



September 20, 2019

## **ADVANCE NOTICE OF ADOPTION OF EMERGENCY REGULATIONS**

This notice is sent in accordance with Government Code Section 11346.1(a)(2), which requires that State of California agencies give notice of at least five working days of their intent to file emergency regulations with the Office of Administrative Law (OAL). The California Health Benefit Exchange (Covered California) intends to file a request for adoption of the Emergency Rulemaking package with the Office of Administrative Law (OAL) that amends Covered California's practices with respect to premium payments made by qualified employers enrolled in the Small Business Options Program (SHOP) Exchange now referred to as Covered California for Small Business (CCSB). Specifically, the proposed amendment concerns premium payments made by check or by automated clearing house (ACH) returned for non-payment for any reason and the charge of an insufficient funds fee. As required by subdivisions (a)(2) and (b)(2) of Government Code Section 11346.1, this notice appends the following: (1) the specific language of the proposed regulations and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, authority and reference citations, informative digest and policy statement overview, any reports, and required determinations.

Covered California plans to file the Emergency Rulemaking package with OAL at least five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed regulations (also enclosed), they must be received by both Covered California and the Office of Administrative Law within five calendar days of Covered California's filing at OAL. Response to these comments is strictly at Covered California's discretion.

Comments should be sent simultaneously to:

Faviola Adams  
Regulations Coordinator  
Covered California  
1601 Exposition Blvd  
Sacramento, CA 95815

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-228-4468 or by e-mail to [regulations@covered.ca.gov](mailto:regulations@covered.ca.gov).

Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for five years. Please note that this advance notice and comment period is not intended to replace the public's ability to comment once the emergency regulations are approved. Covered California will hold a 45-day comment period after it has published Notice to make these regulations permanent.

You may also view the proposed regulatory language and Finding of Emergency on Covered California's website at the following address:

<http://hbex.coveredca.com/regulations>

If you have any questions concerning this Advance Notice, please contact Faviola Adams at (916) 228-8668.

## **FINDING OF EMERGENCY**

The Director Covered California finds that an emergency exists and that this proposed emergency regulation is necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.

## **DEEMED EMERGENCY**

The necessity of this regulation to be adopted immediately as a deemed emergency has been declared by the Legislature in Government Code Section 100504 (a)(6) which grants Covered California emergency rule making authority:

Covered California may “Adopt rules and regulations, as necessary. Until January 1, 2022, any necessary rules and regulations, except those implementing Section 1043, may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). The adoption of emergency regulations pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, including subdivisions (e) and (h) of Section 11346.1, any emergency regulation adopted pursuant to this section shall be repealed by operation of law unless the adoption, amendment, or repeal of the regulation is promulgated by the board pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code within five years of the initial adoption of the emergency regulation. Any rule or regulation adopted pursuant to this section shall be discussed by the board during at least one properly noticed board meeting prior to the board meeting at which the board adopts the rule or regulation. Notwithstanding subdivision (h) of Section 11346.1, until January 1, 2027, the Office of Administrative Law may approve more than two readoptions of an emergency regulation adopted pursuant to this section.”

## **FINDING OF NECESSITY**

Section 6532(e) establishes that on an annual basis, Covered California will set a reasonable charge for processing a premium payment made by a qualified employer via check or ACH that is returned for insufficient funds. This regulatory change is necessary to permit CCSB to recover the actual costs incurred for processing a returned payment submitted to Covered California for premium payment by a qualified employer. Losses sustained as result of the inability to assess a reasonable charge on qualified employers for processing a returned premium payment are harmful to the operation of CCSB. State law prohibits assessment of any charge greater than actual costs of the agency’s processing and collection. Financial stability of the CCSB operation is key to future growth of CCSB which serves California’s small employers.

When a premium payment is returned for any reason, there are several consequences. Covered California pays the qualified employer’s selected qualified

health plans (QHP) issuers for the health insurance coverage even in the absence of the employer's premium payment when returned. Covered California has a contractual obligation to its QHPs to ensure continued health coverage for employees of the qualified employers. In addition, QHP issuers are not allowed to discontinue coverage without timely issuing correct notices to the qualified employers. QHP issuers providing health insurance coverage to qualified employers whose premium payments have been returned continue to pay claims for medical care received by the employer's employees and dependents.

Most importantly, virtually all qualified employers require employees to pay some share of the premium and typically it is taken from an employee's paycheck. In the instance when an employer's premium payment to Covered California is returned for non-payment, some portion of that payment has already been made by the qualified employer's covered employees.

Part of the need for imposing the actual cost of processing a returned payment is not only to keep Covered California whole, but also to discourage unwanted behavior by qualified employers. It is patently unfair to covered employees who have contributed to the premium payment made by the qualified employer to have their health insurance coverage jeopardized by non-payment of premium.

Additionally, this section is amended to impose a requirement on a qualified employer to pay premium due via money order or cashier's check if a qualified employer has two payments returned for non-payment within a six-month period. This requirement lasts for a 12-month period following the six-month period.

This is necessary to enable CCSB to maintain adequate cash flow. CCSB remits premium payments to the QHP issuers who are providing health insurance coverage to the qualified employer. These QHP issuers are statutorily required to continue the qualified employer's health insurance coverage during the period when returned payments are being discovered and processed. Imposing a hard money requirement after two returned payments within a six-month period improves cash flow to CCSB and enables QHP issuers to continue to pay claims for the qualified employers as they are required to do. It is also designed as a deterrent in that it is less convenient to employers who have to pay health insurance premiums via cashier's check or money order.

CCSB started accepting premium payments via ACH in February 2019. Payments for premium made by qualified employers which are returned to Covered California have the same negative impact regardless of whether they are ACH or paper check.

## **AUTHORITY AND REFERENCE**

Authority: Government Code Section 100504.

Reference: Government Code Sections 100502, 100503, and 100504; 45 C.F.R. §§ 155 and 156.

## **DOCUMENTS RELIED UPON**

None.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Documents to be incorporated by reference:**

None.

### **Summary of Existing Laws**

Under the federal Patient and Protection and Affordable Care Act (PPACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law, the California Patient Protection and Affordable Care Act, established the California Health Benefit Exchange (Covered California) within state government. Gov. Code § 100500 et seq. Covered California is required to establish a Small Business Health Options Program (SHOP) now referred to as “Covered California for Small Business (CCSB)”. Gov. Code § 100502(m). The Exchange is further required to establish the criteria and process for eligibility determination, enrollment, and disenrollment of enrollees and potential enrollees in Covered California’s Small Business Health Options Program. Gov. Code § 100503(a).

Government Code Section 6157 was updated in 2013 after Covered California was established. It requires a public agency to accept personal checks in payment for any license, permit or fee, or in payment of an obligation owing to the public agency or trust deposit, under specified conditions. Section 6157 also provides that if any personal check is returned to a public agency without payment, a reasonable charge may be imposed to recover the agency’s processing and collection costs for the returned check which does not exceed the actual costs incurred. CCSB accepts checks from qualified employers for their premium payments for the health insurance coverage selected and purchased from CCSB. The premium paid by check by the qualified employers for their employees’ health insurance coverage are processed by CCSB so that payment to the QHP issuer providing the coverage can be timely made.

Civil Code Section 1719(a)(1) limits “any person (emphasis added) to charging not more than \$25 for the first non-sufficient funds check and up to \$35 for subsequent returned checks”. This statute was enacted in 1998 and is clearly not limited to or even aimed at public agencies. Research shows that this section of the Civil Code was aimed at curbing rogue debt collectors under the Fair Debt Collection Act. It was not targeting public agencies.

Since Government Code Section 6157 was updated in 2013 (after Covered California

was established by law) and is focused on public agencies, it takes precedence over Civil Code Section 1719 which was enacted in 1998. The Civil Code section addresses “any person” and sets specified charges for processing non-sufficient fund situations. The Government Code section is more specific and applies only to public agencies.

