

Title 10. Investment

Chapter 12. California Health Benefit Exchange

§ 6520. Employer and Employee Application Requirements.

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

(1) General employer information: business legal name and whether the employer is doing business under a fictitious name, Federal Employer Identification Number, State Employer Identification Number, organization type (private, nonprofit, government, church/church affiliated), Standard Industry Classification (SIC) code, principal business address, and mailing address;

(2) The number of eligible employees being offered enrollment in SHOP and the total number of full-time equivalent (FTE) employees employed by the qualified employer, as calculated in accordance with Health and Safety Code Section 1357.500(k)(3) and Insurance Code Section 10753(q)(3);

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

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

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

(6) Whether the qualified employer is subject to COBRA or Cal-COBRA

continuation coverage regulations;

(7) Whether the qualified employer is currently offering health coverage or dental coverage, and if so, through which issuer;

(8) Whether the qualified employer intends to claim the Small Business Health Care Tax Credit with the IRS;

(9) The name, primary phone number, and email address for the primary contact and business owner/authorized company officer for the qualified employer and the preferred method of communication;

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

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

(12) The employer's offer of health coverage or dental coverage and the reference plan or dental reference plan, which includes:

(A) The employer's contribution rate to each of its qualified employee's health plan premiums pursuant to Section 6522(a)(5)(A);

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

(C) The employer's selection for one, two contiguous, three contiguous, or four contiguous tiers of health coverage, pursuant to 45 CFR Section 156.140(b) (bronze, silver, gold, or platinum) (February 25, 2013), hereby incorporated by reference;

(D) Whether the qualified employer wishes to include infertility benefits to qualified employees;

(E) Effective August 1, 2021, if the qualified employer is offering dental coverage to qualified employees, the employer must select a dental reference plan. The qualified employer must indicate its contribution rate for qualified employees' QDP premiums pursuant to Section 6522(h)(3). The qualified employer must indicate its QDP premium contribution rate for spouse's or non-registered domestic partner's, or dependent children's coverage, if applicable;

(13) New qualified employer application submissions are due five days prior to the requested effective date. Completed submissions received after this date will carry an effective date no earlier than the first of the following month unless the qualified employer submits a signed CCSB New Business Late Submission Acknowledgement Form (Rev. 1/24), hereby incorporated by reference. The CCSB New Business Late Submission Acknowledgement Form must be submitted by the 7th day of the month to retroactively effectuate enrollment to the 1st of the month. Exceptions for exceptional circumstances will be considered on a case-by-case basis.

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

- (1) That the business has 100 or fewer full-time or FTE employees and has a principal business address in California;
- (2) That all eligible full-time employees of this business will be offered SHOP coverage;
- (3) That the business has at least one employee who is not the owner or business partner, or the spouse of the owner or business partner;
- (4) That the employer is signing the application under penalty of perjury, which means all information contained in the qualified employer application is true and correct to the best of the qualified employer's knowledge;
- (5) That the employer knows that they may be subject to penalties under federal law if they intentionally provide false or untrue information pursuant to 45 CFR Section 155.285 (September 6, 2016), hereby incorporated by reference;
- (6) That the employer knows that the information will only be used to determine eligibility and facilitate enrollment in health coverage or dental coverage and will otherwise be kept private as required by federal and state law;
- (7) That any waiting period established by the qualified employer complies with 42 U.S.C. Section 300gg-7, 45 CFR Section 155.725 (April 18, 2017), hereby incorporated by reference, and applicable state law, and all qualified employees have complied with the qualified employer's waiting period;
- (8) That the employer has the consent from every qualified employee listed on the application to include their personally identifiable information such as dates of birth, addresses, social security numbers or tax identification numbers, phone numbers, and email addresses;

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

(10) That the qualified employer understands that the SHOP will not consider the qualified employer approved for health coverage or dental coverage until the SHOP has received the qualified employer's first month's total premium payment;

(11) That the qualified employer agrees to continue to make the total required monthly premium payment by the due date, and which at no time shall be less than 100 dollars less than the total amount due each month, including any premium amounts past due, to maintain eligibility for coverage in the SHOP;

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

(13) That the qualified employer understands that once coverage in a QHP is approved by the SHOP, changes to the coverage cannot be implemented until the qualified employer's annual election of coverage period pursuant to Section 6526, except to the extent the qualified employer exercises the right to change coverage with the same QHP issuer within the first 30 days of the effective date of coverage pursuant to Section 6528(f), Health and Safety Code 1357.504(d), and Insurance Code Section 10753.06.5(d);

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

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

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

(17) That the qualified employer has provided or will provide to its qualified employees an initial open enrollment period beginning at least 20 days prior to the employee application due date described in subdivision (d).

