

**§ 6864. Roles and Responsibilities.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Inform the consumer that the authorization set forth in (b)(3) of this section may be revoked at any time; and

(11) Maintain a record of such authorization for a minimum of six (6) years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Be a QHP;

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

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

(5) Provide gifts, including gift cards or cash or provide promotional items that market or promote the products or services of a third party, to any applicant or potential enrollee as an inducement for enrollment. The value of gifts provided to applicants and potential enrollees for purposes other than as an inducement for enrollment must not exceed nominal value, either individually or in the aggregate, when provided to that individual during a single encounter. Gifts, gift cards, or cash may be provided for the purpose of providing reimbursement for legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as, but not limited to, travel or postage expenses;

(6) Solicit any consumer for application or enrollment assistance by going door to door or through other unsolicited means of direct contact, including calling a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual has a pre-existing relationship with the individual Certified Application Counselor or designated organization and other

applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door to door or through other unsolicited means of direct contact, including calling a consumer;

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

(8) Mail the paper application for the consumer;

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

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

(11) Accept any premium payments from the consumer;

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

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

(14) Intentionally create multiple applications from the same household, as defined in 42 C.F.R. § 435.603(f) (July 15, 2013), hereby incorporated by reference; or

(15) Invite, influence, or arrange for an individual whose existing coverage through an eligible employer-sponsored plan is affordable and provides minimum value, as described in 26 USC § 36B(c)(2)(C) and in 26 C.F.R. § 1.36B-2(c)(3)(v) and (vi) (July 28, 2014), hereby incorporated by reference, to separate from employer-based group health coverage.

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

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

#### HISTORY

1. New section filed 7-6-2015 as an emergency pursuant to Government Code section 100504(a)(6); operative 7-6-2015 (Register 2015, No. 28). A Certificate of Compliance must be transmitted to OAL by 7-6-2018 pursuant to Government Code section 100504(a)(6) or emergency language will be repealed by operation of law on the following day.

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10 CCR § 6864, 10 CA ADC § 6864