



2023 Agent and Broker Summit

Marketplace Compliance and Agent/Broker Regulations

Understanding Key CMS Rules and Regulations to Maintain Marketplace Compliance

**Centers for Medicare & Medicaid Services (CMS)
Center for Consumer Information & Insurance Oversight (CCIIO)**

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Disclaimer

The information provided in this presentation is intended only as a general, informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, and formal policy guidance that it is based upon. This presentation summarizes current policy and operations as of the date it was presented. Links to certain source documents have been provided for your reference. We encourage audience members to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information about the requirements that apply to them. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

This document generally is not intended for use in the State-based Marketplaces (SBMs) that do not use HealthCare.gov for eligibility and enrollment. Please review the guidance on our Agent and Broker Resources webpage (<http://go.cms.gov/CCIOAB>) and Marketplace.CMS.gov to learn more.

Unless indicated otherwise, the general references to "Marketplace" in the presentation only include Federally-facilitated Marketplaces (FFMs) and State-based Marketplaces on the Federal Platform (SBM-FPs).

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Session Objectives

- » This presentation will cover Marketplace compliance and regulations that agents and brokers are required to adhere to before assisting consumers with selecting and enrolling in qualified health plans (QHPs).
- » This includes an overview of the agent and broker registration and training process, key points about obtaining consumer consent, cybersecurity and personally identifiable information (PII), as well as relevant updates for Plan Year 2024.



Introduction to Compliance

- » Agents and brokers who participate in the Federally-facilitated Marketplace (FFM) must complete all steps of the training and registration process for the current plan year prior to assisting consumers with selecting and enrolling in QHPs.
 - Complete remote identity proofing through the Identity Management (IDM) System.
 - Complete an agent or broker profile on the Marketplace Learning Management System (MLMS).
 - Execute the applicable Marketplace Agreement(s) with CMS.
 - Update agent and broker profile information on the MLMS if anything changed, such as contact information.
- » In addition, agents and brokers assisting consumers in the FFM must comply with applicable federal and state law, including any:
 - Licensing requirements
 - System access terms and conditions
 - Conflict of interest and confidentiality provisions

Maintaining Compliance: Key Reminders

- » Agents and brokers must also:
 - Provide correct information to consumers;
 - Provide correct consumer information (e.g., consumer name, date of birth, address, email address) to the Marketplace for verifying consumer identity and applying for QHP coverage;
 - This includes maintaining documentation stating a consumer or their authorized representative has reviewed and confirmed their application information is accurate (45 C.F.R § 155.220(j)(2)(ii)(A)(1)-(2)).
 - Refrain from marketing or conduct that is misleading;
 - Obtain consent from each client you work with prior to assisting with or facilitating enrollment through a Federally-facilitated Exchange or assisting the individual in applying for advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSRs) for QHPs, including prior to searching for a current application using an approved Classic Direct Enrollment (DE) or Enhanced Direct Enrollment (EDE) website;
 - This includes maintaining documentation of the consumer's or their authorized representative's consent to the enrollment (45 C.F.R. § 155.220(j)(2)(iii)(A)-(C)).
 - Protect consumers' PII; and
 - Identify and report suspicious activity or potentially fraudulent behavior you observe in relation to the Marketplace.

Maintaining Compliant Business Relationships

- » Agents and brokers must ensure compliance with Marketplace regulations and guidance when establishing business relationships (e.g., for purposes of lead generation).
 - Enrollment assistance must be provided by licensed and registered agents and brokers.
 - Agents and brokers are required to obtain consent from the consumer or their authorized representative. Third-party means, such as lead-generators, do not constitute consent in a manner that complies with 45 C.F.R. § 155.220.
 - For example, consumers merely checking a box to indicate that they attest to being enrolled in Marketplace coverage does not constitute consumer consent for purposes of complying with CMS Marketplace requirements.
 - Agents and brokers and any third party with which they have entered into a business relationship must adhere to requirements for the use and disclosure of all consumer PII or protected health information (PHI), including all PII/PHI collected by the third party.

Key Points: Consent

Agents and brokers should only make updates to a consumer's application or policy at the direction of the consumer or their authorized representative. This includes, but is not limited to:



Conducting a search for consumer applications using an approved Classic DE or EDE website.



Helping consumers apply for financial help and/or enroll in a Marketplace QHP, including checking the status of their coverage and making updates throughout the year.



Calling the Marketplace Call Center to ask about the status of a Marketplace enrollment or make consumer application changes.

Maintaining Compliance: The Do's and Don'ts for Agents and Brokers

✓ DO'S

- Obtain and document consumer consent prior to assisting with, or facilitating enrollment through, an FFM or assisting the individual in applying for APTC and CSRs for QHPs.
- Identify and report suspicious or potentially fraudulent Marketplace activity to the Agent/Broker Email Help Desk at FFMProducer-AssisterHelpDeck@cms.hhs.gov.
- Provide the FFMs with correct information and document that eligibility application information has been reviewed and confirmed to be accurate by the consumer or their authorized representative, including ensuring consumers are reporting their most accurate income estimate(s) and are providing their Social Security Numbers (SSNs), when required.
- Make timely updates to your personal and contact information with your state licensing body, in the National Insurance Producer Registry (NIPR), and in the MLMS.

✗ DON'TS

- Retain access to a consumer's HealthCare.gov account or associated email.
- Enter false or dummy addresses in place of a consumer's email or mailing address.
- Enter an agent or broker's own professional or company email or mailing address on a consumer's application.
- Share Marketplace credentials.

