



MNSure Certified Application Counselor Services Agreement Attachment A

State of Minnesota

1. MNSure Duties

1.1 Certified Application Counselor (CAC) Program Duties. MNSure shall:

- (a) Develop and administer a certification and recertification training program and maintain documentation of certification and recertification completion;
- (b) Provide technical assistance to the 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;
- (f) If applicable, evaluate the CAC's performance according to OGM 08-13; and
- (g) Provide notification within ten (10) business days of any proposed and final changes to Minnesota Rules, chapter 7700.

1.2 Information Sharing Duties. MNSure shall:

- (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 Minn. Stat. § 16E.03, subd. 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. Certified Application Counselor Duties.

2.1 Duties. The CAC, who is not a State employee, shall:

2.1.1 Facilitate enrollment in health plans offered through MNSure by providing the following services:

- (a) Inform consumers of health insurance programs and the value of coverage, in addition to reviewing insurance options available through MNSure;
- (b) Inform individuals of application and renewal processes, required documentation, mandated requirements, and any exemption criteria;
- (c) Gauge eligibility through the Minnesota Eligibility Technology System (METS) by assisting

- applicants with the entry of information;
- (d) Provide referrals to such applicants to appropriate support services or programs for further assistance, such as free health clinics;
- (e) Explain program eligibility rules to applicants and provide them application assistance for Medicaid/Childrens' Health Insurance Plan (CHIP), MinnesotaCare, premium tax credits, cost-sharing reductions, and qualified health plans;
- (f) Assist consumers in complying with their responsibility to report changes that could impact program eligibility, including assisting with the renewal process;
- (g) Provide nonmedical referrals, to the extent possible, according to MNSure referral guidance;
- (h) 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 this Agreement;
- (i) 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; and
- (j) Answer questions regarding the submission of eligibility verification documentation; and

2.1.2 Facilitate the enrollment in qualified health plans (QHPs) offered through MNSure for individual eligible to purchase a QHP by providing the following services:

- (a) Explain, discuss, and interpret coverage and policies with consumers to facilitate plan selection;
- (b) 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;
- (c) Assist with the entry of information into enrollment tools and resources, including final submission of information;
- (d) Facilitate referrals to brokers for individuals and families enrolling in QHPs through MNSure and requesting plan enrollment assistance beyond the scope of this Agreement; and
- (e) If available, 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.

2.2 Physical Presence. The CAC will maintain a physical presence in the MNSure service area so that face-to-face assistance can be provided to applicants and enrollees.

2.3 Employee Roster. The CAC will maintain a roster of all employees, agents, and volunteers who require certification to perform the services outlined in this Agreement in the Agency Management Program (AMP). The CAC will notify MNSure without delay and no later than (5) business days when an individual on the CAC's roster is terminated, separates, or otherwise ceases to perform services under this Agreement by updating their roster in AMP.

2.4 Oversight. The CAC will provide oversight of all of the CAC's employees, agents, and volunteers engaged in this process, ensuring that they:

- (a) Successfully complete all certification requirements prior to providing services under this Agreement;
- (b) Complete any background check or background study process in the time frame and manner prescribed by MNSure or the Department of Human Services (this may

- include an additional background study for currently certified navigators, in-person assisters, and certified application counselors upon State's determination that an additional background study using the online NETStudy 2.0 system operated by the Department of Human Services is required);
- (c) Successfully complete the annual recertification process required for continuing to provide services under this Agreement;
 - (d) Are informed of and comply with all procedures as outlined in MNSure's policies and procedures; and
 - (e) Are informed of and comply with all provisions of this Agreement including the information privacy and security requirements in Attachment B.

2.4.1 If additional costs are incurred due to a background check or background study process that is not timely completed by the CAC's employees, agents, or volunteers after such background check or background study process has been initiated, the CAC will be responsible for paying for the costs associated with any subsequent or additional background study process for that employee, agent, or volunteer (i.e., if a first background study is not timely completed and another background study is required).

- (a) State will not pay any additional costs for a background check or background study process if the first background study cannot be completed due to any errors in the application submitted by the background study subject in the NETStudy 2.0 system.
- (b) The State will not pay any additional fees for fingerprinting and photographing that is not completed using the coupon code supplied by MNSure at a MNSure or Department of Human Services approved fingerprint and photo service location in Minnesota.

