

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER f: GENERAL ADMINISTRATION

**PART 437**  
**EMPLOYEE CONFLICT OF INTEREST**

**Section**

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- 437.90 Violations of Part 437

AUTHORITY: Implementing and authorized by Article 4A of the Illinois Governmental Ethics Act [5 ILCS 420/Art. 4A]; Section 16 of the Civil Administrative Code of Illinois [20 ILCS 5/16]; Section 4 of the Children and Family Services Act [20 ILCS 505/4]; and Article 50 of the Illinois procurement Code [30 ILCS 500].

SOURCE: Adopted and codified at 5 Ill. Reg. 13139, effective November 30, 1981; amended at 7 Ill. Reg. 8520, effective July 22, 1983; amended at 9 Ill. Reg. 2661, effective March 1, 1985; amended at 13 Ill. Reg. 3339, effective March 1, 1989; amended at 19 Ill. Reg. 6311, effective May 1, 1995; emergency amendment at 21 Ill. Reg. 11593, effective August 15, 1997, for a maximum of 150 days; emergency amendment modified in response to JCAR Objection at 21 Ill. Reg. 14096; emergency expired January 12, 1998; amended at 22 Ill. Reg. 5484, effective March 16, 1998; amended at 22 Ill. Reg., effective December 15, 1998.

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**Section 437.1 Purpose (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.2 Definitions (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.3 Department Statutory Responsibilities (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.4 Prohibition of Employee Interests Which May Influence the Department's Statutory Duties (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.5 Prohibition of Employee Interests Which May Influence the Department's Grant or Purchase of Service Programs (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.6 Prohibitions Under the Illinois Purchasing Act (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.7 Requirements of the Governmental Ethics Act (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.8 Prohibition of Employee Conflicts in the Care of Children (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.9 Violations of Part 437 (Repealed)**

(Source: Repealed at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.10 Purpose**

The purpose of this Part is to define and prohibit all employee impropriety and the appearance of any impropriety. This Part applies to employee conduct in relationship to any entity which is licensed or regulated by the Department of Children and Family Services or which provides

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services for the Department pursuant to a grant, contract, or purchase of service agreement from or with the Department and families with whom the Department has adoption assistance agreements.

(Source: Added at 22 Ill. Reg. 5484, effective March 16, 1998)

**Section 437.20 Definitions**

"Child care facility," as used in this Part, means a "facility for child care" as defined by the Child Care Act of 1969 [225 ILCS 10/2.05], and includes any child care institution, child welfare agency, day care center, part-day child care facility, day care agency, group home, foster family home, day care home, group day care home, or youth emergency shelter.

The term "foster family home" includes the residences of related children placed by the Department and the residences of families that receive children for purposes of adoption. The term "foster family home" is further defined in Section 2.17 of the Child Care Act of 1969.

"Conflict of interest" means an employee uses his or her official position for private gain (other than salary), gives preferential treatment to any entity or person in the conduct of official duties because of personal interest, impedes or adversely affects efficiency or economy because of personal interest, fails to act impartially in the conduct of official duties because of personal interest, or engages in conduct that could adversely affect the confidence of the public in the integrity of the Department of Children and Family Services. The term also means that the circumstances are such that a reasonable person might conclude that an individual's judgement could be influenced by the nature of the circumstances or the individual(s) involved. Conflicts of interest may be actual or potential.

"Decision-making function" or "decision-making authority" means that an individual's duties include, but are not limited to, the referral or transfer of any applicant for or client of Department services to a child care facility or other entity; the supervision, monitoring, licensing, or evaluation of a child care facility or other entity; or the decision whether to award or refuse to award a contract or grant to a child care facility or other entity.

*"Department" means the Illinois Department of Children and Family Services. [225 ILCS 10/2.02]*

"Economic interest" means any form of ownership, debt interest or contract whereby the individual may incur monetary gain or loss. The term does not include a contract for teaching services at a public or private college, community college or university.

"Employee" or "State employee" means an individual who on a full-time or part-time basis receives remuneration from the Department for services performed. For purposes of this Part, the term "employee" includes an individual who receives remuneration directly from the Department pursuant to a contract for personal services.

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"Immediate family member" means any of the following relationships by blood, marriage or adoption: wife, husband, son, daughter, mother, father, sister, brother, or a legal dependent as claimed on the most recent federal income tax return.

