

**State of California
Office of Administrative Law**

In re:
California Health Benefit Exchange

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections: 6900, 6901, 6902, 6903,
6904, 6905, 6906, 6907,
6908

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2015-0417-02 E

This emergency rulemaking action establishes the process for Medi-Cal Managed Care Plans (MMCPs) to become Certified MMCPs to provide enrollment assistance to consumers, as well as the process for individuals, whether employees or contractors of MMCPs, to become certified to provide enrollment assistance to consumers. The action adopts new provisions concerning Certification application, eligibility, and training requirements, provisions listing roles and responsibilities of Certified MMCPs and Certified MMCP Enrollers, conflict of interest rules, and grounds for suspension and revocation of Certification.

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

This emergency regulatory action is effective on 4/27/2015 and will expire on 4/28/2017. The Certificate of Compliance for this action is due no later than 4/27/2017.

Date: 4/27/2015



Dale P. Mentink
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Peter Lee
Copy: Tessa Hammer

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

STD. 400 (REV. 01-2013)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2015-0417-02E
For use by Office of Administrative Law (OAL) only		2015 APR 17 PM 2:13	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY CA Health Benefit Exchange			AGENCY FILE NUMBER (if any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 27 2015

3:47 PM

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

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 Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Medi-Cal Managed Care Plan Enrollment Assistance	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 6900, 6901, 6902, 6903, 6904, 6905, 6906, 6907 and 6908
	AMEND
	REPEAL 10

3. TYPE OF FILING

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

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

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

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

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

7. CONTACT PERSON

Tessa Hammer	TELEPHONE NUMBER (916) 228-8232	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) tessa.hammer@covered.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 4/17/15
TYPED NAME AND TITLE OF SIGNATORY Peter V. Lee, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 27 2015

Office of Administrative Law

Medi-Cal Managed Care Plan Enrollment Assistance

Article 12

§ 6900. Definitions

- (a) For purposes of this Article, the following terms shall have the following associated meanings:
- (1) Authorized Contact: The individual appointed by the Certified Medi-Cal Managed Care Plan entity to manage the agreement executed with the Exchange pursuant to this Article.
 - (2) Certified Medi-Cal Managed Care Plan: a Medi-Cal Managed Care Plan who has been certified pursuant to this Article.
 - (3) Certified Medi-Cal Managed Care Plan Enroller or Enroller: An individual that is an employee or contractor of a Certified Medi-Cal Managed Care Plan who provides enrollment assistance pursuant to this Article.
 - (4) Consumer Assistance: The programs and activities created under 45 C.F.R. § 155.205(d) to provide enrollment assistance to consumers.
 - (5) Medi-Cal Managed Care Plan: 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.
 - (6) Primary Contact: The individual appointed by the Certified Medi-Cal Managed Care Plan to be the liaison with the Exchange.

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

§ 6901. Eligibility

- (a) All California Medi-Cal Managed Care Plans as defined in section 6900 are eligible to apply to become a Certified Medi-Cal Managed Care Plan with the Exchange.

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

§ 6902. Application

- (a) A Medi-Cal Managed Care Plan may apply to register as a Certified Medi-Cal Managed Care Plan according to the following process:
- (1) The entity shall submit an application containing all information, documentation, and declarations required in subdivision (b) of this section.

- (2) The application shall demonstrate that the entity is capable of carrying out at least those duties described in section 6906 and has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a Qualified Health Plan (QHP) or an insurance affordability program.
- (3) The Exchange shall review the application and, if applicable, request any additional or missing information necessary to determine eligibility.
- (4) Entities who have submitted a completed application and demonstrated ability to meet the above requirements shall:
 - (A) Submit the following:
 1. An executed agreement conforming to the Roles and Responsibilities defined in section 6906; and
 2. 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) Entities who are eligible based on their completed application and whose designee completes and passes the training requirements established pursuant to section 6905 shall be registered as a Certified Medi-Cal Managed Care Plan by the Exchange and assigned a Certified Medi-Cal Managed Care Plan Number. If the designee fails to complete the training requirements set forth in section 6905 within 30 calendar days of completing the requirements in (a)(4)(A) of this section, the applicant shall be deregistered.

(b) A Certified Medi-Cal Managed Care Plan 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 Medi-Cal Managed Care Plan 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) A certification that the applicant and all of its employees who will be acting pursuant to this Article comply with section 6907;
- (15) Indication of whether the entity serves families of mixed immigration status;
- (16) An indication of whether the entity serves individuals with disabilities and, if so, the disability(ies) 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) Hours of operation;
 - (I) Estimated number of individuals served annually;
 - (J) Spoken languages;
 - (K) Written languages;
 - (L) An indication of whether the entity or individual offers services in sign language;
 - (M) Ethnicities served; and
 - (N) Estimated number of individuals served by age.
- (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 Enroller to be affiliated with the applicant,

- (A) All information required by section 6903 that is not already included elsewhere in the application required by this section; and
- (B) An indication of whether 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.

