



April 12, 2016

**ADVANCE NOTICE OF ADOPTION OF EMERGENCY REGULATIONS
TITLE 10. INVESTMENT
CHAPTER 12. CALIFORNIA HEALTH BENEFIT EXCHANGE
ARTICLE 11. CERTIFIED APPLICATION COUNSELORS**

This notice is sent in accordance with Government Code Section 11346.1(a)(2), which requires that State of California agencies give a five working day advance notice of intent to file emergency regulations with the Office of Administrative Law (OAL). The California Health Benefit Exchange ("Exchange") intends to file an Emergency Rulemaking package with the Office of Administrative Law (OAL) that changes previously adopted Certified Application Counselor regulations. As required by subdivisions (a)(2) and (b)(2) of Government Code Section 11346.1, this notice appends the following: (1) the specific language of the proposed regulation and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, attached reports, and required determinations.

The Exchange plans to file the Emergency Rulemaking package with OAL at least five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed regulations (also enclosed), they must be received by both the Exchange and the Office of Administrative Law within five calendar days of the date this is posted on the OAL website. Responding to these comments is at the Exchange's discretion.

Comments should be sent simultaneously to:

California Health Benefit Exchange
Attn: Brian Kearns
1601 Exposition Blvd
Sacramento, CA 95815

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814



Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for two years from the initial date of adoption or until revised by the Board. (Government Code section 100504 (a)(6)) Please note that this advance notice and comment period is not intended to replace the public's ability to comment once the emergency regulations are approved.

You may also view the proposed regulatory language and Finding of Emergency on the Exchange's website at the following address: hbex.coveredca.com/regulations

If you have any questions regarding this Advance Notice, please contact Brian Kearns at (916) 228-8843 or email Brian.Kearns@covered.ca.gov.



FINDING OF EMERGENCY

The Director of the California Health Benefit Exchange finds an emergency exists and that this proposed emergency regulation is necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Government Code section 100504(a)(6) provides:

“... Until January 1, 2017, any necessary rules and regulations may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, including subdivisions (e) and (h) of Section 11346.1, any emergency regulation adopted pursuant to this section shall be repealed by operation of law unless the adoption, amendment, or repeal of the regulation is promulgated by the board pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code within three years of the initial adoption of the emergency regulation. Notwithstanding subdivision (h) of Section 11346.1, until January 1, 2020, the Office of Administrative Law may approve more than two readoptions of an emergency regulation adopted pursuant to this section. The amendments made to this paragraph by the act adding this sentence shall apply to any emergency regulation adopted pursuant to this section prior to the effective date of the Budget Act of 2015.

These regulations will expire three years from the date they are adopted.

DEEMED EMERGENCY

The Exchange may “Adopt rules and regulations, as necessary. Until January 1, 2017, any necessary rules and regulations may be adopted as emergency regulations in accordance with the Administrative Procedures Act. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.” (Gov. Code § 100504(a)(6))

AUTHORITY AND REFERENCE

Authority: Government Code Sections 100503 and 100504.

Reference: Government Code Section 100503; 45 CFR 225; 45 CFR 155.260.



INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

These regulations allow for the certification of and partnership with entities throughout the State of California as Certified Application Counselors. Individuals and plans who complete the requirements set forth in these regulations will be granted access to the CalHEERS, the single streamlined application through which consumers apply for health insurance coverage through the Exchange. This Certified Application Counselors program is required pursuant to federal regulations set forth at 45 C.F.R. section 155.225. Additional requirements have been added to supplement the federal regulations such as Fingerprinting and Background Checks and the Appeals processes. Many entities and individuals applying for certification pursuant to this Article will likely have experience assisting consumers with Exchange enrollment, which will greatly aid consumers in understanding the landscape of insurance affordability programs. A greater number of Californians will benefit from receiving assistance from qualified, certified individuals as a result, and the Exchange will benefit from an increased number of enrollees.

Documents to be incorporated by reference:

None.

