

**State of California
Office of Administrative Law**

In re:
California Health Benefit Exchange

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections:

Amend sections: 6408, 6410, 6474, 6476,
6478, 6484, 6496, 6504,
6602

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2024-1204-01

OAL Matter Type: Emergency (E)

This emergency action amends eligibility, enrollment, and appeals processes for the Individual Exchange to align with changes in federal law and guidance and to establish a process to automatically enroll a consumer in a Qualified Health Plan when moving to a different coverage area. This action is exempt from the Administrative Procedure Act pursuant to Government Code section 100504(a)(6).

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 12/16/2024 and will expire on 12/18/2029. The Certificate of Compliance for this action is due no later than 12/17/2029.

Date: December 16, 2024



Digitally signed by Mark
Storm
Date: 2024.12.16
12:50:41 -08'00'

**Mark Storm
Senior Attorney**

**For: Kenneth J. Pogue
Director**

Original: Jessica Altman, Executive
Director
Copy: Jameson Mitchell

EMERGENCY

For use by Secretary of State only

STD. 400 (REV. 10/2019)

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| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2024-1204-01E |
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| 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

DEC 16 2024
AB 1:50 PM

OFFICE OF ADMIN. LAW
2024 DEC 4 PM 2:50

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| 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) |
| OAL USE ONLY 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)

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| 1a. SUBJECT OF REGULATION(S) Eligibility, Enrollment, and Appeals Process for the Individual Exchange | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) N/A |
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| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT |
| | AMEND 6408, 6410, 6474, 6476, 6478, 6484, 6496, 6504, 6602 |
| TITLE(S) 10 | REPEAL |

| | | | |
|---|--|--|--|
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | <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 type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only |

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| 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) N/A |
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| 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 Jameson Mitchell | TELEPHONE NUMBER (916) 954-3372 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) jameson.mitchell@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 Jessica Altman <small>Digitally signed by Jessica Altman Date: 2024.12.02 13:46:18 -0800</small> | DATE 12/2/2024 |
| TYPED NAME AND TITLE OF SIGNATORY Jessica Altman | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 16 2024

Office of Administrative Law

California Code of Regulations

Title 10. Investment

Chapter 12. California Health Benefit Exchange (§ 6400 et seq.)

Article 2. Abbreviations and Definitions

§ 6408. Abbreviations.

The following abbreviations shall apply to this chapter:

CCSB Covered California for Small Business

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100501, 100502, and 100503, Government Code; 45 CFR Sections 155.20 and 155.300.

§ 6410. Definitions.

"Lawfully Present" means a non-citizen individual as defined in 45 CFR Section 155.20 (~~November 1, 2024~~ ~~August 30, 2012~~), hereby incorporated by reference.

"Tax Household" means the tax filer and any individuals who are claimed as dependents on the tax filer's federal income tax return. A tax household may include a spouse and/or dependents.

Note: Authority cited: Sections 100502, 100503, 100503.4, 100504, and 100505, Government Code. Reference: Sections 100501, 100502, 100503, 100503.4, and 100505, Government Code; Sections 1345, 1357.500, 1357.512, 1367.005, 1367.008, 1367.009, 1373, 1373.10, 1374.1, 1399.845, 1399.848, 1399.849, and 1399.855, Health and Safety Code; Sections 10112.27, 10112.295, 10112.297, 10122.27, 10278.1, 10753, 10753.14, 10965, 10965.3, 10965.4, and 10965.9, Insurance Code; 42 CFR Sections 435.603, 435.911, 457.310 and 457.348; 45 CFR Sections 144.103, 152.2, 155.20, 155.300, 155.305, 155.410, 155.415, 155.430, 155.700, 155.705, 155.710, 155.725, 156.235 and 156.1230; 26 CFR Sections 1.36B-1, 1.36B-2, 1.36B-4, 1.36B-6, 1.5000A-1(d) and 1.7703-1.

Article 5. Application, Eligibility, and Enrollment Process for the Individual Exchange

§ 6474. Eligibility Requirements for APTC and CSR.

