



Overview of Marketplace Requirements for Agents and Brokers

This tip sheet provides an overview of the Federal requirements for agents and brokers who assist consumers with selecting and enrolling in coverage through a Federally-facilitated Marketplace (FFM or Marketplace).

Agents and brokers who participate in the Marketplace must complete all steps of the FFM registration process prior to assisting consumers with selecting and enrolling in a Qualified Health Plan (QHP) through the Individual Marketplace (IM) and prior to assisting employers with purchasing a Small Business Health Options (SHOP) plan. As part of that process, agents and brokers should take time to review the U.S. Department of Health and Human Services' (HHS') standards of conduct for agents, brokers, and web-brokers¹ who participate in the Marketplace to protect against conduct that is harmful to consumers or prevents the efficient operation of the Marketplace.

Participate in the Marketplace as an Agent or Broker

Agents and brokers who want to participate in the Marketplace must annually complete the assigned training courses and pass the exams through the Marketplace Learning Management System (MLMS) or through an HHS-approved vendor.

Training is optional for agents and brokers who only intend to participate in the SHOP.

However, **all** agents and brokers who wish to participate in the Marketplace must annually read and accept the applicable Marketplace Agreement(s) with the Centers for Medicare & Medicaid Services (CMS) on the MLMS.

Participating agents and brokers must:

- ✓ Provide consumers with correct information, without omission of material fact, regarding the Marketplace, QHPs offered through the Marketplace, and insurance affordability programs.
- ✓ Refrain from marketing or conduct that is misleading (including by using or having a website that HHS determines could mislead a consumer into believing he or she is visiting HealthCare.gov), coercive, or discriminates based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation.
- ✓ Provide the Marketplace with correct information required by section 1411(b) of the Patient Protection and Affordable Care Act.
- ✓ Obtain the consent of the individual, employer, or employee prior to assisting with or facilitating enrollment through the Marketplace, or assisting the individual in applying for APTC and CSRs.
- ✓ Protect consumers' personally identifiable information (PII) according to [45 C.F.R. §155.260\(b\)\(3\)](#) and the federal privacy and security standards required under the applicable Marketplace Privacy and Security Agreement(s).
- ✓ Comply with all applicable federal and state laws and regulations.

¹ CMS uses the terms "web-broker" to describe an individual agent or broker, group of agents and brokers, or company that provides a non-FFM website to assist consumers in the selection of QHPs and the enrollment process as described in [45 C.F.R. § 155.220\(c\)\(3\)](#).



Agents and Brokers and Consumer Applications

Agents and brokers may have a contractual arrangement with a web-broker or other business entity and, in such circumstances, may enter the web-broker's or agency's National Producer Number (NPN) on a consumer's application. In such circumstances, the agent or broker must first complete:

- ✓ Marketplace requirements, including training and execution of Marketplace privacy and security agreement(s).
- ✓ Remote identity proofing through the Enterprise Identity Management (EIDM) System.
- ✓ An Agent/Broker profile on the MLMS, including correctly recording the agent's or broker's NPN.

Obtaining Consent for Enrollment in Marketplace QHPs

Per the FFM standards of conduct, agents and brokers must obtain the consent of an individual, employer, or employee prior to helping them apply for financial help and/or enrolling in a Marketplace QHP.

CMS's Exchange regulations do not prescribe a standard format or process for obtaining the consent or for maintaining its record, so agents and brokers should comply with the terms of their agreements with CMS when determining how they will meet the FFM's consent requirement. While the FFM does not provide a form, or specify that a form must be signed, agents and brokers can use a Broker of Record form from an issuer or state Department of Insurance (DOI) to satisfy this requirement. Additionally, an agent or broker may obtain consent verbally (such as over the phone), electronically (such as via email), or in person.



Note: As a best practice, agents and brokers should get consent in writing and must maintain that consent documentation in case questions arise in the future regarding whether consent was obtained.



