EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2014-0822-03EE

For use by Office of Administrative Law (OAL) only

2014 AUG 22 PM 4:21

OFFICE OF ADMINISTRATIVE LAW

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: CA 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: ☐ Notice re Proposed Regulatory Action ☐ Other | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional)

OAL USE ONLY — ACTION ON PROPOSED NOTICE: ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn | NOTICE REGISTER NUMBER | PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Small Business Health Options Program (SHOP) Appeals Process

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S): 2013-1126-01E, 2014-0523-02EE

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: 6540, 6542, 6544, 6546, 6548, 6550, 6552

AMEND:

REPEAL:

TITLE(S): 10

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ 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.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☒ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

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)

☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) ☒ Effective on filing with Secretary of State ☐ §100 Changes Without Regulatory Effect ☐ Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) (SAM §6660) ☐ Fair Political Practices Commission ☐ State Fire Marshal

☐ Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Brandon Ross	(916) 228-8281		brandon.ross@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: [signature] | DATE: 8/22/14

TYPED NAME AND TITLE OF SIGNATORY: Peter V. Lee, Executive Director

For use by Office of Administrative Law (OAL) only

August 15, 2014

ADVANCE NOTICE OF RE-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 a five working day advance notice of intent to file emergency regulations with the Office of Administrative Law (OAL). The California Health Benefit Exchange ("Exchange") intends to file a re-adoption of an Emergency Rulemaking package with the Office of Administrative Law (OAL) that establishes the appeals process for employers and employees participating in the Small Business Health Options Program (SHOP). 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 regulation and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, attached reports, and required determinations.

The Exchange 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 the Exchange and the Office of Administrative Law within five calendar days of the Exchange's filing at OAL. Responding to these comments is strictly at the Exchange's discretion.

Comments should be sent simultaneously to:

California Health Benefit Exchange
Attn: Brandon Ross
1601 Exposition Blvd.
Sacramento, CA 95815

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

BOARD MEMBERS Diana S. Dooley, Chair Kimberly Belshé Paul Fearer Susan Kennedy Robert Ross, MD EXEC DIRECTOR Peter V. Lee

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 one ninety (90) days. 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.

You may also view the proposed regulatory language and Finding of Emergency on the Exchange's website at the following address: https://www.coveredca.com/hbex/regulations/.

If you have any questions concerning this Advance Notice, please contact Brandon Ross at (916) 228-8281.

FINDING OF EMERGENCY

The Director of the California Health Benefit Exchange finds 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.

This emergency rulemaking was previously re-adopted by OAL on June 3, 2014 and will expire on September 3, 2014. The Exchange now seeks a second re-adoption. The Exchange is in the process of making this rulemaking permanent and has proceeded with diligence to comply with the requirements in Government Code § 11346.1(e), and has made substantial progress in that regard. For example, the Exchange has been revising and finalizing regulation text based on stakeholder comments and feedback, which will be addressed in the Initial Statement of Reasons, which is currently in progress. The California Health Benefit Exchange finance department is analyzing the economic impact on the regulations to complete the From 399 to publish the rulemaking to begin the permanent rulemaking process. We anticipate that the Initial Statement of Reasons and other necessary documents will be finalized and filed with OAL for publishing in the next several weeks.

This Finding of Emergency hereby incorporates by reference all documents in the original rulemaking file, which is file number 2013-1126-01 E.

DEEMED EMERGENCY

The Exchange may “Adopt rules and regulations, as necessary. Until January 1, 2016, any necessary rules and regulations may be adopted as emergency regulations in accordance with the Administrative Procedures Act. 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” (Gov. Code § 100504(a)(6)).

AUTHORITY AND REFERENCE

Authority: Government Code Section 100504.
Reference: Government Code Sections 100502, 100503, 100506; 45 CFR §§ 155.520, 155.530, 155.535, 155.540, 155.700, 155.705

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None

Summary of Existing Laws

Under the federal Patient 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 within state government. (Gov. Code § 100500 et seq.) The Exchange is required to establish the Small Business Health Option Program (SHOP), separate from the activities of the board related to the individual market, to assist qualified small employers in facilitating the enrollment of their employees in qualified health plans offered through the Exchange. (Gov. Code § 100502(m).) The Exchange is also required to establish an appeals process for prospective and current enrollees of the Exchange that complies with all requirements of the federal act. (Gov. Code § 100506.)

The proposed regulations will establish the Exchange's appeals policies and procedures for the SHOP. The proposed regulations will provide the public with clear standards for exercising their right to due process through the SHOP appeals process, including the requirements for SHOP appeals, informal resolutions, dismissal requirements, hearing requirements, the expedited appeal process and appeals decisions.

After an evaluation of current regulations, the Exchange has determined that these proposed regulations are not inconsistent or incompatible with any existing regulations.

JUSTIFICATION FOR DUPLICATION

These proposed regulations were developed with significant stakeholder engagement to implement and clarify the SHOP appeals process separate from the individual marketplace appeals process. While these regulations duplicate some federal regulations regarding employer and employee rights to appeal, this duplication is necessary to establish a complete and robust appeals process for the SHOP in California.

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

None

LOCAL MANDATE

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

FISCAL IMPACT ESTIMATES (Attached Form 399)

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Section 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 (Attached Form 399)

The proposal results in additional costs to the California Health Benefit Exchange, which is currently funded by federal grant money and will become financially self-sufficient in 2015. The proposal does not result in any costs or savings to any other state agency.

Adopt Article 6, Sections 6540, 6542, 6544, 6546, 6548, 6550, and 6552 which is all new regulation text to be added, to read:

SECTION 6540: DEFINITIONS FOR THE SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP) APPEALS PROCESS

In addition to the definitions in Section 6410 of Article 2 of this chapter, for purposes of the SHOP Appeals Process, the following terms shall mean:

Appeal record: The appeal decision, all papers and requests filed in the proceeding, and, if a hearing was held, the transcript or recording of hearing testimony or an official report containing the substance of what happened at the hearing and any exhibits introduced at the hearing.

Appeals Representative: an authorized representative, an agent or broker of the employer, legal counsel, a relative, a friend, an employer filing for its employees or another spokesperson designated by the appellant.

Appeal request: A clear expression, either orally or in writing, by an applicant, enrollee, employer, or small business employer or employee to have any SHOP eligibility determinations or redeterminations reviewed by an appeals entity.

Appeals entity: A body designated to conduct appeals hearings of any SHOP eligibility determinations. The California Department of Social Services shall be the designated appeals entity for the SHOP.

Appellant: The applicant or enrollee, the employer, or the small business employer or employee who is requesting an appeal.

De novo review: A review of an appeal without deference to prior decisions in the case.

Eligibility determination: A determination that an applicant, enrollee, employer, small business employer, or employee is eligible for enrollment in a QHP, or for any enrollment periods, in accordance with Sections 6522, and 6524.

Evidentiary hearing: A hearing conducted where evidence may be presented.

Statement of Position: A writing that describes the SHOP's positions regarding an appeal, as specified in Section 10952.5 of the Welfare and Institutions Code.

Vacate: To set aside a previous action.

SECTION 6542: GENERAL ELIGIBILITY APPEALS REQUIREMENTS FOR SHOP

(a) An employer shall have the right to appeal:

(1) An eligibility determination for enrollment of the SHOP pursuant to Sections 6522 and 6524, or failure to make such a determination; and

(2) A failure of the SHOP to provide written notice to an employer of the SHOP's eligibility determination as provided in Section 6524(c) within 15 calendar days of receiving an application from an employer;

(b) An employee shall have the right to appeal:

(1) An eligibility determination for enrollment of the SHOP pursuant to Sections 6522 and 6524, or failure to make such a determination; and

(1) A failure of the SHOP to provide written notice to an employee of the SHOP's eligibility determination as provided in Section 6524(d) within 15 calendar days of receiving an application from an employee.

(c) Notices of the right to appeal an eligibility determination required pursuant to Section 6524(c) or (d) must include:

(1) The reason for the eligibility determination, including a citation to the applicable regulations; and

(2) The procedure by which the employer or employee may request an appeal of an eligibility determination.

