

**DEPARTMENT OF DEVELOPMENTAL SERVICES  
SUPPLEMENT TO THE INITIAL STATEMENT OF REASONS**

Title 17, Division 2, Chapter 3, Subchapter 3, Article 1

**Description of the Public Problem, Administrative Requirement or Other Condition or Circumstances the Regulations are Intended to Address**

In 2011, the Legislature enacted and the Governor signed Senate Bill No. 74 (Stats. 2011, Ch. 9), which, among other things, added section 4622.5 and amended sections 4626, 4626.5 and 4627 of the Welfare & Institutions Code. SB 74 required the Department of Developmental Services (Department or DDS) to adopt regulations to establish standard conflict-of-interest reporting requirements applicable to regional center board members, executive directors, employees, and others acting on the regional center's behalf. SB 74 tasked the Department with monitoring and ensuring that specified individuals comply with the conflict-of-interest reporting and mitigation requirements set forth in SB 74.

The following statutes relating to regional center duties and conflicts of interest were added or amended by SB 74:

1. Welfare & Institutions Code section 4622.5 (added) requires the governing board of each regional center to submit detailed documentation, on an annual basis, to the Department demonstrating that the composition of the regional center's board is in compliance with Welfare and Institutions Code section 4622. Among other things, section 4622 imposes requirements regarding the composition of the regional center board and requires the board to appoint an advisory committee composed of providers from which the regional center purchases client services. The statute requires the advisory committee to designate one of its members to serve as a member of the regional center board. When a member of the board is also an employee or member of the governing board of a provider from which the regional center purchases client services, such a member is subject to certain prohibitions to avoid conflict-of-interest situations.
2. Welfare & Institutions Code section 4626 (amended) requires regional center board members, employees and others acting on the regional center's behalf to be free from conflicts of interest that could adversely influence their judgment, objectivity, or loyalty to the regional center, its consumers, or its mission. The statute prohibits certain individuals from serving as members of the regional center governing board or program policy committee in order to prevent conflicts of interest. The statute also requires the development of a standard conflict-of-interest reporting statement to be completed, in specified time periods, by each and every

regional center governing board member, executive director, administrator, program director, service coordinator, and employee who has decision-making or policy-making authority or authority to obligate the regional center's resources. The statute requires the regional center to submit copies of completed conflict-of-interest reporting statements and conflict mitigation plans to the Department, and imposes civil penalties for providing false information on a reporting statement.

3. Welfare & Institutions Code section 4626.5 (added) requires each regional center to submit a conflict-of-interest policy to the Department and to post the policy on its Internet Website by August 1, 2011. A regional center is also required to ensure compliance with its conflict-of-interest policy.
4. Welfare & Institutions Code section 4627 (amended) requires the Department to adopt and enforce conflict-of-interest regulations to ensure that specified individuals make decisions with respect to the regional centers that are in the best interests of the regional center's consumers and families. The statute also requires the Department to monitor and ensure the regional centers' compliance with the conflict-of-interest requirements. Finally, the Department is required to adopt regulations to develop standard conflict-of-interest reporting requirements.

Together, these proposed regulations benefit the State of California, including consumers and families, by ensuring that regional center governing board members, executive directors, employees and those acting on a regional center's behalf are held to the highest ethical standards. Conflict-of-interest laws are based upon the proposition that certain individuals owe loyalty to the public without allowing their personal and private financial considerations to enter into the decision-making process. Thus, these regulations protect consumers' well-being by ensuring that regional center officials act in the consumers' best interest, rather than in their own financial interests. These regulations also promote accountability and proper use of public resources. The Department modeled many of these conflict-of-interest regulations after state laws that govern conflict-of-interest situations applicable to public officials, including the Political Reform Act of 1974 (Government Code 81000 et seq.), its accompanying regulations (Title 2 California Code of Regulations 18700 et seq.), and Government Code section 1090, while taking into account the need to simplify the concepts found in state conflict-of-interest laws to facilitate their practical application to those working in the regional center system.

## **SPECIFIC PURPOSE AND RATIONALE FOR NECESSITY**

### **§ 54500. Authority and Scope.**

#### Specific Purpose

The language in this section is amended. The new language specifies that the regulations also apply to those “acting on the regional center’s behalf”; changes the term “clients” to the proper terminology “consumers”; and removes the language “Members serving on the governing board of a regional center on January 1, 1982 are subject to these regulations to the extent not prohibited by Welfare and Institutions Code, Section 4626” as this language is no longer pertinent.

#### Rationale for Necessity

These amendments are necessary and benefit the State of California by complying with Welfare & Institutions Code section 4626 and 4627 and clarifying terminology for the affected individuals. The additional language that states the conflict regulations apply to those acting on the regional center’s behalf clarifies that multiple persons associated with the regional center and acting on its behalf fall within the scope of the conflict of interest regulations.

### **§ 54505. Definitions.**

#### **§54505(a)**

#### Specific Purpose

The new language cites the current statutes pertaining to area boards and deletes reference to repealed statutes.

#### Rationale for Necessity

This amendment is necessary to conform to Welfare & Institutions Code section 4546 and cite the current, applicable statute.

#### **§54505(b)**

#### Specific Purpose

The definition for "Board Member" or "Member of the Governing Board" has been deleted.

### Rationale for Necessity

This amendment is necessary to organize and clarify definitions. The definition has been renamed “Member,” refined, and moved to section 54505, subdivision (g). (Please see below).

### **§54505(c)**

#### Specific Purpose

Subsection (c) is renumbered to subsection (b). The definition of "Business Entity, Entity or Provider" has been expanded to include any individual or business venture from whom or from which the regional center secures goods or services to conduct its operations. The definition is further expanded to include additional types of provider services such as supported and independent living, housing providers, and entities formed in support of the regional center. The definition clarifies that it does not apply to consumers or family member of consumers who receive vouchers for consumer services.

