COVERED CALIFORNIA

Notice Published **02/20/2019**

15-DAY NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED RULEMAKING REGARDING CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 11

Pursuant to the requirements of Government Code section 11346.8(c), and California Code of Regulations, title 1, section 44, The California Health Benefit Exchange/Covered California (the Exchange) Board hereby makes available and gives notice that it has revised the text of the above-referenced proposed regulations, which was previously published in the Notice register on December 28, 2018. Section 6860(b) has been updated to include a training requirement on the individual responsibility to have health insurance.

METHOD OF INDICATING CHANGES

Text proposed to be added to the rulemaking in this comment period is displayed in double-underline type font. Text proposed to be deleted from the rulemaking in this comment period is displayed in double ~~strikethrough~~ type font.

WRITTEN COMMENT PERIOD

Notice is given that any interested person, or his or her authorized representative, may submit written comments regarding these newly proposed revisions, and only these revisions, of the text to the Exchange. The written comment period closes at **5:00 p.m. on March 8, 2019.** The Exchange will consider only comments received at the Exchange's office by that time. All written comments received by 5:00 PM on **March 8, 2019**, which pertain to the indicated changes will be reviewed and responded to by the Board's staff as part of the compilation of the rulemaking file. If possible, please limit your comments to the proposed modifications to the text being made for this 15-day notice.

Submit written comments to:

Annalisa Franco
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-403-4468 or by e-mail to regulations@covered.ca.gov.

BOARD MEMBERS Michael Wilkening, Chair Paul Fearer Jerry Fleming Dr. Sandra Hernandez Art Torres **EXEC. DIRECTOR** Peter V. Lee

COVERED CALIFORNIA

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Annalisa Franco
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8754

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

Brian Kearns
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1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8843

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the this notice, the original Notice of Proposed Rulemaking, the Initial Statement of Reasons, the original proposed text of the regulations in underline, and the revisions to the proposed text of the regulations in double underline and strikeout can be accessed through our website at https://hbex.coveredca.com/regulations/.

BOARD MEMBERS Michael Wilkening, Chair Paul Fearer Jerry Fleming Dr. Sandra Hernandez Art Torres EXEC. DIRECTOR Peter V. Lee

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 11. Certified Application Counselor Program

§ 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) (April 18, 2017), hereby incorporated by reference), 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 and the benefits of having health insurance and enrolling through an Exchange;

(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 (September 6, 2016), hereby incorporated by reference, 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~~.~~; and

(17) The individual responsibility to have health insurance.

(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. Certified Application Counselors must complete training within 30 days of enrolling in the recertification course.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. Sections 155.225, 155.260, 156.140.

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 11. Certified Application Counselor Program

§ 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) (December 22, 2016), hereby incorporated by reference, 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. Sections 155.205, 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. Section 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 (March 8, 2016), hereby incorporated by reference. Any person with the legal authority to bind the organization in contract may execute an agreement;

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 from the date of being registered as a Certified Application Entity, 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 of Certified Application Entity;

(3) Primary e-mail address;

(4) Primary phone number;

(5) Secondary phone number;

(6) Website address;

(7) Applicant's status as a non-profit, for profit, or governmental organization, and a copy of supporting documentation;

(8) The type of organization and, if applicable, a copy of the license or other certification;

(9) A certification that the applicant complies with Section 6866;

(10) An attestation that the entity will serve families of mixed immigration status;

(11) An attestation that the entity will serve individuals with disabilities;

(12) Whether applicant receives any federal or state grant funding;

(13) 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; and

(H) Hours providing enrollment assistance.

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

(15) 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;

(B) Languages that the individual can speak; and

(C) Languages that the individual can write.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. Section 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, and primary phone number;

(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 the certified application counselor agreement required by Section 6856(a)(2)(A)2. as well as all requirements as set forth in this Article, including but not limited to Section 6866;

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

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

(D) The individual will abide by all applicable privacy and security standards, including but not limited to those set forth in the agreement between the certified application entity and the Exchange required by Section 6854(a)(4)(B)1.; and

(E) The individual will adhere to all applicable state and federal laws and regulations.

(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) Site(s) that the individual will serve.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. Section 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. Background check costs for individuals seeking certification under this Article shall be paid by the Exchange.

Note: Authority cited: Sections 1043 and 100504, Government Code. Reference: Section 100502, Government Code; Section 11105, Penal Code; and 45 C.F.R. Sections 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) (April 18, 2017), hereby incorporated by reference), 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 and the benefits of having health insurance and enrolling through an Exchange;

(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 (September 6, 2016), hereby incorporated by reference, 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. Certified Application Counselors must complete training within 30 days of enrolling in the recertification course.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. Sections 155.225, 155.260, 156.140.

§ 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.

(9) Provide referrals to any applicable office of health insurance Consumer Assistance or health insurance ombudsman established under Section 2793 of the Public Health Service Act, 42 U.S.C. § 300gg-93, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage.

(10) Provide referrals to licensed tax advisers, tax preparers, or other resources for assistance with tax preparation and tax advice related to consumer questions about the Exchange application and enrollment process, exemptions from the requirement to maintain minimum essential coverage and from the individual shared responsibility payment, and premium tax credit reconciliations.

(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) Inform each consumer that Certified Application Counselors are not acting as tax advisers or attorneys when providing assistance as Certified Application Counselors and cannot provide tax or legal advice within their capacity as Certified Application Counselors;

(4) 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.

(5) Inform the consumer that the Certified Application Counselor cannot choose a health insurance plan on the consumer's behalf;

(6) 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;

(7) 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;

(8) 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;

(9) Inform the consumer that the Certified Application Counselor will not charge a fee in exchange for performing the duties described in this section;

(10) 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;

(11) Inform the consumer that the authorization set forth in (b)(4) of this section may be revoked at any time; and

(12) Maintain a record of such authorization for a minimum of ten (10) 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. The value of gifts provided to applicants and potential enrollees for purposes other than as an inducement for enrollment must not exceed nominal value, either individually or in the aggregate, when provided to that individual during a single encounter. The nominal value is equal to or less than $15.

Gifts of nominal value may not include beer, wine, liquor, cigarettes, tobacco, or lottery tickets. 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) (November 30, 2016), 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 26, 2017), 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; 26 C.F.R Section 1.36B-2; 42 C.F.R Section 436.603; and 45 C.F.R. Sections 155.205, 155.210, 155.215, 155.225 and 155.260.

§ 6866. Conflict of Interest Standards.

(a) Certified Application Entities and Certified Application Counselors must disclose to the Exchange and 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. Sections 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. Section 155.225.