The existing fee of \$25 is not producing funds to cover the actual costs incurred and thus, is not meeting the budget needs of the CCSB program. Accordingly, Covered California proposes to amend Section 6532(e), to assess a reasonable charge for a premium payment that is returned for insufficient funds, as authorized by Government Code Section 6157. Having the flexibility to recoup the actual cost of processing a returned payment is necessary because CCSB is responsible for self-funding. California law prohibits Covered California from receiving any funds from the state general fund. Covered California operations, including the operation of CCSB, must be self-sustaining. Covered California assesses participation fees on the health insurance issuers, as a percentage of premium, to provide for its operating funds. If CCSB is unable, through this amendment to its regulation, to recover the actual costs of processing returned payments, the health insurance issuer’s participation fees will subsidize this cost of the program. On its face, it not fair that health insurance issuers who participate in CCSB should subsidize a small handful of qualified employers who are submitting payments which are returned for insufficient funds. Covered California strives to keep the participation fees charged to issuers to sustain operations at the lowest level possible which helps keep premiums for qualified employers and consumers at competitively low prices. Further, by having the flexibility to change the returned payment fee based on actual costs, it saves Covered California the cost and effort to change this regulation when needed. If Covered California improves the efficiency of its financial systems, the actual costs for processing a returned payment could be lowered. This amendment gives Covered California the ability to do that without the time and cost of amending the regulation.

The proposed amendment will clarify that any premium payment sent to Covered California by a small employer who has purchased coverage through Covered California for Small Business will be subject to a reasonable charge no greater than actual costs incurred for processing and collection. This amount will be widely noticed to prospective employers on the application, the website and on premium invoices. The proposed amendment to this regulation will create greater financial stability for Covered California for Small Business by enabling recoupment of actual costs related to processing a check returned for non-payment. In addition, it may also provide an incentive for reducing the number of unreturned checks thereby allowing more efficient operations.

These proposed regulations will benefit the public including small business employers by notifying them in advance of the reasonable charge which represents the actual costs incurred for processing returned checks. Ample notice of the actual cost amount will be made known to all prospective and current enrolled qualified employers through multiple channels including both online and hard copy premium invoices.

In 2011, OAL approved a similar regulation found at 16 California Code of Regulations Section 999 for the Board of Barbering and Cosmetology. This regulation permits the Department of Consumer Affairs to set the amount that the Board could assess for the return of a personal check. This regulation also requires the Department of Consumer Affairs to set the charge for the return of a personal check in accordance with the laws of the State of California including Government Code section 6157 as discussed above.

This regulatory change will take effect on January 1, 2020 in order to reflect these changes in the CCSB Group Agreement Supplement which is a contract between the CCSB and the qualified employer. The goal of making these regulatory changes effective on January 1, 2020 is to sync up the changes in law with the contract language in this Agreement.

After an evaluation of the above-discussed current regulations, as well as applicable state laws, Covered California has determined that this amendment to existing regulations is not inconsistent or incompatible with any existing regulations or state law.

**MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

None.

**LOCAL MANDATE**

The Executive Director of Covered California has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

**FISCAL IMPACT ESTIMATES**

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies.

**COSTS OR SAVINGS TO STATE AGENCIES AND TO FEDERAL FUNDING**

There will be no costs or savings in federal funding to the state. The proposal results in recoupment of actual costs for processing a returned check thereby increasing the financial viability of the CCSB program. The proposal does not result in any costs or savings to any other state agency.

## **Title 10. Investment**

### **Chapter 12. California Health Benefit Exchange**

#### **Article 4. General Provisions**

##### § 6532. Employer Payment of Premiums.

(a) Upon completion of the initial employee open enrollment period by all of the qualified employees of a qualified employer, the SHOP will send an invoice to the qualified employer for the total premium amount due for all of that qualified employer's qualified employees.

