



Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
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DATE: December 24, 2021

ACTION: Notice of Rulemaking Action
Title 28, California Code of Regulations

SUBJECT: Annual, Quarterly, and Monthly Financial Reporting Regulations:
Proposed adoption of Rule 1300.84.03, the amendment and renumbering of Rule 1300.84.06, and the amendments of Rules 1300.84.2 and 1300.84.3 of Title 28 of the California Code of Regulations. Control No. 2021-OFRR.

PUBLIC PROCEEDINGS:

Notice is hereby given that the Director of the Department of Managed Health Care (Department) pursuant to the authority of the Director under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), by sections 1344 and 1384 of the Health and Safety Code, proposes to adopt, amend, or repeal regulations in title 28 of the California Code of Regulations (CCR) clarifying financial reporting requirements for health plans regarding the financial annual report requirement, the quarterly financial report requirement, and the monthly financial report requirement.

This rulemaking action proposes to amend Rules 1300.84.06, 1300.84.2, and 1300.84.3, renumber Rule 1300.84.06 to 1300.84.1, and adopt Rule 1300.84.03, in title 28, CCR. Before undertaking this action, the Director of the Department (Director) will conduct written public proceedings, during which time any interested person, or such person's duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

PUBLIC HEARING:

No public hearing is scheduled. Any interested person or his or her duly authorized representative, may submit a written request for a public hearing pursuant to Government Code section 11346.8(a). The written request for a hearing must be received by the Department's contact person, designated below, 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 statements, arguments, or contentions (hereafter referred to as comments) relating to

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the proposed regulatory action by the Department. Comments must be received by the Department's Office of Legal Services, **by February 7, 2022**, which is hereby designated as the close of the written comment period.

Please address all comments to the Department's Office of Legal Services, Attention: Fabiola Murillo, Attorney III. Comments may be transmitted by standard U.S. mail and email as follows:

Email: regulations@dmhc.ca.gov
Mail: Department of Managed Health Care
Office of Legal Services
Attn: Fabiola Murillo, Attorney III
980 9th Street, Suite 500
Sacramento, CA 95814

Please note: If comments are sent via email, there is no need to send the same comments by standard U.S. mail. All comments, including via email or standard U.S. mail, should include the author's name and a U.S. Postal Service mailing address so the Department may provide commenters with notice of any additional proposed changes to the regulation text.

Please identify the action by using the Department's rulemaking title and control number, **Annual, Quarterly, and Monthly Financial Reporting Regulations, Control No. 2021-OFRR**, in any of the above inquiries.

CONTACTS: Inquiries concerning the proposed rulemaking action may be directed to:

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Department of Managed Health Care
Office of Legal Services
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(916) 255-2395
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OR

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Department of Managed Health Care
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AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:

The Department has prepared and has available for inspection and copying the Initial Statement of Reasons, text of the proposed regulations and all information upon which the proposed regulations are based (rulemaking file). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Sacramento, CA 95814, Attention: Regulations Coordinator.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After considering all timely and relevant comments received, the Department may adopt, amend, and repeal the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public. The full text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days before the date the Department adopts the regulation. A request for a copy of any modified regulation(s) should be addressed to the Regulations Coordinator. The Department will accept comments via standard U.S. mail or email on the modified regulation(s) for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

You may obtain a copy of the Final Statement of Reasons once it has been prepared by contacting the Regulations Coordinator.

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

The Notice of Proposed Rulemaking Action, the proposed text of the regulations, and the Initial Statement of Reasons are also available on the Department's website at <https://wpso.dmh.ca.gov/regulations/#1>.

AUTHORITY AND REFERENCE:

California Health and Safety Code section 1341, subdivision (a), authorizes the Department to regulate health care service plans (health plans). Health and Safety Code section 1341.9 vests the Director of the Department (Director) with all duties, powers, purposes, responsibilities, and jurisdiction as they pertain to health plans and health plan business.

Health and Safety Code section 1344 grants the Director the authority to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of the Knox-Keene Act Health Care Service Plan Act of 1975 (Knox-Keene Act).

Health and Safety Code section 1346 vests in the Director additional powers to administer and enforce the Knox-Keene Act, including but not limited to, the power to prescribe by rule or order the form and contents of financial statements required under the Knox-Keene Act, the circumstances under which consolidated statements shall be filed with the Department, and the circumstances under which financial statements shall be audited.

Health and Safety Code section 1348.95 grants the Director the authority to make rules and regulations specifying the form and content of the enrollment reports, by product type, including the number of enrollees that receive health care coverage under a health care service plan contract that covers individuals and small groups inside and outside of the California Benefit Exchange, large groups, administrative services only business lines, and any other business lines.

Health and Safety Code section 1375.1 requires every health plan to demonstrate to the Director a fiscally sound operation and adequate provision against the risk of insolvency.

