



NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

January 25, 2016

Pursuant to the Requirements of Government Code section 11346.8(c), and section 44 of title 1 of the California Code of Regulations, the Board governing the California Health Benefit Exchange is providing notice of changes made to proposed regulation section(s) 6704 and 6706, which were part of the regulations package published in the Notice Register on April 17, 2015.

If you have any comments regarding the proposed changes, the Board will accept written comments received between **Monday, January 25, 2016 and Wednesday, February 10, 2016**. All written comments must be submitted to the Board no later than 5:00 p.m. on **February 10, 2016** and addressed to:

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All written comments received by **February 10, 2016** 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. Please limit your comments to the proposed modifications to the text.

NOTE: The modifications to the regulation text are indication by double underline for additions to the text and double strikethrough for deletions from the text.

**CERTIFIED PLAN-BASED ENROLLMENT PROGRAM
OF THE CALIFORNIA HEALTH BENEFIT EXCHANGE
CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 9
ADOPT SECTIONS 6700, 6702, 6704, 6706, 6708, 6710, 6712, 6714, 6716 and 6718**

§ 6700. Definitions.

In addition to the definitions in Section 6410 of Article 2 of this chapter, for purposes of this Article, the following terms shall mean:

(a) Authorized Contact: The contact designated by the carrier to serve as the individual responsible for all Plan-Based Enrollment Program communications with the Exchange and who is also responsible for management of the program. Pursuant to this Article, the Authorized Contact may delegate a designee where allowed by the Exchange.

(b) Cold-Calling: The unsolicited outgoing phone calls of a Certified Plan-Based Enrollment Entity (PBEE) or Certified Plan-Based Enroller (PBE) as defined in Section 6410 of Article 2 of this chapter, that were not prompted by a permissible lead, to an individual that has not expressed an interest in the PBEE's Qualified Health Plans (QHPs) in the Individual Exchange. Permissible leads are lists that are consumer opt-in and outreach to a PBEE's current or former members.

(c) Consumer: For the purposes of this article, Consumer shall mean the following targeted populations:

(1) Issuer's non-group members that meet the requirements of a Qualified Individual in Section 6410 of Article 2 of this chapter;

(2) Issuer's members receiving coverage required by the Consolidated Omnibus Budget and Reconciliation Act of 1985 ("COBRA") and the California Continuation Benefits Replacement Act, or Health and Safety Code Section 1366.20 et seq. ("Cal-COBRA") that meet the requirements of a Qualified Individual;

(3) Issuer's current members meeting the requirements of a Qualified Individual, or those current members terminating their individual or group coverage including 25 year old dependents;

(4) Qualified Individuals interested in obtaining health care coverage through the Exchange; and

(5) Individuals eligible for other Insurance Affordability Programs, as defined in Section 6410 of Article 2 of this chapter (e.g. Medi-Cal).

(d) Enrollment Assistance: For the purposes of this article, Enrollment Assistance shall mean the following direct enrollment assistance to Consumers in the Individual Exchange by a PBE:

- (1) Applying for an eligibility determination or redetermination for coverage through the Exchange;
- (2) Applying for Insurance Affordability Programs;
- (3) Facilitating the enrollment in a QHP offered by the Issuer; and
- (4) If the consumer is determined eligible for Medi-Cal following the process in Section 6710(a)(11).

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: 45 Code of Federal Regulations, Sections 155.20, 155.415, 156.265 and 156.1230.

§ 6702. Certified Plan-Based Enrollment Program Eligibility Requirements.

(a) The following entities and individuals are eligible to apply to participate in the Certified Plan-Based Enrollment Program (PBE Program) through the Exchange (Covered California):

- (1) Qualified Health Plan Issuers, as defined in Section 6410 of Article 2 of this chapter, under contract with the Exchange to provide at least one QHP through the Exchange that seek to provide enrollment assistance to Consumers.
- (2) Issuer Application Assisters, as defined in 45 C.F.R. § 155.20, and Captive Agents, as defined in Section 6410 of Article 2 of this chapter, that are employed or contracted by a PBEE.

(b) An entity who is eligible pursuant to subdivision (a)(1) of this Section may apply to become certified in the PBE Program as a Certified Plan-Based Enrollment Entity (PBEE) according to the following process:

- (1) Complete the application for the PBE Program pursuant to Section 6704;
- (2) Have their Authorized Contact complete training through the Exchange as required under Section 6706; and
- (3) Demonstrate access to Consumers, as defined in Section 6700, for the PBE Program.

