



Notice Published April 23, 2021

NOTICE OF PROPOSED RULEMAKING

CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 8 AMEND SECTIONS 6658, 6660, and 6664

The Board of Directors for the California Health Benefit Exchange (hereinafter referred to as the “Exchange”) proposes to adopt the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Exchange has not scheduled a public hearing on this proposed action. However, the Exchange will hold a hearing if it receives a written request for a public hearing for any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes on June 7, 2021. The Exchange will consider only comments received at the Exchange’s office by that time. Submit written comments to:

Courtney Leadham
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-403-4468 or by e-mail to regulations@covered.ca.gov.

AUTHORITY AND REFERENCE

Government Code Section 100504(a)(6) authorizes the Board of Directors for the Exchange to adopt rules and regulations, as necessary. The proposed regulation implements, interprets, and makes specific Government Code Sections 100502 and 100503; Election Code Sections 2400, 2401, 2403, 2406, and 2048; and Title 45 of the Code of Federal Regulations, Sections 155.205 and 155.210.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None

Summary of Existing Laws

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as known as "Covered California." For purposes of this Notice, Covered California will be referred to as the "Exchange." The Exchange's mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange's Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret, and make specific state and federal laws.

Summary of the Effect of the Proposed Regulation

This proposed regulation allows the Exchange to continue paying the background costs for all individuals seeking certification under Article 8. The originally filed regulation stated that the Exchange would pay for background check costs until December 31, 2015. After that date, Certified Enrollment Counselors were required to pay for background check costs. The Exchange decided to pay the background costs on an indefinite basis and, in order to ensure these continued payments, the Exchange filed an emergency rulemaking to modify 10 CCR §6658(d)(1) on December 12, 2016. This rulemaking package will make that emergency amendment permanent and ensure that the Exchange will continue to pay the background costs. By removing a potential cost barrier, the Exchange can continue to expand the Certified Enrollment Counselor program, which is an important enrollment partner in fulfilling the Exchange's mission of improving the quality of health care and reducing California's uninsured population.

The proposed regulation also requires Certified Enrollment Counselors to advise consumers about the process of filing eligibility appeals and refer consumers to licensed tax advisers, tax preparers, or other resources for assistance with tax issues should consumers have any tax-related questions regarding the Exchange application and enrollment process; exemptions from the requirement to maintain minimum essential coverage; the individual shared responsibility payment; and premium tax credit reconciliations. The regulation requires the Counselors to inform consumers that they are not acting as tax advisers or attorneys when providing assistance in their

capacity as Certified Enrollment Counselors. They must inform consumers that they cannot provide tax or legal advice.

These requirements more narrowly define the scope of the Certified Enrollment Counselor's role in the eligibility and enrollment process. Naturally, consumers will look to Certified Enrollment Counselors for advice regarding taxes, exemptions, and health coverage. Unless they are independently qualified and licensed to do so, Certified Enrollment Counselors cannot provide tax advice to consumers. The eligibility and enrollment process often triggers a number of issues related to income taxes, particularly if the consumer receives financial assistance to help pay for the health insurance. Consumers must be aware that Counselors cannot provide tax advice in their role as a Certified Enrollment Counselor.

Additionally, the Exchange requires Certified Enrollment Entities and Counselors to provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area. The Exchange places a high emphasis on reaching the underserved and vulnerable populations who historically are underinsured or lack health insurance altogether and seeks enrollment partners who can reach those underserved and vulnerable populations. By specifically tasking Certified Enrollment Entities and Counselors with providing targeted assistance to underserved or vulnerable populations, the Exchange can achieve its goal of reducing California's uninsured population, improving the quality of health care, and ensuring fair and equal access to health care.

The Exchange amends its regulation pertaining to gift giving in order to clarify an ambiguity. Under 10 CCR § 6664(a)(9)(h)(11), Certified Enrollment Entities and Counselors are prohibited from giving gifts to consumers in order to induce enrollment. However, the regulation was unclear as to whether Entities and Counselors can give gifts to consumers for purposes other than inducement of enrollment. The proposed language clarifies this ambiguity. It allows Entities and Counselors to give gifts of nominal value (under \$15 dollars) for purposes other than enrollment. Gifts of nominal value may not include beer, wine, liquor, cigarettes, or lottery tickets. This new language ensures that Entities and Counselors can avoid conflicts of interest going forward.

Finally, references to 10 CCR § 6462 have been removed since Section 6462 was repealed by operation of law. All references to Section 6462 have been replaced with a reference to Chapter 6 of the California Elections Code.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After an evaluation of current regulations, the Exchange determined that this proposed regulation is not inconsistent or incompatible with any existing regulations. In Articles 8, 9, 11, and 12 there are a number of regulations pertaining to the roles and responsibilities of Certified Enrollers, such as Certified Enrollment Counselors, Certified Application Counselors, and Plan-Based Enrollers. The proposed regulation does not conflict with any other regulations governing other Certified Enrollers.

Anticipated Benefits of the Proposed Regulation

The anticipated benefits of this proposed regulation include:

- Ensuring that the Exchange continues to pay the background check costs so that Certified Enrollment Entities and Counselors are not burdened by this potential barrier to certification;
- Narrowing the Certified Enrollment Counselor's role regarding tax advice to ensure that consumers receive such advice from qualified professionals;
- Ensuring consumers understand the process of filing an eligibility appeal;
- Providing targeted assistance to underserved or vulnerable populations to achieve the Exchange's goal of reducing California's uninsured population, improving the quality of health care, and ensuring fair and equal access to health care; and
- Removing outdated references to 10 CCR § 6462, which has been repealed.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Exchange has made the following initial determinations:

Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Mandate on Local Agencies and School Districts

None. The Exchange has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

Cost to Any Local Agency or School District Which Must Be Reimbursed in Accordance with Government Code Sections 17500 Through 17630

None. 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.

