



An Assister's Guide to Working with Agents and Brokers

Center for Consumer Information and Insurance Oversight (CCIIO)

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Adapted from guidance released February 2015, available on Marketplace.CMS.gov. This presentation applies to you if you are a Navigator, non-Navigator assistance personnel (“in-person assister”), or certified application counselor (collectively, an “assister”) in a state with a Federally-facilitated Marketplace or State Partnership Marketplace.



Introduction

It is important to understand when it might be appropriate to inform a consumer about the services agents and brokers provide, and how you can collaborate and engage with agents and brokers in a way that does not violate the legal requirements that apply to you in your assister role.

This presentation will cover:

1. Differences between assisters and agents and brokers
2. When to inform consumers about agents and brokers
3. How to inform consumers about agents and brokers
4. Working with agents and brokers: dos and don'ts
5. Examples – working with and informing consumers about agents and brokers

Section 1

- 1. Differences between assisters and agents and brokers**
2. When to inform consumers about agents and brokers
3. How to inform consumers about agents and brokers
4. Working with agents and brokers: dos and don'ts
5. Examples – working with and informing consumers about agents and brokers

Definitions

As described on HealthCare.gov:

- An agent or broker that is registered with the Marketplace is a person or business who can help you apply for help paying for coverage and enroll you in a qualified health plan (QHP) through the Marketplaces.
 - *They can make specific recommendations about which plan you should enroll in.*
 - *They're also licensed and regulated by states and typically get payments, or commissions, from health insurers for enrolling a consumer into an issuer's plans.*
 - *Some agents and brokers may only be able to sell plans from specific health insurers.*
 - *They must complete training before assisting consumers.*

Definitions, cont'd.

- “**Web-brokers**” refers to agents or brokers that own and manage their own enrollment websites (or use the website of another agent or broker), as an alternative to using HealthCare.gov.
 - Web-brokers are required to display all individual market qualified health plans (QHPs) available in a Marketplace service area.
 - However, a web-broker might not be able to provide all information needed for a consumer to make a decision about enrolling in a specific QHP.
 - Web-broker sites are generally focused on enrolling persons into private health insurance coverage, and web-brokers, similar to other agents and brokers, generally receive compensation from health insurance issuers for these enrollments.

Differences

Assisters

- **Prohibited from receiving consideration** directly or indirectly from health insurers or stop-loss insurance issuers in connection with the enrollment of any individuals into QHPs or non-QHPs.
- With one limited exception for some certified application counselors, all assisters in the Federally-facilitated Marketplaces (including State Partnership Marketplaces) **must help all persons who ask for their assistance**, regardless of any particular status.

Agents and Brokers

- Typically **compensated by insurance companies with whom they have a contract**, and are sometimes exclusively affiliated with a specific health insurance company or companies to sell certain products.
- There is no federal requirement that agents or brokers help all persons who ask for their assistance.

Differences, cont'd.

Assisters

- Assisters must inform consumers about all of the QHPs and insurance affordability programs for which they are eligible.
- Assisters **must** disclose to consumers certain relationships **they have with health insurance issuers and insurance affordability programs**. Assisters must also provide information in a **fair, accurate, and impartial manner**.

Agents and Brokers

- With the exception of web-brokers, agents and brokers are **not required by federal law to display all available QHPs or to facilitate enrollment into all QHPs**. Additionally, agents and brokers might not be required or prepared to help individuals with Medicaid/CHIP eligibility.
- The extent to which agents and brokers owe particular duties to consumers usually **depends on whether any such duties have been established under state law**.

Section 2

1. Differences between assisters and agents and brokers
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General Tips

Broadly, assisters cannot:

1. endorse specific agents and brokers or refer consumers to specific agents and brokers;
2. accept consideration of any kind (direct or indirect, cash or in-kind) from an agent or broker that could be tied to the compensation received by that agent or broker from a health insurance or stop loss insurance issuer for enrolling a person in a QHP or non-QHP; or
3. use or rely upon the services of agents and brokers as a substitute for performing any of your federally-required duties.

It may be appropriate for you to inform a consumer about services provided by agents and brokers if...

- A **consumer specifically asks** about the services that agents and brokers provide and expresses a desire to talk to an agent or broker; or
- After you show a consumer all of his or her enrollment options, the **consumer expresses a desire to receive a recommendation** about which plan or type of plan to choose, and **if agents and brokers are permitted under state law to make such recommendations.**

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How to inform consumers about agents and brokers

- **Tell the consumer about the differences** between the services provided by agents and brokers and those provided by assisters.
- **Refer consumers to general resources** that they can use to search for an agent or broker near where they live:
 - Find Local Help feature on HealthCare.gov to find those who have registered with the Marketplace
 - State Departments of Insurance might also have resources available
- **If, after the consumer looks at a general listing** of agents and brokers and selects a specific agent or broker to contact, **he or she asks for your help with contacting that agent or broker, you may also provide that help.**

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Dos and Don'ts

- **DO** provide information in a fair, accurate, and impartial manner.
- **DO NOT** endorse specific agents and brokers or refer consumers to specific agents and brokers.

