

**State of California
Office of Administrative Law**

In re:
California Health Benefit Exchange

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

Regulatory Action:

Title 10, California Code of Regulations

**Government Code Sections 11346.1 and
11349.6**

Adopt sections: 6456

Amend sections:

Repeal sections:

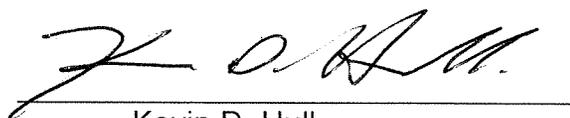
OAL File No. 2013-0619-01 E

This emergency rulemaking by the California Health Benefit Exchange (HBEX) adopts section 6456 in title 10 of the California Code of Regulations relating to the fingerprinting and criminal history requirements for specified employees, prospective employees, contractors, subcontractors, volunteers, or vendors of HBEX. Pursuant to Government Code section 100504, subdivision (a)(6), the "adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare."

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/27/2013 and will expire on 12/25/2013. The Certificate of Compliance for this action is due no later than 12/24/2013.

Date: 6/27/2013



Kevin D. Hull
Attorney

For: DEBRA M. CORNEZ
Director

Original: Peter Lee

Copy: Gabriela Ventura Gonzales

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

FILED IN THE OFFICE OF

2013 JUN 27 PM 2:11

STD. 400 (REV. 01-2013)

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|------------------|---------------------------------|--------------------------|--|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2013-0619-01E |
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| For use by Office of Administrative Law (OAL) only | |
| NOTICE | REGULATIONS |

2013 JUN 19 A 11:01
OFFICE OF ADMINISTRATIVE LAW

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

| | |
|--|-----------------------------|
| AGENCY WITH RULEMAKING AUTHORITY California Health Benefit Exchange | AGENCY FILE NUMBER (if any) |
|--|-----------------------------|

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | |
|---|---------------------------|------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | ACTION ON PROPOSED NOTICE | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|--|
| 1a. SUBJECT OF REGULATION(S) Fingerprinting and Criminal Background Checks | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|---|--|

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|---|----------------------------------|
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT 6456 AMEND REPEAL |
| TITLE(S) 10 | |

| | | | |
|---|---|---|---|
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

| | | | |
|---|---|--|--|
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ |

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| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

| | | | |
|--|----------------------------------|-----------------------|--|
| 7. CONTACT PERSON Gabriela Ventura Gonzales | TELEPHONE NUMBER 916-323-3509 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) gabriela.ventura@covered.ca.gov |
|--|----------------------------------|-----------------------|--|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|---|-----------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Pefer V. Lee</i> | DATE 6/12/13 |
| TYPED NAME AND TITLE OF SIGNATORY Pefer V. Lee, Executive Director | |

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| For use by Office of Administrative Law (OAL) only |
| ENDORSED APPROVED |
| JUN 27 2013 |
| Office of Administrative Law |

Adopt Article 4, General Provisions, Section 6456, Fingerprinting and Criminal Record Checks

a) Definitions. For purposes of this section, the following terms shall have the following associated meanings:

- (1) Federal Tax Information or FTI: return or return information as defined in 26 U.S.C. § 6103(b)(1)-(2).
- (2) Personal Identifying Information or PII: information which can be used to distinguish or trace an individual's identity such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc., consistent with the definition in Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies, M-07-16 (May 22, 2007).
- (3) Personal Health Information or PHI: protected health information or individually identifiable health information as defined in 45 C.F.R. 160.103.

(b) The California Health Benefit Exchange (Exchange or Covered California) shall require fingerprint images and associated criminal history information from individuals described in Government Code 1043(a) whose duties include or would include any of the following:

- (1) Access to Federal Tax Information.
- (2) Access to Personal Identifying Information.
- (3) Access to Personal Health Information.
- (4) Access to confidential or sensitive information provided by a member of the public including, but not limited to, a credit card account number or social security number.
- (5) Access to cash, checks, or other forms of payment and accountable items.
- (6) Responsibility for the development or maintenance of the CalHEERS system and other critical automated systems of the Exchange.
- (7) Access to information technology systems of the Exchange.

(c) Individuals whose duties require fingerprinting under paragraph (b) shall submit fingerprint images and all related information to the Department of Justice for the purpose of obtaining criminal history information as to the existence and content of a record of state or federal convictions; criminal history information as to the existence and content of a record of state or federal arrests for which the Department of Justice established that the person is free on bail or on his or her own recognizance pending trial or appeal; and criminal history information from the Department of Justice subsequent notification service, as provided pursuant to Section 1105.2 of the Penal Code.

(d) The Exchange shall, pursuant to paragraph (e), review the criminal history information of individuals whose duties require fingerprinting under paragraph (b) in order to make a determination of an individual's fitness to perform duties or functions that would include any of those specified in paragraph (b).

(e) (1) If the state or federal level criminal records contain a conviction of a felony, misdemeanor, or pending criminal charge related to a crime of moral turpitude that is substantially related to the qualifications, functions, or duties of the specific employment sought by the applicant or employee, it shall be justification for denial to an individual to serve in an Exchange role that requires fingerprinting. A plea of guilty or no contest, a verdict resulting in a conviction, or the forfeiture of bail, shall be a conviction pursuant to Government Code Section 1043 irrespective of a subsequent order under Penal Code Section 1203.4.

(2) When considering criminal history information received pursuant to this section, the Exchange shall take under consideration the nature of the job held or sought, the age, nature and gravity of the offense, and any evidence of rehabilitation including evidence provided by the individual, including but not limited to participation in treatment programs.

(f) The Exchange shall pay any costs for furnishing the fingerprints and conducting the searches of all employees and prospective employees of the Exchange.

(g) This section does not apply to individuals identified in paragraph (b) whose appointment occurred prior to June 27, 2013.

Authority: Government Code Section 100504. Reference: Government Code Section 1043; Penal Code Section 11105.