2.5 Conflict of Interest. The CAC will attest to, follow, and maintain the CAC's own written conflict of interest policy and procedures that complies with applicable provisions under 45 C.F.R. § 155.225, Minn. R. 7700, and [State of Minnesota OGM Policy 08-01](#). The CAC certifies that it does not have any conflicts of interest related to this Agreement as applicable under 45 C.F.R. § 155.225, Minn. R., chapter 7700, and [State of Minnesota OGM Policy 08-01](#).

2.6 Disclosure.

- (a) The CAC will disclose to MNSure all affiliations that may present a conflict of interest or a potential conflict of interest (including any individual conflict of interest or organizational conflict of interest). The CAC remains under a continuing obligation to notify MNSure's Authorized Representative of the Agreement and disclose a potential conflict of interest at any time it may arise but in no case later than five (5) business days of discovery of the conflict.
- (b) When adding a new individual to the CAC's roster in the AMP, the CAC will:
 - i. review the CAC's conflict of interest policy and this Agreement including Attachments with the new individual; and
 - ii. complete a Conflict of Interest Review according to this Agreement, [State of Minnesota OGM Policy 08-01](#), 45 C.F.R. § 155.225, Minn. R. 7700, and other applicable law to ensure that the new individual does not have any conflicts of interest related to this Agreement. The CAC shall immediately notify State if a conflict of interest arises but in no case later than five (5) business days of discovery of the conflict.

2.7 No compensation policy. The CAC will maintain 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 45 C.F.R. § 155.225(g)(2).

- 2.8** The CAC will maintain expertise in eligibility, enrollment, and program specifications.
- 2.9** The CAC will 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.
- 2.10** The CAC will 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.
- 2.11** The CAC will provide information and services in a fair, accurate and impartial manner.
- 2.12** The CAC will 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.
- 2.13** The CAC will 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.
- 2.14** The CAC will use the most current versions of State-provided applications, forms and outreach materials, and adhere to the publicity guidelines in Section 11 of this Attachment for distribution of any outreach or other materials not provided by MNSure.
- 2.15** The CAC will ensure that consumers are informed, prior to receiving assistance, of the functions and responsibilities of certified application counselors (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).
- 2.16** The CAC will 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).
- 2.17** The CAC will 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).
- 2.18** If applicable, the CAC will submit one progress report each fiscal year in a format and manner as determined by the State according to [OGM 08-09](#).
- 2.19** If applicable, the CAC will cooperate and provide any documentation necessary to facilitate

the State's evaluation of the CAC's performance, if applicable, according to [OGM 08-13](#);

2.20 The CAC will comply with applicable grants management policies and procedures set forth through Minn. Stat. § 16B.97, subd. 4(a)(1) and applicable provisions in [Office of Grant Management Policies](#); Minnesota Statutes, chapter 16B; Minnesota Rules, chapter 7700; and 45 C.F.R. § 155.225.

2.21 The CAC is prohibited from performing the following activities:

- (a) Performance of services which require licensure under Minnesota Statutes, chapter 60K;
- (b) Charging of any applicant or enrollee for application or other assistance related to duties as a CAC in accordance with 45 C.F.R. § 155.225(g)(1);
- (c) 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);
- (d) Soliciting any consumer for application or enrollment assistance by initiating any telephone call, going door-to-door, using an automatic dialing system or an artificial or prerecorded voice, or through other unsolicited means of direct contact, 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)(6); and
- (e) Providing choice counseling or enrollment services as defined in 42 C.F.R. § 438.810 to individuals who have been determined eligible for Medical Assistance or MinnesotaCare.

3. Time. The CAC must comply with all the time requirements described in this grant contract agreement. In the performance of this grant contract agreement, time is of the essence.

4. Contracting and Bidding Requirements

According to [OGM 08-04](#), if applicable,

- (a) Any services and/or materials that are expected to cost \$100,000 or more must undergo a formal notice and bidding process.
- (b) Services and/or materials that are expected to cost between \$25,000 and \$99,999 must be competitively awarded based on a minimum of three (3) verbal quotes or bids.
- (c) Services and/or materials that are expected to cost between \$10,000 and \$24,999 must be competitively awarded based on a minimum of two (2) verbal quotes or bids or awarded to a targeted vendor.
- (d) The grantee must take all necessary affirmative steps to assure that targeted vendors from businesses with active certifications through these entities are used when possible:
 - i. [State Department of Administration's Certified Targeted Group, Economically Disadvantaged and Veteran-Owned Vendor List](#)
 - ii. Metropolitan Council Underutilized Business Program: MCUB: [Metropolitan Council Underutilized Business Program](#)
 - iii. Small Business Certification Program through Hennepin County, Ramsey County, and City of St. Paul: [Central Certification Directory](#)
- (e) The grantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

