



MNsure Certified Application Counselor Services Agreement Attachment A State of Minnesota

1. MNsure Duties

A. Application Counselor Duties

- (a) Develop and administer a certification and recertification training program and maintain documentation of training completion;
- (b) Provide technical assistance to the Certified Application Counselor ("CAC");
- (c) Provide MNsure's policies and procedures to the CAC as new or updated policies and procedures are released;
- (d) Provide current versions of MNsure marketing and communications materials;
- (e) Monitor the CAC utilizing qualitative and quantitative evaluation tools; and
- (f) Provide notification within ten (10) business days of any changes to Minnesota Rules Chapter 7700.

B. Information Sharing Duties

- (a) Only release or disclose information which it is authorized by law or regulation to share with or disclose to the CAC;
- (b) Obtain any required consents, authorizations, or other permissions that may be necessary for it to share information with or disclose information to the CAC;
- (c) Notify the CAC of limitations, restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect the CAC's use or disclosure of protected information;
- (d) Not request the CAC use or disclose protected information in any manner that would not be permitted under law if done by MNsure;
- (e) Comply with all the CAC information security policies and standards as applicable to MNsure in accordance with Minnesota Statutes section 16E.03, subdivision 7; and
- (f) Identify the classification of any data shared with the CAC, and specify any applicable laws, rules, and regulations and any unique handling requirements.

2. CAC Duties. The CAC shall:

A. Application Counselor Duties

- (a) Facilitate enrollment in health plans offered through MNsure by providing the following services:
1. Inform consumers of health insurance options and the value of coverage, in addition to reviewing insurance options available through MNsure;
 2. Inform individuals of application processes, required documentation, mandated requirements, and any exemption criteria;
 3. Provide information and referrals to small employers on enrollment in the Small Business Health Options Program (SHOP) and any tax provisions, including credits and penalties, potentially affecting small employers;
 4. Gauge eligibility through the Minnesota Eligibility Technology System (“METS”), the IT system used by the State for health care eligibility determinations, and provide referrals to appropriate support services or programs for further assistance, such as free health clinics;
 5. Provide nonmedical referrals, to the extent possible, according to referral guidance provided through certification;
 6. Explain program eligibility rules and provide application assistance for Medicaid/CHIP, premium tax credits, cost-sharing reductions, and qualified health plans;
 7. Assist with the entry of information into enrollment tools and resources, including final submission of information;
 8. Advise American Indians and Alaskan Natives on benefits specified by the Affordable Care Act, such as cost-sharing reductions, income exclusions, special open enrollment periods, and exemption from the minimum health care coverage mandate;
 9. Answer questions regarding the submission of eligibility and enrollment verification documentation;
 10. Facilitate referrals to insurance producers for individuals and families enrolling in qualified health plans through MNsure and request plan enrollment assistance beyond the scope of CACs;
 11. Facilitate referrals to community organizations, counties, or other appropriate nonprofit or public entities when individuals and families require technical expertise and assistance beyond the scope of the CAC;
 12. Explain, discuss, and interpret coverage and policies with consumers to facilitate plan selection; and
 13. Assist with plan comparisons based upon individual priorities, including but not limited to metal tier levels, quality ranges, providers including, but not limited to, specialty care, pharmaceutical, dental and eye care, and total cost estimation including utilization and health status.
- (b) Provide oversight of all of the CAC’s employees, agents and volunteers engaged in this process, ensuring that they:

