

**State of California  
Office of Administrative Law**

**In re:**  
**California Health Benefit Exchange**

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Adopt sections:** 6650, 6652, 6656, 6657,  
6658, 6660, 6662, 6664,  
6666, 6668, 6670

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2015-1106-02**

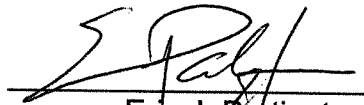
**OAL Matter Type: Certificate of Compliance  
Resub (CR)**

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This rulemaking is a resubmittal of Certificate of Compliance action number 2015-0715-06C, in which the California Health Benefit Exchange sought to make permanent emergency rulemaking action numbers 2013-0705-01E, 2014-0129-01EE, 2014-0501-02EE, 2014-0709-02EE, and 2014-1202-02EE. This action establishes the Navigator Program within title 10 of the California Code of Regulations, and includes eligibility standards, application requirements, and other guidelines for individuals and entities to participate in the Program.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

**Date:** December 23, 2015

  
Eric J. Partington  
Attorney

**For:** DEBRA M. CORNEZ  
Director

**Original:** Peter Lee  
**Copy:** Brian Kearns

NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on reverse

For use by Secretary of State only

# RESUBMITTAL

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2015-1106-02SR</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
		<b>2015 NOV -6 P 1:00</b> OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**DEC 23 2015**  
3:40 PM

AGENCY WITH RULEMAKING AUTHORITY  
California Health Benefit Exchange

AGENCY FILE NUMBER (if any)

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER <b>2015, 122</b>	PUBLICATION DATE <b>3/20/2015</b>

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Enrollment Assistance		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2013-0705-01E, 2014-0709-02EE; 2014-1202-02EE	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) <b>2015-07-15062</b>			
ACTION(S) AFFECTED <b>List all section number(s) individually. Attach additional sheet if needed.</b>		ADOPT 6650, 6652, 6656, 6657, 6658, 6660, 6662, 6664, 6666, 6668, and 6670	
TITLE(S) 10		AMEND	
		REPEAL	

#### 3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
**9/15/15 - 9/30/15**

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON

<b>Brian Kearns</b>	TELEPHONE NUMBER <b>(916) 228-8843</b>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <b>brian.kearns@covered.ca.gov</b>
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE <b>11/05/15</b>
TYPED NAME AND TITLE OF SIGNATORY <b>Kathleen M. Keeshen, General Counsel</b>	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**DEC 23 2015**

Office of Administrative Law

California Code of Regulations

Title 10. Investment

Chapter 12. California Health Benefit Exchange (§ 6650 et seq.)

Article 8. Enrollment Assistance.

California Code of Regulations

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**§ 6650. Definitions.**

(a) For purposes of this Article, the following terms shall have the following associated meanings:

Authorized Contact: The individual appointed by the Certified Enrollment Entity to manage the agreement with the Exchange.

Certified Enrollment Counselor: An individual who is certified by the Exchange pursuant to Section 6656 to provide one-on-one Consumer Assistance. A Certified Enrollment Counselor shall be registered in the Navigator Program.

Certified Enrollment Entity: An entity or individual registered by the Exchange to provide one-on-one Consumer Assistance. A Certified Enrollment Entity shall be registered in the Navigator Program.

Consumer: A person or entity seeking information on eligibility and enrollment or seeking application assistance with a health insurance or health related product available through the Exchange. The term consumer includes, but is not limited to, an applicant, an application filer, authorized representative, employer, qualified employee, qualified employer, qualified individual, small employer, or enrollee as defined in Section 6410 of Article 2 of this Chapter.

Consumer Assistance: The programs and activities created under 45 C.F.R. § 155.205(d) to provide one-on-one assistance to consumers.

Navigator: A Certified Enrollment Counselor who is affiliated pursuant to Section 6656 with a Certified Enrollment Entity that is registered in the Navigator Program.

Navigator Program: The Program whereby Certified Enrollment Entities are awarded grants for conducting Outreach & Education and Consumer Assistance.

