

## ADDENDUM TO THE FINAL STATEMENT OF REASONS

### General Licensure Regulation Section 1300.49, Title 28

(Control No. 2017-5220)

There have been no changes in applicable laws or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Regulatory Action dated October 27, 2017.

The following is the Department of Managed Health Care's (Department) Addendum to the Final Statement of Reasons that was contained in the Department's rulemaking action OAL File No. 2018-0824-01S, which is hereby incorporated by reference. (*Please Note:* Certain of the provisions below were also contained in the Department's Addendum to the Initial Statement of Reasons that was noticed to the public on November 30, 2018).

#### **Update of Information Contained in the Initial Statement of Reasons/Updated Informative Digest**

Updated Documents Relied Upon:

- California HealthCare Foundation, California Regional Markets, California Health Care Almanac Quick Reference Guide. <https://www.chcf.org/resource-center/california-health-care-almanac/almanac-regional-markets/>.
  - San Francisco County - <https://www.chcf.org/wp-content/uploads/2017/12/PDF-AlmanacRegMktQRGSanFran16.pdf>
  - Orange County - <https://www.chcf.org/wp-content/uploads/2017/12/PDF-AlmanacRegMktQRGOrange16.pdf>.
  - Sacramento County - <https://www.chcf.org/wp-content/uploads/2017/12/PDF-AlmanacRegMktQRGSacramento16.pdf>.
  - Fresno County - <https://www.chcf.org/wp-content/uploads/2017/12/PDF-AlmanacRegMktQRGFresno16.pdf>.
  - San Diego County - <https://www.chcf.org/wp-content/uploads/2017/12/PDF-AlmanacRegMktQRGSanDiego16.pdf>.
  - Los Angeles County - <https://www.chcf.org/wp-content/uploads/2017/12/PDF-AlmanacRegMktQRGLosAngeles16.pdf>.
- U.S. Census Bureau Data for Regional California Counties. Data as of July 1, 2017.
  - Los Angeles County - <https://www.census.gov/quickfacts/losangelescountycalifornia>.

- Sacramento County -  
<https://www.census.gov/quickfacts/fact/table/sacramentocountycalifornia/PST045217>.
- San Diego County -  
<https://www.census.gov/quickfacts/fact/table/sandiegocountycalifornia/PST045217>.
- San Francisco County -  
<https://www.census.gov/quickfacts/fact/table/sanfranciscocountycalifornia/PST045217>.
- Alpine County -  
<https://www.census.gov/quickfacts/fact/table/alpinecountycalifornia/PST045217>.
- Lassen County -  
<https://www.census.gov/quickfacts/fact/table/lassencountycalifornia/PST045217>.
- Modoc County -  
<https://www.census.gov/quickfacts/fact/table/modoccountycalifornia/PST045217>.
- Trinity County -  
<https://www.census.gov/quickfacts/fact/table/trinitycountycalifornia/PST045217>.
- Riverside County -  
<https://www.census.gov/quickfacts/fact/table/riversidecountycalifornia/PST045217>.
- San Bernardino County -  
<https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/PST045217>.
- Orange County -  
<https://www.census.gov/quickfacts/fact/table/orangecountycalifornia/PST045217>.
- Fresno County -  
<https://www.census.gov/quickfacts/fact/table/fresnocountycalifornia/PST045217>.
- Marin County -  
<https://www.census.gov/quickfacts/fact/table/marincountycalifornia/PST045217>.
- San Mateo County -  
<https://www.census.gov/quickfacts/fact/table/sanmateocountycalifornia/PST045217>.
- Contra Costa County -  
<https://www.census.gov/quickfacts/fact/table/contracostacountycalifornia/PST045217>.
- Alameda County -  
<https://www.census.gov/quickfacts/fact/table/alamedacountycalifornia/PST045217>.

- California HealthCare Foundation, Exploring Six California Health Economies, Press Release, July 2009. <https://www.chcf.org/press-release/exploring-six-california-health-economies/>.
- Department of Managed Health Care, Office of Plan Management, “Provider and Enrollment Counts in Densely Populated and Rural Counties.” Data from November 13, 2018.

No material other than public comments, the Notice of 45-day Comment Period, the Notice of 2<sup>nd</sup> Comment Period, the Notice of 3<sup>rd</sup> Comment Period, the Notice of 4<sup>th</sup> Comment Period, the revised regulation texts, this Addendum to the Final Statement of Reasons, the final text and the updated documents relied upon listed above have been added to the rulemaking file since the time the rulemaking was opened.