(c) An individual who is eligible pursuant to subdivision (a)(2) of this Section may apply to become certified in the PBE Program as a Certified Plan-Based Enroller (PBE) according to the following process:

- (1) Be employed or contracted by a registered PBEE as a Captive Agent or Issuer Application Assister pursuant to subdivision (a)(2) of this Section;

- (2) Complete requirements of the PBE Training and Certification Standards in Section 6706;
- (3) Comply with the privacy and security requirements in 45 C.F.R. § 155.260;
- (4) Comply with applicable State law related to the sale, solicitation, and negotiation of insurance products, including applicable State law related to agent, broker, and producer licensure; and conflicts of interest;
- (5) Pass the certification exam identified in Section 6706;
- (6) Sign the certification statement required in Section 6704(d)(11)(A)-(D);
- (7) Complete and pass the Exchange's fingerprinting and criminal background check process in Section 6708; and
- (8) Complete refresher training, testing and certification renewal each year per Section 6706, and at other times if required by the Exchange.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.415, 155.260, 156.265 and 156.1230.

§ 6704. Program Application.

(a) An entity or individual who is eligible for the Certified Plan-Based Enrollment Program (PBE Program) may apply to become a Certified Plan Based Enrollment Entity (PBEE) or a Certified Plan-Based Enroller (PBE) according to the following process.

- (1) The entity or individual shall submit all application information, documentation, and declarations required in this Section.
- (2) The application shall demonstrate that the entity or individual is capable of carrying out at least those duties described in the PBEE eligibility requirements in this Article and has existing relationships, or could readily establish relationships, with Consumers, as defined in Section 6700.
- (3) The Exchange shall review the program application and, if applicable, request any missing information necessary to determine eligibility.
- (4) Entities or individuals who have submitted a completed application and demonstrated ability to meet the above requirements shall be notified of available opportunities by the Exchange for the individual or entity (via the entity's Authorized Contact and his or her designees, if applicable) to complete the training requirements in Section 6706. All individuals and entities (via the entity's Authorized Contact and his or her designees, if applicable) shall have 90 days to complete and pass the training and testing requirements in Section 6706. Failure to complete training standards within 90 calendar

days may result in the termination of the individual's or entity's certification application with the Exchange.

(5) All individuals who are seeking certification by the Exchange as PBEs of the PBEE shall meet the following requirements:

(A) Submit all information, documentation, and declarations required in subdivision (d) of this Section;

(B) Pass the PBE Fingerprinting and Criminal Record Check process in Section 6708;

(C) Complete the required training in Section 6706; and

(D) Pass the required certification exam administered by the Exchange pursuant to Section 6706.

(6) Entities or individuals who complete and pass all certification requirements in subdivision (a) of this Section, as applicable, shall be certified as PBEEs or PBEs, respectively, by the Exchange and assigned a PBEE or PBE certification number.

(7) Entities and individuals who have been denied certification by the Exchange may appeal the denial of their certification through the process established by Section 6718 or 6708.

(b) A PBEE application shall contain the following information:

(1) Entity Full name;

(2) Legal name;

(3) Date submitted;

(4) Primary e-mail address;

(5) Primary phone number;

(6) Secondary phone number;

(7) Fax number;

(8) Federal Employment Identification Number;

(9) State Tax Identification Number;

~~(10) Identification of applicant's status as a non-profit, for-profit, or governmental organization;~~

~~(11)~~ (10) Identification of the counties served;

~~(4211)~~ For the primary site and each sub-site, the following information:

- (A) Site Location Address;
- (B) Mailing Address;
- (C) County;
- (D) Contact name;
- (E) Primary e-mail address;
- (F) Primary phone number;
- (G) Secondary phone number;
- (H) An indication of whether the entity wants to receive referrals for individuals seeking assistance at this site;
- (I) An indication of whether the entity provides in-person assistance at this site;
- (J) Hours of operation;
- (K) Spoken languages; and
- (L) Written languages;

~~(4312)~~ Name, e-mail address, primary and secondary phone number for the Authorized Contact;

~~(4413)~~ A certification by the Authorized Contact, or his or her designee, that the PBEE has presented information in the application that is true and correct to the best of his or her knowledge; and

~~(4514)~~ For each Certified PBE to be affiliated with the applicant entity, a completed application for each individual as required in subdivision (d) below must be included in the entity's application.