What this means for assisters:

- You may *not* try to persuade a consumer to use a specific agent or broker (including a web-broker) or recommend a particular agent or broker or subset of agents or brokers.
- An assister entity or individual may *not* advertise or otherwise display a link or widget to a specific web-broker at its service location or on its website.
- You must *not* host or reserve space for agents and brokers at your service locations, regardless of whether you are receiving any payments, services, or other consideration in exchange for the space.

Dos and Don'ts

- **DO NOT** accept consideration of any kind (direct or indirect, cash or in-kind) from an agent or broker that could be tied to the compensation received by that agent or broker from a health insurance or stop loss insurance issuer for enrolling a person in a QHP or non-QHP.

What this means for assisters:

- In particular, assisters should exercise caution about requests from agents and brokers for referrals and requests to link to or otherwise publicize web-broker sites, and ensure that they are not receiving any economic benefit from taking these steps and are not endorsing specific agents or brokers.
- If a consumer uses an agent or broker to enroll in coverage, that agent or broker will generally be compensated by the issuer, and the assister should take care not to receive any part of that compensation.

Dos and Don'ts

- **DO NOT** use or rely upon the services of agents and brokers as a substitute for performing any of your federally-required duties.

What this means for assisters:

- Except for one limited exception for Navigators in a state-based SHOP-only Marketplace, you must *not* refer consumers to agents and brokers as a substitute for fulfilling any of your federally-required duties.
- You must *not* use a web-broker site when performing online application and enrollment assistance, unless you are using it as a reference tool to supplement the information available on HealthCare.gov, since HealthCare.gov should always be the primary website you use to perform these assister functions.

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Informing consumers about agents and brokers– Scenario 1

- A consumer comes to your assister service location for a scheduled appointment. After you have informed the consumer that your duties include helping her choose a plan, and after you have helped the consumer submit the eligibility application through the Marketplace, the consumer thanks you for helping her find out what she is eligible for. Next, without any persuasion whatsoever on your part, she informs you that she would prefer to select a QHP with the help of a licensed agent or broker.
 - Can you refrain from discussing QHP options or proceeding to “Plan Compare” with this consumer?
 - If so, what information should you provide to this consumer?

Informing consumers about agents and brokers– Scenario 1

Answer: Yes, you can refrain from discussing QHP options or proceeding to “Plan Compare” with this consumer.

When doing so, provide the following information:

- Inform the consumer of the differences between agents and brokers and assisters.
- If the consumer consents for you to follow up with her, you may contact her at a later time.

Informing consumers about agents and brokers– Scenario 2

- Same consumer as described in Scenario 1, but this time the consumer thanks you and then informs you that she would like to find a licensed agent or broker but doesn't know how to go about finding an agent or broker in her area and asks you to help her locate one that is close by. She adds that she would like to find an agent or broker who speaks Spanish, and who has experience with enrolling consumers into qualified health plans through the Marketplaces.
 - Can you help this consumer find an agent or broker?
 - If so, how can you help her find someone with the qualifications she is looking for?

Informing consumers about agents and brokers– Scenario 2

Answer: Yes, you can help this consumer find an agent or broker.

When doing so, provide the following information:

- First, refer her to general resources that she can use to search for an agent or broker, such as the Find Local Help feature on HealthCare.gov, or your state’s department of insurance.
- If the consumer asks you to provide a more specific listing of agents and brokers to help her decide whom to contact, you must apply **objective sorting criteria** when creating such a listing, so that the information is provided in a fair and impartial manner. Examples of listings utilizing “objective sorting criteria” include:
 - all agents or brokers in a particular zip code or city and state;
 - all agents or brokers that your state identifies as trained in or capable of assisting with Medicaid enrollments;
 - all agents or brokers that have expressed an interest in receiving referrals from assisters; and/or
 - all agents or brokers that have Spanish language assistance offered.

Informing consumers about agents and brokers– Scenario 2

Answer cont'd: Tips on providing a more specific listing of agents and brokers using objective sorting criteria:

- It is important to inform consumers who would like to see a specific listing what sorting criteria were applied, who compiled the list, and that their choices are limited based on the objective sorting criteria applied.
- The listing itself should not be sorted in such a manner that it gives the appearance of endorsing certain agents or brokers.
 - For example, an alphabetical listing would be appropriate, or a listing that is based on distance from a particular location.