§ 6903. Certified Medi-Cal Managed Care Plan Enroller Application

(a) An individual may become a Certified Medi-Cal Managed Care Plan Enroller according to the following process:

(1) The individual shall:

(A) Submit the following:

1. All information, documentation, and declarations required in subdivision (b) of this section; and
2. An executed agreement conforming to the Roles and Responsibilities defined in section 6906.

(B) Within 90 calendar days of completing the requirements in (a)(1)(A) of this section:

1. Submit fingerprinting images in accordance with section 6904 (a);
2. Disclose to the Exchange all criminal convictions and administrative actions taken against the applicant;
3. Complete the required training established in section 6905; and
4. Pass the required certification exam pursuant to section 6660(d) of Article 8.

(2) Individuals who complete the above requirements and pass the Certified Medi-Cal Managed Care Plan Enroller Fingerprinting and Criminal Record Check described in section 6904 shall be certified as a Certified Medi-Cal Managed Care Plan Enroller by the Exchange.

(b) An individual's application to become a Certified Medi-Cal Managed Care Plan Enroller 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 Medi-Cal Managed Care Plan that the individual will affiliate with;

(4) Affiliated Certified Medi-Cal Managed Care Plan's primary site location address;

(5) Site(s) to be served by the individual;

(6) Mailing Address of the primary site for the Certified Medi-Cal Managed Care Plan;

(7) An indication of the languages that the Certified Medi-Cal Managed Care Plan Enroller can speak;

(8) An indication of the languages that the Certified Medi-Cal Managed Care Plan Enroller can write;

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

(10) A certification by the individual that:

(A) The individual complies with section 6907;

(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.

(11) For the individual applying to become a Certified Medi-Cal Managed Care Plan Enroller, signature and date signed; and

(12) For the Authorized Contact from the Certified Medi-Cal Managed Care Plan that the individual will be affiliated with, name, signature, and date signed.

(c) A Certified Medi-Cal Managed Care Plan shall notify the Exchange of every individual to be added or removed as an affiliated Certified Medi-Cal Managed Care Plan Enroller. Such notification shall include:

(1) Name of the Certified Medi-Cal Managed Care Plan and the Certified Medi-Cal Managed Care Plan Number;

(2) Name and signature of the Authorized Contact from the Certified Medi-Cal Managed Care Plan;

(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 a Certified Medi-Cal Managed Care Plan Enroller.

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

§ 6904. Fingerprinting and Criminal Record Checks

- (a) Subdivisions 6658 (a) – (c) of Article 8 apply to individuals seeking certification pursuant to this Article.
- (b) Background check costs for individuals seeking certification under this Article shall be paid by the Certified Medi-Cal Managed Care Plan.

Note: Authority cited: Sections 1043 and 100504, Government Code. Reference: section 100502, Government Code; section 11105, Penal Code.

§ 6905. Training Requirements

- (a) All individuals who carry out functions pursuant to this Article shall complete training as outlined in section 6660 of Article 8.
- (b) Certified Medi-Cal Managed Care Plans shall ensure that any affiliated Certified Medi-Cal Managed Care Plan Enrollers do not perform any consumer assistance functions if more than twelve months have passed since the Medi-Cal Managed Care Plan Enroller passed the certification exam in section 6660(d) of Article 8.

