

**DEPARTMENT OF DEVELOPMENTAL SERVICES
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 passed and the Governor signed Senate Bill No. 74 (ch.9, Stats. 2011), a bill that, among other things, added section 4620.3 and 4622.5 and amended sections 4626, 4626.5 and 4627 of the Welfare & Institutions Code. Effective March 24, 2011, Senate Bill, No. 74 (SB 74) required the Department of Developmental Services (Department) to adopt emergency regulations to establish standard conflict-of-interest reporting requirements regarding 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 statutes set forth in SB 74.

The following statutes are contained in SB 74:

1. Welfare & Institutions Code section 4620.3 (added) requires the Department, in collaboration with stakeholders, to develop best practices for the administrative management of regional centers and for regional centers to use when purchasing services for consumers and families. The purpose of this statute is to provide more uniformity and consistency in the administrative practices and services of the regional centers throughout the state, promote appropriateness of services, maximize efficiency of funding, address the state budget deficit, ensure consistency with Lanterman Act values, maintain entitlement to services, and improve cost-effectiveness. In developing regional center administrative management best practices, the Department is required to consider policies and procedures that ensure prudent fiscal and program management by regional centers, effective and efficient use of public resources, consistent practices to maximize the use of federal funds, detection and prevention of fraud, waste, and abuse, and proper contracting protocols.
2. 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, as determined by the Department, demonstrating that the composition of the board is in compliance with section 4622. Welfare & Institutions Code section 4622 requires the governing 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.

3. 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 statement to be completed, in specified time periods, by each regional center governing board member, the executive director, every administrator, every program director, every service coordinator, and every employee who has decision-making or policy-making authority or authority to obligate the regional center's resources. The statute calls for a review process and associated civil penalties for providing false information.
4. 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.
5. 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 statutes. Finally, the Department is required to adopt regulations to develop standard conflict of interest reporting requirements. The statute indicates that "The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of sections 11346.1 and 11349.9 of the Government Code and the department is hereby exempt from that requirement". Government Code section 11346 pertains to emergency regulation requirements. The statutory language is pertinent in that these regulations mirror the emergency regulations and continue to benefit the State of California by preserving public peace, health and safety and general welfare.

As required by Welfare & Institutions Code section 4627, the Department has promulgated emergency regulations under Title 17, California Code of Regulations, Division 2, Chapter 3, Subchapter 3, Article 1, Sections 54500 et

seq. The Department proposes to make the emergency regulations permanent. The emergency regulations repeal, amend, and adopt conflict of interest provisions.

As required by SB 74, the Department has implemented operational standards for regional center governing board members, executive directors, employees and those acting on a regional center's behalf. The proposed regulations benefit the State of California, including consumers and families, by ensuring that such individuals are held to the highest ethical standards. These regulations protect consumers' well-being by promoting the appropriate use of decision and policy making authority held by specified individuals. These regulations also promote accountability and proper use of public resources. Conflict of interest laws are based upon the notion that certain individuals owe loyalty to the public without allowing their personal and private financial considerations to enter into the decision-making process. The Department modeled these proposed conflict of interest regulations after the Political Reform Act of 1974 (Government Code 81000 et seq.) and its accompanying regulations (Title 2 California Code of Regulations 18700 et seq.) while taking into account the need to simplify the concepts to facilitate their practical application.

SPECIFIC PURPOSE AND RATIONALE FOR NECESSITY

§ 54500. Authority and Scope.

Specific Purpose

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

This amendment is necessary and benefits the State of California by complying with Welfare & Institutions Code section 4626 and 4627 and clarifying terminology for the affected individuals.

§ 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.

§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 of Board" or "Member", refined, and moved to section 54505(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 amended 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 expanded to include additional entities and providers such as supported and independent living, housing providers, and entities formed in support of the regional center. This benefits the State of California in that the proposed regulation ensures that the appropriate entities and providers are held to the highest ethical standards. The definition benefits consumers and families since it clarifies that the definition is not applicable to consumers or family member of consumers who receive vouchers for consumer services.

Rationale for Necessity

This amendment is necessary to ensure that the regulations apply to those entities and providers that may have individuals who are in decision or policy making positions. The additional language captures a conflict of interest situation wherein an individual may secure goods or services without technically purchasing or physically obtaining them.

§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.

§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 comply with Welfare & Institutions Code section 4626 and 4627. It benefits the specified individuals beholden to the proposed regulations because the definition clarifies the circumstances that give rise to such authority thus triggering their responsibility to be vigilant of conflict of interest situations.

§54505(f)

Specific Purpose

Subsection (f) is renumbered subsection (e).

Rationale for Necessity

This amendment is necessary to organize the definitions.

