



Notice Published May 15, 2015

**NOTICE OF PROPOSED RULEMAKING
CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 6
ADOPT SECTION 6540, 6542, 6544, 6546, 6548, 6550 AND 6552**

The California Health Benefit Exchange/Covered California (the Exchange) Board proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Exchange has not scheduled a public hearing on this proposed action. However, the Exchange will hold a hearing if it receives a written request for a public hearing for any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes at **5:00 p.m. on June 29, 2015**. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

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

Comments may also be submitted by facsimile (FAX) at 916-228-8321 or by e-mail to regulations@covered.ca.gov.

AUTHORITY AND REFERENCE

Government Code Section 100504(a)(6) authorizes the California Health Benefit Exchange/Covered California (the Exchange) Board to adopt rules and regulations, as necessary. The proposed regulations implement, interpret, and make specific Government Code Sections 100503, 100504 and 100506; and Title 45 of the Code of Federal Regulations, Section 155.740.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None

Summary of Existing Laws

The federal Patient Protection and Affordable Care Act (ACA) required each state to establish an American Health Benefit Exchange that makes available qualified health plans (QHPs) to qualified individuals and small employers by January 1, 2014. In 2010, the legislature enacted the California Patient Protection and Affordable Care Act (California Government Code Section 100500 et seq.), which established the Exchange (AKA Covered California). Covered California is California's competitive marketplace where consumers and small businesses can shop for and purchase affordable QHPs certified by the Exchange. Additionally, the Exchange is the only place where consumers and small employers can receive tax credits to lower the costs of health insurance, if eligible.

On December 3, 2013 The California Health Benefit Exchange ("Covered California" or "Exchange") adopted emergency regulations found at Title 10, California Code of Regulations (CCR), Chapter 12, Article 6, Sections 6540, 6544, 6546, 6548, 6550, and 6552. These emergency regulations are in effect and established the Exchange's policies regarding the Small Business Health Option Program's (SHOP) appeals process.

The proposed regulations implement, interpret, and make specific the requirements in state and federal law. The proposed action is specifically in furtherance of California Government Code Section 100506 which instructs the Exchange to establish an appeals process for prospective and current enrollees of the Exchange that complies with federal law. Additionally, Title 45, Section 155.740 of the Code of Federal Regulations (CFR) requires states establishing a SHOP to provide an eligibility appeals process for the SHOP.

The Exchange is now proposing to make permanent those emergency regulations at 10 CCR § 6540-6552, with amendments.

Summary of the Effect of the Proposed Regulation

The proposed regulations make permanent previously readopted emergency regulations, with amendments, of the SHOP appeals process. The proposed regulatory action would permanently establish employee and employer rights and responsibilities with respect to SHOP appeals, establish obligations on the part of the SHOP and the appeals entity, and outline the appeals process, including informal appeals and expedited appeals, in order to promote and protect employer and employee rights, and thus, the public health and welfare.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After an evaluation of current regulations, the Exchange has determined that these proposed regulations are not inconsistent or incompatible with any existing regulations. While several California statutes and regulations govern health insurance and notably include provisions affecting the Exchange in the Government Code, the Insurance Code, and the Health & Safety Code, the Exchange has determined these are the only regulations that concern the appeals process in the SHOP Exchange.

Anticipated Benefits of the Proposed Regulation

Anticipated benefits of the proposed action include nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity. This includes:

- Providing structure for the Exchange to give predictability and clear standards to the public and qualified health plan issuers now and into the future.
- Establishing an appeals process for prospective and current enrollees of the Exchange, thereby providing due process to applicants who have been denied health insurance.
- Establishing clear guidelines for the public to request and receive a fair hearing.
- Reducing error in eligibility determinations of SHOP coverage, thereby more accurately determining who is eligible for SHOP coverage.
- Minimizing the appeal entity's workload and maximizing efficiency by establishing a process for informal resolution prior to a hearing.
- Promoting access to health insurance by establishing an expedited appeal process when there is an immediate need for health services.
- Aligning California's regulations with the federal act and complying with state law.
- Providing increased health care access to the public in California; and
- Ultimately, helping to save lives and increase the health of the public in California

DISCLOSURES REGARDING THE PROPOSED ACTION

The Exchange has made the following initial determinations:

Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Mandate on Local Agencies and School Districts

None. The Executive Director of the California Health Benefit Exchange has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

Cost To Any Local Agency or School District Which Must Be Reimbursed In Accordance With Government Code Sections 17500 Through 17630

None. This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Costs or Savings to State Agencies

The proposal results in additional costs to the California Health Benefit Exchange, which is currently funded by a mix of sustainability funding and federal grant money. The Exchange will become financially self-sustaining in 2016. The proposal does not result in any costs or savings to any other state agency.

Costs or Savings in Federal Funding to the State

The proposal results in additional costs to the California Health Benefit Exchange, which is currently funded by a mix of federal grant money and self-sustainability dollars from QHP participation fees. The Exchange will become financially self-sustaining in 2016.

Other Nondiscretionary or Savings Imposed on Local Agencies

None. This proposal does not impose other nondiscretionary costs or savings on local agencies.

Significant Effect on Housing Costs

None.

Effect on Small Business

The proposal results in an effect on participating small businesses with 2-49 employees statewide by providing them with an appeal process in the small business marketplace to appeal eligibility determinations for health insurance through the Exchange. There are no jobs created or eliminated from this proposal.

Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete With Businesses in Other States

None.

Cost Impacts on a Representative Private Person or Business

While the total statewide dollar costs to businesses or individuals over the lifetime of the proposed regulation is unknown, the current estimates are no impacts for initial costs to a small business or a typical business or individual with no annual ongoing costs to either.

Results of the Economic Impact Assessment/Analysis

The Exchange concludes regarding the proposed regulations that it is:

- (1) **unlikely** that the proposal will create or eliminate any jobs in the State;
- (2) **unlikely** that the proposal will create or eliminate businesses within the State;
- (3) **unlikely** that the proposal will impact the expansion of businesses currently doing business in California; and
- (4) **likely** that the health and welfare of consumers will benefit from the proposed regulation.

Benefits of the Proposed Action

Anticipated benefits including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:

- Providing structure for the Exchange to give predictability and clear standards to the public and qualified health plan issuers now and into the future.
- Establishing an appeals process for prospective and current enrollees of the Exchange, thereby providing due process to applicants who have been denied health insurance.
- Establishing clear guidelines for the public to request and receive a fair hearing.
- Reducing error in eligibility determinations of SHOP coverage, thereby more accurately determining who is eligible for SHOP coverage.
- Minimizing the appeal entity's workload and maximizing efficiency by establishing a process for informal resolution prior to a hearing.
- Promoting access to health insurance by establishing an expedited appeal process when there is an immediate need for health services.
- Aligning California's regulations with the federal act and complying with state law.
- Providing increased health care access to the public in California; and
- Ultimately, helping to save lives and increase the health of the public in California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Exchange invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Mandy Garcia
Regulations Analyst
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8432

The backup contact person for inquiries concerning the proposed administrative action may be directed to:

Brandon Ross
Assistant General Counsel
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8281

Please direct copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mandy Garcia at the above contact information.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Exchange will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date of this notice is published in the Notice Register, the rulemaking file consists of this notice,

the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Mandy Garcia at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Exchange may adopt the proposed regulations substantially as described in this notice. If the Exchange makes modifications which are sufficiently related to the originally proposed text, it will make the modified text to the public at least 15 days before the Exchange adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mandy Garcia at the address indicated above. The Exchange will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mandy Garcia at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline can be accessed through our website at www.healthexchange.ca.gov/regulations.

**INITIAL STATEMENT OF REASONS FOR THE
SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP)
APPEALS PROCESS
OF THE CALIFORNIA HEALTH BENEFIT EXCHANGE
CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 6
ADOPT SECTION 6540, 6542, 6544, 6546, 6548, 6550 AND 6552**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when a permanent rulemaking action is undertaken. The following information required by the APA pertains to this particular rulemaking action:

SUMMARY OF THE PROPOSED REGULATIONS:

On December 3, 2013 The California Health Benefit Exchange (“Covered California” or “Exchange”) adopted emergency regulations found at Title 10, California Code of Regulations (CCR), Chapter 12, Article 6, Sections 6540, 6544, 6546, 6548, 6550, and 6552. These emergency regulations are in effect and established the Exchange’s policies regarding the Small Business Health Option Program’s (SHOP) appeals process.

The Exchange is now proposing to make permanent those emergency regulations at 10 CCR § 6540-6552. The proposed regulations implement, interpret, and make specific requirements in state and federal law.

AUTHORITY AND BACKGROUND

The federal Patient Protection and Affordable Care Act (ACA) required each state to establish an American Health Benefit Exchange that makes available qualified health plans (QHPs) to qualified individuals and small employers by January 1, 2014. In 2010, the legislature enacted the California Patient Protection and Affordable Care Act (California Government Code Section 100500 et seq.), which established the Exchange (AKA Covered California). Covered California is California’s competitive marketplace where consumers and small businesses can shop for and purchase affordable QHPs certified by the Exchange. Additionally, the Exchange is the only place where consumers and small employers can receive tax credits to lower the costs of health insurance, if eligible.