(c) The Authorized Contact of the PBEE shall notify the Exchange of every individual to be added as an affiliated PBE that was not included in the entity's initial application. Such notification shall include the individual's application as required in subdivision (d) of this Section. The individual shall become certified by the process required by subdivision (a) of this Section.

(d) An individual's application to become a PBE shall contain the following information:

- (1) First and last name;
- (2) Business email address;

- (3) Driver's license number or identification number issued by a State Department of Motor Vehicles;
 - (4) Identification of the PBEE with which the applicant is affiliated;
 - (5) Affiliated PBEE's primary site location address;
 - (6) Site(s) to be served by the applicant;
 - (7) Mailing Address of the primary site of the PBEE for which the applicant will serve;
 - (8) An indication of the languages that the applicant can speak;
 - (9) An indication of the languages that the applicant can write;
 - (10) For Issuer Application Assistants, as defined in 45 CFR § 155.20: Disclosure of all criminal convictions and administrative actions taken against the applicant, and any arrests for which the applicant is currently out on bail or his or her own recognizance;
 - (11) A certification by the applicant that:
 - (A) The applicant shall comply with the PBE Program requirements of this Article and Section 6500(f) of Article 5 of this chapter;
 - (B) The applicant 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; and
 - (D) The applicant will adhere to any applicable State and federal laws and regulations;
 - (12) The signature of the applicant applying to become a PBE and date signed;
 - (13) The name and signature of the Authorized Contact, or that of his or her designee, and date signed;
 - (14) An indication of whether the applicant is licensed in good standing as an agent with the California Department of Insurance, and if so, the applicant's license number; and
 - (15) An indication of whether the applicant is certified by the Exchange as a Certified Insurance Agent, Certified Enrollment Counselor, Certified Application Counselor, or serves in any other enrollment function of the Exchange including Service Center Representative and County Eligibility Worker, and, if applicable, the certification number.
- (e) The Authorized Contact of the PBEE shall notify in writing the Exchange of every individual to be removed as an affiliated PBE within 30 days of the date of separation. Such notification shall include the individual's name, certification number, and effective date of removal.

(f) The PBEE shall hold a valid executed agreement with the Exchange to offer at least one QHP through the Exchange.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.415 and 156.1230.

§ 6706. Training and Certification Standards.

(a) All entities who apply to become a PBEE shall have their Authorized Contact and any designees complete certification training for the management of PBEs, prior to any affiliated PBEs carrying out any consumer assistance functions under this Article.

(b) To ensure that all PBEs are knowledgeable about the Individual Exchange, all individuals or entities who carry out enrollment assistance functions shall complete training in the following subjects prior to carrying out any enrollment assistance functions pursuant to this Article:

- (1) QHPs (including the metal levels described at 45 C.F.R. § 156.140(b)) and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances;
- (2) The range of Insurance Affordability Programs, including Medi-Cal, and other public programs;
- (3) The tax implications of enrollment decisions;
- (4) Eligibility requirements for Advanced Premium Tax Credit (APTC), as defined in Section 6410 of Article 2 of this chapter, and cost-sharing reductions, and the impacts of APTC 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 the 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 the Individual Exchange marketplace and differences among health plans;

(11) Privacy and security requirements in 45 CFR § 155.260 for handling and safeguarding consumers' personally identifiable information;

(12) Working effectively with, and not discriminating against, individuals of various racial and ethnic backgrounds, persons with limited English proficiency, people with a full range of 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) PBE voter registration protocol pursuant to Section 6462 of Article 4 of this chapter.

(c) Training pursuant to this Section shall be provided by the Exchange through computer-based training, or through another method at the discretion of the Exchange on a case by case basis when the CBT is unavailable.

(d) PBEs shall pass ~~the~~ a recertification exam testing the subject matter in subdivisions (b)(1)-(16) of this Section, 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: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.205(d), 155.415, 155.260 and 156.1230.

§ 6708. Certified Plan-Based Enroller Fingerprinting and Criminal Record Checks.

(a) Individuals Required to Submit Fingerprinting.