§54505(f)

Specific Purpose

The language incorporates the definition of “Family Member” (shifted from former section 54521(a)(4)(B)) to the section of definitions. This move clarifies that the definition applies to all sections. The language is amended to include an individual’s domestic partner and step-siblings.

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.

§54505(g)

Specific Purpose

The definition of "Governing Board" was deleted, renamed “Regional Center Governing Board”, and shifted to §54505(k) below. This subsection defines “Member of the Board” or “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 of the Board” or “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.

Specific Purpose

The purpose of this section is to specify that a conflict of interest is created when a Regional Center Governing Board Member, Regional Center Executive Directors or a family member of such person is one of the listed positions for a business entity, entity, or provider as defined in these regulations. It adds new positions: governing board member, board committee member, agent, contractor, consultant, and a person who has decision or policy making authority to the list of positions that give rise to conflict of interest situations. It clarifies that there is no conflict of interest for tangential employees or contractors of a state or local government entity. This exception does not apply to employees of the Department of Developmental Services. Also, there is no conflict of interest for family members of consumers who receive regional center services available to all eligible consumers. The subsection regarding “advisory committee board members” has been moved to section 54521. The subsection pertaining to the description of a “financial interest” has been moved to section 54522. The 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 sections 54525, 54533 and 54534.

Rationale for Necessity

This amendment is necessary and benefits the State of California by ensuring that the regulations apply to individuals who are in positions with decision or policy making authority and, potentially, have an incentive to engage in financial self-dealing. It is necessary to conform to Welfare & Institutions Code sections 4626 and 4627. The shift of subsections to other sections is necessary for the clarification and organization of the regulations.

§54521(a)(1)

Specific Purpose

The section regarding the positions creating conflicts of interest for regional center employees has been moved to section 54526. The section discussing financial interests in decisions creating a conflict of interest for regional center employees has been moved to section 54527. This section 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. The language adds board committee member, owner, partner, shareholder, agent, manager, contractor, and consultant. The language “obtains or secures” is added for consistency with the definition of “Business Entity, Entity, or Provider”. The section retains the definition of “Fiscal Matters” from the former section 54520 and adds “making fiscal commitments”.

Rationale for Necessity

This amendment is necessary and benefits the State of California by ensuring that the regulations apply to individuals who are in positions with decision or policy making authority and, potentially, have an incentive to engage in financial self-dealing. The language captures an additional conflict of interest situation wherein an individual makes fiscal commitments. The amendment is necessary to conform to Welfare & Institutions Code sections 4622, 4626 and 4627. The movement of subsections to different sections is necessary to organize the regulations.

§54521(a)(2) and (3)

Specific Purpose

The deleted subsections pertaining to devotion of attention and dual compensation are addressed in section 54529.

Rationale for Necessity

This amendment is necessary to organize the regulations.

§54521(a)(4)

Specific Purpose

The deleted subsection pertaining to a regional center employee participating in the evaluation of an application for employment has been moved to section 54530.

Rationale for Necessity

This amendment is necessary to organize the regulations.

§54521(b)

Specific Purpose

The deleted subsections pertaining to the resolution of a conflict of interest is addressed in 54533 and 54534.

Rationale for Necessity

This amendment is necessary to organize the regulations.

§54522.

Specific Purpose

Subsection (a) discussed reporting statement procedures for regional center employees and governing board members. This subject matter has been deleted and moved to sections 54531 and 54532 respectively. 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 exercising his or her decision or policy making authority when he or she knows or has reason to know it will impact his or her or a family member's financial interest. The new subsection (b) clarifies the term financial interest.

Rationale for Necessity

This amendment is necessary to comply with Welfare & Institutions Code sections 4626 and 4627 and benefits the State of California by holding certain individuals to the highest ethical standards. The term "financial interest" is defined for this section which benefits the individuals affected by the regulation. The definition is based upon Government Code section 87103 and Title 2 California Code of Regulations 18703.1 through 18703.5. The Department simplified and refined the definition to take into account potential conflict of interest situations that the Department has noted. The movement of the subject matters pertaining to reporting statement procedures and conflict of interest resolution is needed to organize the regulations.

§ 54523.

Specific Purpose

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

The section reestablishes the prohibition moved from section 54520(b). The section extends to executive directors and clarifies 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. The terms “financially interested” and “participation in the making of a contract” are defined which benefits the individuals affected by the regulation. Finally, there are actions that an individual must take, prior to the first consideration of a potential contract, when a present or potential conflict is identified. The actions are not required when the financial benefit is available to regional center consumers or their families.

