



Notice Published **12/28/2018**

NOTICE OF PROPOSED RULEMAKING

**CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 11
ADOPT SECTIONS 6850, 6852, 6854, 6856, 6858, 6860, 6862, 6864, 6866, and 6868**

The Board of Directors for the California Health Benefit Exchange (hereinafter referred to as the "Exchange") proposes to adopt the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Exchange has not scheduled a public hearing on this proposed action. However, the Exchange will hold a hearing if it receives a written request for a public hearing for any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes at **02/11/2019**. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

ANNALISA FRANCO
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-228-8321 or by e-mail to regulations@covered.ca.gov.

AUTHORITY AND REFERENCE

Government Code Section 100504(a)(6) authorizes the Board of Directors for the Exchange to adopt rules and regulations, as necessary. The proposed regulations

implement, interpret, and make specific Government Code Sections 100502 and 100503; and Title 45 of the Code of Federal Regulations, Sections 155.205, 156.225, and 156.260.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None

Summary of Existing Laws

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as known as "Covered California." For purposes of this Notice, Covered California will be referred to as the "Exchange." The Exchange's mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange's Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws.

Currently, there are emergency regulations that establish and regulate the Certified Application Counselor Program. Those regulations include definitions, application procedures, eligibility requirements, roles and responsibilities, standards for suspension, and appeal procedures.

Summary of the Effect of the Proposed Regulation

The broad purpose of this proposed regulatory action is to: (1) complete Certificate of Compliance requirements for Sections 6850, 6852, 6854, 6856, 6858, 6860, 6862, 6864, 6866, and 6868; and (2) make minor edits that ensure clarity and address stakeholder requests. The proposed regulations will make permanent the regulations in Article 11 governing Certified Application Entities and Counselors. The proposed permanent regulations include definitions, application procedures, eligibility requirements, roles and responsibilities, standards for suspension, and appeal procedures. If approved, these regulations will assist the Exchange with the implementation of the Certified Application Counselor program on an indefinite basis.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After an evaluation of current regulations, the Exchange determined that these proposed regulations are not inconsistent or incompatible with any existing regulations. In Articles 8, 9, and 12, there are a number of regulations pertaining to the roles and responsibilities of Certified Enrollers, such as Certified Enrollment Counselors, Medi-Cal Managed Care Plan Enrollers, and Plan-Based Enrollers. The proposed regulations do not conflict with any other regulations governing other Certified Enrollers.

Anticipated Benefits of the Proposed Regulation

The anticipated benefits of this proposed regulation include:

- Complete the Certificate of Compliance requirement for emergency regulations;
- Provide clear standards for participants in the Certified Application Counselor program to perform their duties and ensure that consumers receive assistance to address their health and financial needs
- Make minor clarifying edits to remove some ambiguity and accommodate stakeholder requests; and
- Ensure compliance with federal auditing requirements.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Exchange has made the following initial determinations:

Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Mandate on Local Agencies and School Districts

None. The Exchange has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

Cost To Any Local Agency or School District Which Must Be Reimbursed In Accordance With Government Code Sections 17500 Through 17630

None. This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Costs or Savings to State Agencies

The proposal results in additional costs to the Exchange but will have no impact on other agencies or the State General Fund. The Exchange is currently completely funded by assessments on premiums charged by Qualified Health Plans.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Other Nondiscretionary or Savings Imposed on Local Agencies

None. This proposal does not impose other nondiscretionary costs or savings on local agencies.

Significant Effect on Housing Costs

None.

Effect on Small Business

This proposed regulation is not expected to create or expand small business within the State of California. The current CAE/CAC program has been operating since 2012. Considering that many regulations in this package currently exist as emergency regulations, there are no anticipated effects on small businesses.

Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete With Businesses in Other States

None.

Cost Impacts on a Representative Private Person or Business

The Exchange is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of the Economic Impact Assessment/Analysis

The Exchange concludes regarding the proposed regulations that it is:

- (1) **unlikely** that the proposal will create or eliminate any jobs in the State;
- (2) **unlikely** that the proposal will create or eliminate businesses within the State;
- (3) **unlikely** that the proposal will impact the expansion of businesses currently doing business in California; and
- (4) **likely** that the health and welfare of consumers will benefit from the proposed regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Exchange must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in effectuating the purpose of the statute and applicable federal regulations. This proposed action is the most effective in effectuating the purpose of the statute and applicable federal regulations.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

ANNALISA FRANCO
Regulations Analyst
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: **(916) 228-8754**

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

Brian Kearns
Attorney
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8843

Please direct copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to **ANNALISA FRANCO** at the above contact information.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Exchange will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date of this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting **ANNALISA FRANCO** at the address or (916) 228-8754 listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Exchange may adopt the proposed regulations substantially as described in this notice. If the Exchange makes modifications which are sufficiently related to the originally proposed text, it will make the modified text available to the public at least 15 days before the Exchange adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of **ANNALISA FRANCO** at the address indicated above. The Exchange will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting **Annalisa Franco** at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline can be accessed through our website <https://hbex.coveredca.com/regulations>.



INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 11 ADOPT SECTIONS 6850, 6852, 6854, 6856, 6858, 6860, 6862, 6864, 6866, and 6868

The Administrative Procedure Act ("APA") requires that an Initial Statement of Reasons be available to the public upon request when an agency undertakes a permanent rulemaking action. The following information required by the APA pertains to this particular rulemaking action:

BACKGROUND

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as "Covered California." For purposes of this Initial Statement of Reasons, Covered California will be referred to as the "Exchange." The Exchange's mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange's Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws. Specifically, the proposed rulemaking makes permanent all sections in Article 11 governing the Certified Application Counselor program.

PROBLEM STATEMENT

Since 2014, the Exchange has significantly relied upon Certified Enrollers to facilitate enrollment of consumers into Qualified Health Plans (QHPs). Certified Enrollers include Certified Enrollment Counselors, Certified Application Counselors, Medi-Cal Managed Care Plan Enrollers, Agents, and Plan-Based Enrollers. Certified Enrollers account for over half of the Exchange's enrollments every year, so it is important for the Exchange

to foster a mutually beneficial relationship with each type of Enroller. Each counselor affiliates with an entity in order to provide enrollment assistance. Certified Application Counselors (CACs) affiliate with Certified Application Entities (CAEs) and perform enrollment assistance on behalf of the Entity. For purposes of this Initial Statement of Reasons, Certified Application Entities and Certified Application Counselors will be referred to as CAEs and CACs, respectively.

Each Certified Enroller plays a unique role in reducing California's uninsured population. CAEs are community organizations across the state who have experience assisting California's diverse populations and have proven success in enrolling consumers into health care programs. CACs facilitate enrollment of consumers into the appropriate QHP that best fits their needs.

The proposed rulemaking package makes permanent existing emergency regulations regarding CACs and CAEs. It also makes minor edits to several sections. Most edits address grammatical issues and update dates for cited federal regulations. Section 6854(B)(1) has been amended to allow anyone with legal authority to sign the CAE Agreement on behalf of the CAE. This change accommodates requests from CAEs to clarify the requirements regarding contract execution. Section 6860(d) has also been amended to set a deadline for when CACs must complete their recertification training. The regulations were silent on the deadline, which often prompted questions from CACs. Other than these changes, the regulations contained in this package mirror the active emergency regulations.

ANTICIPATED BENEFITS

Anticipated benefits including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:

- Making high quality health care available to all Californians;
- Providing structure for the Exchange to give predictable, clear standards to the public and to CAEs/CACs both now and prospectively;
- Aligning California's regulations with the federal act and complying with state law;
- Establishing a uniform process for CAE/CAC certification;
- Providing increased access to and education about health care coverage to the public in California.

PURPOSE AND NECESSITY

The broad purpose of this proposed regulatory action is to: (1) complete Certificate of Compliance requirements for Sections 6850, 6852, 6854, 6856, 6858, 6860, 6862, 6864, 6866, and 6868; and (2) make minor edits that ensure clarity and address stakeholder requests.

Pursuant to its authorities, the Exchange proposes to permanently adopt certain regulations as follows:

Section 6850:

This section clarifies and makes specific the definitions for certain terms used throughout Article 11. This is necessary because certain terms have specified meanings in state and federal regulations. Section 6850 ensures that these terms are consistently used throughout Article 11.

This rulemaking package makes minor changes to the current emergency regulation, including corrections to grammatical issues and updates to cited federal regulations.

Authorized Contact: “Authorized Contact” is a term unique to the Exchange. Therefore, defining the term is necessary to ensure that the affected public understands this term as it is used in these regulations.

Certified Application Counselor: Defining “Certified Application Counselor” provides clarity to this Article as the term is used throughout. It is a term unique to the Exchange. This definition is necessary to ensure that those regulated by this Article, consumers, and other interested parties understand the role of Certified Application Counselors and to whom these regulations apply.

Certified Application Entity: Defining “Certified Application Entity” provides clarity to this Article so that entities wishing to become Certified Application Entities understand the eligibility rules. “Certified Application Entity” is a term unique to the Exchange.

Consumer Assistance: Defining “Consumer Assistance” provides clarity to these regulations and informs individuals and entities carrying out consumer assistance functions of their duties. Defining “Consumer Assistance” is necessary to ensure consistency with federal regulations set out in 45 C.F.R. § 155.205.

Primary Contact: “Primary Contact” is a term unique to the Exchange. The primary contact will be the appointed liaison with the Exchange. Defining this term is necessary to ensure that applicants know how to complete their application and whom to select to be the liaison with the Exchange.

Section 6852:

This section outlines the requirements for becoming a CAE. This rulemaking package makes minor grammatical changes to the current emergency regulations.

Sections 6852(a)(1) – (a)(2) identify two classes of individuals/entities ineligible to participate in the program: health issuers and Certified Insurance Agents. This is necessary to prevent conflicts of interest and comply with 45 CFR Section 155.225.

Section 6852(b) prohibits Certified Enrollment Entities and Certified Enrollment Counselors from participating in the program. This is necessary to ensure that counselors and entities participate in only one Certified Enroller program and to prevent conflicts of interest from arising.

Section 6852(c) authorizes the Exchange to require proof of a current or valid license, authority, certificate, or registration by the appropriate regulatory or licensing entity as a condition of eligibility to be registered as a CAE. This requirement ensures that only entities authorized to do business in California can participate in the program.

Section 6854:

This section sets forth the requirements for the application for qualified entities interested in performing services as a CAE. This rulemaking package makes minor grammatical changes to the existing emergency regulation. It also adds language to Section 6854(a)(4)(B)(1) that allows any person with legal authority to execute the CAE agreement on behalf of their entity. The Exchange received some requests from stakeholders to identify individuals eligible to execute the agreement. The proposed language in Section 6854(a)(4)(B)(1) addresses those requests.

Section 6854(a)(1) – (6) outlines the submission procedures, review process, and application content for participation in the CAE program. Subdivisions (a)(1)-(6) specify the process that must be followed to submit an application, the criteria used to evaluate the applications, and the protest process to be followed for those who are rejected from the program. This section is necessary to guide interested individuals through the application and protest process.