(d) The SHOP and appeals entity must:

(1) Allow an employer or employee to request an appeal within 90 days from the date of the notice of the eligibility determination, from the enrollment decision, or from the failure to make such determination or decision as provided in subdivisions (a) and (b) unless the appeals entity determines that there is good cause, as defined in Section 10951(b)(2) of the Welfare and Institution Code, for filing the appeals request beyond the 90-day period. For purposes of this paragraph, if the last day of the filing period falls on a Saturday, Sunday, or holiday, as defined in Government Code Section 6700, the filing period shall be extended to the next business day, in accordance with Government Code Section 6707;

(2) Accept appeal requests submitted in person or through an appeals representative, via telephone, facsimile, mail, electronic mail or the SHOP's Internet Web Site;

(3) Comply with the accessibility requirements specified in 45 CFR 155.205(c);

(4) Assist the employer or employee with the submission and processing of the appeal request, if requested, and must not limit or interfere with the employer's or employee's right to request an appeal; and

(5) Consider an appeal request valid if it is submitted in accordance with subdivision (d)(1) of this section.

(e) Upon receipt of an appeal request pursuant to this section, the SHOP shall transmit via secure electronic interface to the appeals entity:

(1) The appeal request, if the appeal request was initially made to the SHOP; and

(2) The appellant's eligibility record.

(f) The appeals entity must confirm receipt of records transmitted pursuant to subdivision (e) of this section within three (3) business days of receipt of the records.

(g) The appeals entity shall conduct all appeals on behalf of the SHOP pursuant to this Article.

(h) For purposes of this Article, an Administrative Law Judge designated by the appeals entity shall determine, on a case-by-case basis, the validity of all appeals requests, including whether good cause exists as provided in subdivision (d)(1).

(i) Upon receipt of a valid appeal request, the appeals entity must send written acknowledgment to the appellant, or the employer and employee if the employee is the appellant within five (5) business days from the date on which the valid appeal request is received. The written acknowledgment must include:

(1) An explanation of the appeals process; and

(2) Instructions for submitting additional evidence for consideration.

(j) Upon receipt of an invalid appeal request, the appeals entity must:

(1) Within five (5) business days from the date on which the invalid appeal request is received, send written notice to the appellant informing him or her:

(A) That the appeal request has not been accepted;

(B) Of the nature of the defect in the appeal request; and

(C) An explanation that the appellant may cure the defect and resubmit the appeal request if it meets the timeliness requirements of subdivision (d)(1), or within 10 calendar days from the date on which the invalid appeal request is received.

(2) Treat as valid an amended appeal request that meets the requirements of this section.

(k) The appellant has the right to be represented by an Appeals Representative, in accordance with Section 6540.

(l) An appellant may seek judicial review to the extent it is available by law.

(m) The appeals entity shall ensure that all data exchanges that are part of the appeals process, comply with the Federal and State privacy and security standards specified in 45 CFR Section 155.260 and the Information Practices Act of 1977 (Cal. Civ. Code, § 1798 et seq.) and in an electronic format that is consistent with 45 CFR Section 155.270.

(n) Both the SHOP and the appeals entity shall provide the appellant with the opportunity to review his or her entire eligibility file, including all papers, requests, documents, and relevant information in the SHOP's possession at any time from the date on which an appeal request is filed to the date on which the appeal decision is issued.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100502 and 100503; 45 CFR §§ 155.520, 155.700, 155.705.

SECTION 6544: INFORMAL RESOLUTION

(a) An appellant shall have an opportunity for informal resolution prior to a hearing in accordance with the requirements of this section.

(b) Upon receipt of a valid appeal request or upon receipt of the notice under Section 6544, the SHOP shall:

(1) Contact the appellant to attempt to informally resolve the appeal; and

(2) Provide the appellant the opportunity to submit relevant evidence to assist in the informal resolution of the appeal.

(c) An appellant's right to a hearing shall be preserved in any case notwithstanding the outcome of the informal resolution process unless the appellant withdraws his or her appeal request prior to the hearing date, in accordance with the procedure set forth in Section 6546(a).

(d) If the appeal advances to hearing :

(1) The appellant shall not be asked to provide duplicative information or documentation that he or she previously provided during the application or informal resolution process.

