Compliance with Marketplace Requirements: Updates and Reminders for Agents and Brokers

August 22, 2019

Centers for Medicare & Medicaid Services (CMS)
Center for Consumer Information & Insurance Oversight (CCIIO)

Disclaimer

The information provided in this presentation is intended only as a general, informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, and formal policy guidance that it is based upon. This presentation summarizes current policy and operations as of the date it was presented. Links to certain source documents have been provided for your reference. We encourage audience members to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information about the requirements that apply to them.

This document generally is not intended for use in the State-based Marketplaces (SBMs) that do not use HealthCare.gov for eligibility and enrollment. Please review the guidance on our Agents and Brokers Resources webpage (http://go.cms.gov/CCIIOAB) and Marketplace.CMS.gov to learn more.

Unless indicated otherwise, the general references to "Marketplace" in the presentation only include Federally-facilitated Marketplaces (FFMs) and State-based Marketplaces on the Federal Platform (SBM-FPs).

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Webinar Agenda

- Compliance Reminders
- New Compliance Provisions in the Notice of Benefit and Payment Parameters for 2020
- Requirements for Agents and Brokers
- Maintaining Compliant Business Relationships
- Requirement to Obtain Consumer Consent Prior to Assistance
- Key Reminders and Resources
- General Resources and Other Marketplace Updates
- Questions and Answers

Compliance with Marketplace Requirements: Updates and Reminders for Agents and Brokers

Compliance Reminders

Maintaining Compliance: Reminders

Be sure to review our previous webinar on *Compliance with Marketplace Requirements: Considerations for Agents and Brokers*, which is available on the Resources for Agents and Brokers webpage. Key points from that presentation are:

- Obtain consent from each client you work with prior to assisting him or her.
- Do not create or maintain access to a client's HealthCare.gov account or associated email account.
- Identify and report suspicious activity or potentially fraudulent behavior you observe in relation to the Marketplace.

- Ensure your clients are reporting accurate income when completing or updating the eligibility application. Reinforce that it is in their best interest to report the **most accurate** income estimate, not the estimate that maximizes the amount of premium tax credit for which they are eligible.

Maintaining Compliance: Reminders (continued)

- Consumer accounts should only have the consumer's (or his or her legally authorized representative's) email and mailing addresses.
  - Never enter your own agent or broker professional or company email or mailing address on a consumer's application.
  - You also should not create or use dummy addresses in place of the consumer's email or mailing address.
- If a client may be eligible for Medicare, direct him or her to Medicare for a determination before you assist that client with enrolling in a Marketplace-qualified health plan (QHP).
  - You SHOULD ask clients about their eligibility for Medicare coverage.
  - You SHOULD NOT assist Medicare eligible consumers with enrolling in Marketplace coverage that duplicates Medicare coverage.

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New Compliance Provisions in the Notice of Benefit and Payment Parameters for 2020

Compliance Updates in the Notice of Benefit and Payment Parameters for 2020

- On April 18, 2019, CMS issued the final rule for the 2020 Annual Notice of Benefit and Payment Parameters. This rule contains new provisions concerning the Department of Health & Human Services' (HHS) rights and processes for terminating an agent's or broker's Marketplace Agreement(s) and for suspending access to the Marketplace.
- These new provisions became effective June 24, 2019.

Immediate Termination for Failure to Maintain State License

§ 155.220(g)(3)(ii): HHS may immediately terminate an agent's or broker's Marketplace Agreement for cause without any further opportunity to resolve the matter if he or she fails to maintain the appropriate license under state law in every state in which the agent or broker actively assists Marketplace consumers.

- The Marketplace Agreements that you execute as part of the annual registration process include the requirement to maintain valid licensure in every state that you assist Marketplace consumers.
- Termination for other causes under § 155.220(g)(2) will continue to include 30-days' advance notice, in which you have the opportunity to submit evidence to rebut CMS' conclusions prior to the termination.
- This new provision became effective June 24, 2019.

Immediate Suspension for Risk to Marketplace Operations or Systems

§ 155.220(k)(3) HHS may immediately suspend the agent's or broker's ability to access Marketplace systems if it discovers circumstances that pose unacceptable risk to Marketplace operations or information technology systems until the incident or breach is remedied or sufficiently mitigated to HHS' satisfaction.