(6) Notwithstanding the requirements in subdivision (c)(3) of this section, if HHS notifies the Exchange, as part of the verification process described in Sections 6482 through 6486, that APTC was made on behalf of either the tax filer or spouse, if the tax filer is a married couple, for one year for which tax data would be used to verify household income and family size in accordance with Section 6482(d) and (e); and the tax filer or

the tax filer's spouse did not comply with the requirement to file an income tax return for that year, as required by Sections 6011 and 6012 of IRC (26 USC §§ 6011, 6012) and implementing regulations, and reconcile APTC for that period ("file and reconcile"), the Exchange shall ~~send a not deny eligibility for APTC under that subdivision unless the Exchange first sends direct notification to the tax filer, consistent with the standards applicable to the protection of Federal Tax Information as required by Section 6103 of IRC (26 USC § 6103) and described in IRS Publication 1075 Tax Information Security Guidelines For Federal, State, and Local Agencies, that informs the tax filer that the Exchange has determined that the tax filer or the tax filer's spouse, if the tax filer is married, has failed to file and reconcile, and educate the tax filer of the need to file and reconcile or risk being determined ineligible for APTC if they fail to file and reconcile for a second consecutive tax year. consistent with the standards set forth in Section 6454, that their eligibility will be discontinued as a result of the tax filer's failure to comply with the tax filing requirement specified under subdivision (c)(3) of this section.~~

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 26 USC Section 36B; 26 CFR Sections 1.36B-1, 1.36B-2, 1.36B-3; 45 CFR Sections 155.305 and 155.340.

§ 6476. Eligibility Determination Process.

(C) No other taxpayer will be able to claim -them as a tax dependent for the benefit year; and

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 26 CFR Sections 1.36B-2 and 1.7703-1; 29 CFR Sections 1984.102 and 1984.102; 45 CFR Section 155.310.

§ 6478. Verification Process Related to Eligibility Requirements for Enrollment in a QHP Through the Exchange.

(e) Verification of incarceration status.

(1) ~~Except as provided in subdivision (e)(2) of this section, The the Exchange shall accept verify an applicant's attestation that they are not currently incarcerated the applicant meets the requirements of 6472(d) by:~~

~~(A) Relying on any HHS-approved electronic data sources that are available to the Exchange; or~~

~~(B) Except as provided in subdivision (e)(2) of this section, if a HHS-approved data source is unavailable, accepting the applicant's attestation without further verification.~~

(2) If an applicant's attestation is not reasonably compatible with information from HHS-approved data sources described in subdivision (e)(1)(A) of this section or other information provided by the applicant or in the records of the Exchange, the Exchange shall follow the inconsistencies procedures specified in Section 6492.

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 45 CFR Section 155.315.

§ 6484. Verification Process for Changes in Household Income Related to Eligibility Determination for APTC and CSR.

(f) ~~For any benefit year for which the applicable percentages for purposes of calculating the APTC amount, as defined in Section 36B(b)(3)(A) of the IRC (26 USC § 36B(b)(3)(A)), are between zero and 8.5, inclusive, the~~The income threshold shall be 50 percent or \$12,000 (whichever is greater). ~~Otherwise, the income threshold shall be 25 percent or \$6,000 (whichever is greater).~~

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 26 USC Section 36B(b)(3)(A); 42 CFR Sections 435.945, 435.948, 435.952 and 457.380; 45 CFR Section 155.320.

§ 6496. Eligibility Redetermination During a Benefit Year.

(o) When an eligibility redetermination in accordance with this section results in a change in the enrollee's rating region, as defined in Section 6410, or if the enrollee has moved out of the service area of the QHP, the enrollee remains eligible for enrollment in a QHP through the Exchange, and the enrollee does not terminate coverage, including termination of coverage in connection with voluntarily selecting a different QHP in accordance with Section 6506, the Exchange shall proceed in accordance with the following process:

(1) The enrollee shall be enrolled in the same QHP as the enrollee's current QHP, unless the enrollee's current QHP is not available.