"Personal interest" means that one has the potential to gain or lose money, other consideration, gifts, favors, or preferential treatment for oneself or another depending upon the outcome of a decision, review or other transaction.

"Personal relationship" means related by blood, marriage or adoption, or that one has or has had a social, business or other relationship that has the potential to influence or affect one's objectivity.

"Significant working relationship" means a relationship that involves direct or indirect supervision or shared work responsibility.

"State agencies," as defined by the Illinois State Auditing Act [30 ILCS 5], *means all officers, boards, commissions, and agencies created by the Constitution, whether in the executive, legislative or judicial branch, but other than the circuit court; all officers, departments, boards, commissions, agencies, institutions, authorities, universities, bodies politic and corporate of the State and administrative units or corporate outgrowths of State government which are created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; all administrative units and corporate outgrowths of the above and as may be created by executive order of the Governor.*

(Source: Added at 22 Ill. Reg. 5484, effective March 16, 1998)

### **Section 437.30 Department Statutory Responsibilities**

The Department of Children and Family Services has statutory responsibilities regarding minors adjudicated under the Juvenile Court Act of 1987 [705 ILCS 405]; minors placed with the Department through voluntary placement agreements with parents, guardians or custodians; minors placed with the Department through adoptive surrenders, or otherwise provided services in accordance with the Children and Family Services Act [20 ILCS 505]; the licensing of child care facilities under the Child Care Act of 1969 [225 ILCS 10]; and the operation of programs. These statutory duties include securing appropriate care for minors through foster care or purchase of service agreements with public or private agencies.

(Source: Added at 22 Ill. Reg. 5484, effective March 16, 1998)

### **Section 437.40 Prohibition of Employee Interests and Conduct Creating Impropriety or the Appearance of Impropriety**

- a) No employee shall use his or her official position for private gain (other than salary), give preferential treatment to any person or entity in the conduct of official duties because of personal interest, impede or adversely affect

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governmental efficiency or economy because of personal interest, fail to act impartially in the conduct of official duties because of personal interest, or engage in conduct that could adversely affect the confidence of the public in the integrity of the Department of Children and Family Services.

- b) No employee shall serve in any capacity with, or be employed on a full-time or part-time basis by, any child care facility as defined in [Section 437.20](#) or any entity that has a grant, contract or purchase of service agreement with the Department, to the extent that such service or employment creates a conflict of interest, as defined in [Section 437.20](#). Foster family home and day care home licensees are exempt from this restriction.
- c) No employee shall act as a consultant, paid or unpaid, to any entity if such consultation enables the entity to meet Department licensing requirements, obtain a grant, contract, or purchase of service agreement with the Department, or secure Department approval for program or staffing to the extent that such consultation creates a conflict of interest as defined in [Section 437.20](#).
- d) Any employee who serves on the board of directors or professional advisory committee, in either a paid or unpaid capacity, of any child care facility as defined in [Section 437.20](#) or any entity that has a grant, contract or purchase of service agreement with the Department shall immediately notify the Director of the Department or designee. Such notification shall result in the employee not being involved in any decision-making function that impacts that child care facility or entity. Service on a board of directors or professional advisory committee may result in a determination that such service presents an inherent conflict of interest and that the service must be terminated. Further, an employee receiving payment or reimbursement for travel expenses (transportation, lodging, per diem) related to serving on a board of directors or professional advisory committee shall report those payments or reimbursement to the Office of Internal Audits when the aggregate amount exceeds \$200 within a calendar year for service on a single board of directors or professional advisory committee. An employee appointed to a board of directors or professional advisory committee by the Director to meet the requirements of a statute or Executive Order is exempt from the provisions of this Subsection.
- e) An employee shall conduct official business impartially and with the object of fulfilling the statutory responsibilities of the Department. No employee shall use his or her official position to benefit the economic interest, private or personal interest of himself or herself or persons with whom he or she has a personal relationship.
- f) No employee shall solicit or accept any payment, gift, favor, service, loan or entertainment or other consideration for themselves or others under circumstances that might reasonably be construed to influence the performance of his or her official duties.