State law further specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange Board to adopt rules and regulations, as necessary. It grants the Exchange with emergency rulemaking authority until January 1, 2016 in accordance with the APA. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws and to make permanent, with amendments, a previous rulemaking initially adopted through the Exchange’s emergency rulemaking authority.

This proposed action is specifically in furtherance of California Government Code Section 100506 which instructs the Exchange to establish an appeals process for prospective and current enrollees of the Exchange that complies with federal law. Additionally, Title 45, Section 155.740 of the Code of Federal Regulations (CFR) requires states establishing a SHOP to provide an eligibility appeals process for the SHOP.

PROBLEM STATEMENT

The Exchange is a relatively new state entity administering recent federal and state health care legislation. Without regulations, the Board, the public, small employers, employees, health insurance issuers, the SHOP and the appeals entity would not know how to interpret and implement the statutes that authorize the Exchange. More specifically, the California enabling legislation requires the Exchange to establish an appeals process for prospective and current enrollees of the Exchange. Government Code § 100506(a). Further, federal law requires a state with an Exchange that provides for the establishment of a SHOP to have an eligibility appeals process for the SHOP. 45 C.F.R. § 155.740(b)(1). The SHOP appeals process is not only required by state and federal law, but it is fundamental in administering the Exchange on an ongoing basis. Without this proposed regulatory action, employers and employees would have no recourse if the SHOP were to make an erroneous eligibility determination. Absent a SHOP appeals process, some members of the public would be erroneously denied access to health insurance.

PURPOSES AND BROAD OBJECTIVES

The broad purpose of this proposed regulatory action is to promote the health and welfare of Californians by expanding access to health insurance. The proposed regulatory action outlines procedures for SHOP appeals in order to protect members of the public from being erroneously denied access to health insurance by the SHOP.

The specific purpose of the proposed regulatory action is to establish employee and employer rights and responsibilities with respect to SHOP appeals, to establish obligations on the part of the SHOP and the appeals entity, and to outline the appeals process, including informal appeals and expedited appeals, in order to promote and protect the public health and welfare.

The broad objectives of this proposed regulatory action are to:

- Provide structure for the Exchange and give predictability and clear standards to the public, the SHOP, and the appeals entity.
- Promote the health and welfare of Californians by expanding access to health insurance.
- Protect small business employees from being erroneously denied access to health insurance.
- Allow the Exchange to administer the PPACA transparently, systematically, and predictably for the public on an ongoing basis.
- Put California in compliance with the federal act.
- Reduce health care costs and provide increased and quality health care to the public in California.

BENEFITS

Anticipated benefits including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:

- Providing structure for the Exchange to give predictability and clear standards to the public and qualified health plan issuers now and into the future.
- Establishing an appeals process for prospective and current enrollees of the Exchange, thereby providing due process to applicants who have been denied health insurance.
- Establishing clear guidelines for the public to request and receive a fair hearing.
- Reducing error in eligibility determinations of SHOP coverage, thereby more accurately determining who is eligible for SHOP coverage.
- Minimizing the appeal entity's workload and maximizing efficiency by establishing a process for informal resolution prior to a hearing.
- Promoting access to health insurance by establishing an expedited appeal process when there is an immediate need for health services.
- Aligning California's regulations with the federal act and complying with state law.
- Providing increased health care access to the public in California; and
- Ultimately, helping to save lives and increase the health of the public in California.

CONSISTENCY AND COMPATIBILITY

The Exchange has evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of the laws that regulate the Exchange and specifically those statutes and regulations related to health insurance in general. Exchange staff also conducted an internet search of other state agency regulations. Several California statutes and regulations govern health insurance, most notably certain provisions of the Health and Safety Code and the Insurance Code. However, no known statute or regulation conflicts with this proposed regulatory proposal.

DETAILED DISCUSSION OF THE SPECIFIC PURPOSE AND NECESSITY FOR EACH REGULATION PROPOSED FOR ADOPTION

Article 6. SHOP Appeals

Sections 6540, 6544, 6546, 6548, 6550, and 6552

Authority Cited in this Regulatory Proposal: Sections 100503, 100504, and 100506 Government Code.

References Cited in this Regulatory Proposal: Sections 155.740

Section 6540: Definitions for the Small Business Health Options Program (SHOP) Appeals Process

Section 6540 in its entirety, defines and makes specific the terms used for purposes of the SHOP Appeals Process. This is necessary to clarify the meaning of terms used throughout the proposed appeals regulations. This is also necessary to ensure that the employer and employee have a clear understanding of the terms used for the purposes of the SHOP Appeals Process. These definitions are in addition to the definitions provided in Section 6410 of Article 2.

Appeal record: this term defines all documentation related to the appeal and appeal decision. All appeal related documentation constitutes the appeal record. This definition is necessary so that all parties are aware of what documentation constitutes the appeal record and for the appeals entity to have sufficient information to make a final determination.

Appeals Representative: this defines who can be an appeals representative for the appellant. This definition is necessary so all parties understand who can represent the appellant during the appeals process and to allow the appellant to designate from a wide range of choices as to who they want to represent them.

Appeal request: this defines how an applicant, enrollee, employer or employee may request an appeal of the SHOP's eligibility determination. This is necessary to establish how and by whom an appeal request can be made.

Appeals entity: this specifies that the California Department of Social Services (DSS) is the designated body to conduct appeals hearings of any SHOP eligibility determinations. This is necessary to identify the entity designated to handle SHOP appeal hearings. The Exchange is required in Government Code § 100506.3 to contract with DSS for appellate services in the Individual Exchange. For consistency and due to DSS's unique experience and expertise with healthcare eligibility and Individual Exchange appeals, DSS was also selected through contract to provide appellate services to the Exchange SHOP.

Appellant: this defines who can request an appeal. This is necessary to identify who may request an appeal and since these are the only people that could potentially want to appeal, they are all included.

De novo review: this defines a review of an appeal without deference to prior decisions in a case. This is necessary to provide all parties with a definition for de novo review and we are using the most common simple definition to make it easier for appellants to understand.

Eligibility determination: this is when an applicant, enrollee, employer or employee is determined to be eligible for a QHP. This is necessary to provide all parties with a definition for eligibility determination. These parties are included since they are the only ones that might be determined eligible.

Evidentiary hearing: this defines a hearing where evidence may be presented. This is necessary to provide all parties with a definition for evidentiary hearing and we are using the most common simple definition to make it easier for appellants to understand.

Good Cause: cause as defined in Section 10951(b)(2) of the Welfare and Institutions Code. This is necessary to establish the definition of good cause for clarity and specificity. This exact definition was chosen for consistency with the definition utilized by the Department of Social Services (DSS) and which applies to the appeals process in the Individual Exchange pursuant to Government Code 100506.3. There, the Exchange is required to enter into a contract with the California Department of Social Services (DSS) for appellate services in the Individual Exchange. Due to the unique expertise of DSS in handling healthcare eligibility and Exchange appeals for the Individual Exchange, the Exchange has also entered into a contract with DSS to handle SHOP appeals and thus, the same definition of good cause is adopted herein.

Statement of Position: this defines a written statement of the SHOP's official position of the appeal. The definition of Statement of Position (SOP) follows Section 10952.5 of the Welfare

and Institutions Code. The same as with the definition above for “good cause,” the definition for SOP follows a statutory definition applicable to the Department of Social Services appeals process and has been applied here for consistency in the SHOP. Additionally, the SOP is necessary so that all parties will have specific information from the SHOP on its position.

Vacate: this defines a previous action that is set aside. This is necessary to ensure that all parties understand this term and we are using the most common simple definition to make it easier for appellants to understand.

Section 6542: General Eligibility Appeals Requirements for SHOP

Section 6542, in its entirety, defines and makes specific all requirements of the appeals process. This section defines what can be appealed, how an appellant can file an appeal, timeframes, notification requirements, and the role of the appeals entity. This section is necessary to clarify all timeframes and requirements of the SHOP Appeals process. This is also necessary to ensure that all parties involved in an appeal are aware of the requirements.

Section 6542(a) provides an employer with an explanation of reasons for which he or she can file a valid appeal. This is necessary to clarify the reasons that an employer can file an appeal. This is also necessary to comply with 45 CFR § 155.740(c).

Section 6542(a)(1) advises an employer that he or she may appeal an eligibility determination made by the SHOP. This is necessary to advise the employer that if he or she is determined to be ineligible for coverage in the SHOP, he or she may appeal the eligibility determination. The right to appeal the SHOP’s eligibility determination is necessary to protect an employer from being denied access to group health coverage through SHOP due to an erroneous determination. This is also necessary to comply with 45 CFR § 155.740(c)(1).

Section 6542(a)(2) advises an employer that he or she may appeal the SHOP’s failure to provide written notice of an eligibility determination within 15 calendar days of receipt of the completed application. This subsection now includes clarification that it is upon the receipt of a completed application that begins the clock for the required timeline to provide notice from the Exchange. A complete application is when an employer provides an application with the full information required for the Exchange to make an eligibility determination and to enable enrollment in a SHOP QHP. This is necessary to advise the employer that he or she may file an appeal for an untimely eligibility determination. The right to appeal an untimely notification of an eligibility determination is necessary to promote an efficient eligibility determination and notification process, and to ensure that an employer is informed of the SHOP’s eligibility determination within an appropriate amount of time. This is also necessary to comply with 45 CFR §155.740(c)(2).

