



## Agent and Broker Compensation for Marketplace Enrollments

This tip sheet reviews agent and broker compensation requirements for enrollments through a Federally-facilitated Marketplace (FFM or Marketplace). Compensation includes commissions, fees, or other incentives as established in the relevant contract between an issuer and the agent or broker.

### Compensation for Marketplace Enrollments

The Marketplace does not set compensation levels or pay commissions to agents or brokers. Agents and brokers who participate in the Marketplace receive compensation directly from affiliated qualified health plan (QHP) issuers in accordance with their agreements with those issuers and any applicable state-specific requirements. Unlike the Centers for Medicare & Medicaid Services (CMS) Medicare Advantage program, the Marketplace does not set compensation levels.

### Working with QHP Issuers

The Marketplace does not play a role in making appointments between issuers and agents and brokers, and the FFM is not a party to the contract between the QHP issuer and the agent or broker. To become appointed with a particular QHP issuer, agents and brokers should contact the QHP issuer directly or work with a general agency who has an appointment with a QHP issuer.

To get compensated for actively assisting a consumer with enrollment in a Marketplace QHP, agents and brokers must:

- Be appointed with the QHP issuer in accordance with state law;
- Have completed FFM registration (including required training) for the applicable plan year at the time of enrollment; and
- Be licensed with an active health-related line of authority in the state(s) where the QHP is offered.

Issuers have discretion to compensate agents and brokers if they do not have an appointment at the time an agent or broker assisted with an enrollment, but they otherwise comply with applicable federal and state requirements.

If an agent or broker has reason to believe that his or her National Producer Number (NPN) (or agency/brokerage NPN) should have been included on a consumer's Marketplace enrollment transaction, but it was not, the agent or broker should contact the respective QHP issuer directly to discuss the situation.

- CMS expects a QHP issuer would issue compensation if it is determined from the issuer's or agent's or broker's records that the agent or broker did, in fact, assist the consumer, but the NPN was left off the enrollment and the agent or broker otherwise complied with applicable federal and state requirements (e.g., was registered with the FFM at the time such assistance was provided).
- Such records may include a consent form from the consumer, an issuer's broker of record form, or similar documentation that demonstrates the consumer was an agent's or broker's client for the enrollment in question.

### QHP Issuer Marketing Practices That May Impact Compensation

#### Equivalence

A QHP issuer must pay the same compensation for QHPs offered through the Marketplace as it does for similar health plans offered in the state, but outside the Marketplace ([see 45 CFR § 156.200\(f\)](#)).

Agents and brokers who have evidence QHP issuers are not compensating agents and brokers inside and outside the Marketplace the same can email these concerns, along with supporting documentation, to the Agent/Broker Email Help Desk at [FFMProducerAssisterHelpDesk@cms.hhs.gov](mailto:FFMProducerAssisterHelpDesk@cms.hhs.gov).



## **Prohibition on Discriminatory Marketing Practices**

QHP issuers are prohibited from adopting marketing practices that have the effect of discouraging enrollment of consumers with significant health needs ([see 45 CFR §156.225\(b\)](#)). This prohibition extends to agent/broker compensation arrangements (e.g., paying lower commission for higher metal level plan, like platinum and gold plans, that are associated with higher utilization).

Agents and brokers who have evidence an issuer's Marketplace compensation arrangement or marketing practices are discriminatory can contact CMS at [marketconduct@cms.hhs.gov](mailto:marketconduct@cms.hhs.gov) or their state Department of Insurance. Documentation should be included that describes the compensation structure or other practice in question. Guidance on Marketplace compensation and marketing is available at <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Agent-Broker-Compensation-and-Discriminatory-Marketing-Practices.pdf>

Agents and brokers can email their questions or concerns on this topic to the Agent/Broker Email Help Desk at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov)