

California Code of Regulations

Title 10. Investment

Chapter 12. California Health Benefit Exchange (§et seq.)

Article 11. Certified Application Counselor Program.

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## **§ 6850. Definitions.**

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

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

Certified Application Entity: An organization with staff members or volunteers serving as Certified Application Counselors.

Consumer: A person or entity seeking information on eligibility and enrollment or seeking application assistance with a health insurance or health related product available through the Exchange. The term consumer includes, but is not limited to, an applicant, an application filer, authorized representative, employer, qualified employee, qualified employer, qualified individual, small employer, or enrollee as defined in Section 6410 of Article 2 of this Chapter.

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

Primary Contact: The individual appointed by the Certified Application Entity to be the liaison with the Exchange for the purposes of the Agreement executed pursuant to this Article.

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

## **§ 6852. Certified Application Entities.**

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

- (1) Individuals and entities registered as Certified Enrollment Entities or Certified Enrollment Counselors under Article 8 of this Chapter;
- (2) Individuals registered as Certified Insurance Agents under Article 10 of this Chapter;  
or
- (3) 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.

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

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

**§ 6854. Certified Application Entity Application.**

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

- (1) The organization shall submit all information, documentation, and declarations required in subdivision (b) of this section.
- (2) The application shall demonstrate that the organization is capable of carrying out at least those duties described in Section 6864.
- (3) The Exchange shall review the application and, if applicable, request any additional or missing information necessary to determine eligibility.
- (4) Organizations who have submitted a completed application and demonstrated ability to meet the above requirements shall
  - (A) 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 established pursuant to Section 6860, subdivision (a); and
  - (B) Submit the following:
    - (i) An executed agreement conforming to the Roles and Responsibilities defined in Section 6864 and provided in the application provided by the Exchange.
    - (ii) Proof of general liability insurance with coverage of not less than \$1,000,000 per occurrence with the Exchange named as an additional insured and workers compensation insurance.
- (5) Organizations that complete the above requirements shall be registered as a Certified Application Entity by the Exchange and assigned a Certified Application Entity Number. If the Authorized Contact, or his or her designee, fails to complete the training standards described in Section 6860, subdivision (b), within 30 calendar days, the applicant shall be deregistered.
- (6) Organizations who have been denied may appeal the denial of their Certified Application Entity Application through the process established by Section 6862.

(b) A Certified Application 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) Identification of the counties served;
- (10) A certification that the applicant and all of its employees comply with Section 6866;
- (11) Identification of whether the entity serves families of mixed immigration status;
- (12) Identification of whether the entity provide services to persons with disabilities;
- (13) An indication of whether the entity serves disabled individuals and, if so, the disability(ies) served;
- (14) Identification of the year the entity was established;
- (15) 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;
- (16) 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 providing enrollment assistance;
  - (J) Languages spoken by staff to provide enrollment assistance under this Article;
  - (K) Written languages;

- (L) An indication of whether the entity or individual offers services in sign language;
  - (M) Ethnicities served;
  - (N) Estimated number of individuals served by age; and
  - (O) Types of industries served;
- (17) Name, e-mail address, primary and secondary phone number, and an indication of the preferred method of communication for the Authorized Contact;
- (18) A certification by the Authorized Contact that the information presented is true and correct to the best of the signer's knowledge;
- (19) For each individual Certified Application Counselor to be affiliated with the applicant,
- (A) All information required by Section 6857 that is not already included elsewhere in the application; and
  - (B) An indication of whether or not he or she is certified by the Exchange and, if applicable, the certification number.

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

**§ 6856. Certified Application Counselor Application.**

- (a) An individual may become a Certified Application Counselor according to the following process:
- (1) The Certified Application Entity shall notify the Exchange of the individual to be affiliated according to the process described in subdivision (c) of this section.
  - (2) The individual shall:
    - (A) Submit the following:
      - (i) All information, documentation, and declarations required in subdivision (b) of this section;
      - (ii) An executed agreement conforming to the Roles and Responsibilities defined in Section 6864 and herein incorporated by reference (Rev. February, 2014);
    - (B) Within 30 calendar day of completing the requirements in (a)(2)(A) of this Section:
      - (i) Submit fingerprinting images in accordance with Section 6558 (a);
      - (ii) Disclose to the Exchange all criminal convictions and administrative actions taken against the applicant;

