

## Key Priorities for Federally-Facilitated Exchange (FFE) and State-based Exchange on the Federal Platform (SBE-FP) Direct Enrollment (DE) Compliance Reviews for Plan Year 2021

CMS will perform compliance reviews of entities that use direct enrollment (DE)<sup>1</sup> (DE Entities)<sup>2</sup> to develop and/or host a non-Exchange website that interfaces with a FFE or a SBE-FP (collectively referred to as “Exchange”) to assist consumers<sup>3</sup> with completing an Exchange eligibility application and enrolling in qualified health plans (QHPs) offered through the Exchange as described in 45 C.F.R. §§ 155.220(c) and 156.1230.<sup>4</sup> CMS will use these reviews to confirm DE Entities’ compliance with relevant regulatory requirements under 45 C.F.R. §§ 155.205, 155.220, 155.221, 155.260, 156.705, and 156.1230, guidance interpreting these regulations, and with requirements in the *Agreement Between Web-Based Entity and the Centers for Medicare & Medicaid Services for the Federally-Facilitated Exchange and the State-Based Exchange on the Federal Platform Individual Market* (Web-broker Agreement), *Enhanced Direct Enrollment Agreement Between Direct Enrollment Entity and the Centers for Medicare & Medicaid Services for the Individual Market Federally-Facilitated Exchanges and State-Based Exchanges on the Federal Platform* (EDE Business Agreement), and *Updated Web-broker Direct Enrollment Program Participation Minimum Requirements*,<sup>5</sup> as applicable.

CMS will request policies, protocols, standard operating procedures or other similar manuals, and any other applicable documentation from DE Entity personnel as part of the compliance review process to evaluate compliance with applicable Exchange requirements. As new operational guidance for plan year 2021 is published, CMS may include those standards as part of the compliance review. Table A below lists the regulatory standards governing DE Entity<sup>6</sup> operational requirements that CMS anticipates including as part of the DE compliance reviews for 2021. This list is intended to provide an overview of CMS’ key priorities for the 2021 DE compliance reviews. This list should not be construed as a comprehensive list of all standards applicable to DE Entities, nor as a limitation on CMS’ authority or ability to review compliance with any standards not appearing on this list. The compliance reviews covered in

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<sup>1</sup> Throughout this document, the term “DE” is used to encompass both the classic direct enrollment pathway and the enhanced direct enrollment pathway.

<sup>2</sup> DE Entities are web-brokers and QHP issuers that are permitted to assist consumers with direct enrollment in QHPs offered through the Marketplaces and that meet the applicable requirements contained in 45 C.F.R § 155.221, and either 45 C.F.R § 155.220 or 45 C.F.R § 156.1230, respectively. See 45 C.F.R. § 155.221(a). Issuers may also be reviewed under the standards set forth in *Key Priorities for Federally-facilitated Exchange Compliance Review for the 2021 Plan Year*.

<sup>3</sup> Throughout this document, the term “consumer” is used to encompass applicants, qualified individuals and enrollees.

<sup>4</sup> See 45 C.F.R. § 155.220(c)(3)(i)(E) and (c)(5). Also see section V.k. of the *Agreement Between Web-Based Entity and the Centers for Medicare & Medicaid Services for the Federally-Facilitated Exchange and the State-Based Exchange on the Federal Platform Individual Market* (Web-broker Agreement).

<sup>5</sup> Guidance document available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2020-WB-Program-Guidance-052120-Final.pdf>

<sup>6</sup> “DE Entity” is used throughout Table A to refer to web-brokers and/or QHP issuers. Some requirements in the table may apply only to a web-broker or only to a QHP issuer, even though the term “DE Entity” is used. For example, requirements applicable to web-brokers exclusively are found in the Web-broker Agreement and in 45 C.F.R. § 155.220. Requirements applicable to DE Entities more broadly might cite the EDE Business Agreement and 45 C.F.R. §§ 155.220 and 156.1230.

this document are separate from other audits and reviews that may be conducted to ensure compliance through other CMS oversight mechanisms.