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

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

(c) A qualified employer must provide the SHOP with its most recent Quarterly Contribution Return and Report of Wages (Form DE-9C), as filed with the California

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

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

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

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

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

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

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

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

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

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

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

Schedule K-1 is not yet available, the Partnership Agreement and the Federal Tax Identification appointment letter can be substituted;

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

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

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

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(14) For a qualified employer who was previously insured outside of the SHOP and has 3 or more qualified employees who are enrolling in coverage, proof of coverage. If qualified employees are not listed in the proof of coverage, a DE-9C or payroll records for 30 days.

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(d) To participate in the SHOP, a qualified employee must submit the following information to the SHOP no later than five days prior to the requested effective date:

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

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

(3) Whether the employee is applying for Cal-COBRA or COBRA continuation coverage pursuant to the following conditions:

(A) The COBRA coverage is currently in effect under the qualified employer's health plan; or

(B) The employee has had a qualifying event that renders the employee eligible for continuation of coverage and is applying for that coverage; and,

(C) If applicable, the effective date of coverage, the qualifying event that triggered that coverage, and the date of the qualifying event;

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

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

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

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

(6) The names of the health plans and dental plans, if applicable, selected by the qualified employee and dependents.

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

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

(2) Disclose whether the employee used an insurance agent and, if so, the agent's name, general agency name (if applicable), and whether the agent is an insurance agent certified by Covered California. If the employee uses an insurance agent, the employee must have that agent certify that they understand they may be subject to a civil penalty for providing false information under Health and Safety Code Section 1389.8 and Insurance Code Section 10119.3.

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

(4) Acknowledge that the employee understands that they may be subject to penalties under federal law if they intentionally provide false or untrue information pursuant to 45 CFR Section 155.285 (September 6, 2016), hereby incorporated by reference.

(f) If a qualified employee declines coverage, the employee must sign the declination of coverage, which is part of the application, and state other sources of coverage, if any.

(g) The SHOP must keep all information received pursuant to this section private in accordance with applicable federal and state privacy and security laws pursuant to 45 CFR Section 155.260 (September 6, 2016), hereby incorporated by reference, and the Information Practices Act of 1977 (Cal. Civ. Code, commencing with Section 1798). The SHOP may not provide to the qualified employer any information collected on the employee application with respect to the qualified employees or dependents of qualified employees, other than the name, address, birth date, and health plan or dental plan selection of the spouse or dependent. The SHOP may only share information from an employee application with the QHP Issuer or employer that is strictly necessary for the purposes of eligibility and enrollment. Information obtained by the SHOP pursuant to this section may not be used for purposes other than eligibility determinations and enrollment in health or dental coverage through the SHOP.

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 CFR Sections 155.260, 155.705, 155.715, 155.725, 155.730, 156.140 and 156.285.

§ 6522. Eligibility Requirements for Enrollment in the SHOP.

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

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

(2) Elects to offer, at a minimum, all eligible full-time employees coverage in a QHP through the SHOP;

(3) Either --

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

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

(4) Meets the following minimum participation rules:

(A) A minimum of 70 percent of eligible employees of the qualified employer must enroll in health coverage through the SHOP, or a lesser minimum percent that may be determined by prevailing market practice through a SHOP survey of market practices. SHOP must provide QHP Issuers notice of such a change, if any, at least 210 days prior to the effective date of the proposed change, unless the QHP issuers agree to an earlier effective date for the proposed change. The percentage will be published on the Covered California for Small Business (CCSB) website.

1. If the qualified employer pays 100 percent of the qualified employees' QHP premiums, then all eligible employees not waiving coverage per Section 6522(a)(4)(B) of the qualified employer must enroll in health coverage through the SHOP.

(B) A qualified employee who waives employer offered health coverage because that qualified employee is enrolled in coverage through another employer, an employee's union, Medicaid pursuant to 42 U.S.C. Section 1396 et seq., Medicare pursuant to 42 U.S.C. Section 1395 et seq., or any other federal or state health coverage program, or any health coverage meeting the definition of minimum essential coverage pursuant to Health and Safety Code Section 1345.5 is ~~not counted in~~ included with the qualified employees enrolling in coverage when calculating compliance with the group participation rules above.

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(5) Meets the following group contribution rule:

(A) A qualified employer must contribute to each of its qualified employees' health plan premiums, a minimum of 50 percent of the lowest cost premium for employee-only health coverage in the level of coverage selected by the qualified employer pursuant to Section 6520(a)(12)(C), or a lesser minimum percent that may be determined by prevailing market practice through a SHOP survey of market practices. The contribution rate will be published on the CCSB website.

(6) A qualified employer who wishes to offer infertility benefits to his/ her qualified employees must do so in accordance with Health and Safety Code Section 1374.55 and Insurance Code Section 10119.6.

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

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

(d) All qualified employees whose eligibility has been verified by the SHOP are eligible to enroll in a QHP through the SHOP.

(e) A qualified employee is eligible to enroll their dependent spouse, registered domestic partner, non-registered domestic partners, and dependent children, whose dependent eligibility has been verified by the SHOP, if the offer from the qualified employer includes an offer of dependent coverage.

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

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

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

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

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

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

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