



Notice Published August 25, 2017

NOTICE OF PROPOSED RULEMAKING

CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 9 ADOPT SECTIONS 6704, 6708, AND 6710

The Board of Directors for the California Health Benefit Exchange (hereinafter referred to as the “Exchange”) proposes to adopt the regulation 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 October 14, 2017. The Exchange will consider only comments received at the Exchange’s office by that time. Submit written comments to:

Sarah Vu, Regulations Analyst
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-403-4468 or by e-mail to regulations@covered.ca.gov.

AUTHORITY AND REFERENCE

Government Code Section 100504(a)(6) authorizes the Board of Directors for the Exchange to adopt rules and regulations, as necessary. The proposed regulations

implement, interpret, and make specific Government Code Section 100503; and Title 45 of the Code of Federal Regulations, Sections 155.205(d), 155.415, 156.265, and 156.1230.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None

Summary of Existing Laws

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as known as "Covered California." For purposes of this Notice, Covered California will be referred to as the "Exchange." The Exchange's mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange's Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws.

Summary of the Effect of the Proposed Regulation

The proposed rulemaking seeks to help alleviate potential conflicts of interest between the Plan Based Enroller (sometimes referred to as "PBE") and other Certified Enrollers—a term that includes Certified Enrollment Counselors (sometimes referred to as "Navigators"), Certified Application Counselors, Medi-Cal Managed Care Plan Enrollers, and Agents. Section 6710(i)(1)(R) ensures that Plan Based Enrollers cannot affiliate with other Certified Enrollers or their respective entities in any capacity. The Exchange sees the importance of clearly delineating the roles of the PBE and other Certified Enrollers. A clear delineation of roles helps to reduce any consumer confusion when enlisting the services of a PBE, Certified Application Counselor, Certified Enrollment Counselor, Medi-Cal Managed Care Plan Enroller or Agent. All Certified Enrollers fulfill unique roles in providing enrollment assistance to consumers. However, the PBE is the only Certified Enroller that is employed by a health insurer and may only sell that insurer's products. All other Certified Enrollers are capable of selling the full array of Exchange products. By reducing any affiliation between PBEs and other

Certified Enrollers, the Exchange can ensure that consumers utilize the appropriate Certified Enroller for their respective needs.

Additionally, the proposed rulemaking makes some minor changes in order to align the PBE program with the other enrollment assistance programs as well as clarify the PBE's obligations with respect to referrals. First, this rulemaking prohibits applicants from reapplying for certification if that applicant fails his or her criminal record check. This prohibition exists in other enrollment assistance programs, so it is necessary to ensure that the PBE program aligns with its counterparts with respect to the two-year application ban. Second, this rulemaking includes language authorizing PBEs to refer consumers to any other Certified Enroller for enrollment assistance. PBEs can only enroll consumers into their respective products, so there may be some consumers who wish to enroll into a different product offered by another insurer. In that instance, the PBE will have the authority to refer that consumer to another Certified Enroller who can assist that consumer.

And, finally, the proposed regulations modify Section 6704, which outlines the requirements for the program's application. The Exchange's enrollment assistance program is in the process of implementing a new online portal that will facilitate the application process for new enrollers. As a result, it became necessary to streamline the application to reduce the amount of information that applicants are required to submit when applying to the program. The proposed changes to Section 6704 are intended to streamline the application process for individuals and entities who wish to participate in the program. The only information that is necessary to determine eligibility for the program will be captured in the new enrollment portal. This is a benefit to both the Exchange and its Certified Enroller applicants.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After an evaluation of current regulations, the Exchange determined that these proposed regulation are not inconsistent or incompatible with any existing regulations. In Articles 8, 9, and 11, there are a number of regulations pertaining to the roles and responsibilities of Certified Enrollers, such as Navigators, Certified Application Counselors, and PBEs. The proposed regulation prohibits PBEs from affiliating with Navigators and Certified Application Counselors, but it does not conflict with existing Navigator or Certified Application Counselor regulations. Rather, this regulation actually clarifies an ambiguity within the PBE regulations. This regulation also aligns the PBE's background check requirements with other Certified Enroller programs as it provides for a two-year ban on applicants who fail the background check.

