

**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, 6528

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2017-0407-02

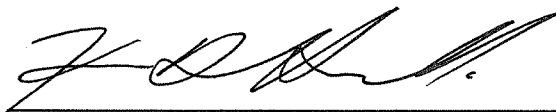
OAL Matter Type: Emergency Readopt (EE)

The California Health Benefit Exchange submitted this emergency readoption action to amend three 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, 2016-0926-04EE and 2016-1116-03EE. 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 4/17/2017 and will expire on 10/2/2018. The Certificate of Compliance for this action is due no later than 10/1/2018.

Date: April 17, 2017



Kevin D. Hull
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)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-0407-02EE
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For use by Office of Administrative Law (OAL) only

2017 APR -7 P 3:27
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

APR 17 2017
2:57 PM

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)		NOTICE REGISTER NUMBER		PUBLICATION DATE
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Application, Eligibility, and Enrollment in the Shop Exchange		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)		2014-0922-02EE; 2016-0926-04EE; 2016-1116-03EE	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 6520, 6522, 6528		
	AMEND		
TITLE(S) 10	REPEAL		

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 §511346.2-11347.3 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 §511349.3, 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)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> 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
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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 3/30/17
TYPED NAME AND TITLE OF SIGNATORY Peter V. Lee, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 17 2017

Office of Administrative Law

Adopt Article 6, Sections 6520, 6522, 6528, whereby 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, organization type (private, nonprofit, government, church/church affiliated), 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) 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 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, 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, 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 spouse or non-registered domestic partner, or dependent children coverage, if applicable; ~~and~~

(C) 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; and

(D) If applicable, the employer's contribution rate to each of its qualified employee's employer-sponsored Group Dental Plan premiums pursuant to Section 6522(h).

(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;

(7) That any waiting period established by the qualified employer complies with 42 U.S.C. Section 300gg-7, 45 CFR Section 155.725 (December 22, 2016), hereby incorporated by reference, 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;

(8) 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, social security numbers or tax identification numbers, phone numbers, and email addresses;

(9) 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;

(10) 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;

(11) 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;

(12) 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;

(13) 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);

(14) 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;

(15) 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;

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

(18) 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;

(6) For a qualified employer who is a partnership in business three (3) months or more, a DE-9C and a current IRS Form 1065 Schedule K-1, if the partners are not listed on DE-9C and want to enroll for coverage. If an IRS Form 1065 Schedule K-1 is not yet available, the Partnership Agreement and the Federal Tax Identification appointment letter can be substituted;

(7) For a qualified employer who is a limited 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;

(8) For a qualified employer who is a limited partnership in business three (3) months or more, a DE-9C. If General Partners are not listed on DE-9C and wish to enroll in coverage, then a current IRS Form 1065 Schedule K-1. If an IRS Form 1065 Schedule K-1 is not available, the Partnership

Agreement and a Federal Tax Identification appointment letter can be substituted. Limited partners are not eligible for coverage unless they appear on a DE-9C;

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

(10) For a qualified employer who is a limited liability partnership in business three (3) months or more, a DE-9C. If partners are not listed on the DE-9C and wish to enroll in coverage, then a current IRS Form 1065 Schedule K-1. If the IRS Form 1065 Schedule K-1 is not yet available, the Partnership Agreement and the Federal Tax Identification appointment letter can be substituted;

(11) For a qualified employer who is a limited liability company in business less than three (3) months, Articles of Organization with the Operating Agreement or the Statement of Information and a DE-9C or payroll records for 30 days; and

(12) For a qualified employer who is a limited liability company in business three (3) months or more, a DE-9C. If managing members are not listed as earning wages on the DE-9C and wish to enroll for coverage, a current IRS Form 1065 Schedule K-1 for a partnership or IRS Form 1040 Schedule C for a sole proprietorship. If an IRS Form 1065 Schedule K-1 is not yet available, a Statement of Information or Articles of Organization with the Operating Agreement may be substituted.

(13) For a qualified employer who was previously insured outside of the SHOP, the SHOP may waive or alter any additional documentation submission requirements in Section 6520(c)(1) – (12), if as determined by the SHOP on a case-by-case basis, the proof of coverage is sufficient to satisfy these requirements.

