

**BOARD OF DIRECTORS OF
THE COLORADO HEALTH BENEFIT EXCHANGE**

Policy Title: Governing Principles and Conflicts of Interest

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I. Policy

It is the policy of the Board of Directors of the Colorado Health Benefit Exchange (“COHBE”) that members of the Board, its committees, its advisory work groups and its staff undertake their respective responsibilities with an unbending duty of loyalty and fidelity to COHBE and the State of Colorado. Board members will manage the affairs of the COHBE with integrity and openness, applying their expertise, skills and judgment for the benefit of COHBE and those individuals and small businesses seeking health care coverage through COHBE, while upholding the mission and goals established for COHBE.

It is further the policy of the Board that all Board members and staff act in an ethical manner and that Board members avoid taking actions that result in, or give the appearance of being, conflicts of interest, i.e., Board members will not perform an official act which may have a direct economic benefit on a business or undertaking in which a Board member has a direct or substantial financial interest.

II. Purpose

It is the purpose of this Policy to:

- Provide guidance to the Board regarding principles of governance as they apply to COHBE
- Ensure that the activities of COHBE remain transparent to the public
- Provide guidance to the Board with respect to the identification, disclosure and resolution of potential and actual conflicts of interest
- Protect COHBE and the public interest of individuals and small businesses seeking health care coverage through COHBE when a conflict of interest arises

III. Definitions

A. Conflict of interest means performing an official act which may have a direct economic benefit on a business or undertaking in which a Board member has a direct or substantial financial interest. [C.R.S. §§24-18-108.5(2) and 10-22-105(3)(b)] The purchase of insurance through COHBE does not constitute a conflict of interest.

B. Financial interest means a substantial interest held by a Board member (or committee member with Board-delegated powers) which is:

1. An ownership interest in a business;
2. A creditor interest in an insolvent business;
3. An employment or a prospective employment for which negotiations have begun;
4. An ownership interest in real or personal property;
5. A loan or any other debtor interest; or
6. A position of director or officer in a business.

[C.R.S. §24-18-102(4)]

B. Official act means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority. [C.R.S. §24-18-102(7)]

IV. Governing Principles

A. General

1. The Board, not the staff, will be responsible for excellence in governing. The Board will regularly monitor and discuss its own process and performance. To meet this goal, the Board will annually review and update its operational and financial plan and thereafter monitor its progress in completing the goals in the plan. The Board will continually develop the knowledge and understanding of its members of the business and operations of COHBE through orientation of new Board members, on-going education of Board members and periodic Board discussion of process improvement.

2. The Board will govern with an emphasis on (a) responsible oversight, (b) strategic leadership, rather than administrative detail, (c) encouragement of diversity in viewpoints, (d) collective rather than individual decisions, and (e) proactivity, rather than reactivity. The Board will lead COHBE through the careful establishment of broad written policies, as well as through the ongoing preparation and monitoring of its operational and financial plan, both of which will reflect the Board's values and perspectives about goals to be achieved.

B. Preparation for and Participation in Meetings

1. The Board will use the expertise, skill and judgment of individual members to enhance the ability of the Board as a whole, rather than to substitute individual judgment for the Board's values. Nonetheless, each Board member has a duty of care to make informed decisions and exercise independent judgment. The satisfaction of the duty of care is accomplished in part by the following activities:

- a. Regularly attending meetings of the Board and actively participating in the deliberations of the Board. A Board member who is appointed to a committee of the Board is expected to regularly attend committee meetings as well.
- b. Exercising independent judgment. While such judgment may be informed by the Board member's individual experience and affiliations, and even knowledge of the viewpoints of the constituency s/he represents (e.g., insurers, consumers, employers, etc.), the Board member's decision must only be based on what is in

the best interest of COHBE and the public interest of the individuals and small businesses seeking health care coverage through COHBE. No Board member should vote solely on the basis of what another Board member thinks, even if that Board member has special expertise. Each Board member must use his/her independent judgment to evaluate any position taken by another Board member, the COHBE staff or an outside expert.

- c. Gathering adequate information to make a decision on a matter before the Board. If sufficient information is not provided by the COHBE staff or consultants, the Board member should identify the additional information that is needed. The Board member should carefully read all information provided. The Board member should ask questions at a Board meeting as necessary to clarify the information and assure that the Board member has fully understood it. A Board member may act in reliance on information and reports received from regular sources that the Board member reasonably regards as trustworthy.