Anticipated Benefits of the Proposed Regulation

The anticipated benefits of this proposed regulation include:

- Safeguarding PBEs from violating their conflict of interest standards, particularly for PBEs who recently transitioned from another Certified

Enroller program, such as the Navigator or Certified Application Counselor programs;

- Providing structure for the Exchange to give predictable, clear standards to the public and Navigators both now and prospectively;
- Ensuring that applicants who fail criminal background checks wait two years before reapplying to the PBE program;
- Streamlining the PBE application to ease the administrative burden on applicants;
- Further distinguishing the role of PBEs from other Certified Enrollers; and
- Ensuring consumers utilize the appropriate Certified Enroller for their particular financial and health needs.

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 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 Exchange but will have no impact on other agencies or the State General Fund. The Exchange is currently completely funded by assessments on premiums charged by Qualified Health Plans.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Other Nondiscretionary or Savings Imposed on Local Agencies

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

Significant Effect on Housing Costs

None.

Effect on Small Business

This proposed regulation is not expected to create or expand small business within the State of California. The current PBE program already exists. The proposed regulation clarifies the role of a PBE, prevents any conflict of interest between PBE and Certified Enrollers, implements a two-year ban on applicants who fail the background checks, and streamlines the application process. Considering the limited nature of these proposed regulations, there are no anticipated effects on small businesses.

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

The Exchange is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of the Economic Impact Assessment/Analysis

The Exchange concludes regarding the proposed regulations 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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Exchange has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this action is proposed, 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 effectuating the purpose of the statute. This proposed action is the most effective in effectuating the purpose of the statute.

The amendments to Section 6704 actually lessen the burden on PBE applicants, because they remove several requirements to streamline the application process. Applicants will not be required to supply more information than needed to determine eligibility in the program. These amendments should remove some barriers to participation in the program.

Section 6708(c) is necessary to align the PBE program with other Certified Enroller programs which have a two-year prohibition on applicants who fail to pass the criminal background check. There are no other reasonable alternatives to implement this two-year ban. The only means to implement a two-year ban is through regulations.

Section 6710(i)(1)(R) ensures that PBEs cannot affiliate with other Certified Enrollers. Regulations are the most effective and efficient means to implement this prohibition. And, as such, there are no other reasonable alternatives. Section 6710(i)(1)(R) provides the necessary safeguards to reduce consumer confusion with respect to the PBE's role and its distinction from other Certified Enrollers.

Section 6710(a)(7) alleviates some confusion among PBEs regarding referrals to other Certified Enrollers. There is some ambiguity with whether PBEs can refer consumers to other Certified Enrollers for enrollment assistance, so the Exchange has amended Section 6710 to clarify that ambiguity. There are no other reasonable alternatives to address this confusion. Section 6710(a)(7) directly benefits both PBEs and consumers.

Pursuant to Government Code subdivision 11346.2(b)(5)(B), the Exchange has not identified any reasonable alternative that would lessen any adverse impact on small businesses. This proposed regulation has only positive or neutral impacts on small businesses.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Sarah Vu
Regulations Analyst
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8727

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

Brian Kearns
Attorney
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8843

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 Sarah Vu 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 Sarah Vu at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a 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 Sarah Vu 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 Sarah Vu 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 can be accessed through our website at <http://hbex.coveredca.com/regulations/index%20-%20Certified%20Plan-Based%20Enrollers.shtml>.



INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 9 AMEND SECTIONS 6704, 6708, AND 6710

The Administrative Procedure Act (“APA”) requires that an Initial Statement of Reasons be available to the public upon request when an agency undertakes a permanent rulemaking action. The following information required by the APA pertains to this particular rulemaking action:

BACKGROUND

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as known as “Covered California.” For purposes of this Initial Statement of Reasons, Covered California will be referred to as the “Exchange.” The Exchange’s mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange’s Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws.