(d) To participate in the SHOP, a qualified employee must submit the following information to the SHOP:

(1) The employer's business name, principal business address, and business phone number;

(2) The qualified employee's first and last name, Taxpayer Identification Number, date of birth, home address, mailing address (if different from home address), and telephone number;

(3) Whether the employee is applying for Cal-COBRA or COBRA coverage; and, if so

(A) The effective date of that coverage, the qualifying event that triggered that coverage, and the date of the qualifying event; and, if applicable,

(B) The start date of any prior Cal-COBRA or COBRA continuation coverage; and

(C) The remaining months of eligibility for continuation coverage.

(4) If the qualified employer is offering coverage for dependents and the employee elects to offer his or her dependents coverage, the marital or domestic partnership status of the qualified employee;

(5) If the qualified employer is offering coverage for spouses or non-registered domestic partners, and/or dependent children, and the employee elects to offer his or her dependents coverage, then information about the qualified employee's spouse or non-registered partner, and/or dependent children, which includes:

(A) The first and last name of each spouse or non-registered domestic partner, and/or each dependent child, their relationship to the qualified employee, SSN or taxpayer identification number, date of birth, age, gender, home address, and mailing address (if different from home address); and

(B) Whether the qualified employee would like to enroll a dependent who is a disabled child pursuant to Section 599.500 of Title 2 of the California Code of Regulations; and

(6) The name of the QHP and dental plan, if applicable, selected by the qualified employee and dependents.

(e) To participate in the SHOP, a qualified employee must do all of the following:

(1) Agree to mandatory arbitration if the QHP selected by the employee requires arbitration, which would require the employee and his or her dependents to arbitrate all claims relating to his or her QHP;

(2) Disclose whether the employee used an insurance agent and, if so, the agent's name, general agency name (if applicable), and whether the agent is an insurance agent certified by Covered California. If the employee uses an insurance agent, the employee 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 1389.8 and Insurance Code 10119.3.

(3) Sign the application under penalty of perjury, that all information contained in the employee application is true and correct to the best of the employee's knowledge.

(4) Acknowledge that the employee understands 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.

(f) If a qualified employee declines coverage, the employee must state other sources of coverage, if any.

(g) The SHOP must keep all information received pursuant to this section private in accordance with applicable federal and state privacy and security laws pursuant to 45 CFR Section 155.260 (September 6, 2016), hereby incorporated by reference, and the Information Practices Act of 1977 (Cal. Civ. Code, commencing with Section 1798). The SHOP may not provide to the qualified employer any information

collected on the employee application with respect to the qualified employees or dependents of qualified employees, other than the name, address, birth date, and plan selection of the spouse or dependent. The SHOP may only share information from an employee application with the QHP or employer that is strictly necessary for the purposes of eligibility and enrollment. Information obtained by the SHOP pursuant to this section may not be used for purposes other than eligibility determinations and enrollment in health coverage through the SHOP.

Note: Authority: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 CFR Sections 155.705, 155.715, 155.730 and 156.285.

§ 6522. Eligibility Requirements for Enrollment in the SHOP.

(a) An employer is a qualified employer and eligible to participate in the SHOP if such employer:

(1) Is a small employer as defined in Section 6410;

(2) Elects to offer all eligible employees coverage in a QHP through the SHOP;

(3) Either –

(A) Has its principal business address in California and offers coverage to all its full-time employees through the SHOP in California or

(B) offers coverage to each eligible employee through the SHOP serving that employee's primary worksite;

(4) Meets the following minimum participation rules:

(A) A minimum of 70 percent of eligible employees of the qualified employer must enroll in health insurance coverage through the SHOP. However, if the qualified employer pays 100 percent of the qualified employees' QHP premiums or the qualified employer only employs one to three eligible employees, then all eligible employees of the qualified employer must enroll in health insurance coverage through the SHOP.

(B) A qualified employee who waives coverage because that qualified employee is enrolled in coverage through another employer, an employee's union, Medicaid pursuant to 42 U.S.C. Section 1396 et seq., or Medicare pursuant to 42 U.S.C. Section 1395 et seq., is not counted in calculating compliance with the group participation rules above.