Summary of Existing Laws

Under the federal Patient Protection and Affordable Care Act (PPACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law, the California Patient Protection and Affordable Care Act, established the California Health Benefit Exchange within state government. (Gov. Code § 100500 et seq.) The Exchange is tasked with providing for the processing of applications and the enrollment and disenrollment of enrollees, and also must “exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of this act and the federal act.” (Gov. Code § 100503(h), (s)) The Exchange must have a Certified Application Counselor program as required by 45 C.F.R. section 155.225(a).

After an evaluation of current regulations, specifically Articles 8, 10, and 12 of Title 10, Chapter 12, the Exchange has determined that these proposed regulations are not inconsistent or incompatible with any existing regulations.



MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

None.

LOCAL MANDATE

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.

FISCAL IMPACT ESTIMATES (Attached Form 399)

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Section 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies.

COSTS OR SAVINGS TO STATE AGENCIES AND TO FEDERAL FUNDING (Attached Form 399)

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

California Code of Regulations

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 11. Certified Application Counselor Program.

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§ 6850. Definitions.

- (a) For purposes of this Article, the following terms shall have the following associated meanings:
- (1) Authorized Contact: The individual appointed by the Certified Application Entity to manage the agreement executed with the Exchange pursuant to this Article.
 - (2) Certified Application Counselor: An individual certified by the Exchange and affiliated with a Certified Application Entity pursuant to section 6856 to provide the duties specified in section 6864 of this Article.
 - (3) Certified Application Entity: An organization registered by the Exchange pursuant to section 6854 with affiliated individuals serving as Certified Application Counselors.
 - (4) Consumer Assistance: The programs and activities created under 45 C.F.R. § 155.205(d) to provide enrollment assistance to consumers.
 - (5) Primary Contact: The individual appointed by the Certified Application Entity to be the liaison with the Exchange.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. § 155.225.

§ 6852. Certified Application Entities.

- (a) Except for the following, public or private entities who meet the requirements of this Article are eligible to apply to become a Certified Application Entity:
- (1) Health Insurance Issuer, as defined in section 6410 of Article 2 of this Chapter;
 - (2) Individuals registered as Certified Insurance Agents under Article 10 of this Chapter.
- (b) Individuals and entities shall not be registered as Certified Enrollment Entities or Certified Enrollment Counselors under Article 8 of this Chapter and pursuant to this Article concurrently;
- (c) The Exchange shall require proof of a current or valid license, authority, certificate, or registration by the appropriate regulatory or licensing entity as a condition of eligibility to be registered as a Certified Application Entity.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. § 155.225.

§ 6854. Certified Application Entity Application.

- (a) An organization who is eligible pursuant to section 6852 may apply to become a Certified Application Entity according to the following process:

- (1) The organization shall submit all information, documentation, and declarations required in subdivision (b) of this section.
- (2) The application shall demonstrate that the organization is capable of carrying out at least those duties described in section 6864.
- (3) The Exchange shall review the application and, if applicable, request any missing information.
- (4) Organizations who have submitted a completed application and demonstrated ability to meet the above requirements shall:
 - (A) Be notified by the Exchange of available opportunities for the entity's Authorized Contact, or his or her designee, to complete the training requirements established pursuant to section 6860, subdivision (a); and
 - (B) Submit the following:
 1. An executed agreement conforming to the roles and responsibilities defined in section 6864 and 45 C.F.R. § 155.225;
 2. Proof of general liability insurance with coverage of not less than \$1,000,000 per occurrence with the Exchange named as an additional insured.
- (5) Organizations that complete the above requirements shall be registered as a Certified Application Entity by the Exchange and assigned a Certified Application Entity Number. If the Authorized Contact, or his or her designee, fails to complete the training standards described in section 6860, subdivision (a), within 90 calendar days, the applicant shall be deregistered.
- (6) Organizations who have been denied may appeal the denial of their Certified Application Entity application through the process set forth in section 6862.

(b) A Certified Application Entity application shall contain the following information.

- (1) Full name;
- (2) Legal name;
- (3) Primary e-mail address;
- (4) Primary phone number;
- (5) Secondary phone number;
- (6) Fax number;
- (7) Whether the entity prefers to communicate via e-mail, phone, fax, or mail;
- (8) Website address;

- (9) Applicant's status as a non-profit, for profit, or governmental organization, and a copy of supporting documentation;
- (10) The type of organization and, if applicable, a copy of the license or other certification;
- (11) The counties served;
- (12) A certification that the applicant complies with section 6866;
- (13) Whether the entity serves families of mixed immigration status;
- (14) Whether the entity serves individuals with disabilities and, if so, the disability(ies) served;
- (15) The year the entity was established;
- (16) Whether applicant receives any federal or state grant funding;
- (17) For the primary site and each sub-site, the following information:
 - (A) Site Location Address;
 - (B) Mailing Address;
 - (C) County;
 - (D) Primary Contact name;
 - (E) Primary e-mail address;
 - (F) Primary phone number;
 - (G) Secondary phone number;
 - (H) Whether the entity wants to receive referrals for individuals seeking assistance at this site;
 - (I) Hours providing enrollment assistance;
 - (J) Languages spoken by staff to provide enrollment assistance under this Article;
 - (K) Written languages;
 - (L) Whether the entity offers services in sign language;
 - (M) Ethnicities served;
 - (N) Estimated number of individuals served by age; and
 - (O) Types of industries served;
- (18) Name, e-mail address, primary and secondary phone numbers, and the preferred method of communication for the Authorized Contact;

(19) A certification by the Authorized Contact that the information presented is true and correct to the best of the signer's knowledge;

(20) For each individual to be affiliated with the applicant as a Certified Application Counselor:

(A) All information required by section 6856 that is not already included elsewhere in the application; and

(B) Whether he or she is certified by the Exchange and, if applicable, the certification number.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. § 155.225.

§ 6856. Certified Application Counselor Application.

(a) An individual may become a Certified Application Counselor according to the following process:

(1) The Certified Application Entity shall notify the Exchange of the individual to be affiliated according to the process described in subdivision (c) of this section.

(2) The individual shall:

(A) Submit the following:

1. All information, documentation, and declarations required in subdivision (b) of this section; and

2. An executed agreement conforming to the roles and responsibilities defined in section 6864 and 45 C.F.R. § 155.225;

(B) Within 30 calendar days of completing the requirements in (a)(2)(A) of this section:

1. Submit fingerprinting images in accordance with section 6858(a);

2. Disclose to the Exchange all criminal convictions and administrative actions taken against the applicant;

3. Complete the required training established in section 6860; and

4. Pass the required certification exam administered by the Exchange pursuant to section 6860.

(3) Individuals who complete the above requirements, pass the Certified Application Counselor fingerprinting and criminal record check described in section 6858, and have no administrative actions taken against them which are substantially related to the qualifications, functions, or duties of the specific position sought, shall be certified as Certified Application Counselors by the Exchange.

(4) Applicants who have been denied for reasons other than failure to pass the Certified Application Counselor fingerprinting and criminal record check may appeal the denial of their Certified Application Counselor application through the process established by section 6862.

(b) An individual's application to become a Certified Application Counselor shall contain the following information:

(1) Name, e-mail address, primary phone number, and preferred method of communication;

(2) Driver's license number or identification number issued by the California Department of Motor Vehicles. If neither is available, the applicant may provide any other unique identifier found on an identification card issued by a federal, state, or local government agency or entity;

(3) Identification of the Certified Application Entity that the individual will affiliate with;

(4) Affiliated Certified Application Entity's primary site location address;

(5) Site(s) served by the individual;

(6) Mailing address of the primary site for the Certified Application Entity;

(7) The languages that the Certified Application Counselor can speak;

(8) The languages that the Certified Application Counselor can write;

(9) A certification by the individual that:

(A) The individual complies with section 6866;

(B) The individual is a natural person of not less than 18 years of age; and

(C) The statements made in the application are true, correct, and complete to the best of his or her knowledge and belief.

