



Notice Published March 28, 2014

**NOTICE OF PROPOSED RULEMAKING
CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 4
ADOPT SECTION 6456**

The California Health Benefit Exchange/Covered California (the Exchange) Board proposes to adopt the regulations 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 at **5:00 p.m. on May 12, 2014**. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

Natalia Chavez, Regulations Analyst
California Health Benefit Exchange (Covered California)
560 J Street, Suite 290
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-323-3569 or by e-mail to regulations@covered.ca.gov.

AUTHORITY AND REFERENCE

Government Code Section 100504(a)(6) authorizes the California Health Benefit Exchange/Covered California (the Exchange) Board to adopt rules and regulations, as necessary. The proposed regulations implement, interpret, and make specific sections 1043 of the Government Code, 11105 of the Penal Code, and 432.7 of the Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None

Summary of Existing Laws

Under the federal Patient and Protection and Affordable Care Act (PPACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law, the California Patient Protection and Affordable Care Act, established the California Health Benefit Exchange within state government, and it specifies the powers and duties of the executive board of the Exchange. Government Code Section 1043 authorizes the Exchange board to require, consistent with the federal Minimum Acceptable Risk Standards for Exchanges (MARS-E) guidance, that employees, prospective employees, contractors, subcontractors, volunteers, or vendors with access to the information systems and devices of the Exchange containing specified sensitive information, to submit a full set of fingerprints for the purpose of conducting a criminal history record check. Government Code Section 1043 further authorizes the Exchange to obtain and receive criminal history information from the California Department of Justice (DOJ) and the U.S. Federal Bureau of Investigation (FBI). Penal Code Section 11105 authorizes the DOJ to furnish state and federal summary criminal history information to the Exchange in fulfillment of the Exchange's employment, certification, or licensing duties.

Pursuant to the federal MARS-E and Government Code Section 1043 the proposed regulation would require specific individuals to successfully complete a state and federal level criminal offender record information search through the DOJ prior to his or her appointment to a position with the Exchange that requires fingerprinting. This regulation would clarify which individuals must submit fingerprints. Specifically, it would require after the effective date, individuals whose duties include or would include any of the following to submit fingerprints:

- (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; and
- (7) Access to information technology systems of the Exchange.

Requiring individuals whose duties for the Exchange include or would include access to any of the above to submit fingerprints for processing prior to his or her appointment will ensure that the Exchange receives timely notification of any arrests or convictions from the DOJ in furtherance of the public peace, health and safety, or general welfare, and satisfies MARS-E requirements.

After an evaluation of current regulations, the Exchange has determined that these proposed regulations are not inconsistent or incompatible with any existing regulations. The Exchange has determined these are the only regulations that concern the fingerprinting and background checks requirements for individuals whose duties with the Exchange would include access to the specified information above.

JUSTIFICATION FOR DUPLICATION

This proposed regulation was developed with significant stakeholder engagement to implement and clarify information from the fingerprinting and background checks process authorized under Government Code Section 1043. The regulation duplicates text from Government Code Section 1043 related to the direct implementation of the fingerprinting process to contain such information in the same source for clarity and improved access to information for individuals affected by this section pursuant to section 12(b), title 1, California Code of Regulations.

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 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.

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

COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE

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-sustaining in 2015. The fingerprinting cost of \$82,000 in FY 2013-14 and \$12,000 each year thereafter would be incurred by the Exchange, and in turn, this amount reflects federal funding costs until 2015.

OTHER NONDISCRETIONARY OR SAVINGS IMPOSED ON LOCAL AGENCIES

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

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

EFFECT ON SMALL BUSINESS

The proposed action will directly affect a small business, Capital Live Scan. Otherwise, no other small business will be affected because the agency only uses this specific business for its fingerprinting services at this time.

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

As the proposed rulemaking affects Accenture (the contractor working on the CalHEERS system), it is estimated that approximately 100 Accenture employees would be fingerprinted in FY 2013-14, assuming a five percent attrition rate in FY 2014-15. This equates to a cost to Accenture of \$6,900 (100 x \$69) in FY 2013-14 and \$345 (5 x \$69) in FY 2014-15. This cost, in turn, is collected by and thus becomes a revenue stream for Capital Live Scan that is rendering the fingerprinting service. Capital Live Scan estimates to collect amounts to \$89,000 in FY 2013-14 and \$12,000 each year thereafter.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Exchange concludes 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.

BENEFITS OF THE PROPOSED ACTION

The proposed regulation will benefit California residents who apply for health benefits through the Exchange. Consumers will benefit from this proposal as applicable staff and contractors must clear background check prior gaining access to sensitive and confidential personal information of the consumers.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective in carrying out the purpose for which the action is proposed or 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 implementing the statutory policy or other provision of law.

The Exchange invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Natalia Chavez
California Health Benefit Exchange (Covered California)
560 J Street, Suite 290
Sacramento, CA 95814
Telephone: (916) 228-8239

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

Gabriela Ventura Gonzales
California Health Benefit Exchange (Covered California)
560 J Street, Suite 290
Sacramento, CA 95814
Telephone: (916) 228-8477

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

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS 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 is 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 Natalia Chavez at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Exchange may adopt the proposed regulations 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 to the public at least 15 days before the Exchange adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Natalia Chavez 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 Natalia Chavez 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 regulations in underline and strikeout can be accessed through our website at www.healthexchange.ca.gov/regulations.