Applicants must submit an executed agreement which conforms to the roles and responsibilities as set forth in Section 6864 and 45 C.F.R. § 155.225. This is necessary to ensure that recipients are knowledgeable and prepared to carry out the functions of the program. The submission of an agreement is necessary to ensure that recipients are on notice of their required functions and are legally bound to perform those functions in conformance with these regulations.

Applicants must also submit proof of general liability insurance of a minimum value of \$1,000,000.00 per occurrence with the Exchange to be listed as an additional insured

and evidence of workers compensation coverage. This is required to protect and indemnify the Exchange from litigation exposure that may arise due to the conduct and events arising from, or involving CAEs and/or its employees. The one million dollar amount is consistent with guidance received by the Office of Risk Management, a division of the Department of General Services.

Section 6854(a)(4)(B)(1) has been updated to allow any person with legal authority to execute the CAE agreement on behalf of their entity. The Exchange received some requests from stakeholders to identify individuals eligible to execute the agreement. The proposed language in Section 6854(a)(4)(B)(1) addresses those requests.

Section 6854(b)(1)-(2) require the organization's full and legal name. This is necessary to identify the applicant. The Exchange must be advised of the applicant's legal name so that agreements and correspondence will legally bind and address the proper name of the applicant.

Section 6854(b)(3) requires the applicant's primary contact's email address. This is necessary so that the Exchange can communicate and send correspondence via email to the applicant's primary contact. This form of communication will allow for efficiency and timeliness in conducting communication related to the CAC program.

Section 6854(b)(4)-(5) require documentation of the applicant's primary and secondary phone number. This is necessary to ensure the Exchange has correct contact information on file for its records so that the Exchange can communicate with the applicant's authorized representative throughout the application process and if selected, communicate regarding participation in the CAC program.

Section 6854(b)(6) requires the applicant's website address. This information is needed to provide the Exchange with background information on the applicant, including but not limited to, service areas the applicant can reach and language assistance availability.

Section 6854(b)(7) requires the applicant to identify its status as a non-profit, for profit, or governmental organization, and a copy of supporting documentation. This information is necessary to ensure eligibility in the program and to confirm that the organization can fully perform the work without violating any conflict of interest rules.

Section 6854(b)(8) requires the applicant to identify its organization type and provide any licensure documents if necessary. This information is necessary to ensure eligibility in the program and to confirm that the organization can fully perform the work without violating any conflict of interest rules.

Section 6854(b)(9) requires the applicant to certify that it will comply with Section 6866, which identifies the conflict of interest standards. This certification is necessary to ensure that applicants can and will comply with all conflict of interest rules. The Exchange cannot certify organizations that are incapable of complying with the conflict of interest rules.

Section 6854(b)(10) requires the applicant to attest that it will serve families of mixed immigration status. This is necessary because the Exchange relies on CAEs to engage with diverse and hard-to-reach populations, including families of mixed immigration status.

Section 6854(b)(11) requires the applicant to attest that it will service individuals with disabilities. This is necessary because the Exchange relies on CAEs to engage with diverse and hard-to-reach populations, including individuals with disabilities.

Section 6854(b)(12) requires the applicant to identify any federal or state grant funding that it might receive. This information is necessary to ensure eligibility in the program and confirm that the organization can fully perform the work without violating any conflict of interest rules. As set forth in 10 CCR section 6866, CAEs and CACs cannot receive funding from some sources.

Section 6854(b)(13)(A)-(H) requires the applicant to provide contact information for both its primary sites and any sub-sites. This information is necessary for administrative purposes. It allows the Exchange to communicate with the organization. The Exchange also makes this information available to the public so consumers can directly contact CAEs for assistance.

Section 6854(b)(14) must be deleted since it is duplicative of Section 6854(b)(13)(A)-(H)

Section 6854(b)(15) will be renumbered as 6854(b)(14). It requires the Authorized Contact to certify that the application contains information that is true and correct. This ensures that the applicants provide accurate information. The Exchange can only certify qualified organizations. The decision to certify is solely based on the information provided in the application, so it is essential for applicants to supply truthful information.

Section 6854(b)(16)(A)-(C) will be renumbered as 6854(b)(15). It requires the CACs to provide any additional information that the Exchange can consider when reviewing the application. This allows CAC applicants to be fairly considered for the program. Section 6854(b)(16)(B) and (C) require applicants to identify the languages that they can speak and write. This is necessary to ensure the applicants can serve target populations in their preferred language. This also allows the Exchange to monitor its compliance with 45 C.F.R. § 155.205(c).

Section 6856

This section sets forth the requirements for the application for qualified individuals interested in performing services as a CAC. This rulemaking package makes minor grammatical changes to the existing regulations.

Section 6856(a)(1) requires CAEs to inform the Exchange of any individual who affiliates with the organization as CAC. This allows the Exchange to properly certify and track all active CACs.

Section 6856(a)(2)(A) broadly outlines the documents that CAC applicants must submit to the Exchange. This is necessary to provide the individual with clear guidance on what information the Exchange must collect in order to properly determine the individual's eligibility to become a Certified Application Counselor. The submission of an agreement is necessary to ensure that applicants are on notice of their required functions and are legally bound to perform those functions in conformance with the applicable regulations.

Section 6856(a)(2)(B) identifies the requirements that Applicants must complete within 30 days after submitting the appropriate paperwork. Applicants must submit their fingerprinting images and disclose criminal convictions/administrative actions. This information is necessary as it allows the Exchange to make an individualized assessment of the individual's fitness eligibility to become a Certified Enrollment Counselor, as required by Government Code Section 1043. Any fitness determinations will be conducted in conformity with Section 6456 of Article 4 and Section 6858 of Article 12.

All applicants must complete training as a condition to certification. This is necessary to comply with 45 C.F.R. § 155.225(d)(1), and to ensure that individuals are knowledgeable and prepared to carry out the duties and functions of a CAC. Applicants must also pass a certification exam administered by the Exchange. This is necessary to comply with 45 C.F.R. § 155.225(d)(1).

Section 6856(a)(3) requires the Exchange to certify individuals who complete the requirements of Section 6856, pass the fingerprinting and criminal record check, and have no administrative actions taken against them which are substantially related to the qualifications, functions, or duties of the specific position sought. This is necessary to inform applicants all requirements which must be satisfied before the Exchange must issue a certification.

Section 6856(a)(4) allows applicants to appeal an adverse eligibility determination if such a determination was not based on a criminal record check. This is necessary to provide applicants with due process and compel the Exchange to reconsider an eligibility determination.

Section 6856(b) outlines the requirements for a CAC application. This is necessary to inform applicants of the required information to complete a CAC application.

Section 6856(b)(1) requires the applicant's name, e-mail address, and primary phone number. require the organization's full and legal name. This is necessary to identify the applicant. The Exchange must be advised of the applicant's legal name so that agreements and correspondence will legally bind and address the proper name of the applicant. This section also requires the applicant's e-mail address and phone number.

This is necessary so that the Exchange can communicate and send correspondence via email to the applicant regarding certification and any updates to the program.

Section 6856(b)(2) requires an applicant's Driver's License Number or Identification Number issued by the California Department of Motor Vehicles. This is necessary for the Exchange to confirm the applicant's age. CACs must be at least 18 years old.

Section 6856(b)(3) – (6) requires the applicant to identify the CAE that it will affiliate with; the CAE's primary address; sites served by the individual; and the mailing address for the CAE. This information is necessary for the Exchange to track and monitor the CAC. The Exchange has a duty to ensure that its CACs comply with applicable laws and regulations. And, as a result, it must be able to contact the CAE if there are any issues.

Section 6856(b)(7) – (8) require applicants to identify the languages that they can speak and write. This is necessary to ensure the applicants can serve target populations in their preferred language. This also allows the Exchange to monitor its compliance with 45 C.F.R. § 155.205(c).

Section 6856(b)(9)(A) requires the applicant to certify that he or she will comply with the CAC agreement and all applicable regulations. Compliance with the agreement is necessary to ensure that applicants are committed to performing the required functions. It is also necessary for applicants to commit themselves to complying with applicable regulations to ensure that they do not violate the law or engage in any conflicts of interest.

Section 6856(b)(9)(B) requires applicants to certify that they are a natural person of not less than 18 years of age. This is necessary for the Exchange to confirm the applicant's age. CACs must be at least 18 years old.

Section 6856(b)(10)(C) requires applicants to certify that the application contains information that is true and correct. This ensures that the applicants provide accurate information. The Exchange can only certify qualified individuals. The decision to certify is solely based on the information provided in the application, so it is essential for applicants to supply truthful information.

Section 6856(b)(10)(D) requires applicants to certify that they will comply with all applicable privacy and security standards, including any set forth in the agreement between the CAE and the Exchange. This certification is necessary to confirm the applicant's willingness and ability to comply with the privacy/security rules. All Certified Enrollers must strictly adhere to the privacy and security rules when handling a consumer's personally identifiable information. Failure to comply with these rules must result in immediate decertification and possible legal action.

Section 6856(b)(10)(D) requires the applicant to sign and date the application. This is required to formalize the completion of the application process.

Section 6856(c)(1)-(5) requires the CAE to notify the Exchange of every individual to be added or removed as a CAC. The notification must include the CAE name and identification number; name and signature of the Authorized Contact; name, email, and phone number for each CAC to be added/removed; effective date of addition or removal; and sites individual will serve.

Section 6858

This section outlines the fingerprinting and criminal record check procedures for CACs. Prior to performing work, all CACs must comply with these procedures and clear the background check. This section details each step of the process as well as the appeal procedures in the event of an adverse decision.

The rulemaking package makes minor grammatical changes throughout the section.

Section 6858 (a)(1) Government Code Section 1043 requires the Exchange to implement a fingerprinting and background check process consistent with applicable federal laws and guidance. This subdivision is needed to ensure compliance with Section 6456 of Article 4 of this Chapter and Government Code Section 1043.

Section 6858 (b)(1) specifies that an initial background check determination by the Exchange is an Interim Fitness Determination. This subdivision cross references Section 6456 of Article 4 of this Chapter and places individuals on notice that the Exchange will utilize the process outlined therein when reviewing an applicant's background check information. This subdivision is necessary in order to comply with the requirements of Section 6456 of Article 4. An interim determination allows the applicant to provide additional rehabilitation information to the Exchange in order for the Exchange to conduct an individual assessment of the applicant's fitness for the position. This practice is necessary to comply with guidance issued by the federal Equal Employment Opportunity Commission (EEOC), which recommends an individualized assessment process.

Section 6858 (b)(2) sets forth the process by which the Exchange will notify applicants if they have a criminal record that may lead to disqualification pursuant to Section 6456(d)-(e) of Article 4. This subdivision is necessary to inform applicants of the process to which they will be subject if their criminal record reflects a potentially disqualifying offense and provide them with a uniform method by which they may request an appeal of the determination made by the Exchange. Additionally, this subdivision is necessary in order to comply with Penal Code Section 11105(t) which requires the Exchange to provide a copy of a criminal history record to a potentially disqualified applicant. For additional clarity, this subdivision provides additional details of the appeal process. These additional details are necessary to provide applicants and those with potentially disqualifying criminal records a uniform process by which they can appeal or dispute their individual assessment.

