Notice Published April 17, 2015

NOTICE OF PROPOSED RULEMAKING
CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 12, ARTICLE 9
ADOPT SECTIONS 6700 et seq.

The California Health Benefit Exchange/Covered California (the Exchange) Board proposes to adopt the regulations 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 **5:00 p.m. on June 1, 2015.** The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

Mandy Garcia, Regulations Analyst
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 California Health Benefit Exchange/Covered California (the Exchange) Board to adopt rules and regulations, as necessary. The proposed regulations implement, interpret, and make specific Government Code Sections 100503 and 100504; and Title 45 of the Code of Federal Regulations, Sections 155.20, 155.415, 156.265 and 156.1230.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None

Summary of Existing Laws

Under the federal Patient and Protection and Affordable Care Act (ACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans (QHPs) to qualified individuals and small employers. Existing state law, the California Patient Protection and Affordable Care Act, established the California Health Benefit Exchange within state government, and specifies the powers and duties of the executive board of the Exchange.

Federal regulations implementing the ACA at 45 CFR 155.415 and 156.1230 allow at state-option the creation of a QHP Issuer-based consumer assistance function for the direct enrollment of consumers in a manner deemed to be through the Exchange.

Summary of the Effect of the Proposed Regulation

The proposed regulations make permanent previously readopted emergency regulations, with amendments, of the Certified Plan-Based Enrollment Program to establish the policies and procedures for QHP Issuers to conduct eligibility determinations and redeterminations, enrollment in QHPs, and appropriate handling of applications deemed eligible for other insurance affordability programs, including Medi-Cal. The proposed regulations will also provide QHP Issuers applying for the Certified Plan-Based Enroller Program with the standards and requirements for issuers and their employees or contractors to qualify for participation in the PBE Program as Certified Plan-Based Entities (PBEEs) and Plan-Based Enrollers (PBEs). These requirements include program eligibility requirements, training and certification standards, fingerprinting and criminal record checks, specific roles and responsibilities, conflict of interest standards, compensation standards, suspension and revocation rules, and allowable appeals.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After an evaluation of current regulations, the Exchange has determined that these proposed regulations are not inconsistent or incompatible with any existing regulations. The Exchange has determined these are the only regulations that concern the participation of QHP Issuers to conduct specified consumer assistance functions of the Exchange in a manner deemed to be through the Exchange.

Anticipated Benefits of the Proposed Regulation

The proposed regulation will benefit California consumers by providing consumers with increased avenues for assistance to enroll in high-quality, affordable health insurance plans through the Exchange and, thus, improving consumer health outcomes through

reliable coverage. The proposed regulation will also protect California consumers by reducing opportunities for conflicts of interest, steerage, and misinformation in the PBE program, thereby promoting fairness and social equity.

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 Executive Director of the California Health Benefit 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 California Health Benefit Exchange, which is currently funded by federal grant money and will become financially self-sustaining in 2016. The proposal does not result in any costs or savings to any other state agency.

Costs or Savings in Federal Funding to the State

The proposal results in additional costs to the California Health Benefit Exchange, which is currently funded by a mix of federal grant money and self-sustainability dollars from QHP participation fees. The Exchange will become financially self-sustaining in 2016.

Other Nondiscretionary or Savings Imposed on Local Agencies

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

Significant Effect on Housing Costs

None.

Effect on Small Business

The Exchange anticipates this proposal will have an effect on fingerprint imaging services, which are operated by small business.

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

Costs will vary amongst the Qualified Health Plans (QHPs). Costs incurred are expected to vary annually as QHPs may adjust their business needs according to projected enrollment dollars. For example, one QHP incurred implementation costs of $171,000. Additionally, QHPs will incur fingerprinting costs associated with the PBE initial certification process (approximately $69 per applicant and currently totaling an estimated $112,953 across all QHPs). Some QHPs will incur no costs if they do not participate in the PBE Program.

Results of the Economic Impact Assessment/Analysis

The Exchange concludes regarding the proposed regulations that it is:
(1) **likely** 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) **possible** 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.

Benefits of the Proposed Action

The proposed regulation will benefit California consumers by providing consumers with increased avenues for assistance to enroll in high-quality, affordable health insurance plans through the Exchange and, thus, improving consumer health outcomes through reliable coverage. The proposed regulation will also protect California consumers by reducing opportunities for conflicts of interest, steerage, and misinformation in the PBE program, thereby promoting fairness and social equity.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or 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 implementing the statutory policy or other provision of law.

The Exchange invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Mandy Garcia
Regulations Analyst
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8432

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

Gabriela Ventura Gonzales
Attorney
California Health Benefit Exchange (Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8477

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 Mandy Garcia 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 Mandy Garcia at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, 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 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 Mandy Garcia 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 Mandy Garcia 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 at www.healthexchange.ca.gov/regulations.

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

The APA requires that an Initial Statement of Reasons be available to the public upon request when a permanent rulemaking action is undertaken. The following information required by the APA pertains to this particular rulemaking action:

SUMMARY OF THE PROPOSED REGULATIONS:

The proposed regulations would make permanent Sections 6700, 6702, 6704, 6706, 6708, 6710, 6712, 6714, 6716 and 6718, of Title 10 of the California Code of Regulations (C.C.R.) related to the Certified Plan-Based Enrollment Program of the California Health Benefit Exchange ("Covered California" or "Exchange"). The proposed regulations implement, interpret, and make specific requirements in state and federal law, including specific federal regulations regarding the Exchange's option to establish an Issuer-based enrollment assistance program.

AUTHORITY AND BACKGROUND

The federal Patient Protection and Affordable Care Act (ACA) required each state to establish an American Health Benefit Exchange that makes available qualified health plans (QHPs) to qualified individuals and small employers by January 1, 2014. In 2010, the legislature enacted the California Patient Protection and Affordable Care Act (California Government Code Section 100500 et seq.), which established the California Health Benefit Exchange. The Exchange is California's competitive marketplace where consumers and small businesses can shop for and purchase affordable, quality insurance coverage through QHPs certified by the Exchange. The Exchange is the only place where consumers can utilize federal advance premium tax credits (APTC) and receive cost-share reductions towards their health insurance costs, if eligible.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the California Health Benefit Exchange/ Board to adopt rules and regulations, as necessary. It further grants the Exchange with emergency rulemaking authority until January 1, 2016 in accordance with the Administrative Procedure Act. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws and to make permanent a rulemaking initially adopted through the Exchange's emergency rulemaking authority.

Specifically, existing State law requires the Exchange to "Exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of this act and the federal [ACA]." Government Code § 100503(s). Federal regulations implementing the ACA in Sections 155.20, 155.415 and 156.1230 of Title 45 of the Code of Federal Regulations (C.F.R.) allow the Exchange, at its option, to create a QHP Issuer-based consumer assistance

function for the direct enrollment of consumers in a manner deemed to be through the Exchange.

This proposed rulemaking also implements, interprets or makes specific additional state statutory requirements. For example, Government Code Section 100503 requires the Exchange to "provide for the processing of applications and the enrollment and disenrollment of enrollees," (Government Code 100503(h)) and to "undertake activities necessary to market and publicize the availability of health care coverage and federal subsidies through the Exchange" (Government Code 100503(k)). Consistent with these existing laws, the proposed regulations would permanently establish a Certified Plan-Based Enrollment Program of the Exchange. The program grants authority to QHP Issuers to conduct eligibility determinations and redeterminations, enrollment and re-enrollment in QHPs, and provide for the appropriate handling of applications deemed eligible for other Insurance Affordability Programs, including Medi-Cal. The proposed regulations also illustrate the standards and requirements for QHP Issuers and their affiliated employees or contractors to qualify for participation in the PBE Program as certified plan-based enrollment entities and counselors. Such provisions include program eligibility rules, training and certification standards, fingerprinting and criminal record checks requirements, enrollment assistance roles and responsibilities, marketing rules, conflict of interest standards, compensation standards, suspension and revocation rules, and appeals processes.

THE PROBLEM

Existing state and federal law, the federal Patient Protection and Affordable Care Act (ACA) and the California Affordable Care Act led to the establishment of the California Health Benefit Exchange as the sole marketplace in the state where qualified individuals and small businesses would be able to receive tax credits and cost share reductions to purchase coverage through Exchange-certified qualified health plans (QHPs). State and federal law required the Exchange to facilitate the purchase of QHPs through the Exchange by January 1, 2014. As of March 31, 2014, the date ending the Exchange's first open enrollment period, 1,395,929 individuals had selected to enroll in Exchange QHPs. Following this initial open enrollment period the Exchange is obligated to continue to meet ongoing consumer assistance and enrollment needs during all subsequent special enrollment and open enrollment periods. The proposed rules would permanently codify the PBE Program in the California Code of Regulations to continue to provide Issuer-based access channels for the ongoing enrollment and renewal of consumers in QHPs.

As authorized by law since 2014, the Exchange has provided new coverage options for various consumer populations in California. These include consumers who were previously uninsured and entering the marketplace for the first time; consumers who were already insured but have new options available to them through the Exchange, including standardized health plans, premium subsidies, and cost-share reductions based on income; and consumers eligible for newly expanded Medi-Cal coverage and other Insurance Affordability Programs (IAPs). These consumers receive Exchange eligibility determinations and enrollment assistance through the service center of the Exchange, or any of the Exchange's other consumer assistance channels.

For individuals with existing health coverage through a QHP Issuer, those Issuers have trusted and established relationships with their members. Thus, Issuers play an important role in providing members with information about new options available through the Exchange and assisting them with eligibility determinations and enrollment. Emergency regulations previously adopted in September 2013, and readopted and amended in April, July, and October 2014, authorized QHP Issuers to perform specific enrollment assistance functions in a manner deemed to be through the Exchange. The Exchange concluded its second open enrollment period on February 15, 2015; it is necessary to promulgate this permanent rulemaking to ensure consumers will continue to have an Issuer-based enrollment portal to help them sort through complex insurance and financial assistance options through the Exchange beyond 2015.

PURPOSES AND BROAD OBJECTIVES

As previously adopted through the emergency rulemaking process, QHP Issuers certified by the Exchange to participate in the Plan-Based Enrollment Program may enroll:

1) Current non-group members that meet the requirements of a Qualified Individual in Section 6410 of Article 2 of Title 10 of the California Code of Regulations; 2) COBRA members meeting the requirements of a Qualified Individual; 3) Current members terminating individual or group coverage, including 25-year-old dependents; 4) Individuals interested in obtaining coverage through the Exchange; and 5) Individuals eligible for other Insurance Affordability Programs (e.g. Medi-Cal).

The goal of the Certified Plan-Based Enrollment Program is to provide consumers with an additional source of enrollment support to help them sort through complex insurance options. The PBE Program builds upon the existing relationship a consumer may have with a QHP Issuer and also provides a new direct enrollment pathway for those consumers who have preliminarily and independently determined they would like to work directly with an Issuer for their QHP enrollment needs. To avoid conflicts of interest, Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers will not qualify for compensation from the Exchange for the functions authorized by this regulatory action.

The broad objectives of this proposed regulatory action are to:

- Provide the Exchange with necessary consumer assistance channels through its qualified health plans to adequately support the eligibility determination and redetermination functions of the Exchange;

- To specify and clarify which individuals and entities are eligible for the Certified Plan Based Enrollment Program (“PBE Program”) of the Exchange;

- To specify and clarify which individuals are subject to the fingerprinting and background checks authorized by Government Code Section 1043 to participate in the PBE Program;

- To clarify the Exchange’s PBE procedures so they are consistent with federal guidelines and State and federal laws;

- To make permanent emergency regulations previously promulgated by the Exchange;

- To protect California consumers by reducing opportunities for PBE and PBEE conflicts of interest, increasing transparency of PBE and PBEE interests, and reducing the likelihood of steerage or misinformation by PBEs and PBEEs; and

- To obtain public comment on proposed regulations during the full 45-day comment period through the permanent rulemaking process.

BENEFITS

Anticipated benefits from this proposed regulatory action are:

- To provide a necessary supporting enrollment assistance channel to California consumers for eligibility determinations and redeterminations in Covered California QHPs; and

- To protect California consumers by reducing opportunities for conflicts of interest, steerage, and misinformation in the PBE Program, which thereby promotes fairness and social equity.

CONSISTENCY AND COMPATIBILITY

The Exchange has evaluated whether the proposed regulations are inconsistent or incompatible with existing State regulations. This evaluation included a review of the laws governing the Exchange and specifically those statutes and regulations related to the consumer assistance functions of the Exchange, and State laws regulating the business of insurance, including those related to agent licensure requirements.

While no known State regulation addresses precisely the same subject matter as these proposed regulations, i.e. implementation of an Issuer-based enrollment assistance function of the Exchange, the proposed regulations have been drafted consistent with the requirements and limitations in the Insurance Code as it relates to agent licensure requirements for individuals Therefore, the Exchange has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing State regulations.

DETAILED DISCUSSION OF THE SPECIFIC PURPOSE, RATIONALE AND PROBLEM ADDRESSED FOR EACH REGULATION PROPOSED FOR ADOPTION:

Article 9. Plan-Based Enrollment Program

Sections 6700, 6702, 6704, 6706, 6708, 6710, 6712, 6714, 6716 and 6718

Authority Cited in this Regulatory Proposal: Sections 100503 and 100504, Government Code;

References Cited in this Regulatory Proposal: Sections 155.20, 155.415, 156.265 and 156.1230, Code of Federal Regulations.