Outreach & Education: The programs and activities created under 45 C.F.R. § 155.205(e) to educate consumers about the Exchange and insurance affordability programs in order to encourage participation.

Personally Identifiable Information: Any information, including electronic, paper or any other media, that identifies or describes an individual, or can be used to distinguish or trace an individual's identity, including, but not limited to, his or her name, social security number, physical description, date, place of birth, mother's maiden name, home address, home telephone number, education, financial matters, medical or employment history, biometric records, and statements made by, or attributed to, the individual, that alone or when combined with other personal or identifying information can be linked or is linkable to a specific individual.

Personally Identifiable Information includes Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. section 1320d-d8).

Primary Contact: The individual appointed by the Certified Enrollment Entity to be a liaison with the Exchange.

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

**§ 6652. Certified Enrollment Entities.**

(a) The following entities and individuals are eligible to apply to become a Certified Enrollment Entity in the Navigator Program pursuant to Section 6656:

- (1) American Indian Tribes or Tribal Organizations;
- (2) Chambers of Commerce;
- (3) Cities, Counties, and Local Government Agencies;
- (4) Commercial fishing, industry organizations;
- (5) Community Colleges and Universities;
- (6) Faith-Based Organizations;
- (7) Indian Health Services Facilities;
- (8) Labor Unions;
- (9) Licensed attorneys (e.g., family law attorneys who have clients that are experiencing life transitions);
- (10) Non-Profit Community Organizations;
- (11) Ranching and farming organizations;
- (12) Resource partners of the Small Businesses Administration;
- (13) School Districts;
- (14) Tax preparers as defined in Section 22251(a)(1)(A) of the Business and Professions Code;
- (15) Trade, industry, and professional organizations;
- (16) Safety Net Clinics:
  - (A) Community Clinics as defined in Health and Safety Code Section 1204, subdivision (a)(1)(A);

- (B) Free Clinics as defined in Health and Safety Code Section 1204, subdivision (a)(1)(B);
- (C) Federally Qualified Health Centers (FQHCs) under Section 330 of the Public Health Service Act, 42 U.S.C. § 254b;
- (D) FQHC Look-Alikes designated by the U.S. Department of Health and Human Services, Health Resources and Services Administration, 42 U.S.C. §§ 1395x and 1396d;
- (E) Health care facilities directly managed and funded by the Indian Health Services under the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 et seq.;
- (F) 638 Contracting or Compacting Clinics funded by the Indian Health Services under the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 et seq.; and
- (G) Urban Indian Health Centers under Title V of the Indian Health Care Improvement Act, 25 U.S.C. § 1601, et seq.

(17) Other public or private entities or individuals who meet the requirements of this Article except for:

- (A) Entities and individuals who are licensed by the Department of Insurance;
- (B) Health insurance issuers or stop loss insurance issuers;
- (C) Except for the Safety Net Clinics listed in subdivision (b)(16) above, Licensed Health Care Clinics;
- (D) Licensed Health Care Institutions; and
- (E) Licensed Health Care Providers.

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

### **§ 6656. Navigator Program Request for Application and Selection Criteria**

(a) Navigator Program applicants shall submit an application in response to a request for application in accordance with the following process:

- (1) The individual or entity shall submit an application that includes all information, documentation, and declarations required in subdivision (b) of this Section.

- (2) Grants will be awarded under the Navigator Program to successful applicants using the following evaluation criteria:
- (A) Cost effectiveness;
  - (B) Ability to carry out the duties described in Section 6664; and
  - (C) Existing relationship, or ability to establish relationships with the consumers likely to be eligible for enrollment in a Qualified Health Plan (QHP).
- (3) Individuals and Entities selected to participate in the Navigator Program shall:
- (A) Submit the following:
    - 1. An executed agreement conforming to the Roles and Responsibilities defined in Section 6664;
    - 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, and workers compensation insurance; and
    - 3. A completed STD. 204, payee data record.
  - (B) Complete the training requirements pursuant to Section 6660.
- (4) The Exchange shall review the application and, if applicable, request missing information necessary to select a Navigator applicant.
- (5) Entities not selected to participate in the Navigator Program may submit a protest in writing to the Exchange to 1601 Exposition Blvd, Sacramento, 95815, which shall:
- (A) Be in writing, signed by an individual who is authorized to contractually bind the applicant
  - (B) Be received by the Exchange within five (5) business days of the date the rejected applicant is notified they have not been selected to participate in the Navigator Program; and
  - (C) Provide a statement of reason(s) for the protest, including facts and evidence to explain why the applicant believes the Exchange has incorrectly rejected the applicant.
- (6) Final decisions regarding the selection of entities to participate in the Navigator Program and responses to protests will be reviewed by the Exchange's Executive Director, or his or her designee, in accordance with the following criteria:
- (A) Submission of an application that includes all required information and documentation, as set forth in subdivision (a)(1) and (a)(4);
  - (B) Ability of the applicant to meet the Navigator Program criteria, as set forth in subdivision (a)(2);
  - (C) Compliance with the requirements of submitting a protest, as set forth in subdivision (a)(5); and
  - (D) Evaluation and investigation of the facts and evidence as detailed in the protest letter.
- (7) Within 30 days of the Exchange receiving the written protest from a rejected applicant, the Exchange's Executive Director, or his or her designee, shall mail the final

determination of the protest to the rejected applicant.

(b) The Navigator Program Grant Application shall contain the following information:

- (1) Individual or Organization information:
  - (A) Full and legal name;
  - (B) Federal Employer Identification Number;
  - (C) Name of person authorized to enter into contractual obligation;
  - (D) Physical address of primary office;
  - (E) Mailing address, if different;
  - (F) Office phone number;
  - (G) Fax number;
  - (H) E-mail address; and
  - (I) Website address.
- (2) Primary contact Information:
  - (A) Primary contact person;
  - (B) Physical address;
  - (C) Phone number;
  - (D) Fax number; and
  - (E) E-mail address.
- (3) Identification of applicant's status as an eligible entity type pursuant to Section 6652 and a copy of supporting documentation.
- (4) Previous experience involving the Navigator Program activities.
- (5) Funding from other sources for similar activities including any federal, state, or county grants awarded for outreach, education, or enrollment activities.
- (6) Requested funding amount.
- (7) Subcontractor('s) information:
  - (A) Full and legal name;
  - (B) Federal Employer Identification Number;
  - (C) Name of person authorized to enter into contractual obligation;
  - (D) Physical address of primary office;
  - (E) Mailing address, if different;
  - (F) Office phone number;
  - (G) Fax number;
  - (H) E-mail address; and
  - (I) Website address.
- (8) Subcontractor('s) primary contact information:
  - (A) Primary contact person;
  - (B) Physical address;
  - (C) Phone number;
  - (D) Fax number; and
  - (E) E-mail address.



- (9) Subcontractor('s) letter of intent to participate.
- (10) Identification of subcontractor('s) eligibility type pursuant to Section 6652 and a copy of supporting documentation.
- (11) Indication of region or population the applicant proposes to reach and estimated percentage by ethnicity, language, age group and federal poverty level.
- (12) Cover Letter including the following information:
  - (A) Title of the grant application;
  - (B) Submission date of the proposal;
  - (C) Requested funding amount;
  - (D) A summary of the proposed project, including a description of the populations and communities targeted by the project, proposed approach, and likely impact; and
  - (E) Signature of an individual authorized to enter into contracts on behalf of the proposer.
- (13) Narrative description of the applicant's qualifications.
- (14) Letter(s) of reference from organizations previously collaborated with.
- (15) Description of the staffing strategy and capacity for the lead organization and subcontractors.
- (16) Description of the approach and strategy for reaching the target population.
- (17) Description of setting and venue where Navigator activities will take place.
- (18) Description of project management and quality monitoring activities.
- (19) Description of project costs.

(c) At least one of the grants shall be awarded to each of the following:

- (1) A non-profit Community Organization as described in Section 6652(a)(10); and
- (2) Any one of the other categories listed in Section 6652.

Note: Authority cited: Sections 100502 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 CFR §§ 155.205, 155.210, and 155.260.