(10) Signature and date signed.

(c) A Certified Application Entity shall notify the Exchange of every individual to be added or removed as an affiliated Certified Application Counselor. Such notification shall include:

(1) Name of the Certified Application Entity and the Certified Application Entity number;

(2) Name and signature of the Authorized Contact from the Certified Application Entity;

(3) Name, e-mail, and primary phone number of the individual to be added or removed;

(4) Effective date for the addition or removal of the individual; and

(5) The following information regarding the Certified Application Counselor to be added or removed:

(A) Certification number; and

(B) When adding an individual, site(s) to be served by the individual.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. § 155.225.

§ 6858. Certified Application Counselor Fingerprinting and Criminal Record Checks.

(a) Individuals Required To Submit Fingerprinting Images

(1) Individuals seeking certification under this Article shall submit fingerprint images and associated criminal history information pursuant to Government Code section 1043 and section 6456(a)-(e) of Article 4 of this Chapter.

(b) Interim Fitness Determination.

(1) Before any final determination or certification decision is made based on the criminal record, the Exchange shall comply with the requirements of section 6456(d)-(e) of Article 4 of this chapter.

(2) If the Exchange finds that an individual seeking certification under this Article has a potentially disqualifying criminal record under section 6456(d)-(e) of Article 4 of this chapter, the Exchange shall promptly provide the individual with a copy of his or her criminal record pursuant to Penal Code section 11105(t), notify the individual of the specific disqualifying offense(s) for the interim determination, and provide the individual information on how to request a written appeal, including examples of the types of additional evidence the individual may provide, to dispute the accuracy and relevancy of the criminal record.

(c) Appeal and Final Determination.

(1) Inaccurate or Incomplete Federal and Out-of-State Disqualifying Offenses.

(A) If the individual believes that the potentially disqualifying offense in the Federal Bureau of Investigation national criminal response, identified in the notice sent pursuant to subdivision (b)(2) of this section, is inaccurate or incomplete, within 60 calendar days from the date of the notice, the individual may seek to correct or complete the response by providing information to the Exchange, including official court and law enforcement records, identifying and correcting the incomplete or inaccurate criminal history information. Upon receipt of such information, the Exchange shall reevaluate the interim fitness determination. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.

(2) Inaccurate or Incomplete California Disqualifying Offenses.

(A) If the individual believes that the potentially disqualifying offense in the California Department of Justice state criminal response, identified in the notice sent pursuant to subdivision (b)(2) of this section, is inaccurate or incomplete, within 60 calendar days from the date of the notice, the individual shall notify the Exchange and follow the procedures set forth in Penal Code sections 11120-11127 to correct or complete the criminal response with the DOJ. The fitness determination shall not be final until the DOJ has acted to correct the state criminal response. Upon receipt of the corrected response, the Exchange shall reevaluate the interim fitness determination. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.

(3) If the individual determines that his or her criminal record is accurate, within 60 days from the date of the notice in subdivision (b)(2) of this section, the individual may dispute the interim determination by producing additional written evidence of rehabilitation and mitigating circumstances related to any potentially disqualifying offense. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.

(A) For purposes of reevaluating the interim determination pursuant to subdivision (c)(3) of this section, the Exchange shall take into account any of the following:

1. Any additional evidence of rehabilitation and mitigating circumstances provided by the individual in subdivision (c)(3) of this section;
2. Information received as a result of the criminal record check;
3. Information received through the individual's application process for a position requiring fingerprinting in subdivision (a) of this section.
4. Information received as a result of the individual's employment history or qualifications for a position requiring fingerprinting in subdivision (a) of this section.

(4) Absent good cause for late filing as determined by the Exchange on a case-by-case basis, the interim fitness determination shall become final.