Article 9, Plan-Based Enrollment Program. This article in its entirety, specifies, clarifies, defines and makes specific the requirements for participation in the Plan-Based Enrollment Program (PBE Program) of the Exchange for Plan-Based Enrollment Entities (PBEEs) and individual Plan-Based Enrollers (PBEs). This article is necessary because it provides interested QHP Issuer entities and their affiliated individuals with clear standards and guidelines to satisfy the requirements to apply to become a PBEE or PBE and to perform the enrollment assistance functions that are required of them. This rulemaking proposes to make permanent the emergency regulations previously adopted for this Article and all sections contained herein, with amendments to some of those sections.

Section 6700

Section 6700, Definitions. This section in its entirety, specifies, clarifies, and defines the terms specific to this Article for the PBE Program of the Exchange and notes the applicability of the global Exchange definitions in Section 6410 of Article 2 of this Chapter related to the PBE Program.. These definitions are necessary because they provide clarity to the public and the regulated entities and individuals for specialized terms utilized in the Plan-Based Enrollment Program of the Exchange. The definitions further ensure clarity and consistency of this regulations package and aim to avoid confusion with other terms utilized elsewhere that may be similar but not the same as utilized in the PBE Program and this Article. Specific discussion of a definition's necessity follows:

Section 6700(a) Defining "Authorized Contact" is necessary to identify the scope of an Authorized Contact's authority to do business with the Exchange. Here, the definition means an individual who is the primary business contact representing the PBEE in its communications and transactions with the Exchange as well as the individual responsible for the management of the PBE Program for the entity. An authorized contact may also, at the Exchange's discretion and pursuant to rule, designate designees to perform specific authorized functions. This is necessary to ensure that one primary representative of the Issuer will be the contact person with the Exchange to promote communication consistency.

Section 6700(b) Defining "Cold-calling" is necessary to avoid confusion regarding a specialized, industry term, the meaning of which might be unclear to the public. The proposed regulations specify in Section 6710(j)(1)(C) that PBEs are prohibited from engaging in cold-calling under the terms of the Plan-Based Enrollment Program. This definition clarifies that calls made to consumers based on permissible leads are not considered "cold-calling" and thus, are permissible under the terms of the proposed regulations the PBE Program.

Section 6700(c) Defining "Consumer" is necessary to avoid confusion with a generally recognizable term and to distinguish the term's basis and purpose in this Article and the Plan-Based Enrollment Program specifically. The Exchange permits PBEs to provide enrollment assistance to specific targeted consumer populations, the "Consumers," with whom the QHP Issuer has established relationships or for which the QHP Issuer was directly contacted by the

consumer for assistance with enrollment in a QHP offered by the PBE in the Individual Exchange or other Insurance Affordability Program.

Section 6700(d) Defining "Enrollment Assistance" is necessary to avoid confusion regarding a specialized, technical term, to specify the term's basis in this Article and scope under federal law. Under 45 CFR § 156.1230 and § 155.415 the Exchange is permitted to allow Issuer-based application assisters to facilitate enrollment assistance in a manner deemed to be through the Exchange. It is necessary to define this term and establish the programmatic parameters to inform QHP Issuers and affiliated individuals of the required scope of enrollment assistance as permissible under federal and state law.

Section 6702

Section 6702, Certified Plan-Based Enrollment Program Eligibility Requirements. This section in its entirety clarifies and makes specific the eligibility requirements of participation in the Plan-Based Enrollment Program for both the Plan-Based Enrollment Entity (PBEE) and the Plan-Based Enroller (PBE). This is necessary to provide the public with clear program eligibility requirements, and to comply with the federal requirements for QHP Issuer-based enrollment assistance in 45 CFR § 156.1230.

Section 6702(a) defines and clarifies the entities and individuals that are eligible for participation in the PBE Program through the Exchange. This is necessary to provide interested entities and individuals the threshold eligibility requirements so they may determine whether to apply for the PBE Program.

Section 6702(a)(1) clarifies that only Qualified Health Plan Issuers with at least one QHP through the Exchange are eligible for participation in the PBE program. This is necessary to comply with the federal requirements for QHP Issuer-based enrollment in a manner considered to be through the Exchange under 45 CFR § 156.1230. Issuers that do not offer at least one QHP through the Exchange are ineligible to apply.

Section 6702(a)(2) clarifies and makes specific the two types of PBEs, Issuer Application Assisters and Captive Agents. In addition this subdivision clarifies that individual PBEs, whether Issuer Application Assister or Captive Agents, must be an employee or contractor of a Certified Plan-Based Enrollment Entity ("PBEE" or "entity"). This is necessary to comply with the federal requirements for QHP Issuer-based enrollment assistance in 45 CFR § 156.1230. This provision is also necessary to introduce the regulated public to two of the threshold eligibility criteria for the program.

Section 6702(b) clarifies and makes specific the steps needed to become a PBEE including application requirements, training requirements and access requirements. This is necessary to provide an overview to interested QHP Issuers of the needed information and minimum requirements of the Exchange's PBEE process.

Section 6702(b)(1) specifies that interested QHP Issuers must complete an application for the PBE Program in accordance with Section 6704. This is necessary to make clear by cross-

reference that the application is crucial to determining whether QHP Issuers meet all of the requirements for the PBE Program.

Section 6702(b)(2) specifies that the Authorized Contact of the entity must complete training in accordance with Section 6706 in order for the entity to become eligible as a PBEE. The cross-reference is included for clarity and the requirements are necessary to ensure a PBEE Authorized Contact is appropriately trained and prepared for the PBEE to provide enrollment assistance in a manner considered to be through the Exchange. This provision is also in satisfaction of a federal requirement that Issuers receive training in 45 CFR § 156.1230 and 45 CFR § 155.415.

Section 6702 (b)(3) specifies that the entity must demonstrate access to Consumers in accordance with Section 6700. This is necessary to determine if the PBEE applicant will be able to provide required assistance to Consumers wishing to enroll in the Exchange.

Section 6702(c) in its entirety clarifies and makes specific the steps needed to become a Certified Plan-Based Enroller ("PBE" or "Enroller") including application, training, privacy and security, employment, additional legal, background check, and recertification requirements. This is necessary to provide notice to interested individuals of the full range of mandatory elements found in the Exchange's PBE application and program processes.

Section 6702(c)(1) reiterates the threshold requirement that a PBE must be employed or contracted by a PBEE and must apply as either an Issuer Application Assister or a Captive Agent. This is necessary to distinguish between the two types of PBEs and to comply with the federal requirements for QHP Issuer-based enrollment assistance in 45 CFR § 156.1230.

Section 6702(c)(2) specifies by cross-reference that a PBE must complete the training requirements of Section 6706 to be eligible for the PBE program. This is necessary to ensure PBEs are adequately trained to provide enrollment assistance in a manner considered to be through the Exchange.

Section 6702(c)(3) specifies by cross-reference that PBEs must comply with the Exchange's privacy and security requirements in 45 CFR § 155.260, including the requirements specific to non-Exchange entities. This is necessary to ensure that PBEs properly handle consumer Protected Health Information (PHI) and Personally Identifiable Information (PII) consistent with state and federal law.

Section 6702(c)(4) clarifies and makes specific that PBEs must comply with State laws regarding the sale, solicitation, and negotiation of insurance products. This is necessary to codify in state regulations a federal requirement set forth in 45 CFR § 156.1230(a)(2)(iii) to expressly align the PBE program with State insurance laws.

Section 6702(c)(5) specifies by cross-reference that PBEs must pass the certification exam identified in Section 6706. This is necessary to ensure that PBEs have achieved a level of understanding and mastery of core subjects necessary to provide enrollment assistance in a manner considered to be through the Exchange.

Section 6702(c)(6) specifies by cross-reference that PBEs must sign the certification statement in Section 6704 (d)(11)(A)-(D) of the PBE Application. This is necessary to inform the applicant that the Exchange will need his or her signature attesting that he or she will adhere to the requirements of the PBE Program and state and federal laws, is of legal age to agree to the terms of the PBE Program, and verifies that the statements in the application and true, correct, and complete to the best of the applicant's knowledge.

Section 6702(c)(7) specifies by cross-reference that PBEs are required to satisfy the Exchange's fingerprinting and criminal background check process in Section 6708. Section 6708 is necessary to comply with Government Code Section 1043 and Section 6456(a)-(e) of Article 4 of this chapter.

Section 6702(c)(8) specifies that all PBEs must complete refresher training, testing and certification renewal every year and as required by the Exchange in Section 6706. This is necessary to ensure that interested applicants are aware of requirements to be properly trained and prepared with the most accurate and timely enrollment assistance information to fulfill their duties as PBEs.

Section 6704

Section 6704, Program Application. This section in its entirety clarifies and makes specific the program application and all the required information and declarations that an applicant must provide for either a Certified Plan-Based Enrollment Entity ("PBEE" or "Entity") or Certified Plan-Based Enroller ("PBE") role with the Exchange. This section is necessary to provide the public with clear standards and guidelines required for the submission and completion of the individual's or the entity's application for participation in the PBE Program of the Exchange. This section is also necessary to comply with the federal requirements for QHP Issuer-based enrollment in 45 CFR § 156.1230.

Section 6704(a) clarifies and makes specific the overall application and certification processes an entity or individual must undergo to become a PBEE or PBE. This is necessary to provide those interested entities or individuals with a clear roadmap of the Exchange's PBEE and PBE complete application and certification processes. The roadmap synthesizes requirements for applicants to better facilitate their understanding of each requisite step in the certification process.

Section 6704(a)(1) requires that the Entity or individual complete and submit all application information, documentation, and declarations required to apply. This is necessary to notify applicants that they will need to provide completed applications if they wish to be considered for the PBE Program.

Section 6704(a)(2) requires that the individual or Entity's application demonstrate the capability to meet the duties required in the PBE Program and that the individual has established or could easily establish relationships with targeted Consumer populations. This is necessary because the Exchange relies upon PBEEs and PBEs to operate in a manner considered to be through

the Exchange, and as such, they must demonstrate adequate ability to service the Exchange's targeted Consumer populations in the PBE Program.

Section 6704(a)(3) requires the Exchange to review an individual's or an Entity's PBE program application and request any missing information that may be necessary to reach a decision on an individual's or Entity's eligibility. This is necessary to allow the Exchange the ability to consider all applicable information related to the individual's or Entity's application and make a fully-informed program eligibility decision. This ensures that the Exchange can request the PBEE to supplement the application with missing information in order for the Exchange to make a decision based upon all of the necessary information.

Section 6704(a)(4) requires the Exchange to notify applicants meeting all programmatic eligibility requirements of the next step in the certification process – to complete training requirements in Section 6706 of this Article. The applicant PBEs and the PBEE's Authorized Contact, and any designees, if applicable, are required to complete the training standards in Section 6706 within 90 calendar days or risk termination of their certification application with the Exchange. This timeline is necessary to ensure prompt processing of qualifying PBEs and PBEEs into the PBE Program to meet Exchange operational demands.

Section 6704(a)(5) clarifies that individuals who are seeking certification as PBEs must also meet the following independent requirements: (A) submit all information required in subdivision (d) of this Section; (B) Pass the fingerprinting and background check process in Section 6708; (C) Complete the training requirement in Section 6706; and (D) Pass the required certification exam in Section 6706. These cross-references serve as roadmaps to the detailed initial requirements of the PBE application process and are necessary to provide affected individuals notice that they must also fulfill independent requirements to become individually certified as PBEs.

Section 6704(a)(6) confirms that Entities or individuals who meet all requirements in subdivision (a) of this Section, as applicable, shall be certified as PBEEs or PBEs. This is necessary to relay to interested applicants that they can expect to be notified by the Exchange when their applications are approved and that they will receive certification numbers for the PBEE and affiliated PBEs. The certification numbers are necessary for Exchange program administration purposes.

Section 6705(a)(7) confirms that entities and individuals who have been denied certification by the Exchange may appeal through the express processes outlined in the regulations in Sections 6708 or 6718. This is necessary to alert applicants to the formal appeal process provided by the proposed regulations to all applicants if certification is denied. The appeal provision is necessary to provide an appeal process to ensure fairness and further review by the Exchange if an entity or individual believes they have been wrongly denied.

Section 6704(b) specifies each application element required for the PBEE application. This is necessary to provide the applicant Entity with clear guidance on what information the Exchange must collect in order to properly determine the applicant Entity's eligibility to become a PBEE with the Exchange. The required elements are detailed below.

Section 6704(b)(1) requires the Entity's full name. This is necessary to identify the applicant Entity.

Section 6704(b)(2) requires the Entity's legal name. This is necessary to identify the applicant Entity under law.

Section 6704(b)(3) requires the submission date of the application. This is necessary to ensure proper tracking of the application and satisfactory completion of Exchange deadline requirements.

Section 6704(b)(4) requires the primary e-mail address of the applicant entity. This is necessary to provide a contact method for consumers to the PBEE in the Exchange's public facing locate assistance tool on CoveredCA.com.

