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From: Gary Cohen, CMS Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight (CCIIO)

Subject: Guidance on Certified Application Counselor Program for the Federally-Facilitated Marketplace including State Partnership Marketplaces

Purpose and Scope of Guidance

Beginning October 1, 2013, the new Health Insurance Marketplaces, also known as the Affordable Insurance Exchanges, will be open for enrollment. The Marketplace will use a single streamlined application to determine eligibility for enrollment in Qualified Health Plans (QHPs) and for insurance affordability programs including advance payments of the premium tax credit (APTCs), cost-sharing reductions (CSRs), Medicaid, and the Children's Health Insurance Program (CHIP). In a recent final rule, which went on display July 12, 2013 (see [http://www.ofr.gov/\(X\(1\)S\(15jdxo01ue0jmed2wmobrmve\)\)/inspection.aspx?AspxAutoDetectCookieSupport=1#spec_C](http://www.ofr.gov/(X(1)S(15jdxo01ue0jmed2wmobrmve))/inspection.aspx?AspxAutoDetectCookieSupport=1#spec_C)), CMS established certified application counselors as a type of assistance personnel available to provide information to consumers and to help facilitate consumer enrollment in QHPs and insurance affordability programs. (See 45 CFR 155.225.) The rule provides that an Exchange may designate organizations to certify staff or volunteers to perform the duties of certified application counselors according to the standards set forth in the rule. This certification process provides an assurance to consumers that they are receiving assistance from persons trained by the Exchange who are overseen by organizations that are required to protect personally identifiable information.

All Exchanges must have a certified application counselor program. This guidance establishes the process for the Federally Facilitated Marketplaces, including State Partnership Marketplaces (jointly, FFMs or the Marketplaces), to designate organizations to certify their staff and volunteers to participate in the certified application counselor program, and the process to withdraw such designation from these organizations.

State-based Marketplaces are welcome to follow this guidance in designating (and withdrawing designation of) organizations, but are also permitted to establish their own processes for their certified application counselor program.

Which Organizations May Be Designated and the Process for Designating Organizations

Organizations may apply to the FFMs to participate in the certified application counselor program. The FFMs will only designate certain types of organizations that, based on the functions of the organization, (1) have processes in place to screen their staff members and volunteers who are certified application counselors to ensure that they protect personally identifiable information, (2) engage in services that position them to help those they serve with health coverage issues, and (3) have experience providing social services to the community. Thus, organizations that the FFMs may designate could include, for example, community health centers such as federally-qualified health centers (FQHCs); hospitals; health care providers (including Indian Health Services, Indian tribes and Urban Indian organizations that provide health care); Ryan White HIV/AIDS providers; behavioral health or mental health providers; agencies that have experience providing social services to the community such as Supplemental Nutrition Assistance Program (SNAP) outreach, energy assistance, or tax assistance, which are either non-federal governmental entities or organized under section 501(c) of the Internal Revenue Code; and other local governmental agencies that have similar processes and protections in place such as other health care providers, health departments and libraries. For information about the states in which HHS will operate a FFM in 2014, please reference the

CCIIO website at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/state-marketplaces.html>.

State-based Marketplaces may follow these guidelines or establish their own guidelines for the types of organizations they will designate. We encourage State-based Marketplaces to include organizations that serve a variety of different populations, such as American Indians/Alaska Natives.

The FFM may designate organizations, including organizations already designated as a Medicaid certified application counselor organization by a state Medicaid or CHIP agency, to allow the organizations to certify their own staff members or volunteers to provide certified application counselor services. This designation is permissible only if those organizations submit a completed application to the FFM to provide certified application counselor services, and enter into an agreement with the FFM that they and their certified application counselors will comply with the applicable requirements of 45 CFR 155.225. In states where the FFM is operated, CMS will establish a mechanism for state Medicaid and CHIP agencies to inform the FFM of organizations they designate to provide certified application counselor services.