#### Rationale for Necessity

Taken as a whole, the amended conflict of interest regulations specify that a conflict occurs when a regional center official has a financial interest in an entity or provider that engages in a business relationship with the regional center. This amendment is necessary to ensure that the definition of business entity, entity or provider is defined as broadly as possible to capture all situations where the regional center contracts for or otherwise secures goods or services in order to capture all potential financial conflicts. It clarifies that a state or local governmental entity can be a type of provider that creates a potential conflict and identifies additional common services that are subject to contract that can create a conflict.

In the last sentence, the definition excludes situations where consumers or family members of a consumer receive vouchers for consumer services. A regional center may issue a voucher to a family member or adult consumer which allows the family member or consumer to procure a service for the consumer up to a maximum reimbursement. The Department wants to avoid the situation where receiving a voucher suggests that the consumer or family member is now a business entity that has executed a contract with the regional center, thereby triggering conflict of interest concerns and reporting requirements which would be overly burdensome for consumers and families. Voucher recipients are not in a position to enrich themselves or seeking to divert regional center money to them, thereby giving rise to concerns about financial self-dealing.

## **§54505(d)**

### Specific Purpose

Subsection (d) is renumbered subsection (c). The definition for “Client” has been deleted. In its place, “Consumer” is defined.

### Rationale for Necessity

This amendment is necessary to utilize the term “consumer” in a manner consistent with current law identified in the subsection. It further clarifies that a person becomes a consumer eligible for regional center services only after the individual has been determined eligible under applicable law.

## **§54505(e)**

### Specific Purpose

Subsection (e) is renumbered subsection (d). The definition of "Decision or Policy-Making Authority" adds those who exercise discretion or judgment without a significant intervening substantive review in making, advising, or recommending a decision or in making a final decision. The language, also, adds those who modify, amend or review contractual agreements on behalf of his or her entity or has the authority to obligate resources and include those who approve, appoint, ratify, elect, confirm, contracts or hires any director, trustee, member of the board, member of a board committee, officer, agent, employee, contractor, or consultant, for his or her entity or any other business entity or provider.

### Rationale for Necessity

This amendment is necessary to implement the standards set forth in Welfare & Institutions Code section 4626 which specifies that conflict-of-interest rules apply whenever a person holds a decision or policymaking position with the regional center. It benefits regional center officials and employees by clarifying instances where the person is engaged in decision or policy-making activities. It also places individuals on notice that a decision or policy-making decision occurs whenever the individual has authority to bind the regional center to a final decision and in various phases of the contract-making and hiring process.

## **§54505(f)**

### Specific Purpose

Subsection (f) is renumbered subsection (e).

The new language incorporates the definition of “Family Member” (shifted from former section 54521(a)(4)(B)) to the section containing definitions. This move clarifies that the definition applies to all subsequent sections. The language is amended to include an individual’s domestic partner and step-siblings. The language in-laws has been clarified by listing parents-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law as the types of family relationships that can trigger a conflict of interest.

#### Rationale for Necessity

The amendment is necessary and benefits the specified individuals by clarifying the application of the definition and specifying the additional familial relationships that may give rise to a conflict-of-interest situation. This language is necessary because these are the most common types of familial relationships that DDS has encountered that create a conflict where a regional center director, board member, employee, or those acting on the regional center’s behalf would be tempted not to act in the regional center’s best interest.

#### **§54505(g)**

#### Specific Purpose

The definition of "Governing Board" was deleted, renamed “Regional Center Governing Board,” and shifted to section 54505, subdivision (I), below. This subsection defines “Member” and adds language to include an individual serving as a member of a board of directors or a board committee of a business entity, entity, or provider.

#### Rationale for Necessity

This amendment is necessary to organize the definitions. The definition of “Member” has been refined to ensure that the regulations apply to those individuals who have decision or policy making authority.

#### **§54505(h)**

#### Specific Purpose

Sections 54520 and 54521 have been deleted from the definition of Potential Conflict of Interest. The language ‘these regulations’ has been added.

#### Rationale for Necessity

This amendment is necessary to cite current conflict of interest regulations.

### **§54505(i)**

#### Specific Purpose

Sections 54520 and 54521 have been deleted from the definition of Present Conflict of Interest. The language ‘these regulations’ has been added.

#### Rationale for Necessity

This amendment is necessary to cite current conflict of interest regulations.

### **§54505(j)**

#### Specific Purpose

The definition of Prospective Client is deleted.

#### Rationale for Necessity

This amendment is necessary to delete reference to an unused term.

### **§54505(k)**

#### Specific Purpose

Subsection (k) has been renumbered to (j). The language has been added to clarify that regional centers also provide services and supports pursuant to Title 14 of the Government Code, California Early Intervention Services Act.

#### Rationale for Necessity

This amendment is necessary for clarity.

### **§54505(l)**

#### Specific Purpose

Subsection (l) has been renumbered to (k). Reference to Section 54505(c) is deleted. The language reads “...business entity, entity, or provider as defined herein is not a regional center employee”.

#### Rationale for Necessity

This amendment is necessary to organize the definitions and to delete reference to an inapplicable citation.

## **§54505(l)**

### Specific Purpose

The definition of “Governing Board” was deleted from subsection (g), renamed “Regional Center Governing Board” and moved to this section.

### Rationale for Necessity

This amendment is necessary to clarify the type of board and to organize the definitions.

## **§54505(m)**

### Specific Purpose

Reference to “client” is deleted from the definition. The term “consumer” is added.

### Rationale for Necessity

This amendment is necessary to conform to usage of the term “consumer” contained in current law and benefits the specified individuals by promoting clarity.