Section 6858(c) This subdivision in its entirety specifies and clarifies the Appeal and Final Determination Process of the Exchange's criminal background check process for an applicant to become a CAC.

Section 6858(c)(1)(A) sets forth the final determination and appeal process that the Exchange will utilize when evaluating disqualified individuals based on the results of the fingerprinting or criminal background check. This is necessary to allow applicants who have been initially disqualified to understand the process applicable to their circumstances in order to appeal. This subdivision serves to inform applicants that they may correct inaccurate or incomplete Federal and out of state disqualifying offenses. This subdivision specifies that for any appeal process under this subdivision an applicant has 60 days from the date of the notice to appeal the initial determination and the Exchange has 60 additional days from receipt of the applicant's new information to review and make a final determination. This timeline was selected to provide the applicant with sufficient time to gather necessary information for appeal, and to provide the Exchange with adequate time to review the record and consider all additional information without undue delay to the applicant.

Section 6858 (c)(2)(A) details the process for those challenging the initial determination based on an inaccurate or incomplete federal or out of state disqualifying offense(s). This is necessary to provide a clear process for a potentially disqualified applicant challenging the determination on these grounds. The Exchange will allow the applicant 60 calendar days to provide the Exchange with additional information to correct or complete the criminal record. The Exchange selected 60 days as it is aligned with other state agency criminal background check appeals processes as well as the Exchange's internal processes for its other programs requiring background checks under Government Code Section 1043, the timeline received the accord of stakeholder groups, and it allows the applicant sufficient time to gather supporting materials while not unduly delaying the business processes of the Exchange.

Section 6858 (c)(3) defines the process that an applicant must follow to contest an interim determination of disqualification by the Exchange when his or her criminal record is accurate. This subdivision is needed to inform applicants that they have an opportunity to provide to the Exchange additional information or contest existing information that may influence the final determination of eligibility by the Exchange. This subdivision specifies that a potentially disqualified applicant may appeal an accurate criminal record with evidence of rehabilitation. This subdivision provides additional clarity as to the types of evidence that will be accepted, including an individual's employment history or qualifications. This subdivision also explains to the applicant that any evidence submitted must be in writing. Additionally, it includes a list of acceptable written information that provides examples of the types of written information that may show rehabilitation.

Section 6858 (c)(4) notifies individuals that an interim determination may become final absent good cause, which will be determined on a case by case basis. This subdivision

is needed to provide closure of the interim determination process and fairness to all applicants.

Section 6858(d) specifies that an individual is disqualified upon receipt of a final determination from the Exchange and is ineligible to reapply for certification for two years. This allows an applicant sufficient time in order to develop evidence that would support a finding of rehabilitation, for example if an individual has had his or her record expunged. This subdivision also is necessary to reduce the workload on the Exchange of having to review multiple applications from the same individual after that individual receives a letter of rejection, while allowing the individual the opportunity to apply again in the future.

Section 6858 (e) provides that the Exchange will pay the background check costs incurred by individuals whose duties require fingerprinting. This subdivision is necessary to inform applicants that they will not need to assume background check costs when applying for certification.

Section 6860

This section identifies all training requirements for CACs. As part of the certification process, CACs must complete training that covers a variety of topics. CACs must also complete annual training to retain their certification status.

This rulemaking package makes minor changes to the current emergency regulations. Specifically, these changes correct grammatical issues and update an effective date for a cited federal regulation. Section 6850(d) has been amended to clarify the deadline for completion of the annual training. The regulations were previously silent on the deadline, which created confusion. The new language should clear up that confusion.

Section 6860(a) requires that CAEs complete training prior to carrying out consumer assistance functions. This section sets forth the subjects about which CAEs and CACs must be knowledgeable in order to carry out the duties required of them when performing enrollment assistance activities on behalf of the Exchange. This subdivision is necessary to ensure that CACs have the proper training before performing any of their required duties.

Section 6860(b) specifies the elements of the training curriculum for Certified Enrollment Counselors. This subdivision is needed to ensure CACs and CAEs are prepared to assist individuals with applying for health insurance coverage through the Exchange.

Section 6860(b)(1) requires CACs and CAEs performing consumer assistance functions to complete training in QHPs and the metal levels described at 45 C.F.R. § 156.140(b). This is necessary to comply with federal regulations set forth at 45 C.F.R. § 155.205(d) and 45 C.F.R. § 155.225(d) and the Exchange does not have the discretion

to require otherwise. The date of April 18, 2017 has been added in parenthesis after 45 C.F.R. § 156.140(b).

Section 6860 (b)(2) requires CACs to complete training in insurance affordability programs, including Medicaid, the Children's Health Insurance Program (CHIP), and other public programs. This subdivision is necessary to comply with federal regulations set forth at 45 C.F.R. § 155.205(d)(1), and 45 C.F.R. § 155.225(d).

Section 6860 (b)(3) requires CACs to complete training on tax implications of health care enrollment decisions. This subdivision is necessary to ensure that consumers receive accurate information from assistance personnel with which to make informed health care decisions. This subdivision is necessary in order to comply with federal regulations set forth at 45 C.F.R. §155.225(d).

Section 6860 (b)(4) requires CACs performing consumer assistance functions to complete training in eligibility requirements for premium tax credits and cost-sharing reductions. This subdivision is necessary to comply with federal regulations set forth at 45 C.F.R. § 155.225(d).

Section 6860 (b)(5) requires CACs performing consumer assistance functions to complete training in how to help consumers seeking additional information about specific coverage options not offered through the Exchange. This subdivision is required to conform to best practices as set forth in 45 C.F.R. § 155.225(d).

Section 6860 (b)(6) requires CACs performing consumer assistance functions to complete training in basic concepts about the Exchange and health insurance. This subdivision is necessary to ensure that consumers have accurate information upon which to make informed health care decisions in compliance with best practices set forth at 45 C.F.R. § 155.225(d). The reference to the individual responsibility to have health insurance has been removed due to changes in federal law.

Section 6860 (b)(7) requires CACs performing consumer assistance functions to complete training in eligibility and enrollment rules and the appeal process. This subdivision is necessary to ensure that consumers have accurate information upon which to make informed health care decisions and appeal determination decisions in compliance with best practices set forth at 45 C.F.R. § 155.225(d).

Section 6860 (b)(8) requires CACs performing consumer assistance functions to complete training in how to provide consumers with culturally and linguistically appropriate services. This subdivision is necessary to comply with best practices set forth at 45 C.F.R. § 155.225(d).

Section 6860 (b)(9) requires CACs performing consumer assistance functions to complete training in how to effectively present information to consumers with disabilities. This subdivision is necessary to ensure that all consumers have equal access to Counselors and Entities, and to comply with 45 C.F.R. § 155.225(d).

Section 6860 (b)(10) requires CACs performing consumer assistance functions to complete training in the differences among health plans. This subdivision is necessary to comply with federal regulations set forth at 45 C.F.R. § 155.205(d)(1) and 45 C.F.R. § 155.225 (d).

Section 6860 (b)(11) requires CACs to complete training in privacy and security standards applicable under 45 C.F.R. § 155.260. This subdivision is necessary to ensure that CACs handle consumers' personally identifiable information appropriately, and is required by 45 C.F.R. § 155.260(b). The date of April 18, 2017 has been added in parenthesis after 45 C.F.R. § 155.260(b).

Section 6860 (b)(12) requires CACs to complete training in how to effectively communicate 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. This subdivision is necessary to ensure that consumers have access to information so they can make informed health care decisions regardless of whether they have limited English proficiency or have disabilities, whether they are members of vulnerable, rural, or underserved populations, and regardless of gender identity or sexual orientation in compliance with federal regulations.

Section 6860 (b)(13) requires CACs performing consumer assistance functions to complete training in customer service standards. This subdivision is necessary to comply with federal regulations set forth at 45 C.F.R. § 155.225(d).

Section 6860 (b)(14) requires CACs performing consumer assistance functions to complete training in outreach and education methods and strategies. This subdivision is necessary to ensure that Counselors and Entities can effectively communicate with the community so that consumers receive information about the Exchange. This subdivision is also set forth in federal regulations set forth at 45 C.F.R. § 155.225(d).

Section 6860 (b)(15) requires CACs performing consumer assistance functions to complete training in applicable administrative rules, processes and systems as they relate to Exchanges and QHPs. This subdivision is necessary to ensure that consumers have accurate information and knowledge of the Exchange upon which to make informed health care decisions in alignment with federal regulations set forth at 45 C.F.R. § 155.225(d).

Section 6860 (b)(16) requires CACs performing consumer assistance functions to complete training in assisting consumers with voter registration. This subdivision is necessary to comply with the Section 6462 of Article 4 and the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg).

Section 6860 (c) informs individuals that computer-based or instructor-led training is provided by the Exchange. This subdivision is necessary to clarify the method by which training will be provided to CACs.

Section 6860 (d) provides that CACs are required to pass an annual examination to maintain certification with the Exchange. This subdivision is necessary to ensure those providing consumer assistance functions remain knowledgeable of products and services offered by the Exchange. Additionally, the annual exam requirement is set forth at 45 C.F.R. § 155.225(d) and this requirement will serve to align with that regulation. Section 6850(d) has been amended to clarify the deadline for completion of the annual training. The regulations were previously silent on the deadline, which created confusion. The new language should clear up that confusion.

Section 6862

This section describes the appeals process for when the Exchange determines that an individual or entity is not qualified to participate in the program. If the Exchange disqualifies and entity or individual from a program, that individual or entity must comply with the procedures in Section 6862 to compel an informal and formal review of the decision.

The rulemaking package makes minor grammatical changes to the existing emergency regulations.

Section 6862(a) provides for an appeal process for an entity or individual deemed ineligible to participate in the CAC Program by the Exchange for reasons other than a determination made as a result to fingerprinting or a background check. This subdivision is necessary to inform applicants of the process to which they will be subject when appealing any rejections that were the result of a determination other than those outlined in Section 6858.

Section 6862(b) permits an applicant 60 calendar days from the date of the notice of eligibility determination to file an appeal. This subdivision is needed to inform rejected applicants of the process available to them to appeal a decision of eligibility by the Exchange. It also provides applicants an opportunity to correct or refute any information upon which the Exchange may have based its decision to reject the applicant. This also provides an opportunity for applicants to voice their concerns regarding the eligibility process as a whole. The Exchange selected 60 days as it is aligned with the Exchange's internal processes for its other programs requiring applications, and it allows the applicant sufficient time to gather supporting materials while not unduly delaying the business processes of the Exchange and the CAC Program.

Section 6862(c) defines the initial phases of the appeals process used by the Exchange to determine the appellant's eligibility. This subdivision is necessary to inform the appellant of the process to which they will be subject to correct or refute any information on which the Exchange may have based their decision to reject the applicant. This subdivision provides that an informal review by the Exchange and an informal resolution decision must be provided within 45 calendar days from the receipt

of the appeal. It further specifies that the decision must be given to the appellant in writing. The Exchange selected 45 days as it allows the applicant sufficient time to gather supporting materials while not unduly delaying the business processes of the Exchange and the CAC Program. The decision must be in writing in order to establish a record of the decision and, if proof is needed, that the decision was provided within the time frame required.