Health and Safety Code section 1376 grants the Director authority to adopt rules and regulations as appropriate in the public interest, or for the protection of health plans, subscribers, and enrollees, to provide safeguards with respect to the financial responsibility of health plans, specifically including but not limited to requiring a minimum capital or net worth, limiting indebtedness, procedures for the handling of funds or assets, including segregation of funds, assets and net worth, maintaining appropriate insurance and a fidelity bond, and the maintenance of a surety bond.

Health and Safety Code section 1377 protects enrollees by imposing more stringent financial regulatory requirements on health plans that incur significant liabilities to non-contracted health care providers, including reporting requirements that require the calculation of estimated liability for reimbursements.

Health and Safety Code Section 1382 gives the Director the authority to conduct an examination of a health plan's fiscal and administrative affairs as often as deemed necessary to protect the interest of subscribers or enrollees.

Health and Safety Code section 1384 grants the Director the authority to make rules and regulations specifying the form and content of the reports and financial statements required under the law, including reports required on a periodic basis of the Director's choosing, as well as special reports as the Director requires.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW:

Purpose of the Proposed Regulations

The Department's regulatory action is being taken under the Knox-Keene Act to implement, interpret and make specific Health and Safety Code sections 1348.95, 1384, and 1385. This rulemaking action proposes to adopt Rule 1300.84.03, and amend Rules 1300.84.06, 1300.84.2, 1300.64.3, in title 28 of the CCR. In addition, the Department is proposing to renumber Rule 1300.84.06 to Rule 1300.84.1 to better align with Rules 1300.84.2 and 1300.84.3.

The purpose of these regulations is to update, clarify, and simplify existing financial reporting regulations. The proposal includes updating existing financial reporting regulations by incorporating health plan financial reporting forms and an instruction

manual. The purpose of the updates is to ensure health plan consistency and uniformity in financial reporting, and to ensure the Department has sufficient financial information to adequately assess health plan financial stability. In addition, this regulatory action implements new requirements for reporting enrollment by product type. The proposed amendments build upon existing requirements and clarify previous reporting issues.

Specifically, the regulations amend the two sections of the regulations that set out the requirements for the reports to be filed on an annual and quarterly basis, respectively. The regulations also modify the existing monthly report section and replace it with two separate sections to address general requirements and specific monthly financial reporting triggers. The first section consists of two subdivisions that are currently in the monthly report regulation, but which have a broader reach than the monthly financial reports. The second section contains requirements for the monthly reports themselves, which propose to amend the existing requirements for monthly reports.

A major component of the proposed regulations is the incorporation by reference of four documents, consisting of three financial reporting forms and an instruction manual, as follows: the “Annual DMHC Financial Reporting Form” (Annual Report), the “Quarterly DMHC Financial Reporting Form” (Quarterly Report), the “Monthly DMHC Financial Reporting Form” (Monthly Report), and the “Annual, Quarterly, and Monthly Reporting Forms Instruction Manual” (Instruction Manual). The Instruction Manual consists of comprehensive directions for health plans to follow when completing and filing the three financial reporting forms with the Department. The revised text of the regulations identifies the frequency with which financial reports must be filed and incorporates by reference the Annual Report, Quarterly Report, Monthly Report, and Instruction Manual. In addition, the monthly report regulations prescribe the requirements a plan must meet in order to discontinue filing monthly reports. The instruction manual advises health plans how to complete the reports and address miscellaneous matters, such as which reports must be audited.

Summary of Existing Laws and Regulations:

The Knox-Keene Act gives the Department authority to obtain financial, enrollment, and other information from health plans on a periodic basis to ensure health plans are financially solvent to provide health care services to enrollees. The Department also has the authority to require health plans to meet various financial thresholds to help ensure the health plans have the necessary resources to provide health care services to enrollees.

Title 28 regulations clarify and make specific the methods of health plan financial reporting. The regulations provide the specific reports the health plans must submit to the department and describe the elements that must be reported in each financial statement.

Broad Objectives and Anticipated Benefits of the Proposed Regulations:

Pursuant to Government Code section 11346.5(a)(3)(C), the broad objectives and benefits of this regulation package are to clarify and make specific state law relevant to health plan financial reporting. The Department anticipates that these regulations will

benefit California residents and protect public health by ensuring that the public has access to reports detailing the financial conditions of health plans. The Instruction Manual is beneficial because it provides comprehensive instructions for the health plans in completing the reports, thereby simplifying the plans' task. Further, comprehensive instructions will ensure plans are uniformly filling out the reports. The regulations will assist Department staff in performing their oversight function efficiently and effectively. The regulations will also provide policymakers within and outside the Department with information on enrollment and on health plans' financial status.

