



Date: May 17, 2017

From: Center for Consumer Information and Insurance Oversight

Title: Health Insurance Exchange^{SM1} Guidance

Subject: Proxy Direct Enrollment Pathway for 2018 Individual Market Open Enrollment Period

The direct enrollment (DE) pathway – the functionality that allows a consumer or an issuer, agent or broker assisting a consumer to shop for coverage on a third party website, is an important method to encourage innovative ways to provide an improved customer experience and easier access to enroll in individual market Exchange coverage offered through HealthCare.gov. In order to reduce undue regulatory burden on DE entities, and in the interest of expanding direct enrollment for Open Enrollment 5 for plan year 2018, CMS will no longer require the consumer-facing redirect with Security Assertion Markup Language (SAML)² for all individual market enrollment transactions for coverage offered through the Federally-facilitated Exchanges (FfEs) and State-Based Exchanges on the Federal Platform (SBE-FPs) that rely on HealthCare.gov for individual market eligibility and enrollment functions, and will permit DE entities to use a “proxy direct enrollment” pathway, under which DE entities may collect consumer information on its website and input that information into HealthCare.gov.

This approach is intended to provide consumers with access to new and innovative shopping experiences for individual market coverage offered through the FfEs and SBE- FPs and further stabilize the risk pool by providing more ways for consumers to access coverage. To minimize risk to HealthCare.gov functionality and of eligibility inaccuracies, CMS will restrict use of proxy direct enrollment as follows:

- All proxy direct enrollments will occur secured with CMS-issued credentials issued to individuals responsible for proxy direct enrollment. Consistent with existing procedures, DE entities may not create Exchange accounts on behalf of individual consumers.
- Proxy direct enrollment will be limited to simple cases currently served by Application 2.0. Complex enrollments, SEPs, and terminations will not be supported. In accordance with 45 C.F.R. § 155.220(c)(1) and 45 C.F.R. § 155.405, the screener questions, application language and application flow will be provided to DE entities by CMS and must be duplicated exactly on the DE entities website for all “proxy direct enrollments”. For those consumers not supported by Application 2.0, DE entities must support these individuals through the current double redirect process in the existing direct enrollment pathway consistent with 45 C.F.R. § 155.220(c)(3)(i) or

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

² Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces (November 7, 2014 Update), available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/May_1_2013_CCIIO_AB_-_Guidance_110414_508.pdf.

direct them to HealthCare.gov to complete the application and receive an eligibility determination.

- To limit burden on issuers to manage re-enrollment for individuals who had previously come to the Exchange for coverage and to avoid duplicate enrollments, DE entities must use existing search functionality where feasible to determine whether an existing application/enrollment is present for a given consumer and use the current application/enrollment to allow the consumer to apply for and select a new plan for the next open enrollment.
- CMS will not allow retries or bulk submissions due to potential for proxy direct enrollment to degrade Exchange systems and hamper the experience for all users.
- CMS may require DE entities to notify consumers of data matching issues (DMIs), pre-enrollment SEP verification status, and clearly outline tax liability implications of APTC, including next steps for the consumer to submit documents and pay premiums.
- DE entities must attest via an agreement with CMS that the entity will comply with the restrictions stated above.
- CMS may release future guidance on privacy and security requirements for DE Entities using the proxy method for enrollments to ensure that this pathway is in compliance with Federal privacy and security standards.

In addition to these requirements, DE entities must implement a FICAM TFS approved identity service provider for consumers.

Entities wishing to participate in proxy direct enrollment will retain a third party auditor that meets CMS's approval to validate compliance with the restrictions outlined above, as well as with the privacy and security standards. Third party audits must take place prior to open enrollment, and the findings must be submitted to CMS. CMS will review and approve auditors and DE entities for use of the proxy direct enrollment on a first come, first served basis, and cannot commit to reviewing and approving all auditors and DE entities prior to November 1, 2017.

To ensure Exchange systems are not negatively affected, DE entities wishing to participate in proxy direct enrollment will need to conduct testing with CMS. This testing will take place on a timeframe to be determined by CMS, likely in early September 2017. Additional information about proxy direct enrollment testing will be forthcoming.

CMS will review and approve DE entities requests to participate in proxy direct enrollment via the pre-open enrollment readiness review outlined at 45 C.F.R. § 155.220(c)(i)(3)(K) and 45 C.F.R. § 156.1230(b)(2). This readiness review will entail: review of third party audit findings, review of testing results, and establishment of operational protocols to ensure entity and Exchange systems stay in sync. We anticipate that we will begin notifying DE entities on a rolling basis of approval to use proxy direct enrollment in October, 2017. Proxy direct enrollment entities will be required to sign an agreement to participate in this pathway.

CMS will also continue to conduct standard web-broker website reviews that include, for example, reviews to determine compliance with display and QHP listing requirements, and will regularly review DE entities not participating in proxy direct enrollment to be sure the entity is using the approved redirect pathway. CMS will also conduct regular reviews of proxy direct enrollment entities' compliance with applicable requirements.

CMS will continue to maintain final authority and oversight over actions with respect to DE partner compliance with Exchange regulations.

Given the potential risks and the need for system stability during the shorter open enrollment period, CMS will invoke its authority³ to temporarily suspend a DE entity's access to the FFE **immediately upon indication that an approved DE entity is out of compliance with requirements and guidance related to proxy direct enrollment**. Access will not be restored until the issue is remedied. Furthermore, any DE entity that does not obtain prior approval for proxy direct enrollment from CMS and is found to be using proxy direct enrollment will have its access to the FFE suspended until the entity is in compliance with an approved DE pathway.

CMS intends that the proxy direct enrollment pathway be temporary until the enhanced direct enrollment pathway under 45 C.F.R. § 155.220(c)(3)(ii) and 45 C.F.R. § 156.265 (b)(3) is available. Entities wishing to utilize the new proxy direct enrollment pathway must notify CMS of their intention to do so and must provide their third party auditor selection, including contact information. Entities may begin to notify CMS of their intent after the release of additional guidance and direction in mid-June.

If you have any questions on this guidance or require technical assistance, please contact webbroker@cms.hhs.gov.

³ 45 C.F.R. § 155.220(c)(3)(i)(L) and 45 C.F.R. § 156.1230(b)(1).