(1) A qualified employer's first premium payment shall be no less than 85 percent of the total amount due and must be delivered to the SHOP or postmarked by the due date indicated on the invoice, for effectuation to occur on the date requested on the employer's application.

(2) If a qualified employer's first payment does not meet the requirements in subdivision (a)(1), the SHOP will cancel the application of that qualified employer and the applications of that employer's qualified employees.

(b) Once coverage is effective, the SHOP will send invoices to qualified employers on the 15th of each month, or the following business day if the 15th falls on a weekend or holiday, for health insurance coverage for the following month.

(1) A qualified employer's monthly premium payment must be delivered to the SHOP or postmarked by the last day of the invoicing month.

(2) After the first invoice, the qualified employer must make a monthly premium payment of no less than 85 percent of the total balance due, including any amounts past due, by the due date on the invoice.



(c) If a qualified employer makes a payment for less than the full amount due, the payment will be allocated by the total percentage paid across all amounts due for health and dental benefits, if any.

(d) In any month after a qualified employer has paid its initial month's premium, if a qualified employer does not pay its premium pursuant to subdivision (b) of this section, the SHOP will, on the day following the due date of the invoice, mail a notice of delinquency to the qualified employer that shows the past due balance, informs the qualified employer of the applicable grace period pursuant to Section 10273.4(a)(1) of the California Insurance Code and Section 1365(a)(1) of the California Health and Safety Code, states the effective date of termination if payment is not received during the grace period, provides instructions for making the premium payment necessary in order to maintain coverage in force, and provides notice of the qualified employer's right to request review of the cancellation by the applicable regulator.

(e) If a qualified employer makes a premium payment ~~via check~~ that is returned unpaid for any reason, the SHOP shall apply a ~~\$25.00 insufficient funds fee~~ reasonable charge for the returned payment that reflects the actual cost incurred for processing returned payments. A reasonable charge for this service shall be set annually by Covered California, shall not exceed the actual cost incurred for processing and the same charge shall apply to each returned payment. This reasonable charge shall be noticed annually to all qualified employers on the premium invoice. If a qualified employer makes a second premium payment that is returned unpaid for any reason within six months of the prior returned payment, the qualified employer shall submit premium payment and the reasonable charge for returned payment in the form of a

cashier's check or money order. This requirement shall continue for a period of 12 months beginning with the first of the month following the last paid-through date. If premium payment is not submitted in one of these two forms, the qualified employer group may be subject to termination of non-payment of premium as described in 6538(c)(2).

(f) If a qualified employer has been terminated pursuant to Section 6538(a), then the group may request to be reinstated in the same coverage in which it was last enrolled within 30 days after the effective date of termination. Past due premiums, if any, must be paid before a group may be reinstated without a lapse in coverage.

(g) A qualified employer terminated due to non-payment of premium in Section 6538(c) may request to be reinstated in the same coverage in which it was last enrolled within 30 days after the effective date of termination. Past due premiums, if any, must be paid before a group may be reinstated without a lapse in coverage.

(h) A qualified employer may not reinstate coverage 31 or more days following the effective date of termination and may only reinstate once during the 12-month period beginning at the time of their original effective date or from their most recent renewal date, whichever is more recent. Exceptions will be considered on a case-by-case basis.

(i) Terminated groups seeking to reapply for coverage 31 or more days following the effective date of termination shall be considered a new group with an effective date consistent with the provisions of this Section and Section 6520 (a)(13).

(j) Collections for delinquent accounts payable will be performed as per State Accounting Manual (SAM) section 8776.6 (non-employee accounts receivable).

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 CFR Sections 155.705, 155.720 and 156.285.