The proposed regulations are described in detail in the Initial Statement of Reasons document for this regulation package.

Evaluation of Consistency / Compatibility with Existing State Regulations

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern periodic financial reporting by health plans.

Forms Incorporated by Reference

Pursuant to title 1, California Code of Regulations, section 20(c)(3), and as cited to in the proposed regulations, the Department is incorporating by reference the following four documents:

- Annual, Quarterly, and Monthly Reporting Forms Instruction Manual [Effective Date, OAL Insert]
- Annual DMHC Financial Reporting Form (Form No. 10-072)
- Quarterly DMHC Financial Reporting Form (Form No. 10-071)
- Monthly DMHC Financial Reporting Form (Form No. 10-070)

Federal Regulations or Statutes

The Department has determined there are no existing comparable federal regulations or statutes.

Other Matters Prescribed by Statute

There are no other requirements prescribed by statute that are applicable to the Department or to any specific regulation or class of regulations.

SUMMARY OF FISCAL IMPACT

- Mandate on local agencies and school districts: None.
- Cost or Savings to any State Agency: None.

- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Costs to Private Persons or Businesses Directly Affected: As explained in the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking package, the Department anticipates \$62,500 in nominal costs incurred for businesses required to comply with the proposed regulations. Total costs for businesses, are estimated to be \$62,500. The Department does not anticipate ongoing costs.
- Effect on Housing Costs: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.

DETERMINATIONS

The Department has made the following determinations:

The regulations will not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The regulations will have no significant effect on housing costs.

The regulations do not affect small businesses. Health plans are not considered a small business under Government Code section 11342.610(b) and (c).

The regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The regulations will have no cost or savings in federal funding to the state.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT

Creation or elimination of jobs within California

These regulations are designed to simplify and clarify requirements for health care service plans to file financial reports. Health care service plans are currently required to file financial reports. The proposed amendments clarify and make specific existing law for the health care industry and impacted enrollees. The Department has determined that these amendments will not significantly affect the creation or elimination of jobs within the state of California. On the contrary, the amendments will benefit persons with jobs in the impacted industry in California by updating obsolete provisions and making clear what is required under the current law.

Accordingly, the Department has determined that no new jobs will be created or eliminated in the state of California as a result of the regulation.

Creation or new businesses or elimination of existing businesses within California

The amendments clarify and make specific the updated laws for the health care industry and impacted enrollees; therefore, the Department has determined that the amendments will benefit persons with jobs in the impacted industry in California by updating obsolete provisions and making clear what is required under the current law and will not impact the creation of new businesses or the elimination of current businesses within the State of California.

Expansion of businesses currently doing business within California

These regulations are designed to simplify and clarify requirements for health care service plans to file financial reports. Health care service plans are currently required to file financial reports. The Department has determined that the amendments will not impact the expansion of business within the State of California but in fact will benefit the impacted industry in California by updating obsolete provisions and making clear what is required under the current law.

Accordingly, the Department has determined the proposed regulation will not significantly affect the expansion 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 anticipated benefit to the health and welfare of California residents of the proposed amendments is that health plans will maintain and remain financially viable and enrollees can ultimately have greater access to health care. The changes to the annual, quarterly, and monthly regulations will result in the benefit to the health and welfare of California residents by providing greater clarity regarding the Department's expectations of health plans for financial reporting; thereby ensuring that health plans remain viable and enrollees may access health care. The benefit of incorporating the instruction manual by reference is to ensure consistency of health plan reporting across health plans.

In addition, the Department does not anticipate benefits to either worker safety or to the California environment by the proposed action.

Therefore, as described in the paragraphs above, the ultimate benefits to the health and welfare of residents of California from these amendments is increased protection of the public health and safety, as well as increased transparency in business and business practices.

BUSINESS REPORTING REQUIREMENT

The Department is incorporating by reference the following documents:

- Annual, Quarterly, and Monthly Reporting Forms Instruction Manual [Effective Date, OAL Insert]
- Annual DMHC Financial Reporting Form (Form No. 10-072)
- Quarterly DMHC Financial Reporting Form (Form No. 10-071)
- Monthly DMHC Financial Reporting Form (Form No. 10-070)

The proposed regulations and the reports are necessary for the health, safety, or welfare of the people of the state because they provide clear and consistent financial reporting requirements for health plans to follow. The forms allow the Department to evaluate a health plan's financial stability and viability to ensure the health plan is able to protect its enrollees against health plan financial insolvency.

ALTERNATIVES CONSIDERED:

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency (1) would be more effective in carrying out the purpose for which the action is proposed, (2) would be as effective and less burdensome to affected private persons than the proposed action, or (3) would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. As described in the Initial Statement of Reasons for this rulemaking action, no alternatives were considered by the Department.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.