

## **ADDENDUM TO INITIAL STATEMENT OF REASONS**

The Department is hereby updated its Initial Statement of Reasons with the following amended information:

### **Update to Documents Relied Upon**

The Department has added the following document to its rulemaking file as a “document relied upon”:

“Accountable Care Organizations in California: Promise and Performance. University of California, Berkeley, School of Public Health, February 2015.”

### **I. ECONOMIC IMPACT**

The Department has determined that the regulation will not have a significant statewide adverse economic impact directly affecting businesses. The economic impact on private businesses, for both one-time and ongoing costs, is estimated to total \$4,882,015. The economic impact was calculated as follows:

The proposed adoption of Rule 1300.49, subdivision (b), interprets, implements, and makes specific state law regarding the definition of a health plan. The addition of Rule 1300.49 makes clear that entities that accept global risk must seek licensure or an exemption from licensure as a health plan. Additionally, the proposed regulation implements the current practice of the Department’s licensure of restricted health care service plans.

Applicants for licensure pay fees up to \$25,000, billed on a monthly basis, as fees accrue by the Department, for review and processing of the application for licensure. Typically, full service and specialized health care service plans pay the maximum \$25,000 for licensure. Restricted health care service plans, on average, pay about \$15,093 for initial licensure. Entities that seek an exemption from licensure requirements are not required to pay the application fee.

Subsequent to licensure, pursuant to Health and Safety Code section 1356, subdivision (b)(1), a licensed health care service plan, which includes a restricted health care service plan, must pay the Department \$10,000 plus an amount calculated on a per enrollee basis for the costs and expenses incurred by the Department associated with the regulation of health plans. In 2016, the per member enrollment cost for full service health plans was \$1.59.

#### **Restricted Health Care Service Plan costs:**

On average, the Department receives five (5) applications per year from restricted health care service plan licensee applicants. Therefore, it is expected that the first effective year of the proposed regulation will result in an aggregate impact of 5 restricted health care service plan

licensees seeking licensure x \$15,093 (the average cost of a restricted health care service plan licensee application fee), or \$75,465 total for the first year.

Restricted health care service plans will also be responsible for paying ongoing annual fees based on the amount of contracted covered lives they undertake. The total amount owed by each restricted licensee will vary significantly depending on the total number of contracted enrollees the restricted health care service plan undertakes. The average restricted health care service plan contract covers 15,272 lives and pays \$24,137 in annual fees. Therefore, the proposed regulation will result in approximately \$120,685 in ongoing annual costs.

#### Costs for New Entities Requiring Licensure:

In addition to implementing the licensure process for restricted health care service plans, the regulation may also require entities that previously did not require licensure to seek either licensure or an exemption from licensure from the Department. Accountable Care Organizations (ACOs) and Public Health Systems (PHS) are two entities that, provided they fall within the regulation's provision, will be required to seek licensure or an exemption. Because these entities have not previously been licensed by the Department, the Department has made assumptions in order to estimate the fiscal impact of the regulation of these entities.

For ACOs, according to a University of California-Berkeley study, in 2015 there were 67 ACOs with risk bearing contracts in California, covering 1,355,756 lives. Although there are likely new ACOs in California today, some of the ACOs in existence in 2015 may have consolidated or otherwise stopped doing business and so the Department estimates that, once the regulation is effective, there will be 67 ACOs that will fall within the terms of the regulation. Of those 67, we assume the Department will grant an exemption to one-quarter of the ACOs. Because one of the purposes of the regulation is to increase oversight in order to protect consumers, the Department will likely not grant many exemptions to ACOs. The overall cost as a result of licensing ACOs is estimated to be \$2,866,739. Of that, \$1,250,000 is the one-time cost to license three-quarters of the 67 ACOs (each will pay the \$25,000 application fee). The ongoing costs are \$2,119,239, which accounts for the \$1.59 per enrollee fee and the \$10,000 per licensed ACO fee.