Section 6542(b) advises an employee of the reasons for which he or she can file a valid appeal. This is necessary to make specific the reasons that an employee can file an appeal. This is also necessary to comply with 45 CFR § 155.740(d).

Section 6542(b)(1) advises an employee that he or she may appeal an eligibility determination made by the SHOP. This is necessary to advise the employee that if he or she is determined to be ineligible for coverage in the SHOP, he or she may appeal the eligibility determination. The right to appeal the SHOP’s eligibility determination is necessary to protect an employee from

being denied access to health insurance due to an erroneous determination. This is also necessary to comply with 45 CFR § 155.740(d)(1)

Section 6542(b)(2) advises an employee that he or she may appeal the SHOP's failure to provide written notice of an eligibility determination within 15 calendar days of receipt of the complete application. This is necessary to advise the employee that he or she may file an appeal for an untimely eligibility determination. The right to appeal an untimely notification of an eligibility determination is necessary to promote an efficient eligibility determination and notification process, and to ensure that an employee are informed of the SHOP's eligibility determination within an appropriate amount of time. This is also necessary to comply with 45 CFR §155.740(d)(2).

Section 6542(c) specifies the information that the SHOP must include in a notice to the applicant of the right to appeal an eligibility determination. This is necessary to codify the information the SHOP must include in a notice of the right to appeal an eligibility determination in order to ensure that an employee or employer has sufficient notice and information to appeal the eligibility determination. This is also necessary to comply with 45 CFR § 155.740(e).

Section 6542(c)(1) instructs the SHOP to include in a notice of the right to appeal an eligibility determination the reason for the eligibility determination, including a citation to the applicable regulations. This is necessary to ensure that an employee or employer understands the reason for the SHOP's eligibility determination, and has sufficient information available in order to appeal the eligibility determination. Including a citation to applicable laws is necessary to ensure that an employee or employer understands the basis upon which the SHOP made its eligibility determination. This is also necessary to comply with 45 CFR § 155.740(e)(1).

Section 6542(c)(2) instructs the SHOP to include in a notice of the right to appeal an eligibility determination the procedure by which the employer or employee may request an appeal of the eligibility determination. This is necessary to ensure that an employee or employer knows how to appeal an eligibility determination. This is also necessary to comply with 45 CFR § 155.740(e)(2).

Section 6542(d) addresses the requirements of the SHOP and the appeals entity in terms of accepting an appeal request and assisting a employee and employer in the appeal process. This is necessary to outline the guidelines with which the SHOP and appeals entity must comply. This is also necessary to comply with 45 CFR § 155.740(f).

Section 6542(d)(1) provides the timeframe in which an employee or employer may request an appeal. This is necessary to ensure that an employee or employer has sufficient time to request an appeal. This section also addresses the fact that an employer or employee may be allowed to request an appeal outside of this timeframe if the appeals entity believes that good cause exists to justify and allow a late appeal request. Consideration of "good cause" is necessary to provide an exception to the timeframe in which an employer or employee may request an appeal of an eligibility determination consistent with the DSS appeals process as codified in the Welfare & Institutions Code § 10951(b)(2). This subdivision is also necessary to comply with 45 CFR § 155.740(f)(1).

Section 6542(d)(2) makes specific what methods are acceptable for submission of an appeal request. This is necessary to ensure that employees and employers have various methods by which to request an appeal, and to ensure that all parties know which methods are acceptable.

Section 6542(d)(3) advises that the SHOP and appeals entity must comply with accessibility requirements specified in 45 CFR § 155.205(c). This is necessary to ensure that the SHOP and appeals entity provide information in a way that an employer or employee can understand, even if the employer or employee has a disability or has limited English proficiency.

Section 6542(d)(4) advises that the SHOP and appeals entity must assist an employer or employee with the submission of an appeal and not interfere with an employer or employee's right to request an appeal. This is necessary to facilitate an appeal request process for an employee or employer, and to ensure that the SHOP and appeals entity handle an appeal request appropriately and in a way that does not inhibit the process.

Section 6542(d)(5) advises the SHOP and appeals entity that an appeal request is valid if it is submitted in accordance with the requirements of this section. This is necessary to comply with 45 CFR § 155.740(f)(1)(ii)(4).

Section 6542(e) sets the timeframe in which the SHOP shall transmit an appeal request to the appeals entity after receiving the request from an employee or employer. This section also makes clear that transmission must be via a secure electronic interface. This is necessary to ensure that appeal requests are processed quickly and to ensure the protection of the appellant's PII. With the goal of processing appeal requests quickly, 3 business days is the shortest amount that will still allow the SHOP to process the appeal requests accurately.

Section 6542(f) sets the timeframe in which the appeals entity must confirm receipt from the SHOP of the appeal request. This is necessary to ensure that appeal requests are processed quickly. 3 business days is optimal because it allows the appeals entity to process the requests accurately while at the same time facilitating a quick process. A shorter amount of time would not give the appeals entity enough time to process the appeals requests accurately.

Section 6542(g) clarifies that the appeals entity shall conduct all appeals on behalf of the SHOP according to these proposed regulations. This is necessary to ensure that the appeals entity follows all rules and requirements set forth in these proposed regulations in order to provide and maintain a successful appeals process.

Section 6542(h) advises that an administrative law judge shall be appointed by the appeals entity to make a determination on a case-by-case basis of the validity of all appeal requests and determinations of good cause. This is necessary to advise who shall make the determination as to whether an appeal request is valid or not. The use of an administrative law judge is necessary to ensure that the decision-maker on appeal is independent and impartial to both the appellant and the SHOP. The requirement that the administrative law judge make the determinations on a case-by-case basis is necessary to ensure that each appeal request is examined independently and a just result is achieved for every appeal request.

Section 6542(i) advises that upon receipt of a valid appeal, the appeals entity shall send written acknowledgement to the appellant, or the employer and employee if the employee is the appellant, within five (5) business days of receipt. This section also advises what content the written acknowledgement shall include. This is necessary to establish a timeframe in which an appellant can expect to receive acknowledgement from the appeals entity upon receipt of a valid appeal request and what content the written acknowledgement shall include. Also, holding the appeals entity to a timeliness standard is necessary to ensure that the whole appeal process progresses quickly. 5 business days is necessary to give the appeals entity adequate time

process the appeal request and send written acknowledgement to the appellant. Each written acknowledgement is specific to an appellant, so fewer than 5 business days would not give the appeals entity enough time to process each appeal request and send a written acknowledgement to each specific appellant. This is also necessary to comply with 45 CFR §§ 155.740(g)(1)(i)(A)-(B).

Section 6542(i)(1) advises that the written acknowledgement to the appellant shall include an explanation of the appeals process. This is necessary to establish what information the appeals entity must include in the written acknowledgement to the appellant in order to ensure that the appellant understands how to continue with the appeal process. This is also necessary to comply with 45 CFR § 155.740(g)(1)(i)(A).

Section 6542(i)(2) advises that the written acknowledgement to the appellant shall include instructions for submitting additional evidence for consideration. This is necessary to establish what information the appeals entity must include in the written acknowledgement to the appellant in order to ensure that the appellant understands how to submit additional information if he or she so desires. This is also necessary to comply with 45 CFR § 155.740(g)(1)(i)(B).

Section 6542(j) advises what the appeals entity must do upon receipt of an invalid appeal request. This establishes guidelines on how the appeals entity shall proceed upon receipt of an invalid appeal request. This is necessary to ensure that an error in an appeal request, thus making the request invalid, does not bar an employee or employer from correcting the error and resubmitting the appeal. This is also necessary to comply with 45 CFR §§ 155.740(g)(2)(i)-(ii).

Section 6542(j)(1) advises that the appeals entity shall send written acknowledgement of an invalid appeal to the appellant within five (5) business days of receipt. This section also advises what the written acknowledgement shall include. This is necessary to establish a timeframe in which an appellant can expect to receive acknowledgement from the appeals entity upon receipt of an invalid appeal request and what the written acknowledgement shall include. 5 business days is necessary to give the appeals entity sufficient time to analyze the appeal request, make a determination that the request is invalid, and send written notice to the appellant. Fewer than 5 days would not give the appeals entity enough time to perform these functions accurately.

Section 6542(j)(1)(A) instructs the appeals entity to, upon receipt of an invalid appeal request, include in its written notice a statement that the appeal request has not been accepted. This is necessary to ensure an appellant is informed of the status of his or her appeal request. An appellant must be aware that his or her appeal request is invalid in order to cure the defect, if possible. This is also necessary to comply with 45 CFR § 155.740(g)(2)(i)(A).

Section 6542(j)(1)(B) instructs the appeals entity to, upon receipt of an invalid appeal request, advise the appellant why his or her appeal request is has not been accepted. This is necessary to ensure that an appellant knows how to cure the defect, if possible. This is also necessary to comply with 45 CFR § 155.740(g)(2)(i)(B).

