

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

| | | | |
|--|-----------------------|---|-------------------|
| Fiscal Year 2016-17 | Business Unit 4150 | Department Department of Managed Health Care | Priority No. 1 |
| Budget Request Name 4150-003-BCP-BR-2016-GB | | Program 3870-Health Plan Program | Subprogram |

Budget Request Description
 Vision Services (AB 684)

Budget Request Summary

The Department of Managed Health Care (DMHC) requests 2.0 permanent positions and \$308,000 for FY 2016-17 and \$292,000 for FY 2017-18 and ongoing to address the increased workload resulting from the implementation of AB 684 (Chapter 405, Statutes of 2015).

| | |
|---|--|
| Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Code Section(s) to be Added/Amended/Repealed |
|---|--|

| | | |
|--|----------------|------|
| Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i> | Department CIO | Date |
|--|----------------|------|

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

| | | | |
|---|-------------------------|---------------------------------------|------------------|
| Prepared By Jennifer Clark, CFO | Date January 4, 2016 | Reviewed By <i>Amanda McSagert</i> | Date 1-4-2016 |
| <i>Armadillo</i> Department Director | Date 1/4/2016 | Agency Secretary <i>Lee</i> | Date 1-6-16 |

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA

Jerry N. Patton

Date submitted to the Legislature
JAN 07 2016

Analysis of Problem

A. Budget Request Summary

The DMHC requests 2.0 permanent positions and \$308,000 for FY 2016-17 and \$292,000 for FY 2017-18 and ongoing to address the increased workload resulting from the implementation of AB 684 (Chapter 405, Statutes of 2015).

| Program/Classification | FY 2016-17 & ongoing |
|---------------------------------------|-------------------------|
| Office of Legal Services (OLS) | |
| Attorney I | 1.0 |
| Office of Plan Licensing (OPL) | |
| Attorney I | 1.0 |
| TOTAL | 2.0 |

B. Background/History

Resource History (Dollars in thousands)

| Program Budget | FY 10-11 | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 |
|-------------------------|--|----------|----------|----------|----------|
| Authorized Expenditures | There are no AB 684 authorized expenditures to date. | | | | |
| Actual Expenditures | | | | | |
| Revenues | | | | | |
| Authorized Positions | | | | | |
| Filled Positions | | | | | |
| Vacancies | | | | | |

Workload History

| Workload Measure | FY 10-11 | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 |
|------------------|----------|----------|----------|----------|----------|----------|
| N/A | | | | | | |

AB 684 authorizes the establishment of landlord-tenant relationships between a registered dispensing optician (RDO), an optometrist, and an optical company, as long as the lease agreement includes specified conditions. Additionally, AB 684 authorizes an RDO or optical company to operate, own, or have an ownership interest in a health care service plan (health plan) licensed under the Knox Keene Health Care Service Plan Act of 1975 (Knox Keene Act), as amended, if the health plan does not directly employ optometrists who provide services to enrollees. This legislation establishes a three-year period for the transition from direct employment of optometrists to lease arrangements.

Optometrists are health care providers licensed under the California State Board of Optometry (Board of Optometry) who perform eye examinations and write prescriptions for eyeglasses and contact lenses. After receiving a prescription, consumers may get their prescriptions filled by optometrists and ophthalmologists (medical doctors) who sell eyewear as part of their practice, or consumers may get their prescriptions filled by RDOs. RDOs are technicians licensed under the Medical Board of California (Medical Board) who fit consumers with glasses and contact lenses.

AB 684 resolves long-standing legal disputes between optometrists and optical chain stores. Existing California law has strict prohibitions on relationships between optometrists and RDOs. California's Business and Professions Code Section 655 currently prohibits optometrists and RDOs from having any financial interest or landlord-tenant relationship with each other and prohibits an optometrist from having any financial interest or landlord-tenant relationship with entities engaged in the manufacture or sale of lenses, frames, and other optical products. Business and Professions Code Section 2556

Analysis of Problem

currently prohibits RDOs from advertising the services of an optometrist or ophthalmologist. It also prohibits an RDO from directly or indirectly employing, or maintaining on or near the premises used for optical dispensing, an optometrist or ophthalmologist. These Business and Professions Code prohibitions are intended to ensure that optometrists' professional decisions are not influenced by commercial interests.