## **§ 54520. Positions Creating Conflicts of Interest for Regional Center Governing Board Members and Executive Directors.**

### Specific Purpose

Subdivisions (a) through (d) identify instances when a regional center board member or executive director’s business relationship with entities that provide services to regional center consumers will create a conflict of interest.

Subdivision (a) specifies that a conflict of interest is created when a regional center governing board member, regional center executive director or a family member of such person holds one of the listed positions with a business entity, entity, or provider that is vendored by the regional center to provide services to consumers. In comparison with the prior version of the regulations, the new subdivision (a) expands the types of business relations that the board member, executive director or family members may have with a business entity, entity or provider that will create a conflict of interest.

Subdivision (b) specifies that in some instances a regional center board member or the family member of such person who works for a state or local government entity that provides services to regional center consumers does not have a conflict of interest. The Department has less of a concern of board members directing regional center business to government agencies because typically government employees receive a set salary and any increased business to the governmental entity does not

result in a financial benefit to the employee. Therefore, there is less of a concern of board members being tempted to direct business to a governmental entity in order to financially benefit the board member or his or her family member. The last sentence in subdivision (b) specifies that employees of DDS are still precluded from serving on a regional center board. DDS reads Welfare and Institutions Code section 4626, subdivision (b)(1), as: (1) precluding employees of DDS from serving on a regional center board; and (2) precluding employees of other state or local agency providing services to regional center consumers from serving on the board if the employment includes administrative or policymaking responsibility or regulation over a regional center. Even if section 4626, subdivision (b)(1), were not read to preclude a DDS employee from serving on a regional center board, the Department has authority under Welfare and Institutions Code section 4627, subdivision (c), to designate a broader range of activities as creating a conflict of interest than those expressly found in current statute.

Subdivision (c) specifies that there is no conflict of interest for a board member if the board member has a family member who is a consumer that receives employment services from a provider, so long as the employment service is equally available to all regional center consumers. DDS wishes to avoid creating a conflict-of-interest situation for a board member simply because the member's consumer relative is an employee of a provider. Employment services are often offered to consumers.

Subdivision (d) clarifies that the conflict-of-interest situations created by the regulations supplement those conflicts of interest already identified by statute.

The prior subsection regarding "advisory committee board members" has been moved to section 54521. The prior subsection pertaining to the description of a "financial interest" has been moved to section 54522. The prior subsection discussing contractual prohibitions has been moved to section 54523. The subsection regarding conflict-of-interest resolution has been deleted. The topic has been moved to the new sections 54525, 54533 and 54534.

### Rationale for Necessity

Subsection (a) is necessary because DDS wishes regional center board members and executive directors to identify and disclose whenever they, or their family members, have a financial interest in a business entity, entity or provider that receives funding from the regional center. The regulations are intended to require the identification and disclosure of such interests.

Subdivision (b) is necessary because DDS is aware of instances where a regional center board member was employed by a governmental entity that provides services to regional center consumers. In DDS' experience, these types of circumstances do not present the same incentive for financial self-dealing that might be present when the business entity, entity or providers is not a governmental entity. Also, DDS wants to encourage as many individuals as possible to be eligible and willing to

serve as board members. Designating instances as not presenting a conflict where there is little incentive for financial self-dealing would in DDS' view encourage more qualified individuals to volunteer to serve as board members, particularly given the requirement of Welfare and Institutions Code section 4622, subdivision (e), that at least 50 percent of the regional center governing board members be persons with developmental disabilities or their parents or legal guardians.

### **§54521 Conflicts of Interest for Regional Center Advisory Committee Board Members.**

#### Specific Purpose

The prior version of section 54521 dealt with conflict-of-interest circumstances for regional center employees. Provisions related to situations that create conflicts for regional center employees have been moved to sections 54526 to 54530.

Welfare and Institutions Code section 4622, subdivision (i), requires the creation of an advisory committee constituted of various categories of providers that contract with the regional center. This regulation identifies when a conflict of interest will arise for advisory committee members. This regulation clarifies that a conflict of interest is created when an advisory committee board member is one of the listed positions for a business entity, entity, or provider defined in the regulations and the person takes certain actions as specified.

#### Rationale for Necessity

This provision is necessary because the Lanterman Act requires the creation of an advisory committee for regional centers and these provisions identify when a conflict of interest exists for advisory committee board members. Based upon DDS' experience, the circumstances described in the section are instances where advisory committee board members may be tempted to act in their financial self-interest rather than in the best interests of the regional center and its consumers. Also, the conduct specified in subdivision (a)(2) largely mirrors the conduct specified in Welfare and Institutions Code section 4622, subdivision (k).

### **§54522. Financial Interests in Decisions Creating a Conflict of Interest for Regional Center Governing Board Members and Executive Directors.**

#### Specific Purpose

The prior version of section 54522, subsection (a), discussed reporting statement procedures for regional center employees and governing board members. This subject matter is now addressed in sections 54531 and 54532 respectively. The prior subsections (b), (c), (d), and (e) discussed conflict-of-interest resolution. This subject matter has been deleted and moved to sections 54525, 54533, and 54534.

The new subsection (a) prohibits a regional center governing board member and executive director from making, participate in making or in any way attempting to use his or her position to influence a regional center or board decision in which the individual knows or has reason to know that he or she or a family member has a financial interest. Subsection (b) then defines what constitutes a financial interest.

#### Rationale for Necessity

The amendments in this section are necessary to effectuate the intent of Welfare & Institutions Code sections 4626 and 4627 and benefit the State of California by holding those individuals responsible for the operation of the regional centers to the highest ethical standards. The term “financial interest” is defined for this section which benefits the individuals affected by the regulation. The Department has incorporated the types of interest and monetary thresholds set forth in Government Code section 87103 and Title 2, California Code of Regulations, sections 18703.1 through 18703.5. The Department determined it to be appropriate to apply the same standards applicable to public officials to regional center board members and executive directors. Barring persons from making decisions that affect his or her financial interests, or those of a family member, helps ensure that individuals are held to the highest ethical standard, thereby protecting the well-being of consumers and ensuring the proper and effective use of public resources. The movement of the subject matters pertaining to reporting statement procedures and conflict of interest resolution is needed to organize the regulations.