**§ 6657. Certified Enrollment Counselor Application.**

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

- (1) The Certified Enrollment 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 6664.

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

1. Submit fingerprinting images in accordance with Section 6658;
2. Disclose to the Exchange all criminal convictions and administrative actions taken against the applicant;
3. Complete the required training established in Section 6660; and
4. Pass the required certification exam pursuant to section 6660.

(3) Individuals who complete the above requirements, pass the Certified Enrollment Counselor Fingerprinting and Criminal Record Check described in Section 6658, 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 Enrollment Counselors by the Exchange.

(4) Applicants who have been denied for reasons other than failure to pass the Certified Enrollment Counselor Fingerprinting and Criminal Record Check may appeal the denial of their Certified Enrollment Counselor Application through the process established by Section 6662.

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

- (1) Name, e-mail address, primary and secondary 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 Enrollment Entity that the individual will affiliate with;
- (4) Affiliated Certified Enrollment Entity's primary site location address;
- (5) Site(s) served by the individual;
- (6) Mailing Address of the primary site for the Certified Enrollment Entity;
- (7) An indication of the languages that the Certified Enrollment Counselor can speak;
- (8) An indication of the languages that the Certified Enrollment Counselor can write;

(9) Disclosure of all criminal convictions and administrative actions taken against the individual;

(10) A certification by the individual that:

(A) The individual complies with Section 6666;

(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.

(11) For the individual applying to become a Certified Enrollment Counselor, signature, and date signed; and

(12) For the Authorized Contact from the Certified Enrollment Entity that the individual will be affiliated with, name, signature, and date signed.

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

(1) Name of the Certified Enrollment Entity and the Certified Enrollment Entity Number;

(2) Name and signature of the Authorized Contact from the Certified Enrollment 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) An indication of whether the individual is certified as an Certified Enrollment Counselor, and if so, the following information:

(A) Certification number; and

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

Note: Authority cited: Sections 100502 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. §§ 155.205, 155.210, ~~155.215~~, and 155.260.

### **§ 6658. Certified Enrollment 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) 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:

(i) Any additional evidence of rehabilitation and mitigating circumstances provided by the individual in subdivision (c)(3) of this Section;

(ii) Information received as a result of the criminal record check;

(iii) Information received through the individual's application process for a position requiring fingerprinting in subdivision (a) of this Section--and

(iv) 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.

(5) 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.

(d) Costs.

(1) The Exchange shall pay the costs incurred by individuals whose duties require fingerprinting under subdivision (a) of this Section until December 31, 2015. After December 31, 2015, background check costs for individuals seeking certification under this Article shall be paid by the Certified Enrollment Entity.

Note: Authority cited: Sections 1043 and 100504, Government Code. Reference: Section 100502, Government Code; Section 11105, Penal Code; and 45 C.F.R. §§ 155.205, 155.210, 155.215, and 155.260.

### **§ 6660. Training Standards.**

(a) All individuals or entities who apply to become a Certified Enrollment Entity shall complete training for the management of Certified Enrollment Entities prior to any affiliated Certified Enrollment Counselors carrying out any Consumer Assistance functions.

(b) To ensure that all Certified Enrollment Counselors are prepared to serve both the individual Exchange and the Small Business Health Options Program, all individuals or entities who

carry out Consumer Assistance functions shall complete training in the following subjects prior to carrying out any Consumer Assistance functions:

- (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 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 physical and other accessibility for people with a full range of disabilities;
- (10) Understanding differences among health plans;
- (11) Privacy and security requirements in 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; and
- (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) Certified Enrollment Counselors shall pass an exam testing the subject matter in subdivision (b)(1)-(16), which shall be administered by the Exchange on an annual basis, in order to maintain certification with the Exchange.

Note: Authority cited: Section 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. §§ 155.205, 155.210, and 155.260.

### **§ 6662. Appeals Process**

- (a) Other than a determination made pursuant to Section 6658, Certified Enrollment 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 appeal.