National optical chain stores, such as LensCrafters, operate under a "co-location" business model where consumers can obtain an eye examination from an optometrist located at, or near, a retail store where eyeglasses or contact lenses may be purchased. In the 1980s, the parent companies of these optical stores created affiliate companies which obtained Knox Keene licenses to provide optometric services. Health and Safety Code Section 1395 provides that a health plan licensed under the Knox Keene Act may employ, or contract with, health professionals licensed under the Business and Professions Code, and that a Knox Keene licensee may directly own and operate, through its professional employees or contracted licensed professionals, offices and subsidiary corporations to provide health care services to the plan's enrollees. Thus, optical store companies obtained Knox Keene licenses as a shield against Business and Professions Code Sections 655 and 2556. However, after years of legal challenges, California courts definitively ruled that a Knox Keene license does not exempt optometrists and RDOs from these Business and Professions Code prohibitions, and federal courts ruled that these prohibitions do not violate federal law. Although unsuccessful, these challenges resulted in a moratorium on enforcement of these Business and Professions Code prohibitions from 2006 until 2013.

The DMHC is aware that the California Attorney General has been engaged in meetings with stakeholders for over two years to resolve this issue, but these meetings recently concluded without resolution because a legislative fix is needed. AB 684 serves as that legislative fix. In the past year, the DMHC has discovered that a number of Knox Keene Act licensed vision plans are currently operating in a manner that would violate the above referenced Business and Professions Code Sections. This bill allows these vision plans to continue to operate as health plans with little or no modifications to their current business models, thereby preserving the model of vision coverage that millions of Californians have come to rely upon with no reduction in consumer protections.

At present, the DMHC regulates three specialized vision plans that operate under a "co-location" business model. However, the "co-location" vision plan model does not completely fit the description of a Knox Keene health plan, which the Health and Safety Code defines as an entity that provides health care services in exchange for a prepaid and periodic charge. The three Knox Keene vision plans that operate under the "co-location" model assume little or no risk, and primarily serve individuals rather than groups.

National chain optical stores affiliated with the three specialized health plans providing vision services under a "co-location" business model in California also operate in other states. According to the September 11, 2015 Assembly Floor Analysis for AB 684, direct landlord-tenant relationships are permitted in 47 states and 49 states allow optical companies to franchise to optometrists.

C. State Level Considerations

AB 684 repeals existing Business and Professions Code prohibitions that cause optical companies operating under a "co-location" business model to be in violation of California law, allowing an RDO or optical company to operate or own a health plan as long as the health plan does not directly employ optometrists to provide services to health plan enrollees. The plan can employ an optometrist as a clinical director to conduct utilization review and quality assurance activities. Furthermore, a health plan, optometrist, RDO, or an optical company can execute a written lease with an optometrist, as long as the practice is owned by the optometrist, every phase of the practice is under the optometrist's exclusive control, and the optometrist's leased space is separate and distinct, in addition to numerous other requirements. The lease agreement could require an optometrist to provide optometric services at the leased space during certain days and hours, and the agreement could restrict the optometrist's

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sale of products (frames, lenses, contact lenses) offered by the leaseholder. AB 684 outlines detailed terms of a permissible lease agreement and provides that the Board of Optometry may inspect any individual agreement.

Until January 1, 2019, AB 684 prohibits an individual, corporation, or firm which was operating as an RDO before the effective date of the bill, or an employee of such an entity, from being subject to any legal or disciplinary action for engaging in the conduct prohibited by Business and Professions Code Sections 655 and 2556, except as specified. This provision offers a safe harbor for individuals and corporations now operating under the "co-location" business model and gives them time to adjust their current business models to conform to the provisions of the bill.

