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From: Center for Consumer Information and Insurance Oversight
Title: Health Insurance MarketplaceSM 1 Guidance
Subject: Guidance for Web-brokers Registered with the Federally-Facilitated Marketplaces

This document contains guidance for web-brokers registered with the Federally-facilitated Marketplaces (FFMs).² The Centers for Medicare & Medicaid Services (CMS) uses the term “web-broker” to describe an individual agent or broker, group of agents and brokers, or company registered with the FFMs that provides a non-FFM website to assist consumers in the selection and enrollment in qualified health plans (QHPs) offered through the Marketplaces as described in 45 CFR § 155.220(c)(3). Consistent with 45 CFR § 155.220(l), this guidance also extends to agents or brokers who complete the FFM registration process and facilitate enrollment in QHPs offered through State-based Marketplaces on the Federal Platform (SBM-FPs).

I. Background

Agents and brokers, including web-brokers, play an important role in educating consumers about the Marketplaces³ and insurance affordability programs, and in helping consumers receive eligibility determinations, compare QHPs, and enroll in coverage offered through the Marketplaces. When permitted under state law and after fulfilling the applicable FFM registration requirements, agents and brokers are able to assist consumers with completing the eligibility application, and in comparing and enrolling in QHPs, through the FFMs or SBM-FPs. Additionally, CMS has approved web-brokers that meet all applicable requirements to provide an alternate channel to help consumers compare and select QHPs online.

CMS regulations at 45 CFR §155.220(c) and (d) establish additional requirements that apply when a web-broker, agent or broker uses a non-FFM website to facilitate enrollment in a QHP offered through the FFMs and SBM-FPs. Also, in the 2017 Payment Notice Final Rule⁴, we established standards governing the conduct of FFM-registered agents and brokers (including web-brokers) at 45 CFR § 155.220(j) to better protect consumers and ensure the efficient operation of the FFMs and SBM-FPs.

¹ Health Insurance MarketplaceSM and MarketplaceSM are service marks of the U.S. Department of Health and Human Services.

² References to the Federally-facilitated Marketplaces (FFMs) in this document include FFMs where the States are performing plan management functions.

³ Unless indicated otherwise, references to the “Marketplace” or “Marketplaces” in this document include FFMs and SBM-FPs.

⁴ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Final Rule 81 FR 12204 at 12258 (March 8, 2016).

This document contains additional guidance on the display of information for QHPs offered on FFM and SBM-FPs by web-brokers on non-FFM websites, as well as on the new FFM standards of conduct for agents, brokers, and web-brokers. It also identifies best practices with respect to offering consumer estimate tools, including consumer email addresses on Marketplace applications, and distinguishing between the web-broker's Application ID and the FFM application ID.

II. Display of QHP Information

A. *Default Display of Complete List of QHPs and SADPs*

Pursuant to 45 CFR § 155.220(c)(3)(i)(B), web-brokers are required to provide consumers the ability to view all QHPs offered through the applicable Marketplace. CMS interprets this requirement as mandating a default display of the complete list of all QHPs and stand-alone dental plans (SADPs)⁵ offered through the applicable Marketplace if the consumer wants to shop or compare QHPs *before completion of the Marketplace application*. Consumers should not be required to perform additional actions (e.g., removing a pre-existing filter or checking a box to view all QHPs and SADPs) in order to initially view the full list of all QHPs and SADPs offered through the applicable Marketplace on the non-FFM website.

Once a consumer enters his or her personal information, the web-broker should display the complete list of QHPs and SADPs offered through the applicable Marketplace responsive to the consumer's information. Therefore, *upon receipt of the eligibility determination from the Marketplace*, web-brokers should limit the display of QHPs and SADPs to those for which the consumer is eligible to avoid confusion. For example, display of child-only plans should only be limited to individuals under the age of 21.

Notwithstanding the above, a web-broker can offer additional tools or decision support that the consumer can then use to navigate or refine the complete list of QHPs and SADPs. For example, a web-broker may allow the consumer to apply filters (e.g., actuarial value level, provider network) to the full list of QHPs offered through the applicable Marketplace. In this case, web-brokers should ensure that if the consumer selects all of the available options for a certain filter (e.g., all available actuarial value levels), the total number of plans displayed would remain consistent with the number of QHPs that satisfy the selection criteria.

