



September 15, 2014

ADVANCE NOTICE OF 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 advance notice at least five working days of their intent to file emergency regulations with the Office of Administrative Law (OAL). The California Health Benefit Exchange (“Exchange”) intends to file an adoption of an Emergency Rulemaking package with the Office of Administrative Law (OAL) that establishes voter registration services to consumers engaging in covered transactions pursuant to state and federal law. 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. Response to these comments is strictly at the Exchange’s discretion.

Comments should be sent simultaneously to:

California Health Benefit Exchange
Attn: Gabriela Ventura Gonzales
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. The emergency regulations will become effective on the day of filing with the Secretary of State. These regulations will remain in effect for up to two years from the date of the initial adoption pursuant to Government Code Section 100504(a)(6). Please note that this advance notice and comment period is not intended to replace the public’s ability to comment during the subsequent certification period of the permanent rulemaking process.

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 Gabriela Ventura Gonzales at 916-228-8477.

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 will allow the Exchange to incorporate voter registration services into its consumer service channels for specified covered transactions pursuant to the National Voter Registration Act (NVRA) 42 U.S.C. § 1973gg-5 et seq., and Election Code § 2400 et seq.

DEEMED EMERGENCY

The necessity of this regulation to be adopted immediately has been declared by the Legislature in Government Code Section 100504 (a)(6) which deems the Exchange with emergency rule making authority:

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 Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). 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. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, including subdivisions (e) and (h) of Section 11346.1, any emergency regulation adopted pursuant to this section shall not be repealed by the Office of Administrative Law until revised or repealed by the board, except that an emergency regulation adopted pursuant to this section shall be repealed by operation of law unless the adoption, amendment, or repeal of the regulation is promulgated by the board pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code within two years of the initial adoption of the emergency regulation. Notwithstanding subdivision (h) of Section 11346.1, until January 1, 2017, the Office of Administrative Law may approve more than two readoptions of an emergency regulation adopted pursuant to this section.” Gov. Code § 100504(a)(6).

AUTHORITY AND REFERENCE

Authority: Section 100504, Government Code.

Reference: Sections 2400, 2401, 2403, 2406, and 2408, Elections Code; and 42 U.S.C. § 1973gg-5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

Under the federal Patient and Protection and Affordable Care Act (ACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans (QHPs) and other Insurance Affordability Programs, including Medi-Cal, 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 specifies the powers and duties of the executive board of the Exchange, including the ability to promulgate rules and regulations, as necessary.

On May 15, 2013, Secretary of State Debra Bowen designated the California Health Benefit Exchange as an NVRA voter registration agency by citing authority under Section 7 of the NVRA. Section 7 of the NVRA requires that “each state shall designate as voter registration agencies... all offices in the state that provide public assistance.”

Specifically, these regulations implement provisions of the National Voter Registration Act and state law and clarify the roles and responsibilities of Exchange consumer assistance personnel, including Assistants, Certified Insurance Agents, and Certified Plan-Based Enrollers. These regulations establish procedures for Exchange consumer assistance personnel to provide opportunities to consumers to register to vote when consumers are engaging in defined covered transactions with the Exchange. Covered transactions with the Exchange are those where consumers submit applications for QHP and Medi-Cal eligibility determinations, provide a change of address, or submit an application for renewal of coverage.

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

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

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. This proposal does not impose other nondiscretionary cost or savings on local agencies.

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 may result in costs or savings to another state agency.

Text of Regulatory Language:

Adopt Article 4, Section 6462, Voter Registration.

(a) Definitions:

(1) For purposes of this section “Applicant” means an individual engaged in a covered transaction through the Exchange.

(2) For purposes of this section a “covered transaction” means any of the following:

(A) An application submitted to the Exchange by an individual for eligibility for coverage in the Individual Exchange for himself or herself, or for a member of his or her household, excluding those individuals seeking eligibility for an exemption from the shared responsibility payment, or transmitted to the Exchange by an agency administering an insurance affordability program; for at least one of the following:

(i) Enrollment in a QHP through the Exchange; or

(ii) Medi-Cal and CHIP; or

(iii) Annual redetermination for enrollment in a QHP through the Exchange.

(B) A change of address request submitted to the Exchange by individuals who submitted an application pursuant to subdivision (a)(2)(A) of this Section.

(3) For purposes of this section a “voter registration form” means the affidavit of registration described in Elections Code Section 2150.