System Use

- » **System Use:** As defined for the purposes of the CMS agreements, CMS systems that agents and brokers access when assisting consumers, include, but are not limited to, the CMS Enterprise Portal, HealthCare.gov, and the Direct Enrollment Pathways.
 - Only maintain one CMS Enterprise Portal account, accessible by the registered agent or broker.
 - Only conduct one log-in session at a time.
 - No scripting or automation without written CMS permission.

Protecting Consumer PII

- » The Marketplace Privacy and Security Agreement that you execute as part of the annual registration process authorizes agents and brokers to create, collect, disclose, access, maintain, store, and use specific data and PII. Agents and brokers cannot release, publish, or disclose consumer PII to unauthorized personnel, and must protect this information in accordance with federal laws and regulations regarding the handling of PII.
- » PII refers to information which can be used to distinguish or trace an individual's identity, such as their name, SSN, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual.*
- » You must provide consumers the opportunity to opt-in and allow you (and your agency, if applicable) to use their PII (e.g., through the record of consent). You should also provide a mechanism through which the consumer, or their authorized representative, can limit the use of their PII.

*This definition of PII was taken from the CMS.gov Privacy Policy available at <https://www.cms.gov/privacy>.

Use of PII

- » PII may only be used for the authorized functions discussed earlier, in the context of completing an application for QHP, APTC, or CSRs eligibility, if applicable, or enrolling in a QHP, or any data transmitted from or through the Marketplace, if applicable.
- » PII may not be used for any other purposes not outlined in these agreements **without the explicit consent of the consumer or their authorized representative.**

There are certain functions that agents and brokers can and cannot do while handling PII. These include:

- » Key authorized functions
 - Assist with application, eligibility, plan selection, enrollment, renewal, and disenrollment activities.
 - Assist consumers with applying for APTC and CSR eligibility determinations.
 - Educate consumers on Insurance Affordability Programs, Medicaid, and the Children's Health Insurance Program (CHIP), if applicable.
 - Meet legal responsibilities and conduct quality assurance.
- » Unauthorized functions
 - Create a HealthCare.gov account for a consumer, applicant, qualified individual, or enrollee.
 - Save and store HealthCare.gov account information for consumers.
 - Log into the HealthCare.gov account of a consumer, applicant, qualified individual, or enrollee.
 - Use PII to log into HealthCare.gov as a consumer, applicant, qualified individual, or enrollee.

Best Practices for Protecting PII



In Person

Secure hard-copy consumer consent forms in a locked location.

During consumer appointments, utilize private spaces to ensure privacy.

Dispose of PII in a manner consistent with FFM rules and retention requirements.



Electronic

Do not send or forward emails with PII to personal email accounts.

Do not use unauthorized mobile devices to access PII.
Store PII securely in a password-protected file on a password-protected computer to which only authorized individuals have access.



Paper

Ensure any originals of consumers' records are returned before they leave your office and only make copies for yourself or others if necessary to carry out required duties.

Keep a supply of manila folders to give to consumers with their documents inside to keep them in one place and shield the contents from view.

NOTE: The documentation and extension of review windows requirements go into effect beginning June 18th, 2023.

Consent Documentation Requirements

- » CMS finalized regulation updates requiring agents, brokers, and web-brokers to document the receipt of consent from the consumer or their authorized representative.
 - The consumer or their authorized representative must take an action to produce the documentation;
 - The documentation must contain, at a minimum, the following information:
 - A description of the scope, purpose, and duration of the consent provided by the consumer or their authorized representative;
 - The date the consent was given;
 - The name of the consumer or their authorized representative;
 - The name of the agent, broker, web-broker, or agency being granted consent;
 - A process through which the consumer or their authorized representative may rescind the consent.
 - The agent, broker, or web-broker must maintain the documentation for a minimum of 10 years.

Review Documentation Requirements

- » CMS finalized regulation updates requiring agents, brokers, and web-brokers to document that eligibility application information has been reviewed by and confirmed to be accurate by the consumer or their authorized representative prior to application submission.
 - The consumer or their authorized representative takes an action to produce the documentation;
 - The documentation must contain, at a minimum, the following information:
 - The date the information was reviewed;
 - The name of the consumer or their authorized representative;
 - An explanation of the attestations at the end of the eligibility application; and
 - The name of the assisting agent, broker, or web-broker.
 - The agent, broker, or web-broker must maintain the documentation for a minimum of 10 years.

Extension of Review Windows

- » For **suspensions**, the Department of Health and Human Services (HHS) finalized regulation updates to receive an additional 15 calendar days, or up to 45 calendar days, to review evidence, and notify the submitting agents, brokers, or web-brokers of HHS' determination regarding the suspension of their Marketplace agreements.
- » For **terminations**, HHS finalized regulation updates to receive an additional 30 calendar days, or up to 60 calendar days, to review reconsideration requests and notify the submitting agents, brokers, or web-brokers of HHS' reconsideration decision related to the termination of their Marketplace agreements.



Agent and Broker Resources

- » **Agent and Broker General Resources:** https://regtap.cms.gov/reg_librarye.php?i=4182
- » **Agent and Broker Help Desk Information:** <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Agent-Broker-Help-Desks.pdf>
- » **Agent and Broker FAQs:** <https://www.agentbrokerfaq.cms.gov/s/>





Agents and brokers are valued partners to all of us at CMS for the vital role you play in enrolling consumers in qualified health coverage.

We thank you for the trusted advice, support, and assistance you provide throughout the year and wish you continued success!