- (f) The grantee must maintain support documentation of the purchasing or bidding process used to contract services in their financial records, including support documentation justifying a single/sole source bid, if applicable.
- (g) Notwithstanding (a) - (d) above, the State may waive bidding process requirements when it is determined there is only one legitimate or practical source for such materials or services and that grantee has established a fair and reasonable price.
- (h) For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.
- (i) The grantee must not contract with vendors who are suspended or debarred in MN: [Suspended/Debarred Vendors / Minnesota Office of State Procurement](#).

5. 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 Agreement, 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 Agreement. 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.

6. Assignment, Amendments, Waiver, and Grant Contract Agreement Complete

6.1 Assignment

The CAC shall neither assign nor transfer any rights or obligations under this grant contract agreement without the prior written consent of the State, approved by the same parties who executed and approved this grant contract agreement, or their successors in office.

6.2 Amendments

Except where otherwise addressed in Clause 2.1(b) of Attachment B and within this Clause, any amendment to this Agreement 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 Agreement, or their successors. The State reserves the right to modify Attachment A and/or Attachment B without amendment as necessary to comply with federal or state law or regulation not addressed within Clause 2.1(b) of Attachment B. The State must provide the CAC notice of the need to update Attachment A and/or Attachment B within a reasonable time prior to the update being completed. All necessary updates will be posted on the MNSure.org website.

6.3 Waiver

If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State’s right to enforce it.

6.4 Grant Contract Complete

This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

7. Indemnification

7.1 In the performance of this Agreement, the Indemnifying Party must indemnify, save, and hold harmless MNSure, DHS, and the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by MNSure, or DHS, or the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

7.2 The Indemnifying Party is defined to include the CAC, CAC's reseller, any third party that has a business relationship with the CAC, or CAC's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of MNSure's, or DHS's, or the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Agreement.

7.3 Nothing within this Agreement, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Agreement, and to all terms subsequently added, without regard to order of precedence.

7.4 MNSure's and DHS' liability, if any, are governed by Minn. Stat. § 3.736.

8. State Audits

Under Minn. Stat. § 16B.98, subd. 8, the CAC's books, records, documents, and accounting procedures and practices of the CAC or other party relevant to this Agreement or transaction are subject to examination by Commissioner of Administration, by the State, and/or the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

Upon request, the CAC must provide the State with any documentation necessary to maintain certification requirements.

The CAC will make its staff available to the State during audits and allow state observation of the CAC's MNSure-related activities and training.

9. Intellectual Property

9.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

- 9.1.1 "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the CAC, its employees, agents, or subcontractors, in the performance of this Contract.
- 9.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

9.1.3 “Works” means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the CAC, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. “Works” includes Documents.

9.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the CAC upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The CAC assigns all right, title, and interest it may have in the Works and the Documents to the State. The CAC must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

9.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The CAC grants the State a perpetual, irrevocable, non-exclusive, royalty free license for the CAC’s Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

9.4 Obligations.

9.4.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the CAC, including its employees and subcontractors, in the performance of this Contract, the CAC will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the State’s Authorized Representative with complete information and/or disclosure thereon.

9.4.2 Representation. The CAC must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither the CAC nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The CAC represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

9.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the CAC will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the CAC’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The CAC will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the CAC’s or the State’s opinion is likely to arise, the CAC must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

10. Workers Compensation

The CAC certifies that it is in compliance with Minn. Stat. §176.181, subd. 2, pertaining to workers' compensation insurance coverage. 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 and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

If during the course of the Agreement the CAC becomes eligible for Workers' Compensation, the CAC must comply with the Workers' Compensation Insurance requirements herein.

11. Publicity and Endorsement

11.1 Publicity. The CAC may use MNSure and State-created materials. MNSure provides its express approval for the 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.

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

12. Governing Law, Jurisdiction, and Venue

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

13. Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

14. Termination

14.1 Either party may terminate this Agreement at any time, without cause, upon thirty (30) days' written notice to the other party.

14.2 The State may immediately terminate this grant contract agreement if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota.

14.3 The Commissioner of Administration may immediately and unilaterally cancel this grant contract agreement if further performance under the agreement would not serve agency purposes or is not in the best interest of the State.

15. Counterparts

This Agreement 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.