



April 6, 2016

**Notice of Availability of Documents or Information Added to the
Rulemaking File
CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 6
ADOPT SECTION 6540, 6542, 6544, 6546, 6548, 6550 AND 6552**

Pursuant to the Requirements of Government Code sections 11346.8(d), 11346.9(a)(1), and 11347, the Board governing the California Health Benefit Exchange is providing notice that documents and/or other information which the agency has relied upon in adopting the proposed regulations have been added to the rulemaking file and are available for public inspection and comment. The agency has modified Section 6542 and Section 6552 to conform to federal regulations which shall take effect in 2017.

Sections 6546(a)(2) and 6542(b)(2) have been added to allow an employer or employee appeal a failure by the SHOP to provide a timely eligibility determination. Under the revised regulations, employees and employers may appeal a failure to receive a timely eligibility determination and a failure to receive a timely notice of an eligibility determination.

Additionally, Section 6552(d) has been modified to allow employers and employees who successfully appeal a denial of SHOP eligibility to select whether the effective date of coverage or enrollment through the SHOP under their appeal decision will be retroactive to the effective date of coverage or enrollment through the SHOP that the employer or employee would have had if they had correctly been determined eligible, or prospective from the first day of the month following the date of the notice of the appeal decision. Additionally, if eligibility is denied under an appeal decision, the appeal decision would be effective on the first day of the month following the date of the notice of the appeal decision.

The documents and information added to the rulemaking file are as follows:

Revised Text of Regulations

The documents/information are available for public inspection at the Board's office located at **1601 Exposition Blvd, Sacramento, CA 95815** from April 6, 2016 to

April 20, 2016 Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. They are also available on the California Health Benefit Exchange's website <http://hbex.coveredca.com/regulations/>. If you have any comments regarding the documents/information, written comments must be submitted to the Board no later than 5:00 p.m. on April 20, 2016, and addressed to:

Mandy Garcia, Regulations Analyst
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815

All written comments received by **April 20, 2016**, which pertain to the above-listed documents/information will be reviewed and responded to by the Board's staff as part of the compilation of the rulemaking file.

Adopt Sections 6540, 6542, 6544, 6546, 6548, 6550, and 6552 which new regulation text is underlined and deleted text is shown in strikethrough:

SECTION 6540: DEFINITIONS FOR THE SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP) APPEALS PROCESS

In addition to the definitions in Section 6410 of Article 2 of this chapter, for purposes of the SHOP Appeals Process, the following terms shall mean:

Appeal record: The appeal decision, all papers and requests filed in the proceeding, and, if a hearing was held, the transcript or recording of hearing testimony or an official report containing the substance of what happened at the hearing and any exhibits introduced at the hearing.

Appeals Representative: an authorized representative, an agent or broker of the employer, legal counsel, a relative, a friend, an employer filing for its employee or another spokesperson designated by the appellant.

Appeal request: A clear expression, either orally or in writing, by an applicant, enrollee, employer, or employee to have any SHOP eligibility determination reviewed by an appeals entity.

Appeals entity: A body designated to conduct appeals hearings of any SHOP eligibility determinations. The California Department of Social Services shall be the designated appeals entity for the SHOP.

Appellant: The applicant or enrollee, the employer, or employee who is requesting an appeal.

De novo review: A review of an appeal without deference to prior decisions in the case.

Eligibility determination: A determination that an applicant, enrollee, employer, or employee is eligible or not eligible for enrollment in a QHP pursuant to this Article.

Evidentiary hearing: A hearing conducted where evidence may be presented.

Good Cause: Cause as defined in Section 10951(b)(2) of the Welfare and Institutions Code.

Statement of Position: A writing submitted by the Appellant or SHOP that describes the Appellant's or SHOP's position regarding an appeal, as specified in Section 10952.5 of the Welfare and Institutions Code.

Vacate: To set aside a previous action.

Authority: Section 100504, Government Code.

Reference: Section 100506, Government Code; 45 CFR § 155.740.

SECTION 6542: GENERAL ELIGIBILITY APPEALS REQUIREMENTS FOR SHOP

(a) An employer shall have the right to appeal:

- (1) An eligibility determination made by the SHOP in accordance with this Article;
- (2) A failure by the SHOP to provide a timely eligibility determination in accordance with this Article; or
- (3) A failure of the SHOP to provide written notice to an employer of the SHOP's eligibility determination as provided in Section 6524(c) within 15 calendar days of receiving a completed application from an employer.