(2) If the enrollee is not eligible for the same level of CSR as the enrollee's current level of CSR, they shall be enrolled in a silver-tier QHP offered by the same QHP issuer at the CSR level for which the enrollee is eligible. If the enrollee is not eligible for any level of CSR, they shall be enrolled in a standard silver-tier QHP offered by the same QHP issuer without CSR.

(3) If the enrollee's current QHP is not available and the current QHP is a HDHP as defined in Section 6410, the enrollee shall be enrolled in the lowest cost HDHP offered by the same QHP issuer at the same metal tier, as determined by the Exchange on a case-by-case basis. If there is no HDHP available, the enrollee shall be enrolled in the lowest cost QHP that is not a HDHP offered by the same QHP issuer at the same metal tier, as determined by the Exchange on a case-by-case basis.

(4) If the enrollee's current QHP is not available and the current QHP is not a HDHP, the enrollee shall be enrolled in the lowest cost QHP that is not a HDHP offered by the same QHP issuer at the same metal tier, as determined by the Exchange on a case-by-case basis.

(5) If the issuer of the QHP in which the enrollee is currently enrolled is no longer available, the enrollee shall be enrolled in the lowest cost QHP that is most similar to the enrollee's current QHP offered by a different QHP issuer that is available to the enrollee through the Exchange at the same metal tier and in accordance with the same hierarchy specified in subdivision (o)(3) through (4) of this section, as determined by the Exchange on a case-by-case basis.

(6) If the enrollee who is currently enrolled in a QHP as a dependent attains the age of 26 before the effectuation date of the new QHP, the enrollee shall be enrolled in their own individual QHP through the Exchange in accordance with the process specified in subdivision (o)(1) through (5) of this section.

(7) Notwithstanding the process specified in subdivision (o)(1) through (6) of this section, a federally recognized American Indian or Alaska Native enrollee who is currently enrolled in a zero cost sharing QHP shall be enrolled in the lowest cost zero cost sharing QHP that offers the same benefits and provider network offered by the same QHP issuer. If the issuer of the QHP in which the enrollee is currently enrolled is no longer available, the enrollee shall be enrolled in the lowest cost zero cost sharing QHP offered by a different QHP issuer that is available to the enrollee through the Exchange, as determined by the Exchange on a case-by-case basis.

(p) The Exchange shall implement the process specified in subdivision (o) of this section no later than October 1, 2025.

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 26 CFR Section 1.36B-3; 45 CFR Section 155.330.

§ 6504. Special Enrollment Periods.

(a) A qualified individual may enroll in a QHP, or an enrollee may change from one QHP to another, during special enrollment periods only if one of the following triggering events occurs:

(17) The qualified individual, enrollee, or dependent, who is eligible for APTC, and whose expected household income is at or below 150 percent of the FPL, and whose applicable percentage for purposes of calculating the APTC amount, as defined in section 36B(b)(3)(A) of the IRC (26 USC § 36B(b)(3)(A)), is set at zero, may enroll in a QHP or change from one QHP to another one time per month

(l) For purposes of this section, all tax household members shall be eligible for a special enrollment period, if otherwise eligible for enrollment in a QHP, if one household member experiences a triggering event.

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 26 USC Sections 36B(b)(3)(A) and 9831(d)(4); 26 CFR Sections 1.36B-2, 1.5000A-2, and 54.9802-4; 29 CFR Section 2590.702-2; 42 CFR Section 457.10; 45 CFR Sections 146.123, 155.420, 155.605, 155.620 and 155.1080.

Article 7. Appeals Process for the Individual Exchange

§ 6602. General Eligibility Appeals Requirements.

(a) In accordance with Section 6510 of Article 5 and Section 6922 of Article 13, an applicant or enrollee shall have the right to appeal:

(2) An eligibility determination or redetermination for the State financial assistance, including the amount of the State advance premium assistance subsidy or the level of the State enhanced cost-sharing reduction, made in accordance with Title 25 (commencing with Section 100800) of the Government Code and Article 5 of this chapter.

