



Date: January 8, 2016

Subject: Frequently Asked Questions (FAQs) Regarding Federally-facilitated Marketplace (FFM) Agents and Brokers

1. What requirements must agents and brokers fulfill if they have previously completed registration for the FFM?

To continue participation in the Federally-facilitated Individual Marketplace (Individual Marketplace) for plan year 2016 and future plan years, agents and brokers must complete an annual registration renewal process that includes completion of a required training curricula and exams, and execution of the Individual Marketplace General Agreement (General Agreement) and the Individual Marketplace Privacy and Security Agreement.

To continue participation in the Small Business Health Option Program (SHOP) Marketplace for plan year 2016 and future plan years, agents and brokers must execute the SHOP Marketplace Agreement annually, and are strongly encouraged to complete the relevant training curricula and exam.

As a reminder, agents and brokers who will be participating in the Individual Marketplace for the first time for plan year 2016 must complete seven steps:

- Create a [Centers for Medicare & Medicaid Services \(CMS\) Enterprise Portal](#) account
- Request the FFM Agent/Broker role on the CMS Enterprise Portal
- Conduct identity proofing on the CMS Enterprise Portal
- Complete the required training curricula and exams on the Marketplace Learning Management System (MLMS) or through a CMS-approved vendor
- Complete profile information on the MLMS, which is available via the CMS Enterprise Portal
- Execute the General Agreement and the Individual Marketplace Privacy and Security Agreement on the MLMS
- Confirm completion of all required steps on the Agent Broker Registration Status page on the CMS Enterprise Portal

Agents and brokers who will be participating in the SHOP Marketplace for the first time in plan year 2016 must complete seven steps and have the option of an additional step:

- Create a [CMS Enterprise Portal](#) account
- Request the FFM Agent/Broker role on the CMS Enterprise Portal
- Conduct identity proofing on the CMS Enterprise Portal
- Complete the training curriculum on the MLMS or through a CMS-approved vendor *(This step is optional, but strongly encouraged.)*

- Complete profile information on the MLMS which is available via the CMS Enterprise Portal
- Execute the SHOP Marketplace Agreement on the MLMS
- Confirm completion of all required steps on the Agent Broker Registration Status page on the CMS Enterprise Portal
- Establish a profile on the [SHOP Marketplace Agent/Broker Portal](#)

Agents and brokers who completed FFM registration in a previous plan year *should not* create a new CMS Enterprise Portal account or conduct identity proofing again. Agents and brokers who completed FFM registration for plan year 2014, but not for plan year 2015, will need to log in to their existing CMS Enterprise Portal account and request the FFM Agent/Broker role.

2. May a qualified health plan (QHP) issuer deny enrollment of a qualified individual, employer, or employee who is eligible for coverage through the FFM, 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 is eligible for coverage through the FFM in a QHP offered through the FFM. 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 applicable 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 concerns, especially with regard to potential or confirmed instances of noncompliance with FFM requirements. States should also notify CMS of state enforcement actions against specific agents and brokers. CMS intends to coordinate resolution actions addressing suspected or confirmed noncompliance by FFM agents or brokers 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 & 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 FFM-registered agents and brokers to ensure compliance with FFM requirements. CMS notifies state regulatory agencies 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). CMS typically relays these concerns through the respective CMS CCIIO State Officer. CMS's monitoring efforts focus primarily on concerns that relate to agent and broker compliance with the FFM-specific requirements. The agency relies on states to continue to monitor agent and broker compliance with state laws and requirements. To the extent that CMS detects a potential compliance issue related to state requirements, it will inform the state and expect the state to assume the primary role for resolving the issue.

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

No. The FFM does not independently verify the state licenses of FFM-registered 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 validity of the agent's or broker's state license and the inclusion of the agent's or broker's National Producer Number (NPN) on the CMS registration completion list 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. Issuers may accept a copy of an agent's or broker's registration completion certificate as evidence that the agent's or broker's NPN will appear on the next publicly available registration completion list.

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

Agents and brokers are compensated or credited directly by QHP issuers as per the terms of their QHP issuer contracts for assisting consumers to enroll in QHPs through the FFM. Compensation or credit for enrollments 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 provide the same compensation or credit to agents and brokers for enrollment in QHPs through the Marketplaces as for enrollment in similar health plans offered outside the Marketplaces.

7. Can agents and brokers 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 affiliated agents and brokers. For information on state-specific Medicaid rules, agents and brokers should contact their state Department of Insurance (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 enrollment transaction 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 information identifies 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 broker for an enrollment transaction, or direct the QHP issuer to do so?

As noted here, and in previous guidance, the FFM has not established a commission schedule and does not pay commissions directly to agents or brokers. The FFM transmits agent and broker identifying information (e.g., the NPN), which is recorded as part of the consumer's application, to QHP issuers in order to facilitate any payment or compensation from a QHP issuer. The amount and terms of any compensation or credit 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, FFM policy recommends that QHP issuers keep a record of enrolling agents or brokers in their systems, even if an agent or broker is not affiliated with the QHP issuer, in case there is any follow-up required as a result of the enrollment. To become affiliated with a QHP issuer, agents and brokers must contact the QHP issuer directly, or they can contact their state DOI for more information.