Working with Agents and Brokers at Community Events – Scenario 1

- An organization in your community, a local food bank, is hosting a community event over the weekend. They have asked that your organization attend in order to provide outreach and education about the Marketplace to participants.
- You notice that the event's guest list includes several health insurance agents from the area. The food bank comments that these agents reached out to them to see if they could participate to advertise their services.
- You know that not all agents and brokers from the community will be attending, and do not want to appear biased towards those who are.
- **Can you attend this community event without violating the legal requirements that apply to you in your assister role?**

Working with Agents and Brokers at Community Events – Scenario 1

Answer: YES, you can attend this community event without violating the legal requirements that apply to you in your assister role.

- However, you should keep in mind that **it is important not to substitute an agent or broker to perform any of the services required of you as an assister**, which is generally prohibited.
 - For example, you should not help consumers complete an application and then refer the consumer to an agent or broker at the event to complete plan selection (unless the consumer specifically asks to be assisted by that agent or broker).
 - Additionally, be careful not to express or imply—by words or actions—an endorsement of, or preference for, the services of the group of agents and brokers that attend this event.

Working with Agents and Brokers at Community Events – Scenario 2

- Your organization is planning to host a large outreach and education event with a community hospital in your area.
- The hospital's event organizers suggest inviting several local insurance brokers with whom they have worked in the past to provide additional education and enrollment at the event.
- You are concerned that inviting these brokers to an event that your organization is co-hosting will imply that you endorse them.
- **Can you and your co-host invite these individuals to the event?**

Working with Agents and Brokers at Community Events – Scenario 2

Answer: YES, you can invite these individuals to an event you are hosting or co-hosting without violating the legal requirements that apply to you in your assister role, *as long as* you take certain steps:

- You should consider extending invitations to all agents and brokers in a particular area or having agents and brokers in a physically separate area of the event.
- If a select group of agents and brokers attends the event, you should be careful not to express or imply—by words or actions—an endorsement of, or preference for, the services of the group of agents and brokers that attend, or for a specific attendee.
- Do not substitute an agent or broker to perform any of the services required of you as an assister, which is generally prohibited.
- Finally, please note that whether agents and brokers attend Navigator-hosted events does not affect a Navigator’s ability to use grant funds for the event. It is the Navigator’s duty of impartiality that matters.

Working with Agents and Brokers at Community Events – Scenario 3

- While representing your assister organization at a local university’s “back to school” event, you meet an agent who is also providing education to consumers about the Health Insurance Marketplaces and other types of insurance that is available. This agent asks if you or someone else from your organization is available to attend an event the following week that her company is hosting to educate consumers about their coverage options and help them to sign up if they choose to.
- You think that this could be a good opportunity to reach consumers interested in signing up for coverage, but you are concerned that attending this event could imply that your organization endorses this company.
- Additionally, you are concerned that your participation could result in receiving indirect in-kind compensation, because it will feature refreshments and marketing products that the company has paid for.
- **Can you attend this event on behalf of your organization?**

Working with Agents and Brokers at Community Events – Scenario 3

Answer: Yes, HOWEVER:

- Take steps to ensure a level of impartiality.
 - For example, if an assister entity or individual attends an event sponsored or hosted by one specific agent or broker entity or individual, then we recommend that the assister strive to attend all other events sponsored or hosted by other agents or brokers to which the assister may also be invited to attend.
 - In addition, if you attend an agent or broker-hosted event, you should be careful not to express or imply—by words or actions—an endorsement of or preference for the services of the hosting individual or company.

Working with Agents and Brokers at Community Events-General Rule

In any of the above 3 scenarios, assisters should also do the following:

- Be careful not to accept any direct or indirect compensation (in cash or in kind, such as reimbursement for or waiver of a facility fee) from agents or brokers who attend these events if such compensation could be tied to the compensation that the agents or brokers receive from health insurance or stop loss issuers related to enrollment in QHPs or non-QHPs.
- Rather than accept compensation (including in-kind compensation) from an agent or broker that could be a type of prohibited compensation, you can pay your share of the overhead costs associated with the event, such as the rental, hospitality, or other administrative costs.

Additional Resources

- Information and Tips for Assisters: How and when to provide information about agent and broker services to consumers, and other information about engaging with agents and brokers | February 2015
 - <https://marketplace.cms.gov/technical-assistance-resources/agents-and-brokers-guidance-for-assisters.PDF>
- Resources for Agents and Brokers in the Health Insurance Marketplaces (for additional background)
 - <http://www.cms.gov/cciiio/programs-and-initiatives/health-insurance-marketplaces/a-b-resources.html>