California Code of Regulations
Add Article 9. Plan-Based Enrollers (§§ 6700 et seq.)
Title 1. Investment
Chapter 12. California Health Benefit Exchange

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§ 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) Certified Plan-Based Enroller ("PBE"): An individual that provides direct Enrollment Assistance to Consumers, as defined in Section 6650, of Article 8, of this chapter, in the Individual Exchange through a Plan-Based Enroller Program. Such an individual may be:

(1) A Captive Agent of a QHP Issuer, or

(2) A customer service representative that is an employee or contractor of a QHP Issuer or Medi-Cal Managed Care Plan that is not licensed as an agent, broker, or producer under State law

(b) Captive Agent: An insurance agent who is currently licensed in good standing by the California Department of Insurance to sell, solicit, and negotiate health insurance coverage and has a current and exclusive appointment with a single Issuer and may receive compensation on a salary or commission basis as an agent only from that Issuer.

(c) Certified Plan-Based Enrollment Entity: A QHP Issuer as defined in Section 6410 of Article 2 of this chapter, or Medi-Cal Managed Care Plan, registered through the Exchange to provide direct Enrollment Assistance to Consumers in the Individual Exchange through a Plan-Based Enroller Program sponsored by the Entity. A Certified Plan-Based Enrollment Entity shall be registered by the Exchange only if it meets all of the training and certification requirements in Section 6706 of this Article.

(d) Enrollment Assistance: A Certified Plan-Based Enroller may provide the following direct enrollment assistance to Consumers in the Individual Exchange:

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

(2) Applying for Insurance Affordability Programs; and

(3) For QHP Issuers with at least one QHP in the Individual Exchange, provided that such a Certified Plan-Based Enroller meet the proposed requirements set forth in this article:

(A) Facilitating the enrollment in a QHP offered by the Issuer; or

(B) Referral to the County of Residence for enrollment in Medi-Cal pursuant to Section 6710(a)(11).

(4) For MMCPs without at least one QHP in the Individual Exchange, provided that such a Certified Plan-Based Enroller meet the proposed requirements set forth in this article:

(A) Facilitating the enrollment of any QHP in the Individual Exchange;

(B) Referral to the County of Residence for enrollment in Medi-Cal pursuant to Section 6710(b)(5).

(e) Medi-Cal Managed Care Plan ("MMCP"): Medi-Cal managed care plan means an entity contracting with the Department of Health Care Services (DHCS) to provide health care services to enrolled Medi-Cal beneficiaries under Chapter 7, commencing with Section 14000, or Chapter 8, commencing with Section 14200, of Division 9, Part 3, of the Welfare and Institutions Code.

(f) Certified Plan-Based Enroller Program ("PBE Program"): The Program whereby a Certified Plan-Based Enroller Entity may provide direct Enrollment Assistance to Consumers in the Individual Exchange in a manner considered to be through the Exchange.

Note: Authority cited: Section 100504, Government Code. Reference: 45 Code of Federal Regulations, Sections 155.205(d), 156.265.

§ 6702 – Certified Plan-Based Enrollment Program Eligibility Requirements

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

(1) Qualified Health Plan Issuers under contract with the Exchange to provide at least one QHP through the Exchange that seek to provide enrollment assistance to Consumers.
(2) Medi-Cal Managed Care Plans that seek to provide enrollment assistance to Consumers.
(3) Customer service representatives or captive agents that are employed or contracted by a Certified Plan-Based Enrollment Entity.

(b) Certified Plan-Based Enroller Entity Eligibility Requirements
(1) Apply to register in the Certified Plan-Based Enrollment Program
(2) Complete training through the Exchange as required under Section 6706 to become eligible to register to provide enrollment assistance to consumers and help them apply for health coverage in a manner considered to be through the Exchange.
(3) Demonstrate access to the Exchange's targeted populations for the Certified Plan-Based Enrollment Program which are:
(A) Non-group members that meet the requirements of a Qualified Individual in Section 6410 of Article 2 of this chapter.
(B) 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 in Section 6410 of Article 2 of this chapter;
(C) Current members terminating individual or group coverage including 25 year old dependents;
(D) Qualified Individuals, as defined in Section 6410 of Article 2 of this chapter, interested in obtaining health care coverage through the Exchange; and
(E) Individuals eligible for other Insurance Affordability Programs, e.g. Medi-Cal.