We expect that the application that the entity submits to the FFM for the purpose of becoming designated as a certified application counselor organization will be posted on the CMS website in July. A sample application may be found at: <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/assistance.html>. Interested organizations may submit their completed application on-line. The application will ask the organization to provide the organization's name and contact information, the nature of the organization's business, and whether the organization has already been designated by a state Medicaid or CHIP agency as a Medicaid or CHIP application assistance program. The application will also ask whether the organization is a governmental entity or organized under 501(c) of the Internal Revenue Code. In addition, the application will ask for information to indicate whether the organization screens the employees and volunteers it will certify as application counselors, whether the organization

or the employees and volunteers it intends to certify already handle personally identifiable information, and the organization's experience, if any, assisting individuals applying for health coverage. The organization does not need to include supporting documentation in its application. However, the FFMs may ask the applying organization follow-up questions or seek additional information in support of the completed application.

Organizations that the FFM designates must enter into a written agreement with the FFM, in a form and manner prescribed by the FFM. The FFMs will establish a standard agreement that the FFMs will use with all designated organizations. The agreement will contain the organization's assurances that it and all of the staff members and volunteers it certifies to be certified application counselors will comply with the applicable requirements of §155.225, including the privacy and security standards established and implemented by the FFMs under 45 CFR 155.260, disclosure of potential conflicts of interest, and successful training completion. The agreement must be signed by someone who has authority to enter into the agreement on behalf of the organization. Once an organization has entered into the required written agreement, it will be listed on the FFM website as having certified application counselors available to help consumers applying for and enrolling in coverage through the FFM.

Process for Withdrawing Designation from Organizations

The recent final rule, in 45 CFR 155.225(e), requires the Exchange to develop procedures to withdraw designation from an organization if the Exchange finds that a designated organization or that organization's certified application counselors have not complied with the applicable requirements of 45 CFR 155.225. Generally, designation will not be withdrawn unless there is a pattern of noncompliance. However, a stricter standard will be applied to violation of privacy and security standards. In determining whether to withdraw an organization's designation, the FFMs will consider the number and severity of the violations, and

any corrective action taken by the organization. An organization may also sever its agreement with the FFM by providing written notice to the FFM of its intent to do so and the effective date that it will no longer have its staff members or volunteers provide certified application counselor services.

If the FFM determines that it will withdraw its designation of an organization as provided in 45 CFR 155.225(e), the FFM will provide written notice to the organization, which includes the reasons for withdrawing the designation, by e-mail, overnight delivery service, and/or first class U.S. mail. The withdrawal of an organization's designation will be effective 20 calendar days following the date of the notice unless the organization appeals the withdrawal of designation.

An organization which receives a notice from an FFM that the FFM is withdrawing its designation of the organization may, within 20 calendar days from the date of the notice, appeal the withdrawal of designation by submitting its appeal to the FFM in writing. The appeal should explain why the organization disagrees with the FFM's reasons for withdrawing the designation and should include all information in support of the organization's appeal. Upon receipt of the appeal, the FFM will determine whether the organization may continue certifying application counselors and providing certified application counselor services until the outcome of the appeal is decided. The FFM will review and issue a written determination on the organization's appeal within 30 days of receiving the appeal.

An organization for which the FFM has withdrawn designation must immediately notify all of its certified application counselors that they may no longer hold themselves out as certified application counselors and may no longer provide certified application counselor services for the designated organization.

Withdrawal of an organization's designation does not relieve the organization or its formerly certified application counselors of their obligation to protect consumers' personally identifiable information which they obtained or to which they had access. Additionally, 45 CFR

155.260 provides for civil monetary penalties for violations of legal requirements to protect the privacy and security of personally identifiable information. Other federal laws regarding privacy and security may be applicable as well and provide sanctions for violations. If an organization or its certified application counselors are suspected of fraud or violations of other applicable federal laws, the FFM will work closely with the appropriate federal agencies to ensure that the matter is fully investigated and addressed in a manner consistent with federal law.