

**State of California  
Office of Administrative Law**

**In re:**  
California Health Benefit Exchange

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Adopt sections:** 6520, 6522, 6524, 6528,  
6530, 6532, 6534, 6536,  
6538

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 100504, 11346.1,  
and 11349.6**

**OAL Matter Number: 2016-1116-03**

**OAL Matter Type: Emergency Readopt (EE)**

---

The California Health Benefit Exchange submitted this emergency readoption action to amend nine sections adopted in title 10 of the California Code of Regulations in OAL file nos. 2013-0920-05E, 2014-0321-01EE, 2014-0620-06EE, 2014-0922-02EE, and 2016-0926-04EE. The regulations establish criteria and procedures for qualified employers and qualified employees to enroll in health coverage under the Small Business Health Options Program (SHOP), a program that is required under both federal and state law to implement the federal Patient and Protection and Affordable Care Act. The amendments modify SHOP regulations to reflect changes in state and federal laws, simplify and modify program requirements to reflect best practices in the SHOP, and clean up language for improved clarity.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 11/28/2016 and will expire on 10/2/2018. The Certificate of Compliance for this action is due no later than 10/1/2018.

Date: November 28, 2016



Richard L. Smith  
Senior Attorney

For: Debra M. Cornez  
Director

Original: Peter Lee

Copy: Gabriela Ventura Gonzales

**NOTICE PUBLICATION REGULATIONS SUBMISSION**

# EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

<b>OAL FILE NUMBERS</b>	<b>NOTICE FILE NUMBER</b> Z-	<b>REGULATORY ACTION NUMBER</b>	<b>EMERGENCY NUMBER</b> 2016-1116-03EE
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

NOV 28 2016  
1:40 P.M.

2016 NOV 16 P 3:06  
OFFICE OF ADMINISTRATIVE LAW

**AGENCY WITH RULEMAKING AUTHORITY**  
California Health Benefit Exchange

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) SHOP Eligibility and Enrollment Process	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2013-0920-05E; 2014-0321-01EE, 2014-0620-06EE;
---	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 6520, 6522, 6524, 6528, 6530, 6532, 6534, 6536, 6538
	AMEND <del>6520, 6522, 6524, 6526, 6528, 6530, 6532, 6534, 6536, 6538</del> per agency request
TITLE(S) 10	REPEAL

2014-0922-02EE  
2016-0926-04EE  
per agency request

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  §100 Changes Without Regulatory Effect  Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify)

7. CONTACT PERSON

Gabriela Ventura-Gonzales	TELEPHONE NUMBER 916-228-8477	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) gabriela.ventura@covered.ca.gov
---------------------------	----------------------------------	-----------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/31/16
TYPED NAME AND TITLE OF SIGNATORY Peter V. Lee, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 28 2016

Office of Administrative Law

Adopt Article 6, Sections 6520, 6522, 6524, 6528, 6530, 6532, 6534, 6536, and 6538, which new regulation text is underlined and deleted text is shown in strikethrough:

ARTICLE 6. APPLICATION, ELIGIBILITY, AND ENROLLMENT IN THE SHOP EXCHANGE

§ 6520. Employer and Employee Application Requirements.

(a) A qualified employer who is eligible to purchase coverage from a Qualified Health Plan (QHP) for its qualified employees through the Small Business Health Options Program (SHOP) pursuant to Section 6522, may apply to participate in the SHOP by submitting the following information to the SHOP:

(1) General employer information: business legal name and whether the employer is doing business under a fictitious name, ~~Federal employer identification number, State employer identification number~~Employer Identification Number, State Employer Identification Number, organization type (private, nonprofit, government, church/church affiliated), ~~primary business~~principal business address, mailing address, and billing address;

(2) The number of qualified employees enrolling in SHOP and the total number of full-time and full-time equivalent (FTE) employees employed by the qualified employer, as calculated in accordance with Health and Safety Code Section 1357.500(k)(3) and Insurance Code Section 10965.3(q)(3);

~~(3) The United States Department of Labor Standard Industrial Code of the qualified employer;~~

(3) Whether you have employed 20 or more employees for 20 or more weeks in the current or preceding calendar year;

(4) Whether the qualified employer is offering dependent health insurance coverage, including whether the qualified employer is offering coverage for for spouses, registered or non-registered domestic partners and/or dependent children;

(5) The qualified employer's desired health insurance coverage effective date;

(6) Whether the qualified employer is subject to COBRA or Cal-COBRA continuation coverage regulations;

(7) The name, and primary phone number, and email address for the primary contact for the qualified employer and the preferred method of communication;

(8) Whether the qualified employer used an insurance agent and if so, the agent's name, general agency name (if applicable), CA insurance license number, and whether the agent is an insurance agent certified by Covered California. If the qualified employer uses an insurance agent, the qualified employer must have that agent certify that he or she understands he or she may be subject to a civil penalty for providing false information under Health and Safety Code Section 1389.8 and Insurance Code Section 10119.3.

~~(9) Information about the qualified employer's qualified employees, including each qualified employee's taxpayer identification number, full name, date of birth, home address, telephone number, the qualified employee's number of dependents, if the qualified employer offers dependent coverage, including spouse, partner, child dependents under the age of 21 and the number of child dependents from 21 to 25 years of age, if applicable, the COBRA or Cal-COBRA continuation coverage designation, start date of the continuation coverage, if any, and the remaining months of eligibility for continuation coverage for enrollees that are not qualified employees or their dependents;~~

(9) Information about the qualified employer's qualified employees, in the employee application in subdivision (d);

(10) The employer's offer of health insurance coverage, which includes:

(A) The employer's contribution rate to each of its qualified employee's Qualified Health Plan (QHP) premiums pursuant to Section 6522(a)(5)(A);

(B) The employer's health premium contribution rate for employees and their dependents for spouse or non-registered domestic partner, or dependent children coverage, if applicable; and

(BC) The employer's plan selection for a tier of health insurance coverage or for two contiguous tiers of health insurance coverage, pursuant to 45 CFR §Section 156.140(b) (bronze, silver, gold, or platinum) (February 25, 2013), hereby incorporated by reference, and the reference plan;

(b) To participate in the SHOP, an employer must attest to the following:

(1) That the business has 100 or fewer full-time or FTE employees and has a principal business address in California;

(2) That all qualified full-time employees of this business will be offered SHOP coverage;

(3) That the business has at least one employee who is not the owner or business partner, or the spouse of the owner or business partner;

(4) That the employer is signing the application under penalty of perjury, which means all information contained in the qualified employer application is true and correct to the best of the qualified employer's knowledge;

(5) That the employer knows that he or she may be subject to penalties under federal law if he or she intentionally provides false or untrue information pursuant to 45 CFR Section 155.285 (September 6, 2016), hereby incorporated by reference;

(6) That the employer knows that the information will only be used to determine eligibility and facilitate enrollment for health coverage and will otherwise be kept private as required by federal and state law;

(47) That any waiting period established by the qualified employer complies with 42 U.S.C. §Section 300gg-7 and applicable state law, including Section 10198.7 of the California Insurance Code and Section 1357.51 of the California Health and Safety Code, and all qualified employees have complied with the qualified employer's waiting period;

(58) That the employer has the consent from every qualified employee listed on the application to include their personally identifiable information such as dates of birth, addresses and social security numbers or tax identification numbers, phone numbers, and email addresses;

(69) That the employer understands that discrimination is prohibited on the basis of race, color, national origin, religion, sex, age, sexual orientation, marital status, gender identity, veteran status, disability, or any other type of discrimination prohibited in the Health and Safety Code and Insurance Code;

(710) That the qualified employer understands that the SHOP will not consider the qualified employer approved for health insurance coverage until the SHOP has received the qualified employer's first month health premium payment, which shall be no less than 85 percent of the total amount due;

(811) That the qualified employer agrees to continue to make the total required monthly health premium payments by the due date, and which at no time shall be less than 85 percent of the total amount due each month, including any premium amounts past due, to maintain eligibility for coverage in the SHOP;

(912) That the qualified employer agrees to inform its qualified employees of the availability of health insurance coverage and that those declining coverage must wait until the next open enrollment period, pursuant to Section 6528, to sign up for coverage, unless that employee experiences an event that would entitle him or her to a special enrollment period pursuant to Section 6530;

(1013) That the qualified employer understands that once coverage in a QHP is approved by the SHOP, changes to the coverage cannot be implemented until the qualified employer's annual election of coverage period pursuant to Section 6526, except to the extent the qualified employer exercises the right to change coverage with the same issuer within the first 30 days of the effective date of coverage pursuant to Health and Safety Code 1357.504(d) and Insurance Code Section 10753.06.5(d);

(1114) That the qualified employer understands that health insurance coverage through the SHOP is subject to the applicable terms and conditions of the QHP issuer contract or policy and applicable state law, which will determine the procedures, exclusions and limitations relating to the coverage and will govern in the event of any conflict with SHOP or QHP issuer benefits comparison, summary or other description of the coverage;

~~(1215)~~ That the qualified employer understands that once employer and employee information is transmitted to the selected QHPs, the qualified employer's coverage effective dates cannot be changed nor can the qualified employer terminate coverage until after the first month of coverage;

(16) That the qualified employer agrees to inform its qualified employees of the availability of child and family dental plans and that qualified employees may choose to enroll only in a dental plan even if the qualified employee does not choose to enroll in a QHP;

~~(1317)~~ That the qualified employer understands that the attestations in this section are subject to audit by the SHOP at any time; and

~~(1418)~~ That the qualified employer agrees to maintain compliance with the attestations in this section in order to continue eligibility for coverage through the SHOP.

(c) A qualified employer must provide the SHOP with its most recent Quarterly Contribution Return and Report of Wages (Form DE-9C), as filed with the California Employment Development Division, on which the qualified employer must identify on the face of the form whether each employee listed on the DE-9C is a full-time employee, part-time eligible employee, ineligible employee and whether the employee is still employed by the qualified employer. If there is not sufficient space on the face of the Form DE-9C for the qualified employer to add the required information, the qualified employer may attach additional sheets of paper to the Form DE-9C as necessary. A qualified employer must provide the SHOP with additional or other documents in the following circumstances:

(1) For a qualified employer who is a sole proprietor in business less than three (3) months, a California business license or Fictitious Business Name Filing and a DE-9C or payroll records for 30 days;

(2) For a qualified employer who is a sole proprietor who is in business three (3) months or more, a DE-9C. If the owner is not listed as earning wages on the DE-9C and wishes to enroll for coverage, a current IRS Form 1040 Schedule C Profit or Loss From Business (Sole Proprietorship) or, if a Form 1040 Schedule C is not available, a California business license or Fictitious Business Name filing may be substituted;

(3) For a qualified employer who is a corporation in business less than three (3) months, Articles of Incorporation, filed and stamped by the Secretary of State, and a Statement of Information or corporate meeting minutes listing all officers' names and a DE-9C or payroll records for 30 days;

(4) For a qualified employer who is a corporation in business three (3) months or more, a DE-9C, and, if officers who are not listed on DE-9C enroll for coverage, a Statement of Information;

(5) For a qualified employer who is a partnership in business less than three (3) months, a Partnership Agreement, a Federal Tax Identification appointment letter, and a DE-9C or payroll records for 30 days;