1. Successfully complete the certification program prior to providing CAC services under this Agreement, including training and background check completion;
 2. Successfully complete the annual recertification process required for continuing to provide CAC services under this Agreement;
 3. Are informed of and comply with all procedures as outlined in MNSure's policy and procedures; and
 4. Are informed of and comply with the information privacy and security requirements in Attachment A, sections 2 and 3, of this Agreement.
- (c) Provide to MNSure a roster of all employees, agents and volunteers who require certification to perform the services outlined in this Agreement and provide immediate notification to MNSure when each certified individual is terminated, separates, or otherwise ceases to perform services under this Agreement;
- (d) Disclose to MNSure all affiliations that may present a direct, indirect, or perceived conflict of interest which includes submission of a written attestation that the CAC is not a health insurance issuer or issuer of stop loss insurance, a subsidiary of a health insurance issuer or issuer of stop loss insurance, or an association that includes members of, or lobbies on behalf of, the insurance industry. The CAC remains under a continuing obligation to notify and disclose a potential conflict of interest at any time it may arise;
- (e) If none exists, create and enforce a policy that no compensation, benefit or gift is received directly or indirectly by the CAC, its employees, subcontractors, agents and volunteers from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a qualified health plan or a nonqualified health plan as specified in the 45 C.F.R. § 155.225(g)(2);
- (f) Maintain expertise in eligibility, enrollment, and program specifications;
- (g) Provide information and services in a fair, accurate, and impartial manner;
- (h) 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, or any other appropriate state agency or agencies for any enrollee with a grievance, complaint, or question regarding an enrollee's health plan, coverage, or a determination under such plan or coverage;
- (i) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by MNSure including individuals with limited English proficiency; and ensure accessibility and usability of tools and functions for individuals with limited English proficiency or disabilities according to the Americans with Disabilities Act and section 504 of the Rehabilitation Act and as outlined in MNSure policies and procedures;
- (j) Comply with Title VI of the Civil Rights Act of 1964, section 1557 of the Americans with Disabilities Act, and other applicable federal laws and regulations;
- (k) Report any actual or suspected instances of fraudulent activity discovered in the course of conducting business with MNSure to the MNSure fraud and ethics anonymous hotline 1-844-466-7873 or email address (mnsurecompliancehotline@mnsure.org) immediately and in no case later than seven (7) business days from discovery;
- (l) Use the most current versions of State-provided applications, forms and outreach materials, and adhere to the publicity guidelines in Attachment A, section 9 for distribution of any outreach or other materials not provided by MNSure;
- (m) Ensure that consumers are informed, prior to receiving assistance, of the functions and

responsibilities of CACs, including that CACs are not acting as tax advisors or attorneys when providing assistance as a CAC and cannot provide tax or legal advice within their capacity as CACs in accordance with 45 C.F.R. § 155.225(f)(1).

- (n) Provide authorization in a form and manner as determined by MNsure prior to obtaining access to an applicant's personally identifiable information, and maintain a record of the authorization provided in a form and manner as determined by MNsure in accordance with 45 C.F.R. § 155.225(f)(2).
- (o) Provide MNsure data and information regarding the number and performance of its CACs and regarding the consumer assistance provided by its CACs, upon request, in the form and manner specified by MNsure in accordance with 45 C.F.R. § 155.225(b)(1)(iii).
- (p) The CAC is prohibited from performing the following activities:
 - 1. Performance of services which require licensure under Minnesota Statutes, chapter 60K;
 - 2. Charging of any applicant or enrollee, or requesting or receiving any form of remuneration from or on behalf of an individual application or enrollee, for application or other assistance related to duties as a CAC in accordance with 45 C.F.R. § 155.225(g)(1);
 - 3. Providing gifts of any value as an inducement for enrollment to an applicant or potential enrollee in accordance with 45 C.F.R. § 155.225(g)(4); and,
 - 4. Soliciting any consumer for application or enrollment assistance by going door-to-door, using an automatic dialing system, or through other unsolicited means of direct contract, unless the individual has a pre-existing relationship with the individual CAC or CAC entity in accordance with 45 C.F.R. §§ 155.225(g)(5), 155.225(g)(6).