### **Substantive Changes to the Text – 4<sup>th</sup> Comment Period**

- The Department changed “may” to “shall” in section 1300.49, subdivision (b)(2), so the language now states the Department “shall” grant an exemption after a review of the listed criteria so long as the requestor meets the threshold for approval. The use of “shall” more closely tracks the exemption established in Health and Safety Code section 1343 that requires the Director of the Department to make a finding that the granting of an exemption may be made if the Director finds the action to be in the public interest and not detrimental to the protection of enrollees.
- In section 1300.49, subdivision (b)(2), which discusses the exemption criteria, the Department deleted language stating the Director will consider “information the Director deems relevant, including, but not limited to, the following.” The Department deleted this language because the new (b)(2)(F) states that “any other information the person believes is appropriate or relevant” may be submitted in the exemption request, which makes it clear that the list of criteria is not exhaustive and allows the requestor some flexibility to provide information the requestor believes supports their exemption request.
- In section 1300.49, subdivision (b)(2), the Department added a reference to Health and Safety Code section 1343 to make clear the ability for a person to seek and the Director to grant an exemption is the same process contained in the already existing statute in the Knox-Keene Act. In subdivision (b)(2), the Department added, “A person requesting an exemption shall submit the following information for consideration by the director”. The Director added this language to make it clear that the party requesting the exemption for consideration shall submit the information listed in this subdivision.
- The Department amended subdivision (b)(2)(A) – (E) to clarify the information the Director will consider when determining whether an exemption request shall be granted.
  - In 1300.49(b)(2)(A), the Department added that the Director will consider the financial statements from the entity, as this will help the Department

determine whether the entity is financially stable and the amount of risk it assumes, key parts of the exemption that must be considered for public safety and the stability of the healthcare market place.

- In 1300.49(b)(2)(B), the Department added language stating that the Director will consider the total percentage of annualized income of institutional risk of the exemption requestor and how it will be assumed. This is necessary to demonstrate financial viability in the marketplace when the requestor is taking on global risk.
- In 1300.49(b)(2)(C), the Department added language requiring the contracts for global risk. The Director must be able to review these contracts to ensure that the enrollees who will be impacted by these global risk contracts are protected as well as the providers who are providing care to the impacted enrollees.
- In 1300.49(b)(2)(D), the Department added language requiring the requestor submit the total number of enrollees and subscribers under the global arrangement. This provision is necessary to allow the Director to assess the impact in the marketplace that will occur from the global risk contract and the number of enrollees or subscribers who could be impacted if there are insolvency issues.
- In 1300.49(b)(2)(E), the Department added language requiring the geographical service area(s) in which the requestor will be operating. This information is essential for the Director's review and understanding of the potential impact in the geographical region if the entity requesting the exemption were to become insolvent and its impact on the marketplace in that geographical region.
- The Department deleted the existing language in 1300.49, subdivision (b)(2)(F), "Information on how the public interest or protection of the public, subscribers, enrollees or persons subject to this chapter will be impacted if the person takes on global risk." This provision was deleted because similar language was added to revised subdivision (b)(2), which makes clear the standard by which the exemption request will be judged is whether the exemption would impact the public interest or protection and thus it would be duplicative in subdivision (b)(2)(F).
- In revised 1300.49, subdivision (b)(2)(F), the Department added language stating that the person may submit "Any other information the person believes is appropriate or relevant for the Director to consider when reviewing the exemption request." This is now its own provision to make it clear that the list of information submitted is not exhaustive and the requestor has the flexibility to add additional information the requestor believes supports their request for an exemption.
- The Department added section 1300.49, subdivision (b)(2)(G), to list both the email and hard copy address to which exemption requests may be submitted to

the Department's Office of Plan Licensing. This will make it clear to persons requesting an exemption how and where to submit the request.

