

ISSUE BRIEF • SEPTEMBER 2013

NAVIGATING COVERED CALIFORNIA BACKGROUND CHECK REQUIREMENTS

A Manual for Certified Enrollment Counselor Applicants

This manual gives guidance on the background check process to applicants for Counselor positions and their advocates, with a particular focus on the appeal process, which is critically important.

This manual covers criminal record issues and does not address immigration status or other potential problems.

INTRODUCTION

The Greenlining Institute and the National Employment Law Project want to open doors to career opportunities for all Americans, and remove discriminatory hiring practices. We have worked to eliminate unfair background check policies that reinforce the racial and economic disparities that hinder communities of color from sharing in the American dream. Our work with Covered California, the state's new health insurance marketplace established by federal health care reform, aims to establish fairer policies that do not create needless bars to employment for responsible, hard-working individuals who may have had a brush with the criminal justice system in the past. We believe that gainful employment opportunities for people with criminal records are good for them and our entire society.

In 2010, California was the first state in the nation to enact legislation to implement the federal Patient Protection and Affordable Care Act (ACA) by creating Covered California, a Health Benefit Exchange or marketplace where individuals and employers will be able to compare and choose health coverage that best fits their needs and budgets, and individuals may get financial assistance to make health coverage more affordable. In October, Covered California will begin enrolling eligible Californians for health coverage that will begin January 2014.

Covered California will hire over 21,000 workers to help individuals determine whether they qualify for health care assistance programs. These workers, called In-Person Assisters, will provide face-to-face, one-on-one-consumer assistance. Assisters will be hired, certified, and trained as Certified Enrollment Counselors by what are called Certified Enrollment Entities — community nonprofit and faith-based groups that will assist Californians in obtaining coverage and navigating the new system. Over 3,600 Entities will hire, certify, and train these applicants for Covered California's In-Person Assistance Program.¹

Key Terms

Covered California:

California's Health Benefit Exchange created under health care reform, sometimes referred to in this manual as the Exchange.

Certified Enrollment Entities:

Individuals or entities (such as nonprofit community or faith-based groups) registered by the Exchange to provide face-to-face, one-on-one consumer assistance. Certified Enrollment Entities shall be registered in the In-Person Assistance Program.

In-Person Assistance Program:

The program that involves community groups (Certified Enrollment Entities) in enrolling consumers in the Exchange and allows them to be compensated for successful enrollment of consumers in the Exchange.

In-Person Assister:

A Certified Enrollment Counselor who is affiliated with a Certified Enrollment Entity that is registered in the In-Person Assistance Program.

Certified Enrollment Counselor:

An individual who is certified by a Certified Enrollment Entity to provide face-to-face, one-on-one consumer assistance.

It is important that the Counselors reflect the diverse pool of people who will enroll in the marketplace. Covered California has stated that it seeks to have Counselors and other staff members who mirror “the cultural and linguistic diversity” of the 5.3 million Californians expected to benefit from health care reform, many of whom will obtain insurance through Covered California.² Having more workers of color as Counselors will help ensure that the communities who have disproportionately lacked access to health care can take advantage of this new program.

Roles and responsibilities for Counselors include distributing fair and impartial information concerning enrollment into qualified health plans, facilitating enrollment into qualified health plans available through Covered California, providing referrals to consumer assistance programs, and providing information that is culturally and linguistically appropriate.

Anyone interested in becoming a Counselor must first be hired by an Entity as an Assister, and then become certified and trained to work as a Counselor. Part of the certification process includes passing a fingerprinting and criminal record check. California regulations state that applicants may be disqualified from becoming Counselors if they have committed certain crimes, defined as crimes of “moral turpitude” that are substantially related to the qualifications, functions, or duties of the job of a Counselor. The regulations include a process that allows applicants to appeal any disqualification due to such offenses, and to challenge errors in state and FBI rap sheets.

The regulations regarding counselor fingerprinting and criminal record checks may be found at Title 10, C.C.R., Section 6658, a copy of which is located on Covered California's website at: www.healthexchange.ca.gov/Regulations.

This manual gives guidance on the background check process to applicants for Counselor positions and their advocates, with a particular focus on the appeal process, which is critically important. This manual covers criminal record issues and does not address immigration status or other potential problems. However, applicants should note that Covered California will not check an applicant's Social Security number against Social Security Administration records, will accept municipal identification cards, and will not conduct work authorization verifications. Covered California's inquiry is limited to whether the applicant has a conviction that would disqualify her or him from performing the functions of the Counselor position.

Applicants with any sort of criminal record may well receive an “initial disqualification” (explained further below), but this is **NOT** the final word. Applicants should take advantage of the appeal process to challenge errors in their state and FBI rap sheets and present other information that may allow them to be hired.

Greenlining and NELP welcome feedback and stories of applicants applying for the Enrollment Counselor certification and their experiences with the Covered California background checks.

Contact: **Carla Saporta**, Greenlining Health Policy Director at: carlas@greenlining.org.

I. THE APPLICATION PROCESS

The application period is scheduled to begin in September 2013 and includes the following steps:

STEP 1: Application

Anyone interested in becoming a Certified Enrollment Counselor must apply through a Certified Enrollment Entity registered by Covered California to provide one-on-one consumer assistance. This requires filling out certain administrative forms and a criminal record disclosure form that must be returned to Covered California only. A list of the requirements is included in Appendix A.

STEP 2: Background Check

Covered California conducts state and federal background checks for criminal history. California regulations require fingerprinting for all Counselors, because these workers will have access to confidential, sensitive and personal information. Covered California will pay any costs for furnishing the fingerprints and conducting the searches of all applicants. If an applicant is potentially disqualified due to information uncovered during the background check, Covered California will send a **Notice of Initial Disqualification** to that applicant (see Appendix C for copies of the relevant notices). **The applicant has the right to appeal the initial disqualification prior to a final determination of disqualification.** This is the applicant's opportunity to correct, complete, or explain why a criminal offense on her or his record should not disqualify the individual from being certified.

STEP 3: Training

After an applicant passes the background check, the applicant will go through training provided by Covered California, either instructor-led or computer-based. Counselors must pass the exam administered by Covered California on an annual basis to maintain certification.

STEP 4: Certification

Once an applicant is hired, passes the background check, and is trained, she or he is considered certified to enroll people into the program.

II. THE CRIMINAL BACKGROUND CHECK

Disqualifying Criminal Offenses

An applicant will not be trained as a Counselor if the applicant has a state or federal level conviction for a crime of "moral turpitude that is substantially related to the qualifications, functions, or duties of the job."³ The fingerprints provided by the applicant will be used to obtain a copy of any criminal history you may have. Explanations of the specific disqualifications used by Covered California are provided here.

Tips on Forms

Notice of Initial Disqualification.

If you receive such a notice indicating you may be disqualified due to an offense on your record, it is **NOT FINAL**. Applicants can file an appeal for any potentially disqualifying offenses.

Answering Questions on Criminal Record Disclosure Form.

Applicants **MUST** fill out and submit several forms, including a Criminal Record Disclosure Form that asks questions about prior convictions and administrative actions taken by other agencies. A copy of the form is included in Appendix B and accessible at:

www.healthexchange.ca.gov/documents/CECdisclosure.pdf.

Applicants should answer the questions truthfully and completely to the best of their ability. However, applicants have the option NOT to provide details about any offenses on this form. No details are required during this step of the process. The form indicates on page one, "if desired" applicants may provide information about the "nature and circumstances of the offense." It is also "optional" to explain what happened during the offense or administrative action, as indicated on page two of the form. In general, it is better **NOT** to provide details about the offense unless the applicant feels it is helpful to do. Details may be provided later, during the appeal process, if and when the applicant receives a Notice of Initial Disqualification as mentioned above.

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Tips on Forms

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Applicants should disclose any conviction(s) and administrative action(s) even if it happened a long time ago; it was only a misdemeanor; the applicant did not have to go to court (an attorney went on the applicant's behalf); the applicant did not go to jail or prison, or the sentence was only a fine or probation; the applicant received a certificate of rehabilitation; the conviction was later dismissed, set aside per Penal Code Section 1203.4, or the sentence was suspended. If the criminal background check reveals any conviction(s) or administrative action(s) that an applicant does not include on the Criminal Record Disclosure form, the failure to disclose the information will result in a disqualification.

Fingerprints may need to be taken several times to get a readable print for the Federal Bureau of Investigation (FBI) background check.

Language Access. Covered California will offer translation services to limited English-speaking applicants who receive a Notice of Initial Disqualification. Limited English-speaking applicants should also work with the Certified Enrollment Entities, qualified interpreters, and professional organizations who can help them navigate any language issues.

What is a “conviction”? Under Covered California, a conviction is any plea of guilty or nolo contendere (no contest), a verdict of guilty for any crime, including a felony, misdemeanor, or pending criminal charge, or a verdict resulting in a conviction, or the forfeiture of bail. Covered California considers criminal convictions from another state or federal court the same as criminal convictions in California.

Unfortunately, dismissals and what is sometimes referred to as expungements (in California, certain records can be dismissed under Penal Code Section 1203.4, but they are not technically expunged) do not erase a criminal conviction for purposes of certification. However, evidence that an applicant received a pardon for a criminal conviction either because the conviction was dismissed/expunged under Penal Code Section 1203.4 or 1203.4(a) or that the conviction was overturned **can** be used to appeal the potentially disqualifying offense. Official documentation of the dismissal/expungement should be submitted as part of a request for appeal because it is strong proof that the applicant is rehabilitated and does not pose a security threat (see Section IV).

What is a crime of “moral turpitude”? “Moral turpitude” is a standard that can cover a broad range of criminal offenses and is often difficult to define and understand, even by legal professionals and criminal experts.

Criminal offenses that may be considered crimes of moral turpitude include theft, dishonesty or fraud, the manufacture or distribution of drugs, and certain violent or property offenses, such as assault with a deadly weapon, murder and arson. On the other hand, Covered California has indicated that it will likely not deem driving under the influence (DUI), drug possession, and petty vandalism as a crime of moral turpitude that would disqualify an applicant from the job.

What does “substantially related” mean? Although the category of “moral turpitude” is broad, not all crimes of moral turpitude will disqualify an applicant because any criminal offense on a record must also be “substantially related” to the job of a Counselor. This means that the offense must relate to the job and its duties.

For example, having committed identity theft in the last five years may be considered a crime of moral turpitude that is substantially related to the job of a Counselor, because a Counselor will be viewing personal, sensitive, and private information regarding potential health exchange enrollees. Additionally, a theft crime or murder may be considered a crime of moral turpitude that is substantially related to the job because Counselors will be working very closely with potential enrollees and their families, sometimes in close physical spaces.

On the other hand, a DUI is not necessarily considered a crime of moral turpitude and is not substantially related to the job of a Counselor if driving is not required to perform the job. If driving is required, then a DUI may be considered substantially related. Additionally, a criminal offense that is deemed a crime of moral turpitude yet occurred during an applicant's youth may not be substantially related to the job because of the time that has passed between the offense and the current application. More recent criminal offenses may have more relevance than those that occurred years prior to applying for the job. Applicants should explain these types of circumstances during the appeal process (see Section V).

III. STEPS TO TAKE AFTER RECEIVING AN “INITIAL DISQUALIFICATION” BASED ON THE BACKGROUND CHECK

STEP 1: Covered California Sends Notice of Initial Disqualification

If, after conducting the background check (including reviewing any state or FBI rap sheet), Covered California identifies any disqualifying offenses or other concerns, Covered California will send the applicant a “Notice of Initial Disqualification” (NID) letter. A sample NID letter is included in Appendix C. This letter explains the basis for the initial determination that the applicant may not be eligible for certification due to a potentially disqualifying criminal offense. The letter will indicate the exact disqualifying criminal offense, its location, the date of the offense, and period sentenced to serve. In addition, the notice should include a copy of the individual’s state and FBI rap sheet.

STEP 2: Review Materials Used by Covered California

State law requires that Covered California provide a copy of the state and FBI rap sheet along with the notice indicating that the individual may be disqualified based on her or his criminal record. Be sure to read the information carefully and confirm that it is accurate, complete and current. State and FBI criminal history record databases are known to contain errors and often do not contain complete information, such as the result of an arrest or the dismissal/expungement of a conviction.⁴ The California Department of Justice (DOJ) makes an effort to track down the missing information from other states, but applicants will still need to review items such as the FBI rap sheet carefully to see whether they are inaccurate or incomplete in order to decide whether to request an appeal.

IV. HOW TO REQUEST AN APPEAL

Covered California encourages applicants with disqualifying convictions to request an appeal of the disqualification by showing either that the record is inaccurate or that it is correct but the applicant has been rehabilitated or can provide other mitigating factors. **Applicants should appeal the initial disqualification within 60 days** of the date of receiving an NID letter, by completing the Covered California Request Cover Sheet (found at the end of the NID letter included in Appendix C) and submitting all other necessary documentation.

Tips for the Appeal Process

Applicants must remember that an appeal process is always available, so even if the applicant has a serious offense, **that does not mean she or he is automatically disqualified.** If the applicant knows that she or he has a potentially disqualifying offense that is eligible for appeal, she or he can reduce delays by starting to collect letters of reference from employers, parole and probation officers to support the appeal request (see Section IV).

If an applicant knows that she or he has one of the disqualifying offenses, it is worth looking into available options for dismissing/expunging that conviction as soon as possible, without waiting to go through the appeal process. For state-by-state information on these options regarding dismissals and expungements, consult: <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486>.

A: How to Dispute the Accuracy of the State Rap Sheet or Criminal History Record

If the criminal offense identified in the NID letter is inaccurate or not totally up to date, then be sure to appeal the determination. The process differs depending on whether the information is for a California-based arrest or conviction or a federal or out-of-state arrest or conviction:

If the information listed about the criminal history is accurate, an applicant may also request an appeal disputing the NID because either she or he has been rehabilitated or because of other mitigating factors.

1) For California Arrests or Convictions: If the incomplete, incorrect, or inaccurate information is from a California arrest or conviction, an applicant must contact the state DOJ at (916) 227-3849 to clarify the record. If the record used by Covered California requires a correction, the DOJ will issue a corrected copy of the record to Covered California. An applicant seeking an appeal should follow up with Covered California to confirm its receipt of the record from the DOJ, and the applicant should request a copy of the record provided by the DOJ to Covered California. If the applicant does not receive any response from DOJ within 60 days of the date of the NID letter, the applicant should call Covered California with any updated information. Section V includes contact information. A final decision will be made 60 days after receiving the corrected record from the DOJ.

2) For Federal or Out-of-State Arrests or Convictions: If the incomplete, incorrect, or inaccurate information is from a federal-level or out-of-state conviction, the applicant must provide Covered California with a copy of the official court and law enforcement records, identifying and correcting the incomplete, incorrect, or inaccurate criminal history, if available. If such records are not available, the applicant should inform Covered California and provide all relevant information explaining why the records are not available. Note: **Applicants must file the appeal within 60 days**, even while waiting for records from an out-of-state or federal arrest, and indicate that she or he is attempting to obtain the relevant information.

This is a very important opportunity for applicants with a record to make their case to Covered California that they are, in fact, qualified for the job, and that their record should not disqualify them.

B: How to Present Evidence of Rehabilitation and Other Mitigating Factors

If the information listed about the criminal history is accurate, an applicant may also request an appeal disputing the NID because either she or he has been rehabilitated or because of other mitigating factors. **This is a very important opportunity for applicants with a record to make their case to Covered California that they are, in fact, qualified for the job, and that their record should not disqualify them.**

When considering criminal history information, Covered California will take under consideration several factors, including “the nature of the job held or sought, the age of the offense, the nature and gravity of the offense, and any evidence of rehabilitation including evidence provided by the individual, including but not limited to participation in treatment programs.” Explanations of these factors are provided here:

The “nature of the job held or sought”: This refers to what type of job is being applied for, the required duties it entails, the circumstances under which the job is performed (e.g., the level of supervision, oversight, and interaction with co-workers or vulnerable individuals), and the environment in which the job’s duties are performed (e.g., outdoors, in a warehouse, in a private home).

For example, the job of a Certified Enrollment Counselor may include data entry and viewing personal information of potential health exchange enrollees when determining whether the person qualifies for health care assistance programs. Some details may vary depending on the Certified Enrollment Entity where one is employed.

The “age of the offense mean”: This refers to the date that the offense occurred and how much time has passed. Research shows that the likelihood that a person who has committed a criminal offense will re-offend decreases every year she or he continues to be crime-free. Eventually, the likelihood that a person with a conviction will commit another crime is not much more than the chance that a person of the same age and sex with no criminal record will commit a crime. For this reason, the more time that has passed since the criminal offense, the less likely it is that it will be considered substantially related to the job in question. An applicant should include the number of years that have passed since the commission of the criminal offense on the record, especially if it has been more than several years. Additionally, people who commit their first offense when they are older are less likely to re-offend. For this reason, if an applicant has a recent crime on her or his record, she or he should explain the circumstances of the criminal offense, with any mitigating details, and emphasize that it was a one-time occurrence.

The “nature and gravity of the offense”: This refers to what type of criminal offense occurred and how serious it is. The name of an offense sometimes reveals little about its nature and gravity. For example, a rape conviction may stem from a 19-year-old having consensual sex with his 17-year-old girlfriend. For this reason, it is helpful to explain the circumstances under which the criminal offense occurred.

Additionally, a single criminal conviction is not as damaging as multiple criminal convictions, especially for non-violent offenses, including minor drug offenses. Surveys consistently show that the vast majority of adults have committed at least one act for which they could have received a criminal conviction. Often the difference between someone with one conviction and someone with none is nothing more than luck. Multiple convictions, particularly those from separate incidents, are a much stronger indication of risk that the person will repeat the conduct, especially when one or more of the convictions are relatively recent.

“Evidence of rehabilitation”: Evidence of rehabilitation refers to any written information that an applicant provides to show that her or his behavior since the time of the criminal offense(s) indicates they are no longer a risk. It is extremely helpful to include any and all information that helps show that the applicant has been rehabilitated. This evidence must be provided in a request for appeal.

An applicant must present several items to Covered California within 60 days from the date of the NID letter, including the Covered California Request Cover Sheet (found at the end of the NID letter) indicating the reason for the appeal and written evidence of rehabilitation, and/or other mitigating circumstances related to the specific disqualifying offense(s) listed in the NID letter.

Evidence of rehabilitation refers to any written information that an applicant provides to show that her or his behavior since the time of the criminal offense(s) indicates they are no longer a risk. It is extremely helpful to include any and all information that helps show that the applicant has been rehabilitated. This evidence must be provided in a request for appeal.

The following is a list of examples that an applicant may submit to support the request for appeal. **It is best to submit as many of these documents as possible:**

Tips for Rehabilitation Evidence

Expressions of remorse for criminal activity are generally viewed more favorably than a claim that a criminal offense was the fault of the police, a friend, or someone else.

Length of time since the conviction or release from incarceration is very helpful, especially if several years have passed since the offense(s).

Descriptions of what the applicant has done since the conviction/release from incarceration, particularly employment history, community service activities or other types of rehabilitation will be viewed very favorably, especially if related to honesty, reliability, and not disclosing private information.

- **Official documentation** showing that the applicant has complied with probation guidelines and all terms of the sentence, paid restitution/fines, and, if applicable, evidence of a pardon for the criminal conviction either because the conviction(s) was dismissed/expunged under Penal Code Section 1203.4 or 1203.4a, or the conviction was overturned.

- **Letter of explanation** or other proof that the applicant has no other history of prior discipline for the same or similar type of conduct referenced in the NID letter.

- **Proof of rehabilitation** such as a certificate of participation or completion from a rehabilitation program, drug treatment program, education or training program, etc.

- **Letters of support** from employers, probation/parole officers, clergy, community leaders, elected officials, and family members describing the applicant's good character, reliable performance, and the reasons why the appeal should be granted.

- **Proof from employers** that the applicant has performed the same or similar type of work after the offense(s), with no incidents of criminal conduct on the job. A letter from an employer emphasizing the applicant's dedication and rehabilitation is particularly persuasive (see Appendix D for a sample employer letter).

- **Awards, certificates, recognition or positive performance reviews** received since the conviction.

- **Sentencing report or transcript** that contains favorable information on the circumstances surrounding the crime.

- **Any other information** that would help Covered California staff members determine that the worker has rehabilitated.

After receiving the appeal request, including the documentation, Covered California has 60 days from the date the package is postmarked to make a final determination. If the applicant does not appeal the NID, it will automatically become final 60 days after the date of service of the NID letter, and the applicant will not be permitted to complete training as a Counselor.

V. RESOURCES FOR ADDITIONAL INFORMATION AND ASSISTANCE

Information about becoming a Certified Enrollment Counselor:

888-402-0737 and <http://www.healthexchange.ca.gov/Pages/EnrollmentAssistanceProgram.aspx>

Contact Information for Covered California:

888-975-1142 and <http://www.coveredca.com/>

Information about California Health Benefit Exchange:

<http://www.healthexchange.ca.gov/Pages/Default.aspx>

Address to mail your documents for appeal requests:

HBEX/California Health Benefit Exchange
CEC - Appeals
P.O. Box 1347
Sacramento, CA 95814-9997

Regulations:

The regulations regarding Certified Enrollment Counselor Fingerprinting and Criminal Record Checks may be found at Title 10, C.C.R., Section 6658, a copy of which is located on Covered California's website at: www.healthexchange.ca.gov/Regulations.

Feedback:

Greenlining and NELP welcome feedback and stories of applicants going through the Enrollment Counselor certification and their experiences with the Covered California background checks. Contact **Carla Saporta**, Greenlining Health Policy Director at: carlas@greenlining.org.

Other Background Check Guidance:

Equal Employment Opportunity Commission's *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*:
http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

Lawyers' Committee for Civil Rights Under Law, The Legal Action Center, and National Workrights Institute's *Best Practice Standards: The Proper Use of Criminal Records in Hiring*:
<http://www.scribd.com/doc/142787063/Best-Practices-Standards-The-Proper-Use-of-Criminal-Records-in-Hiring>

APPENDIX A

In-Person Assister Application Requirements

10 CCR § 6654. In-Person Assistance Program Application.

(d) An individual's application to become an In-Person Assister shall contain the following information:

- (1) Name, e-mail address, primary and secondary phone number, and preferred method of communication;
- (2) Identification of the Certified Enrollment Entity that the individual will affiliate with;
- (3) Affiliated Certified Enrollment Entity's primary site location address;
- (4) Site(s) served by the individual;
- (5) Mailing Address of the primary site for the Certified Enrollment Entity;
- (6) An indication of the languages that the Certified Enrollment Counselor can speak;
- (7) An indication of the languages that the Certified Enrollment Counselor can write;
- (8) Disclosure of all criminal convictions and administrative actions taken against the individual;
- (9) A certification by the individual that:
 - i. The individual complies with Section 6666;
 - ii. The individual is a natural person of not less than 18 years of age; and
 - iii. 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 Enrollment Counselor, signature, and date signed;
- (11) For the Authorized Contact from the Certified Enrollment Entity that the individual will be affiliated with, name, signature, and date signed.

APPENDIX B

Criminal Record Disclosure Form



FORM 100

CRIMINAL RECORD DISCLOSURE

INSTRUCTIONS TO CERTIFIED ENROLLMENT ENTITY:

This form is to be completed by all individuals applying to become a Certified Enrollment Counselor and mailed directly to Covered California. Certified Enrollment Entity personnel other than the individual applicant included on this form may not view or collect completed forms.

INSTRUCTIONS TO INDIVIDUALS APPLYING TO BECOME CERTIFIED ENROLLMENT COUNSELORS:

In order to become a Certified Enrollment Counselor, the law requires that you complete a background check (Government Code section 1043) and fill out this form (California Code of Regulations, Title 10, Section 6654(d)(8)). Do NOT return this form to the Certified Enrollment Entity. Filled in forms must be returned to Covered California only.

THIS FORM IS AVAILABLE AT:

www.healthexchange.ca.gov/documents/CECdisclosure.pdf

THIS FORM MUST BE MAILED TO:

Covered CA
PO Box 1199
Sacramento, CA 95814

You MUST disclose convictions and administrative actions even if:

1. It happened a long time ago;
2. It was only a misdemeanor;
3. You didn't have to go to court (your attorney went for you);
4. You did not go to jail or prison or the sentence was only a fine or probation;
5. You received a certificate of rehabilitation;
6. The conviction was later dismissed, set aside per Penal Code Section 1203.4 or the sentence was suspended.

A conviction is any plea of guilty or nolo contendere (no contest) or a verdict of guilty for any crime. Criminal convictions from another State or Federal Court are considered the same as criminal convictions in California. The fingerprints you provide will be used to obtain a copy of any criminal history you may have.

Certified Enrollment Counselors shall report to Covered California any criminal convictions and administrative actions taken by any other agency within 30 calendar days of the date of the conviction or action.

NOTE: IF THE CRIMINAL BACKGROUND CHECK REVEALS ANY CONVICTION(S) OR ADMINISTRATIVE ACTIONS THAT YOU DID NOT DISCLOSE ON THIS FORM, YOUR FAILURE TO DISCLOSE THE CONVICTION(S) OR ADMINISTRATIVE ACTION(S) WILL RESULT IN A DISQUALIFICATION TO BECOME A CERTIFIED ENROLLMENT COUSELOR.

Have you ever been convicted of a crime in California?..... YES NO

Have you ever been convicted of a crime from another state, federal court,
Military proceeding or jurisdiction outside of the U.S.? YES NO

Have you ever had an Administrative Action against you from another
State Agency? YES NO

If you answered YES to any of the above questions, give details on the back side of this form indicating the date and location of each crime or administrative action and, if desired, the nature and circumstances of the offense. If you need additional space or have more than three offenses or administrative actions to declare, you must use additional sheets and mail in all sheets to the address listed above.

If you have any questions about this form, please contact (888) 975-1142.

APPENDIX B

Criminal Record Disclosure Form (Continued)

| | | |
|---|---------------------------|--------|
| WHAT WAS THE FIRST OFFENSE OR ADMINISTRATIVE ACTION? | | |
| WHEN DID IT OCCUR? | WHERE DID IT OCCUR? CITY: | STATE: |
| TELL US WHAT HAPPENED (optional): | | |
| WHAT WAS THE SECOND OFFENSE OR ADMINISTRATIVE ACTION? | | |
| WHEN DID IT OCCUR? | WHERE DID IT OCCUR? CITY: | STATE: |
| TELL US WHAT HAPPENED (optional): | | |
| WHAT WAS THE THIRD OFFENSE OR ADMINISTRATIVE ACTION? | | |
| WHEN DID IT OCCUR? | WHERE DID IT OCCUR? CITY: | STATE: |
| TELL US WHAT HAPPENED (optional): | | |

| | | |
|--|-----|------------------------------|
| I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses and accompanying attachments are true and correct. | | |
| EMPLOYER NAME | | EMPLOYER ID NUMBER (EIN) |
| YOUR NAME (<i>PRINT CLEARLY</i>) | | SOCIAL SECURITY NUMBER |
| YOUR ADDRESS | | CA DRIVERS LICENSE OR I.D. # |
| CITY | ZIP | DATE OF BIRTH |
| SIGNATURE | | DATE |