B. Information Sharing Duties

- (a) Be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of MNsure. This responsibility includes applying appropriate screening measures and monitoring to protect information privacy, ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed in Attachment A, section 3.1, and having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected information at rest and in transit that it creates, receives, maintains, or transmits on behalf of MNsure.
- (b) Comply with the "minimum necessary" access and disclosure rule set forth in the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minn. Stat. § 13.05 subd. 3.
- (c) Report to MNsure any privacy or security incident regarding the information of which it becomes aware. For purposes of this Contract, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on Contractor's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above when using Contractor equipment and infrastructure; so long as such incidents do not result in unauthorized access, use or disclosure of MNsure's information. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or federal privacy laws or regulations. This includes, but is not limited to, improper and/or unauthorized use or

disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be made in writing and submitted to MNsure immediately and in no case more than 2 days after learning of such incident.

- (d) Unless provided for otherwise in this Contract, if the Community Assistance Partner receives a request to release the information referred to in this Clause, the Community Assistance Partners must immediately notify MNsure. MNsure will give the Community Assistance Partners instructions concerning the release of the data to the requesting party before the data is released.
- (e) Not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this Contract other than as permitted or required by this Contract or as required by law, either during the period of this Contract or hereafter.
- (f) In accordance with Minn. Stat. § 62V.06, subd. 9, the Community Assistance Partner may not sell any data collected, created, or maintained by the MNsure, regardless of its classification, for commercial or any other purposes.
- (g) Consistent with this Contract, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- (h) To the extent that any protected information is PHI:
 - 1. Comply with the minimum necessary rule and limit the collection, creation, use, maintenance, and disclosure of PHI to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” See 45 C.F.R. §§ 164.502(b) and 164.514(d).
 - 2. Report any breach or security incident pursuant to the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E). This report must be in writing and sent to MNsure not more than 2 days after learning of such non-permitted use or disclosure. Such a report will at least:
 - A. Identify the nature of the non-permitted use or disclosure;
 - B. Identify the PHI used or disclosed;
 - C. Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure;
 - D. Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures;
 - E. Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and
 - F. Provide such other information, including any written documentation, as MNsure may reasonably request.
 - G. Provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media, and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with the State.
 - 3. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

4. Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minn. Stat. § 13.04, subd. 3, and 45 C.F.R. § 164.524;
5. Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to the State in order for the State to satisfy its obligations under Minn. Stat. § 13.04, subd. 3 and 45 C.F.R. §164.526;
6. Document such disclosures of PHI and information related to such disclosures as would be required for MNsure to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Maintain and make available no later than fifteen (15) days after receipt of request from the State, the information required to provide an accounting of disclosures to the State as necessary to satisfy the State's obligations under 45 C.F.R. §164.528, or upon request from State respond directly to individual's request for an accounting of disclosures;
7. To the extent the business associate is to carry out one or more of the State's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the State in the performance of such obligation(s); and
8. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
9. The Community Assistance Partner may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by State.
10. Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. Develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws.
11. Designate a privacy official to be responsible for the development and implementation of its policies and procedures as required by 45 C.F.R. Part 164, Subpart E.
 - (i) To the extent that any protected information is FTI, ensure that this data only be used as authorized under the Patient Protection and Affordable Care Act and the Internal Revenue Code, 26 U.S.C. § 6103(C), and IRS Publication 1075, and restrict from use for any other purpose.
 - (j) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Contract.
 - (k) Report and mitigate any fraudulent activities;
 - (l) Comply with any and all other applicable provisions of the Final Exchange Privacy Rule at 45 C.F.R. § 155.260, including future amendments thereto.

3. Information Privacy and Security

3.1 Information Covered by this Agreement. Under this Agreement, MNsure will be sharing with the CAC one or more types of private information, collectively referred to as "protected information," concerning individuals, employers, and/or employees participating in MNsure. "Protected information," for purposes of this Agreement, may include any or all of the following:

- a. Private data (as defined in Minn. Stat. § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. Chapter 13;
- b. Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act (“HIPAA”), 45 C.F.R. § 160.103);
- c. Federal Tax Information (“FTI”) (as defined by IRC § 6103);
- d. Records (as defined by the Privacy Act of 1974, 5 U.S.C. § 552a); and
- e. Other data subject to applicable State and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

3.2 Disposition of Data upon Completion, Expiration, or Agreement Termination. Upon completion, expiration, or termination of this Contract, and in the absence of a new data sharing agreement Contractor will return to MNsure or destroy all protected information received or created on behalf of MNsure for purposes associated with this Contract. A written certification of destruction or return to the States’ Authorized Representative is required. Contractor will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if Contractor is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Contract, Contractor will extend the protections of this Contract to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as Contractor maintains the information.