(c) Certified-Plan Based Enroller Eligibility Requirements
(1) Be employed or contracted by a registered Certified Plan-Based Enrollment Entity as a captive agent or customer service representative.
(2) Complete required training on the following:
(A) QHP options and insurance affordability programs, eligibility, and benefits rules and regulations;

(B) Requirements of the Plan-Based Enroller Training and Certification Standards in Section 6706.

(3) Comply with the Exchange's 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 a code of conduct relating to confidentiality and adherence with any applicable state laws and regulations, including this article and Section 6500(f) of Article 5 of this chapter.

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

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

Note: Authority cited: Section 100504, Government Code. Reference: 45 Code of Federal Regulations Sections, 155.205(d), 155.260, 156.265; 10 California Code of Regulations, Section 6500(f).

§ 6704 – Program Application

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

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

(2) The application shall demonstrate that the entity or individual is capable of carrying out at least those duties described in the Certified Plan-Based Enrollment Entity eligibility requirements in this Article and has existing relationships, or could readily establish relationships, with current non-group members; COBRA members; current members terminating individual or group coverage including 25 year old dependents; individuals who respond to marketing and sales efforts permitted through the Exchange Marketing Guidelines found at www.coveredca.com and applicable marketing rules found in this article; and individuals eligible for Medi-Cal.

(3) The Exchange shall review the program application and, if applicable, request any additional or 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 entity or individual's authorized contact, or his or her designee, to complete the training requirements.

(5) Entities or individuals, who complete and pass the training requirements, shall be registered as Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers by the Exchange and assigned a Certified Plan-Based Enrollment Entity or Enroller number. If the authorized contact, or his or her designee, fails to complete the training standards within 90 calendar days, the applicant shall be deregistered.

(6) All individuals who are not yet certified by the Exchange as Certified Plan-Based Enrollers and included in the initial application of the Certified Plan-Based Enrollment Entity shall become certified in accordance with the following process:

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(A) Pass the Certified Plan-Based Enroller Fingerprinting and Criminal Record Check process in Section 6708;
(B) Complete the required training in Section 6706; and
(C) Pass the required certification exam administered by the Exchange pursuant to Section 6706.

(7) Individuals who have been denied may appeal the denial of their Certified Plan-Based Enrollment Entity through the process established by Section 6718 or 6708.

(b) A Certified Plan-Based Enrollment Entity application shall contain the following information.

(1) Full name;

(2) Legal name;

(3) Primary e-mail address;

(4) Primary phone number;

(5) Secondary phone number;

(6) Fax number;

(7) An indication of whether the entity prefers to communicate via e-mail, phone, fax, or mail;

(8) Website address;

(9) Federal Employment Identification Number;

(10) State Tax Identification Number;

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

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

(13) Identification of the counties served;

(14) An indication of whether applicant received an Outreach & Education Grant from the Exchange and/or the Department of Health Care Services and, if applicable, the Grant Contract Number and Grant Award Amount;

(15) A certification that the applicant and all of its employees comply with the above requirements;

(16) For each County served, indication of the projected:

(A) Number of individuals served;

(B) Percentage (%) of total individuals served in each language;

(C) Percentage (%) of total individuals served in each ethnicity;

(D) Percentage (%) of individuals served by age; and

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(E) Types of industries served;

(17) 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 or individual wants to receive referrals for individuals seeking assistance at this site;

(I) Hours of operation;

(J) Estimated number of Individuals served annually;

(K) Spoken languages;

(L) Written languages;

(M) Ethnicities served;

(N) Estimated number of individuals served by age; and

(O) Types of industries served;

(18) Name, e-mail address, primary and secondary phone number, and an indication of the preferred method of communication for the Authorized Contact, Primary Contact, and Financial Contact;

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

(20) For each Certified Plan-Based Enroller to be affiliated with the applicant entity, the following must be included in the entity's application:

(A) Name, e-mail address, phone number, street address, city, state, and zip code;

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

(C) An indication of whether or not he or she is certified by the Exchange as a Certified Insurance Agent and, if applicable, the certification number;

(21) Submit proof of general liability insurance with coverage of not less than $1,000,000 per occurrence with the Exchange named as an additional insured, automobile

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insurance of not less than $1,000,000 per occurrence with the Exchange named as an additional insured, and workers compensation insurance.

