



Notice Published September 6, 2024

**TITLE 10, CALIFORNIA CODE OF REGULATIONS, CHAPTER 12, ARTICLE 4
AMEND SECTION 6464**

NOTICE OF PROPOSED RULEMAKING

The California Health Benefit Exchange/Covered California (the Exchange) Board proposes to amend 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 from 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 **noon (12:00 p.m.) on October 22, 2024 (45 days after the published date)**. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

Jocelyn Acosta
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, subdivision (a)(6) authorizes the Exchange Board to adopt rules and regulations, as necessary. The proposed regulation implements, interprets, and makes specific Government Code section 100503, subdivisions (a), (h), and (s), and Centers for Medicare and Medicaid Services (CMS), Guidance Regarding Identity Proofing for the Marketplace, Medicaid, and CHIP, and Disclosure of Certain Data Obtained through the Data Services Hub (June 11, 2013).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Effect of the Proposed Regulations

In March 2010, President Obama signed federal healthcare 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 “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.

That same year, 2010, California chose to operate its own exchange as the California Legislature enacted and the governor signed, legislation establishing the California Health Exchange (now also known as "Covered California,") and its governing Board. (Stats. 2010, ch. 659, section 2, (SB 900, [Alquist, Steinberg]); Stats 2010, ch. 655 (AB 1602, [Perez].)

Section 2 of AB 1602 expressed the Legislature’s intent in creating the Exchange and its governing Board as follows: “It is the intent of the Legislature to enact the necessary statutory changes to California law in order to establish an American Health Benefit Exchange in California and its administrative authority in a manner that is consistent with the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), hereafter the federal act. In doing so, it is the intent of the Legislature to do all of the following: Reduce the number of uninsured Californians by creating an organized, transparent marketplace for Californians to purchase affordable, quality health care coverage, to claim available federal tax credits and cost-sharing subsidies, and to meet the personal responsibility requirements imposed under the federal act. (b) Strengthen the health care delivery system. (c) Guarantee the availability and renewability of health care coverage through the private health insurance market to qualified individuals and qualified small employers. (d) Require that health care service plans and health insurers issuing coverage in the individual and small employer markets

compete on the basis of price, quality, and service, and not on risk selection. (e) Meet the requirements of the federal act and all applicable federal guidance and regulations.”

State law also specifies the powers and duties of the executive board of the Exchange. Government Code section 100504, subdivision (a) 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.

The Exchange is required to establish the criteria and process for eligibility determination, enrollment, and disenrollment of enrollees and potential enrollees in California, provide for the processing of applications and the enrollment and disenrollment of enrollees, and exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of the Government Code and the ACA. (Gov. Code, § 100503, subs. (a), (h) & (s).)

The Exchange currently provides rigorous system features and procedures that ensure that individuals who apply for coverage or who provide enrollment assistance are who they say they are. However, for continued use of the Federal Data Services Hub for verification of income and social security data, CMS guidance requires state exchanges to establish remote identity verification for customers who apply online and over the phone. (CMS, Guidance Regarding Identity Proofing for the Marketplace, Medicaid, and CHIP, and the Disclosure of Certain Data Obtained through the Data Services Hub (June 11, 2013), pp.1-2.) As a result, the Exchange integrated the federal remote identity verification service for consumers who apply online or over the phone. These proposed amendments will provide the public with clear standards for identity verification, including the processes that will be used for paper and non-paper (i.e., electronic or telephonic) applications and the alternate process should the initial identify verification fail. These amendments allow the Exchange to continue using the federal data services hub by complying with existing federal guidance.

The Exchange is proposing to make amendments to California Code of Regulations, title 10, section 6464.

Objectives and Anticipated Benefits of the Proposed Regulation

The broad objective of this proposed regulatory action is to make edits that ensure clarity and address stakeholder requests. If approved, this regulation will assist the Exchange with the implementation of identity verification requirements.

Anticipated benefits of this proposed regulation include:

- Providing consumers with clear guidelines on how the Exchange will verify the identity for consumers who apply in either paper or non-paper formats.
- Ensuring compliance with federal requirements.
- Protecting and safeguarding California consumers from the unauthorized and illegal access to, or disclosure of, sensitive information such as federal tax information,

personal health information, and personal identifying information, confidential information, or financial information contained in the information systems and devices of the Exchange, or any other information as required by federal law or guidance.

