



Notice Published November 29, 2019

NOTICE OF INTENT TO AMEND CONFLICT-OF-INTEREST CODE

The Board of Directors for the California Health Benefit Exchange (hereinafter referred to as the “Exchange”) proposes to amend its conflict-of-interest code after considering all comments, objections, and recommendations regarding the proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Overview

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as known as "Covered California." For purposes of this Notice, Covered California will be referred to as the “Exchange.” The Exchange’s mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange’s Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws.

Government Code Section 87300 requires every state agency to adopt and promulgate a conflict-of-interest code. Agencies are required to review their code every two years and update the code when positions and divisions change or are created. The Exchange’s existing code was created in 2011 and approved by the FPPC in 2012. The Exchange as a state agency as grown considerably since that date, added many new positions and re-organized as it pursued its mission.

Authority and Reference

Authority: Sections 87300 and 100504, Government Code.

Reference: Sections 81004, 81008, 87202, 87203, 87204, 87206, 87207, 87208, 87209, 87210, 87300, 87301, 87302, 87302.6, 87303, 87306, 100500, and 100504, Government Code.

Policy Statement:

The objective of the proposed regulation is to update the Exchange's existing conflict-of-interest code.

Existing Law

Current statutes provide that no Exchange staff or board member may be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, a carrier or other insurer, an agent or broker, a health care provider, or a health care facility or health clinic, or a trade association of any of those individuals or entities, while serving on the Exchange board or staff. (See Government Code 100500). Additionally, an Exchange staff or board member may not be a health care provider unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice. *Id.* An existing statute also requires the Exchange to adopt and promulgate a conflict-of-interest code containing provisions including:

- Designation of the positions within the agency which involve the making or participation in making of decisions which may foreseeably have a material effect on any financial interest, and for each such designated position, the specific types of investments, business positions, and sources of income which are reportable;
- Requirement that individuals holding a designated position file a disclosure of economic interests upon assuming office, annually thereafter, and upon leaving office; and
- Specific provisions setting forth any circumstances under which designated employees must disqualify themselves from making, participating in making, or using their official position to influence the making of any decision. (Government Code Section 87302).

A current regulation adopted by the Fair Political Practices Commission contains the terms of a standard conflict-of-interest code that can be incorporated by reference in an agency's code. (Cal. Code Regs., tit. 2, Section 18730).

A summary of the proposed regulations' effect on existing law and regulations follows:

Title 10, Section 6400

Conflict-of-Interest Code

The Conflict-of-Interest Code restates the requirement under the Political Reform Act that all state agencies adopt and promulgate a conflict-of-interest code. The Fair Political Practices Commission has adopted a regulation (Cal. Code Regs., tit. 2, Section 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference into an agency's code. The Conflict-of-Interest Code incorporates that regulation by reference. Also, it specifies that the regulation and the attached Appendices designating positions and establishing disclosure categories constitute the Exchange's conflict-of-interest code.

The main document also specifies that individuals holding designated positions shall file their statements of economic interest with the Exchange, which will make the statements available for public inspection and reproduction, as required under Government Code Section 81008. Further, after receiving the statements for Board members and the Executive Director, the Exchange will make and retain copies and forward the originals to the Fair Political Practices Commission. The Exchange will retain all other statements.

Appendix A List of Designated Positions

The List of Designated Positions includes all positions with the Exchange that must file a disclosure of economic interests and assigns their disclosure category. It also establishes a process for designating disclosure requirements for Consultants/ New Positions.

Positions in Disclosure Category 1 includes but is not limited to Board Members, the Executive Director, the Chief Deputy Director, Deputy Directors, the Chief Financial Officer, the Chief Operations Officer, the SHOP Exchange Director, the Health Plan Contracting Director, the Chief Information Technology and Information Officer, the Chief Medical Officer, the General Counsel, the Communications and Marketing Director, the Legislation Director, and Staff Counsel.

Positions in Disclosure Category 2 include Procurement Personnel.

Consultants and individuals serving in new positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category. However, the List of Designated Positions clarifies that the Executive Director may determine in writing that a particular consultant, although in a designated position, is hired to perform limited duties and may not be required to comply with the disclosure requirements described in the Code. The written determination must include a description of the consultant's duties and a statement of the extent of required disclosure. This determination is a public record and must be retained for public inspection.