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- g) No employee shall solicit or accept any payment, gift, favor, service, discount, loan, entertainment or other consideration from any entity or child care facility as defined in [Section 437.20](#) or any entity that has a grant, contract, or purchase of service agreement, or adoption assistance agreement with the Department over which the employee has decision-making authority.
- h) No employee may accept an honorarium for speeches, panel participation or written materials when:
  - 1) he or she is speaking or writing as a representative of the Department; or
  - 2) the speaking or writing engagement occurs during the employee's scheduled work time (unless earned benefit time is used); or
  - 3) travel and related expenses are paid by the State.
- i) An employee may accept a nominal token of appreciation or courtesy (such as meals, floral arrangements, plaque, certificate, cup or similar item) for participating in a governmental, civic, professional, athletic or similar event. The value of the token(s) accepted from a single source shall not exceed \$50 per calendar year. Excluded from this restriction is any certificate or award publicly presented in recognition of public service. Any employee receiving such tokens that exceed \$200 in value in the aggregate regardless of source during a single fiscal year shall notify the Department's Office of Internal Audits within 30 days after receiving the token(s) that exceeds the allowable limit. Such notification shall be in writing and identify the items received, the dates the items were received, and the names of the donor organization(s) or individual(s).
- j) Any payment, gift, favor or other consideration not authorized for acceptance by subsection (i) above shall be returned to the donor immediately.
- k) No employee who has a contract for future employment or is negotiating concerning possible future employment with any child care facility, as defined in [Section 437.20](#), or any entity that has a grant, contract or purchase of service agreement with the Department shall be involved in any decision-making function that impacts that facility or entity.
- l) No employee shall be involved in any decision-making function that impacts any child care facility, as defined in [Section 437.20](#), or any entity that has a grant, contract purchase of service agreement or adoption assistance agreement with the Department in which the employee or any immediate family member of the employee has an economic interest. When an employee or an immediate family member of an employee has an economic interest in such a facility or entity, and the employee is involved in any decision-making function that impacts that

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child care facility or other entity, the employee shall immediately notify the Director of the Department or designee. Such notification shall result in the employee's not being involved in any decision-making function that impacts that child care facility or other entity, and may result in a determination that an inherent conflict of interest is present that requires that the employee terminate his or her employment.

- m) No employee shall participate in any way in the hiring, supervision, or evaluation of any immediate family member as defined by this Part.
- n) When an employee is the owner, director, officer, or manager of an entity that seeks to become licensed as a child care facility as defined in [Section 437.20](#), other than a foster family home or day care home, the study to determine compliance with licensing standards shall be provided by a Department region other than that in which the individual is employed and by employees who have no significant working relationship or personal relationship with the individual. If such a license is granted, the employee must resign his or her employment before commencing any operations as such a child care facility. For the first five years of such operations, the child care facility shall be supervised, monitored, licensed, and evaluated by Department region other than that in which the individual was previously employed and by employees who had no significant working relationship with the individual while employed and always by employees who have no personal relationship with the individual.
- o) When an employee or spouse seeks to become licensed as a foster family home or day care home, the study to determine compliance with licensing standards shall be provided by an agency other than the Department and by persons who have no significant working relationship or personal relationship with the employee. If such license is granted, the employee may continue his or her employment while operating the foster family home or day care home. The employee's or spouse's foster family home or day care home shall be supervised, monitored, licensed and evaluated by an agency other than the Department and by individuals who have no significant working relationship or personal relationship with the employee. The employee shall consult with appropriate supervisors to make sure his or her official duties do not involve any interaction with the agency responsible for supervising, monitoring, licensing, or evaluating the employee's foster family home or day care home. If the employee or spouse seeks to apply for a license to operate a day care home, but there is no licensed child welfare or day care agency that processes day care home licenses within 50 miles of the employee's residence, the employee can submit a request in writing to the Office of Internal Audits seeking an exemption from the requirements of this subsection, but only as the exemption pertains to day care homes. For purposes of this subsection only, the term "employee" or "State employee" does not include licensed foster parents with whom the Department contracts to provide support services to other Department supervised foster parents.