(c) An individual who is not included in an initial Certified Plan-Based Enrollment Entity application may become a Certified Plan-Based Enroller according to the following process:

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

(2) The individual shall:

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

(B) Pass the Certified Plan-Based Enroller Fingerprinting and Criminal Record Check in Section 6708;

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

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

(3) Individuals who complete the training requirements and pass the required certification exam shall be certified as Certified Plan-Based Enrollers by the Exchange.

(d) An individual's application to become a Certified Plan-Based Enroller shall contain the following information:

(1) Name, e-mail address, primary and secondary phone number, and preferred method of communication;

(2) Identification of the Certified Plan-Based Enrollment Entity that the individual will affiliate with;

(3) Affiliated Certified Plan-Based Enrollment Entity's primary site location address;

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

(5) Mailing Address of the primary site for the Certified Plan-Based Enrollment Entity;

(6) An indication of the languages that the Certified Plan-Based Enroller can speak;

(7) An indication of the languages that the Certified Plan-Based Enroller can write;

(8) Disclosure of all criminal convictions and administrative actions taken against the individual;

(9) A certification by the individual that:

(A) The individual complies with the Certified Plan-Based Enroller requirements;

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

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

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(10) For the individual applying to become a Certified Plan-Based Enroller, signature, and date signed; and

(11) For the Authorized Contact from the Certified Plan-Based Enrollment Entity that the individual will be affiliated with, name, signature, and date signed.

(e) A Certified Plan-Based Enrollment Entity shall notify the Exchange of every individual to be added or removed as an affiliated Certified Plan-Based Enroller. Such notification shall include:

(1) Name of the Certified Plan-Based Enrollment Entity and the Certified Plan-Based Enrollment Entity Number;

(2) Name and signature of the Authorized Contact from the Certified Plan-Based Enrollment Entity;

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

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

(5) An indication of whether the individual is certified as an Certified Plan-Based Enroller, and if so, the following information:

(A) Certification number; and

(B) When adding an individual, site(s) to be served by the individual.

(f) The Certified Plan-Based Enrollment Entity and any Certified Plan-Based Enroller shall submit an executed agreement conforming to the Roles and Responsibilities of the Certified Plan-Based Enroller Program.

Note: Authority cited: Section 100504, Government Code. Reference: 45 C.F.R. Section 155.205(d).

§ 6706 – Training and Certification Standards

(a) All individuals or entities who apply to become a Certified Plan-Based Enrollment Entity shall complete training for the management of Certified Plan-Based Enrollers prior to any affiliated Certified Plan-Based Enrollers carrying out any consumer assistance functions under this article.

(b) To ensure that all Certified Plan-Based Enrollers 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:

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(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 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 standards applicable under 45 CFR § 155.260 for handling and safeguarding consumers' personally identifiable information;

(12) Working effectively with 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; and

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

(c) To the extent a Certified Plan-Based Enrollment Entity intends to have any individuals other than Captive Agents serve as Plan-Based Enrollers, the Entity shall provide to the Exchange

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a detailed description of the Entity-specific training, monitoring and ongoing continuing education for such individuals.

(d) Training pursuant to this section shall be provided by the Exchange through computer-based training, or through another channel at the discretion of the Exchange.

(e) Certified Plan-Based Enrollers shall pass the exam administered by the Exchange on an annual basis to maintain certification.

Note: Authority cited: Section 100504, Government Code. Reference: 45 Code of Federal Regulations, Sections 155.205(c)-(d), and 155.260.

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

(a) Roles Requiring Fingerprinting.

