



November 7, 2016

**ADVANCE NOTICE OF RE-ADOPTION OF EMERGENCY REGULATIONS
TITLE 10. INVESTMENT
CHAPTER 12. CALIFORNIA HEALTH BENEFIT EXCHANGE
ARTICLE 4. GENERAL PROVISIONS**

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 an Emergency Rulemaking package with the Office of Administrative Law (OAL) that establishes the identity proofing process for the individual Exchange. 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 after OAL posts the filing on its website. Responding to these comments is strictly at the Exchange’s discretion.

Comments should be sent simultaneously to:

California Health Benefit Exchange
Attn: Tessa Hammer
1601 Exposition Blvd
Sacramento, CA 95815

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

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 two years. Please note that this advance notice and comment period is not intended to replace the public's ability to comment once the emergency regulations are approved. The Exchange will hold a public hearing and 45-day comment period after it has published Notice to make these regulations permanent.

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

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

If you have any questions concerning this Advance Notice, please contact Tessa Hammer at (916) 228-8232.

UPDATED FINDING OF EMERGENCY

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

This emergency rulemaking was previously adopted by OAL on September 17, 2014. The Exchange now seeks a re-adoption in accordance with Government Code section 100504(a)(6).

Changes Made to Article 4, Section 6464:

- Subdivisions (c)(2)(A)1.(i), (ii) – Additional documents were included as acceptable forms of proof of identify.
- Subdivision (c)(3)(A) – The reference to Experian was deleted in consideration of the possibility of future vendor changes.
- Subdivision (f) was updated to reflect new nomenclature.

DEEMED EMERGENCY

The Exchange may “[a]dopt rules and regulations, as necessary. Until January 1, 2017, any necessary rules and regulations may be adopted as emergency regulations in accordance with the Administrative Procedures Act ... The adoption of these regulations pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.” (Gov. Code § 100504(a)(6)).

AUTHORITY AND REFERENCE

AUTHORITY: Gov’t Code §§ 100504(a)(6).

REFERENCE: Gov’t Code § 100503(a), (h) and (s).

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 criteria and process for eligibility determination, enrollment, and disenrollment of enrollees and potential enrollees in California, provide for the processing of applications and the enrollment and disenrollment of enrollees, and exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of the government code and the federal act. (Gov. Code § § 100503(a)(h)(s))

The Exchange currently provides rigorous system features and procedures to ensure that individuals who apply for coverage or who provide enrollment assistance are who they purport to be. However, for continued use of the federal data services hub for verification of income and social security data, CMS Guidance Regarding Identity Proofing for the Marketplace, Medicaid, and CHIP, and the Disclosure of Certain Data Obtained through the Data Services Hub (June 11, 2013) requires state exchanges to establish remote identity verification procedures for consumers who apply online and over the phone. The proposed regulations will integrate the federal remote identity verification service for consumers who apply online or over the phone as required. The proposed regulation will provide the public with clear standards for identity verification, including the processes that will be used for paper and non-paper (i.e., electronic or telephonic) applications. These regulations allow the Exchange to continue using the federal data services hub by complying with existing federal guidance.

After an evaluation of current regulations, the Exchange has determined that these proposed regulations are the only regulations that concern identity proofing.

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 became financially self-sustaining in 2016. The proposal does not result in any costs or savings to any other state agency.

§ 6464. Identity Verification Requirement.

- (a) Definitions. For purposes of this section, the following terms shall have the following meanings:
- (1) RIDP: Remote Identity Proofing service;
 - (2) FDSH: Federal Data Service Hub;
 - (3) Certified Representative:
 - (A) Service Center Representative: an Exchange employee operating in a call center as set forth in 45 C.F.R. section 155.205 (a);
 - (B) Certified Enrollment Counselor as defined in section 6650;
 - (C) Certified Application Counselor as defined in 45 C.F.R. section 155.225;
 - (D) Certified Insurance Agent as defined in section 6800;
 - (E) Certified Plan-Based Enroller as defined in section 6410.
- (b) Paper Applications
- (1) The Exchange shall accept only paper applications for health insurance coverage that are accompanied by a signature in ink, under penalty of perjury in the declaration and signature section of the Exchange's paper application as defined in section 6470.
 - (2) The Exchange shall not accept or process any paper application lacking an attestation of identity signed by the applicant in ink under penalty of perjury.
- (c) Non-paper applications
- (1) Prior to initiating an application as set forth in section 6470, an applicant must consent to having his or her identity verified in one of the following ways:
 - (A) If the applicant applies through CalHEERS without the assistance of a Certified Representative, the applicant shall consent by clicking the "Yes" button on the CalHEERS Screen in response to being asked, "Do you give your permission to Covered California to confirm your identity?"
 - (B) If the applicant applies through CalHEERS with the assistance of a Certified Representative, he or she shall provide this consent to the Certified Representative orally. The Certified Representative shall attest to having received this consent from the applicant in one of the following ways:
 1. Clicking the "Yes" button next to the statement "I attest that I have visually verified this person's identity";
 2. Clicking the "Yes" button next to the statement "I have the consumer's consent to access their identity information through the Federal Data Services Hub Remote Identity Proofing service."
 - (2) Prior to initiating an application as set forth in section 6470, an applicant shall submit his or her identity for verification using one of the following methods:
 - (A) Visual Verification
 1. An applicant shall mail, present in person, or electronically transmit through CalHEERS to the Exchange or to a Certified Representative acceptable proof of identity as follows:
 - (i) A copy of a valid identification card issued by a federal, state, or local governmental entity that bears a recognizable photograph of the applicant or other identifying information of the individual such as name, age, sex, race, height, weight, eye color, or address, including school identification card, voter registration card, Military Dependent's identification card, Native American Tribal document, U.S. Coast Guard Merchant Mariner card, a Certificate of Naturalization (Form N-550 or N-570), Certificate of U.S. Citizenship (Form N-560 or N-561), Permanent Resident Card or Alien Registration Receipt Card (Form I-551), employment authorization document that includes a photograph (Form I-766), Foreign Passport or identification card issued by a foreign embassy or consulate that contains a photograph, or