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- p) When an employee or spouse seeks to adopt a child or apply for adoption assistance, the study to determine the appropriateness of the adoption or eligibility for adoption assistance shall be provided by an agency other than the Department and by persons who have no significant working relationship or personal relationship with the employee. If an adoption assistance agreement is entered into, on-going maintenance of that agreement shall be by a Department region other than that in which the individual is employed and by employees who have no significant working relationship with the employee involved. Service responsibility for any employee currently involved in adopting a child or applying for or receiving adoption assistance shall be transferred by June 30, 1999 to a private agency or region other than that in which the individual is employed.
- q) An employee who holds a valid license as a child care facility shall comply with the provisions of this Part immediately, except that, if necessary, transfer of the supervision, monitoring, licensing, and evaluation of a foster family home or day care home to an agency other than the Department shall be accomplished by January 15, 1999 or prior to the renewal of the license, whichever occurs first.
- r) An employee called as a witness in a court proceeding or administrative hearing on the basis of his or her official position or knowledge as a Department employee may not accept payment for such an appearance. Any payment or fees received shall be made payable to the Treasurer, State of Illinois, and turned over to the immediate supervisor. An employee called as a witness in a court proceeding or administrative hearing shall notify his or her immediate supervisor. The supervisor shall review the appearance for possible conflict of interest, and, if necessary, shall seek the assistance of the Department's Office of Internal Audits in making a determination of whether a conflict exists.
- s) An employee who accepts secondary employment that might adversely affect, or give the appearance of affecting, his or her official duties or that might adversely affect public confidence in the integrity of the Department shall notify his or her immediate supervisor. The supervisor shall review the employment for possible conflict of interest, and, if necessary, shall seek the assistance of the Department's Office of Internal Audits in making a determination regarding whether a conflict exists. Any such employment must comply with the Illinois Purchasing Act [30 ILCS 505]. (See [Section 437.50](#).)
- t) An employee engaged in any secondary employment shall not permit such employment to interfere with his or her official duties and shall not use his or her relationship with the Department to promote his or her secondary employment.
- u) When an employee or any person with whom the employee has a personal relationship is the subject of an investigation or review conducted by the Office

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of Inspector General, Office of Internal Audits, child protection, licensing, or other Department unit, the employee shall not use his or her status as an employee to influence or interfere with the investigation or review. The employee shall not participate in any decision-making regarding the results of the investigation or review, and shall have access to the record(s) of the investigation or review only as authorized by applicable statute or regulation. When the employee normally has authority over the person or persons responsible for the investigation or review, responsibility for the investigation or review and decision-making shall be transferred to a person or entity with no apparent conflict of interest.

(Source: Amended at 22 Ill. Reg., effective December 15, 1998)

**Section 437.50 Prohibitions Under the Illinois Procurement Code**

- a) Employees who are receiving remuneration for services as State employees of the Department are subject to the provisions of the Illinois Procurement Code [30 ILCS 500]. Very generally, the Illinois Procurement Code prohibits certain contracts and economic interests of State employees, their spouses, and minor children. It also contains reporting requirements and exemption provisions. All State employees must comply with the provisions of the Illinois Procurement Code. State employees should, therefore, consult the Code to make sure that they are in compliance with it. If necessary, employees shall seek the assistance of the Department's Office of Internal Audits in making a determination of whether they are in compliance with the Code.
- b) Section 50-13 of the Illinois Procurement Code excludes from its conflict of interest provisions *payments made to an employee, his or her spouse or minor child acting as a foster parent, homemaker, advocate, or volunteer for or in behalf of a child or family served by the Department. Also excluded are contracts for personal services as a teacher or school administrator at any school district, public community college district or State university.*

(Source: Amended at 22 Ill. Reg., effective December 15, 1998)

**Section 437.60 Requirements of the Illinois Governmental Ethics Act**

- a) Employees who are receiving remuneration for services as State employees of the Department are required by Article 4A of the Illinois Governmental Ethics Act [5 ILCS 420/Art. 4A] to file a yearly statement disclosing their economic interests when they:
  - 1) *are, or function as, the head of a department, commission, board, division, bureau, authority or other administrative unit within the government of this State, or who exercise similar authority within the government of this State;*