| |
|---|
| PRIVACY STATEMENT |
| <p>Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code section 1798 et seq.), notice is given for the request of the Social Security Number (SSN) on this form. The California Department of Justice uses a person's SSN as an identifying number. The requested SSN is voluntary. Failure to provide the SSN may delay the processing of this form and the criminal record check.</p> <p>Covered California will create a file concerning your criminal background check that will contain certain documents, including information that you provide. You have the right to access certain records containing your personal information maintained by the Department (Civil Code section 1798 et seq.).</p> <p>NOTE: IMPORTANT INFORMATION: Under the California Public Records Act, Covered California may have to provide copies of some of the records in your file to members of the public who ask for them, including newspaper and television reporters. Covered California must also tell people who ask the name of a Certified Enrollment Entity that has a Certified Enrollment Counselor with a criminal record exemption.</p> |

If you have any questions about this form, please contact (888) 975-1142.

APPENDIX C

Notice of Initial Disqualification



<Date>

<Applicant Name>
<Address>
<City, State Zip>

<ATI #>

NOTICE OF INITIAL DISQUALIFICATION

This Notice of Initial Disqualification serves as Covered California's first determination that your record contains a potentially disqualifying criminal offense and that you may not qualify for training as a Certified Enrollment Counselor (CEC) at this time.

This Initial Disqualification is not final. You have the right to appeal according to the instructions provided in this Notice on how to respond to and appeal this determination. If you do not appeal this determination within 60 days, it will become final and you will not be permitted to complete training to become a Certified Enrollment Counselor.

The regulations regarding the CEC Fingerprinting and Criminal Record Checks may be found at 10 C.C.R. § 6658 a copy of which is located on our website at www.healthexchange.ca.gov/Regulations.

Basis for Initial Disqualification

Covered California will not authorize an applicant for training as a Certified Enrollment Counselor if Covered California determines that the applicant has a conviction that is substantially related to the qualifications, functions, or duties of the job.

After an initial review of your criminal history record, Covered California has determined that you may not qualify to train as a Certified Enrollment Counselor because:

Your criminal history record shows that you were convicted of a disqualifying criminal offense, **[Cite Offense]**, in **[City, State]**, on or about **[Date]**, **[and sentenced to serve [days, months, or years] incarceration.]**

Instructions to Dispute the Accuracy of the Criminal History Record

You have a right to request your records be reviewed. If you have requested that your record be reviewed and corrected, please notify Covered California within 60 days of the date of this notice by completing the Covered California Request Cover Sheet (found at the end of this Notice).

For California Arrest(s) or Conviction(s): Your record can only be corrected by the Department of Justice (DOJ). If the incomplete, incorrect, or inaccurate information is from a California arrest or conviction, you need to contact the DOJ at (916) 227-3849 to clarify the record, pursuant to the procedures set forth in Penal Code Sections 11120-11127. *When calling DOJ please ask for the full name of the person at DOJ who assists you.* If the record used by Covered California requires a

APPENDIX C

Notice of Initial Disqualification (Continued)

correction, the DOJ will issue a corrected copy of your record to Covered California. You may follow up with Covered California to confirm receipt of the record from the Department of Justice and/or request a copy of the record provided by the DOJ. If you do not receive any response from DOJ within 60 days of the date of this notice you can call **Diana Carlson** at **916-539-4099** with any updated information. A final decision will be made 60 days after receiving the corrected record from the DOJ.

For Federal or Out-of-State Arrest(s) or Conviction(s): If the incomplete, incorrect, or inaccurate information is from a federal-level or out-of-state conviction, you must provide Covered California with a copy of the official court and law enforcement records, identifying and correcting the incomplete, incorrect, or inaccurate criminal history, if available. If such records are not available, please inform Covered California and provide all relevant information explaining the circumstances.

Instructions to Present Evidence of Rehabilitation and Other Mitigating Factors

If the information listed above about your criminal history record is correct and accurate, you may also request a written appeal disputing the Initial Disqualification. As part of your *appeal*, you must present several items to Covered California within 60 days from the date of this Notice. First, you must include the Covered California Request Cover Sheet (found at the end of this Notice) indicating the reason for your appeal. You must also present written evidence of rehabilitation and other mitigating circumstances related to the specific disqualifying offense(s) listed above.

To appeal the Initial Disqualification, it is important that you not just include the same information previously provided. Covered California will consider any of the following written evidence of rehabilitation and other mitigating factors:

- A letter in your own words explaining any disqualifying offense, your rehabilitation or any mitigating factors;
- Evidence that you received a pardon for the criminal conviction referenced in this Notice either because the conviction(s) was dismissed/expunged under Penal Code Section 1203.4 or 1203.4a, or the conviction was overturned;
- Proof you have complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against you due to the criminal conviction referenced in this Notice;
- Proof you have performed the same or similar type of work, after the criminal conviction referenced in this Notice, with the same or a different employer, with no incidents of criminal conduct on the job;
- Proof that you have no other history of prior discipline for the same or similar type of conduct referenced in this Notice;
- Proof of participation in education, training, or treatment programs;
- References from employers, probation officers, parole officers, clergy, etc. who can attest to your character and successful record of job performance;
- Proof of rehabilitation or participation in treatment programs; and/or
- Any additional information relevant to demonstrating rehabilitation or other mitigating factors.

