

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, SEPTEMBER 4, 2020

CLERK'S OFFICE  
CONTROL CENTER  
2020 SEP -4 P 1: 56

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. HBE-2020-00002

*Ex Parte:* In the matter of Adopting  
New Rules Governing the Certified  
Application Counselor Program

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. In accordance with § 38.2-6515 of the Code, the Commission may adopt any rules and regulations pursuant to § 38.2-223 of the Code as necessary or appropriate for the administration of the Health Benefit Exchange ("Exchange").

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <https://www.scc.virginia.gov/pages/Case-Information>.

The Exchange has submitted to the Commission a proposal to promulgate new rules at Chapter 10 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Certified Application Counselor Program," which are recommended to be set out at 14 VAC 7-10-10 through 14 VAC 7-10-80.

The proposed new rules are necessary in light of the enactment of § 38.2-6514 of Chapter 65 of Title 38.2 of the Code of Virginia. This Code section requires the Exchange to establish a Certified Application Counselor program pursuant to 45 C.F.R. § 155.225. Certified application

counselors are individuals who are trained and able to help consumers seeking health insurance coverage options in the Exchange marketplace. The Exchange may designate certain organizations to certify and oversee certified application counselors. The rules establish processes and criteria for the designation of organizations, the certification of application counselors, and the duties and obligations of both.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 10 of Title 14 in the Virginia Administrative Code as submitted by the Exchange should be considered for adoption with a proposed effective date of on or before January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing the Certified Application Counselor Program," recommended to be set out at 14 VAC 7-10-10 through 14 VAC 7-10-80, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of proposed Chapter 10 shall file such comments or hearing request on or before October 16, 2020, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. HBE-2020-00002. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <https://www.scc.virginia.gov/pages/Case-Information>. All comments shall refer to Case No. HBE-2020-00002.

(3) If no written request for a hearing on the adoption of the proposed new rules as outlined in this Order is received on or before October 16, 2020, the Commission, upon

consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Exchange.

(4) The Exchange shall provide notice of the proposal to all carriers licensed in Virginia to write individual and small group health insurance and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website:

<https://www.scc.virginia.gov/pages/Case-Information>.

(7) The Exchange shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, [MBrowder@oag.state.va.us](mailto:MBrowder@oag.state.va.us); and a copy hereof shall be delivered to the Commission's Office of General Counsel and to the Commissioner of Insurance, Scott A. White.

## STATE CORPORATION COMMISSION, HEALTH BENEFITS EXCHANGE DIVISION

CHAPTER 10RULES GOVERNING THE CERTIFIED APPLICATION COUNSELOR PROGRAM**14VAC7-10-10. Scope and purpose.**

The purpose of this chapter is to establish standards for a certified application counselor program by the Health Benefit Exchange in accordance with § 38.2-6514 of the Code of Virginia.

**14VAC7-10-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Certified application counselor" means an individual certified by a CDO to perform the duties described in in this chapter and 45 CFR § 155.225(c).

"Certified application counselor designated organization" or "CDO" means an organization designated by the exchange to certify its staff members or volunteers to act as certified application counselors who perform the duties and meet the standards and requirements for certified application counselors set forth in this chapter and 45 CFR § 155.225.

"CHIP" means the Children's Health Insurance Program under Title XXI of the Social Security Act, including FAMIS.

"Exchange" means the Virginia Health Benefit Exchange established pursuant to the provisions of Chapter 65 (§ 38.2-6500 et seq.) of Title 38.2 of the Code of Virginia.

"FAMIS" means the Family Access to Medical Insurance Security Plan, including the FAMIS Plus program, established pursuant to Chapter 13 (§ 32.1-351 et seq.) of Title 32.1 of the Code of Virginia.

"Navigator" means an individual or entity that is registered pursuant to § 38.2-3457 of the Code of Virginia.

"Personal information" has the same meaning assigned to the term in § 38.2-602 of the Code of Virginia.

"Qualified dental plan" means a limited scope dental plan that has been certified in accordance with § 38.2-6506 of the Code of Virginia.

"Qualified health plan" means a health benefit plan that meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act, Pub.L. 111-148, and has been certified in accordance with § 38.2-6506 of the Code of Virginia.

**14VAC7-10-30. Designation of organizations.**

A. The exchange may designate an organization to certify its staff members or volunteers as certified application counselors. An organization seeking designation as a CDO shall:

1. Register with the exchange and provide any information required for registration purposes in the form and manner prescribed by the exchange;
2. Submit a compliance agreement with the exchange that outlines the standards and requirements in accordance with 45 CFR § 155.225, including subdivisions (d)3 through (d)5; and
3. Attest to the organization's ability to carry out the required duties as set forth in 14VAC7-10-40, and if requested by the exchange, provide documentation or other information evidencing compliance with these duties.

B. If the exchange finds that the applicant meets the requirements of this chapter, it may designate the applicant as a CDO.

C. A designation issued under this chapter shall expire two years from the date it was issued. Each applicant for renewal of designation as a CDO shall submit an application to the exchange in the form and manner prescribed by the exchange. A designation issued under this chapter is required to maintain application counselor certification.

D. The exchange may withdraw a designation, or refuse to designate or renew a designation of an organization for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete or untrue information in the CDO application or any other document filed with the exchange;
2. Obtaining or attempting to obtain a designation through misrepresentation or fraud;
3. Failing to comply with the requirements to certify application counselors; or
4. Failing to comply with requirements in this chapter, § 38.2-6514 of the Code of Virginia or any other applicable provision of the Code of Virginia.