(1) Individuals seeking certification as a Plan-Based Enroller that are not Captive Agents, as defined in Section 6700, 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, as defined in Section 6700, seeking certification as Plan-Based Enrollers are required to be licensed in good standing with the California Department of Insurance and shall not be subject to 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 Plan-Based Enroller has a potentially disqualifying criminal record under Section 6456(d)-(e) of Article 4 of this chapter, the Exchange shall promptly provide the individual with a copy of his or her criminal record pursuant to Penal Code Section 11105(t), notify the individual of the specific disqualifying offense(s) for the interim determination, and provide the individual information on how to request a written appeal, including examples of the types of additional evidence the individual may provide, to dispute the accuracy and relevancy of the criminal record.

(c) Appeal and Final Determination

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

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

(2) Inaccurate or Incomplete California Disqualifying Offenses

(A) If the individual believes that the potentially disqualifying offense in the California Department of Justice state criminal response identified in the notice

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

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

(A) For purposes of reevaluating the interim determination pursuant to subdivision (c)(2) 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)(2) 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) Background check costs for individual Plan-Based Enrollers shall be paid by the Plan-Based Enrollment Entity.

Note: Authority cited: Sections 100504 and 1043, Government Code. Reference: Section 11105, Penal Code; 45 Code of Federal Regulations Sections 155.205(d), and 155.260; 10 California Code of Regulations, Section 6456.

§ 6710 – Roles and Responsibilities

(a) A Certified Plan-Based Enrollment Entity that offers at least one QHP in the Individual Exchange and its Certified Plan-Based Enrollers shall perform the following functions:

(1) Maintain expertise in eligibility, enrollment, and Plan-Based Enrollment 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 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 standards in 45 CFR § 155.260; and

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

(7) Ensure that voter registration assistance is available as required by Chapter 6 of the California Elections Code (Section 2400 et seq.)

(8) Inform all applicants of the availability of other QHP products or stand-alone dental plans offered through the Exchange and provide information on how to access the Exchange Web Site or the Service Center of the Exchange.

(9) Facilitate the enrollment in a QHP offered in the Individual Exchange by the entity represented by the Certified Plan-Based Enroller.

(A) The QHP Issuer must be able to convey to the consumer standardized information for its available QHPs in the Individual Exchange, including at a minimum:

(i) Premium and cost-sharing information;

(ii) The summary of benefits and coverage established under the 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(e) of the Affordable Care Act;

(iv) The results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act;

(v) Quality ratings assigned in accordance with Section 131(c)(3) of the Affordable Care Act, when available;

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

(vii) Transparency of coverage measures reported to the Exchange during certification with § 155.1040; and

(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;

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

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(10) Inform all applicants of the availability of stand-alone dental plans offered through the Exchange and provide the individual information on how to access the Exchange Web Site or the Service Center of the Exchange.

(A) If the applicant's household includes children the PBE shall transfer the applicant to the Service Center of the Exchange.

(11) Allow applicants to select and attest to an APTC amount, if applicable, in accordance with 45 C.F.R. § 155.310(d)(2).

(12) If the consumer is determined to be eligible for Medi-Cal, the PBE may provide information regarding available Medi-Cal managed health care plan selection options to applicants and shall complete the referral of the consumer to the county of residence for enrollment in Medi-Cal or through any other process consistent with 45 C.F.R. § 155.310 and Section 6476(d) of Article 5 of this chapter.

(b) A Certified Plan-Based Enrollment Entity that is an MMCP, as defined in Section 6100, that does not offer at least one QHP in the Individual Exchange, and its Certified Plan-Based Enrollers shall perform the following functions:

(1) All of the functions in (1)-(7) of subdivision (a) of this section;

(2) Facilitate the enrollment in a QHP offered in the Individual Exchange.

(A) The PBE must be able to convey to the consumer standardized and comparative information on each available QHP in the Individual Exchange, including at a minimum:

(i) Premium and cost-sharing information;
(ii) The summary of benefits and coverage established under the 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(e) of the Affordable Care Act;
(iv) The results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act;
(v) Quality ratings assigned in accordance with Section 131(c)(3) of the Affordable Care Act, when available;
(vi) Medical loss ratio information as reported to HHS in accordance with 45 C.F.R. Part 158, when available;
(vii) Transparency of coverage measures reported to the Exchange during certification with § 155.1040; and
(viii) The provider directory made available to the Exchange in accordance with § 156.230.
(ix) Potential total cost, including premium and out-of-pocket expenses;
(x) Participation of the preferred provider of the consumer in available QHPs.