**Table A: Standards That May Be Included in DE Compliance Reviews for Plan Year 2021**

Standard	Source
<p><b>Minimum Requirements for a DE Website Used to Complete QHP Selection and/or the Exchange Eligibility Application<sup>7</sup></b></p> <p>The DE Entity must adhere to standards for the use of its website to assist a consumer with completing QHP selection and/or the Exchange eligibility application by:</p> <ul style="list-style-type: none"> <li>• Disclosing and displaying all QHP information provided by the Exchange or by QHP issuers or prominently displaying the standardized plan detail disclaimer</li> <li>• Providing consumers the ability to view all QHPs offered through the Exchange</li> <li>• Not providing consumers with financial incentives, like rebates or giveaways</li> <li>• Displaying all QHP data provided by the Exchange</li> <li>• Prominently displaying a standardized General Non-Federally-facilitated Exchange (FFE) Disclaimer and providing a link to the Exchange website</li> <li>• Prominently displaying information on a consumer’s eligibility for advance payments of the premium tax credit (APTC) or cost-sharing reductions (CSRs), and allowing the consumer to select an amount for APTC and make related tax attestations, where applicable</li> <li>• Displaying and marketing QHPs and non-QHPs on separate website pages</li> <li>• Not displaying QHP recommendations based on compensation an agent/broker or web-broker receives from QHP issuers</li> </ul>	<ul style="list-style-type: none"> <li>• 45 C.F.R. § 155.220(c)(3)(i)(A)</li> <li>• 45 C.F.R. § 155.220(c)(3)(i)(B)</li> <li>• 45 C.F.R. § 155.220(c)(3)(i)(C)</li> <li>• 45 C.F.R. § 155.220(c)(3)(i)(D)</li> <li>• 45 C.F.R. § 155.220(c)(3)(i)(G)</li> <li>• 45 C.F.R. §§ 155.220(c)(3)(i)(I), (J) and 156.1230(a)(1)(v)</li> <li>• 45 C.F.R. §§ 155.220(c)(3)(i)(K) and 155.221(b)(1)</li> <li>• 45 C.F.R. § 155.220(c)(3)(i)(L)</li> </ul>
<p><b>Website Accessibility</b></p> <p>The DE Entity’s website must adhere to accessibility requirements by:</p> <ul style="list-style-type: none"> <li>• Providing accessible information to individuals living with disabilities and for individuals with limited English proficiency</li> </ul>	<ul style="list-style-type: none"> <li>• 45 C.F.R. § 155.205(c) and EDE Business Agreement, Section IX.o. and Appendix C</li> </ul>

<sup>7</sup> Consistent with 45 C.F.R. § 155.220(c)(3)(ii)(A), the requirements identified in this row also apply to the use of a web-broker website to complete the Exchange eligibility application.

Standard	Source
<p><b>Maintenance of Records</b></p> <p>The DE Entity must follow maintenance of records processes by:</p> <ul style="list-style-type: none"> <li>• Maintaining records for 10 years</li> </ul>	<ul style="list-style-type: none"> <li>• 45 C.F.R. §§ 155.220(c)(3)(i)(E) and 156.705(c); EDE Business Agreement, Section X.i. and Appendix C; Web-broker Agreement, Section VII.h.</li> </ul>
<p><b>Privacy and Security Standards</b></p> <p>The DE Entity must adhere to privacy and security requirements by:</p> <ul style="list-style-type: none"> <li>• Providing a Privacy Notice Statement to consumers on its website or in another form that complies with applicable regulations and/or guidance</li> <li>• Providing consumers the opportunity to opt-in for the DE Entity to collect, create, disclose, access, maintain, store, and use their personally identifiable information (PII)</li> <li>• Providing a mechanism through which consumers can limit the DE Entity’s creation, collection, disclosure, access, maintenance, storage, and use of their PII</li> <li>• Providing a description of privacy and security practices and information on how to file complaints with CMS and the DE Entity on the DE Entity’s website</li> </ul>	<ul style="list-style-type: none"> <li>• 45 C.F.R. §§ 155.220(d)(3) and 155.260(b)</li> <li>• 45 C.F.R. §§ 155.220(d)(3) and 155.260(b); Web-broker Agreement, Section II.g.; and EDE Business Agreement, Section III.f.</li> <li>• 45 C.F.R. §§ 155.220(d)(3) and 155.260(b); Web-broker Agreement, Section II.g.; and EDE Business Agreement, Section III.f</li> <li>• 45 C.F.R. §§ 155.220(d)(3) and 155.260(b)</li> </ul>
<p><b>Reporting Requirements</b></p> <p>The DE Entity must adhere to reporting standards by:</p> <ul style="list-style-type: none"> <li>• Reporting potential material breaches by agents/brokers that access its website to HHS and applicable state departments of insurance when required</li> <li>• Reporting to CMS any security and privacy Incidents within 72 hours from knowledge of the incident or Breaches of PII within 24 hours from knowledge of the breach</li> <li>• Implementing Incident and Breach Handling procedures that are consistent with CMS’ Incident and Breach Notifications Procedures</li> </ul>	<ul style="list-style-type: none"> <li>• 45 C.F.R. § 155.220(c)(4)(i)(E)</li> <li>• 45 C.F.R. § 155.220(d)(3) and Web-broker Agreement, Section II.h.</li> <li>• Web-broker Agreement, Appendix A, Section II.h.; EDE Business Agreement, Section X.d</li> </ul>