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

§ 6906. Roles & Responsibilities

- (a) Certified Medi-Cal Managed Care Plans and Certified Medi-Cal Managed Care Plan Enrollers shall perform the following functions:
 - (1) Maintain expertise in eligibility, enrollment, and Exchange program specifications;
 - (2) Provide information and services in a fair, accurate, and impartial manner, which includes: providing 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. Such information must acknowledge the existence of other health programs (i.e., Medi-Cal and Children’s Health Insurance Programs);
 - (3) Facilitate selection of a QHP and/or insurance affordability programs;
 - (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 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 C.F.R. § 155.260;
 - (6) Ensure that voter registration assistance is available in compliance with section 6462 of Article 4 of this Chapter; and
 - (7) Comply with any applicable federal or state laws and regulations.
- (b) 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, a Certified Medi-Cal Managed Care Plan and its affiliated Certified Medi-Cal Managed Care Plan Enrollers shall comply with the requirements of section 6664(b)(1) through (b)(6) of Article 8.
 - (c) To ensure that Consumer Assistance is accessible to people with disabilities, Certified Medi-Cal Managed Care Plans and affiliated Certified Medi-Cal Managed Care Plan Enrollers shall comply with the requirements of section 6664(c)(1) through (c)(5) of Article 8.
 - (d) To ensure that no consumer is discriminated against, Certified Medi-Cal Managed Care Plans and Certified Medi-Cal Managed Care Plan Enrollers shall provide the same level of service to all individuals regardless of age, disability, culture, sexual orientation, or gender identity and seek advice of experts when needed.
 - (e) Certified Medi-Cal Managed Care Plan Enrollers shall complete the Certified Enrollment Counselor section of a consumer's application to the Exchange, including the following:
 - (1) Name and certification number of the Certified Medi-Cal Managed Care Plan Enroller;
 - (2) Name of the Certified Medi-Cal Managed Care Plan and the Certified Medi-Cal Managed Care Plan Number; and
 - (3) Signature and date of signature by the Certified Medi-Cal Managed Care Plan Enroller.
 - (f) If any of the information listed in subdivision (e) of this section is not included on the consumer's original application, it shall not be added at a later time.
 - (g) Certified Medi-Cal Managed Care Plan Enrollers shall wear the badge issued by the Exchange at all times when providing assistance pursuant to this Article.
 - (h) The Certified Medi-Cal Managed Care Plan and Certified Medi-Cal Managed Care Plan Enroller shall never:
 - (1) Have a conflict of interest as defined in section 6907;
 - (2) Mail the paper application for the consumer;

- (3) Coach the consumer to provide inaccurate information on the application regarding income, residency, immigration status and other eligibility rules;
 - (4) Coach or recommend one plan or provider over another;
 - (5) Accept any premium payments from the consumer;
 - (6) Input any premium payment information on behalf of the consumer;
 - (7) Pay any part of the premium or any other type of consideration to or on behalf of the consumer;
 - (8) Induce or accept any type of direct or indirect remuneration from the consumer;
 - (9) Intentionally create multiple applications from the same household, as defined in 45 C.F.R. § 435.603(f);
 - (10) 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), to separate from employer-based group health coverage;
 - (11) 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 consumer has a pre-existing relationship with the individual Certified Medi-Cal Managed Care Plan Enroller or Certified Medi-Cal Managed Care Plan and other applicable State and Federal laws are otherwise complied with; or
 - (12) 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 Medi-Cal Managed Care Plan Enroller or Certified Medi-Cal Managed Care Plan has a relationship with the consumer and so long as other applicable State and Federal laws are otherwise complied with.
- (i) Certified Medi-Cal Managed Care Plan Enrollers 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.
 - (j) Certified Medi-Cal Managed Care Plans shall notify the Exchange of any change in Contact information for the Certified Medi-Cal Managed Care Plan or its Certified Medi-Cal Managed Care Plan Enrollers.

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

§ 6907. Conflict of Interest

(a) Certified Medi-Cal Managed Care Plan and Certified Medi-Cal Managed Care Plan Enrollers shall:

- (1) 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;
- (2) Create a written plan to remain free of conflicts of interest while carrying out functions under this Article;
- (3) Provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible;
- (4) Disclose to each consumer who receives application assistance from the entity or individual:
 - (A) Any lines of insurance business which the entity or individual intends to sell while carrying out the Consumer Assistance functions;
 - (B) Any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and
 - (C) Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

(b) Medi-Cal Managed Care Plan Enrollers who are licensed insurance agents with the California Department of Insurance shall:

- (1) Comply with 45 C.F.R. section 155.220;
- (2) Execute an agreement with the Exchange that complies with 45 C.F.R. section 155.220;
- (3) While a Certified Medi-Cal Managed Care Plan Enroller, not receive any direct or indirect consideration from any health insurance issuer or stop loss insurance issuer, other than compensation on a salary or contractual basis from the Certified Medi-Cal Managed Care Plan, in connection with the enrollment of any individuals in a QHP or non-QHP;

(4) Not be certified concurrently by the Exchange pursuant to Article 10 of this Chapter.

Note: Authority cited: Sections 100502 and 100504, Government Code. Reference: Sections 100502 and 100503, Government Code; and 45 C.F.R. §155.220.

§ 6908. Suspension and Revocation

(a) Each of the following shall be justification for the Exchange to suspend or revoke the certification of any Certified Medi-Cal Managed Care Plan or Certified Medi-Cal Managed Care Plan Enroller:

(1) Failure to comply with all applicable federal or state laws or regulations; and

(2) A potentially disqualifying administrative action or criminal record which is substantially related to the qualifications, functions, or duties of the specific position of the entity or individual, under sections 6903 and 6904.

(b) Following the receipt of a determination pursuant to this section that disqualifies an individual or entity from certification, the entity or individual is not eligible to reapply for certification for two years.

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