(4) For purposes of this section an “online voter registration form” means the online affidavit of registration on the Secretary of State’s website pursuant to Elections Code Section 2196(a).

(5) For purposes of this section “voter preference form” means the form described in Section 1973gg-5(a)(6)(B) of Title 42 of the United States Code and Elections Code Section 2401.(6)

(6) For purposes of this section an “Assister” means a Certified Enrollment Counselor or Navigator, or any other individual certified by the Exchange to provide in-person Consumer Assistance under Article 8 of this chapter.

(7) For purposes of this section a “Certified Insurance Agent” (CIA) is an agent certified by the Exchange under Article 10 of this chapter.

(b) When an Assister or CIA facilitates a covered transaction in person, as soon as CalHEERS has been programmed to display the voter preference form and allows an Applicant to answer questions related to voter registration, the Assister or CIA shall provide the Applicant the following voter registration services:

(1) For Applicants submitting an electronic covered transaction through CalHEERS, the Assister shall do the following when the voter preference form is displayed in CalHEERS:

(A) Ask the Applicant, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”

(B) Read aloud or allow the Applicant to read the “Important Notices” section of the vote preference form.

(i) If the Applicant selects the “Yes” option indicating that the Applicant would like to register to vote, the Assister or CIA shall mark the response on the online voter preference form, and shall provide assistance filling out the online voter registration form on the Secretary of State’s website, unless such assistance is declined by the Applicant.

(ii) If the Applicant selects the “No” option indicating that the Applicant would not like to register to vote, the Assister or CIA shall mark the response on the online voter preference form and shall not provide additional voter registration services.

(iii) If the Applicant selects the “Mail” option, the Assister or CIA shall mark the response on the voter preference form for the Exchange to mail a voter registration form to the Applicant.

(iv) If the Applicant does not indicate a selection the Assister or CIA shall select “Continue” on the application screen without marking a response to the voter preference form for the Exchange to send a voter registration form to the Applicant.

(2) For Applicants submitting a covered transaction using a paper application form, the Assister or CIA shall do the following when the voter preference form is displayed in the paper application:

(A) Ask the Applicant, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”

(B) Read aloud or allow the Applicant to read the “Important Notices” section of the vote preference form.

(i) If the Applicant indicates that he or she would like to register to vote, the Assister or CIA shall mark the “Send” option on the voter preference form, unless Internet service is directly available at the time the Assister or CIA is providing Consumer Assistance.

(ii) If the Applicant indicates that he or she would like to register to vote and Internet service is available, the Assister or CIA shall mark the “Online” option on the paper application and access the online voter preference form at CoveredCA.com. The Assister or CIA shall select “Yes” to open the Secretary of State’s online voter registration form, and shall provide assistance filling out that form, unless such assistance is declined by the Applicant.

(iii) If the Applicant selects the “No” option indicating that the Applicant would not like to register to vote, the Assister or CIA shall mark the response on the voter preference form and shall not provide additional voter registration services.

(iv) If the Applicant does not indicate a selection the Assister or CIA shall not mark a response on the voter preference form for the Exchange to send a voter registration form to the Applicant.

(c) When a CIA or Assister certified to provide phone assistance facilitates a covered transaction by phone, as soon as CalHEERS has been programmed to display the voter preference form, the CIA or Assister shall select the “Continue” option on the application screen without marking a response to the voter preference form for the Exchange to send a voter registration form to the Applicant.

(d) Assisters and CIAs providing voter registration services pursuant to this Section shall not:

- (1) Interfere with an Applicant’s right to register or decline to register to vote;
- (2) Make any statement to an Applicant that a decision to register or not register to vote will affect the availability of services or benefits that the Applicant may receive from the Exchange or Medi-Cal.
- (3) Seek to influence an Applicant’s political preference or party designation; or
- (4) Refuse to accept and transmit an Applicant’s voter registration application that was properly completed pursuant to this Section.

(e) When a Plan-Based Enroller (PBE) certified under Article 9 of this chapter facilitates a covered transaction, as soon as CalHEERS has been programmed to display the voter preference form, the PBE shall select the “Continue” option on the application screen without marking a response to the voter preference form for the Exchange to mail a voter registration card to the Applicant.

Note: Authority: Section 100504, Government Code. Reference: Sections 2400, 2401, 2403, 2406, and 2408, Elections Code; and 42 U.S.C. § 1973gg-5.