Section 6704(b)(5) requires the primary phone number of the applicant Entity. This is necessary to provide a primary phone number for consumers to the PBEE in the Exchange's public facing locate assistance tool.

Section 6704(b)(6) requires the secondary phone number of the applicant Entity. This is necessary to provide a secondary phone number to the PBEE for use by the Exchange in the case that the Entity cannot be reached through the primary phone number listed in the application. This number is only visible to Exchange personnel and contractors in the CalHEERS web application portal for internal communication purposes.

Section 6704(b)(7) requires the fax number of the applicant Entity. This is necessary to obtain the PBEE's preferred fax number for use by the Exchange when necessary to transmit faxed communications. This number is only visible to Exchange personnel and contractors in the CalHEERS web application portal for internal communication purposes.

Section 6704(b)(8) requires the Federal Employment Identification Number of the applicant entity. This is necessary to identify the applicant Entity for federal tax purposes.

Section 6704(b)(9) requires the State Tax Identification Number of the applicant entity. This is necessary to identify the applicant Entity for state tax purposes.

Section 6704(b)(10) requires the identification of the Entity's tax status including non-profit, for-profit, or governmental organization. This is necessary for Exchange data collection and internal statistics purposes to understand the tax status mix of the QHP Issuers participating in the PBE Program.

Section 6704(b)(11) requires the identification of counties served by the applicant entity. This is necessary to determine the entity's geographic reach and areas covered to allow the Exchange to identify under-resourced locations and populations.

Section 6704(b)(12) requires the applicant Entity to identify primary site and sub-site contact information, demographic information, and services offered. This includes (A) site location address, (B) mailing address, (C) county, (D) contact name, (E) primary e-mail address, (F) primary phone number, (G) secondary phone number, (H) an indication of whether the entity

wants to receive referrals for individuals seeking assistance at this site, (I) an indication of whether the entity provides in-person assistance at this site, (J) hours of operation, and (K)-(L) spoken and written languages. This detailed information is necessary in order to provide consumers with accurate and detailed available enrollment assistance information in the Exchange's online locate assistance tool. This section also requires the applicant entity to list the specified information for Exchange operational purposes which allow the Exchange to properly build PBEE assistance availability information into the consumer locate assistance tool and establish main communication channels between the Exchange and the PBEE. .

Section 6704(b)(13) requires the contact information for the applicant entity's Authorized Contact. This is necessary because the Exchange must have a designated contact for the ongoing management of the Plan-Based Enrollment Program and its affiliated Enrollers (Authorized Contact) and to maintain direct communication with the Exchange.

Section 6704(b)(14) requires a certification from the Authorized Contact of the PBEE that the information provided in the PBEE application is true and correct. This is necessary because the Exchange relies on this information and cannot approve applications that do not meet these requirements, including required training, fingerprinting and background checks, certification testing, and submission of all documentation as required to ensure that all entity's meet minimum program requirements for consumer enrollment assistance.

Section 6704(b)(15) requires the submission of individual Plan-Based Enroller applications with the entity's application to become a PBEE. This is necessary because the Exchange needs appropriate information to link individual PBE applications to a particular entity and to provide appropriate training and certification resources directly to those individuals.

Section 6704(c) specifies the process that a PBEE must follow in order to add subsequent PBEs after the initial PBEE application has been submitted. This is necessary because PBEs are added on an ongoing basis and PBEEs need to understand and follow the process required to properly add additional individuals to the program. In addition, the Exchange must be made aware of these additions in order to adequately track the PBEs that are providing these services.

Section 6704(d) in its entirety specifies and clarifies each application element required for the PBE application. This is necessary to provide the PBE applicant with clear guidance on what information the Exchange must collect in order to properly determine the applicant's eligibility to become a Certified Plan-Based Enroller with the Exchange. The required information is detailed below.

Section 6704(d)(1) requires the applicant's full name. This is necessary to identify the applicant.

Section 6704(d)(2) requires the applicant's business email address. This is necessary to provide a contact method for the Exchange to list on the Exchange's public facing consumer locate assistance tool.

Section 6704(d)(3) requires the applicant's Driver's license number or identification number issued by a State Department of Motor Vehicles. This is necessary to verify the identity of the applicant.

Section 6704(d)(4) requires the applicant to identify the PBEE that the applicant is affiliated with. This is necessary for attribution to the correct PBEE and to accurately list the PBE on the Exchange's public online consumer locate assistance tool as working for the PBEE.

Section 6704(d)(5) requires the applicant to identify the primary site location address of the PBEE. This is necessary for the Exchange to provide consumers with accurate location information in the Exchange's online consumer locate assistance tool.

Section 6704(d)(6) requires the applicant to list any PBEE site(s) that he or she serves. This is necessary for the Exchange to provide accurate information in the consumer locate assistance tool.

Section 6704(d)(7) requires the applicant to list the mailing address of the primary PBEE site served by the applicant. This is necessary because the Exchange must have the best mailing address on file for which to reach the PBE directly while the individual serves as a PBE.

Section 6704(d)(8) requires the applicant to list any languages that he or she can speak. This is necessary in order to provide consumers with accurate information in the Exchange's online consumer locate assistance tool.

Section 6704(d)(9) requires the applicant to list any languages that that he or she can write. This is necessary in order to provide consumers with accurate information in the Exchange's online consumer locate assistance tool.

Section 6704(d)(10) requires all PBE applicants who are not licensed agents with CDI to disclose all criminal convictions and administrative actions taken against them. This is necessary because Captive Agents, who are licensed agents with the CDI, have completed criminal background checks with CDI as part of the licensure process but other PBEs have not and thus must still undergo the Exchange's criminal background check process. This is important to remain in compliance with Government Code Section 1043. This proposed subdivision also clarifies from earlier versions adopted during the emergency rulemaking process that failure to disclose a conviction may result in a disqualification from the PBE program. This addition is necessary to ensure that individuals certified as PBE understand their ongoing criminal disclosure obligations to remain certified with the Exchange.

Section 6704(d)(11) requires the applicant to certify that the individual shall comply with the PBE Program rules as required by the proposed regulations and Section 6500(f) of Article 5 of this Chapter 12, that the individual meets age requirements to participate in the program, that the application is true, correct, and complete, and that the individual will adhere to Exchange Code of Conduct rules and adhere to all applicable State and federal laws and regulations. This is necessary to ensure intent to comply with all requirements under law and program policy.

Section 6704(d)(12) requires the applicant to sign and date the application. This is necessary because the application serves as the agreement between the individual and the Exchange.

Section 6704(d)(13) requires the Authorized Contact of a PBEE, or his or her designee, to sign and date the PBE's application. This is necessary to authenticate the individual's relationship to the PBEE.

Section 6704(d)(14) requires the applicant to indicate whether the applicant is licensed in good standing as an agent with the California Department of Insurance (CDI) and, if so, the individual's license number. This is necessary because an individual cannot be approved for the PBE Program as a Captive Agent unless he or she is in good standing as a licensed agent with the CDI.

Section 6704(d)(15) requires of the applicant to indicate whether the applicant is certified by the Exchange as a Certified Insurance Agent, Certified Enrollment Counselor, Certified Application Counselor, or serves in any other enrollment function of the Exchange including Service Center Representative and County Eligibility Worker, and, if applicable, the certification number. This is necessary because an individual cannot be a PBE if he or she serves in any of the functions listed above pursuant to Section 6710(j)(1)(P) of the proposed regulations .

Section 6704(e) requires that the Authorized Contact of a PBEE notify the Exchange of any individuals to be removed from the Plan-Based Enrollment Program. This rule specifies that notice shall include the name of the PBEE, the name of the individual to be removed, the certification number of the individual, and the effective date of the removal. This is necessary to specify and clarify the procedure that a PBEE must follow to officially remove PBEs from their rolls so that the Exchange can accurately track which PBEs are providing services.

6704(f) indicates a requirement for an executed agreement with the Exchange to offer at least one QHP in the Exchange. This is necessary to conform to federal requirements in 45 CFR 156.1230 that allows at the Exchange's option a QHP-Issuer based enrollment assistance program that is considered to be through the Exchange. This differs from a requirement in the emergency rulemaking process that called for an executed agreement that specified the duties and requirements of the PBE program. The requirement from the emergency rulemaking process was removed to map to federal requirements which only require an issuer to be a QHP Issuer. This change also reduces duplication as all QHP Issuers must hold a valid and executed agreement with the Exchange to do business as a QHP.

Section 6706

Section 6706, Training and Certification Standards. This section in its entirety clarifies and makes specific the training requirements for the Plan-Based Enrollment Program for both Plan-Based Enrollment Entities and individual Plan-Based Enrollers. This section is necessary to describe the subjects Plan-Based Enrollment Entities and Plan-Based Enrollers must be knowledgeable about in order to carry out enrollment assistance functions in a manner considered to be through the Exchange.

Section 6706(a) specifies that the Authorized Contact and any designees for each Plan-Based Enrollment Entity must complete training for the management of their Certified Plan-Based Enrollers prior to the Plan-Based Enrollers carrying out enrollment assistance functions. This is necessary to ensure Authorized Contacts and designees are knowledgeable and prepared to manage their Plan-Based Enrollers,

Section 6706(b) in its entirety describes the subjects Plan-Based Enrollers must complete training in prior to carrying out enrollment assistance functions. These subjects include QHPs, Insurance Affordability Programs, tax implications of enrollment decisions, APTC including eligibility requirements, how to contact appropriate federal, State and local agencies for consumers, basic concepts about health insurance and the Exchange, providing culturally and linguistically appropriate services, ensuring physical and other accessibility for people with a full range of disabilities, understanding the Individual Exchange marketplace, privacy and security standards, discrimination, customer service, outreach and education, applicable administrative rules, processes and systems related to Exchanges and QHPs, and PBE voter registration protocols. This is necessary to ensure Plan-Based Enrollers are knowledgeable and prepared to carry out enrollment functions and comply with the federal requirements for QHP Issuer-based enrollment in manner considered to be through the Exchange under 45 CFR 156.1230.

Section 6706(b)(1) requires training in QHPs (including the metal levels described at 45 CFR Section 156.140(b)) and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances. This is necessary to ensure that PBEs are knowledgeable about QHPs. Being able to distinguish between QHPs, including metal levels, is fundamental for consumers in making informed health coverage decisions.

Section 6706(b)(2) requires training in the range of Insurance Affordability Programs, including Medi-Cal, and other public programs. This is necessary to ensure that PBEs are able to inform consumers of health coverage options in addition to those offered by QHPs.

Section 6706(b)(3) requires training in the tax implications of enrollment decisions. This is necessary because consumers are subject to different tax implications depending on enrollment status, and may want to be informed of these implications before making enrollment decisions.

Section 6706(b)(4) requires training in eligibility requirements for Advance Premium Tax Credit (APTC), as defined in Section 6410 of Article 2 of this chapter, and cost-sharing reductions, and the impacts of APTC on the cost of premiums. This is necessary to ensure that PBEs are knowledgeable and can inform consumers about APTCs and cost-sharing reductions, as this information is crucial for many consumers in making coverage decisions.

Section 6706(b)(5) requires training in contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange. This is necessary because some consumers do not want coverage options offered through the Exchange, and PBEs must be able to direct these consumers to the appropriate federal, state, and local agencies for more information.

Section 6706(b)(6) requires training in basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through the Exchange, and the individual responsibility to have health insurance. This is necessary because a PBE cannot adequately assist consumers unless he or she understands basic health insurance concepts.

Section 6706(b)(7) requires training in eligibility and enrollment rules and procedures, including how to appeal an eligibility determination. This is necessary because PBEs must be prepared to explain eligibility and enrollment rules and procedures to consumers. Also, some consumers will disagree with eligibility determinations and will want to appeal, and PBEs must be able to explain the appeal process.

Section 6706(b)(8) requires training in providing culturally and linguistically appropriate services. This is necessary to prepare PBEs to help diverse populations appropriately, so that cultural and linguistic differences are not a barrier preventing PBEs from discussing health coverage options with consumers.

Section 6706(b)(9) requires training in ensuring physical and other accessibility for people with a full range of disabilities. This is necessary to ensure that PBEs can adequately assist consumers with disabilities, so that a consumer's disability does not prevent him or her from learning about health coverage options from a PBE.

Section 6706(b)(10) requires training in understanding the Individual Exchange marketplace and differences among health plans. This is necessary because a PBE cannot adequately assist a consumer unless the PBE understands the individual Exchange marketplace and the differences among health plans.

Section 6706(b)(11) requires training in privacy and security requirements in 45 CFR Section 155.260 for handling and safeguarding consumers' personally identifiable information. This is necessary to ensure that PBEs properly handle consumer Protected Health Information (PHI) and Personally Identifiable Information (PII) consistent with state and federal law.

Section 6706(b)(12) requires training in working effectively with, and not discriminating against, individuals of various racial and ethnic backgrounds, persons with limited English proficiency, people with a full range of disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations. This is necessary because PBEs work with diverse populations and must work with sensitivity for people's differences in order to effectively reach and assist consumers.

Section 6706(b)(13) requires training in customer service standards. Because customer service is a fundamental aspect of being a PBE, training in customer service is necessary to effectively assist consumers.