Appendix B Disclosure Categories

The Disclosure Categories provide the extent of required disclosure for designated positions in each of the categories.

Designated positions in Disclosure Category 1 must disclose all investments and positions in business entities, and income, including gifts, loans, and travel payments, from the following:

- Health insurance carriers.
- Health insurance agents or brokers.
- Health care providers.
- Health care facilities or health clinics.
- Pharmaceutical companies.
- Medical device or equipment manufacturers or distributors.
- Pharmacy benefit management companies
- Third party administrators (health claims only)
- Non-profit foundations formed or funded by health insurance carriers
- Trade associations of health insurance carriers, health insurance agents or brokers, health care providers, health care facilities or health clinics, pharmaceutical companies, and medical device or equipment manufacturers or distributors.
- Organizations representing individuals with specific medical conditions.
- Information technology consulting firms.
- Sources of the type to provide goods, equipment, materials, supplies, and information technology or telecommunication products to the Exchange.
- Sources of the type to provide personal services to the Exchange, including, but not limited to, health care and insurance research consulting firms.
- Sources of the type to receive funding from or through the Exchange.

Designated positions in Disclosure Category 2 must disclose all investments and business positions in business entities, and sources of income, which provide goods, materials, supplies, and information technology or telecommunication products of the type used by the Exchange.

PUBLIC HEARING

The Exchange has not scheduled a public hearing on this proposed action. However, the Exchange will hold a hearing if it receives a written request for a public hearing for any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes on **January 13, 2020**. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

Faviola Adams
Regulations Coordinator
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-228-8321 or by e-mail to regulations@covered.ca.gov.

Authority and Reference

Authority: Sections 87300 and 100504, Government Code.

Reference: Sections 81004, 81008, 87202, 87203, 87204, 87206, 87207, 87208, 87209, 87210, 87300, 87301, 87302, 87302.6, 87303, 87306, 100500, and 100504, Government Code.

Documents Relied Upon:

None.

DETERMINATIONS

The Exchange has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Faviola Adams
Regulations Coordinator
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8668

The backup contact person for inquiries concerning the proposed administrative action may be directed to:

Andrea Rosen
Senior Attorney
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8343

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the proposed amendment to the conflict-of-interest code can be accessed through our website at <https://hbex.coveredca.com/regulations>.

STATE OF CALIFORNIA
CALIFORNIA HEALTH BENEFIT EXCHANGE

1601 Exposition Blvd.
Sacramento, California 95815

REG-2019-xxxxx

DATE:

CONFLICT OF INTEREST CODE

FINAL AMENDED TEXT OF REGULATIONS

Additions to the amended regulation are in underline and deletions are in strike-through.

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 1. California Health Benefit Exchange - Conflict-of-Interest Code

§ 6400. General Provisions

~~NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:~~

~~CALIFORNIA HEALTH BENEFIT EXCHANGE~~

~~1000 "G" STREET, SUITE 100~~

~~SACRAMENTO, CA 95814~~

~~FAIR POLITICAL PRACTICES COMMISSION~~

~~428 "J" STREET, SUITE 800~~

~~SACRAMENTO, CA 95814~~

~~ARCHIVES~~

~~SECRETARY OF STATE~~

~~1020 "O" STREET~~

~~SACRAMENTO, CA 95814~~

~~The conflict of interest code is designated as article 1, chapter 12 of title 10 of the California Code of Regulations, and consists of sections numbered and titled as follows:~~

~~Article 1. California Health Benefit Exchange – Conflict of Interest Code~~

~~Section 6400. General Provisions~~

~~Appendix A~~

~~Appendix B~~

~~Note: Authority cited: Sections 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.~~

**~~CONFLICT OF INTEREST CODE FOR THE
CALIFORNIA HEALTH BENEFIT EXCHANGE~~**

~~The Political Reform Act (Government Code Section 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code Regs. Sec 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix A designating officials and employees, and Appendix B establishing disclosure categories, shall constitute the conflict of interest code for the **California Health Benefit Exchange (Exchange)**~~