Note: At a minimum, the consent should acknowledge that the agent or broker has informed the individual, employer, or employee of the functions and responsibilities that apply to the agent's or broker's role in the Marketplace.

The record of the consent should include the following:

- ✓ The individual's, employer's, or employee's name;
- ✓ The date the consent was given; and
- ✓ The name of the agent(s) or broker(s) to whom consent was given.



Note: This could include additional names of agents or brokers if the consenter authorized multiple agents or brokers within the same organization.

Agents and brokers providing assistance verbally (such as over the phone) may obtain consent by reading a script that contains, at a minimum, the required elements of consent that are summarized above, and should record in writing that the required consent was obtained.

Privacy and Security Standards for Agents and Brokers

Privacy and security standards require an agent or broker registered with the Marketplace to provide a Privacy Notice Statement to each consumer prior to collecting his or her PII.

- The IM Privacy and Security Agreement and the SHOP Privacy and Security Agreement include more information about the requirements for the Privacy Notice Statement, which is a key component to



ensure that individuals or entities are fully aware of how their personal information is being collected, disclosed, and accessed by you.

- One of the most important priorities when handling consumer information is to not release any personal information to an unauthorized person. If a consumer requests access to personal information, you must confirm that he or she is either the consumer or is authorized to act on behalf of the consumer.
- Remember, agents and brokers must comply with the FFM privacy and security standards established by CMS that outline what and how PII may be collected or received and specify the authorized uses of PII.

Terminating an Agent's or Broker's Marketplace Agreement

HHS may suspend or terminate an agent's, broker's, or web-broker's Marketplace agreements, bar Marketplace participation for future benefit years, or impose a civil money penalty in response to noncompliance.

- HHS may terminate an agent's, broker's, or web-broker's Marketplace Agreement(s) with CMS for cause if HHS determines that a specific finding of noncompliance or a pattern of noncompliance is sufficiently severe, including if the agent, broker, or web-broker violates any terms of the Marketplace Agreement(s) with CMS.
- If HHS reasonably suspects that an agent, broker, or web-broker may have engaged in fraud or abusive conduct that may cause imminent or ongoing harm using a consumer's PII, or in connection with a Marketplace enrollment or application, HHS may temporarily suspend the agent's, broker's, or web-broker's Marketplace Agreement(s) with CMS for up to 90 calendar days, effective on the date HHS notifies the affected entity of the suspension.
- Termination or suspension also results in the removal of the agent/broker role from the FFM User ID, which prevents the agent or broker from logging in to the agent/broker landing page on HealthCare.gov and/or assisting with or facilitating enrollments through the FFMS or assisting with applications for financial help, including the use of a QHP issuer's or web-broker's website for the Direct Enrollment Pathways.
- In addition to terminating an agent's, broker's, or web-broker's Marketplace Agreement(s) with CMS, HHS may impose one or more of the following additional penalties if it determines that an agent, broker, web-broker has failed to comply with the FFM requirements:
 - Denial of the right to participate in the Marketplace in future years.
 - Imposition of civil money penalties.
- If the agent or broker does not register with the Marketplace and actively enrolls consumers in Marketplace coverage in violation of applicable requirements, the agent or broker may be denied the right to participate in the Marketplace in future years and/or be subject to other enforcement action.

Reporting Fraudulent Practices

As you provide assistance to clients seeking health coverage, you play an important role in observing and reporting any potentially fraudulent practices taking place in relation to the Marketplace.

- If you have concerns or specific complaints about potentially fraudulent practices in the Marketplace, report them to the HHS Office of Inspector General Hotline at 1-800-HHS-TIPS (1-800-447-8477) or via <https://forms.oig.hhs.gov/hotlineoperations/index.aspx>.
- For further questions or concerns on this topic, please contact the Agent/Broker Email Help Desk at FFMProduce-AssisterHelpDesk@cms.hhs.gov.