Costs or Savings to State Agencies

The proposal results in additional costs to the Exchange but will have no impact on other agencies or the State General Fund. The Exchange is currently completely funded by assessments on premiums charged by Qualified Health Plans.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Other Nondiscretionary or Savings Imposed on Local Agencies

None. This proposal does not impose other nondiscretionary costs or savings on local agencies.

Significant Effect on Housing Costs

None.

Effect on Small Business

This proposed regulation is not expected to create or expand small business within the State of California. The current Certified Enrollment Entity and Counselor program already exists. Considering the limited nature of this proposed regulation, there are no anticipated effects on small businesses.

Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States

None.

Cost Impacts on a Representative Private Person or Business

The Exchange is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of the Economic Impact Assessment/Analysis

The Exchange concludes regarding the proposed regulation that it is:

- (1) **unlikely** that the proposal will create or eliminate any jobs in the State;
- (2) **unlikely** that the proposal will create or eliminate businesses within the State;
- (3) **unlikely** that the proposal will impact the expansion of businesses currently doing business in California; and
- (4) **likely** that the health and welfare of consumers will benefit from the proposed regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Exchange has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in effectuating the purpose of the statute. This proposed action is the most effective in effectuating the purpose of the statute.

The amendments to Sections 6658 and 6660 are necessary due to the repeal of Section 6462 of Article 4. References to a repealed section render the regulation legally unenforceable and will cause confusion. The amendments to Section 6664 are necessary to ensure the consumer receives information regarding eligibility appeals and limit the role of Certified Enrollment Entities and Counselors with respect to tax advice. The Exchange understands consumers may have questions regarding their tax situation, but it is important for these consumers to seek the services of an independently qualified professional. Finally, the gift limitations in Section 6664 must be clarified to address an ambiguity.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Courtney Leadham
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 281-2562

The backup contact person for inquiries concerning the proposed administrative action may be directed to:

Brian Kearns
Attorney
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8843

Please direct copies of the proposed text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Brian Kearns at the above contact information.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE

The Exchange will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date of this notice published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies may be obtained by contacting Brian Kearns at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if requested, and considering all timely and relevant comments received, the Exchange may adopt the proposed regulation substantially as described in this notice. If the Exchange makes modifications which are sufficiently related to the originally proposed text, it will make the modified text available to the public for at least 15 days before the Exchange adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Brian Kearns at the address indicated above. The Exchange will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Brian Kearns at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulation in underline can be accessed through our website at <https://hbex.coveredca.com/regulations/index-Enrollment-Assistance.html>.



INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 8 AMEND SECTIONS 6658, 6660, and 6664

The Administrative Procedure Act (“APA”) requires that an Initial Statement of Reasons be available to the public upon request when an agency undertakes a permanent rulemaking action. The following information required by the APA pertains to this particular rulemaking action:

BACKGROUND

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as known as “Covered California.” For purposes of this Initial Statement of Reasons, Covered California will be referred to as the “Exchange.” The Exchange’s mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange’s Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws.

Specifically, the proposed rulemaking modifies multiple sections governing Certified Enrollment Entities and Certified Enrollment Counselors. The goal of this rulemaking package is to make permanent some outstanding emergency regulations and remove an invalid citation. Specifically, this regulation package will accomplish the following: (1) ensure the Exchange can continue to pay for the background checks for all individuals seeking certification under Article 8; (2) require Certified Enrollment Counselors to refer consumers to the appropriate expert for tax-related issues; (3) mandate Certified Enrollment Counselors to provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area; (4) set limitations on gifts to consumers; and (5) remove citations to 10 CCR § 6462 since it has been repealed.

PROBLEM STATEMENT

Since 2014, the Exchange has significantly relied upon Certified Enrollers to facilitate enrollment of consumers into Qualified Health Plans (QHPs). Certified Enrollers include Certified Enrollment Counselors, Certified Application Counselors, Medi-Cal Managed Care Plan Enrollers, Agents, and Plan-Based Enrollers. Certified Enrollers account for over half of the Exchange's enrollments every year, so it is important for the Exchange to foster a mutually beneficial relationship with each type of Enroller. Each counselor affiliates with an entity in order to provide enrollment assistance. Certified Enrollment Counselors affiliate with Certified Enrollment Entities.

Each Certified Enroller plays a unique role in reducing California's uninsured population. Certified Enrollment Entities apply for funding through the Navigator Grant Program, which is an Exchange partnership involving community organizations across the state with experience assisting California's diverse populations and proven success in enrolling consumers into health care programs. Certified Enrollment Counselors facilitate enrollment of consumers into the appropriate QHP that best fits their needs.

These proposed regulations allow the Exchange to continue paying the background costs for all individuals seeking certification under Article 8. The originally filed regulations stated that the Exchange would pay for background check costs until December 31, 2015. After that date, Certified Enrollment Counselors were required to pay for background check costs. The Exchange decided to pay the background costs on an indefinite basis and, in order to ensure these continued payments, the Exchange filed an emergency rulemaking to modify 10 CCR §6658(d)(1) on December 12, 2016. This rulemaking package will make that emergency amendment permanent and ensure that the Exchange will continue to pay the background costs. By removing a potential cost barrier, the Exchange can continue to expand the Certified Enrollment Counselor program, which is an important enrollment partner in fulfilling the Exchange's mission of improving the quality of health care and reducing California's uninsured population.