(3) An eligibility determination or redetermination for a hardship or religious conscious exemption made in accordance with Article 13 of this chapter;

(34) The Exchange's failure to provide a timely eligibility determination in accordance with Section 6476(f) of Article 5 of this chapter or failure to provide timely notice of an eligibility determination or redetermination in accordance with Sections 6476(h), 6496(h)(2), or 6498(j)(2) of Article 5 of this chapter; and

(45) A denial of a request to vacate a dismissal made by the Exchange appeals entity in accordance with Section 6610(d)(2) to the HHS.

Note: Authority cited: Sections 100504, 100506.1 and 100506.3, Government Code.

Reference: Sections 100503 and 100506, Government Code; 45 CFR Sections 155.260, 155.270, 155.505, 155.510, 155.605.

This content is from the eCFR and is authoritative but unofficial.

Title 45 — Public Welfare

Subtitle A — Department of Health and Human Services

Subchapter B — Requirements Relating to Health Care Access

Part 155 — Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

Subpart A — General Provisions.

Source: 77 FR 18444, Mar. 27, 2012, unless otherwise noted.

Authority: 42 U.S.C. 18021-18024, 18031-18033, 18041-18042, 18051, 18054, 18071, and 18081-18083.

Source: 77 FR 11718, Feb. 27, 2012, unless otherwise noted.

§ 155.20 Definitions.

The following definitions apply to this part:

Advance payments of the premium tax credit means payment of the tax credit authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with section 1412 of the Affordable Care Act.

Affordable Care Act means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152).

Agent or broker means a person or entity licensed by the State as an agent, broker or insurance producer.

Agent or broker direct enrollment technology provider means a type of web-broker business entity that is not a licensed agent or broker under State law and has been engaged or created by, or is owned by an agent or broker, to provide technology services to facilitate participation in direct enrollment under §§ 155.220(c)(3) and 155.221.

Annual open enrollment period means the period each year during which a qualified individual may enroll or change coverage in a QHP through the Exchange.

Applicant means:

- (1) An individual who is seeking eligibility for him or herself through an application submitted to the Exchange, excluding those individuals seeking eligibility for an exemption from the individual shared responsibility payment pursuant to subpart G of this part, or transmitted to the Exchange by an agency administering an insurance affordability program for at least one of the following:
 - (i) Enrollment in a QHP through the Exchange; or
 - (ii) Medicaid, CHIP, and the BHP, if applicable.
- (2) For SHOP:
 - (i) An employer seeking eligibility to purchase coverage through the SHOP; or
 - (ii) An employer, employee, or a former employee seeking eligibility for enrollment in a QHP through the SHOP for himself or herself and, if the qualified employer offers dependent coverage through the SHOP, seeking eligibility to enroll his or her dependents in a QHP through the SHOP.

Application filer means an applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in 26 CFR 1.36B-1(d), an authorized representative of an applicant, or if the applicant is a minor or incapacitated, someone acting responsibly for an applicant, excluding those individuals seeking eligibility for an exemption from the individual shared responsibility payment pursuant to subpart G of this part.

Benefit year means a calendar year for which a health plan provides coverage for health benefits.

Catastrophic plan means a health plan described in section 1302(e) of the Affordable Care Act.

Code means the Internal Revenue Code of 1986.

Cost sharing means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for non-network providers, and spending for non-covered services.

Cost-sharing reductions means reductions in cost sharing for an eligible individual enrolled in a silver level plan in the Exchange or for an individual who is an Indian enrolled in a QHP in the Exchange.

Direct enrollment entity means an entity that an Exchange permits to assist consumers with direct enrollment in qualified health plans offered through the Exchange in a manner considered to be through the Exchange as authorized by § 155.220(c)(3), § 155.221, or § 156.1230 of this subchapter.

Direct enrollment entity application assister means an employee, contractor, or agent of a direct enrollment entity who is not licensed as an agent, broker, or producer under State law and who assists individuals in the individual market with applying for a determination or redetermination of eligibility for coverage through the Exchange or for insurance affordability programs.

