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Director & State Health Officer

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Conflict of Interest Code for Department of Public Health, DPH-11-018

NOTICE IS HEREBY GIVEN that the California Department of Public Health, pursuant to the authority set forth in section 87306 of the Government Code, proposes to adopt its Conflict of Interest Code. The purpose of this adoption is to implement the requirements of sections 87300 through 87302, and section 87306, of the Government Code.

The Political Reform Act (Gov. Code, § 81000 et seq.) requires each government agency to adopt a conflict of interest code, and agency personnel covered by the code to periodically file a financial disclosure statement known as a Statement of Economic Interests (Form 700). (See Gov. Code, §§ 87300 and 87302.) Among other things, an agency's conflict of interest code must enumerate employee positions with the agency that involve the making of or participation in the making of decisions that may foreseeably have a material financial effect on any economic interest of the employee and, for each enumerated position, the specific types of investments, business positions, interests in real property, and sources of income and gifts which are required to be disclosed on the statement of economic interests. (Gov. Code, § 87302.)

Although the California Department of Public Health (CDPH) technically was newly created by statute on July 1, 2007 (S.B. 162, Chapter 241, Statutes of 2006), its entire operation existed prior to that date as part of the Department of Health Services (DHS). The former DHS was split into two separate departments, with the Medi-Cal Program (and related functions) becoming the Department of Health Care Services (DHCS), and the public health programs becoming CDPH.

Since its "creation" on July 1, 2007, CDPH has continued to follow the Conflict of Interest Code (COIC) of the former DHS, and will continue to do so until adoption of this new code under the name of the Department of Public Health. This Notice therefore will provide the content and findings appropriate to this specific situation; a state agency is technically newly created, but as a practical matter is a re-organization of an existing agency.

CDPH proposes to adopt this conflict of interest code to cover its officers and employee positions that involve the making of or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision

(a) of section 87302 of the Government Code. The proposed CDPH COIC has been developed with reference to the DHS COIC in effect when DHS was split into DHCS and CDPH: The proposed CDPH COIC will thus be reflected as if it were an amendment to the DHS COIC.

A number of changes have been made from the DHS COIC in terms of how CDPH offices subject to the COIC are described. The DHS COIC described CDPH officers in broad terms such as "Assistant Branch Chief and Above", "Section Chief", or persons performing higher-level duties relating to contracts and other procurements. The proposed CDPH COIC instead lists each such office. This change was made in order to allow easier identification of CDPH officers subject to the COIC, without having to refer to other documents, e.g. organization charts, duty statements, etc.

The proposed COIC also expands the number of job classifications subject to disclosure, recognizing the important role played by employees in the wide variety of positions that may be called upon to provide substantive input to decision makers.

The disclosure categories, which define what a designated employee needs to file on their Form 700, all were changed to better describe the types of financial interests to be disclosed, adopting in part language used by other state agencies that have recently amended their codes; the DHS COIC has not been amended since 1996. In order to avoid overly-broad disclosure, some of the disclosure categories were also amended to differentiate between those employees whose job duties involve department-wide subject matter, and those whose scope of duties are more limited to matters within their division.

Advisory Committees

It was determined that there are thirteen (13) departmental advisory committees that meet the standard under which members of such committees are designated to file a Form 700, under the authority of Title 2, California Code of Regulations Section 18701(a)(1)) which applies to:

"...salaried or unsalaried members of committees, boards or commissions with decision-making authority. A committee, board or commission possesses decision-making authority whenever:

- (i) It may make a final governmental decision;
- (ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
- (iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency."

For these thirteen (13) advisory committees, the proposed COIC would establish a separate and unique disclosure category tailored to potential financial interests that could be impacted by decisions or recommendations made by each such advisory committee.

CDPH has prepared a written explanation of the reasons for the proposed code (Initial Statement of Reasons). Copies of the proposed code, and the Initial Statement of Reasons, may be obtained from the person(s) identified in the Inquiries section.

CDPH has determined that the proposed code:

- (1) Imposes no mandate on local agencies or school districts.
- (2) Imposes no costs or savings on any state agency.
- (3) Imposes 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.

In proposing to adopt this conflict of interest code, CDPH must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the code is proposed or would be as effective as and less burdensome to affected private persons than the proposed code.

Copies of the proposed code are available and may be requested from the persons(s) identified in the Inquiries section. Upon specific request, these documents will be made available in Braille, large print, audio cassette, or computer CD.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by **5 p.m. on January 20, 2014**, 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. The telephone numbers for accessing this service are: 1-800-735-2929 or 711, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

Written comments may be submitted as follows:

1. By email to: tim.ford@cdph.ca.gov. It is requested that email transmission of comments contain the regulation package identifier "DPH-11-018" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission: (916) 440-5104;
3. By mail to: Timothy Ford, Office of Legal Services, California Department of Public Health, MS 0506, P.O. Box 997377, Sacramento, CA 95899-7377; or
4. Hand-delivered to: 1415 L Street, Sacramento, CA 95814.

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.

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.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Proposed Regulations.

If written comments are submitted, they need not be separately presented at a public hearing. At this time, no public hearing has been scheduled concerning the proposed code. If any interested person or the person's representative requests a public hearing, he or she must do so no later than 15 calendar days before close of the written comment period, by contacting the person identified in the Inquiries section of this notice. If a public hearing is requested, it will be held on January 20, 2014 from 3:00 p.m. until 5:00 p.m. at 1500 Capitol Avenue, Sacramento, CA 95814.

If a hearing is held, the Department will provide assistive services to persons with disabilities, such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public-hearing materials into Braille, large print, audio cassette, or computer CD. To request such services or copies in an alternate format, please call or write the person identified in the Inquiries section of this notice. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

After completion of the written comment period/hearing, CDPH may adopt the proposed code if it remains substantially the same as described in the text originally made available to the public. CDPH may make changes to the proposed code prior to its adoption, so long as the text of any modified amendment is made available to the public at least 15 days before CDPH adopts the amendments. A request for the modified text

should be made to the person(s) identified in the Inquiries section. CDPH will accept written comments on the modified amendments, addressed to the person identified in the Inquiries section of this notice, for 15 days after the date on which the text of any modified amendment is made available.

INQUIRIES: All inquiries concerning this proposed code and any communications required by this notice should be directed to:

Timothy Ford
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California Department of Public Health
1415 L Street
P.O. Box 997377, MS 0506
Sacramento, CA 95899-7377
Phone: (916) 538-6415
Fax: (916) 440-5104

OR

Cynthia A. Jones
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CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

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