Evaluation of Consistency and Compatibility with Existing State Regulations

After an evaluation of current regulations, the Exchange determined that these proposed amended regulations are not inconsistent or incompatible with any existing state regulations. This evaluation included a review of the laws that regulate the Exchange and specifically those statutes and regulations related to health insurance. Exchange staff also conducted an internet search of other state agency regulations. The Exchange has made its best effort to conform its regulations to State law and does not know of any State statutes or regulations conflicting with these proposed regulations. The proposed amendments do not conflict with any other regulations governing other Certified Representatives.

DOCUMENTS TO BE INCORPORATED BY REFERENCE

None.

DOCUMENTS RELIED UPON

Centers for Medicare and Medicaid Services, *Guidance Regarding Identity Proofing for the Marketplace, Medicaid, and CHIP, and the Disclosure of Certain Data Obtained through the Data Services Hub* (June 11, 2013)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of the California Health Benefit 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 or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed pursuant to Government Code sections 17500 et seq.: None.

Other nondiscretionary costs or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: There is no other impact on federal funding to the state as a result of these regulations.

Significant effect on housing costs: None.

Effect on small business: The proposed regulations will not affect small businesses because the regulations apply to the Exchange identity verification process as well as individual consumers applying for health coverage through the Exchange.

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.

Business Reporting Requirement: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Exchange concludes regarding the proposed regulations that it is:

- (1) **unlikely** to create or eliminate any jobs in the State;
- (2) **unlikely** to create or eliminate businesses within the State;
- (3) **unlikely** to impact the expansion of businesses currently doing business in California;
- (4) **likely** to provide benefits to the health and welfare of California residents; and
- (5) **unlikely** to provide benefits to worker safety and the state's environment.

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

The regulation has a number of benefits which are tied to the Exchange's overall mission. The Exchange is committed to improving the consumer experience in obtaining health insurance. The regulation ensures that identity proofing is used to protect the privacy of personal information, such that only the appropriate individuals have access to data to which access is restricted. A robust identity proofing process is a key piece of the comprehensive privacy and security framework that is needed when providing interactive access to an eligibility process that includes sensitive federal and state data.

Anticipated benefits of this proposed regulation include:

- Providing consumers with clear guidelines on how the Exchange will verify the identity for consumers who apply in either paper or non-paper formats.
- Ensuring compliance with federal requirements.
- Protecting and safeguarding California consumers from the unauthorized and illegal access to, or disclosure of, sensitive information such as federal tax information,

personal health information, and personal identifying information, confidential information, or financial information contained in the information systems and devices of the Exchange, or any other information as required by federal law or guidance.

This proposed regulatory action will not affect worker safety and the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Exchange must determine that no reasonable alternative considered or otherwise identified and brought to the attention of the Exchange is more effective in carrying out the purpose for which the action is proposed, is as effective and less burdensome to affected private persons than the proposed action, or is 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:

Jocelyn Acosta
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 954-3132

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

Crystal Hirst
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8313

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 Jocelyn Acosta at the above contact information.

AVAILABILITY OF DOCUMENTS

Availability of Initial 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 will consist of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Jocelyn Acosta 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 Jocelyn Acosta 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 Jocelyn Acosta 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.hbex.coveredca.com/regulations.



INITIAL STATEMENT OF REASONS

TITLE 10, CALIFORNIA CODE OF REGULATIONS, CHAPTER 12, ARTICLE 4 AMEND SECTION 6464

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

BACKGROUND

On October 9, 2019, the California Health Benefit Exchange (the Exchange) adopted permanent regulations in Title 10, California Code of Regulations (CCR), Chapter 12, Article 4, Section 6464. This regulation is in effect and establishes the obligations and options of individual applicants to verify their identity. The permanent regulation provides the public with clear standards for identity verification, including the processes that will be used for paper and non-paper (i.e., electronic or telephonic) applications and the alternate process should the initial identity verification fail. This regulation allows the Exchange to use the federal data services hub by complying with existing federal guidance.

The Exchange is now proposing to amend these permanent regulations in Title 10, California Code of Regulations (CCR), Chapter 12, Article 4, Section 6464.

State law specifies the powers and duties of the executive board of the Exchange. Government Code section 100504, subdivision (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.