(d) Following the receipt of a final determination pursuant to this section that an individual is disqualified from certification, the individual shall not reapply for certification for two years.

(e) Costs.

(1) Background check costs for individuals seeking certification under this Article shall be paid by the Exchange, prior to and including June 30, 2016.

(2) After June 30, 2016, background check costs for individuals seeking certification under this Article shall be paid by the applicant.

Note: Authority cited: Sections 1043 and 100504, Government Code. Reference: Section 100502, Government Code; Section 11105, Penal Code; and 45 C.F.R. §§ 155.225 and 155.260.

§ 6860. Training Standards.

- (a) All entities who apply to become a Certified Application Entity shall complete training for the management of Certified Application Entities prior to any affiliated Certified Application Counselors carrying out any Consumer Assistance functions.
- (b) All Certified Application Counselors shall complete training in the following subjects prior to carrying out any Consumer Assistance functions under this article:
 - (1) QHPs (including the metal levels described at 45 C.F.R. § 156.140(b)), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;
 - (2) The full range of insurance affordability programs, including Medicaid, the Children’s Health Insurance Program, and other public programs;
 - (3) The tax implications of enrollment decisions;
 - (4) Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;
 - (5) Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;
 - (6) Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through an Exchange; and the individual responsibility to have health insurance;
 - (7) Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;
 - (8) Providing culturally and linguistically appropriate services;
 - (9) Ensuring accessibility for people with any disability;
 - (10) Understanding differences among health plans;
 - (11) Privacy and security standards applicable under 45 C.F.R. § 155.260 for handling and safeguarding consumers’ personally identifiable information;
 - (12) Working effectively with individuals with limited English proficiency, people with disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations;
 - (13) Customer service standards;

(14) Outreach and education methods and strategies;

(15) Applicable administrative rules, processes, and systems related to Exchanges and QHPs; and

(16) Procedures for assisting consumers with voter registration in compliance with section 6462 of Article 4.

(c) Training shall be provided by the Exchange through instructor-led training or computer-based training.

(d) In order to maintain certification with the Exchange, Certified Application Counselors shall annually pass an exam administered by the Exchange testing the subjects in subdivision (b) of this section.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. § 155.225.

§ 6862. Appeals Process.

(a) Other than a determination made pursuant to section 6858, Certified Application Counselor Fingerprinting and Criminal Record Checks, a decision that an individual or entity is not eligible or qualified to participate or continue to participate in a program under this Article may be appealed to the Exchange in accordance with the requirements of this section.

(b) The Exchange shall allow an applicant to request an appeal within 60 calendar days of the date of the notice of eligibility determination.

(c) The first phase of the Appeals Process shall include an informal review by the Exchange. The Exchange shall consider the information used to determine the appellant's eligibility as well as any additional relevant evidence presented during the course of the appeal. The Exchange shall make an informal resolution decision within 45 calendar days from the receipt of the appeal. The Exchange shall notify the appellant in writing of the decision.

(d) If the appellant is satisfied with the outcome of the informal resolution decision, the appeal may be withdrawn. If the appeal is not withdrawn, it shall be automatically escalated to the second phase of the Appeals Process. During the second phase, an independent unit within the Exchange that had no involvement in the original eligibility or qualification determination or informal resolution decision shall review the eligibility or qualification of the appellant de novo. The appellant shall be allowed to present additional evidence during the second phase. The Exchange shall consider all relevant evidence presented during the course of the appeal and notify the appellant in writing of the final decision within 60 calendar days from the receipt of the initial appeal.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code.

§ 6864. Roles and Responsibilities.