- (ii) Two of the following: a birth certificate, Social Security card, marriage certificate, divorce decree, employer identification card, high school or college diploma (including high school equivalency diplomas), property deed or title, an adoption decree for the adoptee, foreign school record that includes a photograph, notice from a public benefits agency, or a union or worker center identification card.
 - 2. If submitted in person or by mail, a Certified Representative shall upload a copy of the identity documents to CalHEERS.
 - (B) Federal Data Service Hub Remote Identity Proofing service
 - 1. If the applicant does not elect to have his or her identity verified pursuant to subdivision (c)(2)(A), he or she shall consent to allowing the Exchange or Certified Representative to use the FDSH RIDP service to access his or her identity information.
 - 2. The applicant shall answer a number of questions generated by the FDSH RIDP service. Examples of these questions include, but are not limited to:
 - (i) Please select the number of bedrooms in your home from the following choices. If the number of bedrooms in your home is not one of the choices please select 'NONE OF THE ABOVE.'
 - (ii) Please select the county for the address you provided.
 - (iii) Please select the range that includes the year the home was built for the address that you provided.
 - 3. Based on the accuracy of the applicant's answers to the questions referenced in (c)(2)(B)2. of this section the FDSH RIDP service will either verify the applicant's identity or provide information on how to complete an alternative identity verification process.
- (3) If the Exchange is unable to verify the identity of an applicant in accordance with subdivision (c)(2) of this section, neither the Exchange nor a Certified Representative shall accept an application for health insurance from that same applicant until one of the following is satisfied:
 - (A) The applicant successfully completes the alternative identity verification process by calling the ~~Experian~~ Help Desk number listed in CalHEERS and successfully answers additional personalized questions, and the FDSH RIDP service informs the Exchange or Certified Representative of such;
 - (B) The applicant completes the visual verification process as set forth in (c)(2)(A) of this section; or
 - (C) The applicant submits a paper application in accordance with subdivision (b) of this section.
- (d) An applicant who successfully completes the identity verification requirements set forth in this section may, if otherwise permitted, apply for health insurance for himself or herself and for members of his or her household, without those household members also satisfying the requirements set forth in this section.
- (e) Consumers who submitted an application prior to the effective date of this section are subject to the requirements of this section if they make a change to the Primary Contact screen.
- (f) This section shall not apply to individuals applying through CCSB SHOP (as defined in section 64106540 et seq.)

AUTHORITY: Gov't Code § 100504(a) (6).

REFERENCE: Gov't Code § 100503(a), (h), and (s).

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME California Health Benefit Exchange	CONTACT PERSON Tessa Hammer	EMAIL ADDRESS Tessa.Hammer@covered	TELEPHONE NUMBER (916) 228-8232
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 ID Proofing			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 _____ 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: _____

Describe the types of businesses (Include nonprofits): _____

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

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

Explain: _____

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

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

Describe the types of jobs or occupations impacted: _____

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. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

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

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: _____

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: \$ _____

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 of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

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? \$ _____

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

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: _____

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

Regulation: Benefit: \$ _____ 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.*

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: _____

The incentive for innovation in products, materials or processes: _____

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: _____

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

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

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

\$ _____

a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

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

Fiscal Year: _____

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

\$ _____

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

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

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

Date of Election: _____

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

Local entity(s) affected: _____

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

Authorized by Section: _____ of the _____ Code;

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

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

3. Annual Savings. (approximate)

\$ _____

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

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

6. Other. Explain _____

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

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

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

\$ _____

It is anticipated that State agencies will:

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

b. Increase the currently authorized budget level for the _____ Fiscal Year

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

\$ _____

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

4. Other. Explain See Attachment A.

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)

\$ _____

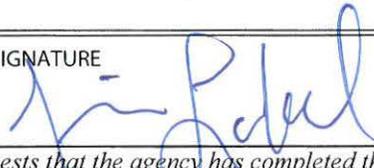
2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

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

4. Other. Explain See Attachment A.

FISCAL OFFICER SIGNATURE

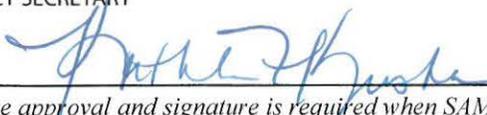



DATE

9/3/14

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

AGENCY SECRETARY

DATE

9/3/14

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

FISCAL IMPACT STATEMENT

B. FISCAL EFFECT ON STATE GOVERNMENT & C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

There is no historical data to develop an estimate, but it is anticipated that the fiscal impact is minimal.

No applicants will seek external assistance for the sole purpose of identity verification because identity verification is only required when and if completing an application or a report a change through CalHEERS. Individuals who seek external assistance likely need help in completing the entire application, in addition to identity verification, in which case the certified enrollment entities would be entitled to compensation (Navigators are awarded sub-grants, which include enrollment assistance services). There is no additional compensation provided for assistance with identity proofing.

Furthermore, HBEX estimates the workload impact to its Service Center staff for reviewing the applicants' mailed or electronic submission of proof of identity is minimal.

Lastly, there is no cost to use the Federal Data Service Hub or Experian for identity verification.

The fiscal component related to the certified enrollment entities affects federal funding through December 31, 2014, and state funding starting January 1, 2015.

The fiscal component related to the Navigators affect state funding starting July 1, 2014.

The fiscal component related to Medi-Cal is funded by the Department of Health Care Services' Endowment Fund with matching federal funds.