Section 6706(b)(14) requires training in outreach and education methods and strategies. This is necessary to teach PBEs how reach out and effectively communicate to consumers within the parameters of the PBE Program.

Section 6706(b)(15) requires training in applicable administrative rules, processes and systems related to Exchanges and QHPs. This is necessary so that PBEs understand how QHPs and the Exchange work within a larger administrative context to ensure that PBEs comply with administrative rules when assisting and enrolling consumers.

Section 6706(b)(16) requires training in PBE voter registration protocol pursuant to subdivision (e) of Section 6462 of Article 4 of this chapter. This is necessary to comply with subdivision (e) of Section 6462 of Article 4 of this chapter.

Section 6706(c) specifies that training for Plan-Based Enrollers and Plan-Based Enrollment Entity Authorized Contacts will consist of computer-based training or through another method at the discretion of the Exchange, if necessary. This is necessary to clarify the delivery method for Plan-Based Enroller training And allow the Exchange the flexibility on a case by case basis to use another method to conduct training if computer-based training is unavailable.

Section 6706(d) specifies that Plan-Based Enrollers must pass an exam administered by the Exchange testing the subject matter in subdivisions (b)(1)-(16) of this Section on an annual basis to maintain certification. This is necessary to ensure PBEs have been trained appropriately and are prepared to facilitate enrollments in a manner considered to be through the Exchange.

Section 6708

Section 6708, **Certified Plan-Based Enroller Fingerprinting and Criminal Record Checks.** This section in its entirety lists all duties and functions requiring fingerprinting under the proposed regulations and incorporates the applicable requirements of 10 CCR Section 6456. This is necessary for consistency and compliance with 10 CCR Section 6456 and Government Code Section 1043, which is duplicated in part for clarity and specificity indicating which roles require fingerprinting through the Exchange process outlined in the proposed regulations.

Section 6708(a) This subdivision specifies that Plan-Based Enrollers that are captive agents and thereby licensed by the California Department of Insurance are not subject to the fingerprinting requirements of this Section. This section is necessary to define which roles in the Plan-Based Enrollment Program must submit fingerprints pursuant to the proposed regulations, Government Code 1043 and 10 CCR Section 6456. Captive Agents satisfy the fingerprinting and background check requirements of the Exchange by completing the CDI fingerprinting and background check requirements for agent licensure. Through an agreement with CDI the Exchange receives ongoing status notifications for any licensed agents, including captive agents serving as Plan-Based Enrollers. If a PBE is not licensed in good standing with CDI the Exchange receives a notification from CDI and the PBE will be required to undergo the fingerprinting and background check process of the Exchange pursuant to subdivision (a)(1) of this Section or be suspended from the program pursuant to Section 6716(a)(3) of this Article.

Section 6708(b) This subdivision specifies that an initial background check determination by the Exchange is an Interim Fitness Determination. Paragraph (1) of this subdivision is necessary because the Exchange seeks compliance in operating the PBE program with the

requirements of Section 6456(d)-(e) of Title 10 of the California Code of Regulations. An interim determination allows the applicant to provide additional rehabilitation information to the Exchange in order for the Exchange 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. Additionally, paragraph (2) of this subdivision is necessary in order to comply with Penal Code 11105(t) which requires the Exchange to provide a copy of a criminal history record to a potentially disqualified applicant. For additional clarity and specificity this subdivision also provides additional details of the appeal process.

Section 6708(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 Certified Plan-Based Enroller. This is necessary to allow applicants who have been initially disqualified to understand the process applicable to their circumstances for appeal. This section in its entirety, clarifies 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 6708(c)(1) Paragraph (1)(A) of this subdivision 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 with 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 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 and the Plan-Based Enrollment Program.

Section 6708(c)(2) Paragraph (2)(A) of this subdivision is necessary to explain the process an applicant must follow if the basis for the appeal is an inaccurate or incomplete California criminal record. It is also necessary to comply with California law in Sections 11120-11127 of the Penal Code which require the applicant to complete the procedures required by the California Department of Justice. As stated above, the timeline of 60 calendar days is necessary for consistency with all other Exchange background check processes.

Section 6708(c)(3) specifies that a potentially disqualified applicant may appeal an accurate criminal record with evidence of rehabilitation. The Exchange provides additional clarity in paragraphs 6708(c)(3)(A)(i)-(iv) as to the types of evidence that will be accepted. This is necessary to explain to the applicant that any evidence must be written but that the types of

written information is non-exhaustive and only illustrative of the types of written information that may show rehabilitation.

Section 6708(c)(4) specifies that absent good cause for late filing the interim determination is final. This is necessary because it specifies that only on a case by case basis, as determined by the Exchange, may an applicant file an untimely appeal.

Section 6708(d) specifies that any Plan-Based Enrollment Entity must cover the associated costs of fingerprinting. This is necessary for clarity and specificity and is aligned with the requirements in 10 CCR Section 6456 which indicate that the Exchange is only required to cover the fingerprinting costs for its employees affected by Government Code 1043.

Section 6710

Section 6710, Roles and Responsibilities. This section in its entirety specifies the expected roles and responsibilities of entities and individuals providing enrollment assistance in the PBE Program. This is necessary in order to provide regulated individuals and entities clear performance expectations and job duties and functions of a PBE and PBEE.

Section 6710(a) in its entirety specifies the required functions of a Certified Plan-Based Enrollment Entity and Certified Plan-Based Enrollers. This is necessary to provide PBEEs and PBEs with clear functions and performance requirements expected of participants in the PBE Program and to implement federal minimum requirements as specified under 45 CFR 156.1230.

Section 6710(a)(1) requires PBEEs and PBEs to maintain expertise in eligibility, enrollment, and PBE Program requirements. This is necessary because the PBEs will be conducting enrollment in QHPs in a manner considered to be through the Exchange and they must remain competent to do so.

Section 6710(a)(2) requires the PBE to provide enrollment assistance consistent with federal rules and state requirements implementing federal rules. This is necessary to comply with the federal requirements for Issuer-based enrollment as specified in 45 CFR 156.1230(a)(1)(i).

Section 6710(a)(3) requires the PBE to provide information in a fair and accurate manner and shall include assistance for enrollment in other Insurance Affordability Programs (IAPs), including Medi-Cal. It is necessary to require the PBEs to offer information in a fair and accurate manner in order to protect consumers from deceptive practices. Proper assistance for other IAPs is necessary because the Exchange utilizes a single streamlined application and eligibility determinations are simultaneously conducted for both the Exchange and Medi-Cal. Proper handling of Medi-Cal cases is further specified in the proposed regulations in Section 6710(a)(12).

Section 6710(a)(4) species that the PBE must provide referrals to consumers to file grievances, complaints, or to ask questions related to the health plan or coverage offered by the PBE, to any appropriate State agency. This is necessary to provide consumers with information regarding how to contact the appropriate entity or agency if they have problematic issues with the PBEE.

Section 6710(a)(5) requires compliance with the privacy and security standards for State Exchanges. This is necessary to meet the federal requirements in 45 CFR 155.260(b) and 45 CFR 156.1230(a)(ii)(2).

Section 6710(a)(6) requires compliance with any applicable state laws and regulations. This is necessary because PBEE and PBEs may not violate any applicable laws related to their conduct and performance in the PBE program. Federal requirements in 45 CFR 156.1230(a)(2)(iii) provide similar requirements specifying adherence to state laws related to the business of insurance. The Exchange requirement in this paragraph is broader than the federal minimum requirement because not all PBEs are subject to agent, broker, or producer licensure laws. This is because the Exchange has allowed individuals who are not licensed agents to provide enrollment assistance where allowed by State law (e.g. for the sale, solicitation and negotiation of non-CDI health insurance plans).

Section 6710(a)(7) requires a PBE to inform all applicants through a universal disclaimer of the availability of other QHP options in the Exchange, and to provide information on how to access the Exchange Web site or Service Center. This is necessary to provide consumers with accurate information and to reduce potential confusion regarding a consumer's options in the Exchange. PBEEs are limited to providing enrollment assistance for the range of products the PBEE offers on the Exchange. Accordingly, it is necessary to specify to consumers that there are other options on the Exchange for which the consumer may be eligible. This paragraph also is necessary to incorporate federal requirements in 45 CFR 156.1230(a)(1)(iv), including the requirement to obtain the approval of the U.S. Department of Health and Human Services (HHS) for the language in the universal disclaimer described above.

Section 6710(a)(8) clarifies and makes specific requirements in federal regulations at 45 CFR 156.1230(a)(1)(ii) and 45 CFR 155.205(b)(1)(i)-(viii). This is necessary to codify federal requirements in state law and to also apply the federal regulations to the unique structure of the Exchange's PBE program. For example, Section 6500(f)(2) of Article 5 of this chapter requires QHP Issuers providing enrollment assistance to provide all eligibility determinations directly through the Exchange's CalHEERS system instead of through the PBEEs own website. Thus, it is necessary to remove the federal requirement (previously adopted in the emergency rulemaking process at former subdivision 6710(a)(8)(iv)) that the QHP Issuer post the results of the "enrollee satisfaction survey" to their Issuer-based enrollment site because the PBE is not utilizing its own site to provide enrollment assistance to Consumers). The Exchange has also modified additional paragraphs from the federal rules to allow for the Exchange's ongoing development of materials based upon data not yet available including quality ratings (subdivision (a)(8)(iv)), medical loss ratio information (subdivision(a)(8)(v)), and the medical provider directory (subdivision (a)(8)(vi)).

Section 6710(a)(9) codifies and makes specific a federal regulatory requirement that the PBE clearly distinguishes between QHPs for which the Consumer is eligible and other non-QHPs that the Issuer may offer and to specify federal assistance is only available through QHPs. This is necessary to comply with federal requirements in 45 CFR 156.1230(a)(iii).

Section 6710(a)(10) codifies and makes specific a federal regulatory requirement in 45 CFR 156.1230(a)(v) that the PBE allow the applicant to select and attest to an advance payment of the premium tax credit, if applicable. This is necessary to comply with a federal requirement and modified to clarify that the requirement here is on the PBEE rather than the QHP Issuer's general website. This modification is consistent with the federal rule and reflects the structure of the Exchange's PBE Program which utilizes the Exchange's enrollment system (CalHEERS) directly to provide PBE Program services.

Section 6710(a)(11) codifies and makes specific federal and state requirements for the proper handling of applicants determined to be Medi-Cal eligible pursuant to 45 CFR 155.310, Section 6476(e) of Article 5 of this chapter, and Section 14016.5 of the Welfare and Institutions Code. This is necessary to ensure the PBE properly handles all Consumers determined eligible for Medi-Cal as specified by state and federal laws.

Section 6710(a)(12) requires PBEs to follow the requirements in Sections 6604 and 6606 of Article 7 of this chapter informing Consumers found ineligible for Insurance Affordability Programs (IAPs) of their appeal rights. This is necessary because otherwise Consumers who utilize a PBE for their enrollment assistance needs would potentially be unaware of their appeal rights guaranteed by law.

Section 6710(a)(13) requires PBEs to inform Consumers found ineligible for IAP programs that there may be other health insurance options off the Exchange that may fit the Consumer's needs. This is necessary to ensure that enrollment assistance for off-Exchange products offered by the QHP Issuer are not handled through the PBE Program and that Consumers are aware of other options if not eligible for Exchange QHPs or other IAPs.

Section 6710(b) in its entirety specifies the requirements that a PBEE must satisfy in order to ensure enrollment assistance provided by PBEs is culturally and linguistically appropriate. These specifications in subdivisions 6710(b)(1)-(5) are necessary to align the PBE program with the Culturally and Linguistically Appropriate Services (CLAS Standards) required by federal law of certain Exchange consumer assistance functions in 45 CFR 155.215(c)(1)-(5). While the federal Issuer-based enrollment assistance authority under 45 CFR 156.1230 does not require Issuer-based enrollment assistance to meet the same CLAS Standards as other Exchange consumer assistance functions, because the enrollment assistance functions of PBEs are similar to Navigators and Certified Enrollment Counselors authorized by 45 CFR 155.215 ("Navigator and Non-Navigator Assistance Personnel"), the Exchange proposes the same federal CLAS Standards in 45 CFR 155.215(c)(1)-(5) for the PBE program for consistency of standards across similar programs. Subdivision (b)(6) requires all PBEEs and PBEs to implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics. This is necessary to ensure that a PBE has staff that can speak the primary languages spoken by, and otherwise interact effectively with, consumers within the PBE's service area.

Section 6710(c) in its entirety specifies the requirements that a PBEE must satisfy in order to ensure enrollment assistance provided by PBEs meets standards ensuring access by persons with disabilities. The same as in Section 6710(b) above, this subdivision is necessary to align

the PBE program with the federal requirements for other Exchange consumer assistance functions. The language in this section is therefore necessary to implement in state law the same federal requirements for Navigator and Non-Navigator Assistance Personnel in 45 CFR 155.215(d)(1)-(5) and apply those requirements to the PBE program.

Section 6710(d) specifies that PBEEs and PBEs must follow the Exchange's nondiscrimination standards. This is necessary to ensure that PBEEs and PBEs understand that they may not provide a different level of service to individuals based on age, disability, culture, race, ethnicity, income, sexual orientation, or gender identity – demographic information that may become available to the PBE through the application process. This is also necessary to align the PBE process with other consumer assistance functions of the Exchange and clarifies and builds upon a federal requirement for Navigator and Non-Navigator Assistance Personnel in 45 CFR 155.215(d)(6).