Educated health care consumer has the meaning given the term in section 1304(e) of the Affordable Care Act.

Eligible employer-sponsored plan has the meaning given the term in section 5000A(f)(2) of the Code.

Employee has the meaning given to the term in section 2791 of the PHS Act.

Employer has the meaning given to the term in section 2791 of the PHS Act, except that such term includes employers with one or more employees. All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Code are treated as one employer.

Employer contributions means any financial contributions towards an employer sponsored health plan, or other eligible employer-sponsored benefit made by the employer including those made by salary reduction agreement that is excluded from gross income.

Enrollee means a qualified individual or qualified employee enrolled in a QHP. Enrollee also means the dependent of a qualified employee enrolled in a QHP through the SHOP, and any other person who is enrolled in a QHP through the SHOP, consistent with applicable law and the terms of the group health plan. Provided that at least one employee enrolls in a QHP through the SHOP, enrollee also means a business owner enrolled in a QHP through the SHOP, or the dependent of a business owner enrolled in a QHP through the SHOP.

Exchange means a governmental agency or non-profit entity that meets the applicable standards of this part and makes QHPs available to qualified individuals and/or qualified employers. Unless otherwise identified, this term includes an Exchange serving the individual market for qualified individuals and a SHOP serving the small group market for qualified employers, regardless of whether the Exchange is established and operated by a State (including a regional Exchange or subsidiary Exchange) or by HHS.

Exchange Blueprint means information submitted by a State, an Exchange, or a regional Exchange that sets forth how an Exchange established by a State or a regional Exchange meets the Exchange approval standards established in § 155.105(b) and demonstrates operational readiness of an Exchange as described in § 155.105(c)(2).

Exchange service area means the area in which the Exchange is certified to operate, in accordance with the standards specified in subpart B of this part.

Federal platform agreement means an agreement between a State Exchange and HHS under which a State Exchange agrees to rely on the Federal platform to carry out select Exchange functions.

Federally-facilitated Exchange means an Exchange established and operated within a State by the Secretary under section 1321(c)(1) of the Affordable Care Act.

Federally-facilitated SHOP means a Small Business Health Options Program established and operated within a State by the Secretary under section 1321(c)(1) of the Affordable Care Act.

Full-time employee has the meaning given in section 4980H (c)(4) of the Code effective for plan years beginning on or after January 1, 2016, except for operations of a Federally-facilitated SHOP for which it is effective for plan years beginning on or after January 1, 2014 and in connection with open enrollment activities beginning October 1, 2013.

Grandfathered health plan has the meaning given the term in § 147.140.

Group health plan has the meaning given to the term in § 144.103.

Health insurance issuer or issuer has the meaning given to the term in § 144.103.

Health insurance coverage has the meaning given to the term in § 144.103.

Health plan has the meaning given to the term in section 1301(b)(1) of the Affordable Care Act.

Individual market has the meaning given the term in section 1304(a)(2) of the Affordable Care Act.

Initial open enrollment period means the period during which a qualified individual may enroll in coverage through the Exchange for coverage during the 2014 benefit year.

Issuer application assister means an employee, contractor, or agent of a QHP issuer who is not licensed as an agent, broker, or producer under State law and who assists individuals in the individual market with applying for a determination or redetermination of eligibility for coverage through the Exchange or for insurance affordability programs.

Large employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a large employer is based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year. A State may elect to define large employer by substituting "101 employees" for "51 employees." The number of employees must be determined using the method set forth in section 4980H(c)(2) of the Code.

