



**Policy Title:** Code of Conduct: Governing Principles and Conflict of Interest  
**Issue Date:** April 30, 2013  
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May 15, 2015

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## **I. General**

- A. beWellnm (referred to in this document as “the Exchange”) is committed to establishing and maintaining a high level of ethical conduct among Directors and employees of the Exchange. Directors and employees must each maintain an individual commitment to high standards of conduct. In performing their duties, Directors and employees must behave in a manner that is consistent with their roles as public servants of the citizens of the State of New Mexico.
- B. The Exchange adopts this Code of Conduct in accordance with the Governmental Conduct Act, NMSA 1978 §§ 10-16-1 *et seq.*
- C. In addition to the requirements set forth in the Governmental Conduct Act and this Code of Conduct, Directors and employees of the Exchange shall familiarize themselves with and adhere to the ethical requirements of other statutes, regulations, and policies applicable to the Exchange, including but not limited to the Financial Disclosure Act, NMSA 1978 §§ 10-16A-1 *et seq.*, the Inspection of Public Records Act, NMSA 1978 §§ 14-2-1 *et seq.*, the Open Meetings Act, NMSA 1978 §§ 10-15-1 *et seq.*, the New Mexico Health Insurance Exchange Act, Laws of 2013, Chapter 54, and the Patient Protection and Affordable Care Act and accompanying regulations.
- D. Terms used in this Code of Conduct shall have the meaning ascribed to those terms in the Governmental Conduct Act, unless otherwise noted.

## **II. Public Trust: Ethical Principles and Conflict of Interest**

- A. Ethical principles.
  - 1. Directors and employees shall treat their positions as positions of public trust. They shall use their positions and the powers and resources of the position only to advance the public interest and not to obtain personal benefits or

pursue private interests. They shall strive in all their actions to bring credit to the State of New Mexico.

2. Directors and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity of and discharging ethically the high responsibilities of public service.
3. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct.
4. A Director or employee shall not request or receive any money, item of value, or a promise of money or item of value that is conditioned upon or given in exchange for the promised performance of an official act.

B. Official acts.

1. Directors and employees shall not take any official act for the primary purpose of enhancing their financial interest or financial position. For the purposes of this Code of Conduct, financial interest means an interest held by an individual or the individual's family that is: (1) an ownership interest in business or property; or (2) any employment or prospective employment for which negotiations have already begun.
2. Directors and employees shall be disqualified from engaging in any official act directly affecting their financial interests, except where the benefit to the Director or employee's financial interest is proportionately less than the benefit to the general public.
3. No Director or employee shall acquire a financial interest when the Director or employee believes or has reason to believe that the new financial interest will be directly affected by the Director or employee's official act.

C. Honoraria.

1. A Director or employee shall not request or receive an honorarium for a speech or service rendered that relates to the performance of beWellnmduties. An honorarium does not include reasonable reimbursement for meals, lodging, or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

D. Disclosure of outside employment.

1. Directors and employees shall not engage in any other employment or activity that creates a conflict of interest, interferes with their duties to the public,

compromises their ability to discharge effectively their duties, or otherwise adversely affects the performance of their duties; provided that employment of Directors described in the New Mexico Health Insurance Exchange Act shall not be considered a conflict of interest as explained in the Act.

2. Directors and employees shall disclose in writing to beWellnm all employment engaged in by the Director or Employee other than employment with or service to the Exchange.
3. An employee who is participating directly or indirectly in the contracting process shall not be or become an employee of any person or business contracting with beWellnm.

E. Confidential information.

1. Directors and employees shall not use or disclose confidential information obtained by virtue of their position with the Exchange for their own or another person's benefit or private gain.

F. Contracts and procurement.

1. The Exchange shall not enter into contracts for services, construction, or items of tangible property:
  - a. With a Director or employee;
  - b. With the family of a Director or employee; or
  - c. With a business in which Director or employee or his or her family has a substantial interest, defined as an ownership interest that is greater than twenty percent;
  - d. Unless the Director or employee has disclosed the interest and the contract is awarded pursuant to competitive processes set forth in the state Procurement Code. Under these circumstances, the potential contractor shall not be eligible for a sole source or small purchase contract.
2. The Exchange shall not accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications, or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of the Exchange shall exercise due diligence to ensure compliance with this section.
3. No employee, officer, or agent of beWellnm shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest

would be involved. For the purposes of this Code of Conduct, such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of beWellnm shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements, unless the gift is an unsolicited item of nominal value. Disciplinary action, up to and including dismissal, may result from violations of these standards by beWellnm officers, employees, or agents.

G. Contracts involving former Directors and employees.

1. The Exchange shall not enter into a contract with, or take any action favorably affecting, any person or business that is:
  - a. Represented personally in the matter by a person who has been a Director or employee of the Exchange within the preceding year and the contract is a direct result of an official act by the Director or employee; or
  - b. Assisted in the transaction by a former Director or employee of the Exchange whose official act, while representing the Exchange, directly resulted in the Exchange making the contract or taking the action.
2. A former Director or employee shall not represent a person in dealings with the government on a matter in which the former Director or employee participated personally and substantially while a Director or employee.
3. For a period of one year after leaving the Exchange, a former Director or employee shall not represent for pay a person before the Exchange.

H. Gifts.

1. A Director or employee shall not accept gifts, compensation, money, or any other item of value from persons affected by Exchange action, where it is known or reasonably should be known that the purpose of the donor in giving the gift, compensation, money, or other thing of value is to influence the Director or employee in the performance of the Director or employee's official duties.