Section 6710(e) specifies that a PBE may transfer an individual to the Service Center of the Exchange if capacity necessitates in order to appropriately provide an individual with the CLAS standards that are not otherwise required of the Issuer by state or federal law. This is necessary because PBEs are not a consumer assistance function of the Exchange for which the CLAS standards in paragraph 6710(b) are required under federal regulations, and if capacity necessitates, it is appropriate for a PBE to directly transfer the individual to the Service Center of the Exchange to ensure that the individual receives any necessary language or cultural assistance that goes beyond what is required of the Issuer under preexisting state or federal laws.

Section 6710(f) in its entirety specifies that a PBE shall complete the required fields for PBEE and PBE identification information on the consumer's application to the Exchange. Subdivision (f)(1) requires the PBEs name, certification number, signature or electronic signature, date, and PIN, if applicable. Subdivision (f)(2) requires the name of the PBEE. This is necessary to properly attribute and authenticate the PBE to the consumer's application.

Section 6710(g) requires PBEs that are not licensed agents by CDI to submit to the Exchange any criminal convictions or administrative actions within 30 days of the date of the conviction or action. A conviction is as defined in Section 6456 of Article 4 of this chapter. An administrative action includes revocation of licensure by agencies other than the California Department of Insurance. This is necessary to ensure that PBEs who are not part of the reporting agreement between CDI and the Exchange meet the background requirements of the program at all times.

Section 6710(h) requires that PBEs who are Captive Agents maintain their licensure with the California Department of Insurance while they participate in the PBE Program. This is necessary to ensure that the Exchange has sufficient information at all times to determine if the PBEs meet the background requirements of the program.

Section 6710(i) in its entirety lists the prohibited activities of PBEEs and PBEs. These prohibitions are necessary to maintain legal and ethical standards for consumer protection purposes. The requirements are as follow below:

Section 6710(i)(1)(A) prohibits PBEEs and PBEs from engaging in door-to-door marketing. This is necessary to specify and clarify to regulated individuals that an industry practice is prohibited in the PBE program. This is a consumer protective requirement and provides assurance to consumers that PBEs certified by the Exchange will not engage in door-to-door marketing practices. This is also necessary to be consistent with a similar requirement for other Exchange consumer assistance programs in 45 CFR 155.215.

Section 6710(i)(1)(B) specifies and clarifies that PBEEs and PBEs are prohibited from utilizing marketing practices or offering information that will have the effect of enrolling the Issuer's non-QHP members with significant health needs in the Individual Exchange. This is necessary to ensure that PBEs market and offer their QHP products in a fair and accurate manner.

Section 6710(i)(1)(C) specifies and clarifies that PBEEs and PBEs are prohibited from Cold-Calling non-member target populations. This provision is consumer protective and provides assurance to Consumers that PBEs may only engage in Cold-Calling, as defined in Section 6700 of this Article, to member populations. This is necessary because the PBE Program rules allow PBEs to provide Enrollment Assistance to Consumers, as defined in proposed Section 6700, which includes assistance to non-member populations.

Section 6710(i)(1)(D) specifies and clarifies that PBEEs and PBEs are prohibited from mailing the paper application on behalf of the consumer. This is a consumer protective provision to protect the privacy and security of the consumer application information and is necessary to mirror the requirements in other Exchange consumer assistance programs in Article 8 of this chapter.

Section 6710(i)(1)(E) specifies and clarifies that PBEEs and PBEs are prohibited from coaching consumers to provide inaccurate or misleading eligibility criteria. This is a fraud prevention provision and is necessary to ensure that PBEEs and PBEs do not engage in fraudulent practices by leading consumers to provide false information to the Exchange for eligibility purposes.

Section 6710(i)(1)(F) specifies and clarifies that PBEEs and PBEs may not select a QHP for the consumer while providing application assistance. This is necessary to align the PBE program with other consumer assistance functions of the Exchange, including those in Article 8 and 10 of this chapter, that aim to reduce opportunities for steerage of consumers into one QHP over any other. Given the structure of the PBE Program, a PBE is limited to providing plan information to Consumers of only those QHPs offered by the PBEE. This provision is therefore specifically necessary in the PBE program to prevent the steerage of consumers to one metal tier over another.

Section 6710(i)(1)(G) specifies and clarifies that PBEEs and PBEs are prohibited from soliciting or accepting any type of consideration from the applicant. This is necessary to ensure that PBEs do not seek payment from an applicant for any enrollment assistance rendered. This is aligned with similar provisions in other consumer assistance functions of the Exchange in Articles 8 and 10 of this chapter.

Section 6710(i)(1)(H) specifies and clarifies that PBEEs and PBEs are prohibited from paying any part of the premium or any other type of consideration to or on behalf of the consumer. This is necessary to align any plans regulated by the Department of Managed Health Care (DMHC) with state law that prohibits plans from offering any inducements or rebates to consumers. This is also necessary to reduce steerage of consumers in the Exchange.

Section 6710(i)(1)(I) specifies and clarifies that PBEEs and PBEs are prohibited from sponsoring individuals by paying family contribution or co-payments. This is also necessary to ensure plans are compliant with state law that prohibits inducements or rebates to consumers. This is also necessary to reduce steerage of consumers in the Exchange.

Section 6710(i)(1)(J) specifies and clarifies that PBEEs and PBEs are prohibited from offering applicants any inducements such as gifts or monetary payments to apply for coverage with the PBE. This is necessary to reduce steerage of consumers in the Exchange and is also in compliance with state law that prohibits plans from offering any inducements or rebates to consumers to enroll.

Section 6710(i)(1)(K) specifies and clarifies that PBEEs and PBEs are prohibited from creating multiple applications from the same household. This is necessary to ensure accuracy and prevent fraudulent enrollments.

Section 6710(i)(1)(L) specifies and clarifies that PBEEs and PBEs are prohibited from encouraging individuals to forego employer-sponsored coverage that is affordable and meets minimum essential coverage requirements under federal law. This is a consumer protective provision and is necessary to ensure that PBEs and PBEEs do not mislead consumers of the eligibility requirements for financial assistance for coverage in a QHP through the Exchange.

Section 6710(i)(1)(M) specifies and clarifies that PBEEs and PBEs are prohibited from requesting, viewing or obtaining claims data information while providing application assistance. This is a consumer protective function and is necessary to ensure such information is not utilized to steer the individual into a QHP in the Individual Exchange or to discriminate against the individual.

Section 6710(i)(1)(N) specifies and clarifies that PBEEs and PBEs are prohibited from requesting, viewing or obtaining health status information for purposes other than connecting the consumer to the appropriate Insurance Affordability Program. This is necessary because discriminating against consumers based upon pre-existing conditions runs afoul of federal and state law, however, obtaining information about disability or pregnancy may result in eligibility for Medi-Cal. Because the Exchange utilizes a single-streamlined application as required by federal and state law, the questions regarding pregnancy and disability must be asked by a PBE to fill out the application and produce accurate eligibility results.

Section 6710(i)(1)(O) specifies and clarifies that PBEEs and PBEs are prohibited from violating the conflict of interest standards in Section 6712 of this proposed rulemaking. This is necessary to inform PBEEs and PBEs that they are expect to follow conflict of interest rules at all times, especially in the performance of their duties in the PBE Program regarding Enrollment

Assistance and general interaction with Consumers. This is another means to provide for consumer protection and safeguard against the misuse of the PBE Program.

Section 6710(i)(1)(P) specifies and clarifies that PBEEs and PBEs are prohibited from being a Certified Insurance Agent through the Exchange, or any other consumer assistance function of the Exchange while serving as a PBE. This is necessary to ensure consistency with other Exchange consumer assistance program rules that do not allow direct compensation from Issuers, among other conflicting requirements across programs.

Section 6710(i)(1)(Q) specifies and clarifies that PBEEs and PBEs are prohibited from retaining any information related to income, citizenship, immigration status, or disability. This is a consumer protective provision to protect the privacy and security of sensitive consumer application information. Additionally, this provision was added as the result of direct stakeholder feedback during the emergency rulemaking process for the same consumer protective reasons stated above.

Section 6712

Section 6712, Conflict of Interest Standards. This section in its entirety specifies the conflicts of interest standards and necessary disclosures required of PBEs. This provision is consistent with other consumer assistance functions of the Exchange, in addition to the unique circumstances affecting QHP Issuers and their compensation relationships with their employees and contractors, including captive agents, providing enrollment assistance functions through the Exchange.

Section 6712(a) in its entirety specifies and clarifies requirements for PBEEs and PBEs regarding receiving consideration, making accurate representations, limiting representations to those regarding QHPs offered by a PBE's affiliated PBEE and disclosing conflicts of interest to consumers. This is necessary to ensure that PBEEs and PBEs assist consumers fairly and accurately by avoiding situations that may create a conflict of interest.

Section 6712(a)(1) specifies that PBEEs and PBEs may only receive consideration pursuant to the exclusive agreement between the PBEE and the PBE in connection with the enrollment of any individuals in the PBEE's QHPs pursuant to this Article. This is necessary to ensure that a PBE only enrolls individuals in a QHP offered by his or her PBEE,

Section 6712(a)(2) specifies that PBEEs and PBEs may only make representations that are accurate and not misleading, and may only make representations regarding QHPs offered by a specific PBEE. This is necessary to ensure that PBEEs and PBEs do not steer consumers into enrollment by making misleading statements. This is also necessary because the function of PBE Program is to allow PBEs to assist consumers with QHPs offered by an affiliated PBEE; PBEs and PBEEs are not to provide information about QHPs offered by other insurance issuers.

Section 6712(a)(3) requires PBEEs and PBEs to disclose conflicts of interest to consumers at different times, including when a contact is first initiated as well as after a consumer is determined eligible for coverage through the Exchange. This is necessary to ensure that consumers are aware of the extent of services that a particular PBE can provide and the

differences between those services and the full range of options available on the Exchange directly.

Section 6712(a)(3)(A) requires PBEEs and PBEs to disclose to consumers when contact is first initiated that the PBE is employed or contracted by a QHP Issuer and is only able to provide plan details and enrollment assistance for QHPs offered by the PBEE affiliated with the PBE. This is necessary to ensure that consumers know immediately the scope of assistance that they will receive when interacting with PBEEs and PBEs.

Section 6712(a)(3)(B) in its entirety specifies PBE disclosure obligations after a consumer is determined eligible for coverage through the Exchange. This is necessary to ensure that consumers are aware of the existence of other health coverage options offered through the Exchange.

Section 6712(a)(3)(B)(i) specifies that after a consumer is determined eligible for coverage through the Exchange, the PBE shall disclose to the consumer that the Individual Exchange offers other QHPs sold by other QHP Issuers, and stand-alone dental plans that may meet the consumer's needs. This is necessary to ensure that the consumer is aware of the existence of health coverage options in addition to those connected to a particular QHP Issuer.

Section 6712(a)(3)(B)(ii) specifies that after a consumer is determined eligible for coverage through the Exchange, the PBE shall provide information to consumers about the availability of the full range of QHP options and Insurance Affordability Programs for which they are eligible. Additionally, it must be apparent to consumers that if determined eligible they would be free to choose among all QHPs offered in the Individual Exchange through the Service Center of the Exchange. This is necessary to ensure that the consumer is aware of the range of QHP options and Insurance Affordability Programs, and that he or she knows how to pursue these options if he or she desires.

Section 6712(a)(3)(B)(iii) specifies that after a consumer is determined eligible for coverage through the Exchange, the PBE shall clearly distinguish between QHPs for which the consumer is eligible and other non-QHPs that the Issuer may offer, and indicate that advance payments of the premium tax credit and cost sharing reductions apply only to QHPs offered through the Exchange. This is necessary to ensure that the consumer understands the scope of his or her coverage options, including the application of advance payments of the premium tax credit.

Section 6712(a)(3)(B)(iv) specifies that after a consumer is determined eligible for coverage through the Exchange, the PBE shall inform the consumer that there may be an insurance agent of record in connection with any existing health insurance policy the consumer may currently have. If the consumer acknowledges having an agent of record, the PBE shall offer to attach the agent to the consumer's enrollment in a QHP unless the consumer is determined eligible for coverage through the Exchange and the insurance agent of record is not authorized to sell QHPs in the Individual Exchange, or the consumer would prefer not to seek further assistance from the consumer's insurance agent of record. This is necessary to ensure that an insurance agent of record remains attached to a consumer unless it is not authorized or the consumer wishes to discontinue service.

Section 6712(a)(4) specifies that at the consumer's request following the PBE's disclosures in subdivision (a)(3)(A) or (a)(3)(B) of this Section, the PBE shall transfer the consumer to the Service Center of the Exchange for further enrollment assistance. This is necessary because the consumer must be allowed to pursue health coverage options in addition to those offered by the PBE.