~~Designated employees shall file statements of economic interest with the **California Health Benefit Exchange (Exchange)**. The Exchange shall make the statements available for public inspection and reproduction. (Government Code Section 81008). Upon receipt of the statements of Members of the Board and the Executive Director, the Exchange shall make and retain a copy and forward the original to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the **Exchange**.~~

The Political Reform Act (Government Code Sections 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict-of-interest codes. Government Code Section 87306 requires every state agency to amend its Conflict of Interest Code when a change is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to subdivision (a) of Section 87302 and relevant changes in the duties assigned to existing positions. The Fair Political Practices Commission has adopted a regulation (2Cal.Code of Regs. Sec. 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and amendments to it duly adopted by the Fair Political Practices Commission are incorporated by reference. This regulation and the attached Appendices, designating positions and establishing disclosure categories, shall constitute the conflict-of-interest code of the California Health Benefit Exchange "Exchange".

Individuals holding designated positions shall file their statement of economic interests with the Exchange in a manner prescribed by the Exchange, including but not limited to, using its electronic filing system. The Exchange will make the statements available for public inspection and reproduction upon request (Government Code Section 81008).

Note: Authority cited: Government Code Sections 87302, 87302.6, 87303, 87306, 87307, 87309, 87310, 87311. Regulation: Title 2, Division 6 CCR Sections 18730, 18750.

Reference: Sections 18730, 18750

CALIFORNIA HEALTH BENEFIT EXCHANGE

APPENDIX A

<u>List of Designated Positions</u>	<u>Assigned Disclosure Categories</u>
Board Members	1
Executive Director	1
Chief Medical Officer	1
Operations	
Chief Operations Officer	1
Assistant Chief Operations Officer	1
Assistant for Program Policy	1
Assistant for Enrollment and Eligibility	1
Navigator Manager	1
Chief Technology Officer	1
IT CalHEERS Project Director	1
Chief Financial Officer	1
Assistant Chief Financial Officer	1
Individual and Small Group Health Plan Contracting	
Health Plan Contracting Director	1
Small Business Options Program (SHOP) Exchange	
SHOP Exchange Director	1
SHOP Sales and Marketing Director	1
Assistant Policy Director	1
Assistant SHOP Director	1

Assistant Sales Director	1
Legal	
General Counsel	1
Staff Counsel	1
Government Relations	
Government Relations Director	1
Communications and External Affairs	
Communications and External Affairs Director	1
Marketing Director	1
Actuary and Research	
Chief Actuary Director of Research	1
Procurement Personnel	2
Consultants/New positions	*

~~* Consultants/New Positions and individuals serving in new positions shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation:~~

~~The Executive Director may determine in writing that a particular consultant/new position, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the duties and, based on that description, a statement of the extent of the disclosure requirements. The Executive Director's determination is a public record and shall be~~

~~retained for public inspection in the same manner and location as this conflict of interest code. (Government Code Sec. 81008).~~

APPENDIX A - DESIGNATED POSITIONS

DESIGNATED POSITION	DISCLOSURE CATEGORY
COVERED CALIFORNIA BOARD	
Board Members	1
EXECUTIVE OFFICE	
Executive Director	1
General Counsel	1
Chief, Deputy Executive Directors	1
Director	1
Deputy Director	1
Staff Services Manager 1 Specialist	2
EQUAL EMPLOYMENT OPPORTUNITY	
Equal Opportunity Officer	1
Staff Services Manager I Specialist	1
OFFICE OF LEGAL AFFAIRS	
Director	1
All Attorneys	1
Staff Service Manager II	1
OFFICE OF THE OMBUDS	
Director	1
CUSTOMER CARE DIVISION	
Director	1
Staff Services Manager II	1
INFORMATION TECHNOLOGY DIVISION	
Chief Information Officer	1
Deputy, Chief Information Officer	1
Chief Technology Officer I	1
Chief, Data Management & Analytics	1
Chief, Network, Server and Cloud OPS	1
Information Security Officer	1
Lead Project Manager	1
Lead Business Specialist	1
Information Technology Manager II	1

Enterprise Project Management	1
Chief, Project Management and Business Analyses	1
Senior Network Engineers	2
Security Analyst	2