The proposed regulations also require Certified Enrollment Counselors to advise consumers about the process of filing eligibility appeals and refer consumers to licensed tax advisers, tax preparers, or other resources for assistance with tax issues should consumers have any tax-related questions regarding the Exchange application and enrollment process; exemptions from the requirement to maintain minimum essential coverage; the individual shared responsibility payment; and premium tax credit reconciliations. The regulations require the Counselors to inform consumers that they are not acting as tax advisers or attorneys when providing assistance in their capacity as Certified Enrollment Counselors. They must inform consumers that they cannot provide tax or legal advice.

These requirements more narrowly define the scope of the Certified Enrollment Counselor's role in the eligibility and enrollment process. Naturally, consumers will look to Certified Enrollment Counselors for advice regarding taxes, exemptions, and health coverage. Unless they are independently qualified and licensed to do so, Certified Enrollment Counselors cannot provide tax advice to consumers. The eligibility and enrollment process often triggers a number of issues related to income taxes, particularly if the consumer receives financial assistance to help pay for the health

insurance. Consumers must be aware that Counselors cannot provide tax advice in their role as a Certified Enrollment Counselor.

Additionally, the Exchange requires Certified Enrollment Entities and Counselors to provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area. The Exchange places a high emphasis on reaching the underserved and vulnerable populations who historically are underinsured or lack health insurance altogether and seeks enrollment partners who can reach those underserved and vulnerable populations. By specifically tasking Certified Enrollment Entities and Counselors with providing targeted assistance to underserved or vulnerable populations, the Exchange can achieve its goal of reducing California's uninsured population, improving the quality of health care, and ensuring fair and equal access to health care.

The Exchange amends its regulations pertaining to gift giving in order to clarify an ambiguity. Under 10 CCR § 6664(a)(9)(h)(11), Certified Enrollment Entities and Counselors are prohibited from giving gifts to consumers in order to induce enrollment. However, the regulations were unclear as to whether Entities and Counselors can give gifts to consumers for purposes other than inducement of enrollment. The proposed language clarifies this ambiguity. It allows Entities and Counselors to give gifts of nominal value (under \$15 dollars) for purposes other than enrollment. Gifts of nominal value may not include beer, wine, liquor, cigarettes, or lottery tickets. This new language ensures that Entities and Counselors can avoid conflicts of interest going forward.

Finally, references to 10 CCR § 6462 have been removed since Section 6462 was repealed by operation of law. All references to Section 6462 have been replaced with a reference to Chapter 6 of the California Elections Code.

ANTICIPATED BENEFITS

The anticipated benefits of this proposed regulation include:

- Ensuring that the Exchange continues to pay the background check costs so that Certified Enrollment Entities and Counselors are not burdened by this potential barrier to certification;
- Narrowing the Certified Enrollment Counselor's role regarding tax advice to ensure that consumers receive such advice from qualified professionals;
- Ensuring consumers understand the process of filing an eligibility appeal;
- Providing targeted assistance to underserved or vulnerable populations to achieve the Exchange's goal of reducing California's uninsured population, improving the quality of health care, and ensuring fair and equal access to health care; and

- Removing outdated references to 10 CCR § 6462, which has been repealed.

PURPOSE AND NECESSITY

The broad purpose of this proposed regulatory action is to: (1) ensure the Exchange can continue to pay for the background checks for all individuals seeking certification under Article 8; (2) require Certified Enrollment Counselors to refer consumers to the appropriate expert for tax-related issues; (3) mandate Certified Enrollment Counselors to provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area; (4) set limitations on gifts to consumers; and (5) remove citations to 10 CCR § 6462 since it has been repealed.

Pursuant to its authorities, the Exchange proposes to permanently adopt and amend certain regulations as follows:

Section 6658:

Subdivision (d)(1) has been modified to remove language referencing the December 31, 2015 expiration date for when the Exchange will discontinue paying background check costs. By removing this date, the Exchange will continue to pay background check costs indefinitely to ensure that Certified Enrollment Entities and Counselors do not face this barrier during the certification process.

Section 6660:

Subdivision (b)(16) has been modified to remove the reference to Section 6462 of Article 4, which has been repealed by operation of law. When providing voter registration assistance, the Exchange implements the procedures as outlined in the California Election Code. Certified Enrollment Counselors are trained on that process as part of certification. Therefore, Section 6462 has been replaced with a reference to Chapter 6 of the Elections Code. The Reference section has also been updated to include specific sections of the Election Code that are implemented by the Exchange.

Section 6664:

Subdivision (a)(9) has been added to require Certified Enrollment Counselors to provide information regarding the process of filing Exchange eligibility appeals. Consumers may need to appeal an eligibility determination for various reasons. Because consumers rely on Certified Enrollment Counselors to complete the eligibility application, consumers must also be able to rely on Certified Enrollment Counselors to provide information regarding the appeals process. Certified Enrollment Counselors are not expected or required to assist consumers during the appeals process and may refer the consumer to an appropriate third party that can assist with the appeal.

Subdivisions (a)(10) and (11) have been modified to ensure that Certified Enrollment Counselors limit their tax advice to consumers. Consumers will look to Certified Enrollment Counselors for advice regarding taxes, exemptions, and health coverage.

Unless they are independently qualified and licensed to do so, Certified Enrollment Counselors cannot provide tax advice to consumers. The eligibility and enrollment process often triggers a number of issues related to income taxes, particularly if the consumer receives financial assistance to help pay for the health insurance. Consumers must be aware that Counselors cannot provide tax advice in their role as a Certified Enrollment Counselor. This protects both the consumer and Certified Enrollment Counselor. Consumers are better served with a referral to the appropriate professional to that can address the consumer's individual tax situation.