Section 6712(a)(5) in its entirety specifies that PBEEs and PBEs shall document that the PBE has provided the required disclosures in either subdivision (a)(3)(A) or (a)(3)(B) of this Section and the consumer has made certain acknowledgements. As outlined in subdivisions (A)-(C), the consumer must acknowledge that the consumer understands the disclosures, does not want to be referred to the Service Center of the Exchange, and wants to receive information and enrollment assistance solely from the PBE. This is necessary to ensure that, when a PBE provides information and enrollment assistance to a consumer, it is because the consumer understands his or her options and intends to receive such communication.

Section 6712(b) in its entirety specifies obligations for the documentation required under subdivision (a)(5) of this Section. Subdivisions (1)-(3) specify that a record of the documentation shall be retained by the PBEE for at least 10 years, subject to the Exchange's review of program conduct at the discretion of the Exchange and provided to the Exchange at its request. This is necessary so that the Exchange can ensure that PBEEs are fulfilling their obligations pursuant to subdivision (a)(5). Also, retention for 10 years is necessary to allow the Exchange to review past documentation, thereby incentivizing PBEEs to fulfil their disclosure and documentation obligations.

Section 6712(c) specifies that where enrollment services pursuant to this Article are provided to consumers over the phone, the PBEE shall keep copies of such conversations and shall make those records available for review by the Exchange on a quarterly basis. This is necessary for the Exchange to verify that PBEs are providing the correct disclosures and information to consumers over the phone.

Section 6712(d) in its entirety specifies requirements for PBEs regarding QHPs or other products offered in the Individual Exchange by QHP Issuers other than the PBEE with which the PBE has an exclusive appointment, The PBE Program was designed to allow PBEs to assist consumers who have an existing relationship with a QHP issuer and also provides a new direct enrollment pathway for consumers who have independently determined they would like to work directly with an Issuer for their QHP enrollment needs. Thus, this is necessary to ensure that PBEs do not assist consumers with QHPs or other products offered by non-affiliated QHP Issuers.

Section 6712(d)(1) specifies that a PBE may not provide enrollment services related to a QHP or other products not offered by the entity affiliated with the PBE. The PBE Program was designed to allow PBEs to assist consumers who have an existing relationship with a QHP Issuer and also provides a new direct enrollment pathway for consumers who have independently determined they would like to work directly with a specific Issuer for their QHP enrollment needs. Thus, this is necessary to ensure that PBEs do not assist consumers with QHPs or other products offered by other QHP Issuers.

Section 6712(d)(2) specifies that a PBE shall at any time transfer any requests for information or enrollment services related to QHPs or stand-alone dental plans in the Individual Exchange not offered by the PBEE affiliated with the PBE to the Service Center of the Exchange and provide information on how to access the Exchange Web Site. This is necessary to direct the PBE to the appropriate protocol when a consumer requests information or assistance related to non-affiliated QHPs or stand-alone dental plans, and that this information is made available to the consumer via transfer and referral.

Section 6712(e) specifies that with regards to any other products offered by the Issuer outside of the Individual Exchange, a PBE shall cease to provide enrollment services in a manner deemed to be through the Exchange in order to provide any information or services related to those non-QHPs offered by the Issuer. This is necessary to make it clear to consumers that a PBE is providing enrollment services through the Exchange on behalf of a PBEE only.

Section 6714

Section 6714, Compensation. This section in its entirety specifies that Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers will not receive compensation from the Exchange. It clarifies that while compensation will not be available from the Exchange, Certified Plan-Based Enrollment Entities may compensate their Certified Plan-Based Enrollers for enrollments per their own compensation agreement. This section is necessary to allow for the ongoing direct compensation arrangements between QHP Issuers and PBEs while at the same notifying applicants to the PBE Program that the Exchange will not provide additional compensation.

Section 6714(a) makes clear that Certified Plan-Based Enrollment Entities will not receive compensation from the Exchange for application and enrollment assistance. This is necessary to provide applicants notice of the uncompensated nature of the PBE Program by the Exchange.

Section 6714(b) makes clear that Certified Plan-Based Enrollment Entities may compensate their individual Certified Plan-Based Enrollers per their own compensation agreement. This is necessary to allow the ongoing direct compensation arrangements between QHP Issuers and PBEs, consistent with current industry practices whereby Issuers have direct compensation agreements with captive agents and enrollment representatives.

Section 6716

Section 6716, Suspension and Revocation. This section in its entirety specifies that Certified Plan-Based Enrollment Entities or Certified Plan-Based Enrollers will be subject to suspension or revocation of certification if they fail to comply with the requirements of the program. This is necessary so PBEs and PBEEs understand the triggers for suspension and revocation in the PBE Program and the avenues available for recourse.

Section 6716(a) makes clear that the Exchange can suspend or revoke a Certified Plan-Based Enrollment Entity or a Certified Plan-Based Enroller's certification if they fail to comply with applicable federal and State laws, have a disqualifying criminal record (applicable to non-

Captive Agents) or fail to maintain a license in good standing with the California Department of Insurance (applicable to Captive Agents). This is necessary to identify the triggers to suspension and revocation.

Section 6716(b) grants individuals and entities the right to appeal an eligibility determination through the process in Section 6718 or Section 6708 and makes clear that once an initial disqualification is made, until a final determination or decision is made regarding the appeal, the applicant is disqualified from performing any functions of the Certified Plan-Based Enrollment Program. This is necessary to provide PBEs and PBEEs information about the appeal processes available and the limited functionality of a PBE/PBEE when under appeal review.

Section 6718

Section 6718, Appeal Process. This section in its entirety clarifies and makes specific the process Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers must follow in order to appeal an initial disqualification from the Plan-Based Enrollment Program that is not made pursuant to Section 6708, Certified Plan-Based Enroller Fingerprinting and Criminal Record Checks. This section goes into detail regarding the steps to be taken in the appeal process including timeline, and phase one and phase two details.

Section 6718(a) clarifies that other than a determination made pursuant to Section 6708, Certified Plan-Based Enroller Fingerprinting and Criminal Record Checks, Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers that are determined not eligible or qualified to participate in the program may appeal this determination in accordance with this section. This practice is necessary to be consistent with guidance issued by the federal Equal Employment Opportunity Commission (EEOC) which recommends an individualized assessment process for criminal record review in employment contexts.

Section 6718(b) specifies that the applicant must request an appeal within 60 calendar days of the date of the notice of eligibility determination. This timeline was selected to provide the applicant with sufficient time to gather necessary information for the appeal process but not so long as to unduly burden the systems and processes of the Exchange.

Section 6718(c) specifies the requirements in phase one of the Appeal Process. Additional clarity is provided regarding the review process. It is to include 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 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 Plan-Based Enrollment Program.

Section 6718(d) clarifies the steps to be taken after the phase one appeals process has been exhausted. The Exchange clarifies that if the appellant is satisfied with the outcome of the informal resolution decision, the appeal may be withdrawn. If the appellate 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 appellate in writing within 60 calendar days from the receipt of the appeal of the 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 Plan-Based Enrollment Program.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following guidance:

- Federal Register, Vol. 78, Number 169, 54069, 56074, 54086-54087, 54124-54126, Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, and Eligibility Appeals; Final Rule, (discussing implementation of 45 CFR §§ 155.20, 155.415 and 156.1230) (August 30, 2013) <http://www.gpo.gov/fdsys/pkg/FR-2013-08-30/html/2013-21338.htm>.
- U.S. Health and Human Services, Centers for Medicare and Medicaid Services. Minimum Acceptable Risk Standards for Exchanges – Exchange Reference Architecture Supplement, Version 1.0 (August 1, 2012) <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Minimum-Acceptable-Risk-Standards-for-Exchanges-ERA-Supp-v-1-0-08012012-a.pdf>.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Background, Assumptions and Calculations:

The proposed rulemaking affects the qualified health plans in various ways. Some QHPs are not affected at all if they do not participate in the PBE Program. See Section A below for details.

In addition, the Exchange will incur costs to oversee and administer the Certified Plan-Based Enrollers program, estimated at approximately $256,700 in FY 2015-2016. The estimated impact to the State (through Exchange sustainability funds) is $128,000 in FY 2015-16. There is no impact on the General Fund. The estimated impact to Federal funds is $128,000 in FY 2015-15. The Exchange anticipates the same costs each year thereafter with the impact to the State (through Exchange sustainability funds) after January 1, 2016, at 100% as there will be no more Federal funds to rely upon. Again, there will be no impact on the General Fund.

A. Potential Costs to Businesses Resulting from the Proposed Amendment.

Costs will vary amongst the Qualified Health Plans (QHPs). For example, one QHP incurred costs of approximately $18,000 for a new Outreach Representative position, $37,000 to pay two plan-based enrollers and one Customer Services Representative for overtime during Open Enrollment, and $116,000 to compensate plan-based enrollers for enrolling individuals. Costs incurred are expected to vary annually, as QHPs may adjust their business needs according to projected enrollment numbers.

In addition, QHPs will incur the fingerprinting costs for the plan-based enrollers, which in turn, will be the revenue generated by the fingerprinting imaging service. Currently, there are 1,637 certified plan-based enrollers. Assuming all 1,637 enrollers need to be fingerprinted, this equates to a cost of 1,350 x $69 = $112,953 to the QHPs. This is the amount of revenue generated by the fingerprint imaging service. Admittedly, however, not all applicants to the PBE program will be fingerprinted by the Exchange if they are captive agents licensed by CDI so these costs will be lower.

B. Effect on Small Business.

The Exchange anticipates this proposal will have an effect on fingerprint imaging services, which are operated by small business. The fingerprint costs incurred by the QHPs in Section A (above) is the amount of revenue generated by the fingerprint imaging service. Specifically, the Exchange is aware that the proposed action will directly affect a small business, Capital Live Scan, which is a fingerprint service provider of the Exchange and which several QHPs have contracted with directly to provide their fingerprinting services.

C. The creation or elimination of jobs within the State of California.

The Exchange anticipates the creation of jobs within California. The Exchange is aware that up to 800 new jobs that were created in the capacity of plan-based enrollers as customer service representatives, outreach representatives, and sales representatives. The Exchange does not anticipate the elimination of any jobs as a result of these proposed regulations because it will likely create a few jobs instead, as indicated above.

D. The creation of new businesses or the elimination of existing businesses within the State of California.

The Exchange does not anticipate the creation of new businesses within California. The number of new businesses created is unknown, as no specific data has been provided by the QHPs. However, the QHPs indicated that they employ third party vendors to serve as plan-based enrollers. This may result in the creation of some new businesses to serve this need. There is no expectation that existing businesses will be eliminated.

E. The expansion of businesses currently doing business within the State of California.

The QHPs could potentially expand their clientele base, should more consumers use certified plan-based enrollers to purchase health insurance. Also, some QHPs have physically expanded the areas in which they do business. Therefore, these proposed regulations may result in the expansion of businesses currently doing business in the state.

F. The benefits of the regulation to the health and welfare of California residents, worker safety, and the State's environment.

The proposed rulemaking will provide consumers an additional source of health plan enrollment assistance to encourage uninsured Californians to apply for coverage. This provides a statewide benefit by improving the overall health of Californians.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board considered several alternatives during the emergency rulemaking process. The stakeholder feedback received during that time heavily informed the formation of the emergency rules previously adopted, which are now being reintroduced and amended in some parts through the permanent rulemaking process. The policy alternatives the Exchange considered and the reasons the Exchange rejected these alternatives are below:

1. *Positions requiring fingerprinting*

Alternative: Further clarify that only the contractors or employees of PBEs with access to the CalHEERS system are required to be fingerprinted and undergo a criminal background check pursuant to the proposed regulations.

Reasoning: The Exchange determined that additional clarity was unnecessary. The Exchange understood there was a concern by Issuers that a broad reading of the regulations as proposed could require fingerprinting of providers contracted with PBEs under these proposed regulations. However, Government Code Section 1043 was amended by the Legislature on October 4, 2013, for this very reason to specify that fingerprinting requirements only applied to those individuals with access to the "information systems and devices of the Exchange," but not individuals that do not have access to the information systems and devices of the Exchange, including, for example, employees of health plans or health insurance companies who have not been certified by the Exchange to access CalHEERS. With the recommended alternative now specified in statute the alternative has been formally adopted and it would be unnecessary to duplicate the clarification in the regulation. Therefore, this alternative was rejected.

Alternative: Require all PBEs to undergo the Exchange's fingerprinting and background check process.

Reasoning: The Exchange determined that it would be unnecessary and duplicative to conduct fingerprinting and background checks for all Plan-based enrollers. Primarily, the proposed regulations would rely on the pre-existing fingerprinting and background check process conducted by the California Department of Insurance (CDI) for all Plan-Based Enrollers who are also licensed agents with CDI. Thus, the Exchange is proposing to require fingerprinting and background checks only for "Issuer Application Assisters," or unlicensed contractors or employees of the PBEE, who would conduct enrollment assistance pursuant to the proposed regulations. Therefore, this alternative was rejected.

2. *Inclusion of Medi-Cal Managed Care Plans as Plan-Based Enrollers*

Alternative: Expand Plan-Based Enrollment Program to include Medi-Cal Managed Care Plans that were not Qualified Health Plans (QHPs) with the Exchange.

Reasoning: Department of Health Care Services laws govern the activity of Medi-Cal Managed Care Plans. Under federal rules applicable to the Exchange, the Exchange does not have the authority to regulate an MMCPs participation in the PBE program so long so long as the MMCP does not offer a QHP in the Exchange. Exchange authority to create a Plan-Based Enroller Program under federal rule 45 CFR 156.1230 is limited to *QHP Issuers.* Participation of MMCPs in the enrollment functions of the Exchange are expected in future regulations. Therefore, this alternative was rejected.