For PHS, according to a California Association of Public Hospitals and Health Systems (CAPH) report, there are 21 PHS in California, covering 2,850,000 lives. Of the 21, we are estimating the Department will grant an exemption to three-quarters of the PHS. PHS are subject to unique considerations and existing oversight, and so the Department will be more likely to grant them exemptions than other entities. The overall cost as a result of licensing PHS is estimated to be \$1,316,625. Of that, \$131,250 is the one-time cost to license one-quarter of the 21 PHS (each will pay the \$25,000 application fee.) The ongoing costs are \$1,185,375, which accounts for the \$1.59 per enrollee fee and the \$10,000 per licensed PHS fee.

These fees are necessary and reflect the Department's costs to protect consumer interests and ensure access to quality health care while maintain a stable health care marketplace. This

licensure requirement will not create a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

## **II. ECONOMIC IMPACT ANALYSIS**

### **Creation or Elimination of Jobs within California**

The proposed adoption of Rule 1300.49, subdivision (b), interprets, implements, and makes specific state law regarding the definition of a health plan. The addition of Rule 1300.49 makes clear that entities that accept global risk must seek licensure or an exemption from licensure as a health care service plan. The proposed regulation implements current practice regarding the Department's licensure of restricted health care service plans. Applicants for licensure pay fees up to \$25,000, billed on a monthly basis as fees accrue by the Department, for review and processing of their application for licensure. Therefore, it is expected that the first effective year of the proposed regulation, with five restricted health care service plans seeking licensure, as well as 50.25 ACOs and 5.25 PHS seeking licensure, will result in \$1,456,715 total costs for the first year.

Restricted health care service plans and newly licensed entities, such as ACOs and PHS, will also be responsible for paying ongoing annual fees based on the amount of covered lives for which they contract. Pursuant to Health and Safety Code section 1356, subdivision (b)(1), a licensed health care service plan, which includes a restricted health care service plan, shall pay the Department \$10,000 plus an amount calculated on a per enrollee basis for the costs and expenses incurred by the Department associated with the regulation of these entities. In 2016, the per member enrollment cost for full service health care plan was \$1.59. The total amount owed by each licensed entity will vary significantly depending on the total number of contracted enrollees the entity undertakes. Based on available data, the Department estimates the proposed regulation will result in approximately \$3,425,299 in ongoing annual costs.

These fees are necessary and reflect the Department's costs to protect consumer interests and ensure access to quality health care. Because the addition of Rule 1300.49 clarifies and makes specific existing law and practice for health plans, the Department determined that this amendment will not significantly affect the creation or elimination of jobs within the State of California.

### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

This proposed adoption of Rule 1300.49 will neither create new businesses nor eliminate existing businesses. Additionally, none of the businesses affected are small businesses. This regulation specifies requirements of existing sections 1345, subdivision (f), 1349, and 1371.5 of the Knox-Keene Act. The regulation clarifies existing state law. While it may require entities that previously did not require licensure to seek a license or an exemption from the

Department, the entities would likely have been doing business in a manner similar to what was already required of them pursuant to Knox-Keene Act requirements.

### **Expansion of Businesses or Elimination of Existing Businesses within the State of California**

This regulation is intended to clarify and make specific the existing State law for health care service plans under the Knox-Keene Act. The addition of Rule 1300.49 makes clear that entities that accept global risk must seek licensure or an exemption from licensure as a health care service plan. It is estimated that 60.5 entities per year (5 restricted health care service plans, 50.25 ACOs, and 5.25 PHS) will be impacted by this regulation. Application for licensure and ongoing regulatory oversight by the Department requires specific fees to be paid by health care service plan applicants and licensees, as required under existing law contained in Health and Safety Code section 1356. It is estimated that the total fees due from new restricted health care service plan licensees will be \$1,456,715. Additionally, it is estimated that these entities will be required to pay annual ongoing fees of the total estimated amount of \$3,425,299. Because this regulation reduces confusion over licensure requirements, the Department determined this regulation will not significantly affect the expansion or elimination of businesses currently doing business within the State of California.

### **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The proposed regulatory action will provide health care service plans and provider organizations with a transparent mechanism to determine whether licensure is required by the Department. Clarifying the licensure requirements of the Knox-Keene Act enhances the health and welfare of California resident's by ensuring that entities that are taking on global risk are not operating without the necessary oversight of the Department. This protects against potential insolvency and puts in place necessary protections against disruption in the health care delivery system. The Department does not anticipate this regulatory action will have any impact on worker safety, or the state's environment.