The Exchange is required to establish the criteria and process for eligibility determination, enrollment, and disenrollment of enrollees and potential enrollees in California, provide for the processing of applications and the enrollment and disenrollment of enrollees, and exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of the Government Code and the ACA. (Gov. Code § 100503, subs. (a), (h) & (s)). Furthermore, the Exchange must establish and implement operational, technical, administrative, and physical safeguards to ensure the confidentiality, integrity, and availability of personally identifiable information that is created, collected, used, or disclosed and to ensure that

personally identifiable information is used by or disclosed to only those authorized to receive or view it (45 C.F.R. § 155.260(a)(4)).

The federal regulations require the Exchange to verify information provided by applicants and obtain information from federal and state sources to determine that an applicant is eligible for enrollment in a Qualified Health Plan (QHP) through the Exchange. (45 C.F.R. § 155.315). Applicants may consent to the use and disclosure of trusted data necessary for making an eligibility determination, including data from federal agencies, and the Exchange must establish and implement operational, technical, administrative, and physical safeguards to ensure the confidentiality, integrity, and availability of personally identifiable information that is created, collected, used, or disclosed and to ensure that personally identifiable information is used by or disclosed to only those authorized to receive or view it (45 C.F.R. § 155.260(a)(4)). To that end, the Exchange must follow federal guidelines pertaining to identity proofing to ensure that personally identifiable information is used and safeguarded appropriately.

According to the Centers for Medicare and Medicaid Services (CMS) Identity Proofing Guidance for State marketplaces, before a marketplace accepts an online or telephone application for enrollment in a QHP, it must conduct identity proofing sufficient to provide assurance that only the appropriate individual has access to restricted data. The guidance, published in June 2013, outlines the requirements for establishing the identity of customers of the state-based exchanges in order to ensure the privacy of personal information including the use of a federally-sponsored service offered through the federal data services hub that provides remote identity proofing for online and phone applicants prior to their submitting applications.

PROBLEM STATEMENT

After promulgating the regulations in Title 10, California Code of Regulations (CCR), Chapter 12, Article 4, Section 6464 in 2019, the Exchange determined that Medi-Cal Eligibility Staff and Certified Medi-Cal Managed Care Plan Enrollers were inadvertently omitted from the list of individuals who are authorized to assist consumers with the identity proofing process. The Exchange also determined that HHS-approved electronic data sources other than the Federal Data Services Hub Remote Identity Proofing service were inadvertently omitted from the acceptable ways to remotely verify identity. Additionally, the Exchange seeks to make this regulation gender neutral. The proposed amendments to Title 10, California Code of Regulations (CCR), Chapter 12, Article 4, Section 6464 seek to remedy these inadvertent omissions and make the regulation gender neutral.

ANTICIPATED BENEFITS

The regulation has a number of benefits which are tied to the Exchange's overall mission. The Exchange is committed to improving the consumer experience in obtaining health insurance. The regulation ensures that identity proofing is used to protect the privacy of personal information, such that only the appropriate individuals have access to data to which access is restricted. A robust identity proofing process is a key piece of

the comprehensive privacy and security framework that is needed when providing interactive access to an eligibility process that includes sensitive federal and state data.

Anticipated benefits of this proposed regulation include:

- Providing consumers with clear guidelines on how the Exchange will verify the identity for consumers who apply in either paper or non-paper formats.
- Ensuring compliance with federal requirements.
- Protecting and safeguarding California consumers from the unauthorized and illegal access to, or disclosure of, sensitive information such as federal tax information, personal health information, and personal identifying information, confidential information, or financial information contained in the information systems and devices of the Exchange, or any other information as required by federal law or guidance.

SUMMARY OF THE PROPOSED AMENDMENTS

The Exchange is proposing to amend Title 10, California Code of Regulations (CCR), Chapter 12, Article 4, Section 6464. The proposed amendments will provide the public with clear standards for identity verification, including the individuals who may assist with identity proofing and the process that will be used for verifying identity for non-paper (i.e., electronic or telephonic) applications remotely.

The proposed amendments change “he or she,” “his or her,” and “himself or herself,” to “they,” “their,” and “themselves” respectively as applicable throughout the section for gender neutrality and consistency purposes.

PURPOSE AND NECESSITY

The purpose of this proposed regulatory action is to amend the Exchange’s policies and procedures for identity verification, including the processes that will be used for paper and non-paper (i.e., electronic or telephonic) applications and the alternate process should the initial identity verification fail. These amendments allow the Exchange to continue using the federal data services hub or another HHS-approved data source by complying with existing federal guidance.