(2) The SHOP will issue a Statement of Position and transmit via secure electronic interface the Statement of Position and all papers, requests, and documents, including printouts from an appeal record, which SHOP obtained during the informal resolution process to the appeals entity no less than two business days before the date of the hearing.

(3) The SHOP will make the Statement of Position available to the appellant no less than two business days before the date of the hearing.

(e) If the appellant is satisfied with the outcome of the informal resolution process and withdraws his or her appeal request, in accordance with Section 6546(a) and the appeal does not advance to hearing:

(1) The SHOP shall, within five business days from the date of the outcome of the informal resolution, send the appellant notice, which shall:

(A) State the outcome of the informal resolution, including a plain language description of the effect of such outcome on the appellant's appeal and eligibility;

(B) State the effective date of such outcome, if applicable; and

(C) Within three business days from the date of the outcome of the informal resolution, send notice of the informal resolution outcome to the appeals entity via secure electronic interface.

(f) The appeals entity shall provide written notice to the appellant with instructions on submitting any withdrawal agreement to the appeals entity, in accordance with the procedure set forth in Section 6546.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100503 and 100506, Government Code. 45 CFR §155.535.

SECTION 6546: DISMISSALS OF APPEALS

(a) The appeals entity will dismiss an appeal if the appellant:

(1) Withdraws the request in writing prior to the hearing date; or

(2) Fails to submit an appeal request meeting the standards specified in subdivision (d) of Section 6542;

(3) Fails to appear at a scheduled hearing without good cause, as determined in accordance with Section 6542(d)(1).

(b) If an appeal is dismissed, the appeals entity shall within fifteen business days from the date of the dismissal, provide written notice to the appellant including the reason for the dismissal.

(c) The appeals entity may vacate a dismissal and proceed with the appeal if the appellant makes a written request within 30 calendar days of the date of the notice of the dismissal showing good cause why the dismissal should be vacated.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100503 and 100506, Government Code. 45 CFR §155.530.

SECTION 6548: HEARING REQUIREMENTS

(a) An appellant shall have an opportunity for a hearing in accordance with the requirements of this section.

(b) The appeals entity must send written notice to the appellant of the date, time, and location or format of the hearing no later than 15 days prior to the hearing date.

(c) The hearing shall be conducted:

(1) After notice of the hearing, pursuant to subdivision (b) of this section;

(2) As an evidentiary hearing, consistent with subdivision (e) of this section;

(3) By an Administrative Law Judge not directly involved in the employee eligibility or enrollment determination implicated in the appeal;

(4) By telephone, video conference, or in person, in accordance with the California Department of Social Services' Manual of Policies and Procedures Section 22-045.1.

(d) The appeals entity shall provide the appellant with the opportunity to:

(1) Review his or her appeal record, including all documents and records to be used by the appeals entity at the hearing, at least two business days before the date of the hearing as well as during the hearing;

(2) Bring witnesses to testify;

(3) Establish all relevant facts and circumstances;

(4) Present an argument without undue interference;

(5) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and

(6) Be represented by an appeals representative.

(e) The appeals entity shall consider the information used to determine the appellant's eligibility as well as any additional relevant evidence presented during the course of the appeals process, including at the hearing.

(f) The appeals entity shall review the appeal de novo and shall consider all relevant facts and evidence presented during the appeal process.

(g) Postponements and continuances shall be conducted in accordance with the California Department of Social Services' Manual of Policies and Procedures Section 22-053.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100503 and 100506, Government Code. 45 CFR §155.535.

SECTION 6550: EXPEDITED APPEAL PROCESS

(a) An appellant shall have the right to request an expedited appeals process from the appeals entity where there is an immediate need for health services because a standard appeal could jeopardize the appellant's life or health or ability to attain, maintain, or regain maximum function.

(b) If the appeals entity denies a request for an expedited appeal, it shall:

(1) Handle the appeal request under the standard appeals process and issue the appeal decision in accordance with Section 6542(d)(1); and

(2) Inform the appellant, within three business days from the date of the denial of a request for an expedited appeal, through electronic or oral notification, if possible, of the denial and, if notification is oral, follow up with the appellant by written notice within five business days of the denial. Written notice of the denial shall include:

(A) The reason for the denial;

(B) An explanation that the appeal request will be administered pursuant to the standard appeals process; and

(C) An explanation of the appellant's rights under the standard appeals process.