### **§ 54523. Financial Interests in Contracts Creating a Conflict of Interest For Regional Center Governing Board Members and Executive Directors.**

#### Specific Purpose

This prior version of section 54523 discussed the subject of conflict-of-interest resolution. That subject matter has been moved to sections 54525, 54533, and 54534.

The amended section reaffirms the prohibition on regional center board members approving contracts in which they have a financial interest previously found in prior section 54520, subdivision (b). The amended section also prohibits executive directors from approving contracts where they have a financial interest. Specifically, the amended section specifies that regional center governing board members and executive directors are prohibited from having a financial interest in any contract in which they participate in making in their official capacity.

Subsection (b) defines when a regional center governing board member or executive director will be deemed as being “financially interested” in a contract and will be considered as having been involved in the “participation in the making of a contract.” Subsection (c) specifies the recusal steps that must be taken if the governing board member or executive director, or his or her family member, has a financial interest in a potential contract.

Consumers and family members of consumers serve on regional center boards. An important function of the regional centers is to secure supports and services for consumers by approval of contracts with providers. Thus, subdivisions (d) and (e) specify that approval of contracts by consumers and their family members will not create a conflict of interest for such board members if the benefit associated with the contract is generally available to regional center consumers and family members, and does not benefit the board member, or his or her family, alone.

### Rationale for Necessity

The amendments are necessary to effectuate the purposes of Welfare & Institutions Code sections 4626 and 4627. Both these code provisions require that regional center board members and executive directors act in the best interests of the regional center and consumers. In terms of contracting, DDS determined that the best interests of the regional center and consumers is achieved by applying the basic standards of identifying and avoiding conflicts applicable to public officials, as modified for the regional center environment.

Subsection (b) is modeled on the prohibition of conflicts of interest found in Government Code section 1090, which codifies the common law prohibition against self-dealing as to contracts by public officials.

Subdivision (b)(1)'s definition of "financially interested" is modeled upon a jury instruction that has been judicially approved for use in prosecutions for violations of section 1090. (See *People v. Honig* (1996) 48 Cal.App.4th 289). Subdivision (b)(2)'s definition of "participation in the making of a contract" is based upon case law. (See *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222).

With regards to subdivision (c), the Department has determined that the limitations on involvement by a board member when a conflict is identified (i.e. abstain from voting, nonparticipation) are reasonable safeguards. The measures are based upon those set forth in Government Code section 87105 and will best ensure that financial self-interest does not play a role in contract making.

Some might argue that DDS cannot impose conflict of interest standards greater than those set forth in Government Code section 87103, which is the only provision of state conflicts law specifically cited in the Lanterman Act's provisions related to regional center conflict of interests. (See Welf. & Inst. Code, § 4626, subd. (b)(4).) This would be an incorrect interpretation of the statutory scheme. Welfare and Institutions Code section 4627 specifically authorizes the Department to adopt and enforce conflict-of-interest regulations and reporting requirements. This provision affords DDS the discretion to adopt the conflict standards adopted in these regulations.

Subdivision (d) and (e) are necessary exceptions to permit the regional center governing board to contract for services that benefit consumers while allowing Department and such boards to comply with Welfare and Institutions Code section 4622, subdivision (e), which requires that a minimum of 50 percent of the governing board members shall be persons with developmental disabilities or their parents or legal guardians.

Subdivision (f) is a necessary additional measure to guard against efforts to influence or manipulate a vote by creative means when a conflict of interest is otherwise present.

The movement of the subject matter conflict of interest resolution is needed to organize the regulations.

### **§ 54524. General Prohibition of Conflicts of Interest for Regional Center Board Members and Executive Directors.**

#### Specific Purpose

The prior section discussed the subject of conflict-of-interest resolution. This subject matter has been moved to sections 54525, 54533, and 54534.

This section prohibits regional center governing board members and executive directors from participating in any transaction or decision in which their or a family member's personal or pecuniary interest conflicts with the individual's duty to act in the best interest of the regional center or consumers. The section seeks to impose the common law doctrine against conflicts of interest to regional center officials.

#### Rationale for Necessity

DDS determines that this provision is necessary to effectuate the requirements of Welfare and Institutions Code sections 4626 and 4627 that regional center board members and executive directors act in the best interests of the regional center and consumers, and not be influenced by their own, or a family member's, financial interest. A provision disqualifying board members and executive directors from taking part in any proceeding where they or a family member would gain financially is appropriate. As already discussed, DDS has broad discretion to impose conflict-of-interest requirements for regional center officials public officials under Welfare and Institutions Code section 4627. This discretion includes authority to impose a disqualification requirement that may or may not exist in the common law doctrine against conflicts of interest. Subdivision (d)'s requirement that common law principles be applied is consistent with the Attorney General's conclusion that even where statutory provisions address conflicts of interest, common law principles may still be applied. (See 92 Ops.Cal,Atty.Gen 19 and 88 Ops.Atty.Gen. 32.) Additionally, the disqualification requirement is similar to a provision that existed in former regulation section 54523, subdivision (c)(4)(C), which specified that conflicts could be mitigated by the "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.”

The movement of the subject matter conflict-of-interest resolution is needed to organize the regulations.

**§ 54525. Necessity of Conflict Resolution Plan for Conflicts of Interests For Regional Center Governing Board Members and Executive Directors.**

Specific Purpose

The prior section discussed the requirement to eliminate conflicts of interest and the sanctions that could be imposed if they were not eliminated or resolved. This subject matter has been moved to section 54535.

