



Date: May 30, 2014

Subject: Frequently Asked Questions Regarding Agents and Brokers

1. What requirements must agents and brokers fulfill if they have previously completed registration for the Federally-facilitated Marketplace (FFM)?

To continue participation in the FFM for the individual market for the 2015 plan year and future plan years, agents and brokers must complete an annual registration renewal process that includes completion of required training, and execution of the Agent Broker FFM Agreements for the individual market. To continue participation in the FF-SHOP for the 2015 plan year and future plan years, agents and brokers must execute the Agent-Broker FF-SHOP Agreement annually, and are strongly encouraged to complete training. All agents and brokers in the FFM for the individual market and FF-SHOP must create an FFM user account and complete identity proofing if they have not done so previously.

As a reminder, agents and brokers who will be participating in the FFM for the individual market for the first time must complete a two-part registration process.

- Part I: Visit the Medicare Learning Network (MLN)[®] at <https://Marketplace.MedicareLearningNetworkLMS.com> to complete—
- Required individual market training; and
 - Execution of the Agent Broker General Agreement for the FFM Individual Market (“General Agreement”) and the Agreement between Agent or Broker and CMS for the FFM Individual Market (“Individual Market Privacy and Security Agreement”).

- Part II: Visit the CMS Enterprise Portal at <https://portal.cms.gov/> to complete—
- Creation of an FFM user account; and
 - Identity proofing.

Agents and brokers who will be participating in the FF-SHOP for the first time must complete a two-part registration process.

- Part I: Visit MLN at <https://Marketplace.MedicareLearningNetworkLMS.com> to complete
- Optional (but strongly encouraged) SHOP training; and
 - Execution of the Agreement between Agent or Broker and CMS for the FF-SHOP (“FF-SHOP Privacy and Security Agreement”).

- Part II: Visit the CMS Enterprise Portal at <https://portal.cms.gov/> to complete
- Creation of an FFM user account; and
 - Identity proofing (*new for plan year 2015 enrollment*).

In addition, there are consumer disclosure requirements that extend to agents and brokers who use their own websites, or the websites of other agents and brokers, to facilitate enrollment in qualified health plans (QHPs) offered through the Marketplaces.

The FFM registration renewal requirements for agents and brokers are separate and distinct from any continuing education requirements required by a state Department of Insurance (DOI) or applicable state regulatory agency to maintain a valid state license. Some states require agents and brokers to undergo training and/or recertification on a periodic basis to maintain their licensure; these continuing education requirements vary by state.

2. May a QHP issuer deny enrollment of a qualified individual, employer, or employee who enrolls in coverage through the Marketplace, including those who have received assistance in the application and enrollment process by an agent or broker registered with the FFM?

No. Consistent with requirements specified under 45 C.F.R. § 147.104, 45 C.F.R. § 156.265 and 45 C.F.R. § 156.285, QHP issuers must enroll any qualified individual or employee who enrolls in a QHP offered through the Marketplace or SHOP. This includes qualified individuals or employees who may have received assistance with the Marketplace application and enrollment process from an agent or broker who has completed the applicable registration process and signed the required Agreement(s) with the Marketplace. A QHP issuer may not reject the enrollment of a qualified individual or employee solely because the qualified individual or employee received assistance in the FFM application and enrollment process from an FFM registered agent or broker.

3. If a state has concerns about a certain agent or broker, should it share these concerns with CMS?

Yes. States should notify CMS of any specific agents and brokers whose conduct raises concern, especially with regard to potential or confirmed instances of non-compliance with FFM requirements. State should also notify CMS of state enforcement actions against specific agents and brokers. CMS intends to coordinate resolution actions with all affected states, and any resolution actions taken under its statutory or regulatory authority will not supplant the states' authority to pursue their own enforcement actions. States should contact their respective CMS Center for Consumer Information and Insurance Oversight (CCIIO) State Officer to relay any concerns about specific agents/brokers.

4. If CMS has concerns about a specific agent or broker, will the agency share these concerns with the state(s) in which the agent or broker is licensed?

Yes. CMS is conducting ongoing oversight of registered agents and brokers to ensure compliance with FFM requirements. CMS will notify states regarding specific agents or brokers about whom it has concern(s) so that the investigation and resolution can be coordinated appropriately with the licensing state(s). The agency will typically relay these concerns through the respective CMS CCIIO State Officer. CMS' monitoring efforts will focus primarily on concerns that relate to FFM requirements and will rely on states to

continue to monitor agent and broker compliance with state laws and requirements. To the extent that CMS detects potential compliance issues related to state requirements, the agency will inform the state and expect the state to assume the primary role for resolving the issue.

