

Adopt Article 6, Sections 6540, 6542, 6544, 6546, 6548, 6550, and 6552, which is all new regulation text to be added, to read:

SECTION 6540: DEFINITIONS FOR THE 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.

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

Appeals entity: A body designated to hear appeals of any SHOP eligibility determinations. The California Department of Social Services is the designated appeals entity for the SHOP.

Appellant: The applicant or enrollee, the employer, or the small business 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, small business employer, or employee is eligible for enrollment in a QHP, or for any enrollment periods, in accordance with Sections 6522, and 6524.

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

Statement of Position: A writing that describes the appellant's and the SHOP's positions regarding an appeal.

Shop Application Filer: an applicant, an authorized representative, an agent or broker of the employer, or an employer filing for its employees where not prohibited by other law, in accordance with §155.700.

Vacate: To set aside a previous action.

SECTION 6542: GENERAL ELIGIBILITY APPEALS REQUIREMENTS FOR SHOP

- (a) An employer shall have the right to appeal:
 - (1) A notice of denial of eligibility under Section 6522; and
 - (2) A failure of the SHOP to make the eligibility determination in a timely manner.
- (b) An employee shall have the right to appeal:
 - (1) A notice of denial of eligibility under Section 6522; and
 - (2) A failure of the SHOP to make the eligibility determination in a timely manner.
- (c) Notices of the right to appeal a denial of eligibility under Section 6524(c) or (d) must include:
 - (1) The reason for the denial of eligibility, including a citation to the applicable regulations; and
 - (2) The procedure by which the employer or employee may request an appeal of the denial of eligibility.
- (d) The SHOP and appeals entity must:
 - (1) Allow an employer or employee to request an appeal within 90 days from the date of the notice of denial of eligibility to the SHOP;
 - (2) Accept appeal requests submitted via telephone, mail, through a SHOP application filer (155.700), email or via the Internet; 155.520(a)(1)
 - (3) Assist the employer or employee with the submission and processing of the appeal request, if requested, and must not limit or interfere with the employer's or employee's right to request an appeal; and [§ 155.520(a)(2) and (3)]
 - (4) Consider an appeal request valid if it is submitted in accordance with subdivision (d)(1) of this section.
- (e) Upon receipt of an appeal request pursuant to this section, or upon receipt of the notice under subdivision (d)(1) of this section, the SHOP shall transmit via secure electronic interface to the appeals entity:

- (1) The appeal request, if the appeal request was initially made to the SHOP;
and
 - (2) The appellant's eligibility record.
- (f) The appeals entity must confirm receipt of records transmitted pursuant to subdivision (g) of this section within two (2) business days of receipt of the records.
- (g) Upon receipt of a valid appeal request, the appeals entity must send written acknowledgment to the appellant, or the employer and employee if the employee is the appellant within five business days from the date on which the valid appeal request is received,. The written acknowledgment must include:
- (A) An explanation of the appeals process; and
 - (B) Instructions for submitting additional evidence for consideration by the SHOP; and
- (2) Notify the SHOP of the appeal within three business days, if the appeal request was not made to the SHOP
- (h) Upon receipt of an appeal request that is not valid, because it fails to meet the requirements of this section, the appeals entity must:
- (1) Within five business days from the date on which the appeal request is received, send written notice to the appellant informing him or her:
 - (A) That the appeal request has not been accepted;
 - (B) About the nature of the defect in the appeal request; and
 - (C) An explanation that the appellant may cure the defect and resubmit the appeal request if it meet the timeliness requirements of subdivision(d)(1) of this section.
 - (2) Treat as valid amended appeal request that meets the requirements of this section.
- (i) The SHOP appeals entity shall conduct all eligibility appeals.
- (j) For purposes of this Article, an Administrative Law Judge designated by the appeals entity shall determine, on a case-by-case basis:
- (1) The validity of all appeals requests received by the SHOP or the appeals entity;
and

(2) Whether good cause exists.

(k) An appellant may request an appeal of any of the actions specified in subdivision (a) of this section to HHS upon exhaustion of the Exchange appeals process

Comment [BA1]: Keep?

(l) An appellant may represent himself or herself, or be represented by a SHOP application Filer, as defined in Section 6540.

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

(n) The appeals entity shall:

(1) 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 in an electronic format that is consistent with 45 CFR Section 155.270; and

(o) The Exchange 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.

NOTE: Authority: Section 100504, Government Code; 45 CFR §§ 155.700, 155.705, 155.715, and 155.730.