- (iii) Complete the required training established in Section 6860; and
  - (iv) Pass the required certification exam administered by the Exchange.
- (3) Individuals who complete the above requirements and pass the Certified Application Counselor Fingerprinting and Criminal Record Check described in Section 6858 shall be certified as Certified Application Counselors by the Exchange.
- (4) Applicants who have been denied for reasons other than failure to pass the Certified Application Counselor Fingerprinting and Criminal Record Check may appeal the denial of their Certified Application Counselor Application through the process established by Section 6862.
- (b) An individual's application to become a Certified Application Counselor shall contain the following information:
  - (1) Name, e-mail address, primary and secondary phone number, and preferred method of communication;
  - (2) Driver's License Number or Identification Number issued by the California Department of Motor Vehicles. If neither is available, the applicant may provide any other unique identifier found on an identification card issued by a federal, state, or local government agency or entity;
  - (3) Identification of the Certified Application Entity that the individual will affiliate with;
  - (4) Affiliated Certified Application Entity's primary site location address;
  - (5) Site(s) served by the individual;
  - (6) Mailing Address of the primary site for the Certified Application Entity;
  - (7) An indication of the languages that the Certified Application Counselor can speak;
  - (8) An indication of the languages that the Certified Application Counselor can write;
  - (9) A certification by the individual that:
    - (A) The individual complies with Section 6866;
    - (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.
  - (10) For the individual applying to become a Certified Application Counselor, signature, and date signed; and
  - (11) For the Authorized Contact from the Certified Application Entity that the individual will be affiliated with, name, signature, and date signed.

- (c) A Certified Application Entity shall notify the Exchange of every individual to be added or removed as an affiliated Certified Application Counselor. Such notification shall include:
- (1) Name of the Certified Application Entity and the Certified Application Entity Number;
  - (2) Name and signature of the Authorized Contact from the Certified Application Entity;
  - (3) Name, e-mail, and primary phone number of the individual to be added or removed;
  - (4) Effective date for the addition or removal of the individual; and
  - (5) An indication of whether the individual is certified as an Certified Application Counselor, and if so, the following information:
    - (A) Certification number; and
    - (B) When adding an individual, site(s) to be served by the individual.

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

#### **§ 6858. Certified Application Counselor Fingerprinting and Criminal Record Checks.**

(a) Roles Requiring Fingerprinting.

- (1) Individuals seeking certification under this article 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.

(b) Interim Fitness Determination.

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

(c) Appeal and Final Determination.

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

- (A) If the individual believes that the potentially disqualifying offense in the Federal Bureau of Investigation national criminal response identified in the notice sent pursuant to subdivision (b)(2) of this Section is inaccurate or incomplete, within 60 calendar days from the date of the notice, the individual may seek to correct or complete the response by providing information to the Exchange, including official court and law enforcement records, identifying and correcting the incomplete or inaccurate criminal history information. Upon receipt of such information, the Exchange shall reevaluate the interim fitness determination. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.
- (2) Inaccurate or Incomplete California Disqualifying Offenses.
- (A) If the individual believes that the potentially disqualifying offense in the California Department of Justice state criminal response identified in the notice sent pursuant to subdivision (b)(2) is inaccurate or incomplete, within 60 calendar days from the date of the notice, the individual shall notify the Exchange and follow the procedures set forth in Penal Code Sections 11120-11127 to correct or complete the criminal response with the DOJ. The fitness determination shall not be final until the DOJ has acted to correct the state criminal response. Upon receipt of the corrected response, the Exchange shall reevaluate the interim fitness determination. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.
- (3) If the individual determines that his or her criminal record is accurate, within 60 days from the date of the notice in subdivision (b)(2) of this Section, the individual may dispute the interim determination by producing additional written evidence of rehabilitation and mitigating circumstances related to any potentially disqualifying offense. The Exchange, within 60 calendar days, shall respond to the individual with a final determination.
- (A) For purposes of reevaluating the interim determination pursuant to subdivision (c)(3) of this Section, the Exchange shall take into account any of the following:
- (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 individuals seeking certification under this Article shall be paid by the Certified Application Entity.

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

### **§ 6860. Training Standards.**

(a) The Authorized Contact, or his or her designee, shall complete training for the management of Certified Application Entities prior to any affiliated Certified Application Counselors carrying out any functions under this article.