AB 684 includes clarifying language that Business and Professions Code Section 655 does not apply to the relationship between any optometrist employee and the employer medical group, or the relationship between a medical group exclusively contracted with a health plan regulated by the DMHC. This language assures that this section would not apply to Kaiser Foundation Health Plan, Inc. and other entities that may have an integrated delivery model where the optometrists may be employed by a medical group.

The bill further requires health plans subject to Business and Professions Code Section 655 to transition from employing optometrists, and report to the Board of Optometry on January 1, 2017, August 1, 2017, and January 1, 2019, that 15 percent, 45 percent, and 100 percent of its locations, respectively, do not employ optometrists. The Board of Optometry is required to report this information to the Legislature.

In addition, AB 684 transfers regulation of RDOs from the Medical Board to the Board of Optometry, requires the DMHC to forward to the Board of Optometry any complaints received from a consumer that alleges an optometrist violated the Optometry Practices Act, and requires the DMHC and the Board of Optometry to enter into an inter-agency agreement regarding information sharing. The bill also requires RDOs to outline for consumers specific information on how patients can file complaints with the Board of Optometry.

Under AB 684, it is possible that California's vision plans operating under a "co-location model" may decide they no longer need Knox Keene licenses and surrender these licenses. However, based on interest expressed from out-of-state entities, a more likely scenario is that this bill will result in out-of-state entities obtaining Knox Keene licenses to operate "co-location" optometry businesses.

D. Justification

The DMHC licenses and regulates health plans that provide full-service and specialty services to more than 25 million Californians. To meet its mission of protecting consumer health care rights and ensuring a stable health care delivery system, the DMHC resolves grievances; conducts onsite medical surveys and financial exams; and reviews and approves plan contracts, disclosures, and vendor arrangements.

Currently, the DMHC licenses and regulates 12 vision plans that provide coverage to approximately 13 million Californians. The passage of AB 684 will require the DMHC to conduct an in-depth review to ensure existing plans are in compliance with Business and Professions Code Sections 655 and 2556 as amended by AB 684.

In addition, the resolution of the longstanding legal conflict over the enforcement of these Business and Professions Code Sections will result in additional plans seeking Knox Keene licensure. Under AB 684, if a RDO or optical company wants to operate or own a health plan, that health plan must be licensed by the DMHC under the Knox Keene Act. Given this requirement, over the next three years the DMHC expects to receive 6-8 applications from entities wanting a specialized vision health plan license; to date, two pre-filing conferences have already been scheduled.

Analysis of Problem

Office of Legal Services (OLS)

OLS conducts legislative and legal analyses for the DMHC; leads rulemaking activities, including pre-notice stakeholder engagement, research and analysis, drafting regulation language, public hearings, responding to comments, and filing the regulation package(s) with the Office of Administrative Law; and responds to Public Records Act requests. To perform this new workload, OLS requests the following permanent position:

1.0 Attorney I

This position will review and process legal questions related to AB 684. The review of legal questions encompasses all tasks necessary to compose the final determination, including gathering data, researching applicable law, conducting staff meetings, crafting a position, briefing management, and presenting to impacted or requesting divisions.

Office of Plan Licensing (OPL)

OPL is responsible for licensing health plans and approving changes to the licensee and its operations such as provider, vendor, and subscriber contracts, provider networks, utilization management processes, quality assurance systems, and financial viability. Preliminary analysis of existing vision plan filings indicate that nine of 12 existing plans have delivery models that may not comply with the Business and Professions Code. The preliminary analysis was conducted in response to the proposed legislation. It was not conducted previously as the Knox Keene Act does not require health plans to file the detailed information necessary to evaluate Business and Professions Code compliance by a plan's optometrists, RDOs, and optical goods vendors. Thus, the DMHC anticipates OPL will conduct a compliance project beginning January 1, 2016, through July 2017 to analyze how the 12 plans currently licensed for vision services will comply with AB 684's provisions and determine any corrective actions required. The majority of work associated with the compliance project will be completed before July 1, 2016. As a result of AB 684 and the review, the OPL expects all current plans will be filing contracting, marketing, and leasing changes to comply with the law. The DMHC also anticipates six to eight new specialized vision health plan applications will be filed between January 1, 2016, and January 1, 2019, as a result of AB 684. OPL expects the plans to continue to file changes to their delivery models to fine-tune profit margins because vision premiums are very low. To facilitate the compliance project, review new vision health plan application filings and ongoing review of the vision plans, OPL is requesting the following permanent position:

1.0 Attorney I

This position will be responsible for providing ongoing legal oversight of the six to eight new vision plans and legal review of non-complex issues in the existing 12 health plans.

E. Outcomes and Accountability

Projected Outcomes

| Workload Measure | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 | FY 20-21 |
|---|----------|----------|----------|----------|----------|----------|
| Office of Legal Services | | | | | | |
| Conducting legal research and policy analysis. Includes reviewing legal questions, gathering data and supporting documentation, staff coordination, reviewing applicable law, gathering legal references, crafting position, drafting memos, briefing management, and presenting final determination to impacted staff. | 2 | 6 | 6 | 6 | 6 | 6 |
| Office of Plan Licensing | | | | | | |
| New Vision Plan License Applications: | | | | | | |
| Legal review and assessment of new vision plan | 1 | 2 | 3 | 3 | 3 | 3 |

Analysis of Problem

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|--|----|----|----|----|----|----|
| license applications. Includes pre-filing and conferences with applicants, and legal assessment and review of all applicable documents. | | | | | | |
| Legal Review for Ongoing Regulatory Compliance of Existing and New Vision Plans: | | | | | | |
| Legal support on pre-filing and filing conferences with plans for material modifications. | 13 | 14 | 17 | 20 | 20 | 20 |
| Legal review of summary of the filing and licensee's business operations. | 49 | 56 | 68 | 80 | 80 | 80 |
| Legal review and support (research and application of bill's provider contracting provisions) of contract changes required for providers, third party administrators, marketing solicitors, and optical company contracts. | 13 | 14 | 17 | 20 | 20 | 20 |
| Legal analysis and assessment of Evidence of Coverage and disclosure forms for compliance. | 13 | 14 | 17 | 20 | 20 | 20 |
| Legal review of subscriber contracts and disclosures, advertising, and other marketing documents. | 49 | 56 | 68 | 80 | 80 | 80 |

F. Analysis of All Feasible Alternatives

Alternative 1: Approve DMHC's request for 2.0 permanent positions and \$308,000 for FY 2016-17 and \$292,000 for FY 2017-18 and ongoing to address the increased workload resulting from the implementation of AB 684.

Pros:

- DMHC will have the necessary resources to implement the provisions of AB 684.

Cons:

- Increases the size of State government and expenditures.

Alternative 2: Approve the request at a lower level.

Pros:

- Provides minimal resources to meet all the provisions of AB 684.

Cons:

- Would cause delays in implementing the requirements of AB 684.
- Less positions and funding would result in the redirection of staff resources in order to accomplish the necessary tasks/activities associated with AB 684. However, DMHC staff is already at capacity and this would add to existing backlogs in other areas.

Alternative 3: Deny the request in which case DMHC will have to redirect existing resources in entirety.

Pros:

- Does not increase the size of State government or expenditures.

Cons:

- The Department may not fulfill all requirements mandated by AB 684.
- Will create a backlog in other areas of the Department's responsibilities.

Analysis of Problem

G. Implementation Plan

The 2.0 positions requested will be effective July 1, 2016. DMHC will start recruitment in late 2015-16 to ensure these positions are filled by that date.

H. Supplemental Information

This request will be funded through annual assessments of the health plans that are regulated by the DMHC. The fiscal impact of this request to full service health plans is less than \$0.01 per enrollee.

I. Recommendation

Alternative 1: Approve DMHC's request for 2.0 permanent positions and \$308,000 for FY 2016-17 and \$292,000 for FY 2017-18 and ongoing to address the increased workload resulting from the implementation of AB 684.