Specifically, the proposed rulemaking seeks to help alleviate potential conflicts of interest between the Plan Based Enroller (hereinafter sometimes referred to as “PBE”) and other Certified Enrollers—a term that includes Certified Enrollment Counselors (sometimes referred to as “Navigators”), Certified Application Counselors, Medi-Cal Managed Care Plan Enrollers, and Agents. Section 6710(i)(1)(R) ensures that Plan Based Enrollers cannot affiliate with other Certified Enrollers or their respective entities in any capacity. The Exchange sees the importance of clearly delineating the roles of

the PBE and other Certified Enrollers. A clear delineation of roles helps to reduce any consumer confusion when enlisting the services of a PBE, Certified Application Counselor, Certified Enrollment Counselor, Medi-Cal Managed Care Plan Enroller or Agent. All Certified Enrollers fulfill unique roles in providing enrollment assistance to consumers. However, the PBE is the only Certified Enroller that is employed by a health insurer and may only sell that insurer's products. All other Certified Enrollers are capable of selling the full array of Exchange products. By reducing any affiliation between PBEs and other Certified Enrollers, the Exchange can ensure that consumers utilize the appropriate Certified Enroller for their respective needs.

Additionally, the proposed rulemaking makes some minor changes in order to align the PBE program with the other enrollment assistance programs as well as clarify the PBE's obligations with respect to referrals. First, this rulemaking prohibits applicants from reapplying for certification if that applicant fails his or her criminal record check. This prohibition exists in other enrollment assistance programs, so it is necessary to ensure that the PBE program aligns with its counterparts with respect to the two-year application ban. Second, this rulemaking includes language authorizing PBEs to refer consumers to any other Certified Enroller for enrollment assistance. PBEs can only enroll consumers into their respective products, so there may be some consumers who wish to enroll into a different product offered by another insurer. In that instance, the PBE will have the authority to refer that consumer to another Certified Enroller who can assist that consumer.

And, finally, the proposed regulations modify Section 6704, which outlines the requirements for the program's application. The Exchange's enrollment assistance program is in the process of implementing a new online portal that will facilitate the application process for new enrollers. As a result, it became necessary to streamline the application to reduce the amount of information that applicants are required to submit when applying to the program. The proposed changes to Section 6704 are intended to streamline the application process for individuals and entities who wish to participate in the program. The only information that is necessary to determine eligibility for the program will be captured in the new enrollment portal. This is a benefit to both the Exchange and its Certified Enroller applicants.

PROBLEM STATEMENT

Since 2014, the Exchange has significantly relied upon Certified Enrollers to facilitate enrollment of consumers into Qualified Health Plans (QHPs). Certified Enrollers include Certified Enrollment Counselors (sometimes referred to as "Navigators"), Certified Application Counselors, Medi-Cal Managed Care Plan Enrollers, Agents, and PBEs. Certified Enrollers account for over half of the Exchange's enrollments every year, so it is important for the Exchange to foster a mutually beneficial relationship with each type of Enroller.

Each Certified Enroller plays a unique role in reducing California's uninsured population. The Navigator program is a partnership with community organizations across the state

who have experience assisting California's diverse populations and have proven success in enrolling consumers into health care programs. Certified Enrollment Counselors must facilitate enrollment of consumers into the appropriate QHP that best fits their needs. Certified Enrollment Entities are compensated through grant funding on an annual basis by the Exchange and employ individual Counselors to assist consumers.

Certified Application Counselors perform a similar role as Navigators, but are uncompensated. These entities rely upon the services of volunteers dedicated to the Exchange's central mission of reducing California's uninsured population and improving the quality of health care.

Medi-Cal Managed Care Plan Enrollers are those individuals employed by Medi-Cal Managed Care Plans. These entities primarily enroll eligible consumers into Medi-Cal, but may enroll consumers into QHPs. Because these entities have access to populations that have higher rates of eligibility for subsidized health care, the Exchange enlists Medi-Cal Managed Care Plan Enrollers to facilitate enrollment of consumers into Exchange plans if they do not otherwise qualify for Medi-Cal. Medi-Cal Managed Care Plan Enrollers receive compensation from their respective entities pursuant to an exclusive agreement between the two.

Certified Insurance Agents are licensed by the California Department of Insurance to sell health insurance. The Exchange contracts with Agents to enroll consumers into QHPs. Unlike the aforementioned Certified Enrollers, however, Agents can only enroll consumers into QHPs if they have are appointed by the health insurer. Most Agents are appointed by all Exchange health insurers, so consumers can access the full array of Exchange products through the majority of the Agent population. Agents are compensated by health insurers for individual market enrollments.