Rationale for Necessity

This amendment is necessary to conform to Welfare & Institutions Code sections 4626 and 4627. The prohibition is modeled after Public Contract Code section 1090 which prohibits Members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in a contract made by them. It benefits the State of California in that the proposed regulation reestablishes a prohibition from former section 54520 and prevents regional center governing board members and, now, executive directors from profiting or gaining an advantage or benefit from a conflict of interest situation. The meaning of “financially interested” is based upon a jury instruction that has been judicially approved for use in prosecutions for violations of section 1090 (People v. Honig 48 Cal.App.4th 289). The term “participation in making” is based upon case law (Millbrae Assn. for Residential Survival v. City of Millbrae 262 Cal.App.2d 222). The movement of the subject matter conflict of interest resolution is needed to organize the regulations.

§ 54524.

Specific Purpose

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

The new section establishes a general prohibition of regional center governing board members and executive directors participation 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. This section is governed by the Common Law Doctrine.

Rationale for Necessity

This amendment is necessary and benefits the State of California by ensuring that these individuals are held to high ethical standards. It establishes a general prohibition to address conflict of interest situations that compromise certain individuals' loyalties to act in the best interest of the public, including regional center consumers. The Courts and the Office of the Attorney General have found conflicts of interest by public officials may violate both the common law and statutory prohibitions. The Department adopts this approach and will apply common law to make determinations about potential conflicts of interest situations that are not specifically addressed in the proposed regulations. The common law is a body of law that has been made by precedential judicial decisions and can be found in the reported California Supreme Court and appellate court cases. The movement of the subject matter conflict of interest resolution is needed to organize the regulations.

§ 54525.

Specific Purpose

This section discussed sanctions. 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 or continuing to serve 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 these individuals are held to the highest ethical standards. This amendment continues a prohibition against referrals that was in section 52520. It also continues to provide for the submission of a plan to resolve conflict of interest situations that was contained in section 54522. The movement of the subject matter sanctions is needed to organize the regulations.

§ 54526.

Specific Purpose

The purpose of this section is to specify 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 is one of the listed positions for a business entity, entity, or provider as defined in these regulations. It adds new positions: governing board member, board committee member, agent, contractor, consultant, and a person who has decision or policy making authority to the list of positions that give rise to conflict of situations. It

clarifies that there is no conflict of interest for tangential employees. This exception does not apply to employees of the Department of Developmental Services.

Rationale for Necessity

This amendment is necessary and benefits the State of California by ensuring that the regulations apply to individuals who are in positions with decision or policy making authority and, potentially, have an incentive to engage in financial self-dealing. The amendment is necessary to conform to Welfare & Institutions Code sections 4626 and 4627.

§ 54527.

Specific Purpose

The section prohibits regional center employees, contractors, agents, and consultants from using their positions to make, participate in making, or influence a regional center decision which he or she knows or has reason to know will impact his or her or a family member's financial interest. The section defines the term "financial interest".

Rationale for Necessity

This amendment is necessary to comply with Welfare & Institutions Code sections 4626 and 4627 and benefits the State of California by holding certain individuals to the highest ethical standards. The term "financial interest" is defined for this section which benefits the individuals affected by the regulation. The definition is modeled after Government Code section 87103 and Title 2 California Code of Regulations 18703.1 through 18703.5. The Department simplified and refined the definition to take into account conflict of interest situations the Department has noted. The movement of the subject matters pertaining to reporting statement procedures and conflict of interest resolution is needed to organize the regulations.

§ 54528.

Specific Purpose

The section prohibits a regional center employee, contractor, agent or consultant from being financially interested in any contract in which they participate in making in their official capacity. The terms "financially interested" and "participation in the making of a contract" are defined which benefits the individuals affected by the regulation. 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 amendment is necessary and benefits the State of California because it establishes a prohibition that would prevent the individuals or their family members from profiting or gaining an advantage or benefit from a conflict of interest situation. It is necessary to comply with Welfare & Institutions Code sections 4626 and 4627. The prohibition is modeled after Public Contract Code section 1090 which prohibits Members of the Legislature, state, county district, judicial district, and city officers or employees from being financially interested in a contract made by them. The definition of “financially interested” is based upon a jury instruction that has been judicially approved for use in prosecutions for violations of section 1090 (People v. Honig 48 Cal.App.4th 289). The term “participation in making” is based upon case law (Millbrae Assn. for Residential Survival v. City of Millbrae 262 Cal.App.2d 222).

§ 54529.

Specific Purpose

This subsection discussed the subject of sanctions. This subject matter has been deleted and moved to section 54535.

The new section establishes a general prohibition of regional center employees, contractors, agents, and consultants participation in any transaction or decision in which their personal interest conflicts with the individual’s duty to act in the best interest of the regional center or consumers. This section is governed by the Common Law Doctrine.