(b) An employee shall have the right to appeal:

- (1) An eligibility determination made by the SHOP in accordance with this Article;
- (2) A failure by the SHOP to provide a timely eligibility determination in accordance with this Article; or
- (3) A failure of the SHOP to provide written notice to an employee of the SHOP's eligibility determination as provided in Section 6524(d) within 15 calendar days of receiving a completed application from an employee.

(c) Notices of the right to appeal an eligibility determination pursuant to Section 6524(c) and (d) shall include:

- (1) The reason for the eligibility determination, including a citation to the applicable regulations; and
- (2) The procedure by which the employer or employee may request an appeal of the eligibility determination.

(d) The SHOP and appeals entity shall:

- (1) Allow an employer or employee to request an appeal within 90 days of the date of the notice of the eligibility determination, unless the appeals entity determines that good cause exists for allowing a late appeal request.
- (2) Accept appeal requests submitted in person or through an appeals representative, via telephone, facsimile, mail, electronic mail or, as soon as it becomes available, the SHOP's Internet Web Site;
- (3) Comply with the accessibility requirements specified in 45 CFR 155.205(c);

- (4) Assist the employer or employee with the submission and processing of the appeal request, if requested, and not limit or interfere with the employer's or employee's right to request an appeal; and
 - (5) Consider an appeal request valid if it is submitted in accordance with the requirements of this section.
- (e) Upon receipt of an appeal request pursuant to this section, the SHOP shall transmit the appeal request to the appeals entity via secure electronic interface within three (3) business days:
 - (1) The appeal request, if the appeal was initially made to the SHOP; and
 - (2) All records concerning the eligibility of the employer or employee who is appealing.
- (f) The appeals entity shall confirm receipt of the ~~appeal request~~ records transmitted pursuant to subdivision (e) of this section within three (3) business days.
- (g) The appeals entity shall conduct all appeals on behalf of the SHOP pursuant to this Article.
- (h) For purposes of this Article, an administrative law judge designated by the appeals entity shall determine, on a case-by-case basis, the validity of all appeals requests and all determinations of good cause.
- (i) Upon receipt of a valid appeal request, the appeals entity shall send written acknowledgment to the appellant, or the employer and employee if the employee is the appellant, within five (5) business days from the date on which the valid appeal request is received. The written acknowledgment shall include:
 - (1) An explanation of the appeals process; ~~and~~
 - (2) Instructions for submitting additional evidence for consideration; and
 - (3) Information regarding the appellant's opportunity for informal resolution prior to the hearing pursuant to Section 6544.
- (j) Upon receipt of an invalid appeal request because it fails to meet the requirements of this section, the appeals entity shall:
 - (1) Within five (5) business days from the date on which the invalid appeal request is received, send written notice to the appellant informing him or her:
 - (A) That the appeal request has not been accepted;

(B) Of the nature of the defect in the appeal request; and

(C) An explanation that the appellant may cure the defect, if curable, and resubmit the appeal request if it meets the timeliness requirements of subdivision (d)(1) of this section, or if the timeliness requirement in subdivision (d)(1) has lapsed, then within 10 calendar days from the date of the notice specified in subdivision (j)(1) of this section.

(2) Treat as valid an amended appeal request that meets the requirements of this section.

(k) The appellant has the right to be represented by an appeals representative.

(l) An appellant may seek judicial review to the extent it is available by law.

(m) The appeals entity shall ensure that all data exchanges that are part of the appeals process, comply with the Federal and State privacy and security standards specified in 45 CFR Section 155.260 and the Information Practices Act of 1977 (Cal. Civ. Code, § 1798 et seq.) and are in an electronic format that is consistent with 45 CFR Section 155.270.

(n) Both the SHOP and the appeals entity shall provide the appellant with the opportunity to review his or her entire eligibility file, including all papers, requests, documents, and relevant information in the SHOP's possession at any time from the date on which an appeal request is filed to the date on which the appeal decision is issued.

Authority: Section 100504, Government Code.

Reference: Section 100506, Government Code; 45 CFR § 155.740.