(5) Meets the following group contribution rule:

(A) A qualified employer must contribute to each of its qualified employees' QHP premiums, a minimum of 50 percent of the lowest cost premium for employee-only coverage in the level of coverage selected by the qualified employer pursuant to Section 6520(a)(10)(C).

(b) An employer that otherwise meets the criteria of this section except for subdivisions (a)(4) and (a)(5)(A) of this section shall be a qualified employer, but may only elect to offer coverage to its employees during the period specified in Section 6526(b).

(c) A qualified employer who ceases to be a small employer solely by reason of an increase in the number of employees of such employer shall continue to be eligible for the SHOP until the qualified employer otherwise fails to meet the eligibility criteria of this section or elects to no longer purchase coverage for qualified employees through the SHOP.

(d) All qualified employees are eligible to select a QHP through the SHOP.

(e) The spouse or non-registered domestic partner and/or dependent children of the qualified employees, if offered health insurance coverage by the qualified employer, are eligible to select a QHP through the SHOP.

(f) If an employer meets the criteria in subdivision (a) of this section and makes the election described in subdivision (a)(3)(B) of this section, a SHOP shall allow the employer to offer coverage to those employees whose primary worksite is in the SHOP's service area.

(g) A qualified employer shall immediately notify the SHOP of any change to the principal business location; if the new principal business address is in a different geographic rating area in California the SHOP shall only apply a new geographic rating factor upon renewal.

(h) The eligibility standards specified in this subdivision shall only apply to the eligibility determination for enrollment in a dental plan through the SHOP:

(1) Qualified employees may choose to enroll only in a dental plan even if the qualified employee does not choose to enroll in a QHP.

(2) To enroll one child in a family in a dental plan, all children in the family under 19 years of age shall also enroll in the same dental plan.

(3) A qualified employer may choose to offer an employer-sponsored Group Dental Plan only if the employer meets the 50 percent contribution requirement and 70 percent participation requirement of eligible employees for enrollment in that Group Dental Plan.

Note: Authority: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 CFR Sections 147.104, 155.705, 155.710, 155.715 and 155.720.

§ 6528. Initial and Annual Enrollment Periods for Qualified Employees.

(a) A qualified employee may enroll in a QHP or change his or her QHP only during the initial employee open enrollment period and annual employee open enrollment period described in this section or during a special enrollment period as described in Section 6530.

(b) Subject to subdivision (e) of this section, a qualified employee's initial employee open enrollment period begins the day his or her employer submits all of the information required in Section 6520 and the SHOP has determined that the employer is a qualified employer.

(c) Subject to subdivision (e) of this section, the annual employee open enrollment period begins the day after his or her qualified employer's annual election period has ended.

(d) The initial and annual employee open enrollment period is at least 20 days.

(e) Beginning January 1, 2014, the SHOP shall provide to qualified employers, a written annual employee open enrollment period notification for each qualified employee 60 days prior to the employee's annual open enrollment period.

(f) If a qualified employee does not enroll in a different QHP during his or her annual employee open enrollment period, that qualified employee will remain in the QHP selected in the previous year unless:

(1) The qualified employee terminates his or her coverage from the QHP in accordance with Section 6538(b), or

(2) The QHP is no longer available to the qualified employee.

(g) Notwithstanding subdivision (f)(2), if the qualified employee's current QHP is not available, the qualified employee shall be enrolled in a QHP offered by the same QHP issuer at the same metal tier that is the most similar to the qualified employee's current QHP, as determined by the SHOP on a case- by-case basis.

(h) An employee who becomes a qualified employee outside of the initial employee open enrollment period, the annual employee open enrollment period, or a special enrollment period shall have a 30-day period to enroll in a QHP beginning on the first day the employee becomes a qualified employee.

(i) Waiting periods in the SHOP are calculated beginning on the date the employee becomes a qualified employee who is otherwise eligible for coverage, regardless of when a qualified employer notifies the SHOP about a newly qualified employee.

~~(i)~~(j) For an employer with changes to report to the initial employer application information in Section 6520(a)(3) the employer shall notify the SHOP of the updated employee counts.