Section 6542(j)(1)(C) instructs the appeals entity to, upon receipt of an invalid appeal request, advise the appellant that he or she may cure the appeal request's defect, if possible, and resubmit it. This is necessary to facilitate the appeal process for an appellant who has submitted an invalid appeal and who wishes to resubmit the appeal. Specifically, this is necessary to inform an appellant that he or she may resubmit an invalid appeal so long as its defect is cured. This section also establishes a timeframe in which a revised appeal request may be submitted.

If the 90 days pursuant to (d)(1) of this section has lapsed, then an appellant is given an additional 10 calendar days from the date of notice to resubmit the appeal request. This is necessary because, if the appellant submits an appeal request within 90 days of an eligibility determination, but the appellant is notified after the 90 days has lapsed that the appeal request is invalid, fairness requires that the appellant still have an opportunity to cure the defect and resubmit the appeal request. This subdivision is also necessary to comply with 45 CFR § 155.740(g)(2)(i)(C).

Section 6542(j)(2) instructs the appeals entity to treat as valid an amended appeal request that meets the requirements to be considered valid. This is necessary to ensure that an employee or employer with a valid appeal request is not denied the right to appeal simply because his or her prior appeal request was invalid. This is also necessary to comply with 45 CFR § 155.740(g)(2)(ii).

Section 6542(k) advises that the appellant may allow a representative to assist them with their appeal. This is necessary to ensure that an appellant's case can be presented competently in order to maximize the effectiveness of the appeal process.

Section 6542(l) all parties that an appellant may seek judicial review to the extent it is available by law. This is necessary to ensure accuracy of eligibility determinations on appeal, and to ensure that an appellant's due process rights are not violated by denying judicial review when it is available by law.

Section 6542(m) specifies that all data exchanges that are part of the appeals process must be secure and in an electronic format to ensure protection of privacy. This section also specifies that the transfer of data must comply with 45 CFR § 155.260 and the Information Practices Act of 1977 (Cal. Civ. Code § 1798 et. seq.) and be in an electronic format that is consistent with 45 CFR § 155.270. This is necessary to ensure that all data transfer is secure and compliant with the federal regulations and Information Practices Act noted above.

Section 6542(n) clarifies that the SHOP and appeals entity must provide the appellant with the contents of their entire file from the date on which the appeal request is filed to the date on which the appeal decision is issued. This is necessary to ensure that the appellant has the opportunity to be informed of all information on his or her record in order to be fully engaged in the appeal process and to understand the basis on which the appeals entity makes its determination.

Section 6544: Information Resolution

Section 6544, in its entirety, defines and makes specific all requirements of the informal resolution process. This section advises that the SHOP must contact the appellant and attempt to informally resolve the appeal upon receipt of an appeal request. This section also clarifies that the appellant may proceed with an appeal hearing regardless of the outcome of the informal resolution. The appellant may also withdrawal their appeal request. This section specifies the SHOP's notification requirements and timelines in the event of a successful informal resolution and the appellant's request to withdrawal their request for an appeal hearing. This is necessary to specify and clarify all requirements and notifications pertinent to the informal resolution process. Informal resolution is necessary to maximize efficiency in the appeals process because it provides an appellant with the option for quick resolution and it reduces the number of potentially unnecessary hearings for the appeals entity.

Section 6544(a) advises that an appellant shall have an opportunity to resolve his or her appeal through informal resolution prior to a hearing. This is necessary to clarify this option for all parties involved in an appeal. The right to informal resolution is necessary to ensure that an appellant has the opportunity to resolve a SHOP appeal issue quickly and to potentially forego an unnecessary hearing.

Section 6544(b) clarifies what the SHOP shall do upon receipt of a valid appeal request. This is necessary to provide guidance on how the SHOP shall proceed upon receipt of a valid appeal request. This is also necessary to promote efficient resolution of an appeal and to potentially forego an unnecessary hearing.

Section 6544(b)(1) advises that the SHOP shall contact the appellant to try to resolve the issue upon receipt of a valid appeal. This is necessary to provide guidance to the SHOP on how to proceed upon receipt of a valid appeal. Requiring the SHOP to contact an appellant to attempt to informally resolve the appeal is necessary to ensure that the appellant has the opportunity to resolve the appeal informally and potentially forego a hearing. If the SHOP is not required to contact the appellant, then the appellant may not be aware of his or her opportunity for informal resolution.

Section 6544(b)(2) advises that the appellant may provide relevant and pertinent documentation in order to informally resolve the appeal. This is necessary to provide guidance to the SHOP and appellant on how they may proceed to resolve this issue. This is also necessary to ensure that the SHOP bases its decision on all relevant available information, thereby maximizing the informal resolution's fairness and effectiveness.

Section 6544(c) advises that an appellant may proceed to hearing no matter what the outcome of the informal resolution unless he or she withdraws the appeal request prior to the hearing. This is necessary to advise all parties of the appellant's right to proceed with or withdrawal their appeal request no matter what the outcome of the informal resolution. The right to a hearing notwithstanding the informal resolution's outcome is necessary to provide an appellant with the opportunity to have his or her appeal considered by a party who is independent from the SHOP, thereby ensuring a fair appeal process.

Section 6544(d) advises what occurs if an appeal advances to hearing. This section is necessary to reduce the burden on an appellant by ensuring that he or she is not required to provide information or documentation that he or she already provided in the informal resolution process. This section is also necessary to ensure that an appellant and the appeals entity are informed of the SHOP's position in advance of the hearing, thereby providing them with enough time to effectively prepare for the hearing.

Section 6544(d)(1) advises that during a hearing an appellant shall not be asked to provide information that has been previously provided. All information previously provided shall be available to all parties during the hearing. This is necessary to minimize the hardship on an appellant during the appeal process. Requiring an appellant to provide duplicate information would be burdensome and an inefficient use of time.

Section 6544(d)(2) specifies that if an appeal advances to hearing, the SHOP shall issue a statement of position and provide all documentation related to the case to the appeals entity via secure electronic interface no less than two (2) business days prior to the hearing. This is necessary to advise all parties of the SHOP's documentation requirement prior to the hearing as

well as to set a timeline and transmission method for this documentation requirement. Requiring the SHOP to transmit the statement of position, and all papers, requests, and documents obtained during the informal resolution process is necessary to ensure that the appeals entity bases its decision on all relevant information. Requiring the SHOP to transmit this information to the appeals entity no less than two (2) business days before the hearing ensures that the appeals entity has adequate time to assess the SHOP's reasoning.. Fewer than two (2) business days would likely not give the appeals entity enough time to process the documents and give sufficient consideration to the SHOP's position in order to reach an informed conclusion. Finally, requiring the SHOP transmit all information via secure electronic interface is necessary to ensure that an appellant's personally identifiable information is transmitted securely.

Section 6544(d)(3) clarifies that the SHOP must make the statement of position available to an appellant no less than two (2) business days prior to the hearing. This is necessary to establish the requirement and timeframe for an appellant to receive the SHOP's statement of position. This is also necessary to ensure that an appellant is adequately informed of the SHOP's position in order to allow the appellant to effectively present his or her case to the appeals entity as to why the SHOP is purportedly incorrect. The requirement that the SHOP make the statement of position available no less than two (2) business days before the hearing is necessary to give the appellant adequate time to read and understand the SHOP's position. Fewer than two (2) business days would likely not be enough time for an appellant to read and understand the SHOP's statement of position, and then develop reasons why the SHOP is purportedly incorrect.

Section 6544(e) explains the SHOP's notice requirements in the event that an appellant is satisfied with the outcome of the informal resolution process and withdraws his or her appeal request and the appeal does not advance to hearing. This section also references section 6546(a), the provision explaining how an appellant may withdraw his or her appeal request. Requiring the SHOP to take appropriate steps to inform the appellant and the appeals entity of the informal resolution's outcome is necessary to ensure that all parties reach a mutual understanding of the informal resolution's outcome, and that there is no confusion about the effect of the outcome and its effective date.

Section 6544(e)(1) specifies that the SHOP shall provide an appellant with a notice of the outcome of the informal resolution within five (5) business days. This is necessary to set a timeframe for notification of the outcome of the informal resolution. Requiring the SHOP to send notice within five (5) business days is necessary to ensure that the appellant is timely informed of the informal resolution's outcome. Yet, a requirement to send notice within fewer than five (5) business days would impose an undue burden on the SHOP. Giving the SHOP a maximum of five (5) business days provides enough time for the SHOP to accurately draft a notice letter explaining details specific to each appellant's case.

Section 6544(e)(1)(A) specifies that the notice shall include the outcome of the informal resolution and a plain language description of the effect of such outcome on an appellant's appeal and eligibility. This is necessary to provide guidance on the content required in the informal resolution notice to the appellant. Requiring the SHOP to send this notification to an appellant is necessary to ensure the appellant becomes aware of the outcome and effect of the informal resolution. Further, due to the technical nature of some terms involved in the appeals process, requiring a plain language description of the informal resolution's effect on the appellants appeal and eligibility is necessary to ensure that the appellant understands the information that the SHOP is conveying.