Detailed Discussion of the Specific Purpose, Rationale and Problems Addressed for Each Regulation Proposed for Adoption:

Pursuant to its authorities, the Exchange proposes to amend Title 10, California Code of Regulations (CCR), Chapter 12, Article 4, Section 6464. The detailed discussion of the specific purpose, rationale, problems addressed, and statement of reasons for each amendment is as follows:

Section 6464, in its entirety establishes the standards for identity verification, including the processes that will be used for paper and non-paper (i.e., electronic or telephonic) applications and the alternate process should the initial identity verification fail.

The proposed amendments change “he or she,” “his or her,” and “himself or herself,” to “they,” “their,” and “themselves” respectively as applicable throughout the section for gender neutrality and consistency purposes.

Section 6464(a)(3): The amended regulation includes Medi-Cal Eligibility Staff as described in California Code of Regulations, title 22, section 50105 and Certified Medi-Cal Managed Care Plan Enrollers as defined in Title 10, California Code of Regulations, Section 6900 in the definition of “Certified Representative.” This is necessary to avoid confusion regarding a specialized, technical term. Applicants may seek telephonic or in-person assistance with applying for and enrolling in QHP coverage through the Exchange, which requires identity proofing. Including Medi-Cal Eligibility Staff and Certified Medi-Cal Managed Care Plan Enrollers in the definition of “Certified Representative” is necessary to clarify that Medi-Cal Eligibility Staff and Certified Medi-Cal Managed Care Plan Enrollers are authorized to assist consumers with the identity proofing process and to make clear to the public which individuals are eligible to provide such identity proofing assistance.

The amended regulation also replaces a cross-reference to Title 10, California Code of Regulations, Section 6800 with a cross-reference to Title 10, California Code of Regulations, Section 6410 in the definition of “Certified Insurance Agent.” This is necessary because section 6800 has been repealed. The definition of “Certified Insurance Agent” under section 6410 is the same as the definition that was formerly under section 6800, so the change in cross-reference does not alter the meaning of the term. This is also necessary to avoid confusion regarding a specialized, technical term.

Section 6464(c)(1): The amended regulation changes “his or her” to “their” for gender neutrality and consistency purposes.

Section 6464(c)(1)(B): The amended regulation changes “he or she” to “they” for gender neutrality and consistency purposes.

Section 6464(c)(2): The amended regulation changes “his or her” to “their” for gender neutrality and consistency purposes.

Section 6464(c)(2)(B): The amended regulation removes reference to the Federal Data Service Hub to clarify that the subparagraph applies to the remote identity proofing process and is not limited to one service that can be used to remotely verify identity. This is necessary to provide the public with clear standards and guidelines on the remote identity verification process and to clarify that the remote identity verification process applies regardless of the source of data used to verify identity.

Section 6464(c)(2)(B)(1.): The amended regulation adds other HHS-approved data sources to the available data sources the applicant must consent to allow the Exchange or Certified Representative to access their identity information if the applicant chooses to verify their identity remotely. The current regulation allows applicants to consent to using only the Federal Data Service Hub Remote Identity Proofing service. The purpose of the amendment is to allow the Exchange to use additional data sources to remotely

verify identity should the federal source no longer be available or if the Exchange opts to use a different HHS-approved data source as permitted under the federal Identity Proofing Guidance Q&A 5. Given the prevalence of data breaches nationally, the amendment is necessary to allow the Exchange to respond rapidly if the Federal Data Service Hub Remote Identity Proofing service is not available due to a data breach. This is necessary for the Exchange to maintain a robust identity proofing process which is a key piece of the comprehensive privacy and security framework that is needed when providing interactive access to an eligibility process that includes sensitive federal and state data. This is also necessary to comply with the federal Identity Proofing Guidance Q&As 5 which allows the Exchange to utilize an identity information data source other than the Federal Data Service Hub Remote Identity Proofing service if it complies with privacy and security standards and achieves levels of assurance 1 and 2.

The amended regulation also changes “his or her” and “he or she” to “their” and “they” respectively for gender neutrality and consistency purposes.