(3) Inform all applicants of the availability of stand-alone dental plans offered through the Exchange and provide the individual information on how to access the Exchange Web Site or the Service Center of the Exchange.

(A) If the applicant's household includes children the PBE shall transfer the applicant to the Service Center of the Exchange.

(4) Allow applicants to select and attest to an APTC amount, if applicable, in accordance with 45 C.F.R. § 155.310(d)(2).

(5) If the consumer is determined to be eligible for Medi-Cal, the PBE may provide information regarding available Medi-Cal managed health care plan selection options to applicants and shall complete the referral of the consumer to the county of residence for enrollment in Medi-Cal or through any other process consistent with 45 C.F.R. § 155.310 and Section 6476(d) of Article 5 of this chapter.

(c) 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 Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers 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.

(d) To ensure that enrollment assistance is accessible to people with disabilities, all Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers 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;

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

(e) All Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers 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.

(f) All Certified Plan-Based Enrollers shall complete the Certified Plan-Based Enrollment Entity and Certified Plan-Based Enroller section of a consumer's application to the Exchange, including the following:

(1) Name, certification number of the Certified Plan-Based Enroller signature and date;

(2) Name of the Certified Plan-Based Enrollment Entity and the Certified Plan-Based Enrollment Entity Number; and

(3) Signature and date of signature by the Certified Plan-Based Enroller;

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

(h) Plan-Based Enrollers that do not meet the definition of a Captive Agent as defined in Section 6700, shall report to the Exchange any criminal convictions and administrative actions taken by any other agency within 30 days of the date of the conviction or action.

(i) Plan-Based Enrollers that are a Captive Agent as defined in Section 6700, shall be licensed in good standing through the California Department of Insurance.

(j) Prohibited Activities for Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers.

(1) All Certified Plan-Based Enrollment Entities and their Contractors and Employees that are Certified Plan-Based Enrollers 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 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 the QHP or MMCP represented by the PBE;
(K) Intentionally create multiple applications from the same household, as defined in 45 C.F.R § 435.603(f)

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(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) Ask or view claims data information while providing application assistance;
(N) Ask of view health status information including any pre-existing conditions from the consumer while providing application assistance;
(O) Violate conflict of interest standards in Section 6712; and
(P) Be a Certified Insurance Agent through the Exchange pursuant to Section 6800 of Article 10 of this chapter.

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

§ 6712 – Conflict of Interest Standards

(a) All Certified Plan-Based Enrollment Entities and Certified Plan-Based Enrollers shall:

(1) Submit to the Exchange a written disclosure indicating whether the entity or individual:

(A) Is a health insurance issuer or issuer of stop loss insurance;

(B) Is a subsidiary of a health insurance issuer or issuer of stop loss insurance; and

(C) Is an association that includes members of, or lobbies on behalf of, the insurance industry; and

(D) Will receive any consideration directly or indirectly from a health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

(i) Certified Plan-Based Enrollers that represent a Certified Plan-Based Enrollment Entity with at least one QHP in the Individual Exchange may only receive consideration pursuant to the exclusive agreement between the Entity and the Plan-Based Enroller in connection with the enrollment of any individuals in the Entity's QHPs pursuant to this article.

(ii) Certified Plan-Based Enrollers that represent a Certified Plan-Based Enrollment Entity without at least one QHP in the Individual Exchange shall not receive any consideration directly or indirectly from a QHP Issuer in connection with the enrollment of any individuals in a QHP pursuant to this article.

(2) Create a written plan to manage conflicts of interest while carrying out enrollment assistance functions which shall be provided to the Exchange as requested.

(3) Only make representations that are accurate and not misleading.

(A) If a PBEE offers at least one QHP in the Individual Exchange, the PBE may only make representations regarding the QHPs offered by the entity represented by the PBE.

(B) If a PBEE does not offer at least QHP in the Individual Exchange, the PBE must make fair and balanced comments to assist the consumer in selecting from all of the QHPs offered in the Individual Exchange.