SECTION 6544: INFORMAL RESOLUTION

- (a) An employer and employee shall have an opportunity for informal resolution prior to a hearing in accordance with the requirements of this section.
 - (1) Upon receipt of an appeal request, which has been determined to be valid in accordance with Section 6542 or upon receipt of the notice under Section 6544, the SHOP shall contact the appellant to informally resolve the appeal, and if applicable, request additional information or documentation, prior to the hearing date
- (b) The informal resolution process shall comply with the scope of review specified in subdivision (c) of this Section.
- (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 unconditionally or conditionally withdraws his or her appeal request prior to the hearing date, in accordance with the procedure set forth in [subdivision \(f\) of this Section](#).
- (d) If the appeal advances to hearing :
 - (1) The appellant shall not be asked to provide duplicative information or documentation that he or she previously provided during the application or informal resolution process; and
- (e) The SHOP shall:
 - (1) Issue a Statement of Position; and
 - (2) Transmit via secure electronic interface the Statement of Position and all papers, requests, and documents, including printouts from an appeal record, which SHOP obtained during the informal resolution process to the appeals entity, the appellant, and, if applicable, the SHOP application filer, at least two business days before the date of the hearing.
- (f) If the appellant is satisfied with the outcome of the informal resolution process and conditionally withdraws his or her appeal request, in accordance with subdivision (a) of 6458 and the appeal does not advance to hearing:
 - (1) The SHOP shall, within five business days from the date of the outcome of the informal resolution, send the appellant a written 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; and

(C) Provide a copy of the conditional withdrawal agreement signed by the appellant and the SHOP with instructions on how to submit his or her conditional withdrawal request to the appeals entity, in accordance with the procedure set forth in [this Section](#);

(2) The SHOP shall, within three 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.

(3) If the appeal request is dismissed in accordance with Section 6548, the SHOP's informal resolution decision shall be final and binding.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100503 and 100506, Government Code. 45 CFR 155.535, 155.740

SECTION 6546: DISMISSALS OF APPEALS

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

(1) Withdraws the request in writing; or

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

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

(b) The SHOP may vacate a denial 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

(c) The SHOP will provide the employer, or the employer and employee if an employee is appealing, the opportunity to submit relevant evidence for review of the eligibility determination.

SECTION 6548: HEARING REQUIREMENTS

- (a) An appellant shall have an opportunity for a hearing in accordance with the requirements of this section.
- (b) When a hearing is scheduled, 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 days prior to the hearing date.
- (c) The hearing shall be conducted:
 - (1) Within 90 days from the date on which a valid appeal request is received;
 - (2) After notice of the hearing, pursuant to subdivision (b) of this section;
 - (3) As an evidentiary hearing, consistent with subdivision (e) of this section;
 - (4) By an administrative law judge who has not been directly involved in the eligibility determination or any prior SHOP appeal decisions in the same matter; and
 - (5) 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 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 a SHOP Application Filer,
- (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.

NOTE: Authority: Section 100504, Government Code. Reference: Sections 100503 and 100506, Government Code. 45 CFR §§ 155.535.

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SECTION 6550: EXPEDITED APPEAL PROCESS

- (a) Pursuant to CFR §§155.540(a), the appeals entity shall establish and maintain an expedited appeals process for an appellant to request an expedited process 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 6542(d)(1); and
 - (2) Inform the appellant, within three 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 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 transferred 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; and
 - (3) Within three 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: Sections 100503 and 100506, Government Code. 45 CFR §155.540.

SECTION 6552: APPEAL DECISIONS

(a) The SHOP appeals must:

- (1) Be based solely on the evidence referenced in this section and the eligibility requirements for the SHOP in Section 6520;

(b) The appeals entity must:

- (1) Be based solely on the evidence referenced in (a)(1) of this section and the eligibility requirement for the SHOP in section 6522.
- (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) Be effective retroactive to the date the incorrect eligibility determination was made if the decision finds the appellant eligible, or effective as of the date of the notice of the appeal decision, if eligibility is denied

(c) Upon receiving the notice described in subdivision (b) of this section, the SHOP shall:

(1) Implement the appeal decision:

- (A) Retroactively, to the date the incorrect eligibility determination was made, at the option of the appellant; and

Comment [BA2]: Added-AB

NOTE: Authority: Section 100504, Government Code
Reference: Sections 100502 and 10503, Government Code; 45 CFR §§ 155.705, 155.715, 155.720.