3.3. Sanctions. In addition to acknowledging and accepting the terms set forth in Attachment A, section 6, “Indemnification” relating to liability, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

The State may inspect, assess, and audit a Consumer Assistance Partner’s data security and privacy practices at any time. Minn. R. 7700.0080. If there is a finding of any willful violation of the MGDPA (Minnesota Statutes, Chapter 13), the State must immediately and permanently revoke authorization of Certified Consumer Assistance Partners pursuant to Minnesota Statutes, section 62V.06.

3.4. Interpretation. Any ambiguity in this Contract shall be resolved to permit the parties to comply with HIPAA, MGDPA, and other applicable state and federal statutes, rules, and regulations affecting the collection, storage, use and dissemination of private or confidential information.

3.5. DHS Information Security Policy. Additional information regarding the handling and, as appropriate, destruction (upon expiration or termination of a contract or agreement) of protected information obtained from State is available at <https://edocs.dhs.state.mn.us/lfsrver/Public/DHS-4683-ENG>.

3.6. Effect of statutory amendments or rule changes. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 3 of this section or in any other applicable law. However, any requirement in this Agreement or in the DHS Information Security Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws means the requirement as it is currently in effect, including any applicable amendment(s), regardless of whether the Agreement has been amended to reflect the amendments(s).

4. Third Party Beneficiary

Both parties agree that the Minnesota Department of Human Services (“DHS”) shall be, and is hereby, named as an express third-party beneficiary of this contract, with full rights as such. The Parties specifically acknowledge and agree that DHS has standing to and may take any appropriate action for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of this Contract. DHS is entitled to and may recover reasonable attorney’s fees and costs and disbursements associated with any action taken under this section that is successfully maintained.

5. Amendments

Except where otherwise addressed in section 3.6 of Attachment A and within this section 5, any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors. The State reserves the right to modify Attachment A without amendment as necessary to comply with federal or state law or regulation not addressed within section 3.6 of Attachment A. The State must provide the CAC notice of the need to update Attachment A within a reasonable time prior to the update being completed. All necessary updates will be posted on the MNSure.org website.

6. Indemnification

The CAC agrees to indemnify, save and hold MNSure, its representatives and employees harmless from any and all claims or causes of action, including all attorneys’ fees incurred by MNSure, arising from the performance of this Agreement by the CAC or the CAC’s agents or employees. This clause will not be construed to bar any legal remedies that the CAC may have for MNSure’s failure to fulfill its obligations pursuant to this contract.

7. State Audits

The CAC’s books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by MNSure and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement. The CAC will make its staff available to MNSure during audits and allow state observation of CAC’s MNSure-related activities and training.

8. Workers Compensation

The CAC’s employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State’s obligation or responsibility.

9. Publicity and Endorsement

9.1 Publicity. The CAC may use MNSure and State-created materials. MNSure provides its express approval for CAC to use the MNSure Partner Badge in relation to activities arising out of the Agreement and in accordance with MNSure’s policies and procedures. The MNSure Partner Badge is provided to the CAC by MNSure upon request.

9.2 Endorsement. The State will publicly identify the CAC as a MNSure Community Assistance Partner, but does not endorse CAC’s products or services. CAC must not claim any endorsement by the State.

10. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11. Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number. Identification numbers may be used in the enforcement of federal and state

laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

12. Termination

Either party may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party.

13. Counterparts

This contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.