- Applying this provision would suspend an agent's or broker's access to the CMS Enterprise Portal, the Marketplace Learning Management System (MLMS), and the Direct Enrollment (DE)/Enhanced Direct Enrollment (EDE) Pathways.
- This new provision became effective June 24, 2019.

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Requirements for Agents and Brokers

Background: Anomalous Activity from Agent and Broker Accounts

- In October 2018, CMS staff detected anomalous activity in the DE Pathway for agents and brokers.*
- The agent and broker accounts that were associated with the anomalous activity were deactivated.
- After analyzing lessons learned from this incident, CMS has implemented additional system security measures and strengthened agent and broker requirements for:
  - Maintaining current and correct MLMS profiles;
  - Complying with CMS system access terms and conditions;
  - Complying with the requirement to maintain valid licensure; and
  - Obtaining consumer consent prior to conducting an online person search for consumer applications in the Marketplace or assisting a consumer with an eligibility application and/or subsequent plan selection and enrollment.
- The following slides review these requirements and highlight what's new.

*See the CMS Press Release for more information on this incident.

Registration Requirements for Agents and Brokers

Agents and brokers who participate in the Marketplace must complete all steps of the Marketplace registration process prior to assisting consumers with selecting and enrolling in QHPs.

- Completing remote identity proofing through the Enterprise Identity Management (EIDM) System
- Completing an Agent/Broker profile on the MLMS
- Entering into the applicable Marketplace Agreement(s) with CMS
- Updating Agent/Broker profile information on the MLMS if anything changed, such as contact information

Please Note:

Agents and brokers who are returning to the Marketplace after participating in a previous year may have already completed these steps and, if so, do not need to repeat them. However, these individuals should ensure they are using the same FFM User ID they used previously and should ensure their contact information and National Producer Number (NPN) are correct in their MLMS profile.

Registration Requirements for Agents and Brokers (Continued)

You must enter a correct NPN in your MLMS profile and should verify it is correct to receive credit for completing training.

- Entering an inaccurate NPN could result in denial of compensation/credit by an issuer.
- The NPN is generally not the same as your state license number. You should be sure to use your NPN, not a state license number.

Please Note:

To update or confirm the NPN associated with an MLMS profile, select the "Complete Agent Broker Training" hyperlink on the Agent Broker Registration Status page of the CMS Enterprise Portal. Selecting the link will open your MLMS profile and, from there, you can update or confirm the NPN listed.

Compliance Requirements for Agents and Brokers

- Agents and brokers who participate in the Marketplace must:
  - Provide correct information to both consumers and the Marketplace;
  - Provide correct consumer information (e.g., consumer name, date of birth) to the Marketplace for verifying consumer identity;
  - Refrain from marketing or conduct that is misleading;
  - Personally obtain consumer consent; and
  - Protect consumers' personally identifiable information (PII).
- In addition, agents and brokers assisting consumers in the Marketplace must comply with applicable federal and state law, including:
  - Licensing requirements,
  - System access terms and conditions,* and
  - Conflict of interest and confidentiality provisions.

* For more information, see the Frequently Asked Questions (FAQ) on the Proper Uses of CMS Systems.

Licensure Requirements for Agents and Brokers

- You must have an active licensure status that is approved for a health-related line of authority by the state(s) where you plan to sell Marketplace coverage.
- CMS monitors the licensure status of Marketplace agents' and brokers' NPNs for compliance with this requirement.
- Effective June 24, 2019, CMS has authority under the new §155.220(g)(3)(ii) to immediately terminate an agent or broker's Marketplace Agreements for failure to maintain the appropriate licensure.

Best Practices for Demonstrating Compliance with Licensure Requirements

- Confirm that your personal and contact information (NPN, email address, and business street address) are up to date with your state licensing body, in the National Insurance Producer Registry, and the MLMS.
  - Make timely updates if anything changes.
  - Confirm information is free of errors (e.g., typos).
- The inclusion of incorrect or inconsistent information hinders CMS' ability to verify that you are in compliance.