The new section prohibits a regional center governing board member or executive director from referring consumers to a provider or continuing to serve in his or her position without the removal of the conflict of interest or an approved conflict resolution plan.

Rationale for Necessity

This amendment is necessary and benefits the State of California by ensuring that regional center board members and executive directors are held to the highest ethical standards. This amendment continues a prohibition against referrals that existed in prior section 54520. It also continues to provide for the submission of a plan to resolve conflict-of-interest situations that was contained in prior section 54522. The movement of the subject matter of sanctions is needed to organize the regulations.

**§ 54526. Positions Creating Conflict of Interests for Employees, Contractors, Agents and Consultants.**

Specific Purpose

Subdivision (a) of this section specifies that a conflict of interest is created when a regional center employee with decision or policy making authority, a contractor, agent, or consultant with authority to act on behalf of the regional center holds one of the listed positions with a business entity, entity, or provider that is vendored by the regional center to provide services to consumers.

Subdivision (b) specifies that in some instances employees, contractors, agents or consultants of a regional center who also work for a state or local governmental entity that provides services to regional center consumers do not have a conflict of interest. The Department has less of a concern of employees, contractors, agents or consultants directing regional center business to government agencies because

typically government employees receive a set salary and any increased business to the governmental entity does not result in a financial benefit to the employee, contractor, agent or consultant. Therefore, there is less of a concern of these types of individuals being tempted to direct business to a governmental entity in order to financially benefit the board member or his or her family member. The last sentence in subdivision (b) specifies that regional center employees, contractors, agents or consultants cannot be employed with DDS. Given DDS' various monitoring responsibilities over the regional centers under the Lanterman Act, it would create the potential for conflicts and incompatible activities for a person to be employed by a department that could then monitor the employee's regional center activities.

### Rationale for Necessity

Subsection (a) is necessary because DDS wishes regional center employees, contractors, agents or consultants to identify and disclose whenever they, or their family members, have a financial or legal interest in a business entity, entity or provider that receives funding from the regional center. This subsection is intended to require the identification and disclosure of such interests.

Subdivision (b) is appropriate because in DDS' experience instances where a regional center employee, contractor, agent or consultant is employed with a governmental entity does not present the same incentive for financial self-dealing that might be present when the business entity, entity or providers is not a governmental entity. Typically, governmental employees receive set salaries and any increased business to a governmental entity by a regional center usually will not result in a financial benefit to the employee. Thus, there is less of a concern that the regional center employee, contractor, agent or consultant will direct regional center resources to a governmental entity to further his or her, or a family member's, financial interest. Employment with both a regional center and DDS is inappropriate because the potential for conflicts and incompatible activities that could arise from employment with both entities is too great to permit.

## **§ 54527. Financial Interests in Decisions Creating a Conflict of Interest for Employees, Contractors, Agents or Consultants.**

### Specific Purpose

Subsection (a) prohibits regional center employees, contractors, agents, and consultants from using their positions to make, participate in making, or influence a regional center decision which the individual knows or has reason to know will impact his or her or a family member's financial interest. Subsection (b) then defines what constitutes a financial interest.

### Rationale for Necessity

The section is necessary to effectuate the intent of Welfare & Institutions Code sections 4626 and 4627 and benefits the State of California by holding individuals acting on behalf of the regional centers to the highest ethical standards. The term “financial interest” is defined for this section which benefits the individuals affected by the regulation. The Department has incorporated the types of interests and monetary thresholds set forth in Government Code section 87103 and Title 2, California Code of Regulations, sections 18703.1 through 18703.5. The Department determined it to be appropriate to apply the same general standards applicable to public officials to those operating on behalf of the regional centers since the regional centers receive state funds. Barring a person from making decisions that affect his or her, or a family member’s, financial interest helps ensure that individuals are held to the highest ethical standard, thereby protecting the well-being of consumers and ensuring the proper and effective use of public resources.

### **§ 54528. Financial Interests in Contracts Creating a Conflict of Interest For Regional Center Employees, Contractors, Agents and Consultants.**

#### Specific Purpose

The section prohibits a regional center employee, contractor, agent or consultant from being financially interested in any contract in which the individual participates in making in his or her official capacity. The terms “financially interested” and “participation in the making of a contract” are defined. In addition, the specified individuals are prohibited from making a contract that is financially beneficial to a family member, unless the benefits are available to the consumers and their families generally.

#### Rationale for Necessity

This section is necessary to effectuate the purposes of Welfare & Institutions Code sections 4626 and 4627. Both these statutes require that regional center employees and others acting on the regional center’s behalf act in the best interests of the regional center and consumers. In terms of contracting, DDS has determined that the best interests of the regional center and consumers is achieved by applying the basic standards of identifying and avoiding conflicts applicable to public officials, as modified for the regional center environment. Subsection (b) is modeled on the prohibition of conflicts of interest found in Government Code section 1090, which codifies the common law prohibition against self-dealing as to contracts by public officials.

Subdivision (b)(1)’s definition of “financially interested” is modeled upon a jury instruction that has been judicially approved for use in prosecutions for violations of section 1090. (See *People v. Honig* (1996) 48 Cal.App.4th 289). Subdivision (b)(2)’s definition of “participation in the making of a contract” is based upon case

law. (See *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222).

Some might argue that DDS cannot impose conflict of interest standards greater than those set forth in Government Code section 87103, which is the only provision of state conflicts law specifically cited in the Lanterman Act's provisions related to regional center conflicts of interests. (See Welf. & Inst. Code, § 4626, subd. (b)(4).) This would be an incorrect interpretation of the statutory scheme. Welfare and Institutions Code section 4627 specifically authorizes the Department to adopt and enforce conflict-of-interest regulations and reporting requirements. This provision affords DDS the discretion to adopt the conflict standards adopted in these regulations. There is no indication that the Legislature ever intended to limit conflict of interest situations to those found in Government Code section 87103.