(a) Certified Application Counselors shall perform the following functions:

- (1) Provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible, which includes providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping consumers make informed decisions during the health coverage selection process;
- (2) Assist individuals and employees in applying for coverage in a QHP through the Exchange and for insurance affordability programs; and
- (3) Help to facilitate enrollment of eligible individuals into QHPs and insurance affordability programs;
- (4) Comply with the privacy and security requirements in 45 C.F.R. § 155.260;
- (5) Act in the best interest of the applicants assisted;
- (6) Either directly or through an appropriate referral to assistance personnel certified pursuant to Article 8 of this Chapter, provide information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 U.S.C. 12101 et seq. and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 794; and
- (7) Ensure that voter registration assistance is available in compliance with section 6462 of Article 4 of this Chapter; and
- (8) Comply with any applicable federal or state laws and regulations.

(b) Prior to receiving access to any consumer's personally identifiable information as defined in section 6650 of Article 8, the Certified Application Counselor shall:

- (1) Inform the consumer that the Certified Application Counselor must obtain his or her authorization prior to accessing any personally identifiable information;
- (2) Inform each consumer of the roles and responsibilities of the Certified Application Counselor as set forth in this section;
- (3) Obtain oral or written authorization from the consumer to access the consumer's personally identifiable information;
 - (A) Written authorization shall contain a consumer's signature and a written attestation completed by the Certified Application Counselor affirming under penalty of perjury that the Certified Application Counselor:

1. Is a Certified Application Counselor affiliated with a Certified Application Entity;
2. Conveyed all the information required under this subdivision to the consumer in a language and manner which he or she understands; and
3. Obtained written authorization from the consumer consenting to the release of his or her personally identifiable information as defined in Article 8 in order to fulfill the duties as described in this section.

(B) Oral authorization shall be accompanied by a written attestation completed by the Certified Application Counselor affirming under penalty of perjury that the Certified Application Counselor:

1. Is a Certified Application Counselor affiliated with a Certified Application Entity;
2. Conveyed all the information required under this subdivision to the consumer in a language and manner which he or she understands; and
3. Obtained oral authorization from the consumer consenting to the release of his or her personally identifiable information in order to fulfill the duties as described in this section.

- (4) Inform the consumer that the Certified Application Counselor cannot choose a health insurance plan on the consumer's behalf;
- (5) Inform the consumer that the Certified Application Counselor will provide the consumer with information regarding the health insurance options and insurance affordability programs for which he or she may be eligible;
- (6) Inform the consumer that his or her personally identifiable information will be kept private and secure in accordance with the standards set forth in 45 C.F.R. § 155.260;
- (7) Inform the consumer that if the Certified Application Counselor cannot assist the consumer, he or she will refer the consumer to another Certified Application Counselor or the Covered California Call Center;
- (8) Inform the consumer that the Certified Application Counselor will not charge a fee in exchange for performing the duties described in this section;
- (9) Inform the consumer that the assistance is based only on the information provided by the consumer, and if the information given is inaccurate or incomplete, the Certified Application Counselor may not be able to offer assistance;
- (10) Inform the consumer that the authorization set forth in (b)(3) of this section may be revoked at any time; and
- (11) Maintain a record of such authorization for a minimum of six (6) years.

- (c) Certified Application Counselors shall include the following in a consumer's application to the Exchange:
- (1) Name and certification number of the Certified Application Counselor;
 - (2) Name of the Certified Application Entity and the Certified Application Entity Number;
and
 - (3) Signature and date of signature by the Certified Application Counselor.
- (d) If any of the information listed in subdivision (c) of this section is not included on the consumer's original application, it may not be added at a later time.
- (e) Certified Application Counselors shall wear the badge issued by the Exchange at all times when performing duties under this section.
- (f) Certified Application Entities must maintain a physical presence in the state of California so that face-to-face assistance can be provided to applicants and enrollees.
- (g) Certified Application Entities shall maintain a registration process and method to track the performance of Certified Application Counselors.
- (h) To ensure that information provided as part of any Consumer Assistance is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency as required by 45 C.F.R. §§ 155.205(c)(2) and 155.225, Certified Application Entities and Certified Application Counselors shall:
- (1) Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs;
 - (2) Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken;
 - (3) Provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary to ensure meaningful access. Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services;
 - (4) Provide oral and written notice to consumers with limited English proficiency informing them of their right to receive language assistance services and how to obtain them;
 - (5) Receive ongoing education and training in culturally and linguistically appropriate service delivery; and