PBEs are a unique type of Certified Enroller. They are employed by health insurers and can only enroll consumers into their health insurer's products. Like other Certified Enrollers, PBEs promote the Exchange's "no wrong door" approach and ensure that consumers receive enrollment assistance from any Certified Enroller. While PBEs are obligated to inform consumers about other available products, they can only enroll consumers into QHPs sold by a single health insurer. Some consumers prefer specific health insurers due or are limited to certain insurers based on their health care provider. These consumers will more likely utilize PBEs to enroll into their QHPs. The Exchange and health insurers rely on PBEs to assist with eligibility determinations and enrollment into the consumer's preferred QHPs.

However, other consumers may not have a preferred QHP and will seek to enroll into QHPs that are most financially beneficial to them. In those situations, a PBE may not be the best Certified Enroller for the consumer. The Exchange encourages consumers to shop all available QHPs to enroll in the one that best accommodates their financial situation. For these consumers, other Certified Enrollers are much more beneficial since they can sell the Exchange's full array of products.

The Exchange recognizes that some Certified Enrollers may want to affiliate with each other and combine resources. While this may occur to some degree, the Exchange's regulations largely prohibit certain types of affiliations between Certified Enrollers, especially Agents. The Exchange determined that having any such relationship with an individual or entity possessing an insurance license would constitute having a private or personal interest sufficient to influence, or appear to influence, the objective exercise of a non-licensed Certified Enroller's official duties. And, as a result, those relationships must be prohibited entirely.

Currently, there are some limitations regarding affiliations between PBEs and other Certified Enrollers, but those limitations could use clarification. Section 6710(i)(1)(P) precludes PBEs from being simultaneously certified as another Enroller. PBEs can only be certified as a PBE and only perform the PBE's functions. Should a PBE wish to perform the functions of another Certified Enroller, the PBE will need to go through a decertification process and then certify under another program. Furthermore, under Section 6712(a)(1), PBEs may only receive compensation from their entity pursuant to an exclusive agreement. Section 6712(a)(1) effectively precludes PBEs from receiving compensation from any other entity in connection with QHP enrollments.

Even though the preceding regulations provide some limitations regarding PBE affiliation with other Certified Enrollers, the Exchange needs to implement additional safeguards to preclude any affiliation between PBEs and other Enrollers, specifically Navigators and Certified Application Counselors. The regulations are rather vague with respect to a PBE's ability to affiliate with Navigators and Certified Application Counselors. The proposed regulation makes certain that consumers utilize the Certified Enroller that best suits their particular needs because it limits any affiliations between PBEs and Navigators and Certified Application Counselors. Those two entities fulfill specialized roles in local communities, so it is important to preserve their function by limiting PBE affiliation. The proposed regulation also prevents PBEs from potentially violating their conflict of interest standards as it prohibits PBEs from receiving direct or indirect compensation from Navigators and Certified Application Counselors.

The Exchange recognizes that some Certified Enrollers may decertify to become PBEs. While this is perfectly acceptable, it is important for these Enrollers to completely disassociate themselves from their prior position when they become PBEs. The proposed regulation prevents PBEs from employing, being employed by, or receiving compensation from Navigators and Certified Application Counselors, which may be a possibility for Enrollers who transition from a Certified Application Counselor/Navigator to a PBE. PBEs who previously served as Certified Application Counselors or Navigators may desire to provide some assistance to their former entities. The Exchange appreciates this type of devotion to its mission but also recognizes the importance of clearly delineating its enrollment channels. This delineation necessarily involves confining PBEs to one enrollment channel rather than allowing them to affiliate with others.

Consumers should fully understand the role of a PBE when they utilize a PBE's services. They should also choose the Enroller that best suits their health and financial needs. By potentially allowing a PBE to affiliate with other Navigators or Certified Application Counselors, the PBE could be sending mixed messages to consumers and cause confusion. This type of affiliation could also put PBEs in a position to violate their conflict of interest standards, specifically the prohibition against receiving compensation from other entities.

The proposed regulations also ensure consistency with respect to penalties for failed background checks. For other enrollment partners such as Certified Enrollment Counselors, applicants who fail their criminal background check must wait two years before reapplying to the program. This limitation does not currently exist in the PBE program. As such, it is necessary to amend Section 6708 to include this limitation and ensure consistency across enrollment channels. This amendment also ensures that only qualified individuals may have access to a consumer's personally identifiable information.