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME <b>California Health Benefit Exchange</b>	CONTACT PERSON <b>Brian Kearns</b>	EMAIL ADDRESS <b>Brian.Kearns@covered.ca.g</b>	TELEPHONE NUMBER <b>916-228-8843</b>
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 <b>Employer Payment of Premiums</b>			NOTICE FILE NUMBER <b>Z</b>

**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |   |
|---|---|
| <input type="checkbox"/> a. Impacts business and/or employees   | <input type="checkbox"/> e. Imposes reporting requirements              |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals                         |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input type="checkbox"/> h. None of the above (Explain below):          |

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.  
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The California Health Benefit Exchange  
(Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- Below \$10 million  
 Between \$10 and \$25 million  
 Between \$25 and \$50 million  
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: Attachment A3

Describe the types of businesses (Include nonprofits): See attachment section A3

Enter the number or percentage of total businesses impacted that are small businesses: 100%

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: No businesses will be created or eliminated.

5. Indicate the geographic extent of impacts:  Statewide  
 Local or regional (List areas): \_\_\_\_\_

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: No jobs will be created or eliminated.

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?  YES  NO

If YES, explain briefly: N/A

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)**

**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ Attachment B1

a. Initial costs for a small business: \$ Attachment B1 Annual ongoing costs: \$ Attachment B1 Years: 10

b. Initial costs for a typical business: \$ N/A Annual ongoing costs: \$ N/A Years: N/A

c. Initial costs for an individual: \$ N/A Annual ongoing costs: \$ N/A Years: N/A

d. Describe other economic costs that may occur: Minimal other costs, such as if the company must submit payment with a cashier's check or money order

2. If multiple industries are impacted, enter the share of total costs for each industry: N/A

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ N/A

4. Will this regulation directly impact housing costs?  YES  NO

If YES, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_

Number of units: \_\_\_\_\_

5. Are there comparable Federal regulations?  YES  NO

Explain the need for State regulation given the existence or absence of Federal regulations: See attachment section B5

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ 0

**C. ESTIMATED BENEFITS** *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment:

California Health Benefit Exchange will be able to recover up to the actual processing cost for a NSF transaction.  
Businesses will have a reduce risk of losing insurance coverage for their employees.

2. Are the benefits the result of:  specific statutory requirements, or  goals developed by the agency based on broad statutory authority?

Explain: See attachment section C2

3. What are the total statewide benefits from this regulation over its lifetime? \$ Unknown

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: N/A

**D. ALTERNATIVES TO THE REGULATION** *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: No alternatives were considered.

Current regulation limits the NSF / returned payment fee at \$25.00 per transaction, which is only a fraction of the actual processing cost.

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)**

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ Unknown Cost: \$ Up to 350,000

Alternative 1: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

Alternative 2: Benefit: \$ \_\_\_\_\_ Cost: \$ \_\_\_\_\_

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?  YES  NO

Explain: \_\_\_\_\_

**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.*

*California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?  YES  NO

*If YES, complete E2. and E3  
If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

*(Attach additional pages for other alternatives)*

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES  NO

*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: N/A

The incentive for innovation in products, materials or processes: N/A

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: N/A

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT**

**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

a. Funding provided in \_\_\_\_\_

Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

b. Funding will be requested in the Governor's Budget Act of \_\_\_\_\_

Fiscal Year: \_\_\_\_\_

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

*Check reason(s) this regulation is not reimbursable and provide the appropriate information:*

a. Implements the Federal mandate contained in \_\_\_\_\_

b. Implements the court mandate set forth by the \_\_\_\_\_ Court.

Case of: \_\_\_\_\_ vs. \_\_\_\_\_

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_

Date of Election: \_\_\_\_\_

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: \_\_\_\_\_  
\_\_\_\_\_

e. Will be fully financed from the fees, revenue, etc. from: \_\_\_\_\_

Authorized by Section: \_\_\_\_\_ of the \_\_\_\_\_ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

3. Annual Savings. (approximate)

\$ \_\_\_\_\_

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain \_\_\_\_\_  
\_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT (CONTINUED)**

**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

*It is anticipated that State agencies will:*

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the \_\_\_\_\_ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ 27,334