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- 2) *have direct supervisory authority over, or direct responsibility for, the formulation, negotiation, issuance or execution of contracts entered into by the State in the amount of \$5,000 or more;*
  - 3) *have authority for the issuance or promulgation of rules and regulations within areas under the authority of the State;*
  - 4) *have authority for the approval of professional licenses;*
  - 5) *have responsibility with respect to the financial inspection of regulated nongovernmental entities;*
  - 6) *adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration or decision of any judicial or administrative proceeding, within the authority of the State; or*
  - 7) *have supervisory responsibility for 20 or more employees of the State.(Section 4A-101 of the Act)*
- b) Employees affected by the Act will be notified by mail from the Secretary of State's Index Department regarding the requirement to file a Statement of Economic Interest. Any employee who is required to file a Statement of Economic Interest, but fails to file the Statement by May 1 of each year, will be subject to a \$15 late filing fee. Any employee who fails to file the Statement by May 15 shall be subject to a penalty of \$100 per day from May 16 to the date that the Statement is filed with the Secretary of State. This penalty is in addition to the \$15 late filing fee associated with the May 1 deadline. Failure to file by May 31 of each year shall result in the forfeiture of employment.
- c) Any employee who willfully files a false or incomplete Statement of Economic Interest shall be guilty of a Class A misdemeanor.

(Source: Added at 22 Ill. Reg. 5484, effective March 16, 1998)

### **Section 437.70 Prohibition of Employee Conflicts in the Care of Children**

No employee shall take a child for whom the Department is legally responsible to the employee's residence, or in any way be involved in arranging or facilitating the transportation of such a child to the employee's residence, unless:

- a) the employee is a licensed foster parent or unlicensed relative caregiver and the child has been placed with the employee for foster care or adoption purposes. Placement of a child with an employee must be approved by the administrator responsible for the region; or

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- b) the person(s) responsible for the day to day care of the child has consented to the child's visit to the employee's residence or has authorized the employee to transport the child in-state and, for purposes of transportation, the employee has a valid driver's license, insurance as required by law, and uses appropriate child safety restraint devices; or
- c) a child age 16 or over has been placed in an independent living arrangement, supervised by a different employee or another agency, and the child is residing in an apartment or other separate unit of the building where the employee resides; or
- d) the administrator responsible for the region has approved the child staying overnight at the employee's residence because of inclement weather or other emergency. Verbal approval by the administrator must be confirmed in writing the next business day.

(Source: Added at 22 Ill. Reg. 5484, effective March 16, 1998)

### **Section 437.80 Requirements of Executive Order #3 (1977)**

- a) In addition to the requirements of the Illinois Governmental Ethics Act, certain employees in critical government positions are required to file a Statement of Personal Economic Disclosure. This is a requirement of Executive Order #3 (1977), "Personal Economic Disclosure." Staff included under Executive Order #3 are the following: appointed by the Governor; approve and certify vouchers, issuance of contracts, licensing, financial inspection of regulated private entities; staff in policy-making positions; or such other responsibilities determined to have potential conflict of interest.
- b) The Department's Office of Internal Audits contacts each employee subject to Executive Order #3 by memorandum instructing them to complete the attached Statement of Economic Interest that is attached to the memorandum and return it to the State Board of Ethics no later than April 30 of each year. Failure to file in a timely manner, or the willful making of a false, misleading, or incomplete Statement of Economic Interest or failure to cooperate with the State Board of Ethics shall be grounds for disciplinary action, including dismissal.

(Source: Added at 22 Ill. Reg. 5484, effective March 16, 1998)

### **Section 437.90 Violations of Part 437**

- a) Strict compliance with all of the provisions of this Part is mandatory and any non-compliance may subject the employee to criminal penalties, suspension, or discharge from employment.

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- b) Any employee who has reasonable cause to believe that an employee is in violation of any of the provisions of this Part shall refer the matter to the Department's Office of Internal Audits.
- c) The Department may require any employee who appears to be in violation of any of the provisions of this Part to document all of his or her actions undertaken in order to comply with all of the provisions of this Part.
- d) Discipline imposed for violations of this Part will be based, in part, upon whether the employee:
  - 1) Used his or her official position for private gain (other than salary);
  - 2) Gave preferential treatment to any entity or person in the conduct of official duties because of personal interest or personal relationship;
  - 3) impeded or adversely affected governmental efficiency or economy because of personal interest or personal relationship;
  - 4) Failed to act impartially in the conduct of official duties because of personal interest or personal relationship; or
  - 5) Engaged in conduct that could adversely affect the confidence of the public in the integrity of the Department of Children and Family Services.

(Source: Added at 22 Ill. Reg. 5484, effective March 16, 1998)