Note: Authority: Section 100504, Government Code. Reference: Sections 100502 and 10503, Government Code; and 45 CFR Sections 147.104, 155.720, 155.725 and 156.285.

§155.725 Enrollment periods under SHOP.

(a) *General requirements.* The SHOP must ensure that enrollment transactions are sent to QHP issuers and that such issuers adhere to coverage effective dates in accordance with this section.

(b) *Rolling enrollment in the SHOP.* The SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year. The employer's plan year must consist of the 12-month period beginning with the qualified employer's effective date of coverage, unless the plan is issued in a State that has elected to merge its individual and small group risk pools under section 1312(c)(3) of the Affordable Care Act, in which case the plan year will end on December 31 of the calendar year in which coverage first became effective.

(c) *Annual employer election period.* The SHOP must provide qualified employers with a standard election period prior to the completion of the employer's plan year and before the annual employee open enrollment period, in which the qualified employer may change its participation in the SHOP for the next plan year, including—

(1) The method by which the qualified employer makes QHPs available to qualified employees pursuant to §155.705(b)(2) and (3);

(2) The employer contribution towards the premium cost of coverage;

(3) The level of coverage offered to qualified employees as described in §155.705(b)(2) and (3); and

(4) The QHP or QHPs offered to qualified employees in accordance with §155.705.

(d) *Annual employer election period notice.* The SHOP must provide notification to a qualified employer of the annual election period in advance of such period.

(e) *Annual employee open enrollment period.* (1) The SHOP must establish a standardized annual open enrollment period for qualified employees prior to the completion of the applicable qualified employer's plan year and after that employer's annual election period.

(2) Qualified employers in a Federally-facilitated SHOP must provide qualified employees with an annual open enrollment period of at least one week.

(f) *Annual employee open enrollment period notice.* The SHOP must provide notification to a qualified employee of the annual open enrollment period in advance of such period.

(g) *Newly qualified employees.* (1) In a State Exchange that does not use the Federal platform for SHOP functions, the following rules apply with respect to enrollment and coverage effective dates for newly qualified employees.

(i) The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period an enrollment period beginning on the first day of becoming a qualified employee. A newly qualified employee must have at least 30 days from the beginning of his or her enrollment period to select a QHP. The enrollment period must end no sooner than 15 days prior to the date that any applicable employee waiting period longer than 45 days would end if the employee made a plan selection on the first day of becoming eligible.

(ii) The effective date of coverage for a QHP selection received by the SHOP from a newly qualified employee must always be the first day of a month, and must generally be determined in accordance with

paragraph (h) of this section, unless the employee is subject to a waiting period consistent with §147.116 of this subchapter, in which case the effective date may be on the first day of a later month, but in no case may the effective date fail to comply with §147.116 of this subchapter.

(iii) Waiting periods in the SHOP are calculated beginning on the date the employee becomes a qualified employee who is otherwise eligible for coverage, regardless of when a qualified employer notifies the SHOP about a newly qualified employee.

(2) In a Federally-facilitated SHOP or in a State Exchange that uses the Federal platform for SHOP functions, the following rules apply with respect to enrollment and coverage effective dates for newly qualified employees.

(i) The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period with a 30-day enrollment period beginning on the date the qualified employer notifies the SHOP about the newly qualified employee. Qualified employers must notify the SHOP about a newly qualified employee on or before the thirtieth day after the day that the employee becomes a newly qualified employee.

(ii) The effective date of coverage for a QHP selection received by the SHOP from a newly qualified employee is the first day of the month following plan selection, unless the employee is subject to a waiting period consistent with §147.116 of this subchapter and paragraph (g)(2)(iii) of this section, in which case the effective date will be on the first day of the month following the end of the waiting period, but in no case may the effective date fail to comply with §147.116 of this subchapter. If a newly qualified employee's waiting period ends on the first day of a month and the employee has already made a plan selection by that date, coverage must take effect on that date. If a newly qualified employee makes a plan selection on the first day of a month and any applicable waiting period has ended by that date, coverage must be effective on the first day of the following month. If a qualified employer with variable hour employees makes regularly having a specified number of hours of service per period, or working full-time, a condition of employee eligibility for coverage offered through the SHOP, any measurement period that the qualified employer elects to use under §147.116(c)(3)(i) to determine whether an employee meets the applicable eligibility conditions with respect to coverage offered through the SHOP must not exceed 10 months, beginning on any date between the employee's start date and the first day of the first calendar month following the employee's start date.