Standard	Source
<p><b>Oversight of Agents/Brokers Who Use a DE Entity's Website</b></p> <p>The DE Entity must comply with processes concerning oversight of downstream agents/brokers by:</p> <ul style="list-style-type: none"> <li>• Providing a list of all agents/brokers who have entered into an arrangement with the DE Entity to use its website to CMS</li> <li>• Verifying that agents/brokers accessing or using its website are licensed in the state in which a consumer is selecting a QHP, have completed required training and registration, and have signed all required agreements with the Exchange</li> <li>• Ensuring that its name and National Producer Number (NPN) prominently appear on the website even if the agent or broker that is accessing the website is able to customize the appearance of the website</li> <li>• Terminating an agent/broker's access to its website if HHS determines that the agent/broker is in violation of 45 C.F.R. § 155.220 and/or HHS terminates any required agreement with the agent/broker</li> <li>• Identity-proofing agents/brokers in the manner prescribed in the EDE Business Agreement prior to allowing the agents/brokers to use its EDE environment</li> </ul>	<ul style="list-style-type: none"> <li>• 45 C.F.R. § 155.220(c)(4)(i)(A)</li> <li>• 45 C.F.R. § 155.220(c)(4)(i)(B)</li> <li>• 45 C.F.R. § 155.220(c)(4)(i)(C)</li> <li>• 45 C.F.R. § 155.220(c)(4)(i)(D)</li> <li>• EDE Business Agreement, Section IX.f. and Appendix C</li> </ul>
<p><b>Exchange Standards of Conduct</b></p> <p>The DE Entity must comply with the Exchange's standards of conduct by:</p> <ul style="list-style-type: none"> <li>• Providing consumers with correct information, without omission of material fact, regarding the Exchange, QHPs offered through the Exchange, and insurance affordability programs, including savings that may be available through Exchange coverage (APTC, CSRs), and coverage through Medicaid and the Children's Health Insurance Program (CHIP)</li> <li>• Refraining from marketing or conduct that is misleading, coercive, or discriminatory based on race, color, national origin, disability, age, and sex</li> <li>• Obtaining consumer consent prior to assisting with or facilitating enrollment through the Exchange or assisting with an application for Exchange or insurance affordability programs, including APTC and CSRs for QHPs, Medicaid or CHIP</li> </ul>	<ul style="list-style-type: none"> <li>• 45 C.F.R. §§ 155.220(j)(2)(i), 155.300(a) <i>citing</i> 42 C.F.R. § 435.4, and 156.1230(b)(2); Web-broker Agreement, Appendix B, Section (44); and EDE Business Agreement, Appendix B, Section (45)</li> <li>• 45 C.F.R. §§ 155.220(j)(2)(i) and 156.1230(b)(2)</li> <li>• 45 C.F.R. §§ 155.220(j)(2)(iii) and 155.300(a) <i>citing</i> 42 C.F.R. § 435.4; Web-broker Agreement, Appendix B, Section (35); and EDE Business Agreement, Appendix B, Section (34)</li> </ul>

Standard	Source
<p><b>Relationship with Upstream EDE Entity</b></p> <ul style="list-style-type: none"> <li>A primary EDE Entity must have a contractual and legally binding relationship with each of its upstream EDE Entities reflected in a signed, written agreement between the primary EDE Entity and the upstream EDE Entity</li> </ul>	<ul style="list-style-type: none"> <li>EDE Business Agreement, Sections VII.f., VII.g., and VII.h.</li> </ul>
<p><b>EDE Environment Requirements</b></p> <p>The DE Entity must adhere to requirements concerning its EDE environment by:</p> <ul style="list-style-type: none"> <li>Ensuring that its EDE Environment supports Consumer-reported Changes in Circumstances (CiCs), inclusive of Special Enrollment Period (SEP) CiCs and non-SEP CiCs, and SEPs within its chosen end-state phase for the full term of the EDE Business Agreement and supports re-enrollment application activities</li> <li>Providing and communicating status updates and access to information for consumers to manage their application and health insurance coverage</li> <li>Tracking agent/broker, and consumer interactions with consumer applications and/or the Exchange using a unique identifier</li> </ul>	<ul style="list-style-type: none"> <li>EDE Business Agreement, Section IX.b.</li> <li>EDE Business Agreement, Section IX.h. and Appendix C</li> <li>EDE Business Agreement, Section IX.j. and Appendix C</li> </ul>