Subdivision (a)(12) has been modified to require Certified Enrollment Entities and Counselors to provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area. The Exchange places a high emphasis on reaching the underserved and vulnerable populations who are historically underinsured or lack health insurance altogether and seeks enrollment partners who can reach those underserved and vulnerable populations. By specifically tasking Certified Enrollment Entities and Counselors with providing targeted assistance to underserved or vulnerable populations, the Exchange can achieve its goal of reducing California's uninsured population, improving the quality of health care, and ensuring fair and equal access to health care.

Subdivision (h)(11) has been modified to clarify the gift limitation. Under 10 CCR § 6664(a)(9)(h)(11), Certified Enrollment Entities and Counselors are prohibited from giving gifts to consumers in order to induce enrollment. However, the regulations were unclear as to whether Entities and Counselors can give gifts to consumers for purposes other than inducement of enrollment. The proposed language clarifies this ambiguity. It also allows Entities and Counselors to give gifts of nominal value (under \$15 dollars) for purposes other than enrollment. Gifts of nominal value may not include beer, wine, liquor, cigarettes, or lottery tickets. This new language ensures that Entities and Counselors can avoid conflicts of interest going forward.

RELIED ON DOCUMENTS

None.

ECONOMIC IMPACT ASSESSMENT (EIA)

Creation of Jobs

This proposed regulation is not expected to create or eliminate any jobs within the State of California. The proposed Navigator and Certified Enroller regulations are intended to clarify the regulations already in existence, and align the current practices being used for Navigators and Certified Enrollers. Additionally, these regulations will streamline the application process to ease the administrative burden on applicants. Therefore, no new job creation or elimination is expected to occur due to this proposed regulation.

Creation of Businesses

This proposed regulation is not expected to create or eliminate any new business within the State of California. The current Certified Enroller program is already in existence and the regulations only tighten the requirements for Certified Enroller to participate in the program. Therefore, no new businesses are expected to form or be eliminated due to this proposed regulation.

Expansion of Businesses

This proposed regulation is not expected to expand any business within the State of California. The current Certified Enroller program is already in existence. Therefore, no expansion of businesses is expected due to this proposed regulation.

Benefits

The regulations package has a number of benefits which are tied to the Exchange's overall mission. The Exchange is committed to improving the consumer experience in using a CEC to obtain health insurance. These regulations ensure that the Exchange obtains only that information which is necessary to determine a CEE/CEC applicant's eligibility. They also remove an unnecessary training requirement.

DESCRIPTION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Exchange has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in effectuating the purpose of the statute. This proposed action is the most effective in effectuating the purpose of the statute.

The amendments to Sections 6658 and 6660 are necessary due to the repeal of Section 6462 of Article 4. References to a repealed section render the regulation legally unenforceable and will cause confusion. The amendments to Section 6664 are necessary to ensure the consumer receives information regarding eligibility appeals and limit the role of Certified Enrollment Entities and Counselors with respect to tax advice. The Exchange understands consumers may have questions regarding their tax situation, but it is important for these consumers to seek the services of an independently qualified professional. Finally, the gift limitations in Section 6664 must be clarified to address an ambiguity.

SUPPORT FOR DETERMINATION OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The proposed rulemaking modifies multiple sections governing the Certified Enrollment Entity (CEE) and Certified Enrollment Counselor (CEC) application and certification process. The goal of these amendments is; (1) reduce the amount of information that

applicants must provide and (2) ensure compliance with applicable laws. The proposed changes are intended to streamline the application process for individuals and entities who wish to participate in the program. Requiring only information that is necessary to determine eligibility for the program is captured. This is a benefit to both the Exchange and its CEE/CEC applicants.

The proposed amendment also removes the requirement for CECs to receive training on the Exchange's Small Business Health Options Program. The CECs solely enroll individuals into QHPs; therefore, the Small Business training requirement is unnecessary and should be removed.

Lastly, the document retention requirement was changed from six to ten years to ensure that counselors comply with Federal laws, which require a minimum ten year retention requirement for any documents related to the performance of an agreement between Covered California and its contractors.

These provisions will have no substantial impact on the operation of these entities and thus the proposed regulation is not expected to have a significant adverse economic impact on businesses.

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 8. Enrollment Assistance

§ 6658. Certified Enrollment Counselor Fingerprinting and Criminal Record Checks.

(a) Individuals Required To Submit Fingerprinting Images.

(1) Individuals seeking certification under this Article shall submit fingerprint images and associated criminal history information pursuant to Government Code Section 1043 and Section 6456, subdivision (c), of these regulations.

(b) Interim Fitness Determination.

(1) Before any final determination or certification decision is made based on the criminal record, the Exchange shall comply with the requirements of Section 6456, subdivisions (d) and (e), of these regulations.

(2) If the Exchange finds that an individual seeking certification under this Article has a potentially disqualifying criminal record, the Exchange shall promptly provide the individual with a copy of his or her criminal record pursuant to Penal Code Section 11105(t), notify the individual of the specific disqualifying offense(s) for the interim determination, and provide the individual information on how to request a written appeal, including examples of the types of additional evidence the individual may provide, to dispute the accuracy and relevance of the criminal record.

(c) Appeal and Final Determination.

(1) Inaccurate or Incomplete Federal and Out of State Disqualifying Offenses.