(1) Issuer Application Assistants seeking certification as PBEs shall submit fingerprint images and associated criminal history information pursuant to Gov. Code 1043 and Section 6456(a)-(e) of Article 4 of this chapter.

(2) Captive Agents seeking certification as PBEs are required to be licensed in good standing with the California Department of Insurance and shall not be subject to the fingerprinting process described in subdivision (a)(1).

(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 as a PBE 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. Within 60 days of receipt of such information, the Exchange shall reevaluate the interim fitness determination and 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. Within 60 days of receipt of the corrected response, the Exchange shall reevaluate the interim fitness determination and 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. Within 60 days of receipt of such written evidence, the Exchange shall reevaluate the interim fitness determination and 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.
- (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.

(d) Costs.

(1) Background check costs for individual PBEs shall be paid by the PBEE.

Note: Authority cited: Sections 1043, 100503 and 100504, Government Code. Reference: Section 11105, Penal Code; Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.415, 155.260 and 156.1230.

§ 6710. Roles and Responsibilities.

(a) A Certified Plan-Based Enrollment Entity (PBEE) and its Certified Plan-Based Enrollers(PBEs) shall perform the following functions:

- (1) Maintain expertise in eligibility, enrollment, and PBE Program specifications.
- (2) Provide enrollment assistance to consumers in a manner considered to be through the Exchange pursuant to 45 C.F.R. § 156.265(b)(2) and Section 6500(f) of Article 5 of this chapter.
- (3) Provide information and services in a fair and accurate manner. Such information and services shall include assistance with other Insurance Affordability Programs (e.g., Medi-Cal).
- (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 (PHS) 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 CFR § 155.260.
- (6) Comply with any applicable federal or state laws and regulations.
- (7) Inform all applicants of the availability of other QHP products or stand-alone dental plans offered through the Exchange through an HHS-approved universal disclaimer and display the Web link to access the Exchange Web Site on the PBEE's Web Site, and describe how to access the Exchange Web Site or the Service Center of the Exchange.

(8) Facilitate enrollment and renewal in a QHP offered in the Individual Exchange by the PBEE affiliated with the PBE.

(A) The QHP Issuer must be able to provide applicants standardized information for its available QHPs in the Individual Exchange, including at a minimum the following data elements:

(i) Premium and cost-sharing information;

(ii) The summary of benefits and coverage established under Section 2715 of the PHS Act;

(iii) Identification of whether the QHP is a bronze, silver, gold or platinum level plan as defined by Section 1302(d) of the Affordable Care Act (ACA), 42 U.S.C. § 18022(d), or a catastrophic plan as defined by Section 1302(e) of the ACA, 42 U.S.C. § 18022(e);

(iv) The results of the enrollee satisfaction survey, as described in Section 1311(c)(4) of the ACA, 42 U.S.C. 18031, when available;

(v) Quality ratings assigned in accordance with Section 1311(c)(3) of the ACA, 42 U.S.C. 18031;

(vi) Medical loss ratio information as reported to HHS in accordance with 45 C.F.R. § 158;

(vii) Transparency of coverage measures reported to the Exchange during certification with 45 C.F.R. § 155.1040;

(viii) The provider directory made available to the Exchange in accordance with 45 C.F.R. § 156.230;

(ix) Potential total cost, including premium and out-of-pocket expenses;

and

(x) Participation of the preferred provider of the consumer in the QHP Issuer's available QHPs.

(9) Clearly distinguish between QHPs for which the consumer is eligible and other non-QHPs that the Issuer may offer, and indicate that advance payments of the premium tax credit and cost sharing reductions apply only to QHPs offered through the Exchange.

(10) Allow applicants to select and attest to an APTC amount, if applicable, in accordance with 45 C.F.R. § 155.310(d)(2) and Section 6476(c) of Article 5 of this chapter.

(11) If the consumer is determined to be eligible for Medi-Cal, the PBE shall either transfer the consumer to the county of residence for enrollment in Medi-Cal or transmit all eligibility information to DHCS consistent with 45 C.F.R. § 155.310 and Section

6476(e) of Article 5 of this chapter. A PBE shall not facilitate Medi-Cal plan selection until the California Healthcare Eligibility, Enrollment, and Retention System (CalHEERS) has been programmed to allow a beneficiary to select a Medi-Cal managed care plan, as defined in Section 6410 of Article 2 of this chapter, pursuant to subdivision (p) of Section 14016.5 of the Welfare and Institutions Code.