Subdivision (c) is necessary because employees, contractors, agents or consultants of regional centers may have family members who are regional center consumers. DDS' experience demonstrates that there is less occurrence of or incentive for financial self-dealing if a contract is being executed the benefits of which are generally available to all regional center consumers and families.

#### **§ 54529. General Prohibition of Conflicts of Interest for Regional Center Employees, Contractors, Agents and Consultants.**

##### Specific Purpose

This section prohibits regional center employees, contractors, agents, and consultants from participating in any transaction or decision in which his or her personal interests conflict with the individual's duty to act in the best interest of the regional center or consumers. The section seeks to impose the common law doctrine against conflicts of interest to those acting on the regional center's behalf.

##### Rationale for Necessity

DDS determines that this provision is necessary to effectuate the requirements of Welfare and Institutions Code sections 4626 and 4627 that regional center employees and others acting on the regional center's behalf act in the best interests of the regional center and consumers, and are not influenced by his or her own financial interests. A provision disqualifying an employee, contractor, agent or consultant from participating in any transaction or decision where he or she has a present or potential conflict of interest is appropriate. As discussed, DDS has broad discretion to impose conflict of interest requirements for regional center officials under Welfare and Institutions Code section 4627. This discretion includes authority to impose a disqualification requirement that may or may not exist in the common law doctrine against conflicts of interest. Subdivision (d)'s requirement that common law principles be applied is consistent with the Attorney General's conclusion that even where there exists statutory provisions addressing conflicts of interest,

common law principles may still be applied. (See 92 Ops.Cal.Atty.Gen 19 and 88 Ops.Atty.Gen. 32.) Additionally, the disqualification requirement is similar to a provision that existed in former regulation section 54523, subdivision (c)(4)(C), which specified that conflicts could be mitigated by the “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.”

### **§ 54530. Employees, Contractors, Agents and Consultants Conflicts with Regional Center Duties.**

#### Specific Purpose

This new section is similar to prior section 54521(a)(4) which addressed the evaluation of applications for employment by regional center employees and situations wherein the employee acts as a supervisor of his or her family member. This section is now also directed towards contractors, agents and consultants and covers applications for bid for a position or a contract at the regional center submitted by a family member.

#### Rationale for Necessity

This regulation addresses conflict-of-interest situations that can occur in day-to-day regional center operations. Based upon DDS’ experience, there were instances where regional centers employees were evaluating family members who applied to become regional center vendors. DDS views these circumstances as creating potential conflicts where regional center employees may not act in the best interests of the regional center or consumers because a family member is involved. DDS wants regional centers to be aware of and identify these types of circumstances, and to develop conflict mitigation plans as appropriate for these types of situations.

### **§ 54531. Conflict of Interest Reporting Statements for Employees, Contractors, Agents and Consultants, Time for Filing.**

#### Specific Purpose

The subject matters of this section were previously found in former section 54522 regarding Conflict of Interest Disclosure – Content of Statements, Procedures and Actions required for Resolution. The prior section 54522 required regional center employees and governing board members to submit conflict disclosure statements. Now, this section also applies to contractors, agents and consultants. The prior provision requiring governing board members and regional center executive directors to submit conflict-of-interest reporting statements is now found in section 54532. The purpose of the section is to continue the requirement that individuals complete and file conflict-of-interest reporting statements annually and when there is a change of status. This section specifies the timelines for such submissions. It

adds “familial relationship” as a type of change in status and identifies the regional center executive director as the individual who will review the statements.

### Rationale for Necessity

This amendment is necessary to comply with Welfare & Institutions Code sections 4626 and 4627, and benefits the State of California by ensuring that regional center employees, contractors, agent and consultants file conflict to interest disclosure statements.

Subdivisions (a), (b) and (c) are necessary to implement the requirements of Welfare and Institutions Code section 4626, subdivisions (e), (f) and (g), which require a regional center to submit a conflict-of-interest reporting statement by August 1st of each year or when a person becomes employed by a regional center.

With regards to subdivision (d), for consistency with reporting timelines, the Department implements a 30 calendar day timeline activated by a change of status that is similar to the 30 calendar day timeline triggered by selection, appointment, or election as discussed in Welfare & Institutions Code 4626, subdivision (f).

Subdivision (e) is necessary to ensure that a regional center executive director or acting executive director is aware of potential conflicts among employees, contractors, agents and consultants. It is also needed to identify the executive director or acting executive director as the individual responsible for reviewing the statements as required by Welfare and Institutions Code section 4626, subdivision (k).

### **§ 54532. Conflict of Interest Reporting Statements for Regional Center Governing Board Members and Regional Center Executive Directors, Time for Filing.**

#### Specific Purpose

The subject matter of this section was previously found in former section 54522 regarding Conflict of Interest Disclosure – Content of Statements, Procedures and Actions required for Resolution. Prior section 5422 covered regional center employees and governing board members. This new section covers both governing board members and regional center executive directors. The purpose of the section is to continue the requirement that individuals complete and file conflict of interest statements annually and when there is a change of status. This section specifies the timelines for such submissions. It adds “familial relationship” as a type of change in status occurs and identifies the Department and the regional center governing board as entities that will review the statements.

## Rationale for Necessity

This provision is necessary to comply with Welfare & Institutions Code sections 4626 and 4627, and benefits the State of California by ensuring that regional center board members and executive directors are held to the highest ethical standards. The regulation continues the disclosure procedure and specifies timelines to ensure that disclosure is made in a timely manner.

Subdivisions (a), (b) and (c) are necessary to implement the requirements of Welfare and Institutions Code section 4626, subdivisions (e), (f) and (g), which require a regional center board member and executive director to submit a conflict-of-interest reporting statement by August 1st of each year or when the board member or executive director is selected, appointed or elected.