Section 6464(c)(2)(B)(2.): The amended regulation adds other HHS-approved data sources to the data sources that may be used to generate knowledge-based questions. The current regulation allows only the Federal Data Service Hub Remote Identity Proofing service to generate knowledge-based questions to remotely verify identity. The purpose of the amendment is to allow the Exchange to use additional data sources to generate-knowledge based questions should the federal source no longer be available or if the Exchange opts to use a different HHS-approved data source as permitted under the federal Identity Proofing Guidance Q&A 5. Given the prevalence of data breaches nationally, the amendment is necessary to allow the Exchange to respond rapidly if the Federal Data Service Hub Remote Identity Proofing service is not available due to a data breach. This is necessary for the Exchange to maintain a robust identity proofing process which is a key piece of the comprehensive privacy and security framework that is needed when providing interactive access to an eligibility process that includes sensitive federal and state data. This is necessary to comply with the federal Identity Proofing Guidance Q&A 5 because it requires the collection and validation of responses to knowledge-based questions to achieve assurance level 2.

Section 6464(c)(2)(B)(3.): The amended regulation adds other HHS-approved data sources to the available data sources that will either verify the applicant’s identity or provide information on how to complete an alternate verification process. The current regulation allows applicants to complete the remote identity verification process using only the response from the Federal Data Service Hub Remote Identity Proofing service. The purpose of the amendment is to allow the Exchange to use additional data sources to complete the remote identity verification process should the federal source no longer be available or if the Exchange opts to use a different HHS-approved data source as permitted under the federal Identity Proofing Guidance Q&A 5. Given the prevalence of data breaches nationally, the amendment is necessary to allow the Exchange to respond rapidly if the Federal Data Service Hub Remote Identity Proofing service is not available due to a data breach. This is necessary for the Exchange to maintain a robust

identity proofing process which is a key piece of the comprehensive privacy and security framework that is needed when providing interactive access to an eligibility process that includes sensitive federal and state data. This is necessary to comply with the federal Identity Proofing Guidance Q&As 5 which allows the Exchange to complete the remote identity verification process using a data source other than the Federal Data Service Hub Remote Identity Proofing service if it complies with privacy and security standards and achieves levels of assurance 1 and 2.

Section 6464(c)(3)(A): The amended regulation adds other HHS-approved data sources to the alternate options available to verify identity remotely if the applicant fails to verify their identity using the method they initially chose. This is necessary to clarify the sources of identity information that will be used to remotely verify identity for applicants who failed to verify their identity using a different method and choose the remote identity verification process as an alternate.

Section 6464(d): The amended regulation changes “himself or herself” and “his or her” to “themselves” and “their” respectively for gender neutrality and consistency purposes.

ADVISORY GROUP OR OTHER AGENCY COMMENT, CONSULTATION AND/OR APPROVAL

The Exchange met with the Department of Health Care Services and stakeholder groups in advance of proposing this permanent regulatory action.

DOCUMENTS RELIED UPON

Centers for Medicare & Medicaid Services (CMS), *Guidance Regarding Identity Proofing for the Marketplace, Medicaid, and CHIP, and the Disclosure of Certain Data Obtained through the Data Services Hub* (June 11, 2013).

ECONOMIC IMPACT ANALYSIS/ASSESSMENT (EIA)

The proposed amendments seek to clarify and make specific some of the Exchange’s policies and procedures for identity verification. The proposed regulatory package (1) clarifies that Medi-Cal Eligibility Staff and Certified Medi-Cal Managed Care Plan Enrollers can assist applicants with verifying their identity and updates a cross-reference, (2) adds other HHS-approved data sources to the remote identity verification process, and (3) updates the regulation to be gender neutral. The proposed amendments have been circulated to and reviewed by affected parties including the Department of Health Care Services and stakeholder groups. No comments regarding the economic impact of the proposal were received.

Although the proposed amendments include Medi-Cal Eligibility Staff in the list of individuals who may assist consumers with the identity proofing process, Medi-Cal Eligibility Staff have been assisting applicants with verifying their identity prior to applying through the California Healthcare Eligibility and Enrollment System (CalHEERS) since 2015 pursuant to California Department of Health Care Services, Medi-Cal Eligibility Division Information Letter No. 15-10 (Mar. 24, 2015). The

amendment seeks to correct an inadvertent omission and does not impose a new obligation to assist applicants with identity verification on Medi-Cal Eligibility Staff. Therefore, it is unlikely that any jobs or businesses will be created, eliminated, or expanded based on these proposed amendments.