(12) Advise all consumers found ineligible for Insurance Affordability Programs of their appeal rights, including the time limits and methods for filing appeals, in accordance with Sections 6604 and 6606 of Article 7 of this chapter.

(13) Advise all consumers found ineligible for Insurance Affordability Programs that there may be other health insurance products outside of the Individual Exchange that may be suitable to their needs. The PBE shall offer to transfer the consumer to a Captive Agent or Solicitor, as defined in Health and Safety Code Section 1345(m), affiliated with the PBEE capable of offering the consumer the full range of health plans offered by the Issuer in the Individual Market and Individual Exchange.

(b) To ensure that information provided as part of any enrollment assistance is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency, all PBEEs and PBEs 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 enrollment assistance is accessible to people with disabilities, all PBEEs and PBEs 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 supports programs when appropriate.

(d) All PBEEs and PBEs shall provide the same level of service to all individuals regardless of age, disability, culture, race, ethnicity, income, sexual orientation, or gender identity and seek advice or experts when needed.

(e) If capacity necessitates, for those culturally and linguistically appropriate services in this Section which are not otherwise required of the PBEE in federal or state law, a PBE may transfer consumers seeking those services under this Section to other Exchange resources including the Exchange Service Center and describe how to access Exchange-provided services.

(f) All PBEs shall complete the PBEE and PBE Section of a consumer's application to the Exchange, including the following:

(1) Name, certification number of the PBE, signature or electronic signature, date, and PBE PIN number, if applicable; and

(2) Name of the PBEE.

(g) PBEs that do not meet the definition of a Captive Agent, as defined in Section 6410 of Article 2 of this chapter, shall report to the Exchange any criminal convictions, administrative actions taken by any other agency, and arrests for which the individual is out on bail or his or her own recognizance, within 30 days of the date of the conviction, action, or arrest.

(h) PBEs that are Captive Agents shall be licensed in good standing through the California Department of Insurance.

(i) Prohibited Activities for PBEEs and PBEs.

(1) All PBEEs and their Contractors and Employees that are PBEs may not:

- (A) Conduct door-to-door marketing;
- (B) Employ marketing practices or offer information and assistance only to certain members in a manner that will have the effect of enrolling a disproportionate number of the Issuer's non-QHP members with significant health needs in QHPs offered in the Individual Exchange;
- (C) Cold-call non-member target populations;
- (D) Mail the paper application for the consumer;
- (E) Advise the consumer to provide inaccurate information on the application regarding income, residency, immigration status and other eligibility criteria;
- (F) Select a QHP for the potential applicant while providing application assistance;
- (G) Solicit or accept any consideration from an applicant in exchange for application assistance;
- (H) Pay any part of the premium or any other type of consideration to or on behalf of the consumer;
- (I) Sponsor a person eligible for the program by paying family contribution amounts or co-payments;
- (J) Offer applicants any inducements such as gifts or monetary payments to apply for coverage in a QHP or Medi-Cal Managed Care Plan represented by the PBE;
- (K) Intentionally create multiple applications from the same household, as defined in 45 C.F.R § 435.603(f);
- (L) 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 U.S.C. § 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;
- (M) Request, view or obtain claims data information while providing application assistance;
- (N) Request, view or obtain health status information including any pre-existing conditions for purposes other than connecting the consumer to the appropriate IAP;

(O) Violate conflict of interest standards in Section 6712;

(P) Be a Certified Insurance Agent through the Exchange pursuant to Section 6800 of Article 10 of this chapter, or any other enrollment assistance function of the Exchange, including those certified through Article 8 of this chapter; or

(Q) Retain any information related to income, citizenship, immigration status, or disability.

Note: Authority cited: Section 100504, Government Code. Reference: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.205(d), 155.260, 155.415, 156.265 and 156.1230.

§ 6712. Conflict of Interest Standards.

(a) All PBEEs and PBEs shall:

(1) Only receive consideration pursuant to the exclusive agreement between the PBEE and the PBE in connection with the enrollment of any individuals in the PBEE's QHPs pursuant to this Article.

(2) Only make representations that are accurate and not misleading. Additionally, the PBE may only make representations regarding QHPs offered by the PBEE affiliated with the PBE.