Rationale for Necessity

This amendment is necessary and benefits the State of California by ensuring that these individuals are held to the highest ethical standards. The regulation establishes a general prohibition to address conflict of interest situations that compromise certain individuals’ loyalties to act in the best interest of the public, including regional center consumers. The Courts and the Office of the Attorney General have found conflicts of interest by public officials may violate both the common law and statutory prohibitions. The Department adopts this approach and will apply common law to make determinations about potential conflict of interest situations that are not specifically addressed in the proposed regulations. The common law is a body of law that has been made by precedential judicial decisions and can be found in the reported California Supreme Court and appellate court cases. The movement of the subject matter sanctions is needed to organize the regulations.

§ 54530.

Specific Purpose

This new section was moved from the former 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. Further, this section is now also directed towards contractors, agents and consultants and covers applications for bid of a contract at the regional center submitted by a family member. The definition of “family member” was moved to section 54505.

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 these individuals are held to the highest ethical standards. The regulation addresses conflict of interest situations that commonly face such individuals in the day-to-day regional center operations. The movement of the definition of “family member” is needed to organize the regulations.

§ 54531.

Specific Purpose

This section was moved from the former 54522 regarding Conflict of Interest Disclosure – Content of Statements, Procedures and Actions required for Resolution. Initially, the section covered regional center employees and governing board members. Now, this section also covers contractors, agents and consultants. A similar provision covering governing board members and regional center executive directors is located in section 54532. 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 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 these individuals are held to the highest ethical standards. The regulation implementing a disclosure procedure and specifying timelines to ensure that disclosure is made in a timely manner. It is also needed to identify the executive director as the individual responsible for reviewing the statements. Contractors, agents and consultants must also be required to disclose his or her conflict status since these individuals may

have decision or policy making authority and act on the regional center's behalf. The discussion of governing board members and disclosure has been moved to a separate section for clarity and organization of the regulations.

§ 54532.

Specific Purpose

This section was moved from the former 54522 regarding Conflict of Interest Disclosure – Content of Statements, Procedures and Actions required for Resolution. Initially, the section covered regional center employees and governing board members. This section covers governing board members and, now, 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 amendment is necessary to comply with Welfare & Institutions Code sections 4626 and 4627, and benefits the State of California by ensuring that these individuals 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. It is also needed to identify the entities responsible for reviewing the statements. Executive directors must also be required to disclose his or her conflict status since these individuals also have decision or policy making authority.

§ 54533.

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 of Interest Plan. The regulation identifies to whom the certain individuals shall submit a copy of their completed Conflict of Interest Reporting Statement, their proposed 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 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 plan must contain.

Rationale for Necessity

This amendment is necessary to comply with Welfare & Institutions Code sections 4626 and 4627. It benefits the State of California by ensuring that these individuals are held to the highest ethical standards. It continues a procedure that eliminates or mitigates conflict of interest situations.

§ 54534.

Specific Purpose

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 governing board member or executive director from the date of receipt of the Conflict of Interest Statement. The section provides that the Department shall not approve a plan without the approval of both entities. The section clarifies that the Department may act alone to disapprove a plan if the entities do not provide an approval or disapproval within the time specified. The Department has the ability to make determinations about whether a plan is sufficient or needs modification; make additional restrictions or obligations. The section clarifies that during the review phase of the plan, the individual is prohibited in engaging in activities that constitute a present or potential conflict of interest. The section provides for 30 calendar days (from the receipt of the two entities approval or disapproval for governing board members or executive directors or from receipt of proposed plan for others) in which the Department may issue its modification, approval or denial of the plan. If the Department or either of the two entities denies the plan, 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. If the plan is approved, the plan must be implemented within 30 days, unless the Department grants an extension of time. When required by the plan, the individual must provide documentation demonstrating compliance. New plans are 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 Statements and approved plans consistent with record retention requirements per contract.

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 these individuals are held to the highest ethical standards. The regulation provides specified timelines and provides instruction to the individuals affected by the regulation.

§ 54535.

Specific Purpose

This section was moved from the former 54525. The positions of executive director, contractor, agent, and consultant were added to the list of positions triggering the regulation. The section clarifies that as a result of an unresolved violation, the Department may commence procedures for termination or nonrenewal of the regional center contract. The language regarding the withholding of funding has been deleted.

Rationale for Necessity

This amendment is necessary and benefits the State of California by continuing sanctions for violations, adding those positions that are beholden to these Conflict of Interest regulations, and clarifying that the appropriate procedures will occur prior to termination or non-renewal of a regional center's contract.

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 Political Reform Act of 1974 (Government Code 81000 et seq.) and its accompanying regulations (Title 2 California Code of Regulations 18700 et seq.).