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BCP Fiscal Detail Sheet

BCP Title: Vision Services (AB 684)

DP Name: 4150-003-BCP-DP-2016-GB

Budget Request Summary

| | FY16 | | | | | |
|---|------------|--------------|--------------|--------------|--------------|--------------|
| | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
| Positions - Permanent | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| Total Positions | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| Salaries and Wages | | | | | | |
| Earnings - Permanent | 0 | 161 | 161 | 161 | 161 | 161 |
| Total Salaries and Wages | \$0 | \$161 | \$161 | \$161 | \$161 | \$161 |
| Total Staff Benefits | 0 | 90 | 90 | 90 | 90 | 90 |
| Total Personal Services | \$0 | \$251 | \$251 | \$251 | \$251 | \$251 |
| Operating Expenses and Equipment | | | | | | |
| 5301 - General Expense | 0 | 20 | 4 | 4 | 4 | 4 |
| 5302 - Printing | 0 | 2 | 2 | 2 | 2 | 2 |
| 5304 - Communications | 0 | 2 | 2 | 2 | 2 | 2 |
| 5320 - Travel: In-State | 0 | 13 | 13 | 13 | 13 | 13 |
| 5322 - Training | 0 | 2 | 2 | 2 | 2 | 2 |
| 5324 - Facilities Operation | 0 | 18 | 18 | 18 | 18 | 18 |
| Total Operating Expenses and Equipment | \$0 | \$57 | \$41 | \$41 | \$41 | \$41 |
| Total Budget Request | \$0 | \$308 | \$292 | \$292 | \$292 | \$292 |
| Fund Summary | | | | | | |
| Fund Source - State Operations | | | | | | |
| 0933 - Managed Care Fund | 0 | 308 | 292 | 292 | 292 | 292 |
| Total State Operations Expenditures | \$0 | \$308 | \$292 | \$292 | \$292 | \$292 |
| Total All Funds | \$0 | \$308 | \$292 | \$292 | \$292 | \$292 |
| Program Summary | | | | | | |
| Program Funding | | | | | | |
| 3870 - Health Plan Program | 0 | 308 | 292 | 292 | 292 | 292 |
| Total All Programs | \$0 | \$308 | \$292 | \$292 | \$292 | \$292 |

Personal Services Details

Salary Information

| Positions | Min | Mid | Max | <u>CY</u> | <u>BY</u> | <u>BY+1</u> | <u>BY+2</u> | <u>BY+3</u> | <u>BY+4</u> |
|-------------------------------|-----|-----|-----|------------|------------|-------------|-------------|-------------|-------------|
| 5778 - Atty (Eff. 07-01-2016) | | | | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| Total Positions | | | | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |

| Salaries and Wages | <u>CY</u> | <u>BY</u> | <u>BY+1</u> | <u>BY+2</u> | <u>BY+3</u> | <u>BY+4</u> |
|---------------------------------|------------|--------------|--------------|--------------|--------------|--------------|
| 5778 - Atty (Eff. 07-01-2016) | 0 | 161 | 161 | 161 | 161 | 161 |
| Total Salaries and Wages | \$0 | \$161 | \$161 | \$161 | \$161 | \$161 |

| Staff Benefits | <u>CY</u> | <u>BY</u> | <u>BY+1</u> | <u>BY+2</u> | <u>BY+3</u> | <u>BY+4</u> |
|--------------------------------|------------|--------------|--------------|--------------|--------------|--------------|
| 5150350 - Health Insurance | 0 | 38 | 38 | 38 | 38 | 38 |
| 5150500 - OASDI | 0 | 12 | 12 | 12 | 12 | 12 |
| 5150600 - Retirement - General | 0 | 40 | 40 | 40 | 40 | 40 |
| Total Staff Benefits | \$0 | \$90 | \$90 | \$90 | \$90 | \$90 |
| Total Personal Services | \$0 | \$251 | \$251 | \$251 | \$251 | \$251 |