

Mastering Agent and Broker Compliance: Tips on Obtaining Consumer Consent and Appropriately Using CMS Marketplace Systems

July 2019



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.

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

Unless indicated otherwise, the general references to “Marketplace” in the presentation only includes Federally-facilitated Marketplaces (FFMs) and State-based Marketplaces on the Federal Platform.

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Agenda

- Registration and Training Compliance
- Compliance in the Direct Enrollment (DE) Pathway
- Other Issues and Compliance Actions
- Key Points to Remember

Registration and Training Compliance

Registration Requirements for Marketplace Agents and Brokers

Agents and brokers who want to participate in the Marketplace must complete the FFM registration process prior to assisting Marketplace consumers. This includes:

- Completing remote identity proofing through the Enterprise Identity Management (EIDM) system
- Completing an Agent/Broker profile on the Marketplace Learning Management System (MLMS)
- Entering into the applicable Marketplace Agreement(s) with the Centers for Medicare & Medicaid Services (CMS)
- Updating Agent/Broker profile information on the MLMS if anything changed, such as contact information

Registration Requirements for Marketplace Agents and Brokers (Continued)

Confirm that your personal and contact information (National Producer Number [NPN], email address, and business street address) are up to date with your state licensing body, in the National Insurance Producer Registry (NIPR), and the MLMS.

- Entering an invalid NPN will result in the inability to complete registration and training in the MLMS.
- Entering an inaccurate NPN could result in denial of compensation or credit by an issuer for Marketplace enrollments.
- CMS conducts real-time NPN validation with the NIPR.
- Please note: The NPN is generally not the same as your state license number.

Licensure Requirements for Marketplace Agents and Brokers

- You must have an active license status that is approved for a health-related line of authority by the state you plan to sell Marketplace coverage.
- CMS monitors the licensure status of Marketplace agents' and brokers' NPNs for compliance with this requirement.
- CMS will disable access to the CMS Portal and the DE Pathways for any agent or broker where CMS is unable to verify state license status using the NIPR and may subsequently terminate the Marketplace Agreements with the agent or broker.

New Authority: Immediate Termination for Failure to Maintain State License

§ 155.220(g)(3)(ii): The Department of Health & Human Services (HHS) may immediately terminate an agent's or broker's Marketplace Agreement(s) for cause without any further opportunity to resolve the matter if he or she fails to maintain the appropriate license under state law in every state in which the agent or broker actively assists Marketplace consumers.

- The Marketplace Agreements that you execute as part of the annual registration process also include the requirement to maintain valid licensure in every state that you assist Marketplace consumers.
- Termination for other causes under § 155.220(g)(2) will continue to include 30-days' advance notice, in which you have the opportunity to offer a resolution or rebuttal prior to the termination.
- This new provision is effective June 24, 2019.

Compliance in the Direct Enrollment Pathway

The DE Pathways

- DE Pathways allow qualified health plans (QHPs), registered agents and brokers, and other third parties that are certified to sell health insurance to assist consumers applying for and enrolling in Marketplace coverage.
- Enrollments through the DE Pathways are considered to be through the Marketplace.
- The DE Pathways are generally available to assist with enrollments during Open Enrollment and Special Enrollment Periods.
- There are two DE Pathways offered by approved QHP issuer and web-broker partners: Classic DE (the “Double Redirect”) and Enhanced DE.

Anomalous Activity from Agent and Broker Accounts

- In October 2018, CMS staff detected anomalous activity in the DE Pathway conducted by certain agents and brokers. The accounts that were associated with the anomalous activity were deactivated.
- CMS has implemented additional security system measures and strengthened agent and broker requirements for
 - Maintaining current and correct MLMS profiles,
 - Complying with CMS system access terms and conditions,
 - Complying with the requirement to maintain valid licensure, and
 - Obtaining consumer consent prior to conducting an online person search or assisting a consumer with an eligibility application and/or subsequent plan selection and enrollment.

Monitoring for Anomalous Activity in Agent/Broker Accounts

- CMS is monitoring activity in the DE Pathway for other anomalous activity or circumstances that pose unacceptable risk to Marketplace operations or information technology systems.
- CMS will notify agents and brokers when their search activity may conflict with the terms and conditions to access CMS systems and provide an opportunity to remedy.
- If CMS continues to observe activity within the agent's or broker's account that poses a risk to Marketplace systems, CMS will suspend that individual's access to CMS systems and consider suspending or terminating his or her Agreement(s).

Suspension of Marketplace Systems Access

- HHS may immediately suspend the agent's or broker's ability to access Marketplace systems if it discovers circumstances that pose unacceptable risk to Marketplace operations or information technology systems until the incident or breach is remedied or sufficiently mitigated to HHS' satisfaction.*
- Applying this provision would suspend an agent's or broker's access to the CMS Enterprise Portal, the MLMS, or the Direct Enrollment/Enhanced Direct Enrollment Pathways.

