

**State of California  
Office of Administrative Law**

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

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Amend sections: 6658, 6660, 6664**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

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

**OAL Matter Number: 2021-0827-03**

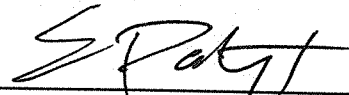
**OAL Matter Type: Certificate of Compliance  
(C)**

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This Certificate of Compliance action makes permanent emergency rulemaking action no. 2016-1202-03E, which indefinitely extended the time period during which the Exchange will pay fingerprinting costs for certain individuals and further defined the enrollment assistance responsibilities of Certified Enrollment Entities and Counselors.

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

Date: October 7, 2021



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Eric Partington  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Peter Lee, Executive Director  
Copy: Courtney Leadham

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

STD. 400 (REV. 10/2019)

# CERT

For use by Secretary of State only

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-2021-0413-02</b>	REGULATORY ACTION NUMBER <b>2021-0827-03</b>	EMERGENCY NUMBER <b>C</b>
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For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

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

**OCT. 07. 2021.**

*2:23 PM*

OFFICE OF ADMIN. LAW  
2021 AUG 27 PM 12:43

AGENCY WITH RULEMAKING AUTHORITY California Health Benefit Exchange	AGENCY FILE NUMBER (if any)
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**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE <b>Enrollment Assistance</b>	TITLE(S) <b>10</b>	FIRST SECTION AFFECTED <b>6658</b>	2. REQUESTED PUBLICATION DATE <b>4/23/21</b>
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON <b>Courtney Leadham</b>	TELEPHONE NUMBER <b>(916) 281-2562</b>	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

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

1a. SUBJECT OF REGULATION(S) <b>Enrollment Assistance</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <b>2016-1202-03 E</b>
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) ADOPT AMEND <b>6658, 6660, and 6664</b> REPEAL TITLE(S) <b>10</b>
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3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 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 type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 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)

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) _____

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>Courtney Leadham</b>	TELEPHONE NUMBER <b>(916) 281-2562</b>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <b>courtney.leadham@covered.ca.g</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>9/25/2021</b>
TYPED NAME AND TITLE OF SIGNATORY <b>Peter V. Lee, Executive Director</b>	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**OCT 07 2021**

Office of Administrative Law

**Title 10. Investment**

**Chapter 12. California Health Benefit Exchange**

**Article 8. Enrollment Assistance**

§ 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, subdivision (c), of these regulations.

(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, subdivisions (d) and (e), of these regulations.

(2) If the Exchange finds that an individual seeking certification under this Article has a potentially disqualifying criminal record, 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 relevance 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 the following, if applicable:

1. 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; and
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.

(5) Following the receipt of a final determination pursuant to this Section that disqualifies an individual from certification, the individual is not eligible to 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.

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, 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 and the available resources for consumers who require tax advice and assistance with tax preparation;

(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;
  - (15) Applicable administrative rules, processes and systems related to Exchanges and QHPs; and
  - (16) Procedures for assisting consumers with voter registration in compliance with Chapter 6 of the California Elections Code. ~~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 subdivisions (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.



§ 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 (e.g., 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 of Article 8, 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, subdivisions (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, subdivision (a)(6)(C), may be revoked at any time; and

(K) Maintain a record of such authorization for a minimum of ten (10) years.

(7) Ensure that voter registration assistance is available in compliance with Chapter 6 of the California Elections Code ~~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;

(9) Provide information regarding the process of filing Exchange eligibility appeals;

(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;

(11) Inform each consumer that Certified Enrollment Entities and Certified Enrollment Counselors are not acting as tax advisors or attorneys when providing enrollment assistance and cannot provide tax or legal advice within their capacity as a Certified Enrollment Entity or Certified Enrollment Counselor;

(12) Provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area; and

(13) 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, websites, 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 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;

(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. 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 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, subdivision (c), and administrative actions taken by any other agency, within 30 calendar days of the date of each occurrence.

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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.