(A) If the individual believes that the potentially disqualifying offense in the Federal Bureau of Investigation national criminal response identified in the notice sent

pursuant to subdivision (b)(2) of this Section is inaccurate or incomplete, within 60 calendar days from the date of the notice, the individual may seek to correct or complete the response by providing information to the Exchange, including official court and law enforcement records, identifying and correcting the incomplete or inaccurate criminal history information. Upon receipt of such information, the Exchange shall reevaluate the interim fitness determination. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.

(2) Inaccurate or Incomplete California Disqualifying Offenses.

(A) If the individual believes that the potentially disqualifying offense in the California Department of Justice state criminal response identified in the notice sent pursuant to subdivision (b)(2) is inaccurate or incomplete, within 60 calendar days from the date of the notice, the individual shall notify the Exchange and follow the procedures set forth in Penal Code Sections 11120-11127 to correct or complete the criminal response with the DOJ. The fitness determination shall not be final until the DOJ has acted to correct the state criminal response. Upon receipt of the corrected response, the Exchange shall reevaluate the interim fitness determination. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.

(3) If the individual determines that his or her criminal record is accurate, within 60 days from the date of the notice in subdivision (b)(2) of this Section, the individual may dispute the interim determination by producing additional written evidence of rehabilitation and mitigating circumstances related to any potentially disqualifying offense. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.

(A) For purposes of reevaluating the interim determination pursuant to subdivision (c)(3) of this Section, the Exchange shall take into account the following, if applicable:

1. Additional evidence of rehabilitation and mitigating circumstances provided by the individual in subdivision (c)(3) of this Section;
2. Information received as a result of the criminal record check;
3. Information received through the individual's application process for a position requiring fingerprinting in subdivision (a) of this Section; and
4. Information received as a result of the individual's employment history or qualifications for a position requiring fingerprinting in subdivision (a) of this Section.

(4) Absent good cause for late filing as determined by the Exchange on a case-by-case basis, the interim fitness determination shall become final.

(5) Following the receipt of a final determination pursuant to this Section that disqualifies an individual from certification, the individual is not eligible to reapply for certification for two years.

(d) Costs.

(1) The Exchange shall pay the costs incurred by individuals whose duties require fingerprinting under subdivision (a) of this Section. ~~until December 31, 2015. After December 31, 2015, background check costs for individuals seeking certification under this Article shall be paid by the Certified Enrollment Entity.~~

Note: Authority cited: Sections 1043 and 100504, Government Code. Reference: Section 100502, Government Code; Section 11105, Penal Code; and 45 C.F.R. §§ 155.205, 155.210, 155.215 and 155.260.

§ 6660. Training Standards.

(a) All individuals or entities who apply to become a Certified Enrollment Entity shall complete training for the management of Certified Enrollment Entities prior to any affiliated Certified Enrollment Counselors carrying out any Consumer Assistance functions.

(b) To ensure that all Certified Enrollment Counselors are prepared to serve both the individual Exchange, all individuals or entities who carry out Consumer Assistance functions shall complete training in the following subjects prior to carrying out any Consumer Assistance functions:

(1) QHPs (including the metal levels described at 45 C.F.R. § 156.140(b)), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;

(2) The range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program, and other public programs;

(3) The tax implications of enrollment decisions and the available resources for consumers who require tax advice and assistance with tax preparation;

(4) Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;

(5) Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;

(6) Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through an Exchange; and the individual responsibility to have health insurance;

(7) Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;

(8) Providing culturally and linguistically appropriate services;

(9) Ensuring physical and other accessibility for people with a full range of disabilities;

(10) Understanding differences among health plans;

(11) Privacy and security requirements in 45 C.F.R. § 155.260 for handling and safeguarding consumers' personally identifiable information;

(12) Working effectively with individuals with limited English proficiency, people with disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations;

(13) Customer service standards;

(14) Outreach and education methods and strategies;

(15) Applicable administrative rules, processes and systems related to Exchanges and QHPs; and

(16) Procedures for assisting consumers with voter registration in compliance with Chapter 6 of the California Elections Code. Section 6462 of Article 4.

(c) Training shall be provided by the Exchange through instructor-led training or computer-based training.

(d) Certified Enrollment Counselors shall pass an exam testing the subject matter in subdivisions (b)(1)-(16), which shall be administered by the Exchange on an annual basis, in order to maintain certification with the Exchange.

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; Sections 2400, 2401, 2403, 2406 and 2408, Elections Code; and 45 C.F.R. §§ 155.205, 155.210 and 155.260.

§ 6664. Roles & Responsibilities.

(a) Certified Enrollment Entities and Certified Enrollment Counselors shall perform the following functions:

(1) Maintain expertise in eligibility, enrollment, and program specifications. Individuals and entities registered under the Navigator Program must also conduct outreach and education to raise awareness about the Exchange;

(2) Provide information and services in a fair, accurate and impartial manner, which includes providing information that assists consumers with submitting the eligibility application, clarifying the distinctions among health coverage options, including QHPs, and helping consumers make informed decisions during the health coverage selection process. Such information and services shall include assistance with all other insurance affordability programs (e.g., Medicaid and Children's Health Insurance Programs);

(3) Facilitate selection of a QHP;

(4) Provide referrals to any applicable office of health insurance Consumer Assistance or health insurance ombudsman established under Section 2793 of the Public Health Service Act, 42 U.S.C. § 300gg-93, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage;

(5) Comply with the privacy and security requirements in 45 C.F.R. § 155.260;

(6) Prior to receiving access to any consumer's personally identifiable information as defined in Section 6650 of Article 8, the Certified Enrollment Counselor shall:

(A) Inform the consumer that the Certified Enrollment Counselor must obtain his or her authorization prior to accessing any personally identifiable information;

(B) Inform each consumer of the roles and responsibilities of the Certified Enrollment Counselor as set forth in Section 6664, subdivisions (a)(1)-(5), (7);

(C) Obtain oral or written authorization from the consumer to access the consumer's personally identifiable information;

1. Written authorization shall contain a consumer's signature and a written attestation completed by the Certified Enrollment Counselor affirming under penalty of perjury that the Certified Enrollment Counselor:

i. Is a Certified Enrollment Counselor affiliated with a Certified Enrollment Entity in the Navigator program as defined in Section 6650;

ii. Conveyed all the information required under this subdivision to the consumer in a language and manner which he or she understands; and

iii. Obtained written authorization from the consumer consenting to the release of his or her personally identifiable information in order to fulfill the duties as described in Section 6664.