* See 45 CFR 155.220(c)(3)(i)(L) and (4)(ii). Effective June 24, 2019, this authority is codified at 45 CFR 155.220(k)(3).

Maintain Compliance in the DE Pathways

Avoid disruptions to your DE Pathways and CMS system accesses.

- Obtain and maintain a record of a consumer's consent before conducting online person searches
- Confirm the information you have is accurate (e.g., name spelling, correct date of birth)
- Abide by the terms and conditions to access CMS systems
- Monitor your email for communications and technical assistance alerts from CMS about your DE Pathway activity
- Respond to inquiries regarding ongoing anomalous activity associated with your account

Proper Uses of the DE Pathways

Per the terms and conditions to access CMS systems, proper uses include:

- A single login session: If you are logged in and then try to log in again with a new browser window, tab, or other computer, your first session will end.
- You may conduct only one person search at a time.
- You may only conduct online person searches for consumers who have given you consent to work with them for the purposes of applying for and enrolling in a Marketplace plan.
- You must obtain the consent of an individual, employer, or employee prior to conducting online person searches, helping them apply for financial help and/or enrolling in a Marketplace QHP.*

* Note: This requirement is different from and in addition to the requirement that consumers must also provide you their informed consent for any use or disclosure of their personally identifiable information (PII) outside the scope of the Privacy Notice Statement and the Authorized Functions for PII in the Marketplace.

Other Issues and Compliance Actions

Maintaining Compliance with the Consumer Consent Requirement

- You must obtain consent prior to assisting with Marketplace transactions.
- The consent should acknowledge that you have informed the consumer of the functions and responsibilities that apply to your role in the Marketplace.
- The consent should also indicate that you have permission to:
 - Conduct an online person search,
 - Assist with completing an eligibility application,
 - Assist with plan selection and enrollment, and
 - Assist with ongoing account/enrollment maintenance.

Content of Consumer Consent

- The record of the consent should include the following:
 - The individual's, employer's, or employee's name;
 - The date the consent was given; and
 - The name of the agent(s) or broker(s) to whom consent was given. Note that this could include additional names of agents or brokers if the consenter authorized multiple agents or brokers within the same organization.
- CMS does not prescribe a standard format or process for obtaining the consent or for maintaining its record, so you have flexibility to determine how you will meet the consent requirement.
- While CMS does not provide a form, or specify that a form has to be signed, you can use a Broker of Record form from an issuer or state Department of Insurance to satisfy this requirement.
- Additionally, you may obtain consent verbally (such as over the phone), electronically (such as via email), or in person. If you obtain the consent verbally, you should maintain a record of the verbal consent, consistent with the above guidelines.

Maintaining Compliant Business Relationships

- You may not enroll a consumer based solely on information gathered by a third party.
 - You have an obligation to obtain consumer consent prior to assisting a Marketplace consumer.
 - Consumers enrolled in a QHP by an agent or broker should have a clear understanding of the role of the agent or broker and the ability to confirm the name of their agent or broker and their relationship with that agent or broker.
 - You must be able to provide demonstrable proof of your relationship or interaction with the consumer for any Marketplace enrollment submitted under your NPN.
- You must ensure compliance with Marketplace regulations and guidance when establishing business relationships (e.g., for purposes of lead generation).

Maintaining Compliant Business Relationships (Continued)

- Enrollment assistance must be provided by a licensed and registered agent or broker.
- Consumer consent requirements apply to the agent or broker, regardless of any initial contact with the consumer by a third party on the agent's or broker's behalf.
- An agent or broker and any third party with which he or she has entered into a business relationship must adhere to requirements for the use and disclosure of all consumer PII/protected health information (PHI), including all PII/PHI collected by the third party.

Key Points to Remember

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- During the annual FFM registration process, you must confirm your personal and contact information in the MLMS, state producer license database(s), and the other resources (i.e., NIPR) are accurate.
- CMS monitors compliance with requirements to have appropriate licensure where you plan to actively sell Marketplace coverage.
- You must adhere to the terms and conditions for accessing CMS systems.
- You must obtain consumer consent and may not enroll a consumer based only on information gathered by a third party.

Acronym Definitions

Acronym	Definition
CMS	Centers for Medicare & Medicaid Services
DE	Direct Enrollment
EIDM	Enterprise Identity Management System
FFM	Federally-Facilitated Marketplace
HHS	Department of Health & Human Services
MLMS	Marketplace Learning Management System
NIPR	National Insurance Producer Registry
NPN	National Producer Number
PHI	Protected Health Information
PII	Personally Identifiable Information
QHP	Qualified Health Plan

Additional Resources

For additional information about the Marketplace Agent and Broker Program, please visit

<http://go.cms.gov/CCIIOAB>