Section 6862(d) defines the second phase of the appeals process and disposition of the appeal. This subdivision is necessary to give appellants an opportunity to correct or refute any information upon which the Exchange may have based its decision to reject the applicant. This subdivision clarifies the steps to be taken after the phase one appeals process has been exhausted. If the appellant is satisfied with the outcome of the informal resolution decision, the appeal may be withdrawn. If the appellant is dissatisfied, they may escalate the appeal to phase two by notifying the Exchange in writing within 45 calendar days of the date of the decision from phase one. In the second phase, an independent unit within the Exchange that had no involvement in the original determination shall review the eligibility or qualification of the appellant de novo. The Exchange must notify the appellant in writing within 60 calendar days from the receipt of the initial appeal of its final decision. The Exchange selected 45 days to provide the applicant with sufficient time to gather necessary information for the appeal process, and 60 days as it is aligned with the Exchange's internal processes for its other programs requiring applications, the timeline received the accord of stakeholder groups, and it allows the applicant sufficient time to gather supporting materials while not unduly delaying the business processes of the Exchange and the CAC Program. This subdivision, as a whole, allows for a fair and impartial process to review appeals submitted by applicants for or members of the CAC Program.

Section 6864

This section outlines the CAC's roles and responsibilities when performing enrollment assistance.. The rulemaking package makes minor grammatical and citation changes throughout the current emergency regulations.

Section 6864(a)(1) requires CACs to provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible, which includes providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarify the distinctions among health coverage options, including QHPs; and help consumers make informed decisions during the health coverage selection process. This section is necessary to ensure consumers receive the best possible assistance when choosing the appropriate health plan for their health and financial needs.

Section 6864(a)(2) requires CACs to assist individuals and employees in applying for coverage in a QHP through the Exchange and for insurance affordability programs. This is a core function for CACs. The Exchange relies on CACs to assist consumers with

applying for Covered California plans and other insurance affordability programs. This requirement is necessary to ensure that the CACs can fulfill their main objective.

Section 6864(a)(3) requires CACs to facilitate the enrollment of individuals and employees coverage in a QHP through the Exchange and for insurance affordability programs. This is a core function for CACs. The Exchange relies on CACs to assist consumers with enrollment into Covered California plans and other insurance affordability programs. This requirement is necessary to ensure that the CACs can fulfill their main objective.

Section 6864(a)(4) establishes that CACs will comply with privacy and security standards set forth at 45 C.F.R. § 155.260. This subdivision is required pursuant to 45 C.F.R. § 155.260 and the Exchange does not have the discretion to require otherwise. CACs must adhere to the privacy and security requirements as set forth in 45 C.F.R. § 155.260 or they cannot assist consumers.

Section 6864(a)(5) establishes that CACs act in the best interest of the applicants assisted, which is also required by 45 C.F.R. § 155.225(d)(4). This is an important requirement because CACs are most effective when they ensure that consumers receive assistance that best addresses their individual needs. CACs must be mindful of the consumer's needs when facilitating enrollment, because choosing health insurance is an incredibly personal process. Consumers depend on CACs to act in their best interest since there are both financial and health risks involved with the health insurance decision.

Section 6864(a)(6) requires CACs to ensure that their assistance is available to persons with disabilities or refer consumers to the appropriate entity if they are unable to assist. This subdivision is needed to ensure compliance with 45 C.F.R. § 155.225(d)(5), which requires CACs to assist disabled consumers. Section 6864(a)(6) copies 45 C.F.R. § 155.225(d)(5) verbatim.

Section 6864(a)(7) requires CACs to ensure that voter registration assistance is available to each consumer. This subdivision is required in order to comply with National Voter Registration Act (42 U.S.C. § 1973gg-5), Elections Code Sections 2400 et seq., and Section 6462 of Article 4.

Section 6864(a)(8) requires CACs to comply with any applicable federal or state laws and regulations. This requirement is necessary to protect both consumers and the Exchange from CACs who cannot comply with applicable laws. The Exchange entrusts CACs to handle sensitive information when performing enrollment assistance.

Section 6864(a)(9) requires CACs to 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. This is an important requirement because consumers may run into coverage issues after enrollment. Consumers could seek the CAC for advice on an appeals process. CACs are not trained to handle insurance disputes but are required to refer consumers to the appropriate entity who can assist the consumer. This process ensures that the consumer receives the appropriate assistance in an expedient manner.

Section 6864(a)(10) requires CACs to 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. This is an important requirement because many consumers receive subsidies to assist with health insurance costs. These subsidies impact the consumer's tax liability. While CACs generally cannot answer tax-related questions (unless they are independently qualified to do so), they are obligated to refer consumers to the persons and entities who can provide that assistance. This requirement benefits the consumer since many will inevitably ask questions regarding tax liability during the application process. CACs should ensure that these consumers receive the assistance that they need.

Section 6864(b)(1) requires CACs to inform each consumer that he or she is required to obtain consumer authorization prior to accessing personal and confidential information. The purpose of this subdivision is to outline what must be communicated to each consumer prior to providing assistance. This section is necessary to ensure that the consumer is informed of the need for their authorization before the CAC can access their personally identifiable information to complete an enrollment. Section 6864(b)(1) is also required under 45 CFR § 155.225(f).

Section 6864(b)(2) obligates CACs to inform consumers of their roles and responsibilities as a CAC. This ensures that the consumer fully understands the CAC's scope of work when performing enrollment assistance. Section 6864(b)(2) is also required under 45 CFR § 155.225(f).

Section 6864(b)(3) obligates CACs to inform consumers that they are not acting as tax advisers or attorneys when providing assistance as Certified Application Counselors and cannot provide tax or legal advice within their capacity as Certified Application Counselors. This requirement protects consumers and CACs. Consumers are safeguarded by this regulation because CACs must inform them that they cannot provide tax or legal advice, which hopefully dissuades consumers from asking questions regarding tax liability and legal issues. If consumers refrain from asking tax and legal questions, then CACs will not be put into a position to answer them. The Exchange does not want CACs to assist consumers with tax and legal issues unless they are independently qualified to do so. Section 6864(b)(3) is also required under 45 CFR § 155.225(f).

Section 6864(b)(4) requires CACs to obtain the consumer's written or oral authorization to access his or her personally identifiable information. CACs to inform consumers that

they are not acting as tax advisers or attorneys when providing assistance as Certified Application Counselors and cannot provide tax or legal advice within their capacity as Certified Application Counselors. This requirement protects consumers and CACs. Consumers are safeguarded by this regulation because CACs must inform them that they cannot provide tax or legal advice, which hopefully dissuades consumers from asking questions regarding tax liability and legal issues. If consumers refrain from asking tax and legal questions, then CACs will not be put into a position to answer them. The Exchange does not want CACs to assist consumers with tax and legal issues unless they are independently qualified to do so. Section 6864(b)(3) is also required under 45 CFR § 155.225(f).

Section 6864(b)(4)(A) addresses what must be contained in a consumer's written authorization. A Counselor must provide a written attestation signed under penalty of perjury that the following are true:

- i. The individual is a Certified Application Counselor affiliated with a Certified Application Entity;
- ii. The CAC conveyed the information required as part of the authorization to the consumer is in a language and in a manner understood by the consumer;
- iii. The CAC obtained written authorization from the consumer consenting to the release of his or her personally identifiable information.

Section 6864(b)(4)(A) is necessary to ensure that each consumer understands and agrees to the contents of the written authorization. This subdivision meets the requirements of 45 CFR § 155.225(f), which mandates CACs to obtain authorization from the consumer. Additionally, this subdivision allows the Exchange to have a record of the CACs attestation, which the Exchange can use to verify that this practice is taking place in accordance with regulations. The signature of penalty of perjury is necessary to prevent fraud and ensure that the Exchange is protected from liability stemming from any attempts to falsify the information contained in the authorization.

Section 6864(b)(4)(B) addresses what must be contained in a consumer's written authorization. A CAC must provide a written attestation signed under penalty of perjury that the following are true:

- i. The individual is a Certified Application Counselor affiliated with a Certified Application Entity;
- ii. The CAC conveyed the information required as part of the authorization to the consumer is in a language and in a manner understood by the consumer;
- iii. The CAC obtained oral authorization from the consumer consenting to the release of his or her personally identifiable information.

Section 6864(b)(4)(B) is necessary to ensure that each consumer understands and agrees to the contents of the written authorization. This subdivision meets the requirements of 45 CFR § 155.225(f), which mandates CACs to obtain authorization from the consumer. Additionally, this subdivision allows the Exchange to have a record of the CACs attestation, which the Exchange can use to verify that this practice is taking place in accordance with regulations. The signature of penalty of perjury is necessary to prevent fraud and ensure that the Exchange is protected from liability stemming from any attempts to falsify the information contained in the authorization.

Section 6864(b)(5) has been renumbered from Section 6864(b)(4) to Section 6864(b)(5) to correct a numbering error in the current emergency regulations. This section requires CACs to inform consumers that they cannot choose a health plan on the consumer's behalf. This subdivision is necessary to ensure that the consumer knows that the Certified Enrollment Counselor cannot choose a plan for them and that the consumer must, with assistance from the CAC, choose the plan that best suits his or her health and financial needs.

Section 6864(b)(6) has been renumbered from Section 6864(b)(5) to Section 6864(b)(6) to correct a numbering error in the current emergency regulations. This section requires CACs to inform each consumer that he or she will provide the consumer with information regarding the health insurance options and insurance affordability programs for which he or she may be eligible. This section is necessary to ensure that the consumer knows what type of information the CAC will provide.

Section 6864(b)(7) has been renumbered from Section 6864(b)(6) to Section 6864(b)(7) to correct a numbering error in the current emergency regulations. This section requires CACs to inform consumers that personally identifiable information will be maintained in a private and secure manner by the CAC and CAE in accordance with 45 C.F.R. § 155.260. This subdivision is necessary to ensure that consumers are aware of the strict privacy requirements set forth in federal regulations and the CAC and CAE's adherence to such requirements.

Section 6864(b)(8) has been renumbered from Section 6864(b)(7) to Section 6864(b)(8) to correct a numbering error in the current emergency regulations. This section requires CACs to inform consumers that they will refer them to another CAC or the Covered California Call Center if they cannot provide assistance. This is necessary to ensure that the consumer understands that he or she is entitled to assistance from an alternative source if the CAC cannot help.

Section 6864(b)(9) has been renumbered from Section 6864(b)(8) to Section 6864(b)(9) to correct a numbering error in the current emergency regulations. This section requires CACs to requires each Counselor to inform the consumer that they will provide services at no cost. This is necessary to ensure that consumers are aware of the prohibition on charging for enrollment assistance and will not pay or offer to pay for these services.

Section 6864(b)(10) has been renumbered from Section 6864(b)(9) to Section 6864(b)(10) to correct a numbering error in the current emergency regulations. This section requires CACs to inform the consumer of the need to provide accurate information in order for the CAC to provide effective assistance. Informing the consumer of this requirement will serve to ensure that information the Exchange receives is accurate and the consumer understands the importance of providing false information.