Section 6544(e)(1)(B) advises that the informal resolution notification shall state the effective date of the outcome. This is necessary to ensure the appellant fully understands the outcome's effect on his or her appeal and eligibility. For example, without clarification from the SHOP, the appellant may not be aware that coverage may be retroactively effective.

Section 6544(e)(2) specifies that a notice of informal resolution must be sent by the SHOP to the appeals entity within three (3) business days. This section also clarifies that the notice must be submitted via secure electronic interface. This is necessary to establish a timeframe and method for the SHOP to advise the appeals entity of the informal resolution with the appellant. Requiring the SHOP to notify the appeals entity of the informal resolution's outcome is necessary to ensure that the appeals entity is aware that the appeal is no longer active. Section 6542(e) requires the SHOP, upon receipt of an appeal request, to transmit the appeal request to the appeal entity. If the SHOP were to not notify the appeals entity of the informal resolution's outcome, then the appeals entity may believe that the appellant still wishes to pursue the appeal. The requirement that the SHOP send notice within three (3) business days from the date of the outcome is necessary to ensure that there is little delay between the outcome and the notice to the appeals entity. Fewer than three (3) business days would be too burdensome on the SHOP as it would not provide enough time to draft and send each specific notice accurately. Lastly, requiring the SHOP to send notice of the outcome via secure electronic interface is necessary to ensure that an appellant's personally identifiable information is transmitted securely.

Section 6546: Dismissal of Appeals

Section 6546, in its entirety, instructs the appeals entity to dismiss an appeal in certain circumstances, specifies and makes clear timeframes and content that must be included in dismissals of appeals notifications, and it specifies the appellant's right to show good cause why a dismissal should be vacated. This is necessary to inform all parties of the reasons an appeal may be dismissed, to ensure that appellants are timely informed of the reasons for dismissal, and to inform all parties that a dismissal can be vacated upon showing of good cause in order to ensure that the appeal process functions fairly and effectively.

Section 6546(a) specifies the instances in which the appeals entity shall dismiss an appeal. This is necessary so that all parties are aware of the reasons for which the appeals entity shall dismiss an appeal. Dismissal in these instances is necessary if the appellant indicates by any of the listed actions or omissions that they are not proceeding with an appeal.

Section 6546(a)(1) specifies that the appeals entity shall dismiss an appeal if the appellant withdraws the appeal request in writing prior to the hearing date. This is necessary to advise all parties how an appeal may be withdrawn. That the withdrawal must be in writing is necessary to ensure that there is no confusion on the record over whether the appellant wishes to withdraw.

Section 6546(a)(2) specifies that the appeals entity shall dismiss an appeal request if the appellant does not meet the standards specified in Section 6542(d). This is necessary to inform all parties that the appeals entity will dismiss an appeal unless the appellant uses the appropriate methods to submit the appeal request. Failure to meet the appeal request standards makes it unlikely that the appeals entity would be able to conduct a thorough review.

Section 6546(a)(3) specifies that the appeals entity shall dismiss an appeal if the appellant fails to appear at a scheduled hearing without good cause. This is necessary to ensure all parties

understand that an appeal will be dismissed if the appellant fails to appear at the hearing without good cause. This is also necessary to ensure that an appellant knows that he or she cannot simply reschedule a hearing if he or she fails to appear without good cause. Also, such non-appearance reasonably leads the appeals entity to assume that the appellant does not wish to continue with the appeal.

Section 6546(b) specifies a timeframe in which the appeals entity must provide written notice to the appellant with the reason for the dismissal. The requirement that the appeals entity provide notice to the appellant of the dismissal is necessary to ensure that the appellant is informed if the appeals entity is no longer considering the appeal. Further, the requirement that the notice include the reason for dismissal is necessary to ensure that the appellant has the information available in order to show good cause, if good cause exists, why the dismissal should be vacated. Lastly, that the notice shall be provided within 15 business days from the date of dismissal is necessary to ensure that the appellant is timely informed of the dismissal, while providing sufficient time to the appeals entity to accurately draft and send each notice with information specific to each appellant. This is also necessary to comply with 45 CFR § 155.740(i)(ii)(2).

Section 6546(c) advises that if an appellant makes a written request to vacate a dismissal showing good cause, the appeals entity may vacate the dismissal. The appellant must make the written request within 30 days of the notice of dismissal. Allowing an appellant to show good cause why a dismissal should be vacated is necessary to protect the appellant's right to appeal when his or her appeal has been dismissed yet fairness dictates that the appeal should be heard. Limiting an appellant to 30 calendar days to make a written request is necessary to ensure that he or she does not wait an unreasonable amount of time to make the request. That is, the limitation helps ensure that the appeal process flows reasonably quickly from beginning to end while still giving an appellant enough time to show good cause, if applicable, why a dismissal should be vacated. This is also necessary to comply with 45 CFR § 155.740(i)(ii)(3).

Section 6548: Hearing Requirements

Section 6548, in its entirety, clarifies and makes specific all aspects and requirements for an appeals hearing. This includes requirements on notification timeframe, how the hearing shall be conducted, evidence presented at the hearing, who can attend the hearing, format of the hearing, what information the appeals entity shall use to make their appeal decision, postponements and continuances of a hearing. This section is necessary to provide all parties with the guidelines and an overview of an appeal hearing. In addition, outlining the requirements of an appeal hearing is necessary to ensure that the hearing is conducted fairly and systematically in order to achieve an accurate outcome.

Section 6548(a) clarifies that an appellant shall have an opportunity for a hearing in accordance with the requirements of this section in its entirety. This is necessary to establish that an appellant has the right to a hearing, and to be clear about what is necessary for conducting such a hearing.

Section 6548(b) specifies that the appellant shall receive written notification from the appeals entity 15 business days prior to the hearing date. The notification shall include date, time and location or format of the hearing. This is necessary to establish the timeframe and content of the written notification to the appellant regarding the appeal hearing. Sending written notification to an appellant of the date, time, and location or format of the hearing is necessary to inform the appellant so that he or she may participate in the hearing. Sending written notification to the

appellant no later than 15 business days prior to the hearing date is necessary to ensure that the appellant has sufficient time to adjust his or her schedule in order to be available for the hearing.

Section 6548(c) outlines specific requirements as to how a hearing shall be conducted. This is necessary to provide guidelines for the appeal hearing in order to ensure that the hearing is conducted fairly and in a manner that is likely to produce an accurate outcome.

Section 6548(c)(1) provides that the hearing shall be conducted after notice of the hearing as specified in Section 6548(b). This is necessary to clarify that the hearing will be conducted on the date and time stated in the written notification to the appellant. It is also necessary to ensure that an appellant has enough time to adjust his or her schedule and plan ahead to participate in the hearing.

Section 6548(c)(2) specifies that the appeals entity will conduct the hearing as an evidentiary hearing as specified in Section 6548(e). The appeals entity shall consider documentation previously provided to determine eligibility as well as additional relevant evidence provided during the course of the appeals process, including at the hearing. This is necessary so that the appeals entity considers all relevant evidence in order to make an accurate determination.

Section 6548(c)(3) specifies that the hearing shall be conducted by an administrative law judge not directly involved in the eligibility determination implicated in the appeal. Thus, the person conducting the hearing is not biased toward either party. This is necessary to ensure that the hearing is conducted fairly in order to achieve an accurate outcome.

Section 6548(c)(4) specifies that the hearing shall be conducted via telephone, video conference or in person. This section clarifies that the hearing will be conducted in accordance with the California Department of Social Services' Manual of Policies and Procedures Section 22-045.1. Giving an appellant the option of using different methods to participate is necessary because it makes the hearing more accessible than if the appellant could only participate in person. Furthermore, adopting the hearing processes of the Department of Social Services provides consistency with the Individual Exchange appeals process which is required under state law to follow the established DSS processes for Medi-Cal appeals wherever the federal rules are silent and so long as the processes does not conflict with federal rules. Here, based on the aforesaid reasons we have contracted with DSS to provide these same services in the SHOP, and accordingly have adopted the same pre-existing processes, as specified, in the proposed regulations.

Section 6548(d) clarifies what the appeals entity will allow of an appellant. This is necessary to establish the rights of an appellant during a hearing so that he or she may present his or her case effectively.

Section 6548(d)(1) specifies that an appellant shall be able to review his or her appeal record, including all documents that will be used in the appeal hearing at least two (2) days prior to the hearing and during the hearing. This is necessary to ensure that the appellant has all documents available to help present his or her case, and to ensure that he or she is aware of all information that will be used by the administrative law judge to determine the outcome.

Section 6548(d)(2) specifies that the appellant may bring witnesses to the hearing to testify if they choose. This is necessary to ensure that an appellant can effectively present his or her argument, if such argument relies on the testimony of witnesses.

Section 6548(d)(3) specifies that the appeals entity shall allow the appellant to establish all relevant facts and circumstances of their case. This is necessary to ensure that an appellant can effectively participate in a hearing. If an appellant is not given the opportunity establish facts and circumstances at a hearing, then the facts and circumstances would be established by information provided by the SHOP, and thus would be one sided and potentially unfair to the appellant.