3. *Application assistance: Collection of consumer income information*

Alternative: PBEs would not be permitted to ask consumers income information because of concerns over discrimination.

Reasoning: Income information is a basic requirement to determine eligibility for all Insurance Affordability Programs (IAPs) including Advanced Premium Tax Credits (APTC) and Medi-Cal so it must be included in the information collected. Therefore, this alternative was rejected.

4. *Application assistance: Collection of consumer health status information*

Alternative: Prohibit PBEs from asking consumers for health status information at the time of application.

Reasoning: It is not possible to exclude certain health status information questions from the application process. Enrollment through a PBE as authorized by federal rules is conducted in a manner deemed to be through the Exchange. Health status information questions are part of the single streamlined application. In fact, certain health status information questions including those related to disability and pregnancy are required for Medi-Cal eligibility purposes. Therefore, this alternative was rejected.

5. *Require California Department of Insurance licensing for all Plan-Based Enrollers*

Alternative: Require CDI licensing for Plan-Based Enrollers because the Exchange PBEs solicit, negotiate, and sell insurance per 10 CCR 2193.3.

Reasoning: Not all PBEs solicit, negotiate, and sell insurance per 10 CCR 2193.3. Only those PBEs that engage in such activity (i.e. solicitation, negotiation, and sale of CDI-licensed products) are required under state law to hold a current license in good standing with CDI. The proposed regulations in Section 6702(c)(4) require PBEs to comply with any applicable state laws related to agent or producer licensure for the sale of insurance. For those PBEEs who sell products licensed by CDI on the Individual Exchange (i.e. only HealthNet in plan year 2014), the PBEE would need to comply with the licensure requirement for any PBEs soliciting, negotiating, or selling CDI licensed plans. Additionally, given the APA non-duplication standard in Government Code Section 111349.1, it would be unnecessary and duplicative to promulgate

additional language on this issue within the proposed regulations. Therefore, this alternative was rejected.

6. *Retention of consumer information*

Alternative: Disallow retention of all consumer information

Reasoning: The alternative would be overbroad and would frustrate the enrollment process. The Exchange prohibits the retention of consumer information that is non-essential to the effectuation of enrollment in the PBEEs QHP. Accordingly, the proposed regulations only prohibit the retention of any information related to income, citizenship, immigration status or disability that is collected during the application process. Therefore, this alternative was rejected.

7. *Cold-calling and marketing practices*

Alternative: Prohibit all cold calling by Plan-Based Enrollers

Reasoning: All PBEEs are currently under contract with the Exchange to offer QHPs. The marketing guidelines developed and proposed in this regulation mirror as closely as possible what is currently in Plan contracts with the Exchange. As such, Plan-Based Enrollers are allowed to engage in cold-calling of its own members (either current or former) and to market to those individuals who have contacted the PBE and expressed an interest with the PBE in coverage through the Exchange or opted-in to receive marketing communications from the PBE. Therefore, this alternative was rejected.

8. *Application assistance: Enrollment in Medi-Cal*

Alternative: Require Plans to enroll applicants deemed eligible for Medi-Cal in coverage in any Medi-Cal managed care plan (MMCP) available through the Exchange.

Reasoning: As PBEs offer primarily phone-based assistance, this regulation allows PBEs to elect to transfer applicants deemed potentially eligible for Medi-Cal to the County for further processing. This is similar to the process of the Service Center of the Exchange which is required, by California Law in 14015.7 of the Welfare & Institutions Code, to Quick Sort Medi-Cal eligible individuals to the Counties for eligibility determinations, further processing and enrollment. The proposed regulations do not prohibit a PBE from continuing to enroll an individual in a MMCP offered by the PBE once functionality is operational inside CalHEERS. The consumer must be transferred to the County of residence for enrollment in any Medi-Cal plan not offered by the Plan-Based Enrollment Entity (the Issuer). Therefore, this alternative was rejected.

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

§ 6700. Definitions.

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

(a) Authorized Contact: The contact designated by the carrier to serve as the individual responsible for all Plan-Based Enrollment Program communications with the Exchange and who is also responsible for management of the program. Pursuant to this Article, the Authorized Contact may delegate a designee where allowed by the Exchange.(b) Cold-Calling: The unsolicited outgoing phone calls of a Certified Plan-Based Enrollment Entity (PBEE) or Certified Plan-Based Enroller (PBE) as defined in Section 6410 of Article 2 of this chapter, that were not prompted by a permissible lead, to an individual that has not expressed an interest in the PBEE's Qualified Health Plans (QHPs) in the Individual Exchange. Permissible leads are lists that are consumer opt-in and outreach to a PBEE's current or former members.

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

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

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

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

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

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

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

(1) Applying for an eligibility determination or redetermination for coverage through the Exchange;

(2) Applying for Insurance Affordability Programs;

(3) Facilitating the enrollment in a QHP offered by the Issuer; and

(4) If the consumer is determined eligible for Medi-Cal following the process in Section 6710(a)(11).

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

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

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

(1) Qualified Health Plan Issuers, as defined in Section 6410 of Article 2 of this chapter, under contract with the Exchange to provide at least one QHP through the Exchange that seek to provide enrollment assistance to Consumers.

(2) Issuer Application Assisters, as defined in 45 C.F.R. § 155.20, and Captive Agents, as defined in Section 6410 of Article 2 of this chapter, that are employed or contracted by a PBEE.

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

(1) Complete the application for the PBE Program pursuant to Section 6704;

(2) Have their Authorized Contact complete training through the Exchange as required under Section 6706; and

(3) Demonstrate access to Consumers, as defined in Section 6700, for the PBE Program.

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

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

(2) Complete requirements of the PBE Training and Certification Standards in Section 6706;

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

(4) Comply with applicable State law related to the sale, solicitation, and negotiation of insurance products, including applicable State law related to agent, broker, and producer licensure; and conflicts of interest;

(5) Pass the certification exam identified in Section 6706;

(6) Sign the certification statement required in Section 6704(d)(11)(A)-(D);

(7) Complete and pass the Exchange's fingerprinting and criminal background check process in Section 6708; and

(8) Complete refresher training, testing and certification renewal each year per Section 6706, and at other times if required by the Exchange.

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

§ 6704. Program Application.

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

(1) The entity or individual shall submit all application information, documentation, and declarations required in this Section.

(2) The application shall demonstrate that the entity or individual is capable of carrying out at least those duties described in the PBEE eligibility requirements in this Article and has existing relationships, or could readily establish relationships, with Consumers, as defined in Section 6700.

(3) The Exchange shall review the program application and, if applicable, request any missing information necessary to determine eligibility.

(4) Entities or individuals who have submitted a completed application and demonstrated ability to meet the above requirements shall be notified of available opportunities by the Exchange for the individual or entity (via the entity's Authorized Contact and his or her designees, if applicable) to complete the training requirements in Section 6706. All individuals and entities (via the entity's Authorized Contact and his or her designees, if applicable) shall have 90 days to complete and pass the training and testing requirements in Section 6706. Failure to complete training standards within 90 calendar days may result in the termination of the individual's or entity's certification application with the Exchange.

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

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

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

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

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

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

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

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

(1) Entity Full name;

(2) Legal name;

(3) Date submitted;

(4) Primary e-mail address;

(5) Primary phone number;

(6) Secondary phone number;

(7) Fax number;

(8) Federal Employment Identification Number;

(9) State Tax Identification Number;

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

(11) Identification of the counties served;

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

(A) Site Location Address;

(B) Mailing Address;

(C) County;

(D) Contact name;

(E) Primary e-mail address;

(F) Primary phone number;

(G) Secondary phone number;

(H) An indication of whether the entity wants to receive referrals for individuals seeking assistance at this site;

(I) An indication of whether the entity provides in-person assistance at this site;

(J) Hours of operation;

(K) Spoken languages; and

(L) Written languages;

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

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

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

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

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

(1) Name;

(2) Business email address;

(3) Driver's license number or identification number issued by a State Department of Motor Vehicles;

(4) Identification of the PBEE with which the applicant is affiliated;

(5) Affiliated PBEE's primary site location address;

(6) Site(s) to be served by the applicant;

(7) Mailing Address of the primary site of the PBEE for which the applicant will serve;

(8) An indication of the languages that the applicant can speak;

(9) An indication of the languages that the applicant can write;

(10) For Issuer Application Assisters, as defined in 45 CFR § 155.20: Disclosure of all criminal convictions and administrative actions taken against the applicant, and any arrests for which the applicant is currently out on bail or his or her own recognizance;

(11) A certification by the applicant that:

(A) The applicant shall comply with the PBE Program requirements of this Article and Section 6500(f) of Article 5 of this chapter;

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

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

(D) The applicant will adhere to any applicable State and federal laws and regulations;

(12) The signature of the applicant applying to become a PBE and date signed;

(13) The name and signature of the Authorized Contact, or that of his or her designee, and date signed;

(14) An indication of whether the applicant is licensed in good standing as an agent with the California Department of Insurance, and if so, the applicant's license number; and

(15) An indication of whether the applicant is certified by the Exchange as a Certified Insurance Agent, Certified Enrollment Counselor, Certified Application Counselor, or serves in any other enrollment function of the Exchange including Service Center Representative and County Eligibility Worker, and, if applicable, the certification number.

(e) The Authorized Contact of the PBEE shall notify the Exchange of every individual to be removed as an affiliated PBE. Such notification shall include the individual's name, certification number, and effective date of removal.

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

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

§ 6706. Training and Certification Standards.

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

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

(1) QHPs (including the metal levels described at 45 C.F.R. § 156.140(b)) and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances;

(2) The range of Insurance Affordability Programs, including Medi-Cal, and other public programs;

(3) The tax implications of enrollment decisions;

(4) Eligibility requirements for Advanced Premium Tax Credit (APTC), as defined in Section 6410 of Article 2 of this chapter, and cost-sharing reductions, and the impacts of APTC on the cost of premiums;

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

(6) Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through the Exchange; and the individual responsibility to have health insurance;

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

(8) Providing culturally and linguistically appropriate services;

(9) Ensuring physical and other accessibility for people with a full range of disabilities;

(10) Understanding the Individual Exchange marketplace and differences among health plans;

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

(12) Working effectively with, and not discriminating against, individuals of various racial and ethnic backgrounds, persons with limited English proficiency, people with a full range of disabilities, people of any gender identity, people of any sexual orientation, and vulnerable, rural, and underserved populations;

(13) Customer service standards;

(14) Outreach and education methods and strategies;

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

(16) PBE voter registration protocol pursuant to Section 6462 of Article 4 of this chapter.

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

(d) PBEs shall pass the certification exam testing the subject matter in subdivisions (b)(1)-(16) of this Section, which shall be administered by the Exchange on an annual basis, in order to maintain certification with the Exchange.

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

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

(a) Individuals Required to Submit Fingerprinting.

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

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

(b) Interim Fitness Determination.

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

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

(c) Appeal and Final Determination.

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

(A) If the individual believes that the potentially disqualifying offense in the Federal Bureau of Investigation national criminal response identified in the notice sent pursuant to subdivision (b)(2) of this Section is inaccurate or incomplete, within 60 calendar days from the date of the notice, the individual may seek to correct or complete the response by providing information to the Exchange, including official court and law enforcement records, identifying and correcting the incomplete or inaccurate criminal history information. Within 60 days of receipt of such information, the Exchange shall reevaluate the interim fitness determination and respond to the individual with a final determination.

(2) Inaccurate or Incomplete California Disqualifying Offenses.

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

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

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

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

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

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

(iv) Information received as a result of the individual's employment history or qualifications for a position requiring fingerprinting in subdivision (a) of this Section.

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

(d) Costs.

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

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

§ 6710. Roles and Responsibilities.

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

(1) Maintain expertise in eligibility, enrollment, and PBE Program specifications.

(2) Provide enrollment assistance to consumers in a manner considered to be through the Exchange pursuant to 45 C.F.R. § 156.265(b)(2) and Section 6500(f) of Article 5 of this chapter.

(3) Provide information and services in a fair and accurate manner. Such information and services shall include assistance with other Insurance Affordability Programs (e.g., Medi-Cal).

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

(5) Comply with the privacy and security requirements in 45 CFR § 155.260.

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

(7) Inform all applicants of the availability of other QHP products or stand-alone dental plans offered through the Exchange through an HHS-approved universal disclaimer and display the Web link to access the Exchange Web Site on the PBEE's Web Site, and describe how to access the Exchange Web Site or the Service Center of the Exchange.

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

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

(i) Premium and cost-sharing information;

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

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

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

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

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

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

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

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

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

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

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

(11) If the consumer is determined to be eligible for Medi-Cal, the PBE shall either transfer the consumer to the county of residence for enrollment in Medi-Cal or transmit all eligibility information to DHCS consistent with 45 C.F.R. § 155.310 and Section 6476(e) of Article 5 of this chapter. A PBE shall not facilitate Medi-Cal plan selection until the California Healthcare Eligibility, Enrollment, and Retention System (CalHEERS) has been programmed to allow a beneficiary to select a Medi-Cal managed care plan, as defined in Section 6410 of Article 2 of this chapter, pursuant to subdivision (p) of Section 14016.5 of the Welfare and Institutions Code.