Although the proposed amendments will affect Certified Medi-Cal Managed Care Plan Enrollers statewide, applicants will not seek external assistance for the sole purpose of identity verification because identity verification is only required when applying for enrollment. Individuals who seek external assistance will likely need help in completing the entire application, in addition to identity verification, in which case the Certified Medi-Cal Managed Care Plan Enrollers would fulfil one of their job responsibilities. There is no additional compensation provided for assistance with identity proofing. Therefore, the Exchange concludes that the economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant. These provisions will have no substantial impact on the operation of Medi-Cal Managed Care Plan and thus the proposed regulation is not expected to have a significant adverse economic impact on businesses.

Creation of Jobs

For the reasons stated above, this proposed regulation is not expected to create or eliminate any jobs within the State of California. The focus of the amendments is on enhancing the Exchange's identity verification process and affects those seeking health insurance through the Exchange. By clarifying who can assist with identity verification and the remote identity verification process, the primary impact is on consumers, not directly on job creation or elimination.

Medi-Cal Eligibility Staff are already assisting consumers with verifying their identity before applying for health coverage and Certified Medi-Cal Managed Care Plan Enrollers are already assisting consumers with submitting applications, so the counties and Medi-Cal Managed Care Plans will not need to create or eliminate jobs to comply with these proposed amendments. As such, the proposed amendments are not expected to create new jobs, alter job responsibilities, or affect employment levels within the state. Although requiring to Allow the Exchange to use an alternate data source to remotely verify identity is not expected to create new jobs because the Exchange will utilize a pre-existing source of identity information, and it is unlikely that the administrators of the data source would create jobs based on the Exchange's use of the identity information.

Creation of Businesses

For the reasons stated above, this proposed regulation is not expected to create or eliminate businesses within the State of California. The focus of the amendments is on enhancing the Exchange's identity verification process and affects those seeking health insurance through the Exchange. By clarifying who can assist with identity verification and the remote identity verification process, the primary impact is on consumers, not directly on businesses.

The regulations do not create conditions conducive to the establishment of new businesses nor do they impose restrictions that would necessitate the closure of existing ones. Medi-Cal Eligibility Staff are already assisting consumers with verifying their identity and Certified Medi-Cal Managed Care Plan Enrollers are already assisting consumers with submitting applications, so businesses will not be created or eliminated to comply with these regulations. Allowing the Exchange to use an alternate data source to remotely verify identity is not expected to create new businesses because the Exchange will utilize a pre-existing source of identity information. Thus, there is no expected direct effect on the creation or elimination of businesses due to these regulations.

Expansion of Businesses

The proposed amendments are not expected to expand any businesses currently doing business within the State of California. The focus of the amendments is on enhancing the Exchange's identity verification process and affects those seeking health insurance through the Exchange. By clarifying who can assist with identity verification and the remote identity verification process, the primary impact is on consumers, not directly on businesses.

If the Exchange uses an alternate data source as permitted but not required by the amendments to remotely verify identity, the Exchange will utilize a pre-existing source of identity information. Companies that offer identification verification services are typically very large and assist many businesses and public entities with verifying identity. Therefore, it is unlikely that they would expand their operations to accommodate the Exchange's use of their data. Medi-Cal Eligibility Staff are already assisting consumers with verifying their identity and Certified Medi-Cal Managed Care Plan Enrollers are already assisting consumers with submitting applications, so businesses will not expand to comply with these regulations. These amendments are not expected to facilitate market expansion, affect operational capacities, or boost financial growth for businesses. Thus, there is no expected direct effect on the expansion of businesses due to these regulations.

Benefits

The regulation has a number of benefits which are tied to the Exchange's overall mission. The Exchange is committed to improving the consumer experience in obtaining health insurance. The regulation ensures that identity proofing is used to protect the privacy of personal information, such that only the appropriate individuals have access to data to which access is restricted. A robust identity proofing process is a key piece of the comprehensive privacy and security framework that is needed when providing interactive access to an eligibility process that includes sensitive federal and state data.

Anticipated benefits including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:

- Making quality health care available to all Californians.
- Providing consumers with clear guidelines on how the Exchange will verify the identity for consumers who apply in either paper or non-paper formats.
- Ensuring compliance with federal requirements.
- Protecting and safeguarding California consumers from the unauthorized and illegal access to, or disclosure of, sensitive information such as federal tax information, personal health information, and personal identifying information, confidential information, or financial information contained in the information systems and devices of the Exchange, or any other information as required by federal law or guidance.
- And ultimately, helping to save lives and increase the health of the public in California.