After receiving the appeal request including the documentation, Covered California has 60 days from the date your package is post-marked to make a final determination. *If you do not appeal this Initial Disqualification, it will automatically become final 60 days after the date of service of this Notice, and you will not be permitted to complete training as a Certified Enrollment Counselor.*

APPENDIX C

Notice of Initial Disqualification (Continued)

Instructions to Send Correspondence to Covered California

Please include your completed Cover Sheet with all of your other documents

Please mail your documents to:

HBEX/California Health Benefit Exchange
CEC – Appeals
P.O. Box 1347
Sacramento, CA 95814-9997

You are not required to obtain an attorney to appeal this Initial Disqualification, but you may do so at your own expense. If you have any questions please contact **Diana Carlson** at **916-539-4099**.

Instructions to Request Interpreter Services

IMPORTANT: You can get an interpreter at no cost to speak with Covered California staff members to translate this Notice of Initial Disqualification. To reach an interpreter or to ask about the information contained in this notice in your preferred language, call Covered California at **1-888-975-1142**.

Someone can help you who speaks your preferred language, including العربية (Arabic), Հայերեն (Armenian), 中文 (Chinese), ىسراف (Farsi), Hmoob (Hmong), ភាសាខ្មែរ (Khmer), 한국의 Korean, ພາສາລາວ (Lao), Русский (Russian), Español (Spanish), Wikang Tagalog (Tagalog), Tiếng Việt (Vietnamese), and other languages. Please be advised Covered California interpreters do not have access to your file and cannot provide information beyond what is included in this notice.

IMPORTANTE: Puede obtener la ayuda de un intérprete sin costo alguno para hablar con miembros del personal de Covered California para traducir esta Notificación de Descalificación Inicial. Para obtener los servicios de un intérprete o solicitar ayuda en español sobre la información en esta Notificación, llame al número de teléfono de Covered California al **1-888-975-1142**. Un representante de Covered California que habla español puede ayudarle. Se les informa que los intérpretes de Covered California no tienen acceso a la información de su caso y no pueden dar información más de la que ya está incluida en esta Notificación.

PRIVACY STATEMENT

Covered California will create a file concerning your criminal background check that will contain certain documents, including information that you provide. You have the right to access certain records containing your personal information maintained by Covered California (Civil Code section 1798 et seq.).

NOTE: IMPORTANT INFORMATION

Under the California Public Records Act, Covered California may have to provide copies of some of the records in your file to members of the public who ask for them, including newspaper and television reporters. Covered California must also tell people who ask the name of a Certified Enrollment Entity that has a Certified Enrollment Counselor with a criminal record exemption.

APPENDIX C

Notice of Initial Disqualification (Continued)

State of California
Covered California Appeal Request Cover Sheet
CEC Form 110 (08/13)

Covered California
CEC-Appeals

COVERED CALIFORNIA APPEAL REQUEST COVER SHEET

You must include this cover sheet at the front of your request and all additional evidence. To complete this cover sheet, select all of the appeal options below that apply and provide all required information.

1. Reasons for Appealing the Initial Disqualification:

- (A) Incomplete, incorrect, or inaccurate criminal history record
- State criminal record appeal
 - Federal or out of state criminal appeal
- (B) Evidence of rehabilitation and other mitigating circumstances
- State criminal record appeal
 - Federal or out of state criminal appeal

2. Required for State Appeal Request:

If you are requesting an appeal to correct or complete your State record through option 1(A) above, please provide the date you contacted the Department of Justice (DOJ) and the name of the person you talked to at DOJ. This will ensure that your file will not be closed until Covered California receives the corrected information.

| | |
|---------------------|------------------------|
| DATE CONTACTED DOJ: | NAME OF PERSON AT DOJ: |
|---------------------|------------------------|

3. Required for Federal or Out of State Appeal Request:

If you are requesting an appeal to correct or complete a federal or out-of-state record through option 1(A) above, please provide a copy of the official court and law enforcement records, identifying and correcting the incomplete, incorrect, or inaccurate criminal history, if available. If such records are not available, please inform Covered California and provide all relevant information explaining the circumstances.

4. Please mail your documents to:
- HBEX/California Health Benefit Exchange
CEC – Appeals
P.O. Box 1347
Sacramento, CA 95814-9997

Please ensure that all documents provided for Covered California's reconsideration of the Initial Disqualification are attached. Closely following these directions will help ensure expedited processing of your request.

| | |
|--|------------------|
| I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses and all accompanying attachments are true and correct. | |
| NAME | STREET ADDRESS |
| ATI # (found on the front of your notice) | CITY, STATE, ZIP |
| SIGNATURE | DATE |

This form is available at: www.healthexchange.ca.gov

APPENDIX D

Sample Employer Letter in Support of Worker's Appeal Request

(printed on employer's letterhead)

[Date]

[HBEX/California Health Benefit Exchange
CEC - Appeals
P.O. Box 1347
Sacramento, CA 95814-9997]

Re: Notice of Initial Disqualification of [Employee First and Last Name]

To Whom It May Concern:

I am a [job title] with [company name]. I have supervised [employee] since [start date] in [her/his] position as [job title] where [she/he] [brief description of job duties]. During the time I have known [employee], [she/he] has been a model employee. [She/He] is hard working, honest, respectful, courteous, and well-liked by [her/his] co-workers and management.

[She/He] has never been subject to any discipline or reprimands by the company, nor have any complaints been made about [her/him] by the customers [she/he] comes into contact with every day. We do not believe that [she/he] poses any kind of security risk.

[Employee] is the kind of reliable and motivated employee whom we value very much at [company name]. Therefore, we respectfully ask that Covered California withdraw its Initial Disqualification and grant [her/him] certification so that [she/he] can continue working with our company.