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

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

(b) To ensure that information provided as part of any enrollment assistance is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency, all PBEEs and PBEs shall:

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

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

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

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

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

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

(c) To ensure that enrollment assistance is accessible to people with disabilities, all PBEEs and PBEs shall:

(1) Ensure that any consumer education materials, Web sites, or other tools utilized for consumer assistance purposes are accessible to people with disabilities, including those

with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities;

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

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

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

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

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

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

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

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

(2) Name of the PBEE.

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

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

(i) Prohibited Activities for PBEEs and PBEs.

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

(A) Conduct door-to-door marketing;

(B) Employ marketing practices or offer information and assistance only to certain members in a manner that will have the effect of enrolling a disproportionate number of the Issuer's non-QHP members with significant health needs in QHPs offered in the Individual Exchange;

(C) Cold-call non-member target populations;

(D) Mail the paper application for the consumer;

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

(F) Select a QHP for the potential applicant while providing application assistance;

(G) Solicit or accept any consideration from an applicant in exchange for application assistance;

(H) Pay any part of the premium or any other type of consideration to or on behalf of the consumer;

(I) Sponsor a person eligible for the program by paying family contribution amounts or co-payments;

(J) Offer applicants any inducements such as gifts or monetary payments to apply for coverage in a QHP or Medi-Cal Managed Care Plan represented by the PBE;

(K) Intentionally create multiple applications from the same household, as defined in 45 C.F.R § 435.603(f);

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

(M) Request, view or obtain claims data information while providing application assistance;

(N) Request, view or obtain health status information including any pre-existing conditions for purposes other than connecting the consumer to the appropriate IAP;

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

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

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

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

§ 6712. Conflict of Interest Standards.

(a) All PBEEs and PBEs shall:

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

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

(3) Disclose conflicts of interest to Consumers:

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

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

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

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

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

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

1. The consumer is determined eligible for coverage through the Exchange, and the insurance agent of record is not authorized to sell QHPs in the Individual Exchange; or

2. The consumer would prefer not to seek further assistance from the consumer's insurance agent of record.

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

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

(A) Understands the disclosures;

(B) Does not want to be referred to the Service Center of the Exchange; and

(C) Wants to receive information and enrollment assistance solely from the PBE.

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

(1) Retained by the PBEE for at least 10 years;

(2) Subject to the Exchange's review of program conduct at the discretion of the Exchange; and

(3) Provided to the Exchange at its request.

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

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

(1) May not provide enrollment services related to QHPs or other products not offered by the entity affiliated with the PBE; and

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

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

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

§ 6714. Compensation.

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

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

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

10 CCR § 6716

§ 6716. Suspension and Revocation.

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

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

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

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

(b) Appeals.

(1) Individuals or entities may appeal a determination made pursuant to subdivision (a)(1) of this Section through the process described in Section 6718 of this Article.

(2) Individuals or entities may appeal a determination made pursuant to subdivision (a)(2) of this Section through the process described in Section 6708, subdivision (c).

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

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

§ 6718. Appeal Process.

(a) Other than a determination made pursuant to Section 6708, Certified Plan-Based Enroller Fingerprinting and Criminal Record Checks, a decision that an individual or entity is not eligible or qualified to participate or continue to participate in a program under this Article may be appealed to the Exchange in accordance with the requirements of this Section.

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

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

(d) If the appellant is satisfied with the outcome of the informal resolution decision, the appeal may be withdrawn. If the appellant is dissatisfied with the outcome of the informal resolution, the appellant may escalate the appeal to the second phase of the Appeal Process by notifying the Exchange in writing and providing additional evidence within 45 calendar days of the date of the decision in subdivision (c). During the second phase, an independent unit within the Exchange that had no involvement in the original eligibility or qualification determination or informal resolution decision shall review the eligibility or qualification of the appellant de novo. The Exchange shall consider all relevant evidence presented during the course of the appeal and notify the appellant in writing of the final decision within 60 calendar days from the receipt of the appeal.

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

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME	CONTACT PERSON	EMAIL ADDRESS	TELEPHONE NUMBER
California Health Benefit Exchange	Gabriela Ventura Gonzales	Gabriela.Ventura@covere	916-228-8477

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400	NOTICE FILE NUMBER
Certified Plan-Based Enrollment Program	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:

- [X] a. Impacts business and/or employees
- [X] b. Impacts small businesses
- [X] c. Impacts jobs or occupations
- [ ] d. Impacts California competitiveness
- [X] e. Imposes reporting requirements
- [ ] f. Imposes prescriptive instead of performance
- [ ] g. Impacts individuals
- [ ] 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 (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- [X] 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: 12

Describe the types of businesses (Include nonprofits): Qualified Health Plans, Fingerprinting services

Enter the number or percentage of total businesses impacted that are small businesses: 1

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: No new businesses were created.

5. Indicate the geographic extent of impacts: [X] Statewide

[ ] Local or regional (List areas):

6. Enter the number of jobs created: up to 800 and eliminated: 0

Describe the types of jobs or occupations impacted: Outreach representatives, Customer Service representatives, and Sales representatives.

7. 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 [X] NO

If YES, explain briefly:

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ Unknown

   a. Initial costs for a small business: $See Att A, Section B Annual ongoing costs: $ _____ Years: _____

   b. Initial costs for a typical business: $See Att A, Section B Annual ongoing costs: $ _____ Years: _____

   c. Initial costs for an individual: $0 Annual ongoing costs: $ _____ Years: _____

   d. Describe other economic costs that may occur: See Att A, Section B

2. If multiple industries are impacted, enter the share of total costs for each industry: Qualified Health Plans 100%

   Fingerprinting Services 0%

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* $Unknown

4. Will this regulation directly impact housing costs? ☐ YES ☒ NO

   If YES, enter the annual dollar cost per housing unit: $ _____

   Number of units: _____

5. Are there comparable Federal regulations? ☒ YES ☐ NO

   Explain the need for State regulation given the existence or absence of Federal regulations: Health plan-based consumer assistance program is created at the Exchange's discretion, per 45 Code of Federal Regulations Sections 155.20, 155.415, 156.1230.

   Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ Unknown

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: Proposed regulation will provide consumers an additional source of health plan enrollment assistance for Californians.

2. Are the benefits the result of: ☐ specific statutory requirements, or ☒ goals developed by the agency based on broad statutory authority?

   Explain: 45 C.F.R. Sections 155.20,155.415, & 156.1230;Government Code Sections 100503,100504(a)(6).

3. What are the total statewide benefits from this regulation over its lifetime? $ See Att A, Section C

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation:

   Qualified health plans could potentially expand their clientele base, should more consumers use certified plan-based enrollers to purchase health insurance. Also, some QHPs physically expanded their business areas.

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: See Attachment A, Section D

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

Regulation: Benefit: $ Section C, Q-3 Cost: $ _____

Alternative 1: Benefit: $ See Att A, Sect D Cost: $ _____

Alternative 2: Benefit: $ See Att A, Sect D Cost: $ _____

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

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: Performance standards are not applicable to this proposed regulation.

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 through12 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: Providing increased access to uninsured Californians to purchase high-quality health insurance plan is an investment to improving the overall health of Californians.

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: Proposed regulation will provide consumers an additional source of health plan enrollment assistance for Californians to apply for coverage.

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

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 _____

_____

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE
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 (sustainability) Funds is $128,000 in FY 2015-2016 for the Certified Plan-based Enrollment program. See Attachment B. There is no impact to the General Fund.

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 Estimated impact to Federal (Grant 2.0) Funds is $128,000 in FY 2015-2016 for the Certified Plan-based Enrollment program. See Attachment B.

FISCAL OFFICER SIGNATURE	DATE
	3/27/15

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
	4/1/15

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

Economic Impact

Section B (Estimated Costs)

Question 1: Total Statewide Dollars Business May Incur – Costs will vary amongst the QHPs to implement the PBE program. For example, one QHP incurred costs of approximately $18,000 for a new Outreach Representative position, $37,000 to pay two plan-based enrollers and one Customer Services Representative for overtime during Open Enrollment, and $116,000 to compensate plan-based enrollers for enrolling individuals. Costs incurred are expected to vary annually, as QHPs may adjust their business needs according to projected enrollment numbers.

In addition, QHPs will incur the fingerprinting costs for the plan-based enrollers, which in turn, will be the revenue generated by the fingerprinting imaging service. Currently, there are 1,637 certified plan-based enrollers. Assuming all 1,637 enrollers need to be fingerprinted, this equates to a cost of 1,637 x $69 = $112,953 to the QHPs. This is the amount of revenue generated by the fingerprint imaging service.

Section C (Estimated Benefits)

Question 3: Total Statewide Benefits – The plan-based enrollers will improve the health of Californians by providing consumers with increased assistance to enroll in a high- quality, affordable health insurance plan.

Section D (Alternatives to the Regulation)

The alternatives considered and the reasons for rejections are listed below:

Alternative 1: Require all PBEs to undergo the Exchange's fingerprinting and background check process.

Reasoning: The Exchange determined that it would be unnecessary and duplicative to conduct fingerprinting and background checks for all PBEs. Primarily, these regulations would rely on the pre-existing fingerprinting and background check process conducted by the California Department of Insurance (CDI) for all Plan-Based Enrollers who are also licensed agents with CDI. Thus, the Exchange is proposing to require fingerprinting and background checks only for "Issuer Application Assisters," or unlicensed contractors or employees of the PBE entities, who would conduct enrollment assistance pursuant to these regulations.
Cost Savings: The approach used in these regulations will save some PBEs, or the QHPs who hire PBEs, from paying for unnecessary and duplicative fingerprinting and background check costs.

Alternative 2: Require California Department of Insurance licensing for all Plan-Based Enrollers because the Exchange PBEs solicit, negotiate, and sell insurance per 10 CCR 2193.3.

Reasoning: Not all PBEs solicit, negotiate, and sell insurance per 10 CCR 2193.3. Only those PBEs that engage in such activity (i.e. solicitation, negotiation, and sale of CDI-licensed products) are required under state law to hold a current license in good standing with CDI. The proposed regulations in Section 6702(c)(4) require PBEs to comply with any applicable state laws related to agent or producer licensure for the sale of insurance. For those PBEEs who sell products licensed by CDI on the Individual Exchange (i.e. only HealthNet in plan year 2014), the PBEE would need to comply with the licensure requirement for any PBEs soliciting, negotiating, or selling CDI licensed plans. Additionally, given the Administrative Procedure Act (APA) non-duplication standard in Government Code Section 111349.1, it would be unnecessary and duplicative to promulgate additional language on this issue within these regulations.

Cost Savings: This decision will save some PBEs, or the QHPs who hire PBEs, from paying additional licensing fees and continuing education costs.

Plan-Based Enrollers
Std 399

Attachment B

Personal Services (PS) & Operating Expenses & Equipment (OE&E) Costs

Classification	Cost (per classification) Salary Cost[1]	Benefits[2]	Total PS	OE&E[3]	PS + OE&E	Staffing Level[4]	Total Cost
Sales Director	$ 25,499	$ 9,945	**$ 35,444**	$ 1,200	**$ 36,644**	1.0	$ 36,644
CEA Level B	$ 12,722	$ 4,962	**$ 17,684**	$ 1,200	**$ 18,884**	1.0	$ 18,884
SSM II	$ 11,480	$ 4,477	**$ 15,957**	$ 1,200	**$ 17,157**	1.0	$ 17,157
SSM I	$ 17,427	$ 6,797	**$ 24,224**	$ 2,000	**$ 26,224**	1.0	$ 26,224
Office Tech	$ 1,819	$ 709	**$ 2,528**	$ 400	**$ 2,928**	1.0	$ 2,928
Assoc. Gov. Program Analyst (AGPA)	$ 18,191	$ 7,094	**$ 25,285**	$ 2,400	**$ 27,685**	1.0	$ 27,685
Assoc. Gov. Program Analyst (AGPA)	$ 60,636	$ 23,648	**$ 84,284**	$ 8,000	**$ 92,284**	1.0	$ 92,284
AGPA - Retired Annuitant	$ 13,896	$ 1,063	**$ 14,959**	$ -	**$ 14,959**	1.0	$ 14,959
SSA - Retired Annuitant	$ 4,621	$ 354	**$ 4,975**	$ -	**$ 4,975**	4.0	$ 19,898
Total	$ 166,291	$ 59,048	**$ 225,339**	$ 16,400	**$ 241,739**	12.0	**$ 256,663**

1. Salary calculations based off of mid-step of classification and prorated based on the amount of time dedicated to the development of the Certified Plan-based Enrollers program.
2. Benefits calculated via standard benefit rate (39% for Perm Full-time and 7.65% for Temp Help).
3. OE&E includes annual standard complement at $8,000 for Perm Full-time only, prorated based on the same parameters as salary.
4. Staffing level and associated classifications provided by program.

Contract Costs

Contract/Contractor	Amount
Total	$ -

Total Summary

Cost Category	Amount
Total PS & OE&E	$ 256,663
Total Contracts	$ -
Total Cost	$ 256,663