This proposed regulatory action will not affect worker safety and the state's environment.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Exchange has determined that no reasonable alternative considered or otherwise identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which the 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 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 amendments at the scheduled hearing or during the written comment period.

SUPPORT FOR DETERMINATION OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

For the reasons stated above, the Exchange has determined that the proposed rulemaking will have no significant, statewide adverse economic impact affecting businesses, either directly or indirectly, including the ability of California businesses to compete with businesses in other states. The proposed regulation describes action taken by the Exchange and does not impose any direct requirements on businesses.

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 4. General Provisions

§ 6464. Identity Verification Requirement.

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) RIDP: Remote Identity Proofing service;

(2) FDSH: Federal Data Service Hub;

(3) Certified Representative:

(A) Service Center Representative: An Exchange employee operating in a call center as set forth in 45 C.F.R. Section 155.205(a) (December 22, 2016), hereby incorporated by reference;

(B) Certified Enrollment Counselor as defined in section 6650;

(C) Certified Application Counselor as defined in 45 C.F.R. section 155.225 (March 8, 2016), hereby incorporated by reference;

(D) Certified Insurance Agent as defined in section ~~6800~~6410;

(E) Certified Plan-Based Enroller as defined in section 6410-;

(F) Medi-Cal Eligibility Staff as described in California Code of Regulations, title 22, section 50105;

(G) Certified Medi-Cal Managed Care Plan Enroller as defined in section 6900.

(b) Paper Applications

(1) The Exchange shall accept only paper applications for health insurance coverage that are accompanied by a signature in ink, under penalty of perjury in the

declaration and signature section of the Exchange's paper application as defined in section 6470(d).

(2) The Exchange shall not accept or process any paper application lacking a signature in ink, under penalty of perjury in the declaration and signature section of the Exchange's paper application as defined in section 6470(d).

(c) Non-paper Applications

(1) Prior to initiating an application as set forth in section 6470, an applicant shall consent to have ~~his or her~~ their identity verified in one of the following ways:

(A) If the applicant applies through CalHEERS without the assistance of a Certified Representative, the applicant shall consent by clicking the "Yes" button on the CalHEERS Screen in response to being asked, "Do you give your permission to Covered California to confirm your identity?"

(B) If the applicant applies through CalHEERS with the assistance of a Certified Representative, ~~he or she~~ they shall provide this consent to the Certified Representative orally. The Certified Representative shall attest to having received this consent from the applicant in one of the following ways:

1. Clicking the "Yes" button next to the statement "I attest that I have visually verified this person's identity";

2. Clicking the "Yes" button next to the statement "I have the consumer's consent to access their identity information through the Federal Data Services Hub Remote Identity Proofing service."

(2) Prior to initiating an application as set forth in section 6470, an applicant shall submit ~~his or her~~ their identity for verification using one of the following methods:

(A) Visual Verification

1. An applicant shall mail, present in person, or electronically transmit through CalHEERS to the Exchange or to a Certified Representative acceptable proof of identity as follows:

(i) A copy of a valid identification card issued by a federal, state, or local governmental entity that bears a recognizable photograph of the applicant or other identifying information of the individual such as name, age, sex, race, height, weight, eye color, or address, including school identification card, voter registration card, Military Dependent's identification card, Native American Tribal document, U.S. Coast Guard Merchant Mariner card, a Certificate of Naturalization (Form N-550 or N-570), Certificate of U.S. Citizenship (Form N-560 or N-561), Permanent Resident Card or Alien Registration Receipt Card (Form I-551), Employment Authorization Document Card that includes a photograph (Form I-766), Foreign Passport or identification card issued by a foreign embassy or consulate that contains a photograph, or

(ii) Two of the following: a birth certificate, Social Security card, marriage certificate, divorce decree, employer identification card, high school or college diploma (including high school equivalency diplomas), property deed or title, an adoption decree for the adoptee, foreign school record that includes a photograph, notice from a public benefits agency, or a union or worker center identification card.

2. If submitted in person or by mail, a Certified Representative shall upload a copy of the identity documents to CalHEERS.

