

**State of California  
Office of Administrative Law**

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

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Adopt sections: 6864**

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1, 11349.6,  
and 100504(a)(6)**

**OAL Matter Number: 2016-0826-07**

**OAL Matter Type: Emergency Readopt (EE)**


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The California Health Benefit Exchange submitted this emergency action to amend one of ten sections in title 10, chapter 12 of the California Code of Regulations that were adopted in OAL file number 2015-0625-02E. The emergency regulations established criteria and procedures for becoming a Certified Application Entity or a Certified Application Counselor affiliated with a Certified Application Entity, as required by 45 Code of Federal Regulations part 155.255, which implemented the federal Patient Protection and Affordable Care Act. The proposed action adds three subdivisions to section 6864 of title 10 of the California Code of Regulations that make clear that Certified Application Counselors cannot provide tax or legal advice to consumers when acting as a Certified Application Counselor, and include as part of the mandatory functions of a Certified Application Counselor providing referrals to entities for enrollees to direct any grievance, complaint, or question regarding their health plan, coverage, and providing referrals to licensed tax advisers, tax preparers, or similar resources for questions relating to tax issues about the Exchange application and enrollment process.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 9/1/2016 and will expire on 7/7/2018. The Certificate of Compliance for this action is due no later than 7/6/2018.

Date: September 1, 2016

  
Richard L. Smith  
Senior Attorney

For: Debra M. Cornez  
Director

Original: Peter Lee  
Copy: Brian Kearns

# EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2016-0826-07EE</b>
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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

SEP -1 2016

1:43pm

For use by Office of Administrative Law (OAL) only

2016 AUG 26 P 4: 10

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
California Health Benefit Exchange

AGENCY FILE NUMBER (if any)

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

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

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

1a. SUBJECT OF REGULATION(S) Certified Application Counselors	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0625-02E, 2015-0625-02E, 2016-0518-03EE per agency request
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 6864
	AMEND
TITLE(S) 10	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

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

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

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

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

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 9/18/16
TYPED NAME AND TITLE OF SIGNATORY Peter V. Lee, Executive Director	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

SEP 01 2016

Office of Administrative Law

California Code of Regulations

Title 10. Investment

Chapter 12. California Health Benefit Exchange

Article 11. Certified Application Counselor Program.

**§ 6864. Roles and Responsibilities.**

(a) ...

(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) ...

(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;

~~(3)~~(4) Obtain oral or written authorization from the consumer to access the consumer's personally identifiable information;

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Note: Authority cited: Sections 100503 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. §§ 155.205, 155.210, 155.215, and 155.225.