C. Ethical Conduct

1. The Board is committed to ethical conduct on the part of the Board and the staff of COHBE, including the proper use of authority and appropriate decorum when acting in their respective roles. No Board member will accept remuneration in the form of cash, gift or gift certificate, loan, discount or travel expenses from any third party that would tend to influence the Board member's independent judgment on matters coming before the Board. Likewise, no staff member will accept remuneration in the form of cash, gift or gift certificate, loan, discount or travel expense that would tend to influence decisions in the day-to-day operation of COHBE. If a Board member or staff member receives a gift or other remuneration with a value in excess of \$30, the Board or staff member will disclose the receipt of the gift or other remuneration in writing to the Executive Director who will maintain a record of all disclosures. Cumulative receipt of gifts with a value of less than \$30 should also be considered for disclosure.

2. Board members may not use their COHBE position for personal advantage or for the personal benefit of family members or close associates, either in the form of employment or personal profit/gain. If a Board member desires employment by COHBE, the Board member must first resign from the Board. Nor may Board members use COHBE staff, equipment, supplies and/or good will for other than COHBE-approved activities, programs and purposes.

V. Conflicts of Interest

A. Identification of Potential and Actual Conflicts

1. Each Board member has a duty of loyalty to COHBE and must avoid conflicts of interest. A Board member can have a direct or substantial financial interest even if an immediate family member has a financial interest, as defined above. For the purposes of this Policy, an immediate family member is a spouse, parent, child or sibling (and their respective spouses).

2. Board members should fully review agendas and related materials as far in advance of a Board meeting as possible to identify potential or actual conflicts with matters coming before the Board. If a Board member has any question about a potential conflict, the Board member is encouraged to disclose. Board members may consult with COHBE legal counsel to assist in identifying a potential conflict. Board members should be prepared to fully explain any concern

regarding a potential conflict and to provide relevant materials for consideration by legal counsel.

3. While it is incumbent upon each Board member to identify potential and actual conflicts based on the financial interests of the Board member and his immediate family members, there may be circumstances in which other Board members may, in good faith, perceive a potential conflict on the part of another Board member and raise the issue for further determination as set forth in Section V.B below.

B. Disclosure of Potential and Actual Conflicts

1. All Board members will annually complete a Statement Pertaining to Conflicts Of Interest (Annual Statements), attached as Exhibit A. The Executive Director will distribute, collect, review and compile the information disclosed in the Annual Statements. At the next meeting of the Board, the Executive Director will provide the compilation for review by the Board. The Annual Statements will be maintained in the files of COHBE and will be published on the COHBE website. The Annual Statements are for the purpose of identifying the employment, professional affiliations and financial interests of the Board member that have the potential to raise a conflict of interest as the Board undertakes to implement its operational and financial plan for COHBE. Additionally, the Annual Statements will confirm each Board member's receipt and understanding of this Policy and his/her agreement to comply with this Policy. Each Board member has a duty to update the Annual Statement at any time that his or her employment, affiliations or financial interests change.

2. Any Board member who believes that s/he has an actual or potential conflict of interest with respect to an official act to be taken by the Board has a duty to disclose to the Board the existence of the potential or actual conflict and its nature. This disclosure should take place as soon as the Board member identifies the potential or actual conflict, whether at the beginning of the meeting, upon or during discussion of the matter before the Board or any other time before the official act is taken. Any Board member may, in good faith, raise the issue of a perceived conflict involving another member of the Board if the potentially conflicted Board member does not personally recognize and disclose the conflict. The potentially conflicted Board member will be provided an opportunity to address any potential or perceived conflict of interest, with the final determination as to whether a conflict of interest exists to be made by majority vote of the remaining Board members.

C. Participation and Voting

1. A Board member who has been determined to have a conflict of interest or has disclosed an actual conflict 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 of the matter before the Board. The conflicted Board member will not participate in the official action on the matter. The conflicted Board member, however, may be counted for the purpose of determining whether a quorum exists at the meeting at which the matter is discussed and/or official action taken.

2. The minutes of the Board meeting will document (i) the fact of disclosure and the nature of the conflict *vis a vis* the matter before the Board; (ii) the Board's determination with respect to a potential or perceived conflict; (iii) whether the conflicted Board member participated in the

discussion; (iv) the fact that the conflicted Board member did not participate in the official act; and (v) the official action taken with respect to the matter before the Board.

3. A Board member's conflict will not result in a deemed breach of loyalty or render void the official act taken by the Board if the official act was taken by a majority of the remaining Board members, after full disclosure by the conflicted Board member of that Board member's financial interest in the matter before the Board.

VI. Enforcement

If the Board finds by majority vote of the remaining Board members that a Board member has violated this Policy, the Board may take appropriate action, including referral to that Board member's appointing authority. Any violation of this Policy by a staff member may be considered in the performance evaluation of that staff member.

VII. Periodic Review

The Board will periodically review this Policy and the Board's compliance with this Policy to ensure that the Board is operating in a manner that is consistent with its purpose and in the public interest of individuals and small businesses seeking health care coverage through COHBE.