Section 6864(b)(11) has been renumbered from Section 6864(b)(10) to Section 6864(b)(11) to correct a numbering error in the current emergency regulations. This section requires CACs to inform consumers that he or she has the right to revoke his or her authorization at any time. This requirement ensures that consumers understand that they can freely choose their certified enrollers and are not obligated to remain with any specific enroller.

Section 6864(b)(12) has been renumbered from Section 6864(b)(11) to Section 6864(b)(12) to correct a numbering error in the current emergency regulations. This section requires CACs to maintain authorizations for a minimum of ten years for future auditing purposes. Under 45 CFR § 155.1210(c), all Exchange contractors must make all records (which includes consumer authorization forms) available to HHS, the OIG, the Comptroller General, or the designees, upon request.

Section 6864(c) requires that the CAC include specified information on the consumer's application. The purpose of this subdivision is to ensure that the Exchange has a record of the CAC that assisted the consumer with their application through the Exchange.

Section 6864(c)(1) requires the name and certification number of the CAC. This subdivision is necessary so that the Exchange is able to accurately capture and report data regarding enrollment assistance and its effectiveness. Additionally, if a consumer has a complaint about a specific enrollment CAE or CAC who may have assisted him or her, the Exchange will be able to verify which CAE or CAC the consumer is referring to.

Section 6864(c)(2) requires the name of the CAC and the CAE number. These fields are required so the Exchange may maintain accurate and up-to-date records of CACs and CAEs. This is necessary so that the Exchange can keep track of how many consumers each CAE or individual CAC has enrolled.

Section 6864(c)(3) requires the signature and date of signature by the CAC. This subdivision is required to ensure that the Counselor is affirmatively attesting to the fact that the information contained in their application is true and is legally binding themselves to those statements.

Section 6864(d) specifies that CAC information may not be added to a consumer's original application at a later date. This subdivision is necessary to ensure the CACs are not adding themselves to applications after they have been completed and signed by the individual. This prohibition will serve to avoid fraudulent reporting of consumer assistance.

Section 6864(e) requires CACs to wear an identification badge when providing consumer assistance. This subdivision is necessary to ensure that all consumers feel that the individuals representing the Exchange are trained and certified by the Exchange. Consumers will thus feel more trusting of the individuals with whom they work, which will foster more honest and truthful communication. Additionally, the Exchange will be better able to keep track of the individuals it has certified as CACs and identify them should there be a reported issue or problem with that particular CAC or the CAE.

Section 6864(f) requires CAEs to maintain a physical presence in California so that face-to-face assistance can be provided to applicants and enrollees. This requirement is important because the Exchange relies upon CAEs to assist hard-to-reach populations, which are typically better served through in-person assistance. CAEs must be available to their consumers in order to provide the best service.

Section 6864(g) requires CAEs to maintain a registration process and method to track performance of CACs. This requirement ensures that CACs comply with applicable rules and regulations. The Exchange cannot monitor CACs on a daily basis and relies on CAEs to manage them.

Section 6864(h)(1) requires CACs and CAEs to develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including . This is necessary to comply with 45 C.F.R. § 155.205 (c)(2). Also, and perhaps more importantly, this regulation ensures that CACs and CAEs can address the needs of California's culturally diverse population.

Section 6864(h)(2) requires CACs and CAEs to 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. This subdivision is necessary to ensure that each CAC and CAE has the requisite knowledge and familiarity with the individuals in the service area and community in which they work. This subdivision will ensure that each consumer will receive assistance that is tailored to them specifically, and that CACs and CAEs will take into consideration consumers' beliefs and experiences when meeting with them.

Section 6864(h)(3) requires CACs and CAEs to provide assistance in each consumer's preferred language at no cost to the consumer. This subdivision is necessary to ensure that no consumer will go without assistance from a CAC or CAE due to lack of English proficiency.

Section 6864(h)(4) requires CACs and CAEs to inform limited English proficient consumers of their right to receive language assistance services and how to obtain them. This subdivision is needed to ensure that those with limited English proficiency are made aware how to obtain language assistance services so that they can communicate effectively with a CAC.

Section 6864(h)(5) requires CACs and CAEs to receive ongoing education and training in culturally and linguistically appropriate service delivery. This subdivision is necessary to ensure that CACs are prepared to fully assist consumers from all backgrounds. The Exchange relies on CACs and CAEs to target hard-to-reach populations, so this training is essential for CACs and CAEs to fulfill their purpose.

Section 6864(h)(6) requires CACs and CAEs to implement strategies to develop a staff that is representative of the communities in their area. This subdivision is needed pursuant to promote an appropriate demographic cross-section among CACs.

Section 6864(i) requires CACs and CAEs to ensure that their assistance is available to persons with disabilities. This section ensures that CAEs and CACs can assist all consumers from different backgrounds, especially those that may significantly rely upon health insurance to address issues related to disabilities. The Exchange relies on CACs and CAEs to target hard-to-reach populations, so this section is essential for CACs and CAEs to fulfill their purpose.

Section 6864(i)(1) requires CACs and CAEs to 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. This section ensures that CAEs and CACs can assist all consumers from different backgrounds, especially those that may significantly rely upon health insurance to address issues related to disabilities. The Exchange relies on CACs and CAEs to target hard-to-reach populations, so this section is essential for CACs and CAEs to fulfill their purpose.

Section 6864(i)(2) requires CACs and CAEs to provide auxiliary aids and services for individuals with disabilities, at no cost, where necessary for effective communication. This section ensures that CAEs and CACs can assist all consumers from different backgrounds, especially those that may significantly rely upon health insurance to address issues related to disabilities. The Exchange relies on CACs and CAEs to target hard-to-reach populations, so this section is essential for CACs and CAEs to fulfill their purpose.

Section 6864(i)(3) requires CACs and CAEs to provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities. This subdivision is needed to ensure that all locations are compliant with the Americans with Disabilities Act.

Section 6864(i)(4) requires CACs and CAEs to ensure that that legally authorized representatives are permitted to assist consumers in making informed decisions. This subdivision is necessary to ensure that the Exchange is in compliance with 45 C.F.R. § 155.227.

Section 6864(i)(5) requires CACs and CAEs to acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and support

programs when appropriate. This section ensures that CAEs and CACs can assist all consumers from different backgrounds, especially those that may significantly rely upon health insurance to address issues related to disabilities. The Exchange relies on CACs and CAEs to target hard-to-reach populations, so this section is essential for CACs and CAEs to fulfill their purpose.

Section 6864(j) requires CACs and CAEs to 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. This section is necessary to prohibit discrimination on the basis of age, disability, culture, sexual orientation, or gender identity, so that all consumers can receive the same level of service.

Section 6864(k)(1) prohibits CACs and CAEs from imposing any fee, charge, or remuneration on applicants for application or other assistance related to the Exchange. This prohibition is required pursuant to 45 C.F.R. § 155.225(g) and the Exchange does not have the authority to require otherwise.

Section 6864(k)(3) prohibits CACs and CAEs from being a QHP. This section ensures that CACs and CAEs can freely offer all QHPs to consumers without steering them to specific QHPs and violating the conflict of interest rules.

Section 6864(k)(3) prohibits CACs and CAEs from receiving direct or indirect consideration from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a QHP or a non-QHP. This subdivision is required by 45 C.F.R. § 155.225(g) and the Exchange does not have the discretion to require otherwise.

Section 6864(k)(4) prohibits CACs and CAEs from referring consumers to a specific insurance agent or specific set of insurance agents. This restriction ensures that CACs and CAEs avoid relationships which could potentially create a conflict of interest. CACs and CAEs cannot receive direct or indirect compensation for QHP enrollment. Allowing CACs and CAEs to partner with a specific set of agents may put the CACs/CAEs in a position to violate that rule.

Section 6864(k)(5) prohibits CACs and CAEs from providing 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. This subdivision is required by 45 C.F.R. § 155.225(g) and the Exchange does not have the discretion to require otherwise.

Section 6864(k)(6) prohibits CACs and CAEs from soliciting any consumer for application or enrollment assistance by going door to door or through other unsolicited means of direct contact, including calling a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual

has a pre-existing relationship with the individual Certified Application Counselor or designated organization and other applicable State and Federal laws are otherwise complied with. This subdivision is required by 45 C.F.R. § 155.225(g) and the Exchange does not have the discretion to require otherwise.

Section 6864(k)(7) prohibits CACs and CAEs from initiating any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual Certified Application Counselor or designated organization has a relationship with the consumer and so long as other applicable State and Federal laws are otherwise complied with. This subdivision is required by 45 C.F.R. § 155.225(g) and the Exchange does not have the discretion to require otherwise.

Section 6864(k)(8) prohibits CACs and CAEs from mailing the paper application for the consumer. Mailing an application on behalf of a consumer would prolong the CAC's access to the consumer's personal information, and is not necessary to fulfill their roles and responsibilities. This subdivision is necessary to avoid such exposure.

Section 6864(k)(9) prohibits CACs and CAEs from coaching a consumer to provide inaccurate information regarding their income, residency, or immigration status on his or her application to the Exchange. This is necessary to prevent fraudulent applications and inaccuracies that could result in a consumer choosing an incompatible plan.

Section 6864(k)(10) prohibits CACs and CAEs from coaching or recommending one plan over another. This subdivision is needed to reflect federal regulations at 45 C.F.R. § 155.225(c), which requires CACs to provide information and services in a fair, accurate, and impartial manner.

Section 6864(k)(11) prohibits CACs and CAEs from accepting premium payments from consumers. This subdivision is necessary to ensure that CACs do not access or receive credit card information from consumers. Accepting payment information from consumers is not part of a CAC's duties, and thus would give them access to personal information that they do not need access to. This subdivision is necessary to limit the amount of personal information to which a CAC and CAE has access to, which reduces the risk of misuse of this highly sensitive information.

Section 6864(k)(12) prohibits CACs and CAEs from inputting premium payment information on behalf of the consumer. This subdivision is necessary to ensure that CACs and CAEs do not access or receive credit card information from consumers. Accepting payment information from consumers is not part of a CAC's duties, and thus would give them access to personal information that they do not need access to. This subdivision is necessary to limit the amount of personal information to which a CAC and CAE has access to, which reduces the risk of misuse of this highly sensitive information.

Section 6864(k)(13) prohibits CACs and CAEs from paying consumer premiums or any type of consideration to or on behalf of the consumer. This subdivision is needed to

ensure that CAEs and CACs are not inducing consumers to allow them to provide assistance so that they can increase their enrollment numbers, which may lead to an increase in their grant award amount. Some premium amounts may be as low as a few dollars, in which case the CAC/CAE would have more to gain from paying the premium on behalf of the consumer, than losing that consumer as a client.

Section 6864(k)(14) prohibits CACs and CAEs from intentionally creating multiple applications from the same household, as defined in 42 C.F.R. § 435.603(f). This regulation would ensure that CAEs and CACs are not manipulating the system in order to increase their enrollment numbers. This is necessary to ensure that the Exchange is not rewarding Entities for work that has been fraudulently created, and has accurate enrollment data from each Entity. Note: the effective date of the cited federal regulation has been updated in this rulemaking package.