Lawfully present means a noncitizen who—

- (1) Is a qualified noncitizen as defined at 42 CFR 435.4;

- (2) Is in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));
- (3) Is paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than 1 year, except for a noncitizen paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) Is granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a;
- (5) Is granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a;
- (6) Is granted employment authorization under 8 CFR 274a.12(c);
- (7) Is a Family Unity beneficiary in accordance with section 301 of Pub. L. 101-649 as amended; or section 1504 of the LIFE Act Amendments of 2000, title XV of H.R. 5666, enacted by reference in Pub. L. 106-554 (see section 1504 of App. D to Pub. L. 106-554);
- (8) Is covered by Deferred Enforced Departure (DED) in accordance with a decision made by the President;
- (9) Is granted deferred action, including but not limited to individuals granted deferred action under 8 CFR 236.22;
- (10) Has a pending application for adjustment of status;
- (11)
 - (i) Has a pending application for asylum under 8 U.S.C. 1158, for withholding of removal under 8 U.S.C. 1231(b)(3)(A), or for protection under the regulations implementing the Convention Against Torture; and
 - (ii) Is under the age of 14;
- (12) Has been granted withholding of removal under the regulations implementing the Convention Against Torture; or
- (13) Has a pending or approved petition for Special Immigrant Juvenile classification as described in 8 U.S.C. 1101(a)(27)(J).

Minimum essential coverage has the meaning given in section 5000A(f) of the Code.

Navigator means a private or public entity or individual that is qualified, and licensed, if appropriate, to engage in the activities and meet the standards described in § 155.210.

Plan year means a consecutive 12 month period during which a health plan provides coverage for health benefits. A plan year may be a calendar year or otherwise.

Plain language has the meaning given to the term in section 1311(e)(3)(B) of the Affordable Care Act.

Qualified employee means any employee or former employee of a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP for himself or herself and, if the qualified employer offers dependent coverage through the SHOP, for his or her dependents.

Qualified employer means a small employer that elects to make, at a minimum, all full-time employees of such employer eligible for one or more QHPs in the small group market offered through a SHOP. Beginning in 2017, if a State allows large employers to purchase coverage through the SHOP, the term "qualified employer" shall include a large employer that elects to make all full-time employees of such employer eligible for one or more QHPs in the large group market offered through the SHOP.

Qualified health plan or QHP means a health plan that has in effect a certification that it meets the standards described in subpart C of part 156 issued or recognized by each Exchange through which such plan is offered in accordance with the process described in subpart K of part 155.

Qualified health plan issuer or QHP issuer means a health insurance issuer that offers a QHP in accordance with a certification from an Exchange.

Qualified health plan issuer direct enrollment technology provider means a business entity that provides technology services or provides access to an information technology platform to QHP issuers to facilitate participation in direct enrollment under § 155.221 or § 156.1230, including a web-broker that provides services as a direct enrollment technology provider to QHP issuers. A QHP issuer direct enrollment technology provider that provides technology services or provides access to an information technology platform to a QHP issuer will be a downstream or delegated entity of the QHP issuer that participates or applies to participate as a direct enrollment entity.

Qualified individual means, with respect to an Exchange, an individual who has been determined eligible to enroll through the Exchange in a QHP in the individual market.

SHOP means a Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more QHPs.

Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer is based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year. A State may elect to define small employer by substituting "100 employees" for "50 employees." The number of employees must be determined using the method set forth in section 4980H(c)(2) of the Code.

Small group market has the meaning given to the term in section 1304(a)(3) of the Affordable Care Act.

Special enrollment period means a period during which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the Exchange outside of the initial and annual open enrollment periods.

Standardized option means a QHP offered for sale through an individual market Exchange that either—

- (1) Has a standardized cost-sharing structure specified by HHS in rulemaking; or
- (2) Has a standardized cost-sharing structure specified by HHS in rulemaking that is modified only to the extent necessary to align with high deductible health plan requirements under section 223 of the Internal Revenue Code of 1986, as amended, or the applicable annual limitation on cost sharing and HHS actuarial value requirements.

State means each of the 50 States and the District of Columbia.

Web-broker means an individual agent or broker, group of agents or brokers, or business entity registered with an Exchange under § 155.220(d)(1) that develops and hosts a non-Exchange website that interfaces with an Exchange to assist consumers with direct enrollment in QHPs offered through the Exchange as described in § 155.220(c)(3) or § 155.221. The term also includes an agent or broker direct enrollment technology provider.

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