2. Oral authorization shall be accompanied by a written attestation completed by the Certified Enrollment Counselor affirming under penalty of perjury that the Certified Enrollment Counselor:

i. Is a Certified Enrollment Counselor affiliated with a Certified Enrollment Entity in the Navigator program as defined in Section 6650;

ii. Conveyed all the information required under this subdivision to the consumer in a language and manner which he or she understands; and

iii. Obtained oral authorization from the consumer consenting to the release of his or her personally identifiable information in order to fulfill the duties as described in Section 6664.

(D) Inform the consumer that the Certified Enrollment Counselor cannot choose a health insurance plan on the consumer's behalf;

(E) Inform the consumer that the Certified Enrollment Counselor will provide the consumer with information regarding the health insurance options and insurance affordability programs for which he or she may be eligible;

(F) Inform the consumer that his or her personally identifiable information will be kept private and secure in accordance with § 45 C.F.R. 155.260;

(G) Inform the consumer that if the Certified Enrollment Counselor cannot assist the consumer, he or she will refer the consumer to another Certified Enrollment Counselor or the Covered California call center;

(H) Inform the consumer that the Certified Enrollment Counselor will not charge a fee in exchange for performing the duties described in Section 6664;

(I) Inform the consumer that the assistance is based only on the information provided by the consumer, and if the information given is inaccurate or incomplete, the Certified Enrollment Counselor may not be able to offer assistance;

(J) Inform the consumer that the authorization set forth in Section 6664, subdivision (a)(6)(C), may be revoked at any time; and

(K) Maintain a record of such authorization for a minimum of ten (10) years.

(7) Ensure that voter registration assistance is available in compliance with Chapter 6 of the California Elections Code ~~with Section 6462 of Article 4;~~

(8) For Certified Enrollment Entities only, maintain a physical presence in the state of California so that face-to-face assistance can be provided to applicants and enrollees; ~~and~~

(9) Provide information regarding the process of filing Exchange eligibility appeals;

(10) Provide referrals to licensed tax advisers, tax preparers, or other resources for assistance with tax preparation and tax advice related to consumer questions about the Exchange application and enrollment process, exemptions from the requirement to maintain minimum essential coverage and from the individual shared responsibility payment, and premium tax credit reconciliations;

(11) Inform each consumer that Certified Enrollment Entities and Certified Enrollment Counselors are not acting as tax advisors or attorneys when providing enrollment assistance and cannot provide tax or legal advice within their capacity as a Certified Enrollment Entity or Certified Enrollment Counselor;

(12) Provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area; and

~~(9)~~ (13) Comply with any applicable federal or state laws and regulations.

(b) To ensure that information provided as part of any Consumer Assistance is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency as required by 45 C.F.R. §§ 155.205(c)(2) and 155.210(e)(5), Certified Enrollment Entities and Certified Enrollment Counselors shall:

(1) Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs;

(2) Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken;

(3) Provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary to ensure meaningful access. Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services;

(4) Provide oral and written notice to consumers with limited English proficiency informing them of their right to receive language assistance services and how to obtain them;

(5) Receive ongoing education and training in culturally and linguistically appropriate service delivery; and

(6) Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

(c) To ensure that Consumer Assistance is accessible to people with disabilities, Certified Enrollment Entities and Certified Enrollment Counselors shall:

(1) Ensure that any consumer education materials, websites, or other tools utilized for Consumer Assistance purposes are accessible to people with disabilities, including those with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities;

(2) Provide auxiliary aids and services for individuals with disabilities, at no cost, where necessary for effective communication. Use of a consumer's family or friends as interpreters can satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services;

(3) Provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities;

(4) Ensure that legally authorized representatives are permitted to assist an individual with a disability to make informed decisions; and

(5) Acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and support programs when appropriate.

(d) To ensure that no consumer is discriminated against, Certified Enrollment Entities and Certified Enrollment Counselors shall provide the same level of service to all individuals regardless of age, disability, culture, sexual orientation, or gender identity and seek advice or experts when needed.

(e) Certified Enrollment Counselors shall complete the Certified Enrollment Entity and Certified Enrollment Counselor section of a consumer's application to the Exchange, including the following:

(1) Name and certification number of the Certified Enrollment Counselor;

(2) Name of the Certified Enrollment Entity and the Certified Enrollment Entity

Number; and

(3) Signature and date of signature by the Certified Enrollment Counselor;

(f) If any of the information listed in subdivision (e) of this Section is not included on the consumer's original application, it may not be added at a later time.

(g) Certified Enrollment Counselors shall wear the badge issued by the Exchange at all times when providing Consumer Assistance.