B. *Separate Display of QHPs Offered Through the Marketplaces and Off-Marketplace Plans*

45 CFR § 155.220(j)(2)(i) requires agents, brokers and web-brokers to provide consumers with correct information, without omission of material fact, regarding the Marketplaces, QHPs offered through the Marketplaces, and insurance affordability programs; and to refrain from marketing or conduct that is misleading or coercive. Consistent with this regulation, web-brokers should advise consumers that APTCs and CSRs are only available for QHPs

⁵ With some limited exceptions, CMS considers SADPs to be a type of QHP. See 45 CFR § 155.1065(a)(3). CMS expects web-brokers registered with the FFMs to follow the same display and disclosure requirements for SADPs as for QHPs, including display of all applicable SADPs offered through the Marketplace and all available information specific to each SADP on their websites, as well as including the Plan Detail Disclaimer to the extent that all required SADP comparative information is not displayed on their websites.

offered through the Marketplaces and must not reflect any estimated APTC or CSR amounts in the plan selection experience for off-Marketplace coverage options.

CMS expects web-brokers will display QHPs and SADPs offered through the applicable Marketplace separately or in a manner that clearly distinguishes them from other available coverage options (e.g., off-Marketplace plans). For example, if a web-broker offers assistance with both Marketplace plans and off-Marketplace plans, the web-broker should display QHPs and SADPs offered through the applicable Marketplace on a separate plan selection page that does not include off-Marketplace plan options. Alternatively, the web-broker might display Marketplace plans on the same plan selection page as off-Marketplace plans, but in a manner that clearly identifies which plans are Marketplace plans under which APTCs and CSRs might be available.

In addition, web-brokers should offer a QHP plan selection experience that is free from advertisements or information for other health insurance-related products and sponsored links promoting health insurance-related products (e.g., an advertisement for a QHP issuer). Once the consumer has completed the QHP plan selection and enrollment, the web-broker may offer the consumer the ability to search for additional products or services if desired. CMS expects that such offers are made in a section of the web-broker's website that is separate from the QHP display and plan selection area.

CMS is also revising the General non-FFM Disclaimer under 45 CFR § 155.220(c)(3)(i)(G) that must be prominently displayed to include additional language to address situations where web-brokers offer consumers assistance with other coverage options (e.g., off-Marketplace plans). The General non-FFM Disclaimer that must be prominently displayed by web-brokers who offer this type of assistance must read:⁶

“Attention: This website is operated by [Name of Company] and is not the Health Insurance MarketplaceSM website. In offering this website, [Name of Company] is required to comply with all applicable federal law, including the standards established under 45 CFR 155.220(c) and (d) and standards established under 45 CFR 155.260 to protect the privacy and security of personally identifiable information. This website may not display all data on Qualified Health Plans (QHPs) being offered in your state through the Health Insurance MarketplaceSM website. To see all available data on QHP options in your state, go to the Health Insurance MarketplaceSM website at HealthCare.gov.

[Also, you should visit the Health Insurance MarketplaceSM website at HealthCare.gov if:

- *You want to select a catastrophic health plan.*
- *You want to enroll members of your household in separate QHPs.*

⁶ Certain pieces of the disclaimer, indicated in brackets, are not required but CMS encourages a web-broker that does not offer these services to display those pieces of the disclaimer.

- *The plans offered here don't offer pediatric dental coverage and you want to choose a QHP that covers pediatric dental services or a separate dental plan with pediatric coverage. Pediatric dental services are an essential health benefit.]*

[Name of web-broker's website] offers the opportunity to enroll in either QHPs and off-Marketplace coverage. Please visit [HealthCare.gov](https://www.healthcare.gov) for information on the benefits of enrolling in a QHP. Off-Marketplace coverage is not eligible for the cost savings offered for coverage through the Marketplaces.”⁷

III. Best Practices

A. Consumer Estimate Tools

It has come to CMS' attention that some web-brokers offer consumers tools to assist with the QHP comparison and shopping experience prior to completion of the Marketplace application. We appreciate these efforts and want to encourage innovation; however, we also want to ensure that it is clear that only the Marketplaces can verify eligibility and make insurance affordability program determinations.