(4) Disclose conflicts of interest to Consumers.

(A) At a minimum, a Certified Plan-Based Enrollment Entity that offers at least one QHP in the Individual Exchange and its Certified Plan-Based Enrollers shall disclose to the consumer that:

(i) The Certified Plan-Based Enroller is employed or contracted by a QHP Issuer and is able to provide plan details and enrollment assistance only for QHPs offered by the entity represented by the Certified Plan-Based Enroller;

(ii) 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;

(iii) 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.

(iv) Clearly distinguish between QHPs for which the consumer is eligible and other non-QHPs that the PBEE may offer outside of the Individual Exchange, and indicate that APTC and CSRs apply only to QHPs offered through the Exchange.

(B) At a minimum, a Certified Plan-Based Enrollment Entity that does not offer at least one QHP in the Individual Exchange and its Certified-Pan Based Enrollers shall disclose to the consumer that:

(i) The Certified Plan-Based Enroller is employed or contracted by an MMCP and is able to provide plan details about and enrollment assistance for QHPs in the Individual Exchange;

(ii) The Individual Exchange offers stand-alone dental plans as defined in Section 6410 of Article 2 of this chapter, that may meet the consumer's needs;

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

(5) On the consumer's request following the Certified Plan-Based Enroller's disclosures in subdivision (4)(A) or 4(B):

(A) Refer the individual for further enrollment assistance to the Service Center of the Exchange.

(6) Document that the Certified Plan-Based Enroller has provided the required disclosures and the consumer has acknowledged that the consumer:

(A) Understands the disclosures;

(B) Does not want to be referred to the Central Service Center of the Exchange.

(C) Wants to receive information and enrollment assistance solely from the Certified Plan-Based Enroller.

(7) A record of the documentation required under subdivision (6) of this section shall be:

(i) Retained by the Certified Plan-Based Enrollment Entity for at least 3 years;

(ii) Subject to the Exchange's review of program conduct at the discretion of the Exchange.

(iii) Provided to the Exchange on a quarterly basis.

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

(9) With regards to any QHP or other products offered in the Individual Exchange by QHP issuers other than the entity which the Certified-Plan Based Enroller has an exclusive appointment, a Certified Plan-Based Enroller:

(A) May not provide enrollment services related to QHPs or other products not offered by the entity represented by the Certified Plan-Based Enroller; and

(B) Shall refer any requests for information or enrollment services related to QHPs or stand-alone dental plans in the Individual Exchange not offered by the entity represented by the Certified Plan-Based Enroller to:

(i) The Service Center of the Exchange.

(10) With regards to any other products offered by the entity outside the Individual Exchange with which the Certified Plan-Based Enroller has an exclusive appointment, a Certified Plan-Based Enroller:

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(A) 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.

§ 6714 – Compensation

(a) Certified Plan-Based Enrollment Entities will not receive compensation from the Exchange in exchange for application and enrollment assistance.
(b) Certified Plan-Based Enrollment Entities may compensate affiliated individual Certified Plan-Based Enrollers for enrollment in their compensation agreement with their Certified Plan-Based Enrollers.

Note: Authority cited: Section 100504, Government Code. Reference: 45 Code of Federal Regulations, Section 155.205(d).

§ 6716 – Suspension and Revocation

(a) Each of the following shall be justification for the Exchange to suspend or revoke the certification of any Certified Plan-Based Enrollment Entity or Certified Plan-Based Enroller:

(1) Failure to comply with any and all applicable federal or state law or regulation, including but not limited to, Section 6710 or Section 6712 of this Article; and

(2) If the Certified Plan-Based Enroller is not a captive agent, a potentially disqualifying criminal record under Section 6708 of Article 4 of this chapter;

(3) If the Certified Plan-Based Enroller 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 paragraph (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 paragraph (a)(2) of this section through the process described in Section 6708, paragraph (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: Section 100504, Government Code. Reference: 45 Code of Federal Regulations, Section 155.205(d).

§ 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.

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(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: Section 100504, Government Code. Reference: 45 Code of Federal Regulations, Section 155.205(d).

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