

Title 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

ACTION: **Notice of Proposed Rulemaking**
 Title 17, California Code of Regulations

SUBJECT: **CONFLICT-OF-INTEREST STANDARDS AND PROCEDURES FOR
REGIONAL CENTER BOARD MEMBERS, EMPLOYEES AND OTHERS
ACTING ON THE REGIONAL CENTER'S BEHALF**

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Developmental Services will conduct written proceedings during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereafter referred to as comments) relevant to the action described in this notice.

HEARING

No hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. For individuals with disabilities, should a public hearing be scheduled, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of written public hearing materials into Braille, large print, audiocassette, or computer disk. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

To request such services or copies of materials in an alternate format, please write to: Office of Legislation & Regulations, 1600 Ninth Street, Room 322, MS 3-10, Sacramento, California 95814 or call (916) 654-1884, or use the California Relay Service by dialing 711.

WRITTEN COMMENT PERIOD

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Legislation & Regulations by 5 p.m. on February 28, 2013, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: eric.gelber@dds.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier, "Conflict of Interest: Regional Center," in the subject line to facilitate timely identification and review of the comment; or
2. By fax transmission: (916) 654-1913; or hand-deliver to: 1600 Ninth Street, Room 322, Sacramento, California 95814.
3. By mail to: Office of Legislation & Regulations, 1600 Ninth Street, Room 322, MS 3-10, Sacramento, California 95814.

It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

For purposes of implementing Senate Bill (SB) 74 (Statutes of 2011, chapter 9), amending Welfare & Institutions Code section 4626, the proposed regulations would establish the requirements to ensure that regional center board members, and employees act in the course of their duties solely in the best interest of the regional center consumers and their families without regard to the interests of any other organization with which they are associated or persons to whom they are related. Board members, employees, and others acting on the regional center's behalf, as defined in the proposed regulations, shall be free from conflicts of interest that would adversely influence their judgment, objectivity, or loyalty to the regional center, its consumers, or its mission.

Policy Statement Overview

Problem Statement: SB 74 requires the Department to implement, interpret, or make specific enacted provisions as a result, regulations are required. Existing Department regulations do not address the provisions specified in SB 74.

Objectives: Broad objectives of this proposed regulatory action are to

- Implement SB 74
- Provide well-defined terms and implement procedures to identify and address conflict of interest situations for specified individuals

Benefits: Anticipated benefits, including non-monetary benefits, from this regulatory action are:

- Ensure that specified individuals act in the best interest of the regional center consumers and their families
- Provide specific guidance as to the procedures for identifying and handling conflict of interest matters
- Clarifies terms
- Publishes a standard conflict-of-interest reporting statement to be completed by specified individuals who have decision making or policymaking authority or authority to obligate the regional center's resources.

Evaluation as to whether the proposed regulations are inconsistent or incompatible with existing state regulations:

The Department has evaluated this proposal and determined that it will not be inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department's existing regulations.

AUTHORITY & REFERENCE CITATIONS

The Department is proposing to adopt, amend, or repeal, as applicable, the following regulation sections under the authority provided in Welfare & Institutions Code section 4627. This proposal implements, interprets and makes specific Welfare & Institutions Code section 4626.

Amend 54500 to ensure that those acting on the regional center's behalf make decisions relative to the regional center that are in the best interest of the center's consumers and families.

Amend 54505 to set forth well-defined terms for the determination of conflicts of interest for the individuals specified in proposed regulations.

Amend 54520 to identify the positions creating conflicts of interest for Regional Center Governing Board Members and Executive Directors.

Repeal 54521 to organize the Conflict of Interest Regulations.

Adopt 54521 to identify the positions creating conflicts of interest for Regional Center Advisory Committee Board Members.

Repeal 54522 to organize the Conflict of Interest Regulations.

Adopt 54522 to set forth the financial interests in decisions that create conflicts of interests for Regional Center Governing Board Members and Executive Directors.

Repeal 54523 to organize the Conflict of Interest Regulations.

Adopt 54523 to set forth the financial interests in contracts that create conflicts of interests for Regional Center Governing Board Members and Executive Directors.

Repeal 54524 to organize the Conflict of Interest Regulations.

Adopt 54524 to set forth a general prohibition of conflicts of interest for Regional Center Governing Board Members and Executive Directors

Repeal 54525 to organize the Conflict of Interest Regulations.

Adopt 54525 to prohibit the referral of consumers to any business entity, entity or provider in which a board member or executive director has a conflict of interest and to require the individual to eliminate the conflict or submit a Conflict Resolution Plan.

Adopt 54526 to identify the positions creating conflicts of interest for Regional Center Employees, Contractors, Agents and Consultants.

Adopt 54527 to set forth the financial interests in decisions that create conflicts of interests for Regional Center Employees, Contractors, Agents and Consultants.

Adopt 54528 to set forth the financial interests in contracts that create conflicts of interests for Regional Center Employees, Contractors, Agents and Consultants.

Adopt 54529 to provide for a general prohibition of conflicts of interest for Regional Center Employees, Contractors, Agents and Consultants.

Adopt 54530 to identify additional conflicts of interest for regional center employees, contractors, agents, and consultants.

Adopt 54531 to require the filing of Conflict of Interest Reporting Statements by Employees, Contractors, Agents and Consultants within specified time periods.