Subdivision (d) is necessary to implement the requirement of Welfare and Institutions Code section 4626, subdivision (h), which requires a regional center board member to complete and file a subsequent conflict-of-interest reporting statement upon a change of status that creates a potential or present conflict. Welfare and Institutions Code section 4627, subdivision (c), affords DDS the discretion to impose the same requirement to regional center executive directors. DDS has the discretion to choose 30 days as the time period to file a subsequent reporting statement, and this time period is consistent with the 30 day period found in Welfare and Institutions Code section 4626, subdivision (f).

Subdivisions (e) and (f) are necessary to implement the requirement found in Welfare & Institutions Code section 4626, subdivisions (i) and (l), that conflict-of-interest reporting statements be review and submitted to DDS. DDS selected 10 days as the time period for the regional center board to submit conflict of interest reporting statements to DDS to remain consistent with the time period specified in Welfare and Institutions Code section 4626, subdivision (k).

### **§ 54533. Present or Potential Conflict of Interest Identified, Proposed Conflict Resolution Plan Content, Timelines for Submission of Proposed Conflict Resolution Plan.**

#### Specific Purpose

This section covers regional center board members, executive directors, employees, contractors, agents, and consultants. It provides that present or potential conflicts of interest shall be eliminated or mitigated and managed through a Conflict Resolution Plan. The regulation identifies to whom the specified individuals shall submit their completed Conflict of Interest Reporting Statement, their resolution plans, and the timeline for doing so. The section requires a detailed description of the conflict (i.e. type of interest, relationship, roles, and duties); an explanation of how the proposed actions will resolve the conflict; the identification of the person who will be responsible for ensuring that the plans are implemented; and an explanation of the

oversight or monitoring mechanisms. The section indicates that unresolved present or potential conflict of interests shall be posted on the website to promote transparency if resolution does not occur within a specified time period. The posting shall remain until resolution. The section sets forth what a resolution plan must contain.

### Rationale for Necessity

This amendment is necessary to comply with Welfare & Institutions Code sections 4626 and 4627.

Subdivisions (a), (b), and (d) are necessary to implement the requirements of Welfare & Institutions Code section 4626, subdivisions (k) and (l), that if a conflict of interest cannot be eliminated, a plan that proposes mitigation measures be submitted to the Department. Thirty days was selected as the time period to submit a conflict mitigation plan to remain consistent with the time period specified in Welfare and Institutions Code section 4626, subdivisions (k) and (l).

Subdivisions (c) and (e) are potentially applicable in two different types of circumstances. First, as discussed above, subdivisions (b) and (d) require that if a conflict of interest cannot be eliminated, the conflict reporting statement and resolution plan shall be submitted to DDS for review. If after reviewing the submitted reporting statement and plan, DDS independently identifies an additional present or potential conflict of interest not initially reported by the regional center, the Department will notify the regional center of the additionally discovered conflict. The regional center shall then complete a conflict of interest reporting form and conflict resolution plan that eliminates or mitigates and manages the additional conflict identified by DDS. Second, subdivisions (c) and (e) can be applicable in instances where DDS independently identifies a conflict of interest through its other interactions with the regional centers. DDS routinely communicates with regional centers on a variety of issues and concerns and periodically audits regional center activities. During these communications or audits, DDS can become aware of circumstances that create a present or potential conflict of interest. In these situations, subdivisions (c) and (e) provide that DDS will notify the regional center of the independently identified conflict, and the regional center will complete and submit a reporting statement and resolution plan. Subdivisions (c) and (e) require the regional center to prepare a Conflict Resolution Plan for conflicts identified by DDS because the regional centers are in the best position to propose mitigation measures for their employees, contractors, agents consultants, governing board members or executive directors.

Subdivisions (d) and (e) require the Department, State Council and area board to receive a copy of the Conflict of Interest Reporting Statement and the proposed Conflict Resolution Plan. Welfare and Institutions Code section 4626, subdivision (l), specifically requires the submission of the conflict-of-interest statement and mitigation plan to DDS and the State Council. Welfare and Institutions Code section

4628 requires area board approval for waiver of statutory requirements that apply to the governing boards of the regional center. DDS reads Welfare and Institutions Code section 4626, subdivisions (a), (d) and (l), as imposing an obligation that regional center board members and regional center executive directors be free from conflicts of interest. If a board member or executive director cannot be free from a conflict and a conflict mitigation plan is proposed, this constitutes a request to waive a statutory requirement, which in turn requires area board approval under section 4628. Thus, DDS reads the statutory scheme as requiring area board approval for the Conflict Resolution Plans. However, even if area board approval was not statutorily required, DDS still has discretion to require area board review pursuant to Welfare and Institutions Code section 4627, subdivision (c). Subdivisions (d) and (e) are consistent with the prior versions of the conflict-of-interest regulations. Prior section 54523, subdivision (b), required conflict waiver packets involving regional center governing board members to be sent to the applicable area board and to the State Council.

Welfare & Institutions Code section 4629.5 promotes transparency and requires regional centers to post a non-exclusive list of specified information on their websites. Based upon broad authority granted by Welfare & Institutions Code section 4627, the Department has determined that it is in the best interests of regional center consumers and families to require the posting of specified Conflict of Interest Reporting Statements as set forth in subdivision (f).