SECTION 6544: INFORMAL RESOLUTION

- (a) An appellant shall have an opportunity for informal resolution prior to a hearing in accordance with the requirements of this section.
- (b) Upon receipt of a valid appeal request, the SHOP shall:
 - (1) Contact the appellant to attempt to informally resolve the appeal; and
 - (2) Provide the appellant the opportunity to submit relevant evidence to assist in the informal resolution of the appeal.
- (c) An appellant's right to a hearing shall be preserved in any case notwithstanding the outcome of the informal resolution process, unless the appellant withdraws his or her appeal request prior to the hearing date, in accordance with the procedure set forth in Section 6546(a).
- (d) If the appeal advances to hearing:
 - (1) The appellant shall not be asked to provide information or documentation that he or she previously provided during the application or informal resolution process.
 - (2) The SHOP shall issue a statement of position and transmit via secure electronic interface, the statement of position and all papers, requests, and documents the SHOP obtained during the informal resolution process, to the appeals entity no less than two (2) business days before the date of the hearing.
 - (3) The SHOP shall make the statement of position available to the appellant no less than two (2) business days before the date of the hearing.
- (e) If the appellant is satisfied with the outcome of the informal resolution process and withdraws his or her appeal request in accordance with Section 6546(a) and the appeal does not advance to hearing:
 - (1) The SHOP shall, within five (5) business days from the date of the outcome of the informal resolution, send the appellant notice, which shall:
 - (A) State the outcome of the informal resolution, including a plain language description of the effect of such outcome on the appellant's appeal and eligibility;
 - (B) State the effective date of such outcome, if applicable.

(2) Within three (3) business days from the date of the outcome of the informal resolution, send notice of the informal resolution outcome to the appeals entity via secure electronic interface.

Authority: Section 100504, Government Code.

Reference: Section 100506, Government Code; 45 CFR § 155.740.

SECTION 6546: DISMISSALS OF APPEALS

- (a) The appeals entity shall dismiss an appeal if the appellant:
- (1) Withdraws the request in writing prior to the hearing date; or
 - (2) Fails to submit an appeal request meeting the standards specified in Section 6542(d);
 - (3) Fails to appear at a scheduled hearing without good cause.
- (b) If an appeal is dismissed, the appeals entity shall, within 15 business days from the date of the dismissal, provide written notice to the appellant including the reason for the dismissal. This notice shall include:
- (1) The reason for the dismissal; and
 - (2) An explanation of how the appellant may show good cause as to why the dismissal should be vacated in accordance with subdivision (d) of this section.
- (c) If an appeal is dismissed, the appeals entity shall, within 15 business days from the date of the dismissal, provide notice of the dismissal to the SHOP.
- (d) The appeals entity may vacate a dismissal and proceed with the appeal if the appellant makes a written request within 30 calendar days of the date of the notice of the dismissal showing good cause why the dismissal should be vacated.

Authority: Section 100504, Government Code.

Reference: Section 100506, Government Code; 45 CFR §155.740.

SECTION 6548: HEARING REQUIREMENTS

- (a) An appellant shall have an opportunity for a hearing in accordance with the requirements of this section.
- (b) The appeals entity shall send written notice to the appellant of the date, time, and location or format of the hearing no later than 15 business days prior to the hearing date.
- (c) The hearing shall be conducted:
 - (1) After notice of the hearing, pursuant to subdivision (b) of this section;
 - (2) As an evidentiary hearing, consistent with subdivision (e) of this section;
 - (3) By an administrative law judge not directly involved in the eligibility determination implicated in the appeal; and
 - (4) By telephone, video conference, or in person, in accordance with the California Department of Social Services' Manual of Policies and Procedures Section 22-045.1.
- (d) The appeals entity shall provide the appellant with the opportunity to:
 - (1) Review his or her appeal record, including all documents and records to be used by the appeals entity at the hearing, at least two (2) business days before the date of the hearing as well as during the hearing;
 - (2) Bring witnesses to testify;
 - (3) Establish all relevant facts and circumstances;
 - (4) Present an argument without undue interference;
 - (5) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and
 - (6) Be represented by an appeals representative.
- (e) The appeals entity shall consider the information used to determine the appellant's eligibility as well as any additional, relevant evidence presented during the course of the appeals process, including at the hearing.
- (f) The appeals entity shall review the appeal de novo and shall consider all relevant facts and evidence presented during the appeal process.