The amendment to Section 6710(a) authorizes PBEs to refer consumers to other enrollment partners, such as Certified Enrollment Counselors, Certified Application Counselors, or Agents. PBEs represent an important enrollment channel for the Exchange but are limited to enrolling consumers into only those products offered by a single insurer. If that insurer's products do not meet a consumer's needs, the PBE should refer that consumer to another Certified who can properly assist him or her. However, nothing in the regulations specifically authorizes PBEs to refer consumers. After consulting with stakeholders, there appears to be some confusion as to whether PBEs can refer consumers at all. Therefore, the amendment to Section 6710(a) clarifies any confusion and ensures that consumers receive the appropriate assistance to address their particular health and financial needs.

Finally, the amendments to Section 6704 address issues related to the Exchange's application process. A primary issue with the application is that it can be rather cumbersome for our applicants. The Exchange is currently updating its online portal for Certified Enrollers in order to, among other things, streamline the application and ease the burden. As part of this process, the Exchange identified some questions that were outdated or largely irrelevant. These questions will be removed so that the Exchange is collecting only that information which is necessary to determine an applicant's eligibility for a Certified Enroller program.

ANTICIPATED BENEFITS

The anticipated benefits of this proposed regulation include:

- Safeguarding PBEs from violating their conflict of interest standards, particularly for PBEs who recently transitioned from another Certified Enroller program, such as the Navigator or Certified Application Counselor programs;

- Providing structure for the Exchange to give predictable, clear standards to the public and Navigators both now and prospectively;
- Ensuring that applicants who fail criminal background checks wait two years before reapplying to the PBE program;
- Streamlining the PBE application to ease the administrative burden on applicants;
- Further distinguishing the role of PBEs from other Certified Enrollers; and
- Ensuring consumers utilize the appropriate Certified Enroller for their particular financial and health needs.

PURPOSE AND NECESSITY

The broad purpose of this proposed regulatory action is to: (1) clarify the role of a PBE; (2) ensure that PBEs do not create conflicts of interest by associating with other Certified Enrollers that perform specialized roles in local communities; (3) align the PBE program with the other Certified Enroller programs with respect to penalties for failing to pass the criminal background checks; (4) ensure that consumers receive the appropriate Certified Enroller for their particular financial and health needs; and (5) make the application process more efficient for applicants. By accomplishing these goals, the Exchange can ultimately improve the consumer experience in using a PBE to obtain health insurance. These regulations also ensure that the Exchange obtains only that information which is necessary to determine an applicant's eligibility to serve as a Certified Enroller.

Pursuant to its authorities, the Exchange proposes to permanently adopt, amend, and certain regulations as follows:

Section 6704:

Subdivisions (b)(7), (10), and (11)(H), (K), (L) all set forth information that must be included on a Plan-Based Enroller Entity (PBEE) application. Upon reviewing the application and consulting with stakeholders, it was determined that the PBEE application requires more information than is necessary to determine eligibility to participate in the Certified Enroller Program. As a result, The Exchange does not communicate via fax, so it is not necessary to collect this information from entities who wish to participate in the program.

The application requires the entity to identify the counties served as well as the written and spoken languages that are available at each site. After reviewing the program needs and consulting with stakeholders, it was determined that this information was not

necessary to determine eligibility. Entities may have difficulty identifying what languages are available at each site because that is dependent upon the counselors that serve each site. So, even if an entity provided such information, that information will change when counselors affiliate and de-affiliate from entities.

Similarly, the PBE application also requires individuals to supply more information than is needed to determine eligibility. PBEs are individual counselors who affiliate with PBEEs to provide enrollment assistance on behalf of the entity. Subdivisions (d)(4), (5), (6), and (7) all identify information that is extraneous to the PBE application and should be removed to streamline the application process for individuals. Finally, sections (d)(4) and (5) contained language that potentially confused applicants, so those sections have been re-worded to ensure clarity.

Section 6708:

Subdivision (c) has been added to preclude applicants who failed the criminal and background check process from reapplying to the program for two years. Other Certified Enroller programs have this prohibition. It was determined that the PBE program should be aligned with its counterpart programs to ensure that only the most qualified applicants perform enrollment assistance. The criminal background checks filter those individuals who may not be qualified to handle personally identifiable information, which is a necessary component to providing enrollment assistance. Through the Certified Enroller program, the Exchange seeks to match consumers with Enrollers who can provide assistance without compromising the integrity of its mission. This prohibition only furthers that goal.