Section 6548(d)(4) specifies that the appeals entity shall allow the appellant the opportunity to present an argument without undue interference. This is necessary because undue influence could prevent an appellant from presenting his or her case effectively, and if an appellant cannot present his or her case effectively, then the ability to appeal an eligibility determination has little meaning.

Section 6548(d)(5) specifies that the appeals entity shall allow the appellant to question or refute any testimony or evidence, as well as confront and cross-examine adverse witnesses This is necessary to ensure a fair hearing because, if an appellant is not given this opportunity, the administrative law judge would be forced to rely on testimony or evidence that may be incorrect or misleading, thereby increasing the chance of an inaccurate and unfair determination.

Section 6548(d)(6) specifies that the appeals entity shall allow the appellant to be represented by an appeals representative. This is necessary to ensure a fair hearing because an appellant's case may be more effectively presented by another individual.

Section 6548(e) clarifies that the appeals entity shall review the information used to determine the appellant's eligibility, as well as any additional relevant evidence presented during the course of the appeals process and during the hearing, to make their decision in the case. This is necessary because requiring the appeals entity to base its determination on all relevant available information increases the likelihood of an accurate and fair determination. This is also necessary to comply with 45 CFR § 155.740(k)(2).

Section 6548(f) clarifies that the appeals entity shall review all relevant facts and evidence presented during the appeals process, and shall not consider prior decisions in the case when making its decision. This is necessary to ensure that the appeals entity makes an appeal decision based on the facts and evidence presented during the appeals process. This is also necessary because, if the appeals entity were forced to defer to prior decisions in the case, then an incorrect SHOP determination would limit the appeals entity's ability to reach a correct determination.

Section 6548(g) clarifies that all postponement and continuances of an appeal hearing shall be conducted in accordance with the California Department of Social Services' Manual of Policies and Procedures Section 22-053. This section is necessary to establish a standard for the postponements and continuances of an appeal hearing so that the parties can know what to expect in these instances.

Section 6550: Expedited Appeal Process

Section 6550, in its entirety, clarifies and makes specific the expedited appeal process. This section provides guidelines for an expedited hearing including when an expedited hearing request would be honored, appeals entity requirements for denial of an expedited hearing

request, appeals entity requirements for acceptance of an expedited appeal request. This is necessary to ensure that all parties understand the reason for an expedited appeal and the appeals entity's notification procedures and guidelines for denial and acceptance of an expedited appeal request. The right to request an expedited appeals process is necessary to protect an appellant's health and welfare if waiting through the standard appeal process would result in jeopardizing his or her life or health, or ability to attain, maintain, or regain maximum function.

Section 6550(a) specifies that the appellant shall be entitled to an expedited appeal in the event that they have an immediate need for health services. This section is necessary to ensure that an appellant in immediate need for health services, who was erroneously denied eligibility by the SHOP, has the ability to quickly correct the SHOP's mistake through the expedited appeal process and procure the needed health services.

Section 6550(b) specifies what the appeals entity shall do if it denies an expedited appeal request. This is necessary to ensure the appeals entity acts appropriately when handling an expedited appeal request. The time-sensitive nature of an expedited appeal request requires the appeals entity to act with relative urgency to inform the appellant of the appeal request's status, even in the case of denial.

Section 6550(b)(1) specifies that if an expedited appeal request is denied, the appeals entity shall handle the appeal under the standard appeal request process and issue their appeal decision in accordance with Section 6552. This is necessary to establish a guideline on how the appeals entity shall proceed if an expedited appeal request is denied. Requiring the appeals entity to handle an appeal request under the standard appeals process if an expedited appeal is denied is necessary because proceeding with the standard appeals process may still benefit an appellant.

Section 6550(b)(2) advises the appeals entity how and when they must communicate a denial for an expedited appeal request to the appellant. This is necessary to establish a guideline and timeframe in which appeals entity must advise an appellant of the decision to deny an expedited appeal request. These guidelines are necessary because an appellant requesting an expedited appeal expects, and will benefit from, a quick response from the appeals entity regarding the request's status. This ensures that the appellant has the earliest opportunity to request a standard appeal.

Section 6550(b)(2)(A) advises that the written notification denying the expedited appeal request must include the reason that the request is being denied. This is necessary to promote transparency and to ensure that an appellant's expedited appeal request is not denied arbitrarily.

Section 6550(b)(2)(B) advises that the written notification shall advise the appellant that their appeal will be administered pursuant to the standard appeals process. This is necessary to establish the requirement for the written notification and to inform the appellant on how the appeal will proceed. Informing an appellant that the appeal request will be administered pursuant to the standard appeals process is necessary to ensure that an appellant understands that his or her appeal will proceed. If the appeals entity does not inform an appellant that the appeal request will be administered pursuant to the standard appeals process, then he or she might incorrectly believe that the eligibility determination appeal has been denied.

Section 6550(b)(2)(C) advises that the written notification shall contain an explanation of the appellant's rights under the standard appeals process. This is necessary to establish a guideline for the written notification and to ensure the appellant is advised of their rights. Explaining the appellant's rights under the standard appeals process is necessary to ensure the appellant understands how to proceed to appeal his or her case effectively.

Section 6550(c) specifies what the appeals entity shall do if it grants an expedited appeal request. This is necessary to enable an appellant to proceed to his or her appeal quickly in consideration of his or her immediate need for health services.

Section 6550(c)(1) specifies that an appeals entity must ensure that a hearing date is set on an expedited basis if the expedited appeal request is granted. Ensuring that a hearing date is set on an expedited basis is necessary to protect the health of an appellant who has an immediate need for health services. If the hearing date is not set on an expedited basis, then the appellant may be forced to wait unreasonably long for a hearing considering his or her immediate need for health services.

Section 6550(c)(2) advises the appeals entity how and when they must communicate a written acceptance for an expedited appeal request to the appellant. This is necessary to establish a guideline and timeframe in which appeals entity must advise the appellant of the decision to honor an expedited appeal request. Requiring the appeals entity to provide written notice within 10 calendar days is necessary to ensure that the appeals entity informs the appellant within a reasonable amount of time of information about the hearing. Fewer than 10 calendar days would not give the appeals entity enough time to process expedited appeal requests, make specific grant or denial determinations and send notices to each applicant.

Section 6550(c)(2)(A) specifies that the appeal entity must provide written notification to the appellant that their request for an appeal is granted. This is necessary to ensure that the appellant understands that his or her expedited appeal request was granted, instead of denied.

Section 6550(c)(2)(B) advises that the appeals entity must provide the date, time and type of hearing that will be convened in the written notification to the appellant. This is necessary to ensure that the appellant has the information needed in order to fully participate in the hearing.

Section 6550(c)(3) specifies that the appeals entity must notify the SHOP within three (3) business days from the date on which the appellant's request for expedited appeal is granted, providing notice via secure electronic interface.. This is necessary to ensure that the appeals entity informs the SHOP within a reasonable timeframe when an expedited appeal request is granted. Requiring notice in than three (3) days would place an undue administrative burden on the appeals entity. Requiring that notice is provided via secure electronic interface to the SHOP is necessary to ensure that an appellant's personally identifiable information (PII) remains secure.

Section 6552: Appeal Decisions

Section 6552, in its entirety, this section specifies and clarifies how the appeals entity shall make appeals decisions. This section provides guidelines and timeframes for written notification of an appeal decision and how the SHOP shall proceed based on the appeal decision. This section is necessary to provide guidelines and timeframes for appeals decisions and direction on how the SHOP will implement the appeal decision.

Section 6552(a) specifies how the appeals entity shall make the appeals decision, and how the appeals entity shall notify the appellant of the appeals decision. This is necessary to ensure that the appeals entity makes an accurate and fair appeals decision, and that it explains this decision clearly to the appellant.

Section 6552(a)(1) specifies that an appeals decision shall be based solely on the evidence presented during the appeals process and the eligibility requirements for the SHOP. This is necessary to ensure a fair hearing by requiring that the appeals entity base its decision on relevant evidence. This is also necessary to comply with 45 CFR § 155.740(l)(1)(i)-(ii).

Section 6552(a)(2) specifies that the appeals decision shall be stated in plain language and include the effect of the decision on the appellant's eligibility. This is necessary to establish a guideline on how the appeal decision shall be conveyed. Considering that a layperson might not understand some technical terms that may be used in a SHOP eligibility decision, a plain language description of the effect of the decision on the appellant's eligibility is necessary to ensure that the appellant understands the implication of the decision.

Section 6552(a)(3) specifies that the appeals decision shall identify the legal basis, including the regulations that support the decision. This is necessary to ensure that the appeals entity does not make an arbitrary decision, and to inform the appellant of the decision's basis.

Section 6552(a)(4) specifies that the appeals entity shall summarize the facts relevant to the appeal. This is necessary to ensure that the appeals decision is based on all relevant facts, and to ensure that the appellant understands which facts are relevant to the decision.

Section 6552(a)(5) specifies that the appeals decision shall state the effective date of the decision. This is necessary to inform the appellant of the effective date of the decision, and so that the SHOP can implement the decision on the correct date.

