider advisory committee

pursuant to Welfare and Institutions Code, Section 4622(a)(7), shall prepare and file an initial conflict of interest statement pursuant to these regulations. Employees shall file their statements with their respective regional center and governing board members shall file their statements with their regional center governing board. Subsequent statements shall be filed thereafter whenever a change in status would create a present or potential conflict of interest situation as defined in these regulations. Individuals serving in any capacity under a waiver granted pursuant to Section 54523 of these regulations shall be required to file a conflict of interest statement with each waiver renewal as required pursuant to Section 54524(b)(3) of these regulations. The regional center and governing board shall designate the individual who is responsible for receiving, processing, and maintaining the initial and subsequent annual statements for their own respective agency. Such individual, however, may not review his or her own filed statement. The initial conflict of interest statement and all subsequent annual statements shall be dated, signed, and contain a declaration, under penalty of perjury, that the governing board member or employee has:

“(1) No present or potential conflict of interest;

“(2) A present conflict of interest; or

“(3) A potential conflict of interest pursuant to these regulations.

“The individual shall specify the factual basis for that determination and provide full and complete disclosure relative to any present or potential conflict of interest, including a description of the nature of the conflict of interest. For the board member designated by the regional center provider advisory committee pursuant to Welfare and Institutions Code, Section 4622(a)(7), the disclosure shall include, to the extent not otherwise disclosed, a list of the member's financial interest as required by Welfare and Institutions Code, Section 4622(a)(9)(C).

“(b) If a present or potential conflict of interest exists, the statements of regional center employees and governing board members, including the board member designated by the regional center provider advisory committee pursuant to Welfare and Institutions Code, Section 4622(a)(7), shall if desired by the governing board member or regional center employee, also contain a request for waiver of the prohibitions of any present or potential conflict of interest, and a suggested plan of action for resolution of the present or potential conflict of interest, including limitations on the governing board member or regional center employee which will enable him or her to avoid actions involving the conflict of interest during the period the waiver request is being reviewed pursuant to Section 54523 of these regulations.

“(c) The regional center or regional center governing board shall review, respectively, the waiver requests of all regional center employees and governing board members, and determine, in its discretion, whether to submit the request

pursuant to the regulations, or require the individual to eliminate the conflict of interest or resign his or her position as stated therein.

“(d) If a present or potential conflict of interest exists and no waiver is requested, or if the regional center or regional center governing board elects not to submit such a request in accordance with these regulations, the regional center employee or governing board member, and the board member designated by the regional center provider advisory committee pursuant to Welfare and Institutions Code, Section 4622(a)(7), shall have thirty (30) calendar days from the date of filing the conflict of interest statement or the date of notification by the regional center or its governing board in which to either take whatever action is necessary to eliminate the conflict of interest, or resign his or her position as a regional center employee or governing board member. During the thirty (30) calendar day period, the employee or board member shall avoid all involvement with or participation in regional center activities involving the conflict of interest in question.

“(e) If no conflict of interest is declared at the time of filing the initial statement or subsequent statements, no further action is required by the governing board member or regional center employee unless or until such time as that individual's status changes, so that he or she is in a present or potential conflict of interest situation. Upon such a change in status, a new statement shall be filed immediately with the member's governing board or the employee's regional center, specifying the factual basis for that determination and providing full and complete disclosure relative to the present or potential conflict of interest in accordance with provisions of subsection (a) above.”

Title 17 § 54523 specifies the method to request a waiver of a conflict of interest or potential conflict of interest as follows:

“(a) If the conflict of interest statement filed by the regional center governing board member or the regional center employee indicates that a present or potential conflict of interest exists and a waiver is being requested, then within thirty (30) calendar days of receipt of such a statement, the governing board or regional center shall, unless it has elected to do otherwise pursuant to Section 54522(c), submit the request for waiver packet in accordance with the procedures set forth in this section.

“(b) All requests for waiver packets must be submitted to the Department. In addition, copies of requests for waiver packets involving governing board members must also be sent to the area board in the area and to the State Council.

“(c) Requests for waiver packets shall include:

“(1) A copy of the board member's or employee's conflict of interest statements;

“(2) The request for waiver;

“(3) The plan of action for resolution of his or her conflict of interest and the time frames for doing so; and

“(4) Any limitations proposed by the governing board or regional center to be applied to the board member or employee during the term of the waiver. Limitations may include, but are not limited to:

“(A) Abstention by the person from voting on the conflict of interest situations;

“(B) Nonparticipation by the person, individually or as part of a group, in the preparation, presentation, formulation or approval of reports, plans, policies, analyses, opinions or recommendations regarding the conflict of interest situation, when the exercise of judgment is required and the purpose is to influence the decision;

“(C) Noninvolvement of the person in the negotiation, obligation, or commitment of the regional center to a course of action involving the conflict of interest situation;

“(D) Reassignment of the person to duties or responsibilities where no conflict of interest exists; and

“(E) Establishment of an independent review and prior approval procedure by supervisors or administrative staff regarding purchase of service and other decisions made by the person with respect to the conflict of interest situation.

“(5) The individual(s) responsible for ensuring that the above plan of action or limitations are applied and monitored;

“(6) Any other information which the employee or board member feels is pertinent to his or her request.

Title 17 § 54524 sets forth the Department and the Area Board’s and the State Council’s response requirements to a request for waiver of a conflict of interest as follow:

“(a) Within twenty (20) calendar days after the area board in the area and the State Council receive copies of a request for waiver packet regarding a regional center governing board member, the area board in the area and the State Council, respectively, shall provide to the Department their written approval or disapproval of such request. The Department may not approve the request for waiver of a regional center governing board member without the approval of both the area board in the area and the State Council.

“(b) Within sixty (60) calendar days after the Department receives a request for waiver packet the Department will respond to the request for waiver in writing:

“(1) Explaining the outcome of its review including approval or denial of the request, where appropriate, and the rationale for the decision;

“(2) Specifying the actions, if any, by the governing board or regional center which the Department deems necessary in order to resolve the conflict of interest; and

“(3) Stating the duration of the waiver, if approved, according to the following:

“(A) For the members of the governing boards who are subject to those regulations, the duration of the waiver may not exceed one year;

“(B) For the regional center employee, the duration of the waiver will be determined by the Department.

“(c) If the request for waiver is denied by the Department and/or the State Council or area board in the area pursuant to subsections (a) and (b) herein, the governing board member or regional center employee shall have thirty (30) calendar days from the date of receipt of the denial in which to either take whatever action is necessary to eliminate the conflict of interest or resign his or her position as a governing board member or regional center employee. During this thirty (30) calendar day period, the board member or employee shall avoid all involvement with and participation in the conflict of interest in question.”

ⁱ Government Code § 87103 states:

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this

subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.