Section 6864(k)(15) prohibits CACs and CAEs from inviting, influencing, or arranging 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. This section is necessary to ensure that CACs comply with the eligibility and enrollment rules when assisting consumers. Consumers who have legally compliant employer-sponsored coverage should not be induced to separate from that coverage unless there is sufficient justification for doing so.

Section 6864(l) requires CACs to report to the Exchange any subsequent arrests for which they have been released on bail or personal recognizance and criminal convictions, in accordance with Section 6456(c) of Article 4, and administrative actions taken by any other agency, within 30 calendar days of the date of the arrest or final administrative action order. This requirement is necessary to ensure that CACs have not committed or been accused of committing any additional substantially related crimes after becoming certified with the Exchange. This addition serves to comply with Government Code Section 1043 and regulations set forth in Section 6456 of Article 4.

Section 6666

This section sets forth the conflict of interest standards for CAEs and CACs pursuant to this Article.

Section 6666(a) requires CAEs and CACs to disclose any relationships with QHPs, insurance affordability programs, or other potential conflicts of interest to the Exchange and consumers. This section enables the Exchange to determine whether the CAEs and CACs can legally fulfill their respective duties. This section also promotes transparency as consumers will be informed of potential (but not actual) conflicts of interest when engaging with a CAE and CAC. Transparency allows consumers to make informed decision when choosing a certified enroller.

Section 6666(b) prohibits CAEs and CACs from holding licenses issued by the California Department of Insurance. The Exchange determined that possessing an insurance license would constitute having a private or personal interest sufficient to influence, or appear to influence, the objective exercise of a CAC's and CAE's official duties such that it must be prohibited entirely.

Section 6666(c) prohibits CAEs and CACs from partnering with any individual or entity currently licensed by the California Department of Insurance. The Exchange determined that having any such relationship with an individual or entity possessing an insurance license would constitute having a private or personal interest sufficient to influence, or appear to influence, the objective exercise of a CAC's and CAE's official duties such that it must be prohibited entirely.

Section 6666(d)(1) requires CAEs and CACs to create a written plan to remain free of conflicts of interest while performing consumer assistance activities on behalf of the Exchange. This section ensures that CAEs and CACs are aware of the conflict of interest rules and also actively take measures to prevent conflicts from occurring.

Section 6666(d)(2) requires CAEs and CACs to provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible. This section aligns with 45 C.F.R. § 155.225(c)(1), which requires CAEs and CACs to provide fair, accurate, and impartial information to consumers so they can make an informed decision regarding health insurance.

Section 6666(d)(3)(A) requires CAEs and CACs to disclose to the Exchange and to each consumer receiving application assistance 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 consumer assistance functions. This section enables the Exchange to determine whether the CAEs and CACs can legally fulfill their respective duties. This section also promotes transparency as consumers will be informed of potential (but not actual) conflicts of interest when engaging with a CAE and CAC. Transparency allows consumers to make informed decision when choosing a certified enroller.

Section 6666(d)(3)(B) requires CAEs and CACs to disclose 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. This section enables the Exchange to determine whether the CAEs and CACs can legally fulfill their respective duties. This section also promotes transparency as consumers will be informed of potential (but not actual) conflicts of interest when engaging with a CAE and CAC. Transparency allows consumers to make informed decision when choosing a certified enroller.

Section 6666(d)(3)(C) requires CAEs and CACs to disclose any existing or anticipated financial, business, or contractual relationship with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance. This section enables the Exchange to determine whether the CAEs and CACs can legally fulfill their respective duties. This section also promotes transparency as consumers will be informed of potential (but not actual) conflicts of interest when engaging with a CAE and CAC. Transparency allows consumers to make informed decision when choosing a certified enroller.

Section 6868

This subdivision in its entirety sets forth the suspension, revocation, and appeals procedures for individuals applying or certified under this Article.

Section 6868(a) specifies that CAEs and CACs will be subject to suspension or revocation of certification if they fail to comply with applicable state and federal laws and regulations and the requirements of the program, and if they have a potentially disqualifying administrative or criminal record. This is necessary to comply with Government Code Section 1043, 10 C.C.R. § 6456, and 45 C.F.R. § 155.225. This subdivision also provides the CAE and CAC with notice of conduct that may result in suspension or revocation of their certification.

Section 6868(a)(1) informs CAEs and CACs that their certification will be suspended or revoked if they fail to comply with applicable federal or state laws or regulations. This is necessary to ensure that CAEs and CACs are abiding by applicable federal and state laws and regulations when providing services pursuant to this Article. This requirement will serve to protect the Exchange from liability stemming from any violation of the law its contractors may commit. This subdivision is necessary to give the Exchange the right to terminate the certification of individuals and entities for violations of applicable law.

Section 6868(a)(2) provides that the certification of CAEs and CACs shall be suspended or revoked if they have 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. Individuals with criminal records or administrative actions that are determined to be disqualifying offenses following the Exchange criminal background check review process will be decertified in order to protect against misuse of consumers' personal information. This is necessary to comply with Government Code Section 1043 and Article 4, Section 6456 of this Chapter.

Section 6868(b)(1)(A)-(E) outlines the process by which the Exchange withdraws a CAE's certification. The withdrawal becomes effective 20 calendar days following the date of the issuance of the Exchange's written notice. Appealing the notice of withdrawal tolls the 20-day deadline until a final determination is made. CAEs may not continue enrollment assistance activities during the appeal process. CAEs must notify all affiliated CACs that they can no longer hold themselves out as CACs when the

Exchange withdraws certification. And CAEs must protect consumer information even after the CAE has been decertified.

These requirements allow for an expedient decertification process while still affording CAEs due process rights to contest the decertification. These requirements also protect consumers because CAEs must refrain from holding themselves out as CAEs during the appeal and post-decertification. They must also protect consumer information even after they have been decertified. This ensures that CAEs do not use the consumer's information in a harmful way.

Section 6868(b)(2)(A)-(E) outlines the process by which the Exchange withdraws a CACs certification. The withdrawal becomes effective 20 calendar days following the date of the issuance of the Exchange's written notice. Appealing the notice of withdrawal tolls the 20-day deadline until a final determination is made. CACs may not continue enrollment assistance activities during the appeal process. And CACs must protect consumer information even after the CAE has been decertified.

These requirements allow for an expedient decertification process while still affording CACs due process rights to contest the decertification. These requirements also protect consumers because CACs must refrain from holding themselves out as CACs during the appeal and post-decertification. They must also protect consumer information even after they have been decertified. This ensures that CACs do not use the consumer's information in a harmful way.

Section 6868(b)(3) requires CAEs to establish procedures to withdraw certification from individual CACs upon a Counselor's failure to comply with any and all applicable federal or state laws or regulations. This requirement ensures that CACs can be expediently decertified if they violate laws and regulations.

Section 6868 (c)(1)-(3) clarifies and makes specific the process CAEs and CACs must follow in order to appeal a certification determination made pursuant to subdivision (a). This is necessary to afford individuals and entities the opportunity to appeal the Exchange's determination and have the matter reviewed in detail. This section cross references other provisions of this Article in order to provide clarity to the public regarding which process will apply to which individual in a particular circumstance.

Section 6868(d) specifies that an individual or entity who has received a final determination of disqualification is not eligible to reapply for certification for two years. This is necessary to ensure that the Exchange is not repeating the same workload by making determinations on individuals who have already been disqualified. The Exchange established a two year time period to provide enough time for the disqualified individual or entity to make efforts toward rehabilitation and be eligible for another opportunity to be certified, while not being overly prohibitive.

RELIED ON DOCUMENTS

None.

Creation of Jobs

This proposed regulation is not expected to create or eliminate any jobs within the State of California. The proposed Certified Application Counselor regulations are intended to complete Certificate of Compliance requirements and make minor edits that ensure clarity and address stakeholder requests. Additionally, these regulations will streamline the application process to ease the administrative burden on applicants. Therefore, no new job creation or elimination is expected to occur due to this proposed regulation.

Creation of Businesses

This proposed regulation is not expected to create or eliminate any new business within the State of California. The current Certified Application Counselor program is already in existence and the regulations only address grammatical issues and update dates of the cited federal regulations for Certified Application Counselor to participate in the program. Therefore, no new businesses are expected to form or be eliminated due to this proposed regulation.

Expansion of Businesses

This proposed regulation is not expected to expand any business within the State of California. The current Certified Application Counselor program is already in existence. Therefore, no expansion of businesses are expected due to this proposed regulation.

Benefits

The regulations package has a number of benefits which are tied to the Exchange's overall mission. The Exchange is committed to improving the consumer experience in using a CAC to obtain health insurance. These regulations ensure that the Exchange obtains only that information which is necessary to determine a CAC applicant's eligibility. They also set a deadline for when CACs must complete their recertification training.

DESCRIPTION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Exchange has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in effectuating the

purpose of the statute and applicable regulations. This proposed action is the most effective in effectuating the purpose of the statute and applicable regulations.

The amendment to Section 6854 addresses stakeholder requests to identify individuals eligible to execute agreements on behalf of their entity.

The amendment to Section 6660 clarifies the deadline for completion of the annual training. The regulations were previously silent on the deadline, which created confusion.

SUPPORT FOR DETERMINATION OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The proposed rulemaking modifies multiple sections governing the Certified Application Counselor application and certification process. The goal of these amendments is to make minor edits and adopt regulations that prior were emergency regulations. The proposed changes are intended to streamline the application process for individuals and entities who wish to participate in the program. The edits to sections that were previously emergency regulations will ensure clarity and address stakeholder requests. This is a benefit to both the Exchange and its CAC program applicants.

These provisions will have no substantial impact on the operation of these entities and thus the proposed regulation is not expected to have a significant adverse economic impact on businesses.

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 11. Certified Application Counselor Program

§ 6850. Definitions.

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

(1) Authorized Contact: The individual appointed by the Certified Application Entity to manage the agreement executed with the Exchange pursuant to this Article.

(2) Certified Application Counselor: An individual certified by the Exchange and affiliated with a Certified Application Entity pursuant to Section 6856 to provide the duties specified in Section 6864 of this Article.

(3) Certified Application Entity: An organization registered by the Exchange pursuant to Section 6854 with affiliated individuals serving as Certified Application Counselors.

(4) Consumer Assistance: The programs and activities created under 45 C.F.R. § 155.205(d) (December 22, 2016), hereby incorporated by reference, to provide enrollment assistance to consumers.

(5) Primary Contact: The individual appointed by the Certified Application Entity to be the liaison with the Exchange.

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

§ 6852. Certified Application Entities.

(a) Except for the following, public or private entities who meet the requirements of this Article are eligible to apply to become a Certified Application Entity:

(1) Health Insurance Issuer, as defined in Section 6410 of Article 2 of this

Chapter;

(2) Individuals registered as Certified Insurance Agents under Article 10 of this

Chapter.

(b) Individuals and entities shall not be registered as Certified Enrollment Entities or Certified Enrollment Counselors under Article 8 of this Chapter and pursuant to this Article concurrently;

(c) The Exchange shall require proof of a current or valid license, authority, certificate, or registration by the appropriate regulatory or licensing entity as a condition of eligibility to be registered as a Certified Application Entity.

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

§ 6854. Certified Application Entity Application.