(h) The Certified Enrollment Entity and Certified Enrollment Counselor shall never:

(1) Have a conflict of interest as defined in Section 6666;

(2) Mail the paper application for the consumer;

(3) Coach the consumer to provide inaccurate information on the application regarding income, residency, immigration status and other eligibility rules;

(4) Coach or recommend one plan or provider over another;

(5) Accept any premium payments from the consumer;

(6) Input any premium payment information on behalf of the consumer;

(7) Pay any part of the premium or any other type of consideration to or on behalf of the consumer;

(8) Induce or accept any type of direct or indirect remuneration from the consumer;

(9) Intentionally create multiple applications from the same household, as defined in 42 C.F.R. § 435.603(f);

(10) Invite, influence, or arrange for an individual whose existing coverage through an eligible employer-sponsored plan is affordable and provides minimum value, as described in 26 U.S.C. § 36B(c)(2)(C)) and in 26 C.F.R. § 1.36B-2(c)(3)(v) and (vi), to separate from employer-based group health coverage;

(11) Provide gifts, including gift cards or cash or provide promotional items that market or promote the products or services of a third party, to any applicant or potential enrollee as an inducement for enrollment. The value of gifts provided to applicants and potential enrollees for purposes other than as an inducement for enrollment must not exceed nominal value, either individually or in the aggregate, when provided to that individual during a single encounter. The nominal value is equal to or less than \$15. Gifts of nominal value may not include beer, wine, liquor, cigarettes, tobacco, or lottery tickets. Gifts, gift cards, or cash may be provided for the purpose of providing reimbursement for legitimate expenses incurred by a consumer in effort to receive Exchange application assistance, such as, but not limited to, travel or postage expenses;

(12) Use Exchange funds to purchase gifts or gift cards, or promotional items that market or promote the products or services of a third party, that would be provided to any applicant or potential enrollee;

(13) Solicit any consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact, including calling a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the consumer has a pre-existing relationship with the individual Certified Enrollment Counselor or Certified Enrollment Entity and other applicable State

and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door-to-door or through other unsolicited means of direct contact, including calling a consumer; or

(14) Initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual Certified Enrollment Counselor or Certified Enrollment Entity has a relationship with the consumer and so long as other applicable State and Federal laws are otherwise complied with.

(i) Certified Enrollment Counselors shall report to the Exchange any subsequent arrests for which they have been released on bail or personal recognizance and criminal convictions, received by the Exchange in accordance with Section 6456, subdivision (c), and administrative actions taken by any other agency, within 30 calendar days of the date of each occurrence.

Note: Authority cited: Sections 100502 and 100504, Government Code. Reference: Sections 1043, 100502 and 100503, Government Code; Sections 2400, 2401, 2403, 2406 and 2408, Elections Code; and 45 C.F.R. §§ 155.205, 155.210, 155.215 and 155.260.

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

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT

| | | | |
|---|---|--|---|
| DEPARTMENT NAME California Health Benefit Exchange | CONTACT PERSON Courtney Leadham | EMAIL ADDRESS courtney.leadham@covered.ca. | TELEPHONE NUMBER 916.281.2562 |
| DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Enrollment Assistance - Navigators | | | NOTICE FILE NUMBER Z |

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:

- a. Impacts business and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- 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 estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- 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: 112

Describe the types of businesses (Include nonprofits): Non-profit community organizations, clinics, tax preparer, tribes, etc.

Enter the number or percentage of total businesses impacted that are small businesses: 1.5%

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

Explain: _____

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

6. Enter the number of jobs created: 1,159 and eliminated: _____

Describe the types of jobs or occupations impacted: Certified Enrollment Counselors (Navigators) with production

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: _____

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

STD. 399 (Rev. 10/2019)

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? \$ unknown
 - a. Initial costs for a small business: \$ 700 Annual ongoing costs: \$ Unknown Years: _____
 - b. Initial costs for a typical business: \$ 4,300 Annual ongoing costs: \$ unknown Years: _____
 - c. Initial costs for an individual: \$ 0 Annual ongoing costs: \$ 0 Years: _____
 - d. Describe other economic costs that may occur: unknown

2. If multiple industries are impacted, enter the share of total costs for each industry: Non-profit community organization - 51%, Safety-Net Clinic - 34%, Tax Preparer - 5%, Other - 10%

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 A.

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

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: sure high quality health care available to all Californians, providing structure for the Exchange to give predictable, clear standards to the public and to Navigators, providing increased access to and education about health care coverage to the public in California.

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

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: Jobs are created but no new business entities are created.

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: _____
Alt. #1 - Require Navigators to pay for fingerprinting and background checks.
Alt. #2 - Do not adopt new regulations and rely on federal Navigator (enrollment assistance) regulations.

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

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

Regulation: Benefit: \$ unknown Cost: \$ unknown

Alternative 1: Benefit: \$ unknown Cost: \$ unknown

Alternative 2: Benefit: \$ unknown Cost: \$ unknown

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: Given the Exchange's limited experience, it is dirgcult to quantify the extent which Navigators facilitate enrollment that, in their absence would have occurred by other means.

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: Certain performance standards were accepted and other performance standards were rejected based on the input and need of the stakeholders.

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: Making high quality health care available to all Californians, and providing increased education and access to health care coverage.

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

STD. 399 (Rev. 10/2019)

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. 10/2019)

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)

\$ 7,748,606

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)

\$ _____

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

4. Other. Explain The proposal has no impact on the General Fund. For details see Attachment B.

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)

\$ _____

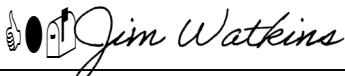
2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

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

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

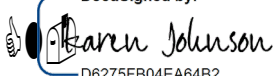


DATE

April 13, 2021

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

4/13/2021

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

STD. 399 – Enrollment Assistance – Navigators

Economic Impact

Section B. Estimated Costs –

5. Explain the need for State regulation given the existence or absence of Federal regulations

Federal law related Health Care Exchange Navigator programs should be adopted into state law so that those specific requirements are more directly applicable to entities and individuals contracting with Covered California.”