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

### **§ 6664. Roles & Responsibilities.**

- (a) Certified Enrollment Entities and Certified Enrollment Counselors shall perform the following functions:

- (1) Maintain expertise in eligibility, enrollment, and program specifications; Individuals and entities registered under the Navigator Program must also conduct outreach and education to raise awareness about the Exchange;
- (2) Provide information and services in a fair, accurate and impartial manner, which includes providing 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. Such information and services shall include assistance with all other insurance affordability programs (i.e., Medicaid and Children’s Health Insurance Programs);
- (3) Facilitate selection of a QHP;
- (4) 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;
- (5) Comply with the privacy and security requirements in 45 C.F.R. § 155.260;
- (6) Prior to receiving access to any consumer’s personally identifiable information as defined in Section 6650, the Certified Enrollment Counselor shall:
  - (A) Inform the consumer that the Certified Enrollment Counselor must obtain his or her authorization prior to accessing any personally identifiable information;
  - (B) Inform each consumer of the roles and responsibilities of the Certified Enrollment Counselor as set forth in Section 6664 (a)(1)-(5), (7);
  - (C) Obtain oral or written authorization from the consumer to access the consumer’s personally identifiable information;
    1. Written authorization shall contain a consumer’s signature and a written attestation completed by the Certified Enrollment Counselor affirming under penalty of perjury that the Certified Enrollment Counselor:
      - i. Is a Certified Enrollment Counselor affiliated with a Certified Enrollment Entity in the Navigator program as defined in Section 6650;
      - ii. Conveyed all the information required under this subdivision to the consumer in a language and manner which he or she understands;  
and



- iii. Obtained written authorization from the consumer consenting to the release of his or her personally identifiable information in order to fulfill the duties as described in Section 6664.
  - 2. Oral authorization shall be accompanied by a written attestation completed by the Certified Enrollment Counselor affirming under penalty of perjury that the Certified Enrollment Counselor:
    - i. Is a Certified Enrollment Counselor affiliated with a Certified Enrollment Entity in the Navigator program as defined in Section 6650;
    - ii. Conveyed all the information required under this subdivision to the consumer in a language and manner which he or she understands; and
    - iii. 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 Section 6664.
- (D) Inform the consumer that the Certified Enrollment Counselor cannot choose a health insurance plan on the consumer's behalf;
- (E) Inform the consumer that the Certified Enrollment Counselor will provide the consumer with information regarding the health insurance options and insurance affordability programs for which he or she may be eligible;
- (F) Inform the consumer that his or her personally identifiable information will be kept private and secure in accordance with § 45 C.F.R. 155.260;
- (G) Inform the consumer that if the Certified Enrollment Counselor cannot assist the consumer, he or she will refer the consumer to another Certified Enrollment Counselor or the Covered California Call Center;
- (H) Inform the consumer that the Certified Enrollment Counselor will not charge a fee in exchange for performing the duties described in Section 6664;
- (I) 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 Enrollment Counselor may not be able to offer assistance;
- (J) Inform the consumer that the authorization set forth in Section 6664 (a)(6)(C) may be revoked at any time; and
- (K) Maintain a record of such authorization for a minimum of six (6) years.
- (7) Ensure that voter registration assistance is available in compliance with Section 6462 of Article 4;

- (8) For Certified Enrollment Entities only, maintain a physical presence in the state of California so that face-to-face assistance can be provided to applicants and enrollees; and
- (9) Comply with any applicable federal or state laws and regulations.
- (b) 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 155.210(e)(5), Certified Enrollment Entities and Certified Enrollment 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.
- (c) To ensure that Consumer Assistance is accessible to people with disabilities, Certified Enrollment Entities and Certified Enrollment 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.
- (d) To ensure that no consumer is discriminated against, Certified Enrollment Entities and Certified Enrollment 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.
- (e) Certified Enrollment Counselors shall complete the Certified Enrollment Entity and Certified Enrollment Counselor section of a consumer's application to the Exchange, including the following:
- (1) Name and certification number of the Certified Enrollment Counselor;
  - (2) Name of the Certified Enrollment Entity and the Certified Enrollment Entity Number;  
and
  - (3) Signature and date of signature by the Certified Enrollment Counselor.
- (f) If any of the information listed in subdivision (e) of this Section is not included on the consumer's original application, it may not be added at a later time.
- (g) Certified Enrollment Counselors shall wear the badge issued by the Exchange at all times when providing Consumer Assistance.
- (h) The Certified Enrollment Entity and Certified Enrollment Counselor shall never:
- (1) Have a conflict of interest as defined in Section 6666;
  - (2) Mail the paper application for the consumer;
  - (3) Coach the consumer to provide inaccurate information on the application regarding income, residency, immigration status and other eligibility rules;
  - (4) Coach or recommend one plan or provider over another;
  - (5) Accept any premium payments from the consumer;
  - (6) Input any premium payment information on behalf of the consumer;
  - (7) Pay any part of the premium or any other type of consideration to or on behalf of the consumer;
  - (8) Induce or accept any type of direct or indirect remuneration from the consumer;