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Maintaining Compliant Business Relationships

Maintaining Compliant Business Relationships

You must ensure compliance with Marketplace regulations and guidance when establishing business relationships (e.g., for purposes of lead generation).

- Enrollment assistance must be provided by a licensed and registered agent or broker.
- Consumer consent requirements apply to the agent or broker, regardless of any initial contact with the consumer by a third party on the agent's or broker's behalf.
- An agent or broker and any third party with which he or she has entered into a business relationship must adhere to requirements for the use and disclosure of all consumer PII/protected health information (PHI), including all PII/PHI collected by the third party.

Maintaining Compliant Business Relationships

- You may not enroll a consumer based solely on information gathered by a third party.
  - You have an obligation to personally obtain consumer consent prior to assisting a Marketplace consumer.
  - Consumers enrolled in a QHP by an agent or broker should have a clear understanding of the role of the agent or broker and the ability to confirm the name of their agent or broker and their relationship with that agent or broker.
  - You must be able to provide demonstrable proof of your relationship or interaction with the consumer for any Marketplace enrollment submitted under your NPN.
- Be wary of any entity that offers complete enrollment information absent any contact between the consumer and a licensed and registered agent or broker.

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Requirement to Obtain Consumer Consent Prior to Assistance

Obtain Consent Prior to Assisting with Marketplace Transactions

The Marketplace standards of conduct specify that agents and brokers must obtain the consent of an individual, employer, or employee prior to:

- Conducting a search for consumer applications in the Marketplace,
- Helping them apply for financial help and/or enrolling in a Marketplace QHP, and
- Making updates to their eligibility application and/or subsequent plan selection and enrollment.

Please Note:

This requirement is different from and in addition to the requirement that consumers must provide you their informed consent for any use or disclosure of their PII outside the scope of the Privacy Notice Statement and the Authorized Functions for PII in the Marketplace.

Format of Consumer Consent

CMS does not prescribe a standard format or process for obtaining the consent or for maintaining its record, so you have flexibility to determine how you will meet the consent requirement.

- While CMS does not provide a form, or specify that a form has to be signed, you can use a Broker of Record form from an issuer or state Department of Insurance to satisfy this requirement.
- If you are providing assistance verbally (such as over the phone), you may obtain consent by reading a script that contains, at a minimum, the required elements, and you should record in writing that the required consent was obtained.
- Additionally, you may obtain consent electronically (such as via email) or in person.

Content of Consumer Consent

- 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 that this could include additional names of agents or brokers if the consenter authorized multiple agents or brokers within the same organization.
- The consent should acknowledge that the agent or broker has informed the consumer of the functions and responsibilities that apply to the agent's or broker's role in the Marketplace.
- It should also indicate that the agent or broker has permission to:
  - Conduct a search for the consumer application in the Marketplace;
  - Assist with completing an eligibility application;
  - Assist with plan selection and enrollment; and
  - Assist with ongoing account/enrollment maintenance.

Expiration and Retention of Consumer Consent

- CMS does not specify an automatic expiration date for the consent because it could become burdensome for anyone consistently seeking services from the same agent or broker to have to repeatedly renew the consent.
- Therefore, the consent may last indefinitely, unless the individual, employer, or employee revokes it.
- Consent documents must be appropriately secured and retained for 10 years.

Please Note:

This consent does not authorize you to speak with the Marketplace Call Center regarding an application or consumer's question. Consumers must provide a separate authorization to the Marketplace Call Center to allow you to call and access their account information on their behalf. The Call Center authorization can be valid for one call or up to 365 days. If you contact the Marketplace Call Center on behalf of a consumer, the consumer must be available on the line to provide authorization (unless already provided).

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Key Reminders and Resources

Points to Remember

- The new provisions in the final rule for the 2020 Annual Notice of Benefit and Payment Parameters went into effect on June 24, 2019.
  - Immediate termination for failure to maintain state license(s)
  - Immediate suspension for causing risk to Marketplace operations or systems
- During the annual Marketplace registration process, confirm that your personal and contact information (NPN, email address, and business street address) are accurate in the MLMS.
- CMS monitors compliance with the requirement to have appropriate licensure in the state where you plan to sell Marketplace coverage, so make sure that your state licensing body and the National Insurance Producer Registry have information for you that is up-to-date.