(c) If the appeals entity grants a request for an expedited appeal, it shall:

(1) Ensure a hearing date is set on an expedited basis;

(2) Provide the appellant with written notice within 10 calendar days from the date on which the appellant's request for an expedited appeal is granted, informing the appellant:

(A) That his or her request for an expedited appeal is granted; and

(B) About the date, time, and type of the hearing that will be convened;

(3) Within three business days from the date on which the appellant's request for an expedited appeal is granted, provide notice via secure electronic interface to the SHOP, specifying that the appellant's request for an expedited appeal is granted and a hearing will be set on an expedited basis.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100503 and 100506, Government Code. 45 CFR §155.540.

SECTION 6552: APPEAL DECISIONS

(a) The appeals decisions must:

(1) Be based solely on the evidence referenced in this Chapter and the eligibility requirements for SHOP enrollment as specified in Sections 6520 and 6522.

(2) Be issued to the appellant within 90 days of the date on which a valid appeal request received, unless the 90-day timeline is extended due to good cause, as provided in Section 6542(d)(1), in which case, the notice of the appeal decision shall be within the applicable extended timeline;

(3) State the decision, including a plain language description of the effect of the decision on the appellant's eligibility;

(4) Identify the legal basis, including the regulations that support the decision;

(5) Summarize the facts relevant to the appeal; and

(6) Be effective retroactive to the date the incorrect eligibility determination was made if the decision finds the appellant eligible, or effective as of the date of the notice of the appeal decision, if eligibility is denied;

(b) Upon issuance of a final decision that determines the appellant eligible the appeal decision shall be:

(1) Implemented retroactively to the date the incorrect eligibility determination was made if the decision finds the appellant eligible;

(2) Effective as of the date of the notice of the appeal decision, if eligibility is denied; or

(3) Prospectively to the 1st of the month following the decision.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100503 and 100506, Government Code. 45 CFR §155.540.

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
Covered California	Brandon Ross	916-228-8281
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
SHOP Appeals Regulations		Z

ECONOMIC IMPACT STATEMENT

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 businesses 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. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) _____

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

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

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

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

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. 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: _____

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? $ _____

a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

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

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.): $ _____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the 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: _____

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

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

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

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

Explain: _____

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

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: _____

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

Regulation:	Benefit: $ _____	Cost: $ _____
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.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

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

   Alternative 1: _____

   Alternative 2: _____

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

Regulation:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	$ _____	Cost-effectiveness ratio: $ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____

court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ election;
(DATE)

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ authorized by Section
(FEES, REVENUE, ETC.)

_____ 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 such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Savings of approximately $ _____ annually.

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

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

☑ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

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 of approximately $ _____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $ _____ in the current State Fiscal Year.

☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☑ 4. Other. See attached.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1 . Additional expenditures of approximately $ _____ in the current State Fiscal Year.

☐ 2. Savings of of approximately $ _____ in the current State Fiscal Year.

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

☑ 4. Other. See attached.

FISCAL OFFICER SIGNATURE		DATE 11-19-2013
AGENCY SECRETARY [1] APPROVAL/CONCURRENCE		DATE
DEPARTMENT OF FINANCE [2] APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER	DATE

1. *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 department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

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

COVERED CALIFORNIA
PROPOSED REGULATION
SHOP APPEALS
STD FORM 399

ATTACHMENT A

FISCAL IMPACT STATEMENT

Section B – Fiscal Effect on State Government

4. The proposed regulation affects Covered California's (CC) Small Business Health Option Program (SHOP) unit. As Attachment B indicates, the estimated cost impact to CC is $24,000 in FY 2014-15, and $77,000 in FY 2015-16. As CC becomes self-sustaining starting January 1, 2015, CC will adjust the participation fees, if necessary, to collect sufficient revenue to offset these costs. There is no impact on the General Fund.