- (6) Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.
- (i) To ensure that Consumer Assistance is accessible to people with disabilities, Certified Application Entities and Certified Application Counselors shall:
- (1) Ensure that any consumer education materials, web sites, or other tools utilized for Consumer Assistance purposes are accessible to people with disabilities, including those with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities;
 - (2) Provide auxiliary aids and services for individuals with disabilities, at no cost, where necessary for effective communication. Use of a consumer's family or friends as interpreters can satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services;
 - (3) Provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities;
 - (4) Ensure that legally authorized representatives are permitted to assist an individual with a disability to make informed decisions; and
 - (5) Acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and support programs when appropriate.
- (j) To ensure that no consumer is discriminated against, Certified Application Entities and Certified Application Counselors shall provide the same level of service to all individuals regardless of age, disability, culture, sexual orientation, or gender identity, and seek advice or experts when needed.
- (k) Certified Application Entities and Certified Application Counselors may not:
- (1) Impose or induce any fee, charge, or remuneration on applicants for application or other assistance related to the Exchange;
 - (2) Be a QHP;
 - (3) Receive any direct or indirect consideration from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a QHP or a non-QHP;
 - (4) Refer consumers to a specific insurance agent or specific set of insurance agents;
 - (5) Provide gifts, including gift cards or cash or provide promotional items that market or promote the products or services of a third party, to any applicant or potential enrollee as an inducement for enrollment. Gifts, gift cards, or cash may be provided for the purpose of providing reimbursement for legitimate expenses incurred by a consumer in

an effort to receive Exchange application assistance, such as, but not limited to, travel or postage expenses;

- (6) Solicit any consumer for application or enrollment assistance by going door to door or through other unsolicited means of direct contact, including calling a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual has a pre-existing relationship with the individual Certified Application Counselor or designated organization and other applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door to door or through other unsolicited means of direct contact, including calling a consumer;
- (7) Initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual Certified Application Counselor or designated organization has a relationship with the consumer and so long as other applicable State and Federal laws are otherwise complied with;
- (8) Mail the paper application for the consumer;
- (9) Coach the consumer to provide inaccurate information on the application regarding income, residency, immigration status, and other eligibility criteria;
- (10) Coach or recommend one plan or provider over another;
- (11) Accept any premium payments from the consumer;
- (12) Input any premium payment information on behalf of the consumer;
- (13) Pay any part of the premium or provide any form of consideration to the consumer on behalf of the consumer;
- (14) Intentionally create multiple applications from the same household, as defined in 42 C.F.R. § 435.603(f) (July 15, 2013), hereby incorporated by reference; or
- (15) Invite, influence, or arrange for an individual whose existing coverage through an eligible employer-sponsored plan is affordable and provides minimum value, as described in 26 USC § 36B(c)(2)(C) and in 26 C.F.R. § 1.36B-2(c)(3)(v) and (vi) (July 28, 2014), hereby incorporated by reference, to separate from employer-based group health coverage.

(l) Certified Application Counselors shall report to the Exchange any subsequent arrests for which they have been released on bail or personal recognizance and criminal convictions, in accordance with section 6456(c) of Article 4, and administrative actions taken by any other agency, within 30 calendar days of the date of the arrest or final administrative action order.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. §§ 155.205, 155.210, 155.215, and 155.225.

§ 6866. Conflict of Interest Standards.