- In section 1300.49, subdivision (b)(3), the Department added the criteria the Director will consider and analyze when determining whether to grant an exemption request. This was added in response to public comments requesting this information be added to the regulation, as it some of these factors were listed in the Initial Statement of Reason but were not included in the regulation. The criteria show that the Director will consider the financial reserves, capacity, and market share of the person in order to determine how the person's potential exemption could affect enrollees and the health care marketplace. The criteria all underscore that, pursuant to (b)(2) and as reiterated in (b)(3)(E), an exemption will be granted only if it is in the public interest and not detrimental to subscribers, enrollees or other persons regulated pursuant to the Knox-Keene Act.
  - In subdivision (b)(3)(A), the Director will consider the person's portion of global risk compared to the person's overall business. This information is necessary to review because it demonstrates the person's overall financial viability if the global risk contract were to cause financial difficulties.
  - In subdivision (b)(3)(B), the Director will consider the portion of market share the person assumes for global risk in the geographical region compared to the market share assumed by other persons within the region. This information helps the Director determine whether and how much disruption might occur if the person fails to maintain financial solvency in the geographical region.
  - In subdivision (b)(3)(C), the Director will consider the financial capacity of the person to assume global risk without jeopardizing access to basic health care services in the geographical region. It is necessary for the Director to consider this information because of the potential safety issues for enrollees through potential disruption in accessing medically necessary health care services.
  - In subdivision (b)(3)(D), the Director will consider the potential impact on the marketplace in the geographical region in which the person operates, including the impacted on contracted providers, if the person is unable to maintain financial solvency. This information is necessary for the Director to consider because it directly impacts providers as well as marketplace stability in the geographical region.
  - In subdivision (b)(3)(E), the Director will consider whether the exemption will negatively impact the public interest or protection of the public, subscribers, enrollees, or persons subject to the Knox-Keene Act if the person assumes global risk. The Director is required to consider this overarching concern under the terms of the authority for the exemption in Health and Safety Code section 1343.
- In the next subdivision (b)(3) - (which the Department corrected to (b)(4)), the Department states the Director shall issue a decision on the exemption request

within 30 days of the receipt of the request by the Department. This provision was added to make clarify the Department's deadline to review and respond to the request in a timely manner.

### **Non-Substantive Changes – 4<sup>th</sup> Comment Period Text**

- In subdivision (a)(2), a comma was added after “. . .section 1253 of the Health and Safety Code<sub>1</sub>” for proper grammar. It does not change the substantive meaning of the definition.
- A second subdivision (b)(3) has been changed to subdivision (b)(4) because there were two subdivision (b)(3)s mistakenly contained in the text.
- In subdivision (b)(2)(A), the Department made a non-substantive change when it deleted the word “currently” and replaced it with “already.” The sentence now reads, “A person that already files audited financial statements...” which is easier to read and understand than the previous language. This change does not affect the meaning and is non-substantive in nature.
- In subdivision (c)(1)(A), the word “only” has been deleted in its first usage because it is bad grammar. The word “only” is used in a separate portion of this subdivision correctly.
- In subdivision (c)(1)(C), the Department made the non-substantive change of making the date of the Restricted Health Care Service Plan Responsibility Statement “November” instead of “March.” This is necessary because the Restricted Health Care Service Plan Responsibility Statement was updated during the November comment period.
- In subdivisions (d) and (e), the DMHC deleted “effective date of this regulation” and instead states “[Date to be inserted by OAL].” This is a non-substantive change. Having the OAL insert an effective date will make the regulation more clear, as parties reviewing the regulation will be able to see the date in the regulatory text and will not have to look up and find the effective date of the regulation.

### **Form Incorporated by Reference**

Pursuant to Title 1, section 20, of the California Code of Regulations, the Department has incorporated by reference the Restricted Health Care Service Plan Statement after determining that it would be too cumbersome, unduly expensive, or otherwise impractical to publish the document in the California Code of Regulations.

### **Mandate on Local School Agencies and School Districts**

The Department has determined that the proposed regulation will not impose a mandate on local school agencies or school districts.

### **Comparable Federal Law**

The Department has reviewed federal law and determined that there is no comparable

federal law for this regulation.

### **Alternatives to the Proposed Regulation**

As discussed in the Initial Statement of Reasons, the Department considered various alternatives to the proposed regulation during the informal rulemaking process. Further, the Department determined during the rulemaking process that the alternatives considered would not be more effective in carrying out the purposes for which the regulation is proposed, would not be as effective and less burdensome to regulated entities, and would not be more cost-effective in implementing the requirements of Health and Safety Code sections 1345, 1349 and the entirety of the Knox-Keene Act.

### **Summary of and Responses to Comments**

The Department's summary and responses to comments from the 4<sup>th</sup> comment period are contained in Tab G, and revised responses to comment from the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> comment periods are contained in Tab H.