Section C – Fiscal Effect on Federal Programs

4. The proposed regulation affects Covered California's SHOP unit. The regulation becomes effective immediately once the Office of Administrative Law files with the Secretary of State. As Attachment B indicates, the estimated cost impact to the federal funding (Grant) is $25,000 in FY 2013-14 and $24,000 in FY 2014-15. There is no impact on the General Fund.

COVERED CALIFORNIA
EMERGENCY RULEMAKING
SHOP APPEALS
STD 399
(whole dollars)

ATTACHMENT B

	2013-14 [A]	2014-15	2015-16
Estimated SHOP Applications			
Members	30,000	57,500	92,500
Group Size (Members per Application)	8	8	8
Total Applications (Members/Group Size)	3,750	7,188	11,563
Estimated Appeals (Assume 2% of applications are rejected & appealed)	75	144	231
Estimated Hearings (Assume 25% of appeals require ajudication)	19	36	58

Appeals Cost Estimate [B]					Costs		
SHOP Unit (Pinnacle Contract)	Total Hours		Rate		2013-14	2014-15	2015-16
1.5 hour/appeal x 75 appeals =	112.5	x	$25	=	$2,813		
1.5 hour/appeal x 144 appeals =	216.0	x	$25	=		$5,400	
1.5 hour/appeal x 231 appeals =	346.5	x	$25	=			$8,663

Hearing Cost Estimate [C]					Costs		
Department of Social Services	Cost Per Hearing		No. of Hearings		2013-14	2014-15	2015-16
$7.113M / 6,018 hearings =	$1,182	x	19	=	$22,162		
	$1,182	x	36	=		$42,476	
	$1,182	x	58	=			$68,332
	ESTIMATED ANNUAL COST				**$24,974**	**$47,876**	**$76,994**

Funding Summary	2013-14	2014-15	2015-16
Federal Grant (thru 12/31/14)	$24,974	$23,938	
Self-Sustaining (eff 1/1/15)		$23,938	$76,994
Total	**$24,974**	**$47,876**	**$76,994**

The appeals cost estimates are already included in the Per Member/Per Month fee that Covered California pays Pinnacle. In addition, the cost estimates were captured in the fiscal analysis for the Eligibility & Enrollment (SHOP) emergency rulemaking.

Notes:

A. SHOP Program staff provided application and appeal estimates for 2013-14. SHOP currently anticipates the number of members in 2013-14 will be 25% less than what was projected back in June. To forecast the out years, Budgets applied the same rate of reduction (25%) to the June projections for 2014-15 and 2015-16.
B. SHOP Program staff and Pinnacle developed the appeals workload and rate estimates based on current contract with Pinnacle.
C. Based on Department of Social Services' FY 2014-15 Budget Change Proposal (Affordable Care Act Caseload Growth ACMS).

CALIFORNIA HEALTH BENEFIT EXCHANGE
BOARD RESOLUTION NO. 2014-72

In the matter of the readoption of the SHOP Appeals Process Regulations.

The Board hereby resolves that, in accordance with Sections 100500(i), 100502(m), 100504(a)(6), and 100506 of the Government Code, the Executive Director or his authorized designee be authorized to finalize and submit to the Office of Administrative Law an emergency regulations package for the readoption of the SHOP Appeals Process Regulations.

* * * * * * * * * * * * *

CERTIFICATION

I, Peter V. Lee, Executive Director of the California Health Benefit Exchange, do hereby certify that the foregoing action was duly passed and adopted by the California Health Benefit Exchange Board at an official meeting thereof on August 21, 2014.

Peter V. Lee
Executive Director
California Health Benefit Exchange

August 22, 2014

STATEMENT OF CONFIRMATION OF MAILING OF FIVE-DAY EMERGENCY NOTICE
(Title 1, CCR section 50(a)(5)(A))

The California Health Benefit Exchange sent notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulation to the Office of Administrative law in accordance with the requirements of Government Code section 11346.1, subdivision (a)(2).

BOARD MEMBERS Diana S. Dooley, Chair Kimberly Belshé Paul Fearer Susan Kennedy Robert Ross, MD EXEC DIRECTOR Peter V. Lee