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

(1) The organization shall submit all information, documentation, and declarations required in subdivision (b) of this section.

(2) The application shall demonstrate that the organization is capable of carrying out at least those duties described in Section 6864.

(3) The Exchange shall review the application and, if applicable, request any missing information.

(4) Organizations who have submitted a completed application and demonstrated ability to meet the above requirements shall:

(A) Be notified by the Exchange of available opportunities for the entity's Authorized Contact, or his or her designee, to complete the training requirements established pursuant to Section 6860, subdivision (a); and

(B) Submit the following:

1. An executed agreement conforming to the roles and responsibilities defined in Section 6864 and 45 C.F.R. § 155.225 (March 8, 2016), hereby incorporated by reference. Any person with the legal authority to bind the organization in contract may execute an agreement;

2. Proof of general liability insurance with coverage of not less than \$1,000,000 per occurrence with the Exchange named as an additional insured.

(5) Organizations that complete the above requirements shall be registered as a Certified Application Entity by the Exchange and assigned a Certified Application Entity

Number. If the Authorized Contact, or his or her designee, fails to complete the training standards described in Section 6860, subdivision (a), within 90 calendar days from the date of being registered as a Certified Application Entity, the applicant shall be deregistered.

(6) Organizations who have been denied may appeal the denial of their Certified Application Entity application through the process set forth in Section 6862.

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

(1) Full name;

(2) Legal name of Certified Application Entity;

(3) Primary e-mail address;

(4) Primary phone number;

(5) Secondary phone number;

(6) Website address;

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

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

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

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

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

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

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

(A) Site Location Address;

(B) Mailing Address;

(C) County;

(D) Primary Contact name;

(E) Primary e-mail address;

(F) Primary phone number;

(G) Secondary phone number; and

(H) Hours providing enrollment assistance.

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

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

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

(B) Languages that the individual can speak; and

(C) Languages that the individual can write.

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

§ 6856. Certified Application Counselor Application.

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

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

(2) The individual shall:

(A) Submit the following:

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

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

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

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

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

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

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

(3) Individuals who complete the above requirements, pass the Certified Application Counselor fingerprinting and criminal record check described in Section 6858, and have no administrative actions taken against them which are substantially

related to the qualifications, functions, or duties of the specific position sought, shall be certified as Certified Application Counselors by the Exchange.

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

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

(1) Name, e-mail address, and primary phone number;

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

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

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

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

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

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

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

(9) A certification by the individual that:

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

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

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

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

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

(10) Signature and date signed.

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

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

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

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

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

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

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

§ 6858. Certified Application Counselor Fingerprinting and Criminal Record

Checks.

(a) Individuals Required To Submit Fingerprinting Images

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

(b) Interim Fitness Determination.

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

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

(c) Appeal and Final Determination.

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

(A) If the individual believes that the potentially disqualifying offense in the Federal Bureau of Investigation national criminal response, identified in the notice sent pursuant to subdivision (b)(2) of this section, is inaccurate or incomplete, within 60

calendar days from the date of the notice, the individual may seek to correct or complete the response by providing information to the Exchange, including official court and law enforcement records, identifying and correcting the incomplete or inaccurate criminal history information. Upon receipt of such information, the Exchange shall reevaluate the interim fitness determination. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.

(2) Inaccurate or Incomplete California Disqualifying Offenses.

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

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

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

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

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

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

(e) Costs. Background check costs for individuals seeking certification under this Article shall be paid by the Exchange.

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

§ 6860. Training Standards.

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

(b) All Certified Application Counselors shall complete training in the following subjects prior to carrying out any Consumer Assistance functions under this article:

(1) QHPs (including the metal levels described at 45 C.F.R. § 156.140(b) (April 18, 2017), hereby incorporated by reference), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;

(2) The full range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program, and other public programs;

(3) The tax implications of enrollment decisions;

(4) Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;

(5) Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;

(6) Basic concepts about health insurance and the Exchange and the benefits of having health insurance and enrolling through an Exchange;

(7) Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;

(8) Providing culturally and linguistically appropriate services;

(9) Ensuring accessibility for people with any disability;

(10) Understanding differences among health plans;

(11) Privacy and security standards applicable under 45 C.F.R. § 155.260

(September 6, 2016), hereby incorporated by reference, for handling and safeguarding consumers' personally identifiable information;

(12) Working effectively with individuals with limited English proficiency, people with disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations;

(13) Customer service standards;

(14) Outreach and education methods and strategies;

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

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

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

(d) In order to maintain certification with the Exchange, Certified Application Counselors shall annually pass an exam administered by the Exchange testing the subjects in subdivision (b) of this section. Certified Application Counselors must complete training within 30 days of enrolling in the recertification course.

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

§ 6862. Appeals Process.

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

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

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

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

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

§ 6864. Roles and Responsibilities.

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

(1) Provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible, which includes providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping consumers make informed decisions during the health coverage selection process;

(2) Assist individuals and employees in applying for coverage in a QHP through the Exchange and for insurance affordability programs; and

(3) Help to facilitate enrollment of eligible individuals into QHPs and insurance affordability programs;

(4) Comply with the privacy and security requirements in 45 C.F.R. § 155.260;

(5) Act in the best interest of the applicants assisted;

(6) Either directly or through an appropriate referral to assistance personnel certified pursuant to Article 8 of this Chapter, provide information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 U.S.C. 12101 et seq. and Section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 794; and

(7) Ensure that voter registration assistance is available in compliance with Section 6462 of Article 4 of this Chapter; and

(8) Comply with any applicable federal or state laws and regulations.

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

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

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

(1) Inform the consumer that the Certified Application Counselor must obtain his or her authorization prior to accessing any personally identifiable information;

(2) Inform each consumer of the roles and responsibilities of the Certified Application Counselor as set forth in this section;

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

(4) Obtain oral or written authorization from the consumer to access the consumer's personally identifiable information;

(A) Written authorization shall contain a consumer's signature and a written attestation completed by the Certified Application Counselor affirming under penalty of perjury that the Certified Application Counselor:

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

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

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

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

(6) Inform the consumer that the Certified Application Counselor will provide the consumer with information regarding the health insurance options and insurance affordability programs for which he or she may be eligible;

(7) Inform the consumer that his or her personally identifiable information will be kept private and secure in accordance with the standards set forth in 45 C.F.R. § 155.260;

(8) Inform the consumer that if the Certified Application Counselor cannot assist the consumer, he or she will refer the consumer to another Certified Application Counselor or the Covered California Call Center;

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

(10) Inform the consumer that the assistance is based only on the information provided by the consumer, and if the information given is inaccurate or incomplete, the Certified Application Counselor may not be able to offer assistance;

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

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

(c) Certified Application Counselors shall include the following in a consumer's application to the Exchange:

(1) Name and certification number of the Certified Application Counselor;

(2) Name of the Certified Application Entity and the Certified Application Entity Number; and

(3) Signature and date of signature by the Certified Application Counselor.

(d) If any of the information listed in subdivision (c) of this section is not included on the consumer's original application, it may not be added at a later time.

(e) Certified Application Counselors shall wear the badge issued by the Exchange at all times when performing duties under this section.

(f) Certified Application Entities must maintain a physical presence in the state of California so that face-to-face assistance can be provided to applicants and enrollees.

(g) Certified Application Entities shall maintain a registration process and method to track the performance of Certified Application Counselors.

(h) To ensure that information provided as part of any Consumer Assistance is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency as required by 45 C.F.R. §§ 155.205(c)(2) and 155.225, Certified Application Entities and Certified Application Counselors shall:

(1) Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs;

(2) Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken;

(3) Provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary to ensure meaningful access. Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services;

(4) Provide oral and written notice to consumers with limited English proficiency informing them of their right to receive language assistance services and how to obtain them;

(5) Receive ongoing education and training in culturally and linguistically appropriate service delivery; and

(6) Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

(i) To ensure that Consumer Assistance is accessible to people with disabilities, Certified Application Entities and Certified Application Counselors shall:

(1) Ensure that any consumer education materials, web sites, or other tools utilized for Consumer Assistance purposes are accessible to people with disabilities, including those with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities;

(2) Provide auxiliary aids and services for individuals with disabilities, at no cost, where necessary for effective communication. Use of a consumer's family or friends as interpreters can satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services;

(3) Provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities;

(4) Ensure that legally authorized representatives are permitted to assist an individual with a disability to make informed decisions; and

(5) Acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and support programs when appropriate.

(j) To ensure that no consumer is discriminated against, Certified Application Entities and Certified Application Counselors shall provide the same level of service to all individuals regardless of age, disability, culture, sexual orientation, or gender identity, and seek advice or experts when needed.

(k) Certified Application Entities and Certified Application Counselors may not:

(1) Impose or induce any fee, charge, or remuneration on applicants for application or other assistance related to the Exchange;

(2) Be a QHP;

(3) Receive any direct or indirect consideration from any health insurance issuer or issuer of stop-loss insurance in connection with the enrollment of any individuals in a QHP or a non-QHP;

(4) Refer consumers to a specific insurance agent or specific set of insurance agents;

(5) Provide gifts, including gift cards or cash or provide promotional items that market or promote the products or services of a third party, to any applicant or potential enrollee as an inducement for enrollment. The value of gifts provided to applicants and potential enrollees for purposes other than as an inducement for enrollment must not exceed nominal value, either individually or in the aggregate, when provided to that individual during a single encounter. The nominal value is equal to or less than \$15.

Gifts of nominal value may not include beer, wine, liquor, cigarettes, tobacco, or lottery tickets. Gifts, gift cards, or cash may be provided for the purpose of providing reimbursement for legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as, but not limited to, travel or postage expenses;

(6) Solicit any consumer for application or enrollment assistance by going door to door or through other unsolicited means of direct contact, including calling a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual has a pre-existing relationship with the individual Certified Application Counselor or designated organization and other applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door to door or through other unsolicited means of direct contact, including calling a consumer;

(7) Initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual Certified Application Counselor or designated organization has a relationship with the consumer and so long as other applicable State and Federal laws are otherwise complied with;

(8) Mail the paper application for the consumer;

(9) Coach the consumer to provide inaccurate information on the application regarding income, residency, immigration status, and other eligibility criteria;

(10) Coach or recommend one plan or provider over another;

(11) Accept any premium payments from the consumer;

(12) Input any premium payment information on behalf of the consumer;

(13) Pay any part of the premium or provide any form of consideration to the consumer on behalf of the consumer;

(14) Intentionally create multiple applications from the same household, as defined in 42 C.F.R. § 435.603(f) (November 30, 2016), hereby incorporated by reference; or

(15) Invite, influence, or arrange for an individual whose existing coverage through an eligible employer-sponsored plan is affordable and provides minimum value, as described in 26 USC § 36B(c)(2)(C) and in 26 C.F.R. § 1.36B-2(c)(3)(v) and (vi) (July 26, 2017), hereby incorporated by reference, to separate from employer-based group health coverage.

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

Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; 26 C.F.R Section 1.36B-2; 42 C.F.R Section 436.603; and 45 C.F.R. Sections 155.205, 155.210, 155.215, 155.225 and 155.260.

§ 6866. Conflict of Interest Standards.