Section C. Estimated Benefits –

2. Are the benefits the result of goals developed by the agency based on broad statutory authority?

Explain:

Gov Code section 100502 (I) requires the Exchange to establish a Navigator program in conformity with the federal act. Gov Code 100503 (I) requires the Exchange to select and set performance standards and compensation for Navigators.

**Enrollment Assistance - Navigator
Std 399**

Attachment B

Personal Services (PS) & Operating Expenses & Equipment (OE&E) Costs

| Classification | Cost (per position) | | | | | Staffing Level ^{4/} | Total Cost |
|--|---------------------------|------------------------|---------------------|--------------------|---------------------|------------------------------|---------------------|
| | Salary Cost ^{1/} | Benefits ^{2/} | Total PS | OE&E ^{3/} | PS + OE&E | | |
| Director @ 20% | \$ 39,958 | \$ 23,671 | \$ 63,629 | \$ 1,460 | \$ 65,089 | 1.0 | \$ 65,089 |
| Deputy Director @ 50% | \$ 67,212 | \$ 39,816 | \$ 107,028 | \$ 3,650 | \$ 110,678 | 1.0 | \$ 110,678 |
| SSM III @ 20% | \$ 33,357 | \$ 19,761 | \$ 53,118 | \$ 2,409 | \$ 55,527 | 1.0 | \$ 55,527 |
| SSM II @ 100% | \$ 77,226 | \$ 45,749 | \$ 122,975 | \$ 7,300 | \$ 130,275 | 1.0 | \$ 130,275 |
| SSM I @ 100% | \$ 70,040 | \$ 41,492 | \$ 111,532 | \$ 7,300 | \$ 118,832 | 1.0 | \$ 118,832 |
| HPS I @100% | \$ 77,118 | \$ 45,685 | \$ 122,803 | \$ 7,300 | \$ 130,103 | 1.0 | \$ 130,103 |
| HPS I @100% | \$ 77,118 | \$ 45,685 | \$ 122,803 | \$ 7,300 | \$ 130,103 | 1.0 | \$ 130,103 |
| Assoc. Gov. Program Analyst (AGPA) (@100%) | \$ 70,212 | \$ 41,594 | \$ 111,806 | \$ 7,300 | \$ 119,106 | 1.0 | \$ 119,106 |
| Assoc. Gov. Program Analyst (AGPA) (@100%) | \$ 61,836 | \$ 36,632 | \$ 98,468 | \$ 7,300 | \$ 105,768 | 1.0 | \$ 105,768 |
| Assoc. Gov. Program Analyst (AGPA) (@100%) | \$ 64,930 | \$ 38,465 | \$ 103,395 | \$ 7,300 | \$ 110,695 | 1.0 | \$ 110,695 |
| Assoc. Gov. Program Analyst (AGPA) (@100%) | \$ 70,212 | \$ 41,594 | \$ 111,806 | \$ 7,300 | \$ 119,106 | 1.0 | \$ 119,106 |
| SSM III @2% | \$ 1,870 | \$ 1,108 | \$ 2,978 | \$ 146 | \$ 3,124 | 1.0 | \$ 3,124 |
| SSM II @5% | \$ 4,549 | \$ 2,695 | \$ 7,244 | \$ 365 | \$ 7,609 | 1.0 | \$ 7,609 |
| SSM I @8% | \$ 5,603 | \$ 3,319 | \$ 8,922 | \$ 584 | \$ 9,506 | 1.0 | \$ 9,506 |
| Assoc. Gov. Program Analyst (AGPA) @10% | \$ 6,493 | \$ 3,846 | \$ 10,339 | \$ 730 | \$ 11,069 | 1.0 | \$ 11,069 |
| Assoc. Gov. Program Analyst (AGPA) @10% | \$ 5,888 | \$ 3,488 | \$ 9,376 | \$ 730 | \$ 10,106 | 1.0 | \$ 10,106 |
| Assoc. Gov. Program Analyst (AGPA) @10% | \$ 7,021 | \$ 4,159 | \$ 11,180 | \$ 730 | \$ 11,910 | 1.0 | \$ 11,910 |
| Total | \$ 740,643 | \$ 438,759 | \$ 1,179,402 | \$ 69,204 | \$ 1,248,606 | 17.0 | \$ 1,248,606 |

1. Filled positions calculated on actual January 2021 salary, vacant positions based off of mid-step of classification with 9.23% decrease. All positions are prorated based on the amount of time dedicated to the development of the Enrollment Assistance - Navigator program.
2. Benefits calculated via standard benefit rate (59.24%).
3. OE&E includes average per employee budget for Travel, Trainning, and other general expense, prorated based on the same parameters as salary.
4. Staffing level and associated classifications provided by program.

Contract Costs

| <u>Contract/Contractor</u> | <u>Amount</u> |
|----------------------------|---------------------|
| Navigator Grants | \$ 6,500,000 |
| Total | \$ 6,500,000 |

Total Summary

| <u>Cost Category</u> | <u>Amount</u> |
|------------------------|---------------------|
| Total PS & OE&E | \$ 1,248,606 |
| Total Navigator Grants | \$ 6,500,000 |
| Total Contracts | \$ - |
| Total Cost | \$ 7,748,606 |