The Conflict of Interest Resolution Plan requirements set forth in subdivision (g) are necessary to implement Welfare & Institutions Code section 4626. The statute provides that when a present or potential conflict of interest cannot be eliminated, a plan proposing mitigation measures must be submitted. The regulation specifies the information typically needed by the Department to assess the nature of a present or potential conflict of interest, and to determine whether the proposed measures will suffice to eliminate or mitigate the conflict. In addition, the Department can specify what actions may be needed to eliminate, or mitigate and manage a conflict of interest. These actions are in line with the non-exclusive list contained within former regulation section 54523 (i.e. nonparticipation, reassignment, non-involvement). Based upon the broad authority granted by Welfare & Institutions Code 4627, the Department has included additional measures such as divestiture, resignation, and termination/refrain from relationship. The Department has determined that these standards and safeguards are reasonable to promote compliance. The process benefits the State of California by ensuring that individuals are held to the highest ethical standard thereby protecting the well-being of consumers and ensuring the proper and effective use of public resources.

Specifically, DDS requires the information specified in subdivision (g)(1) so that it may fully and accurately understand the facts that give rise to the conflict of interest so that this information is available when the Department judges the adequacy of the plan to eliminate or mitigate the conflict. DDS chose the conflict mitigation options specified in subdivision (g)(2)(A) through (D) because based upon the Department's

prior experiences dealing with regional center conflict-of-interest situations, these were the more common steps that could be undertaken to eliminate or mitigate a conflict.

#### **§ 54534. Conflict Resolution Plan Review, Procedures.**

##### Specific Purpose

Broadly stated, this section provides that the local area board and State Council have 90 calendar days to submit their approval or disapproval of a resolution plan for a governing board member or executive director from the date of receipt of the Conflict of Interest Statement and Conflict Resolution Plan. The Department has the ability to make determinations about whether a Conflict Resolution Plan is sufficient to eliminate or mitigate a conflict or whether additional requirements must be imposed to eliminate or mitigate the conflict. DDS has the final authority to determine whether additional requirements must be imposed to eliminate or mitigate a conflict.

The section further states that while the Conflict Resolution Plan is being reviewed for sufficiency, the individual is prohibited from engaging in activities that constitute a present or potential conflict of interest. The section provides for 30 calendar days in which the Department may issue its modification, approval or denial of the plan. If the plan is denied, the individual has 30 calendar days to resign or eliminate the conflict of interest. The Department may, at its discretion, grant an extension of time to eliminate the conflict. If the plan is approved, the plan must be implemented within 30 days, unless the Department grants an extension of time. A new Conflict Resolution Plan is required when there is a change in status that creates a present or potential conflict of interest. Regional center governing boards and regional centers are required to retain a copy of Conflict of Interest Reporting Statements and approved Conflict Resolution Plans consistent with record retention requirements.

##### Rationale for Necessity

This amendment is necessary to comply with Welfare & Institutions Code sections 4626 and 4627, and benefits the State of California by ensuring that individuals associated with the regional centers are held to the highest ethical standards. The Department has broad authority and discretion to impose the requirements found in this provision under Welfare and Institutions Code section 4627.

Subdivision (a) is necessary because, as described above, DDS reads the statutory scheme, particularly Welfare and Institutions Code sections 4626 and 4628, as affording the State Council and area boards the authority to approve or disapprove a proposed Conflict Resolution Plan. However, if either the State Council or area board waives its duty to review and approve or disapprove a plan, then DDS reads the statutory scheme as permitting the Department in those circumstances to disapprove the proposed plan. This will permit DDS to administratively close out its review of a pending proposed Conflict Resolution Plan where either the area board

or State Council has effectively disapproved the plan by failing to act upon it. Subsection (a) reiterates that DDS will not approve a proposed Conflict Resolution Plan without the approval of both the area board and the State Council. This is consistent with prior regulatory section 54524, subdivision (a). Because an area board and the State Council may not always meet within 30 days, DDS has determined that 90 days is sufficient for either entity to review and approve or reject a proposed plan.

The Department has determined that the procedures and requirements set forth in subdivisions (b) through (l) are appropriate means by which to implement the Department's statutory duties to review conflict-of-interest reporting statements and plans that propose to mitigate conflicts of interest as required by Welfare and Institutions Code section 4626, subdivision (l). DDS has carefully considered the best means by which to implement the duties imposed by sections 4626 and 4627, and determined that the procedures established in these subdivisions are the most administratively efficient means by which to ensure that individuals associated with the regional centers are acting in the regional center and consumers' best interests. DDS chose the 30 day time periods specified in subdivisions (f), (g), (h) and (i) because Welfare and Institutions Code section 4626 establishes 30 days as a reasonable time period in which various tasks related to the conflict-of-interest requirements should be completed.

#### **§ 54535. Sanctions.**

##### Specific Purpose

The subject matter of this section was previously found in former section 54525. The positions of executive director, contractor, agent, and consultant were added to the list of individuals who could be found to have violated the conflict of interest regulations. The section specifies that if a violation of the conflict regulations is not resolved or eliminated, then the Department may commence procedures for termination or nonrenewal of the regional center contract. The language regarding the withholding of funding found in the prior regulations has been deleted.

##### Rationale for Necessity

This section is necessary to make clear that violations of these conflict-of-interest regulations must be resolved. The requirement that a regulatory violation must be corrected is necessary to implement DDS' statutory obligation to ensure that those associated with the regional center act in the best interests of the center's consumers and families. The sanction specified in subdivision (b) is necessary to ensure that the Department's directive to take corrective action is not ignored or disregarded.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS.**

The Department has relied upon the Economic Impact Assessment (EIA) and SB 74.

**ECONOMIC IMPACT ASSESSMENT/ANALYSIS.**

Please see EIA.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS.**

The proposed regulations are a continuation of the current emergency regulations. These proposed regulations implement SB 74 which enhance, refine, and clarify the former regulations regarding conflict-of-interest review and reporting thereby benefiting the State of California, consumers, their families and the specified individuals.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

The Department did not consider alternatives to the proposed regulations in that these regulations are based upon the specified sections of the Welfare & Institutions Code and modeled after the laws governing conflicts of interest applicable to public officials.