Section 6552(b) sets the timeframe in which the appeals entity shall issue and provide a written appeal decision to the appellant. Additionally, this section requires the appeals entity to issue and provide a written appeal decision to the employer, or to the employer and employee if an employee is appealing. This is necessary to establish a timeframe, and to specify to whom the appeals entity must provide a written appeal decision. This is also necessary to comply with 45 CFR § 155.740(m).

Section 6552(c) clarifies the SHOP's requirement upon issuance of an appeal decision. This is necessary to establish guidelines for how the SHOP shall proceed upon receipt of an appeals decision. This is also necessary to comply with 45 CFR § 155.740(n).

Section 6552(c)(1) advises that if the appellant is determined to be eligible, the SHOP shall make coverage retroactive to the date that the incorrect eligibility determination was made. This is necessary to set a guideline for the effective date of coverage if the SHOP's eligibility determination is determined to be incorrect. If the SHOP's eligibility determination was incorrect, then there was a span of time in which the appellant was eligible but was denied coverage. Retroactive implementation of eligibility is necessary to correct this error. This is also necessary to comply with 45 CFR § 155.740(l)(3).

Section 6552(c)(2) specifies that the SHOP shall implement the appeal effective as of the date of the notice of the appeal decision if eligibility is denied. This is necessary to establish a

guideline on how the SHOP shall proceed if the appeal decision denies eligibility. This is also necessary to comply with 45 CFR § 155.740(l)(3).

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following guidance:

- California Department of Social Services, State Hearing Manual, Manual Letter No. CFC-07-01 (January 24, 2007).
- Federal Register, Vol. 78, No. 169, 54070, 54109-54116, 54118-54119, *Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, and Eligibility Appeals; Final Rule* (discussing implementation of 45 CFR §§ 155.545, 155.740)(August 30, 2013). Accessible at: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21338.pdf>
- Federal Register, Vol. 79, No. 101, 30240, 30309, *Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Final Rule* (discussing amendments to and implementation of 45 CFR § 155.740)(May 27, 2014). Accessible at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>

ECONOMIC IMPACT ANALYSIS

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Background, Assumptions and Calculations:

The direct fiscal impact of this proposed regulation is the incurrence of costs to the Exchange to oversee and administer the SHOP appeals process, estimated at approximately \$7,166 in FY 2014-15, \$16,346 in FY2015-16 and \$26,749 in FY 2016-17. The estimated impact to the State (through Exchange sustainability funds) is \$8,173 in FY 2015-16 and \$26,749 in FY 2016-17. There is no impact on the General Fund. The estimated impact to Federal funds is \$7,166 in FY 2014-15 and \$8,173 in FY 2015-16. Again, there will be no impact on the General Fund.

Effect on Small Business.

The proposed regulations effect participating small businesses with 2-49 employees statewide by providing them with an appeal process in the small business marketplace to appeal eligibility determinations for health insurance through the Exchange. The Exchange anticipates this proposal will impact 2,076 small businesses.

Creation or Elimination of Jobs

The proposed regulatory action would establish employee and employer rights and responsibilities with respect to SHOP appeals, establish obligations on the part of the SHOP and the appeals entity, and outline the appeals process in order to promote and protect

employer and employee rights, and thus, the public health and welfare. The proposed regulation only pertains to the appeals process, not to the determination of whether an employee or employer is eligible to obtain health insurance coverage through the SHOP. Therefore, the Exchange does not anticipate the creation or elimination of any jobs as a result of these proposed regulations.

Creation or Expansion of Businesses

The proposed regulatory action would establish employee and employer rights and responsibilities with respect to SHOP appeals, establish obligations on the part of the SHOP and the appeals entity, and outline the appeals process in order to promote and protect employer and employee rights, and thus, the public health and welfare. The proposed regulation only pertains to the appeals process, not to the determination of whether an employee or employer is eligible to obtain health insurance coverage through the SHOP. Therefore, the Exchange does not anticipate the creation of new businesses nor expansion of businesses within California. There is also no expectation that existing businesses will be eliminated.

Benefits

The proposed rulemaking will promote access to health insurance by establishing an expedited appeal process when there is an immediate need for health services that in turn will improve the health and welfare of Californian residents. These proposed regulations are not expected to have any impact on the State's environment.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Stakeholders provided alternatives that were considered during the review of SHOP Appeals Process. SHOP considered and rejected the following alternatives:

1. **Alternative:** Employees should have a right to appeal if they are not deemed a qualified employee by their employer, and therefore not offered the opportunity to enroll in the SHOP as part of their Employer's Policy.

Reason for rejecting: Because a qualified employee is someone who has been offered coverage, it is up to the employer to determine which employees are offered coverage. Consistent with the definition of "qualified employee" in the federal rules, the Exchange cannot force an employer to offer coverage.

2. **Alternative:** Any violation of privacy and confidentiality protections by the SHOP (i.e., inappropriate sharing of information with QHPs or employers or other agencies) shall be appealable; the employee should also have a private right of action.

Reason for rejecting: Violations of privacy and confidentiality are not appealable issues for which a remedy would be available through an eligibility appeal process. These violations can be addressed through the complaint process or a private action.

3. **Alternative:** All SHOP Appeals should be conducted in person.

Reason for rejecting: Covered CA considered this suggestion and determined that it would not be practical, convenient, or cost effective in many cases. If the appellant would like to participate in their hearing in person, they have the option to request an in person hearing. This is also consistent with the Department of Social Services (DSS) appeals processes available in the Individual Exchange as required for that program.

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

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

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

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

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

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

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

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

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

Eligibility determination: A determination that an applicant, enrollee, employer, or employee is eligible for enrollment in a QHP pursuant to this Article.

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

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

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

Vacate: To set aside a previous action.

Authority: Section 100504, Government Code.

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

SECTION 6542: GENERAL ELIGIBILITY APPEALS REQUIREMENTS FOR SHOP

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

(1) An eligibility determination made by the SHOP in accordance with this Article;
or

(2) A failure of the SHOP to provide written notice to an employer of the SHOP's eligibility determination as provided in Section 6524(c) within 15 calendar days of receiving a completed application from an employer;

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

(1) An eligibility determination made by the SHOP in accordance with this Article;
or

(2) A failure of the SHOP to provide written notice to an employee of the SHOP's eligibility determination as provided in Section 6524(d) within 15 calendar days of receiving a completed application from an employee.

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

(1) The reason for the eligibility determination, including a citation to the applicable regulations; and

(2) The procedure by which the employer or employee may request an appeal of the eligibility determination.

(d) The SHOP and appeals entity shall:

(1) Allow an employer or employee to request an appeal within 90 days of the date of the notice of the eligibility determination, unless the appeals entity determines that good cause exists for allowing a late appeal request.

(2) Accept appeal requests submitted in person or through an appeals representative, via telephone, facsimile, mail, electronic mail or, as soon as it becomes available, the SHOP's Internet Web Site;

(3) Comply with the accessibility requirements specified in 45 CFR 155.205(c);

(4) Assist the employer or employee with the submission and processing of the appeal request, if requested, and not limit or interfere with the employer's or employee's right to request an appeal; and

- (5) Consider an appeal request valid if it is submitted in accordance with the requirements of this section.
- (e) Upon receipt of an appeal request pursuant to this section, the SHOP shall transmit the appeal request to the appeals entity via secure electronic interface within three (3) business days.
- (f) The appeals entity shall confirm receipt of the appeal request transmitted pursuant to subdivision (e) of this section within three (3) business days.
- (g) The appeals entity shall conduct all appeals on behalf of the SHOP pursuant to this Article.
- (h) For purposes of this Article, an administrative law judge designated by the appeals entity shall determine, on a case-by-case basis, the validity of all appeals requests and all determinations of good cause.
- (i) Upon receipt of a valid appeal request, the appeals entity shall send written acknowledgment to the appellant, or the employer and employee if the employee is the appellant, within five (5) business days from the date on which the valid appeal request is received. The written acknowledgment shall include:
- (1) An explanation of the appeals process; and
 - (2) Instructions for submitting additional evidence for consideration.
- (j) Upon receipt of an invalid appeal request because it fails to meet the requirements of this section, the appeals entity shall:
- (1) Within five (5) business days from the date on which the invalid appeal request is received, send written notice to the appellant informing him or her:
 - (A) That the appeal request has not been accepted;
 - (B) Of the nature of the defect in the appeal request; and
 - (C) An explanation that the appellant may cure the defect, if curable, and resubmit the appeal request if it meets the timeliness requirements of subdivision (d)(1) of this section, or if the timeliness requirement in subdivision (d)(1) has lapsed, then within 10 calendar days from the date of the notice specified in subdivision (j)(1) of this section.
 - (2) Treat as valid an amended appeal request that meets the requirements of this section.
- (k) The appellant has the right to be represented by an appeals representative.

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

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

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

Authority: Section 100504, Government Code.

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

SECTION 6544: INFORMAL RESOLUTION

(a) An appellant shall have an opportunity for informal resolution prior to a hearing in accordance with the requirements of this section.

(b) Upon receipt of a valid appeal request, the SHOP shall:

(1) Contact the appellant to attempt to informally resolve the appeal; and

(2) Provide the appellant the opportunity to submit relevant evidence to assist in the informal resolution of the appeal.