Points to Remember

- You must ensure compliance with Marketplace regulations and guidance when establishing business relationships.
- You must personally obtain consumer consent prior to providing assistance with Marketplace coverage and may not enroll a consumer based solely on information gathered by a third party.
- The Marketplace standards of conduct specify that agents and brokers must obtain consumer consent prior to assisting with Marketplace transactions, including conducting searches for consumer applications in the Marketplace and ongoing account/enrollment maintenance.
- If you are aware of an agent or broker who is conducting a search for consumer applications in the Marketplace or enrolling consumers without their consent or inappropriately accessing CMS systems, report it to the Agent/Broker Email Help Desk at FFMProducer-AssisterHelpDesk@cms.hhs.gov.

Key Resources for Agent and Broker Requirements

Resource	Link
Agent and broker standards of conduct: 45 C.F.R. §155.220(j)(2)	https://www.ecfr.gov/cgi-bin/text-idx?SID=6817930009495593ae1acc821445c709d&mc=true&node=se45.1.155_1220&rgn=div8
Requirement for Marketplace agents and brokers to complete annual registration and training: 45 C.F.R. §155.220(d)	
Requirement for Marketplace agents and brokers to comply with state law: 45 C.F.R. §155.220(e)	
Standards and process for terminating an agent's or broker's Marketplace agreement: 45 C.F.R. §155.220(f),(g), and (h)	
Banning an agent or broker from future Marketplace participation penalty: 45 C.F.R. §155.220(k)(1)(i)	
Civil money penalties for provision of false information to the Marketplace: 45 C.F.R. §§155.220(k)(1)(ii) and 155.285	https://www.ecfr.gov/cgi-bin/text-idx?SID=6817930009495593ae1acc821445c709d&mc=true&node=se45.1.155_1285&rgn=div8
CMS' eight privacy principles: 45 C.F.R. §155.260(a)	https://www.ecfr.gov/cgi-bin/text-idx?SID=6817930009495593ae1acc821445c709d&mc=true&node=se45.1.155_1260&rgn=div8

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General Resources and Other Marketplace Updates

NOW OPEN!

Plan Year 2020 Marketplace Registration and Training is Live!

- Plan year 2020 Marketplace registration and training is now available through the CMS Enterprise Portal at https://portal.cms.gov.
- Returning agents and brokers must complete registration by October 31 to avoid having your Marketplace system access revoked and so issuers may provide compensation for your Marketplace enrollments.

New Agents and Brokers (those who did not complete plan year 2019 registration)

- Must take the full Individual Marketplace training for plan year 2020
- Must execute the Agent Broker General Agreement and the Individual Marketplace Privacy and Security Agreement via the MLMS

Returning Agents and Brokers (completed plan year 2019 registration)

- Must take either the condensed or full required training for plan year 2020
- Must execute the Agent Broker General Agreement and the Individual Marketplace Privacy and Security Agreement via the MLMS

**For instructions on how to complete Marketplace registration, please see the Agents and Brokers Resources Plan Year 2020 Registration and Training webpage.*

CMS held the 2019 Marketplace Agent and Broker Summit on July 1.

Missed it? Check out the slides from the breakout sessions on the [Agents and Brokers Resources webpage.]

Summit sessions covered topics important to agents and brokers, including:

- Agent and Broker Program Overview and Steps to Get Ready for Open Enrollment
- Enhanced Direct Enrollment
- Compensation
- Compliance
- Circle of Champions
- Find Local Help/Help On Demand
- Working with Navigators
- Plan Year 2020 Registration & Training
- Resources to Master the Marketplace
- Periodic Data Matching and Client Impacts
- New Health Reimbursement Arrangements
- Short-Term Limited Duration Insurance
- State Relief and Empowerment Waivers