Section 6710:

Subdivision (a)(7) enables PBEs to refer applicants to any Certified Enroller for enrollment assistance. The PBE program is unique because PBEs can only enroll applicants into plans offered by one Issuer. Navigators, Certified Application Counselors, Medi-Cal Managed Care Plan Enrollers, and Agents can enroll consumers into a variety of plans offered by all Issuers with Covered California. So, if an applicant needs to enroll in a plan that is offered by another Issuer, the PBE should refer that applicant to another Certified Enroller who can better address their particular health and financial needs. There was some confusion on whether PBEs could refer applicants to other Certified Enrollers, so Subdivision (a)(7) was added to eliminate that confusion.

Subdivision (i)(1)(R) of this Section expressly precludes PBEs from employing, being employed by, being in partnership with, or receiving any remuneration for performing a PBE's duties from Navigators and Certified Application Counselors. The purpose of this regulation is to ensure a division between PBEs and the other Certified Enrollers. While all Certified Enrollers are united in fulfilling the Exchange's mission, PBEs play a unique role as they are the only Certified Enrollers who are directly affiliated with an Issuer and can only offer plans from that Issuer. Stakeholders expressed concern over PBEs

comingling with other Certified Enrollers, which could potentially cause confusion with applicants and consumers. Subdivision (i)(1)(R) eliminates this confusion by prohibiting any affiliations between PBEs and other Certified Enrollers.

RELIED ON DOCUMENTS

None.

ECONOMIC IMPACT ASSESSMENT (EIA)

Creation of Jobs

This proposed regulation is not expected to create or eliminate any jobs within the State of California. The proposed regulations are intended to clarify the regulations already in existence, and align the current practices being used for Navigators and Certified Enrollers. Additionally, these regulations will streamline the PBE application process to ease the administrative burden on applicants. Therefore, no new job creation or elimination is expected to occur due to this proposed regulation.

Creation of Businesses

This proposed regulation is not expected to create or eliminate any new business within the State of California. The current Navigator and Certified Enroller program is already in existence and the regulations only tighten the requirements for Navigator and Certified Enroller to participate in the program. Therefore, no new businesses are expected to form or be eliminated due to this proposed regulation.

Expansion of Businesses

This proposed regulation is not expected to expand any business within the State of California. The current programs are already in existence and the proposed regulation clarifies the role of a PBE and prevents any conflict of interest between PBE and Certified Enrollers. Therefore, no expansion of businesses are expected due to this proposed regulation.

Benefits

The regulations package has a number of benefits which are tied to the Exchange's overall mission. The Exchange is committed to improving the consumer experience in using a PBE to obtain health insurance. These regulations ensure that the Exchange obtains only that information which is necessary to determine an applicant's eligibility. Additionally, the regulations safeguard PBEs from violating their conflict of interest standards, especially PBEs who recently transitioned from another Certified Enroller program such as the Navigator or Certified Application Counselor programs. They

ensure that applicants who fail criminal background checks wait two years before reapplying to the PBE program. And they encourage consumers to utilize the appropriate Certified Enroller to accommodate their particular financial and health needs.

DESCRIPTION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Exchange has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this action is proposed, 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 effectuating the purpose of the statute. This proposed action is the most effective in effectuating the purpose of the statute.

The amendments to Section 6704 actually lessen the burden on PBE applicants, because they remove several requirements to streamline the application process. Applicants will not be required to supply more information than needed to determine eligibility in the program. These amendments should remove some barriers to participation in the program.

Section 6708(c) is necessary to align the PBE program with other Certified Enroller programs which have a two-year prohibition on applicants who fail to pass the criminal background check. There are no other reasonable alternatives to implement this two-year ban. The only means to implement a two-year ban is through regulations.

Section 6710(i)(1)(R) ensures that PBEs cannot affiliate with other Certified Enrollers. Regulations are the most effective and efficient means to implement this prohibition. And, as such, there are no other reasonable alternatives. Section 6710(i)(1)(R) provides the necessary safeguards to reduce consumer confusion with respect to the PBE's role and its distinction from other Certified Enrollers.