(c) An appellant's right to a hearing shall be preserved in any case notwithstanding the outcome of the informal resolution process, unless the appellant withdraws his or her appeal request prior to the hearing date, in accordance with the procedure set forth in Section 6546(a).

(d) If the appeal advances to hearing:

(1) The appellant shall not be asked to provide information or documentation that he or she previously provided during the application or informal resolution process.

(2) The SHOP shall issue a statement of position and transmit via secure electronic interface, the statement of position and all papers, requests, and documents the SHOP obtained during the informal resolution process, to the appeals entity no less than two (2) business days before the date of the hearing.

(3) The SHOP shall make the statement of position available to the appellant no less than two (2) business days before the date of the hearing.

(e) If the appellant is satisfied with the outcome of the informal resolution process and withdraws his or her appeal request in accordance with Section 6546(a) and the appeal does not advance to hearing:

(1) The SHOP shall, within five (5) business days from the date of the outcome of the informal resolution, send the appellant notice, which shall:

(A) State the outcome of the informal resolution, including a plain language description of the effect of such outcome on the appellant's appeal and eligibility;

(B) State the effective date of such outcome, if applicable.

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

Authority: Section 100504, Government Code.

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

SECTION 6546: DISMISSALS OF APPEALS

(a) The appeals entity shall dismiss an appeal if the appellant:

(1) Withdraws the request in writing prior to the hearing date; or

(2) Fails to submit an appeal request meeting the standards specified in Section 6542(d);

(3) Fails to appear at a scheduled hearing without good cause.

(b) If an appeal is dismissed, the appeals entity shall, within 15 business days from the date of the dismissal, provide written notice to the appellant including the reason for the dismissal.

(c) The appeals entity may vacate a dismissal and proceed with the appeal if the appellant makes a written request within 30 calendar days of the date of the notice of the dismissal showing good cause why the dismissal should be vacated.

Authority: Section 100504, Government Code.

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

SECTION 6548: HEARING REQUIREMENTS

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

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

Authority: Section 100504, Government Code.

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

SECTION 6550: EXPEDITED APPEAL PROCESS

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

NOTE: Authority: Section 100504, Government Code.

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

SECTION 6552: APPEAL DECISIONS

(a) The appeals decisions shall:

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

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

(c) Upon issuance of an appeal decision, the SHOP shall implement the appeal decision:

- (1) Retroactively to the date the incorrect eligibility determination was made, if the decision finds the appellant eligible; or
- (2) Effective as of the date of the notice of the appeal decision, if eligibility is denied.

Authority: Section 100504, Government Code.

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

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Covered California	CONTACT PERSON Brandon Ross	EMAIL ADDRESS Brandon.Ross@covered.ca.gov	TELEPHONE NUMBER (916) 228-8281
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 SHOP Appeals Process Regulations			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|---|---|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below): |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*

2. The California Health Benefit Exchange estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
 Between \$10 and \$25 million
 Between \$25 and \$50 million
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: 2,076

Describe the types of businesses (Include nonprofits): Small business with 2 - 49 employees

Enter the number or percentage of total businesses impacted that are small businesses: 100%

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: N/A

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: N/A

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ Unknown

a. Initial costs for a small business: \$ 0 Annual ongoing costs: \$ 0 Years: _____

b. Initial costs for a typical business: \$ 0 Annual ongoing costs: \$ 0 Years: _____

c. Initial costs for an individual: \$ 0 Annual ongoing costs: \$ 0 Years: _____

d. Describe other economic costs that may occur: None

2. If multiple industries are impacted, enter the share of total costs for each industry: N/A

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ N/A

4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: California Government Code Section 100506

instructs the Exchange to establish an appeals process for prospective and current enrollees of the Exchange.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ 0

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: See Attachment I

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: California Government Code Section 100506

3. What are the total statewide benefits from this regulation over its lifetime? \$ 0

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: None

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: See Attachment I

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ See Attach I Cost: \$ _____Alternative 1: Benefit: \$ See Attach I Cost: \$ _____Alternative 2: Benefit: \$ See Attach I Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

N/A4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NOExplain: N/A**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.**California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.*1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? YES NO*If YES, complete E2. and E3**If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

 YES NO*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: N/AThe incentive for innovation in products, materials or processes: N/AThe benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: See Attachment I

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain Covered California would incur an estimated costs of \$8,173 in FY 2015-16 and \$26,749 in FY 2016-17.

Refer to Attachment II. There is no impact to the General Fund.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

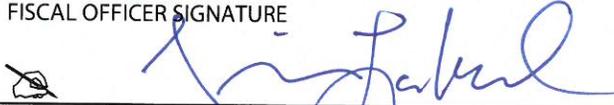
\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain Estimated costs of \$7,166 in FY 2014-15 and \$8,173 in FY 2015-16. These costs will be funded by the

Federal Grant. Refer to Attachment II. There is no impact to the General Fund.

FISCAL OFFICER SIGNATURE



DATE

4/27/15

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

4/27/15

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

ECONOMIC IMPACT STATEMENT

C. ESTIMATED BENEFITS

1. Anticipated benefits including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:
 - Making quality health care available to all Californians;
 - Providing structure for the Exchange to give predictability and clear standards to the public and qualified health plan issuers now and into the future.
 - Establishing an appeals process for prospective and current enrollees of the Exchange, thereby providing due process to applicants who have been denied health insurance.
 - Establishing clear guidelines for the public to request and receive a fair hearing.
 - Reducing error in eligibility determinations of SHOP coverage, thereby more accurately determining who is eligible for SHOP coverage.
 - Minimizing the appeal entity's workload and maximizing efficiency by establishing a process for informal resolution prior to a hearing.
 - Promoting access to health insurance by establishing an expedited appeal process when there is an immediate need for health services.
 - Aligning California's regulations with the federal act and complying with state law.
 - Providing increased health care access to the public in California.
 - Ultimately, helping to save lives and increase the health of the public in California.

D. ALTERNATIVES TO THE REGULATION

Stakeholders provided alternatives that were considered during the review of SHOP Appeals Process. SHOP considered and rejected the following alternatives:

1. **Alternative:** Employees should have a right to appeal if they are not deemed a qualified employee by their employer, and therefore not offered the opportunity to enroll in the SHOP as part of their Employer's Policy.

Reason for rejecting: Because a qualified employee is someone who has been offered coverage, it is up to the employer to determine which employees are offered coverage. We cannot force an employer to offer coverage.

2. **Alternative:** Any violation of privacy and confidentiality protections by the SHOP (i.e., inappropriate sharing of information with QHPs or employers or other agencies) shall be appealable; the employee should also have a private right of action.

Reason for rejecting: Violations of privacy and confidentiality are not appealable issues. These violations can be addressed through the complaint process or a private action.

- 3. Alternative:** All SHOP Appeals should be conducted in person.

Reason for rejecting: Covered CA considered this suggestion and determined that it would not be practical, convenient, or cost effective in many cases. If the appellant would like to participate in their hearing in person, they have the option to request an in-person hearing.

COVERED CALIFORNIA
 PERMANENT RULEMAKING
 SHOP APPEALS
 STD 399
 (whole dollars)

	2014-15 ^A	2015-16 ^A	2016-17 ^A
Estimated SHOP Applications			
Members	14,400	27,600	45,800
Group Size (Members per Application)	6.5	6.5	6.5
Total Applications (Members/Group Size)	2,215	4,246	7,046
Estimated Appeals (Assume 0.5% of applications are rejected & appealed)	11	21	35
Estimated Hearings (Assume 50% of appeals require adjudication)	6	11	18

Appeals Cost Estimate^B

	2014-15	2015-16	2016-17
Pinnacle Contract			
6 hour/appeal x 6 appeals =	36 x	\$50 =	\$1,800
6 hour/appeal x 11 appeals =	66 x	\$50 =	\$3,300
6 hour/appeal x 18 appeals =	108 x	\$50 =	\$5,400

Hearing Cost Estimate

	2014-15	2015-16	2016-17
Department of Social Services			
\$5.382M ^C / 6,018 hearings =	\$894 x	6 =	\$5,366
\$7.000M ^D / 5,902 hearings =	\$1,186 x	11 =	\$13,046
\$7.000M ^E / 5,902 hearings =	\$1,186 x	18 =	\$21,349

	2014-15	2015-16	2016-17
ESTIMATED ANNUAL COST	\$7,166	\$16,346	\$26,749

Funding Summary

	2014-15	2015-16	2016-17
Federal Grant (thru 12/31/15)	\$7,166	\$8,173	\$26,749
Self-Sustaining (effective 1/1/16)		\$8,173	\$26,749
Total	\$7,166	\$16,346	\$26,749

- Notes:**
- A. SHOP Program staff provided application and appeal estimates. Member is average annual enrollment per March 2015 enrollment forecast (Mid).
 - B. SHOP Program staff and Pinnacle developed the appeals workload and rate estimates based on current contract with Pinnacle.
 - C. Hearing costs for FY 2014-15 are based on the latest IAA with the Department of Social Services.
 - D. Projected hearing costs for FY 2015-16, per Budget shop on 4/17/15, are subject to change in the absence of an official IAA with the Department of Social Services.
 - E. Assume the same level of hearing costs as in FY 2015-16.