(b) All Certified Application Counselors shall complete training in the following subjects prior to carrying out any functions under 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, and contacting individual plans;

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

(3) The tax implications of enrollment decisions;

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

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

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

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

(8) Providing culturally and linguistically appropriate services;

- (9) Ensuring physical and other accessibility for people with a full range of disabilities;
  - (10) Understanding differences among health plans;
  - (11) Privacy and security standards applicable under 45 C.F.R. § 155.260 for handling and safeguarding consumers' personally identifiable information;
  - (12) Working effectively with individuals with limited English proficiency, people with 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.
  - (16) For governmental entities only, procedures for assisting consumers with voter registration in compliance with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg.
- (c) Training shall be provided by the Exchange through instructor led training or computer based training at the discretion of the Exchange.
- (d) Certified Enrollment Counselors shall pass the exam administered by the Exchange on an annual basis to maintain certification with the Exchange.

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

### **§ 6862. Appeals Process**

- (a) Other than a determination made pursuant to Section 6858, Certified Application Counselor Fingerprinting and Criminal Record Checks, a decision that an individual or entity is not eligible or qualified to participate or continue to participate in a program under this Article may be appealed to the Exchange in accordance with the requirements of this section.
- (b) The Exchange shall allow an applicant to request an appeal within 60 calendar days of the date of the notice of eligibility determination.
- (c) The first phase of the Appeals Process shall include an informal review by the Exchange. The Exchange shall consider the information used to determine the appellant's eligibility as well as any additional relevant evidence presented during the course of the appeal. The Exchange shall make an informal resolution decision within 45 calendar days from the receipt of the appeal. The Exchange shall notify the appellant in writing of the decision.

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

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

#### **§ 6864. Roles & Responsibilities.**

- (a) Certified Application Counselors shall perform the following functions:
- (1) Provide information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible;
  - (2) Assist individuals and employees to apply for coverage in a QHP through the Exchange and for insurance affordability programs; and
  - (3) Help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs.
  - (4) Comply with the privacy and security standards established by the Exchange pursuant to 45 C.F.R. § 155.260, and applicable authentication and data security standards;
  - (5) Act in the best interest of the applicants assisted;
  - (6) Either directly or through an appropriate referral to a Navigator or non-Navigator assistance personnel authorized under §§155.205(d) and (e) or 155.210, or to the Exchange call center authorized under §155.205(a), provide information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 U.S.C. 12101 et seq. and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 794; and
  - (7) Comply with any applicable federal or state laws and regulations.
- (b) Prior to a Certified Application Counselor obtaining access to a Consumer's personally identifiable information the Certified Application Counselor shall ensure that the Consumer has signed the Authorization Form here incorporated by reference (Rev. January, 2014). The Certified Application Entity or the Certified Application Counselor shall maintain a record of the Authorization Form.

- (c) Certified Application Counselors shall include the following in a consumer's application to the Exchange:
  - (1) Name and certification number of the Certified Application Counselor;
  - (2) Name of the Certified Application Entity and the Certified Application Entity Number; and
  - (3) Signature and date of signature by the Certified Application Counselor;
- (d) If any of the information listed in subdivision (c) of this section is not included on the consumer's original application, it may not be added at a later time.
- (e) Certified Application Counselors shall wear the badge issued by the Exchange at all times when providing duties under Section 6864.
- (f) Certified Application Entities and Certified Application Counselors may not impose any charge on Consumers for application or other assistance related to the Exchange.
- (g) Certified Application Counselors shall report to the Exchange any criminal convictions and administrative actions taken by any other agency within 30 calendar days of the date of the conviction or action.

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

#### **§ 6866. Conflict of Interest Standards.**

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

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

#### **§ 6868. Suspension and Revocation.**

- (a) Each of the following shall be justification for the Exchange to suspend or revoke the certification of any Certified Application Entity or Certified Application Counselor:
  - (1) Failure to comply with any and all applicable federal or state law or regulation, including, but not limited to, Section 6864 or Section 6866 of this Article; and
  - (2) A potentially disqualifying criminal record under Section 6456 of Article 4 of this Chapter.
- (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 6862 of this Article.
- (2) Individuals or entities may appeal a determination made pursuant to subdivision (a)(2) of this section through the process described in Section 6858, subdivision (c).
- (3) Until a final determination or decision is made regarding an individual or entity's appeal, the appellant shall be disqualified from performing any functions under this Article.

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

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