- (a) Certified Application Entities and Certified Application Counselors must disclose to the Exchange and any consumers any relationships with Qualified Health Plans, insurance affordability programs, or other potential conflicts of interest.
- (b) Certified Application Entities and Certified Application Counselors shall not concurrently hold a license issued by the California Department of Insurance.
- (c) Certified Application Entities and Certified Application Counselors shall not employ, be employed by, be in partnership with, or receive any remuneration arising out of functions performed under this Article, from any individual or entity currently licensed by the California Department of Insurance.
- (d) Certified Application Entities and Certified Application Counselors shall:
 - (1) Create a written plan to remain free of conflicts of interest while carrying out functions under this Article; this plan shall be made available upon request to the Exchange;
 - (2) Provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible; and
 - (3) Disclose to the Exchange and to each consumer who receives application assistance from the entity or individual:
 - (A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in this section, which the entity or individual intends to sell while carrying out the Consumer Assistance functions;
 - (B) Any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and
 - (C) Any existing or anticipated financial, business, or contractual relationship with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. §§155.205, 155.210, and 155.225.

§ 6868. Suspension and Revocation.

- (a) Each of the following shall be justification for the Exchange to suspend or revoke the certification of any Certified Application Entity and/or Certified Application Counselor:

- (1) Failure to comply with any and all applicable federal or state laws or regulations, including, but not limited to, section 6864 or section 6866 of this Article; and
- (2) A potentially disqualifying administrative action or criminal record which is substantially related to the qualifications, functions, or duties of the specific position of the entity or individual as set forth in this Article.

(b) Withdrawal of Certification Procedure.

- (1) The Exchange shall withdraw a Certified Application Entity's certification in accordance with the following procedure:
 - (A) The Exchange shall provide written notice to the Certified Application Entity including the justification for withdrawing the certification;
 - (B) The withdrawal of the Certified Application Entity's certification shall become effective 20 calendar days following the date of the issuance of the Exchange's written notice;
 - (C) The submission of an appeal as set forth in subdivision (c) of this section shall toll the effectiveness of the decertification pursuant to subdivision (b)(1)(B) of this section until a final determination is made, however during this time the Certified Application Entity may not hold itself out as such;
 - (D) A Certified Application Entity for which the Exchange has withdrawn its certification must notify within one business day all of its Certified Application Counselors that they may no longer hold themselves out as Certified Application Counselors; and
 - (E) Withdrawal of a Certified Application Entity's certification does not relieve the entity of its obligation to protect consumers' personally identifiable information which it obtained or to which it had access.
- (2) The Exchange shall withdraw a Certified Application Counselor's certification in accordance with the following procedure:
 - (A) The Exchange shall provide written notice to the Certified Application Counselor, which includes the justification for withdrawing the certification;
 - (B) The withdrawal of the Certified Application Counselor's certification shall become effective 20 calendar days following the date of the issuance of the Exchange's written notice;
 - (C) The submission of an appeal as set forth in subdivision (c) of this section shall toll the effectiveness of the decertification pursuant to subdivision (b)(2)(B) of this section until a final determination is made;
 - (D) Certified Application Counselors may not hold themselves out as Certified Application Counselors after receiving a written notice pursuant to (b)(2)(A) of this section unless and until their certification is reinstated; and

(E) Withdrawal of a Certified Application Counselor's certification does not relieve the Counselor of the obligation to protect consumers' personally identifiable information which they obtained or to which they had access.

(3) A Certified Application Entity shall, within 30 days of certification, establish procedures to withdraw certification from individual Certified Application Counselors upon a Counselor's failure to comply with any and all applicable federal or state laws or regulations, including, but not limited to, the regulations set forth in this Article.

(c) Appeals.

(1) Individuals or entities may appeal a determination made pursuant to subdivision (a)(1) of this section through the process described in section 6862 of this Article.

(2) Individuals or entities may appeal a determination made pursuant to subdivision (a)(2) of this section through the process described in section 6858, subdivision (c).

(3) Until a final determination or decision is made by the Exchange regarding an individual or entity's appeal, the appellant shall be disqualified from performing any functions under this Article;

(d) Following the receipt of a final determination pursuant to this section that disqualifies an individual or entity from certification, the entity or individual is not eligible to reapply for certification for two years.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 45 C.F.R. 155.225.