



Date: May 22, 2020
From: Center for Consumer Information and Insurance Oversight
Title: Direct Enrollment Website Display Bulletin
Subject: Guidance Regarding Website Display for Direct Enrollment (DE) Entities Assisting Consumers in States with Federally-facilitated Exchanges (FFE) and State-based Exchanges on the Federal Platform (SBE-FPs)

I. Background and Purpose

45 C.F.R. § 155.220(j)(2)(i) and 45 C.F.R. § 156.1230(b)(2) establish standards of conduct for DE entities¹ that assist consumers with enrolling in qualified health plans (QHPs) or with applying for financial assistance through the FFEs and SBE-FPs.^{2,3} These rules require DE entities to “[p]rovide consumers with correct information, without omission of material fact, regarding the Federally-facilitated Exchanges, QHPs offered through the Federally-facilitated Exchanges, and insurance affordability programs, and refrain from marketing or conduct that is misleading (including by having a direct enrollment Web site that HHS determines could mislead a consumer into believing they are visiting HealthCare.gov), coercive, or discriminates based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation.”⁴ This guidance provides information on, including illustrative examples of, website content that CMS may consider noncompliant with 45 C.F.R. § 155.220(j)(2)(i) or 45 C.F.R. § 156.1230(b)(2). This guidance applies to DE entities using the classic (i.e., double-redirect) DE pathway and those using the enhanced DE (EDE) pathway.

For any questions regarding this guidance, please contact DE Support at directenrollment@cms.hhs.gov.

II. Guidance

Most DE entity websites begin their consumer experiences with a series of screening questions. Often these screening questions are intended to assist consumers with determining whether they may have had a qualifying life event that makes them eligible for a special enrollment period

¹ 45 C.F.R. § 155.221(a).

² 45 C.F.R. §§ 155.220(l) and 155.221(h) extend the applicable FFE standards to agents, brokers, web-brokers and DE entities assisting consumers in SBE-FPs.

³ While these FAQs are specific to DE entities, we remind agents and brokers that are not web-brokers that they must also comply with the FFE standards of conduct when assisting consumers within the FFEs and SBE-FPs, including 45 C.F.R. § 155.220(j)(2)(i).

⁴ 45 C.F.R. § 155.220(j)(2)(i) applies to agents, brokers, and web-brokers assisting consumers in the FFEs and SBE-FPs and 45 C.F.R. § 156.1230(b)(2) applies to QHP issuers in the FFEs using the DE or EDE pathways.

(SEP)⁵ or whether they may qualify for insurance affordability programs (i.e., advanced payment of the premium tax credit (APTC), cost sharing reductions (CSRs), Medicaid, the Children’s Health Insurance Program (CHIP), or a state basic health program). When DE entities’ screening questions ask about qualifying life events to assist consumers with determining whether they may qualify for an SEP or ask about household composition, income, and other related information to assist consumers with determining whether they may qualify for insurance affordability programs, DE entities must avoid the following:

Example #1: Communicating that consumers are eligible or ineligible for an SEP or an insurance affordability program after the consumer has answered the screening questions without any qualifying language (e.g., “You *may* be ineligible...” is qualified language while “You *are* ineligible...” is not)⁶ or directions about obtaining an official eligibility determination.⁷

Example #2: Including informational or explanatory text in relation to the screening questions that implies or states they provide an official or final eligibility determination.⁸

Example #3: Implying or stating that the qualifying life events asked about are the only qualifying life events available when the screening questions fail to ask about all possible qualifying life events.

Example #4: Including informational or explanatory text in relation to the screening questions that inaccurately states the length of time a consumer may be eligible for an SEP.

Example #5: Communicating screening results that fail to distinguish between different eligibility groups and/or include appropriate clarifying language (e.g., indicating all members of a household may qualify for APTC when some members of the household are likely eligible for Medicaid or CHIP).