(g) Postponements and continuances shall be conducted in accordance with the California Department of Social Services' Manual of Policies and Procedures Section 22-053.

Authority: Section 100504, Government Code.

Reference: Section 100506, Government Code; 45 CFR § 155.740.

SECTION 6550: EXPEDITED APPEAL PROCESS

- (a) An appellant shall have the right to request an expedited appeals process from the appeals entity where there is an immediate need for health services because a standard appeal could jeopardize the appellant's life or health, or ability to attain, maintain, or regain maximum function.
- (b) If the appeals entity denies a request for an expedited appeal, it shall:
- (1) Handle the appeal request under the standard appeals process and issue the appeal decision in accordance with Section 6552; and
 - (2) Inform the appellant, within three (3) business days from the date of the denial of a request for an expedited appeal, through electronic, or oral notification if possible, of the denial and, if notification is oral, follow up with the appellant by written notice within five (5) business days of the denial. Written notice of the denial shall include:
 - (A) The reason for the denial;
 - (B) An explanation that the appeal request will be administered pursuant to the standard appeals process; and
 - (C) An explanation of the appellant's rights under the standard appeals process.
- (c) If the appeals entity grants a request for an expedited appeal, it shall:
- (1) Ensure a hearing date is set on an expedited basis;
 - (2) Provide the appellant with written notice within 10 calendar days from the date on which the appellant's request for an expedited appeal is granted, informing the appellant:
 - (A) That his or her request for an expedited appeal is granted; and
 - (B) About the date, time, and type of the hearing that will be convened.
 - (3) Within three (3) business days from the date on which the appellant's request for an expedited appeal is granted, provide notice via secure electronic interface to the SHOP, specifying that the appellant's request for an expedited appeal is granted and a hearing will be set on an expedited basis.

NOTE: Authority: Section 100504, Government Code.

Reference: Section 100506, Government Code; 45 CFR §155.740.

SECTION 6552: APPEAL DECISIONS

(a) The appeals decisions shall:

- (1) Be based solely on the evidence referenced in Section 6548(e) and the eligibility requirements for SHOP under this Article.
- (2) State the decision, including a plain language description of the effect of the decision on the appellant's eligibility;
- (3) Identify the legal basis, including the regulations that support the decision;
- (4) Summarize the facts relevant to the appeal; and
- (5) State the effective date of the decision; and
- (6) Provide information about judicial review available to the appellant pursuant to Section 1094.5 of the California Code of Civil Procedure.

(b) The appeals entity shall issue and provide a written appeal decision to the employer, or to the employer and employee if an employee is appealing, and to the SHOP, within 90 calendar days of the date on which a valid appeal request is received, unless the appeal request was determined by the appeals entity to meet the criteria for an expedited appeal.

(c) If the appeal request was determined by the appeals entity to meet the criteria for an expedited appeal, the appeals entity shall issue and provide a written appeal decision to the employer, or to the employer and employee if an employee is appealing, and to the SHOP, as expeditiously as reasonably possible, but not later than five business days from the date of the conclusion of the hearing.

(d) Upon issuance of an appeal decision, the SHOP shall implement the appeal decision, which shall be effective as follows:

- ~~(1) Retroactively to the date the incorrect eligibility determination was made, if the decision finds the appellant eligible. If an employer is found eligible under the decision, then at the employer's option, the effective date of coverage or enrollment through the SHOP under the decision can either be made retroactive to the effective date of coverage or enrollment through the SHOP that the employer would have had if the employer had been correctly determined eligible, or prospective to the first day of the month following the date of notice of the appeal decision; or~~
- ~~(2) Effective as of the date of the notice of the appeal decision, if eligibility is denied. For employee appeal decisions only, if an employee is found eligible~~

under the decision, then at the employee's option, the effective date of coverage or enrollment through the SHOP under the decision can either be made effective retroactive to the effective date of coverage or enrollment through the SHOP that the employee would have had if the employee had been correctly deemed eligible, or prospective to the first day of the month following the date of notice of the appeal decision; or

- (3) If the employer or employee is found ineligible under the decision, then the appeal decision is effective as of the date of the notice of the appeal decision.

Authority: Section 100504, Government Code.

Reference: Section 100506, Government Code; 45 CFR §155.740.