

Key Priorities for Federally-Facilitated Exchange (FFE)¹ Web-broker Direct Enrollment (DE) Compliance Reviews for Plan Year 2019

CMS will perform compliance reviews of web-brokers that develop and host a non-Exchange website that interfaces with the Federally-facilitated Exchange and is used to assist consumers with direct enrollment (DE) in qualified health plans (QHPs) offered through the Exchange as described in § 155.220(c).^{2,3} CMS will use these reviews to confirm web-brokers' compliance with applicable regulatory requirements under 45 C.F.R. § 155.220, as well as with its guidance on interpreting these regulations and with requirements in the Web-broker Agreement.

CMS will request policies, protocols, standard operating procedures, or other similar manuals and any other applicable documentation from web-broker personnel as part of the compliance review process to demonstrate compliance with applicable Exchange requirements. As new operational guidance for plan year 2019 is published, those standards may be included as part of compliance reviews.

Table A below lists the regulatory standards governing web-broker operational requirements that we anticipate including as part of the Web-broker DE compliance reviews for plan year 2019. This list is intended to help web-brokers understand the key priorities for CMS' 2019 Web-broker DE compliance reviews and should not be construed as a comprehensive list of all standards applicable to web-brokers, nor as a limitation on CMS' authority or ability to review compliance with any standards not appearing on this list. The compliance reviews that are the subject of this document are separate from other audits and reviews that may be conducted to ensure compliance through other CMS oversight mechanisms.

¹ Consistent with 45 C.F.R. § 155.220(l), web-brokers participating in State-based Exchanges on the Federal Platform (SBE-FPs) must comply with all FFE standards otherwise applicable to web-brokers in 45 C.F.R. § 155.220.

² 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).

³ See the definition for "web-broker" under 45 C.F.R. § 155.20. The definition was added as part of the amendments made in the *Department of Health & Human Services (HHS) Notice of Benefit and Payment Parameters for 2020 Final Rule* (2020 Payment Notice), 84 FR 17454 (April 25, 2019). It went into effect on June 24, 2019.

Table A: Standards That May Be Included in Web-Broker DE Compliance Reviews for Plan Year 2019

Standard	Source
<p>Minimum Requirements for Web-Broker Website Used to Complete QHP Selection and/or the Exchange Eligibility Application⁴</p> <p>The web-broker must adhere to standards for the use of its website by a consumer to complete QHP selection and/or the Exchange eligibility application by:</p> <ul style="list-style-type: none"> • Displaying all QHP standardized comparative information or displaying the plan detail disclaimer • Provide consumers the ability to view all QHPs offered through the Exchange • Not providing financial incentives, such as rebates or giveaways • Displaying all QHP data provided by the Exchange • Displaying a standardized General Non-Federally-facilitated Exchange (FFE) Disclaimer • Prominently displaying information on a consumer’s eligibility for advanced 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 attestations, where applicable • Providing accessible information to individuals living with disabilities and for individuals with limited English proficiency 	<ul style="list-style-type: none"> • 45 C.F.R. § 155.220(c)(3)(i)(A) • 45 C.F.R. § 155.220(c)(3)(i)(B) • 45 C.F.R. § 155.220(c)(3)(i)(C) • 45 C.F.R. § 155.220(c)(3)(i)(D) • 45 C.F.R. § 155.220(c)(3)(i)(G) • 45 C.F.R. § 155.220(c)(3)(i)(I), (J) • 45 C.F.R. § 155.220(c)(3)(i)(A) <i>citing</i> 45 C.F.R. § 155.205(c)
<p>Maintenance of Records</p> <p>The web-broker’s website must follow maintenance of records processes by:</p> <ul style="list-style-type: none"> • Maintaining records in an electronic format for 10 years 	<ul style="list-style-type: none"> • 45 C.F.R. § 155.220(c)(3)(i)(E)
<p>Privacy and Security Standards</p> <p>The web-broker must adhere to privacy and security requirements by:</p> <ul style="list-style-type: none"> • Providing a Privacy Notice Statement to consumers on its website or in another form 	<ul style="list-style-type: none"> • 45 C.F.R. § 155.220(d)(3) and Web-broker Agreement, Appendix A, Section 2(a)
<p>Reporting Requirements</p> <p>The web-broker must adhere to reporting standards by:</p> <ul style="list-style-type: none"> • Reporting any suspected or confirmed Incidents or Breaches of PII to CMS within one hour of discovery 	<ul style="list-style-type: none"> • 45 C.F.R. § 155.220(d)(3) and Web-broker Agreement, Section II.g.

⁴ 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
<ul style="list-style-type: none"> Reporting agents or brokers that access its website to HHS and applicable state departments of insurance if the web-broker becomes aware of a potential breach of the standards in 45 C.F.R. § 155.220(c)-(d) or of the agent’s or broker’s agreement under 45 C.F.R. § 155.260(b) with the Exchange 	<ul style="list-style-type: none"> 45 C.F.R. § 155.220(c)(4)(i)(E)
<p>Oversight of Downstream Agents and Brokers Who Use a Web-Broker’s Website</p> <p>The web-broker must comply with processes concerning oversight of downstream agents and brokers by:</p> <ul style="list-style-type: none"> Providing a list of all agents and brokers who have entered into an arrangement with the web-broker to use its website to CMS Ensuring that agents or brokers 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 Terminating an agent or broker’s access to its website if the agent or broker is in violation of 45 C.F.R. § 155.220 or HHS terminates its agreements with the agent or broker Reporting potential material breaches by agents or brokers that access its website to HHS and applicable state departments of insurance when required 	<ul style="list-style-type: none"> 45 C.F.R. § 155.220(c)(4)(i)(A) 45 C.F.R. § 155.220(c)(4)(i)(B) 45 C.F.R. § 155.220(c)(4)(i)(D) 45 C.F.R. § 155.220(c)(4)(i)(E)
<p>Suspension by HHS for Fraud or Abusive Conduct</p> <p>The web-broker must adhere to regulations concerning suspension of its agreements with HHS by:</p> <ul style="list-style-type: none"> Ensuring that it does not assist with or facilitate enrollment of consumers through the Exchange or assist individuals with applying for APTC and CSRs for QHPs during the period of suspension 	<ul style="list-style-type: none"> 45 C.F.R §155.200(g)(5)(iii)
<p>FFE Standards of Conduct</p> <p>Web-brokers must comply with the Exchange’s standards of conduct by:</p> <ul style="list-style-type: none"> Providing consumers with correct information regarding the Exchange QHPs offered, and insurance affordability programs Refraining from marketing that is misleading, coercive, or discriminatory based on race, color, national origin disability, age, sex, gender identity, or sexual orientation Obtaining consumer consent prior to assisting with enrollment through the Exchange or assisting with an application for APTC and CSRs for QHPs 	<ul style="list-style-type: none"> 45 C.F.R. § 155.220(j)(2)(i) 45 C.F.R. § 155.220(j)(2)(iii)