**III. Conflicts of Interest and Disclosure for Directors**

- A. It is incumbent upon each Director to identify and disclose potential and real conflicts of interest.

- B. Directors should fully review agendas and related materials as far in advance of a Board meeting as possible to identify potential or real conflicts relating to matters coming before the Board. If a Director has any question about a conflict of interest, the Director is encouraged to disclose the issue to the Chair and beWellnm CEO. A Director may also consult with beWellnm legal counsel to assist in identifying a conflict of interest. A Director shall fully explain any concern regarding a conflict of interest and provide relevant materials for consideration by the Chair, CEO, or legal counsel.
- C. A Director shall disclose a potential or real conflict of interest as soon as the Director becomes aware of the potential or real conflict of interest. Directors shall strive to identify and disclose a real or potential conflict before engaging in discussion or taking action relating to the matter giving rise to the real or potential conflict. By majority vote of the other Directors, the Board may determine whether a real conflict of interest exists and steps to take, if any, to address a potential or real conflict of interest.
- D. A Director shall not take any official action related to a matter in which a real conflict of interest exists. A Director who has a real conflict of interest may participate in the discussion of the matter before the Board, unless the Board determines that such participation may adversely affect or unjustly influence the discussion before the Board. The conflicted Director, however, may be counted for the purpose of determining whether a quorum exists at the meeting at which the matter arises.
- E. A Director may participate in discussion of a matter presenting a potential conflict of interest, and may take official action related to a potential conflict of interest, after disclosing the potential conflict of interest to the Board, unless the Board determines that such participation or action may adversely affect or unjustly influence the discussion before the Board or the action taken by the Board. The potentially conflicted Director, however, may be counted for the purpose of determining whether a quorum exists at the meeting at which the matter arises.
- F. Any Director or employee may, in good faith, raise the issue of a potential or real conflict involving a Director if the Director does not personally recognize and disclose the conflict. The Director will be provided an opportunity to address any potential or real conflict of interest. By majority vote of the other Directors, the Board may determine whether a real conflict of interest exists and steps to take, if any, to address a potential or real conflict of interest.
- G. The minutes of a Board meeting at which a potential or real conflict of interest is discussed shall document:
  - 1. The disclosure and the nature of the conflict;
  - 2. The Board's determination with respect to a potential or real conflict, if any;

3. Whether the conflicted or potentially conflicted Board member participated in a discussion related to the matter giving rise to the potential or real conflict;
4. The fact that a conflicted Director did not take any official action related to the issue giving rise to a real conflict; and
5. Any official action taken with respect to the matter before the Board.

#### **IV. Conflicts of Interest and Disclosure for Employees**

- A. It is incumbent upon each employee to identify and disclose potential and real conflicts of interest.
- B. An Employee shall evaluate any work in which the employee is engaged to identify potential or real conflicts of interest related to that work. If an employee has any question about a conflict of interest, the Employee shall disclose the issue to the beWellnm CEO. An employee may also consult with beWellnm legal counsel to assist in identifying a conflict of interest. An employee shall fully explain any concern regarding a conflict of interest and provide relevant materials for consideration by the CEO or legal counsel.
- C. An employee shall disclose a potential or real conflict of interest as soon as the employee becomes aware of the potential or real conflict of interest. Employees shall strive to identify and disclose a conflict before engaging in work or taking action relating to the matter giving rise to the conflict.
- D. The beWellnm CEO shall determine the appropriate course of action to be taken in response to the disclosure of a potential or real conflict of interest; provided that in any event, an employee shall not perform any further work related to a matter giving rise to a real conflict of interest.

#### **V. Conflict of Interest Statement**

- A. Each Director and employee shall complete a Conflict of Interest Statement (Exhibit A) at the time the Director is appointed or the employee is hired, and by the close of the first quarter of each year thereafter. The Statement is for the purpose of identifying the employment, professional affiliations, and financial interests of the Directors and employees that have the potential to raise a conflict of interest. Additionally, the Statement will confirm each Director's and employee's receipt and understanding of this Code of Conduct and the Director's and employee's agreement to comply with this Code of Conduct. Each Director and employee has a duty to update the Statement at any time that the Director or employee's employment, affiliations, or financial interests change.
- B. The beWellnm CEO shall distribute, collect, and review the information disclosed in the Conflict of Interest Statements.

1. Each Statement completed by a Director shall be maintained in the files of beWellnm.
2. Each Statement completed by an employee shall be maintained in the employee's personnel file.

## **VI. Education and Compliance**

- A. The Code of Conduct shall be given to and reviewed with all Directors and employees of the Exchange upon its adoption, and to any newly appointed Director or newly hired employee prior to or at the time the Director is appointed or the employee is hired.
- B. The Exchange shall educate and advise Directors and employees about the Code of Conduct annually, and upon any revisions to the Code of Conduct.
- C. The Code of Conduct shall be filed with the New Mexico Secretary of State and shall be available for public inspection.
- D. The Code of Conduct shall be reviewed at least once every four years.

## **VII. Violations**

- A. A violation of the Code of Conduct may constitute neglect of duty or malfeasance in office and constitute grounds for removal from office in accordance with the New Mexico Health Insurance Exchange Act and the beWellnm Plan of Operation. A Director who violates the Code of Conduct may also be subject to a non-financial sanction at the discretion of the Board.
- B. An employee who violates the Code of Conduct may be subject to discipline, up to and including termination.
- C. The Governmental Conduct Act provides for criminal and civil penalties for violations of the Act. *See* NMSA 1978, §§ 10-16-4, 17, and 18.

**PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of March, 2016.**

**Approved by:**

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Dr. James R. Damron  
Chair