45 CFR § 155.220(j)(2)(i) requires agents, brokers and web-brokers to provide consumers with correct information, without omission of material fact, regarding the Marketplaces, QHPs offered through the Marketplaces and insurance affordability programs; and to refrain from marketing or conduct that is misleading. We interpret this regulation to extend to the use of consumer estimate tools.

If a web-broker offers an estimation tool to the consumer prior to the official eligibility determination based on a completed Marketplace application, the web-broker should prominently display the following disclaimer adjacent to the web-broker's tool(s):

“This tool provides a quick view of qualifications for different savings programs in your state. You'll find out exactly what you qualify for only when you fill out a Marketplace application and get your eligibility results from the Marketplace. Please visit [HealthCare.gov](https://www.healthcare.gov) for more information.”

Web-brokers should not use “eligibility” when referring to this tool to clarify for consumers that only the Marketplace can make an official eligibility determination. CMS also recommends that web-brokers prominently display language adjacent to the web-broker's estimate tool(s) informing consumers that they should enter the ZIP code or address where they are seeking QHP coverage (e.g., for the individual market, the consumer's home ZIP code or address).

Further, if the web-broker estimate and the official Marketplace eligibility determination are different with respect to eligibility for Medicaid, the Children's Health Insurance Program (CHIP), advance payments of the premium tax credit (APTCs), or cost-sharing reductions (CSRs), the web-broker should promptly inform the consumer of the changes and provide the consumer with an opportunity to reconsider his or her preliminary QHP selection.

⁷ Web-brokers are required to display this final paragraph of the disclaimer if they offer consumers assistance with off-Marketplace coverage options. .

B. Include Consumer Email Address on Marketplace Applications⁸

With a consumer's consent, the Marketplaces send important coverage alerts and updates that the consumer may miss if the Marketplaces are not able to send the notice directly to the consumer's email address. If requested, a web-broker should assist a consumer with establishing his or her own Marketplace account at HealthCare.gov and should include the consumer's email address on his or her Marketplace application.

C. Distinguish Between the Web-broker's Application ID and the Marketplace Application ID

The Web-broker Application ID and the Marketplace Application ID serve different purposes that might be unclear to the consumer.

- The Web-broker Application ID is a unique identifier assigned by the web-broker to the consumer for interacting with the Marketplaces. Consumers can use this information to access their enrollment information on the web-broker's website and complete various activities related to their enrollment (e.g., pay a premium, update demographic information).
- The Marketplace Application ID is generated by the Marketplaces as soon as the system has sufficient information to create a basic account. The Marketplace Application ID is the primary identifier for the web-broker to use in retrieving the consumer's information and Marketplace application. Consumers can use this information to access their Marketplace account at HealthCare.gov and make changes or updates to their Marketplace application. Consumers can also use their Marketplace credentials (i.e., the consumer's Marketplace User ID and password) to access their account and make changes to their Marketplace application.

CCIIO expects web-brokers to provide consumers with both their Web-broker Application ID and Marketplace Application ID. In addition, as part of this communication, web-brokers should distinguish between the Web-broker Application ID and the Marketplace Application ID and indicate to consumers how and when each ID can be used.

IV. Additional Information

The "Role of Agents, Brokers, and Web-brokers in the Health Insurance Marketplaces" document (updated January 6, 2016) provides details on Marketplace requirements and operational processes related to agent and broker (including web-broker) participation in the FFMs and SBM-FPs. This document is available at the following link:

https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Role-of-ABs-in-Marketplace-1_6_16.pdf.

Please also consult the Federally-facilitated Marketplace (FFM) and Federally-facilitated Small Business Health Options Program (FF-SHOP) Enrollment Manual, available through the CCIIO website at <https://www.cms.gov/CCIIO/Resources/Regulations-and->

⁸ For more information, see page 31 of the Health Insurance Marketplace 2016 Open Enrollment: Open Enrollment Week 4 webinar. Available at: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/OEP-Webinar-Week-4_FINAL.pdf

[Guidance/Downloads/ENR_FFMSHOP_Manual_080916.pdf](#), for information on requirements for agents and brokers (including web-brokers) registered with the FFMs.

For additional resources for agents and brokers registered with the FFMs who are assisting with enrollment in the Marketplaces, including the Small Business Health Options Program (SHOP) Marketplaces, please visit the following webpage: <http://go.cms.gov/CCIOAB>.