Sincerely,

[Name]
[Address]
[Phone Number]

REFERENCES

¹ Retrieved from <http://www.healthexchange.ca.gov/StakeHolders/Documents/Assisters%20Webinar%20FINAL02072013.pdf>.

² Covered California. (Feb. 2013). Covered California Assisters Program: In-Person Assistance and Navigator Webinar, retrieved from <http://www.healthexchange.ca.gov/StakeHolders/Documents/Assisters%20Webinar%20FINAL02072013.pdf>.

³ 10 C.C.R. § 6456(e)(1)

⁴ U.S. Dept. of Justice, Office of the Attorney General, *The Attorney General's Report on Criminal History Background Checks* (June 2006) at 3, available at http://www.justice.gov/olp/ag_bgchecks_report.pdf [hereinafter *Attorney General's Report*]. The 2006 report is the latest information that is publicly available regarding the percent of arrest records in the FBI database missing disposition information. Neither the FBI nor the Attorney General have provided an updated statistic for the percent of arrest records maintained in the Interstate Identification Index that lacks final disposition information since the 2006 Attorney General's report. In 2011, in response to a congressional inquiry by Senator Al Franken, the FBI reported that it “does not collect information regarding the number of criminal history record checks that contain incomplete state criminal history record information.” The FBI further stated that it does not collect information responsive to Senator Franken’s requests for information regarding incomplete FBI records for noncriminal justice purposes and employment and licensing purposes. U.S. Dept. of Justice, Office of Legislative Affairs, *Responses of the Federal Bureau of Investigation to Questions for the Record Arising from the March 30, 2011 Hearing Before the Senate Committee on the Judiciary Regarding FBI Oversight* (Dec. 6, 2011) at 8-9 [hereinafter *Questions for the Record*]. In June 2013, NELP submitted a Freedom of Information Act (FOIA) Request formally requesting the percent of arrest records missing disposition information. In response, the FBI stated that the FOIA “does not require agencies to answer inquiries, create records, conduct research, or draw conclusions.” Because the FBI does not maintain this statistic they were unable to provide it to NELP in response to the FOIA request. David M. Hardy, Section Chief, Record/Information Dissemination Section, Records Management Division, Federal Bureau of Investigation (July 1, 2013), letter to Madeline Neighly. Letter on file with NELP. See U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2010*, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf> (providing data on state criminal history repositories and percent of arrests in database that have final dispositions recorded).

ACKNOWLEDGEMENTS

About the Greenlining Institute

Founded in 1993, **The Greenlining Institute** is a policy, research, organizing, and leadership institute working for racial and economic justice. We work to bring the American Dream within reach of all, regardless of race or income. In a nation where people of color will make up the majority of our population by 2040, we believe that America will prosper only if communities of color prosper.

About the National Employment Law Project

The **National Employment Law Project** is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing. Through its Second Chance Labor Project, NELP promotes the employment rights of people with criminal records. For more about NELP, please visit www.nelp.org.

About the Authors

Noemí Gallardo

At Greenlining, Noemí Gallardo advocates for language access in the energy efficiency sector and is helping ensure that people with criminal records have fair access to jobs in the energy and health fields. Recently, she advocated for fair background checks in the energy efficiency sector negotiating with major utility companies, and advocated for less restrictive background check requirements in the health care field addressing Covered California positions. In both instances, our programmatic work uniquely positioned Greenlining to impact policies to reduce discrimination, and create gainful employment opportunities for people with criminal records.

Noemí recently completed a legal fellowship at Greenlining and is now serving as a law and policy consultant for our health program. She holds a B.A. from Pepperdine University in International Studies and Spanish; a Master of Public Policy from the University of Southern California with a concentration in urban and social policy; and a J.D. from UC Hastings with an emphasis in local government and civil litigation. Noemí has served the immigrant and limited-English proficient community working as a California Certified Administrative Hearings Spanish Interpreter through her self-established business called Voz Interpreting. She has also educated local government officials and the courts about how to improve language access through several published articles she co-authored. Noemí served in numerous leadership positions, including president of her law school and co-chair of the La Raza Law Students Association.

Maurice Emsellem

Maurice Emsellem is the National Employment Law Project's (NELP) Director of the Access and Opportunity Program. He specializes in government systems of support for unemployed workers and the employment rights of people with criminal records. Maurice and his colleagues at NELP have co-authored several publications, including scholarly articles that appeared in the *Stanford Law & Policy Review* and the *University of Michigan Journal of Law Reform*. He was a Soros Justice Senior Fellow (2005), and a Visiting Public Interest Mentor at Stanford Law School (2003). Maurice received his B.A. in 1982 from the University of Michigan and his J.D. in 1986 from Northeastern University School of Law.

Carla Saporta

Before joining Greenlining as Health Policy Director, Carla Saporta educated and mobilized community members on policy issues and worked with policymakers to create and implement policy that benefits the community. She currently represents the community's interest as an advisory member on Covered California's Small Business Health Options Program Advisory Group.

In her role at Greenlining, Carla leads advocacy efforts to ensure that implementation of the Affordable Care Act will benefit communities of color. This entails working with policymakers to pass and implement state reforms, increasing health workforce diversity, increasing access to care for boys and young men of color, and finding solutions to covering those who will not benefit from the ACA. Carla also oversees Greenlining's community benefit advocacy, which focuses on increasing funding for upstream programs that improve public health. Carla received her B.A. from Occidental College and her Master of Public Health at Portland State University through the Oregon Master of Public Health Program.

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