(3) Disclose conflicts of interest to Consumers:

(A) A PBEE and its PBEs shall disclose to the consumer when contact is first initiated that the PBE is employed or contracted by a QHP Issuer and is only able to provide plan details and enrollment assistance for QHPs offered by the PBEE affiliated with the PBE.

(B) After a consumer is determined eligible for coverage through the Exchange, the PBE shall:

(i) Disclose to the consumer that the Individual Exchange offers other QHPs sold by other QHP Issuers, and stand-alone dental plans as defined in Section 6410 of Article 2 of this chapter, that may meet the consumer's needs;

(ii) Provide information to consumers about the availability of the full range of QHP options and Insurance Affordability Programs for which they are eligible. It must be apparent to consumers that if determined eligible they would be free to choose among all QHPs offered in the Individual Exchange through the Service Center of the Exchange;

(iii) Provide information required in Section 6710(a)(9); and

(iv) Inform the consumer that there may be an insurance agent of record in connection with any existing health insurance policy the consumer may currently have, and if the consumer acknowledges having an agent of record, offer to attach the agent to the consumer's enrollment in a QHP, unless:

1. The consumer is determined eligible for coverage through the Exchange, and the insurance agent of record is not authorized to sell QHPs in the Individual Exchange; or
2. The consumer would prefer not to seek further assistance from the consumer's insurance agent of record.

(4) At the consumer's request following the PBE's disclosures in either subdivision (a)(3)(A) or (a)(3)(B) of this Section, the PBE shall transfer the consumer to the Service Center of the Exchange for further enrollment assistance.

(5) Document that the PBE has provided the required disclosures in subdivision (a)(3)(A) or (a)(3)(B) of this Section and the consumer has acknowledged that the consumer:

- (A) Understands the disclosures;
- (B) Does not want to be referred to the Service Center of the Exchange; and
- (C) Wants to receive information and enrollment assistance solely from the PBE.

(b) A record of the documentation required under subdivision (a)(5) of this Section shall be:

- (1) Retained by the PBEE for at least 10 years;
- (2) Subject to the Exchange's review of program conduct at the discretion of the Exchange; and
- (3) Provided to the Exchange at its request.

(c) Where enrollment services pursuant to this Article are provided to consumers over the phone, the PBEE shall keep copies of such conversations and shall make those records available for review by the Exchange on a quarterly basis.

(d) With regards to any QHP or other products offered in the Individual Exchange by QHP Issuers other than the PBEE with which the PBE has an exclusive appointment, a PBE:

- (1) May not provide enrollment services related to QHPs or other products not offered by the entity affiliated with the PBE; and
- (2) Shall at any time transfer any requests for information or enrollment services related to QHPs or stand-alone dental plans in the Individual Exchange not offered by the PBEE affiliated with the PBE to the Service Center of the Exchange and provide information on how to access the Exchange Web Site.

(e) With regards to any other products offered by the PBEE outside the Individual Exchange with which the PBE has an exclusive appointment, a PBE shall cease to provide enrollment services in a manner deemed to be through the Exchange in order to provide any information or services related to other products offered by the entity.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.415, 155.1210 and 156.1230.

§ 6714. Compensation.

(a) PBEEs will not receive compensation from the Exchange for application and enrollment assistance.

(b) PBEEs may compensate affiliated individual PBEs for enrollment assistance.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.415 and 156.1230.

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§ 6716. Suspension and Revocation.

(a) Each of the following shall be justification for the Exchange to suspend or revoke the certification of any PBEE or PBE:

(1) Failure to comply with the requirements of this Article and all applicable federal and state laws;

(2) If the PBE is not a Captive Agent, a potentially disqualifying criminal record under Section 6708 of Article 4 of this chapter; and

(3) If the PBE is a Captive Agent, failure to maintain a license in good standing with the California Department of Insurance.

(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 6718 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 6708, 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.

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.415 and 156.1230.

§ 6718. Appeal Process.

(a) Other than a determination made pursuant to Section 6708, Certified Plan-Based Enroller 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 Appeal 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 appellant is dissatisfied with the outcome of the informal resolution, the appellant may escalate the appeal to the second phase of the Appeal Process by notifying the Exchange in writing and providing additional evidence within 45 calendar days of the date of the decision in subdivision (c). 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 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 100503 and 100504, Government Code. Reference: Section 100503, Government Code; and 45 Code of Federal Regulations, Sections 155.415 and 156.1230.