Section 6710(a)(7) alleviates some confusion among PBEs regarding referrals to other Certified Enrollers. There is some ambiguity with whether PBEs can refer consumers to other Certified Enrollers for enrollment assistance, so the Exchange has amended Section 6710 to clarify that ambiguity. There are no other reasonable alternatives to address this confusion. Section 6710(a)(7) directly benefits both PBEs and consumers.

Pursuant to Government Code subdivision 11346.2(b)(5)(B), the Exchange has not identified any reasonable alternative that would lessen any adverse impact on small businesses. This proposed regulation has only positive or neutral impacts on small businesses.

SUPPORT FOR DETERMINATION OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The proposed rulemaking seeks to alleviate potential conflicts of interest between PBEs and other Certified Enrollers (Navigators), Certified Application Counselors, Medi-Cal Managed Care Plan Enrollers, and Agents. It also makes some minor changes in order to align the PBE program with the other enrollment assistance programs as well as clarify the PBE's obligations with respect to referrals. These provisions will have no substantial impact on the operation of these entities and thus the proposed regulation is not expected to have a significant adverse economic impact on businesses.

California Code of Regulations

Title 10. Investment

Chapter 12. California Health Benefit Exchange (§ 6650 et seq.)

Article 9. Plan-Based Enrollers

California Code of Regulations

§ 6704. Program Application

[(a)(1)-(7): No change]

(b) A PBEE application shall contain the following information

[(b)(1)-(6): No change]

~~(7) Fax number;~~

~~(7)(8) Federal Employment Identification Number;~~

~~(8)(9) State Tax Identification Number;~~

~~(10) Identification of the counties served;~~

~~(9)(11) For the primary site and each sub-site, the following information:~~

[(b)(9)(A)-(G): No change]

~~(H) An indication of whether the entity wants to receive referrals for individuals—
seeking assistance at this site;~~

~~(H)(I) An indication of whether Whether the entity provides in-person assistance
at this site; and~~

~~(I)(J) Hours of operation;~~

~~(K) Spoken languages; and~~

~~(L) Written languages;~~

~~(10)(12) Name, e-mail address, primary and secondary phone number for the Authorized
Contact;~~

~~(11)(13) A certification by the Authorized Contact, or his or her designee, that the PBEE
has presented information in the application that is true and correct to the best of his or
her knowledge; and~~

~~(12)~~(14) For each Certified PBE to be affiliated with the applicant entity, a completed application for each individual as required in subdivision (d) below must be included in the entity's application.

...

(d) An individual's application to become a PBE shall contain the following information

[(d)(1)-(3): No change]

~~(4) Identification of the PBEE with which the applicant is affiliated;~~

~~(5) Affiliated PBEE's primary site location address;~~

~~(6) Site(s) to be served by the applicant;~~

~~(7) Mailing Address of the primary site of the PBEE for which the applicant will serve;~~

~~(4)~~ (8) Languages that the applicant can speak ~~An indication of the languages that the applicant can speak;~~

~~(5)~~ (9) Languages that the applicant can write ~~An indication of the languages that the applicant can speak;~~

~~(6)~~(10) For Issuer Application Assisters, as defined in 45 CFR § 155.20: Disclosure of all criminal convictions and administrative actions taken against the applicant, and any arrests for which the applicant is currently out on bail or his or her own recognizance;

~~(7)~~(11) A certification by the applicant that:

(A) The applicant shall comply with the PBE Program requirements of this Article and Section 6500(f) of Article 5 of this chapter;

(B) The applicant is a natural person of not less than 18 years of age;

(C) The statements made in the application are true, correct and complete to the best of his or her knowledge and belief; and

(D) The applicant will adhere to any applicable State and federal laws and regulations;

~~(8)~~(12) The signature of the applicant applying to become a PBE and date signed;

~~(9)~~(13) The name and signature of the Authorized Contact, or that of his or her designee, and date signed;

~~(10)~~(14) An indication of whether the applicant is licensed in good standing as an agent with the California Department of Insurance, and if so, the applicant's license number; and

~~(11)~~(15) An indication of whether the applicant is certified by the Exchange as a Certified Insurance Agent, Certified Enrollment Counselor, Certified Application Counselor, or serves in any other enrollment function of the Exchange including Service Center Representative and County Eligibility Worker, and, if applicable, the certification number.