5. Does the FFM independently verify agents'/brokers' state licenses?

The FFM does not independently verify the state licenses of agents and brokers. Pursuant to 45 C.F.R. 156.340, a QHP issuer maintains responsibility for the compliance of its delegated and downstream entities, including affiliated agents and brokers. Accordingly, CMS expects QHP issuers to verify that the agents and brokers selling their products have valid state licenses and comply with applicable agent and broker FFM registration requirements. The QHP issuer is responsible for confirming the agent's or broker's state license and National Producer Number (NPN) before allowing an agent or broker to access the QHP issuer's connection to the FFM (if the QHP issuer supports the Direct Enrollment Pathway) and before issuing compensation. Agents and brokers are required to provide their affiliated QHP issuers with a copy of their FFM curriculum completion certificate, and QHP issuers may ask agents and brokers for their FFM user ID. QHP issuers will need the FFM user IDs if their appointed agents and brokers enroll consumers through the Direct Enrollment Pathway.

6. How are agents and brokers compensated for enrolling consumers in coverage through the FFM?

Agents and brokers are compensated directly by QHP issuers as per the terms of their QHP issuer contracts for assisting consumers to enroll in QHPs through the FFM. Compensation includes commissions, fees, or other incentives as established in the relevant contract between a QHP issuer and an agent or broker. An agent or broker must be affiliated or have a contractual relationship with the respective issuer offering a QHP or a qualified stand-alone dental plan, in accordance with applicable state law, in order to be paid for a Marketplace transaction. The FFM will not establish a commission schedule or pay commissions directly to agents or brokers. CMS expects that the amount and terms of any commission would be established by the terms of the contract between a QHP issuer and an agent or broker. However, QHP issuers are required to pay the same compensation to agents and brokers for enrollment in QHPs through the Marketplaces as for enrollment in similar health plans offered outside the Marketplaces.

7. Will agents and brokers be able to receive commissions for enrolling individuals in Medicaid managed care plans?

The FFM does not have authority over state Medicaid program rules or over the relationships between Medicaid managed care organizations and their agents and brokers. For information on state-specific Medicaid rules, agents and brokers should contact their state DOI or state Medicaid agency.

8. If an agent or broker assisted an individual in enrolling in a QHP through the Marketplace but the agent's or broker's NPN is not associated with the enrollment transaction on the 834 file provided by the Marketplace to the QHP issuer, can the

agent's or broker's information be added at a later date, so that the agent or broker can receive compensation from the QHP issuer?

In general, the agent's or broker's NPN, name, and FFM user ID should be recorded as part of the consumer's application. This will identify the agent or broker on the enrollment transaction so the FFM can appropriately track enrollment and the QHP issuer can compensate the agent or broker based upon the enrollment (as may be appropriate). However, if a QHP issuer identifies a particular enrollment that should have had an agent or broker associated with it, the QHP issuer should add the agent or broker to the enrollment record internally even if the agent or broker was not reflected on the initial enrollment transaction, in case there is any follow-up required as a result of the enrollment.

If an agent or broker has a legitimate reason to believe he or she should be credited for an FFM enrollment, but has not been credited for it, the agent or broker should contact the respective QHP issuer directly to discuss the specific situation. Please note that agents and brokers must meet registration requirements prior to assisting with an FFM application in order to be credited for the enrollment transaction.

9. May agents and brokers be compensated for an FFM enrollment if they are not affiliated with a QHP issuer? Can the FFM credit an agent or brokers for an enrollment transaction, or direct the QHP issuer to do so?

As we have noted here, and in previous guidance, the Marketplace has not established a commission schedule or pay commissions directly to agents or brokers. The FFM transmits agent and broker identifying information (such as their NPN), which is recorded as part of the consumer's application, to QHP issuers in order to facilitate any payment of compensation from a QHP issuer. The amount and terms of any compensation are governed by the QHP issuer's contract with the agent or broker. Unless otherwise required under state law, a QHP issuer is not obligated to compensate an agent or broker with whom the QHP issuer is not affiliated, even if the agent or broker assists a consumer in enrolling in the issuer's QHP through the Marketplace. However, we recommend that QHP issuers keep a record of the enrolling agent or broker in their systems, even if the agent or broker is not affiliated with the QHP issuer, in case there is any follow-up required as a result of the enrollment. In order to become affiliated with a QHP issuer, agents and brokers must contact the QHP issuer directly, or they can contact the state DOI for more information.