**14VAC7-10-40. Duties of a certified application counselor designated organization.**

A CDO shall perform the duties and meet the standards and requirements to certify application counselors. The CDO shall:

1. Meet the terms of the compliance agreement executed with the exchange pursuant to 14VAC7-10-30 A 2;
2. Maintain a registration process and method to track the performance of certified application counselors;
3. Provide data and information to the exchange regarding: (i) the identity, number and performance of its certified application counselors; and (ii) the consumer assistance provided by its certified application counselors in the form and manner specified by the exchange. Beginning in the first quarter of calendar year 2021, each CDO shall submit

quarterly reports that include, at a minimum, data regarding the number and identifying information of individuals who have been certified by the organization; the total number of consumers who received application and enrollment assistance from the organization; and of that number, the number of consumers who received assistance in applying for and selecting a qualified health plan or qualified dental plan, enrolling in a qualified health plan or qualified dental plan, or applying for Medicaid or CHIP;

4. Establish procedures to withdraw certification from or refuse to recertify any individual certified application counselor upon a finding of noncompliance with the requirements for certification or a failure to perform duties as required by this chapter; and

5. Establish consumer protection procedures to ensure that:

a. Consumers are informed prior to receiving assistance of the functions and responsibilities of a certified application counselor, including that a certified application counselor may not act as a tax adviser or attorney and cannot provide tax or legal advice when providing assistance in their capacity as a certified application counselor;

b. Consumers provide the CDO with a signed authorization on a form prescribed and furnished by the exchange prior to a certified application counselor obtaining access to a consumer's personal information. The CDO shall maintain a record of the authorization for a period of at least six years; and

c. Consumers understand that they may revoke at any time the authorization provided to the certified application counselor.

**14VAC7-10-50. Certification of application counselors.**

A. A CDO may certify an individual staff member or volunteer to perform the duties of a certified application counselor only if the individual staff member or volunteer:

1. Completes exchange-approved training regarding qualified health plan and qualified dental plan options, insurance affordability programs, eligibility, and benefits rules and regulations governing all insurance affordability programs operated in Virginia, as implemented in Virginia, and completes and achieves a passing score on all exchange-approved certification examinations, prior to functioning as a certified application counselor;

2. Discloses to the CDO and potential applicants any relationships the certified application counselor or sponsoring agency has with any qualified health plan, qualified dental plan or insurance affordability program, or other potential conflicts of interest;

3. Complies with the exchange's privacy and security standards adopted consistent with 45 CFR § 155.260 and applicable authentication and data security standards;

4. Agrees to act in the best interest of the applicants assisted;

5. Provides, either directly or through an appropriate referral to a navigator or non-navigator assistance personnel authorized under 45 CFR § 155.205(d) and (e) or 45 CFR § 155.210 or to the exchange call center, information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 USC § 12101 et seq. and § 504 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act, as amended, 29 USC § 794; and

6. Enters into an agreement with the CDO regarding compliance with the standards specified in paragraphs (d), (f), and (g) of 45 CFR § 155.225.

B. The CDO may recertify a certified application counselor on at least an annual basis after the certified application counselor has successfully completed recertification training as required by the exchange.



C. A CDO shall withdraw certification from or refuse to recertify an individual certified application counselor upon a finding of noncompliance with the requirements for certification or any failure to perform required duties in accordance with this chapter.

D. A CDO that does not renew or is no longer designated by the exchange shall result in all application counselors certified by that CDO to become decertified.

**14VAC7-10-60. Duties of certified application counselors.**

A certified application counselor certified by a CDO shall:

1. Provide information to individuals and employees about the full range of qualified health plan or qualified dental plan options and insurance affordability programs for which they are eligible, including providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarify the distinctions among health coverage options, including qualified health plans or qualified dental plans; and help consumers make informed decisions during the health coverage selection process;

2. Assist individuals and employees to apply for coverage in a qualified health plan or qualified dental plan through the exchange and for insurance affordability programs;

3. Help to facilitate enrollment of eligible individuals in a qualified health plan or qualified dental plan and any insurance affordability programs; and

4. Adhere to all the requirements and responsibilities set forth by the CDO or the exchange in the performance of his duties under this chapter.

**14VAC7-10-70. Prohibitions on fees, consideration, solicitation, and marketing.**

A CDO or a certified application counselor may not:

1. Impose any charge on a consumer, an applicant or enrollee for application or other assistance related to the exchange;

2. Act as an insurance agent or broker;
3. Receive any consideration directly or indirectly from any health insurance issuer or other insurance issuer in connection with the enrollment of any individual in a qualified health plan or qualified dental plan or a non-qualified health plan or non-qualified dental plan;
4. Provide compensation to any individual certified application counselor on a per-application, per-individual-assisted, or per-enrollment basis;
5. Provide to an applicant or potential enrollee a gift of any value as an inducement for enrollment. The value of a gift provided to an applicant and potential enrollee for purposes other than as an inducement for enrollment shall not exceed nominal value, either individually or in the aggregate, when provided to that individual during a single encounter. For purposes of this subdivision the term gift includes gift items, gift cards, cash cards, cash, or promotional items that market or promote the products or services of a third party, but does not include the reimbursement of legitimate expenses incurred by a consumer in an effort to receive exchange application assistance, such as 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 with 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 CDO and other applicable state and federal laws are otherwise complied with; or
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 CDO has a relationship with the consumer and so long as other applicable state and federal laws are otherwise complied with.

**14VAC7-10-80. Severability.**

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.