- (9) Intentionally create multiple applications from the same household, as defined in 42 C.F.R. § 435.603(f);
- (10) 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), to separate from employer-based group health coverage;
- (11) 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 effort to receive Exchange application assistance, such as, but not limited to, travel or postage expenses;
- (12) Use Exchange funds to purchase gifts or gift cards, or promotional items that market or promote the products or services of a third party, that would be provided to any applicant or potential enrollee;
- (13) 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 consumer has a pre-existing relationship with the individual Certified Enrollment Counselor or Certified Enrollment Entity 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; or
- (14) 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 Enrollment Counselor or Certified Enrollment Entity has a relationship with the consumer and so long as other applicable State and Federal laws are otherwise complied with.
- (i) Certified Enrollment Counselors shall report to the Exchange any subsequent arrests for which they have been released on bail or personal recognizance and criminal convictions, received by the Exchange 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 each occurrence.

Note: Authority cited: Sections 100502 and 100504, Government Code. Reference: Sections 1043, 100502, and 100503, Government Code; and 45 C.F.R. §§ 155.205, 155.210, 155.215, and 155.260.

**§ 6666. Conflict of Interest Standards.**

- (a) Certified Enrollment Entities and Certified Enrollment Counselors shall not concurrently hold a license issued by the California Department of Insurance.
- (b) Certified Enrollment Entities and Certified Enrollment Counselors shall not employ, be employed by or 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.
- (c) Certified Enrollment Entities and Certified Enrollment Counselors shall:
- (1) Not be:
    - (A) Health insurance issuers or stop loss insurance issuers;
    - (B) Subsidiaries of health insurance issuers or stop loss insurance issuers;
    - (C) Associations that include members of, or lobby on behalf of, the insurance industry; or
    - (D) Recipients of any direct or indirect consideration from any health insurance issuer or stop loss insurance issuer in connection with the enrollment of any individuals or employees in a QHP or non-QHP.
  - (2) Submit to the Exchange a written attestation that the entity or individual:
    - (A) Is not a health insurance issuer or issuer of stop loss insurance;
    - (B) Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;
    - (C) Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and
    - (D) Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.
  - (3) Create a written plan to remain free of conflicts of interest while carrying out Consumer Assistance functions under this Article which shall be made available upon request to the Exchange.
  - (4) Provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.
  - (5) 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 relationships 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 100502 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. §§155.205, 155.210, and 155.215.

### **§ 6668. Compensation.**

- (a) Certified Enrollment Entities that are registered in the Navigator Program shall receive grants which will be individually negotiated with each Entity.

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

### **§ 6670. Suspension and Revocation.**

- (a) Each of the following shall be justification for the Exchange to suspend or revoke the certification of any Certified Enrollment Entity or Certified Enrollment Counselor:
- (1) Failure to comply with all applicable federal or state laws or regulations, including, but not limited to, Section 6664 or Section 6666 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, under Sections 6657 and 6658.
- (b) Appeals
- (1) Individuals or entities may appeal a determination made pursuant to subdivision (a)(1) of this Section through the process described in Section 6662 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 6658, subdivision (c).
  - (3) Until a final determination or decision is made regarding an individual or entity's appeal, the appellant shall be disqualified from performing any functions under this Article.

(c) 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 100502 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code.