



March 19, 2021

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 a five working day advance notice of intent to file emergency regulations with the Office of Administrative Law (OAL). The California Health Benefit Exchange (“Exchange”) intends to file a request for adoption of the Emergency Rulemaking package with OAL that implements and administers the requirements of Proposition 22, as codified in Section 1, Chapter 10.5 of Division 3 of the Business and Professions Code, as they pertain to the 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 to adopt Section 6466 of Chapter 12, Title 10 of California Code of Regulations; 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 request for adoption of 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 regulation (also enclosed), they must be received by both the Exchange and OAL within five calendar days of the Exchange’s filing at OAL. Responding to these comments is strictly at the Exchange’s discretion.

Comments should be sent simultaneously to:

Courtney Leadham
Regulations Coordinator
California Health Benefit Exchange
1601 Exposition Blvd.
Sacramento, CA 95815

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

Comments may also be submitted by facsimile (FAX) at 916-228-4468 or by e-mail to regulations@covered.ca.gov.

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 regulation with

the Secretary of State, and the emergency regulation will become effective on the day of filing. This regulation will remain in effect until March 26, 2023. 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. The Exchange will hold a public hearing and 45-day comment period after it has published notice to make this regulation permanent.

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

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

If you have any questions concerning this advance notice, please contact Courtney Leadham at (916) 281-2562.

FINDING OF EMERGENCY

The Director of the California Health Benefit Exchange (“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.

The Exchange seeks an emergency adoption to allow for the necessary and immediate incorporation of state requirements. The Exchange acts in accordance with Business and Professions Code section 7466, subdivision (a), which authorizes the Exchange to adopt emergency regulations to implement and administer subdivision (g) of section 7454. Section 7466 authorizes emergency regulations adopted by the Exchange to remain in effect for two years from the date of adoption.

DEEMED EMERGENCY

The necessity of this regulation to be adopted immediately has been declared by Proposition 22, as codified in Business and Professions Code section 7466, which grants the Exchange emergency rulemaking authority to implement and administer the requirements of subdivision (c) and (g) of Business and Professions Code section 7454:

(a) Emergency regulations may be adopted by Covered California in order to implement and administer subdivisions (c) and (g) of Section 7454.

(b) Any emergency regulation adopted pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other provision of law, the emergency regulations adopted by Covered California may remain in effect for two years from the date of adoption.

The proposed emergency regulation implements and interprets the requirements of Business and Professions Code section 7454, subdivision (g).

FINDING OF NECESSITY

California voters approved Proposition 22 in November 2020, which added Chapter 10.5. App-Based Drivers and Services to Division 3 of the California Business and Professions Code (commencing with Section 7448). Article 4, commencing with Section 7454, establishes new benefits for qualifying app-based drivers, including a healthcare subsidy.

Business and Professions Code Section 7454, subdivision (g) provides that “On or before December 31, 2020, and on or before each September 1 thereafter, Covered California shall publish the average statewide monthly premium for an individual for the following calendar year for a Covered California bronze health insurance plan.” The Exchange has determined that emergency rulemaking is necessary to implement this provision.

The Exchange proposes to adopt Section 6466, within Title 10, Chapter 12, of the California Code of Regulations as follows:

Article 4. General Provisions

- Section 6466 implements the requirements of Business and Professions Code section 7454, subdivision (g).

Text proposed to be added is displayed in underline type font. Text proposed to be deleted is displayed in ~~striketrough~~ type font.

The Exchange intends to make permanent these regulations within two years, as provided in Business and Professions Code Section 7466, subdivision (b).

AUTHORITY AND REFERENCE

Authority: Section 100504, Government Code; Sections 7466 and 7454, Business and Professions Code.

Reference: Sections 100502 and 100503, Government Code; Section 7454, Business and Professions Code; Section 61015 Revenue and Taxation Code.

DOCUMENTS RELIED ON

None.

DOCUMENTS INCORPORATED BY REFERENCE

None.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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.)

California Business and Professions Code section 7454, added by Proposition 22, provides a new healthcare subsidy for qualifying independent contractor app-based drivers working for network companies. The amount of the available subsidy is a percentage based on driving hours of the “average statewide monthly premium” for an individual for a Covered California bronze health insurance plan. Business and Professions Code section 7454, subdivision (g), requires the Exchange to annually publish the “average statewide monthly premium for an individual for the following calendar year for a Covered California bronze health insurance plan” to enable network companies to calculate the required subsidy amount. Business and Professions Code section 7466 grants the Exchange emergency rulemaking authority to implement and administer this requirement.

The proposed regulation will interpret and make more specific the requirement that the Exchange annually publish the statewide monthly bronze premium. Specifically, proposed Title 10 of the California Code of Regulations, section 6466, subdivision (a), identifies the Exchange’s public website as the location of the annual publication. Proposed section 6466, subdivision (b) provides the methodology the Exchange will use to calculate the “average statewide monthly premium” annually.

The proposed regulations will benefit the public by providing consistency and transparency to the annual calculation of the average statewide monthly premium for the purposes of the healthcare subsidy added by Proposition 22. The proposed regulation will also inform the public, including network companies required to issue the healthcare subsidy to drivers, as to where to access the published information annually.

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

JUSTIFICATION FOR DUPLICATION

These proposed regulations do not duplicate existing law.

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 AND TO FEDERAL FUNDING

There will be no costs or savings in federal funding to the state. The proposal results in additional costs to the Exchange, which are minor and absorbable with existing budgetary resources. The proposal does not result in any costs or savings to any other state agency.

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 4. General Provisions

§ 6466. Average statewide monthly premium.

(a) On or before December 31, 2020, and on or before each September 1 thereafter, Covered California shall publish the average statewide monthly premium for an individual for the following calendar year for a Covered California bronze health insurance plan on its public website.

(b) For the purposes of this section, the “average statewide monthly premium” means one-twelfth of the state average premium for an individual, as calculated annually pursuant to section 61015, subdivision (a)(2) of the Revenue and Taxation Code, adjusted to account for the average age of a Covered California enrollee in the current calendar year.

Note: Authority cited: Section 100504, Government Code; Sections 7454 and 7466, Business and Professions Code. Reference: Section 61015, Revenue and Taxation Code.