(a) Certified Application Entities and Certified Application Counselors must disclose to the Exchange and consumers any relationships with Qualified Health Plans, insurance affordability programs, or other potential conflicts of interest.

(b) Certified Application Entities and Certified Application Counselors shall not concurrently hold a license issued by the California Department of Insurance.

(c) Certified Application Entities and Certified Application Counselors shall not employ, be employed by, be in partnership with, or receive any remuneration arising out of functions performed under this Article, from any individual or entity currently licensed by the California Department of Insurance.

(d) Certified Application Entities and Certified Application Counselors shall:

(1) Create a written plan to remain free of conflicts of interest while carrying out functions under this Article; this plan shall be made available upon request to the Exchange;

(2) Provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible; and

(3) Disclose to the Exchange and to each consumer who receives application assistance from the entity or individual:

(A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in this section, which the entity or individual intends to sell while carrying out the Consumer Assistance functions;

(B) Any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of

stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and

(C) Any existing or anticipated financial, business, or contractual relationship with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

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

§ 6868. Suspension and Revocation.

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

(1) Failure to comply with any and all applicable federal or state laws or regulations, including, but not limited to, Section 6864 or Section 6866 of this Article;
and

(2) A potentially disqualifying administrative action or criminal record which is substantially related to the qualifications, functions, or duties of the specific position of the entity or individual as set forth in this Article.

(b) Withdrawal of Certification Procedure:

(1) The Exchange shall withdraw a Certified Application Entity's certification in accordance with the following procedure:

(A) The Exchange shall provide written notice to the Certified Application Entity including the justification for withdrawing the certification;

(B) The withdrawal of the Certified Application Entity's certification shall become effective 20 calendar days following the date of the issuance of the Exchange's written notice;

(C) The submission of an appeal as set forth in subdivision (c) of this section shall toll the effectiveness of the decertification pursuant to subdivision (b)(1)(B) of this section until a final determination is made, however during this time the Certified Application Entity may not hold itself out as such;

(D) A Certified Application Entity for which the Exchange has withdrawn its certification must notify within one business day all of its Certified Application Counselors that they may no longer hold themselves out as Certified Application Counselors; and

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

(2) The Exchange shall withdraw a Certified Application Counselor's certification in accordance with the following procedure:

(A) The Exchange shall provide written notice to the Certified Application Counselor, which includes the justification for withdrawing the certification;

(B) The withdrawal of the Certified Application Counselor's certification shall become effective 20 calendar days following the date of the issuance of the Exchange's written notice;

(C) The submission of an appeal as set forth in subdivision (c) of this section shall toll the effectiveness of the decertification pursuant to subdivision (b)(2)(B) of this section until a final determination is made;

(D) Certified Application Counselors may not hold themselves out as Certified Application Counselors after receiving a written notice pursuant to (b)(2)(A) of this section unless and until their certification is reinstated; and

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

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

(c) Appeals.

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

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

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

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

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

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME California Health Benefit Exchange	CONTACT PERSON Brian M. Kearns	EMAIL ADDRESS Brian.Kearns@covered.ca.gov	TELEPHONE NUMBER (916) 228-8843
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Certified Application Counselors Regulations			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts business and/or employees | <input checked="" type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input checked="" type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below): |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.**If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*2. The California Health Benefit Exchange estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
 Between \$10 and \$25 million
 Between \$25 and \$50 million
 Over \$50 million *(If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c))*

3. Enter the total number of businesses impacted: UnknownDescribe the types of businesses (Include nonprofits): Certified Application CounselorsEnter the number or percentage of total businesses impacted that are small businesses: Unknown4. Enter the number of businesses that will be created: 0 eliminated: 0Explain: Certified Application Counselors are uncompensated individual volunteers5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____6. Enter the number of jobs created: 0 and eliminated: 0Describe the types of jobs or occupations impacted: Uncompensated volunteers who provide in-person assistance to California residents applying for coverage through Covered California7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ Unknown Cost: \$ 0
 Alternative 1: Benefit: \$ Unknown Cost: \$ 0
 Alternative 2: Benefit: \$ Unknown Cost: \$ 0

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

The Exchange sees the importance of ensuring that individual volunteers meet the qualifications to perform the roles of a Certified Application Counselor.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?

 YES NO

Explain: The defined application process for a Certified Application Counselor ensures well qualified and eligible individuals participate in the program which in turn helps to reduce consumer confusion during enrollment.

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO*If YES, complete E2. and E3**If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

 YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____ N/A

The incentive for innovation in products, materials or processes: _____ N/A

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: Making high quality health care available to all Californians, and providing increased education and access to health care coverage.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain Estimated impact to State Funds is \$339,763 in FY 2018-19 for the Certified Application Counselor program.

There is no impact to the General Fund. See Attachment.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

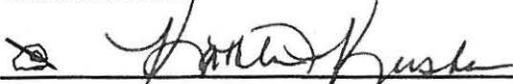


DATE

10-24-18

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

12/12/18

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

Fiscal Summary
(Dollars in thousands)

BCP No. N/A	Title Certified Application Counselors Regulations	Program N/A				
Personal Services	Positions			Dollars (in thousands)		
	CY	BY	BY + 1	CY	BY	BY + 1
Total Salaries and Wages	7.0	7.0	7.0	\$210	\$220	\$231
Total Staff Benefits				\$99	\$104	\$109
Total Personal Services	7.0	7.0	7.0	\$309	\$324	\$340
Operating Expenses and Equipment						
General Expense						
Printing						
Communications						
Postage						
Travel-In State						
Travel-Out of State						
Training						
Facilities Operations						
Utilities						
Consulting & Professional Services: Interdepartmental						
Consulting & Professional Services: External						
Data Center Services						
Information Technology						
Equipment ³						
Other/Special Items of Expense: <i>list your item</i>						
Standard OE&E Allocation				\$31	31	31
Total Operating Expenses and Equipment				\$31	\$31	\$31
Total State Operations Expenditures				\$340	\$355	\$371
Fund Source	Item Number					
	Org	Ref	Fund			
General Fund						
Special Funds	4800	001	3175	\$340	\$355	\$371
Federal Funds						
Other Funds (Specify)						
Reimbursements						
Total Local Assistance Expenditures				\$0	\$0	\$0
Fund Source	Item Number					
	Org	Ref	Fund			
General Fund						
Special Funds	4800	001	3175			
Federal Funds						
Other Funds (Specify)						
Reimbursements						
Grand Total, State Operations and Local Assistance				\$340	\$355	\$371

California Health Benefit Exchange
Regulation Package
Personal Cost Calculations

SALARY DETAILS

Classification ^{1/}	Salary Range			Benefit Rate (Standard)	OE&E (Standard)
	Min	Mid	Max		
Staff Services Manager I	\$ 5,917	\$ 6,634	\$ 7,351	57.0%	\$ 7,241
Associate Governmental Program Analyst	\$ 4,975	\$ 5,602	\$ 6,228	57.0%	\$ 7,241
Staff Service Analyst	\$ 3,450	\$ 3,884	\$ 4,318	57.0%	\$ 7,241
SSA - Retired Annuitant	\$ 2,298	\$ 2,298	\$ 2,298	8.0%	\$ 7,241
AGPA - Retired Annuitant	\$ 2,764	\$ 2,764	\$ 2,764	8.0%	\$ 7,241

POSITION DETAILS

Classification ^{1/}	Current Year 2018-19				Budget Year 2019-20				Budget Year +1 2020-21			
	Positions ^{2/}	Months	Time Allocation ^{3/}	Month - Equivalent ^{4/}	Positions ^{2/}	Months	Time Allocation ^{3/}	Month - Equivalent ^{4/}	Positions ^{2/}	Months	Time Allocation ^{3/}	Month - Equivalent ^{4/}
Staff Services Manager I	1.0	12.0	10%	1.2	1.0	12.0	10%	1.2	1.0	12.0	10%	1.2
Associate Governmental Program Analyst	2.0	12.0	70%	8.4	2.0	12.0	70%	8.4	2.0	12.0	70%	8.4
Staff Service Analyst	2.0	12.0	70%	8.4	2.0	12.0	70%	8.4	2.0	12.0	70%	8.4
SSA - Retired Annuitant	1.0	12.0	70%	8.4	1.0	12.0	70%	8.4	1.0	12.0	70%	8.4
AGPA - Retired Annuitant	1.0	12.0	70%	8.4	1.0	12.0	70%	8.4	1.0	12.0	70%	8.4
Total PYs & Adjusted Months	7.0			34.8	7.0			34.8	7.0			34.8

SALARIES & BENEFITS CALCULATIONS

Classification ^{1/}	Current Year 2018-19	Budget Year 2019-20	Budget Year+1 2021-21
Staff Services Manager I	\$ 7,961	\$ 8,359	\$ 8,757
Associate Governmental Program Analyst	\$ 94,114	\$ 98,820	\$ 103,525
Staff Service Analyst	\$ 65,251	\$ 68,514	\$ 71,776
SSA - Retired Annuitant	\$ 19,303	\$ 20,268	\$ 21,233
AGPA - Retired Annuitant	\$ 23,218	\$ 24,379	\$ 25,540
Total Salaries & Wages^{5/}	\$ 209,847	\$ 220,339	\$ 230,832
Staff Benefits^{6/}	\$ 98,778	\$ 103,716	\$ 108,655
Total Salaries & Benefits	\$ 308,625	\$ 324,055	\$ 339,487

Notes:

1. Classifications provided by program.
2. Position count provided by program.
3. Time allocation provided by program, based on amount of time spent on CAC activities.
4. Month-Equivalent = Months x Time Allocation.
5. Salary calculations based on mid-step of the classifications salary range, including GSI and MSA.
6. Benefit calculations based on standard benefit rate used for budgeting purposes.
7. Based on standard OE&E used for budgeting purposes and prorated based month-equivalent.
9. No contractual expenditures per program.

OPERATING EXPENSE & EQUIPMENT

Classification ^{1/}	Current Year 2018-19	Budget Year 2019-20	Budget Year+1 2021-21
Staff Services Manager I	\$ 724	\$ 724	\$ 724
Associate Governmental Program Analyst	\$ 10,138	\$ 10,138	\$ 10,138
Staff Service Analyst	\$ 10,138	\$ 10,138	\$ 10,138
SSA - Retired Annuitant	\$ 5,069	\$ 5,069	\$ 5,069
AGPA - Retired Annuitant	\$ 5,069	\$ 5,069	\$ 5,069
Total OE&E (Standard)^{7/}	\$ 31,138	\$ 31,138	\$ 31,138
Total Contracts^{8/}	\$ -	\$ -	\$ -
Total OE&E & Contracts	\$ 31,138	\$ 31,138	\$ 31,138
TOTAL COST	\$ 339,763	\$ 355,193	\$ 370,625

COST BREAKDOWN BY FUNDING SOURCE

Fund	Current Year 2013-14	Budget Year 2014-15	Budget Year+1 2015-16
General Fund	\$ 339,763	\$ 355,193	\$ 370,625
Special Funds	\$ -	\$ -	\$ -
Federal Funds	\$ -	\$ -	\$ -
Total	\$ 339,763	\$ 355,193	\$ 370,625