Adopt 54532 to require the filing of Conflict of Interest Reporting Statements by Regional Center Governing Board Members and Regional Center Executive Directors within specified time periods.

Adopt 54533 to provide the method for submitting a written proposed Conflict Resolution Plan to DDS when a present or potential conflict of interest has been

identified for covered persons. Specify the required elements of the proposed Conflict Resolution Plan, including a thorough explanation of the proposed actions that will be taken by specified individuals, in specified timeframes, to eliminate or mitigate and manage the present or potential conflict of interest.

Adopt 54534 to provide for submission and review of the proposed plan to the area board, the State Council and the Department. Provide that Department's approval of a proposed Conflict Resolution Plan is not valid unless it is based upon full disclosure by the individual with the present or potential conflict of interest and the consequences of nondisclosure or misrepresentation.

Adopt 54535 to specify the consequences for violating the proposed regulations.

FORMS INCORPORATED BY REFERENCE

The Department incorporates by reference Form DS 6016 (New 8/2012) "Conflict of Interest Reporting Statement".

MANDATED BY FEDERAL LAW OR REGULATIONS

N/A

OTHER STATUTORY REQUIREMENTS

N/A

LOCAL MANDATE

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

FISCAL IMPACT

The Department has determined that the proposed regulations would not impose any additional cost or savings requiring reimbursement under Government Code section 17500, et seq., any non-discretionary cost or savings to local agencies or school districts, or any cost or savings in federal funding to the State. The Department has determined that there will be no cost or savings to any State Agency pursuant to section 11346.1(b) or 11346.5(a)(6) of the Government Code.

HOUSING COSTS

The Department has determined that the proposed regulations will have no impact on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Department has made an initial determination that the regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Department analyzed whether and to what extent this proposal affects the following:

1. The creation or elimination of jobs within the State of California. This proposal will likely neither create nor eliminate jobs. The proposal is only directed to Regional Center Board Members, Executive Directors, employees and those acting on a regional center's behalf, and addresses the review for and resolution of conflict of interest situations to ensure that such individuals perform their duties in the best interest of regional center consumers and their families.
2. The creation of new businesses or the elimination of existing businesses within the State of California. Based on the aforementioned reasons, this proposal is not expected to create new businesses nor eliminate existing businesses.
3. The expansion of businesses currently doing businesses within the State of California. Based on the aforementioned reasons, businesses are not expected to expand.
4. The benefits of the regulations to the well-being of California consumers and California residents. Regional centers are nonprofit private corporations that contract with the Department to provide or coordinate services and supports for persons with developmental disabilities. This proposal is designed to assist the Department perform its duties to monitor and to require resolutions of conflict of interest situations in compliance with State law. The proposal indirectly increases the benefits to the well-being of consumers. It works to ensure that specified individuals will be free from conflicts of interest that could adversely influence their judgment, objectivity, and loyalty to the consumers and the regional center's mission. These individuals also owe loyalty

to the public and the proposed regulations work to keep personal or private financial considerations on the part of these individuals out of the decision-making process.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORT

None.

SMALL BUSINESS DETERMINATION

The proposed regulations will not affect small businesses because they affect only board members, employees, and others acting on behalf of the State's 21 regional centers, which are established as nonprofit corporations pursuant to the Lanterman Developmental Disabilities Services Act (Welfare & Institutions Code Section 4500 et seq.). Under the Administrative Procedures Act (Government Code Section 11342.610(b)(6)), "small business" does not include "[a]n entity organized as a nonprofit institution."

ALTERNATIVES STATEMENT

In accordance with Government Code section 11346.5(a)(13), the Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The proposed regulations are required by Senate Bill (SB) 74 (Statutes of 2011, chap. 9, effective March 24, 2011).

CONTACT PERSON

Inquiries regarding the proposed action or substance of the proposed action described in this notice may be directed to:

Eric Gelber

Assistant Director
Office of Legislation and Regulations
Department of Developmental Services
1600 Ninth Street, Room 322, MS 3-10
Sacramento, CA 95814
Email: eric.gelber@dds.ca.gov
Phone: (916) 654-1884
Fax: (916) 654-1913

If Eric Gelber is unavailable, inquiries regarding the proposed action or substance of the proposed action described in this notice may be directed to:

Christina Morales
Senior Staff Counsel
Office of Legal Affairs
Department of Developmental Services
1600 Ninth Street, MS 2-14
Sacramento, CA 95814
Email: christina.morales@dds.ca.gov
Phone: (916) 654-3405
Fax: (916) 654-1716

In any inquiries or written comments, please identify the action by using the Department regulations package identifier, Conflict of Interest: Regional Center.

AVAILABILITY OF STATEMENT OF REASONS,
TEXTS OF PROPOSED REGULATIONS, AND
RULEMAKING FILE

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Legislation & Regulations, 1600 Ninth Street, Room 322, MS 3-10, Sacramento, California 95814 will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file).

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 654-1884 (or the California Relay Service at 711), send an email to eric.gelber@dds.ca.gov, or write to the Office of Legislation & Regulations at the

address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Legislation & Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Legislation & Regulations.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dds.ca.gov by clicking on these links, in the following order: Laws & Regulations; Emergency and Proposed Regulations.