POLICY, ELIGIBILITY, AND RESEARCH DIVISION

Director	1
Associate Director	1
Staff Services Manager III	1
Staff Services Manager II (Supervisory)	1
Federal Policy Specialist	1

EXTERNAL AFFAIRS

Director	1
----------	---

FINANCIAL MANAGEMENT DIVISION

Director	1
Deputy Director	1
Chief of Financial Planning	1
Staff Services Manager III	1
Budget Officer	2

BUSINESS SERVICES BRANCH

Deputy Chief Operations Officer	1
Deputy Director	1
Assistant Deputy Director	1
Procurement Officer	1
Procurement Analyst	1
Contract Manager	1
Contract Analyst	1
Special Projects Liaison	1
Special Projects, AGPA	1
Admin/Special Projects Manager	1
Procurement, Staff Services Manager I	1

HUMAN RESOURCES BRANCH

Chief Deputy Operations Officer	1
Deputy Director	1
Assistant Deputy Director	1
Labor Relations Manager	2
Labor Relations Officer	2

Labor Relations Specialist	2
Talent Acquisition Manager	2
Performance & Disability Section Chief	2

PLAN MANAGEMENT DIVISION

Director	1
Deputy Director	1
Chief Medical Officer	1
Medical Director	1
Pharmaceutical Consultant	1
Lead Plan Manager	1
Plan Manager	1
Contract Manager	1
Lead Certification Program Specialist	1
Staff Services Manager II, Carrier Management	1
Staff Services Manager II, Analytics and Informatics	1
Staff Services Manager II (Managerial), Population Care	1

OUTREACH AND SALES DIVISION

Director	1
Deputy Director	1
Staff Services Manager III	1
Research Data Specialist II	2
Agent Team Manager	1
Certification Services Manager	1
Analytics Manager	1
Account Services Section Manager	2

RANCHO CORDOVA SERVICE CENTER

Director	1
Deputy Director	1
Staff Services Manager III	1
Appeals Section Manager	1
Appeals Manager	2

FRESNO SERVICE CENTER

Staff Services Manager III	1
----------------------------	---

SERVICE CENTER SUPPORT SERVICES

Staff Services Manager III	1
----------------------------	---

PROGRAM INTEGRITY DIVISION

Director	1
Staff Services Manager III	1
Staff Services Manager II	2
Quality Review Auditor	1
Health Program Specialist I, Fraud and Risk Lead	1
Senior Program Manager	2

COMMUNICATIONS AND PUBLIC RELATIONS

Director	1
Staff Services Manager II	1
Staff Services Manager I	2

MARKETING DIVISION

Director	1
Deputy Director	1
Staff Services Manager III	1
Staff Services Manager II	1
Staff Services Manager II (Managerial), Division Consultant	1

COVERED CALIFORNIA UNIVERSITY

Director	1
Deputy Director	1
Assistant Deputy Director	1
Staff Services Manager II	2
Operations Manager	2

CALIFORNIA HEALTH BENEFIT EXCHANGE

APPENDIX B- Disclosure Categories

1. Designated employees shall disclose all investments and business positions in business entities, and income, including gifts, loans and travel payments, from the following:

- Health insurance carriers.
- Health insurance agents or brokers.
- Health care providers.
- Health care facilities or health clinics.
- Pharmaceutical companies.
- Medical device or equipment manufacturers or distributors.
- Pharmacy benefit management companies.
- Third party administrators (health claims only)
- Trade associations of health insurance carriers, health insurance agents or brokers, health care providers, health care facilities or health clinics, pharmaceutical companies, and medical device or equipment manufacturers or distributors.
- Non-profit foundations formed or funded by health insurance carriers or any other health care entities listed herein.
- Organizations representing individuals with specific medical conditions.
- Information technology consulting firms.

- Sources of the type to provide goods, equipment, materials, supplies, and information technology or telecommunication products to the California Health Benefit Exchange.
- Sources of the type to provide personal services to the California Health Benefit Exchange, including, but not limited to, health care and insurance research consulting firms.
- Sources of the type to receive funding from or through the California Health Benefit Exchange.

2. Designated employees shall disclose investments and business positions in business entities, and sources of income, which provide goods, equipment, materials, supplies, and information technology or telecommunication products of the type used by the California Health Benefit Exchange.