§ 6708. Certified Plan-Based Enroller Fingerprinting and Criminal Record Checks

[(a)-(c)(4): No change]

(c) Appeal and Final Determination:

(5) Following the receipt of a final determination pursuant to this section that an individual is disqualified from certification, the individual shall not reapply for certification for two years.

§ 6710. Roles and Responsibilities.

(a) A PBE shall perform the following functions:

[(a)(1)-(6): No change]

(7) Inform all applicants of the availability of other QHP products or stand-alone dental plans offered through the Exchange through an HHS-approved universal disclaimer and display the Web link to access the Exchange Web Site on the PBEE's Web Site, and describe how to access the Exchange Web Site or the Service Center of the Exchange. The PBE can refer an applicant to any individual or entity certified through Articles 8, 11, 12 of this chapter, or to any Agents certified by the Exchange.

[(b)(1)-(h): No change]

(i) Prohibited Activities for PBEEs and PBEs.

(1) All PBEEs and their Contractors and Employees that are PBEs may not:

[(i)(1)(A)-(Q): No change]

(R) Employ, be employed by, be in partnership with, or receive any remuneration arising out of the functions performed under this Article, from any individual or entity

certified through Article 8 or Article 11 of this chapter or from any Agents certified by the Exchange.

Note: Authority cited: Section 100504, Government Code. Reference: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.205(d), 155.415, 156.265 and 156.1230.

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME California Health Benefit Exchange	CONTACT PERSON Brian Kearns	EMAIL ADDRESS brian.kearns@covered.ca.gov	TELEPHONE NUMBER (916) 228-8843
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Plan-Based Enrollers - "PBE"			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 California Health Benefit Exchange (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- 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: Unknown

Describe the types of businesses (Include nonprofits): Plan Based Enroller and other Certified Enrollers

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

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: The Proposed reg. seeks to help alleviate potential conflicts of interest between PBE & other Certified Enrollers.

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

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: Plan Based Enroller

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? \$ 0
- a. Initial costs for a small business: \$ 0 Annual ongoing costs: \$ 0 Years: _____
- b. Initial costs for a typical business: \$ 0 Annual ongoing costs: \$ 0 Years: _____
- c. Initial costs for an individual: \$ 0 Annual ongoing costs: \$ 0 Years: _____
- d. Describe other economic costs that may occur: None

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.* \$ N/A

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: CCR Title 10. Investment Chapter 12. California Health Benefit Exchange (§ 6650 et seq.) Article 9. Plan-Based Enrollers.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ 0

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: Safeguarding PBEs from violating their conflict of interest standards, particularly for PBEs who recently transitioned from another Certified Enroller program, such as the Navigator or Certified Application Counselor programs.

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? \$ Unknown

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: No additional job will be created.

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: _____

Alt. #1 - Do not adopt new regulations and rely on federal regulations.

Alt. #2 - Do not adopt new regulations and rely on PBEs to safeguarding themselves.

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: \$ Unknown Cost: \$ 0

Alternative 1: Benefit: \$ Unknown Cost: \$ 0

Alternative 2: Benefit: \$ Unknown Cost: \$ 0

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: The Exchange sees the importance of clearly delineating the roles of the PBE and other Certified Enrollers.

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: A clear delineation of roles helps to reduce any consumer confusion when enlisting the services of a PBE, Certified Application Counselor, a Navigator, or an Agent.

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: N/A

The incentive for innovation in products, materials or processes: N/A

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: Making high quality health care available to all Californians, and providing increased education and access to health care coverage.

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 The proposed regulations will have no impact on the State General Fund. The estimated cost to the California Health Trust Fund is approximately \$170,000 annually.

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 _____

FISCAL OFFICER SIGNATURE

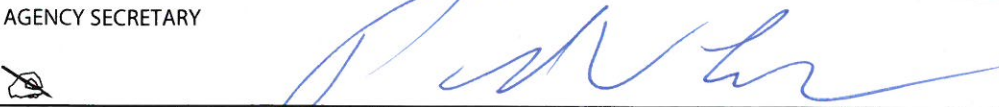


DATE

8/14/2017

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

8/14/17

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