To mitigate the risk of noncompliance with 45 C.F.R. § 155.220(j)(2)(i) and 45 C.F.R. § 156.1230(b)(2) when DE entities develop and use consumer-assistance tools designed to help consumers better understand their circumstances and the potential availability of SEPs and/or insurance affordability programs, CMS recommends the use of qualifying language that is prominently displayed to consumers to clearly communicate that the screening tools they offer only provide preliminary information and that an official eligibility determination may only be provided by the Exchange after completion of the Exchange eligibility application.⁹ Using language similar or identical to the language used on HealthCare.gov is encouraged and should substantially reduce the risk of noncompliance. For example, when using HealthCare.gov’s SEP screening tool, a large pop-up window displays that communicates the limitations of the tool, including the following:

⁵ These types of screening questions are typically displayed only outside of the annual open enrollment period.

⁶ See below for examples of how HealthCare.gov communicates the limitations of its SEP screening tool.

⁷ Consumers may only receive an official eligibility determination from the Exchange after the completion of the Exchange eligibility application.

⁸ Ibid.

⁹ To clarify, consumers may receive an eligibility determination from the Exchange by completing an Exchange eligibility application on the Exchange website or on an EDE entity’s website.

- This isn't an application for health coverage.
- It's a quick screener that tells you if you may qualify for a Special Enrollment Period, Medicaid, or CHIP. If you do, you can enroll outside the yearly Open Enrollment Period.
- We ask for only basic information to quickly tell you if you **may** qualify. The coverage application itself asks for more details.
- The only way to know if you qualify for sure is to apply. You can do that any time, even if the results say you don't appear to qualify.

In addition, if consumers answer all the screening questions on HealthCare.gov in a way that suggests they are not eligible for an SEP, they are provided with an additional explanation that they can still fill out an application to confirm their eligibility, that they still may be able to get coverage this year if they are eligible for Medicaid or CHIP, and that there are additional complex (albeit rare) situations that the screening tool does not account for. DE entities are encouraged to convey qualifying and clarifying information on their websites that is similar to the language that appears on Healthcare.gov as follows, to ensure consumers are not misled about the potential availability of an SEP:

- It looks like you may not qualify for a Special Enrollment Period.
- This means you probably can't enroll in a 2020 Marketplace plan now.
 - You can still fill out or update an application by selecting "Start or update an application." But you may find out you can't enroll now.
 - You can still get coverage this year if you qualify for Medicaid or the Children's Health Insurance Program (CHIP). These programs cover individuals and families with limited incomes, disabilities, and some family situations. You can apply for these programs at any time. If you qualify, you can enroll immediately. Select "See if you qualify for Medicaid/CHIP" to find out if you may qualify.
 - Note: There are a few rare situations that may also qualify for a Special Enrollment Period. Learn about complex situations.

In addition to utilizing language similar to that which appears on HealthCare.gov, DE entities are encouraged to integrate with the Marketplace application programming interface (MAPI)¹⁰ to facilitate their ability to provide preliminary eligibility information, which can also mitigate the risk that inaccurate information is provided to consumers in violation of 45 C.F.R. § 155.220(j)(2)(i) and 45 C.F.R. § 156.1230(b)(2).

Although the issues involving DE entity screening questions that are described above account for the most common situations CMS has become aware of that are noncompliant with the standards in 45 C.F.R. § 155.220(j)(2)(i) or 45 C.F.R. § 156.1230(b)(2), the following are examples of other DE entity website content that may also be noncompliant with 45 C.F.R. § 155.220(j)(2)(i) or 45 C.F.R. § 156.1230(b)(2).

Example #1: Implying or stating that APTC or CSRs are available to defray the costs of any off-Exchange products.

¹⁰ More information about utilizing MAPI is available at: <https://developer.cms.gov/marketplace-api/>. DE entities using either the classic DE or EDE pathways may leverage MAPI.

Example #2: Displaying QHP premiums that factor in estimated APTC for household members that are unlikely to qualify for APTC (e.g., considering a child within a household as APTC-eligible for purposes of calculating estimated APTC when that child is likely Medicaid- or CHIP-eligible and therefore likely not APTC-eligible).