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain \_\_\_\_\_  
\_\_\_\_\_

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain \_\_\_\_\_  
\_\_\_\_\_

FISCAL OFFICER SIGNATURE



DATE

8-9-19

*The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

AGENCY SECRETARY



DATE

9/19/19

*Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.*

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE



## Economic and Fiscal Impact Statement Attachment (form STD. 399)

**A3.** Enter the total number of businesses impacted – **Estimated 6,926 total CCSB businesses, 160 estimated businesses that are candidates to submit not sufficient funds (NSF) transaction i.e. returned payment.**

Describe the types of businesses (Include nonprofits) – **Small Businesses with under 100 FTEs doing business with the California Health Benefit Exchange.**

**B1.** What are the total statewide dollar cost that businesses and individuals may incur to comply with this regulation over its lifetime? **Up to \$350,000.00**

- a. Initial costs for a small business: **The maximum increase for small businesses is an additional \$122 per returned payment transaction. However, California Health Benefit Exchange is proposing increasing the fee to \$50.00 per transaction**

Annual ongoing costs: **\$6,000 to \$35,000**

**B5.** Are there comparable Federal regulations? No

Explain the need for State regulation given the existence or absence of Federal regulations: **Regulation allows Covered California to recover up to the actual processing cost of a returned payment transaction and when a second payment is returned unpaid for any reason, the employer is required to submit premium payment, the fee for insufficient funds and ongoing monthly payments in the form of a cashier's check or money order for a period of 12 months beginning the first of the month following the last paid through date.**

**C2.** Are the benefits the result of:

Explain - **Government Code 100504 and 100503 authorizes the Board of the California Health Benefit Exchange to adopt the regulations.**

**Covered California for Small Business  
Economic and Fiscal Impact Statement Exhibit  
Emergency Rulemaking for Not Sufficient Funds (NSF) i.e. returned payment  
Financial Analysis**

<b>Actual FY2018 - 19</b>	
Number of NSF Transactions	197
NSF Fee	\$25
Fees Received	\$4,925
Average Staff Time (minutes)	150
Average FMD Monthly Salary	\$9,836
<b>Actual Cost per NSF Transaction</b>	<b>\$142</b>
Annual Cost	\$27,947
<b>Additional Cost to the CCSB for NSF (annual)</b>	<b>\$23,022</b>
Number of Checks / ACH Received	74,523
Percentage of Groups	0.3%

<b>FMD Job Classification</b>	<b>Monthly Salary+Benefit</b>
Senior Accounting Officer	\$9,467
Accounting Admin I, Supervisor	\$11,174
Accounting Officer	\$8,267
Accountant Trainee	\$6,642
Accounting Admin III	\$13,628

<b>Projected Actual Cost FY2019 - 20</b>	
Projected NSF Transactions	220
<b>NSF Fee</b>	<b>\$147</b>
Fees Received	\$32,297
Average Staff Time (minutes)	150
Average FMD Monthly Salary	\$10,180
Actual Cost per NSF Transaction	\$147
Annual Cost	\$32,259
<b>Cost to the CCSB for NSF (annual)</b>	<b>\$0</b>
Estimated Number of Checks / ACH Received	83,112
Percentage of Groups	0.3%

<b>Additional Savings in FY2019 - 20</b>	<b>\$27,372</b>
<b>Estimated Additional Savings Over 10 Year Per</b>	<b>\$350,000</b>

<b>California Health Benefit Exchange proposed fee is \$50.00 per returned payment</b>	
<b>Proposed Returned Payment Fee FY2019 - 20</b>	
Projected NSF Transactions	220
<b>NSF Fee</b>	<b>\$50</b>
Fees Received	\$10,985
Average Staff Time (minutes)	150
Average FMD Monthly Salary	\$10,180
Actual Cost per NSF Transaction	\$147
Annual Cost	\$32,259
<b>Cost to the CCSB for NSF (annual)</b>	<b>\$21,274</b>
Estimated Number of Checks / ACH Received	83,112
Percentage of Groups	0.0%

<b>Additional Savings in FY2019 - 20</b>	<b>\$6,060</b>
<b>Estimated Additional Savings Over 10 Year Per</b>	<b>\$60,000</b>