

**DOCKETED**

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## **Suggestion for addressing potential conflict of interest between Providers and Rating Companies**

In the early days of HERS verification when duct testing for alterations was about to go into effect, around 2006, my company, Sierra Building Science, was the sole training subcontractor for CalCERTS, one of two HERS providers at the time.

We regularly received inquiries from HVAC contractors asking basically the same question: If my son/daughter/other family member/past employee starts a HERS company, can they inspect my company's work? The answer was, "probably not". At that time, the HERS regulations had language preventing conflicts of interest by defining "financial interest". The assumption was that the contractor (Senior) provided funding or other support to help start the HERS company (Junior's). This would meet the definition of financial interest and prevent Junior from inspecting Senior's work.

Then the question was asked, "What if Junior started their HERS company with no help from Senior?" Our answer was that it would be very difficult to verify and that we would have to take it on a case-by-case basis. Even if we were comfortable that Junior started the HERS company completely on their own, which was unlikely, there is still a familial relationship. Even if there is not a familial relationship (Junior is a former employee of Senior but not a family member) there could be an unwritten agreement of cooperation that could lead to a conflict of interest (e.g., I'll let you inspect all of my jobs, if you give me a reduced price and go easy on the inspections.). While these relationships met the letter of the law based on financial interest, they did not meet the intent. We told them that at the very least all inspections by Junior of Senior's work would be under much higher scrutiny by CalCERTS QA staff and probably by CEC staff. In consultation with CalCERTS, we basically discouraged them from doing it. That was our prerogative, despite the loss of business to both CalCERTS and my company. If Senior wanted to help Junior set up a HERS company, that was fine as long as Junior inspected anyone's work but Senior's. Most of the time Junior's company never was established and it was apparent why.

I encourage the CEC to consider a similar approach to the Provider/Rating Company relationship. Any new or existing Provider should be approved/recertified under similar restrictions: If there is any reasonable suspicion of conflict between a provider and a rating company that they be "highly discouraged" or outright prevented from doing business with each other. If they are allowed to do business despite being discouraged, that it be under much greater scrutiny by CEC and the code enforcement community, and that the cost of the additional scrutiny be borne by the Provider and rating company.

Trust in the HERS/ECC program is imperative to its success. Anything that is even just

perceived as a conflict of interest must be avoided or the code enforcement community will not respect the HERS/ECC program, or use it.