(B) ~~Federal Data Service Hub~~ Remote Identity Proofing service (FDSH RIDP)

1. If the applicant does not elect to have ~~his or her~~their identity verified pursuant to subdivision (c)(2)(A), ~~he or she~~they shall consent to allow the Exchange or Certified Representative to use the FDSH RIDP service or other HHS-approved data source to access ~~his or her~~their identity information.

2. The applicant shall answer a number of questions generated by the FDSH RIDP service or other HHS-approved data source. Examples of these questions include, but are not limited to:

(i) Please select the number of bedrooms in your home from the following choices. If the number of bedrooms in your home is not one of the choices, please select 'NONE OF THE ABOVE.'

(ii) Please select the county for the address you provided.

(iii) Please select the range that includes the year the home was built for the address that you provided.

3. Based on the accuracy of the applicant's answers to the questions referenced in subdivision (c)(2)(B)2. of this section, the FDSH RIDP service or other HHS-approved data source will either verify the applicant's identity or provide information on how to complete an alternative identity verification process.

(3) If the Exchange is unable to verify the identity of an applicant in accordance with subdivision (c)(2) of this section, neither the Exchange nor a Certified Representative shall accept an application for health insurance from that same applicant until one of the following is satisfied:

(A) The applicant successfully completes the alternative identity verification process by calling the Help Desk number listed in CalHEERS and successfully

answering additional personalized questions, and the FDSH RIDP service or other HHS-approved data source informs the Exchange or Certified Representative of such;

(B) The applicant completes the visual verification process as set forth in subdivision (c)(2)(A) of this section; or

(C) The applicant submits a paper application in accordance with subdivision (b) of this section.

(d) An applicant who successfully completes the identity verification requirements set forth in this section may, if otherwise permitted, apply for health insurance for ~~himself or herself~~ themselves and for members of ~~his or her~~ their household, without those household members also satisfying the requirements set forth in this section.

(e) Consumers, as defined in section 6650, who submitted an application prior to the effective date of this section are subject to the requirements of this section if they make a change to the Primary Contact screen.

(f) This section shall not apply to individuals applying through CCSB (as defined in section 6410).

Note: Authority cited: Section 100504(a)(6), Government Code. Reference: Sections 100503(a), 100503(h) and 100503(s), Government Code; 45 C.F.R. Sections 155.205 and 155.225.

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME California Health Benefit Exchange	CONTACT PERSON Haley Bohnert	EMAIL ADDRESS haley.bohnert@covered.ca.gov	TELEPHONE NUMBER +1 916-954-3283
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Make Identity Verification Regulatory Changes to Permanent Changes			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):

Permanent changes are made to comply with existing federal requirements, and provide clear standards for identity verification and process for eligibility determination, enrollment, and dis-enrollment

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** estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: 0

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: 0

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

Explain: N/A

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: N/A

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. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

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

a. Initial costs for a small business: \$ 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: There are no economic costs

2. If multiple industries are impacted, enter the share of total costs for each industry: N/A

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.* \$ 0

4. Will this regulation directly impact housing costs? YES NO
If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

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

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: Regulation benefits include clear guidelines for verifying consumers' identities, ensuring compliance with federal requirements, and safeguarding California consumers' sensitive information from disclosed, unauthorized, and/or illegal access.

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

The regulation amendments are driven by specific statutory requirements, particularly from the Affordable Care Act (ACA) and corresponding federal regulations. The Exchange must comply with federal guidelines related to identity proofing and safeguarding personally identifiable information. These requirements are grounded in federal law, such as 45 C.F.R. §155.260 and 155.315, which mandate the Exchange to establish robust identity verification processes to protect sensitive data.

3. What are the total statewide benefits from this regulation over its lifetime? \$ 0

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

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: In accordance with Government Code section 11346.5, subdivision (a)(13), the Exchange has determined no reasonable alternative be considered or otherwise identified due to being burdensome and less affective than the proposed action.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

Regulation: Benefit: \$ 0 Cost: \$ 0

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

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

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

N/A

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?

YES

NO

Explain:

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES

NO

***If YES, complete E2. and E3
If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES

NO

If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

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

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (Rev. 10/2019)

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. 10/2019)

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 _____

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

DocuSigned by:



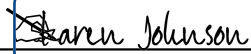
DATE

8/21/2024

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

DocuSigned by:



DATE

8/22/2024

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