(iii) Waiting periods in the SHOP are calculated beginning on the date the employee becomes a qualified employee who is otherwise eligible for coverage, regardless of when a qualified employer notifies the SHOP about a newly qualified employee, and must not exceed 60 days in length. Waiting periods must be 0, 15, 30, 45 or 60 days in length.

(h) *Initial and annual open enrollment effective dates.* (1) The SHOP must establish effective dates of coverage for qualified employees enrolling in coverage for the first time, and for qualified employees enrolling during the annual open enrollment period described in paragraph (e) of this section.

(2) For a group enrollment received by the Federally-facilitated SHOP from a qualified employer at the time of an initial group enrollment or renewal:

(i) Between the first and fifteenth day of any month, the Federally-facilitated SHOP must ensure a coverage effective date of the first day of the following month unless the employer opts for a later effective date within a quarter for which small group market rates are available.

(ii) Between the 16th and last day of any month, the Federally-facilitated SHOP must ensure a coverage effective date of the first day of the second following month unless the employer opts for a later effective date within a quarter for which small group market rates are available.

(i) *Renewal of coverage.* (1) If a qualified employee enrolled in a QHP through the SHOP remains eligible for enrollment through the SHOP in coverage offered by the same qualified employer, the SHOP may provide for a process under which the employee will remain in the QHP selected the previous year, unless—

(i) The qualified employee terminates coverage from such QHP in accordance with standards identified in §155.430;

(ii) The qualified employee enrolls in another QHP if such option exists; or

(iii) The QHP is no longer available to the qualified employee.

(2) The SHOP may treat a qualified employer offering coverage through the SHOP as offering the same coverage under §155.705(b)(3) at the same level of contribution under §155.705(b)(11) unless:

(i) The qualified employer is no longer eligible to offer such coverage through the SHOP;

(ii) The qualified employer elects to offer different coverage or a different contribution through the SHOP;

(iii) The qualified employer withdraws from the SHOP; or

(iv) In the case of a qualified employer offering a single QHP, the single QHP is no longer available through the SHOP.

(j)(1) *Special enrollment periods.* The SHOP must provide special enrollment periods consistent with this section, during which certain qualified employees or a dependent of a qualified employee may enroll in QHPs and enrollees may change QHPs.

(2) The SHOP must provide a special enrollment period for a qualified employee or dependent of a qualified employee who:

(i) Experiences an event described in §155.420(d)(1) (other than paragraph (d)(1)(ii)), or experiences an event described in §155.420(d)(2), (4), (5), (7), (8), (9), (10), (11), or (12);

(ii) Loses eligibility for coverage under a Medicaid plan under title XIX of the Social Security Act or a State child health plan under title XXI of the Social Security Act; or

(iii) Becomes eligible for assistance, with respect to coverage under a SHOP, under such Medicaid plan or a State child health plan (including any waiver or demonstration project conducted under or in relation to such a plan).

(3) A qualified employee or dependent of a qualified employee who experiences a qualifying event described in paragraph (j)(2) of this section has:

(i) Thirty (30) days from the date of a triggering event described in paragraph (j)(2)(i) of this section to select a QHP through the SHOP; and

(ii) Sixty (60) days from the date of a triggering event described in paragraph (j)(2)(ii) or (iii) of this section to select a QHP through the SHOP;

(4) A dependent of a qualified employee is not eligible for a special election period if the employer does not extend the offer of coverage to dependents.

(5) The effective dates of coverage for special enrollment periods are determined using the provisions of §155.420(b).

(6) Loss of minimum essential coverage is determined using the provisions of §155.420(e).

(k) *Limitation.* Qualified employees will not be able to enroll unless the employer group meets any applicable minimum participation rate implemented under §155.705(b)(10).

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