Upcoming Activities

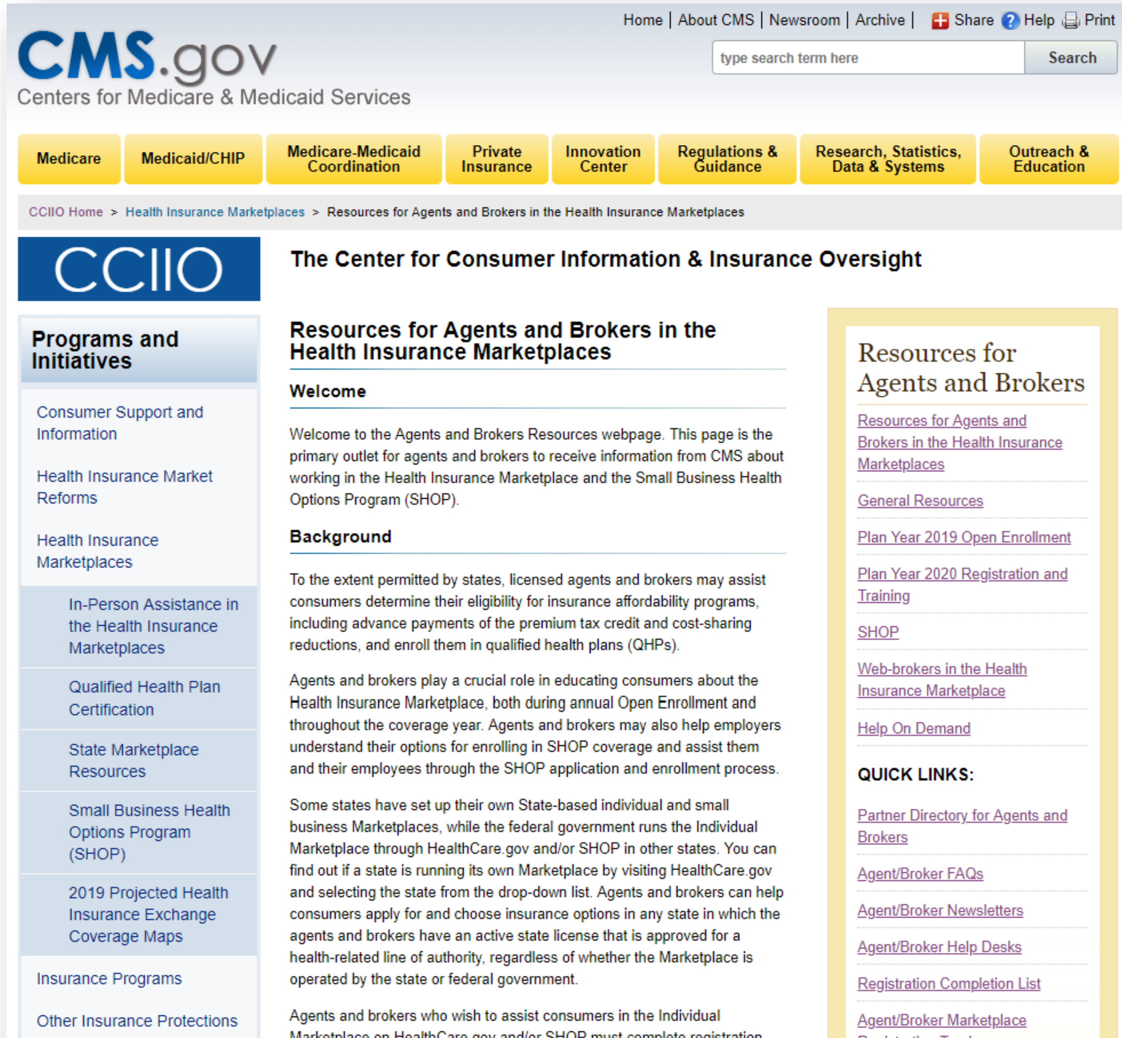
- Watch your email for invitations to upcoming events.
- **Periodic webinars** will continue through 2019 to help you **prepare for plan year 2020** Open Enrollment, **enhance your knowledge** of Marketplace policies and learn **how you can continue to assist your clients** throughout the plan year.
- CMS also hosts **agent and broker Office Hours** for you to ask questions and share observations about your Marketplace participation.

Upcoming Events* **Mark your calendars for these dates and times.**
Assister Webinar: Friday, August 23 2-3 PM ET Helping Consumers Evaluate Employer-Sponsored Coverage Coverage Options for Uninsured or Underinsured Consumers
Office Hours: Thursday, September 5 2-2:30 PM ET

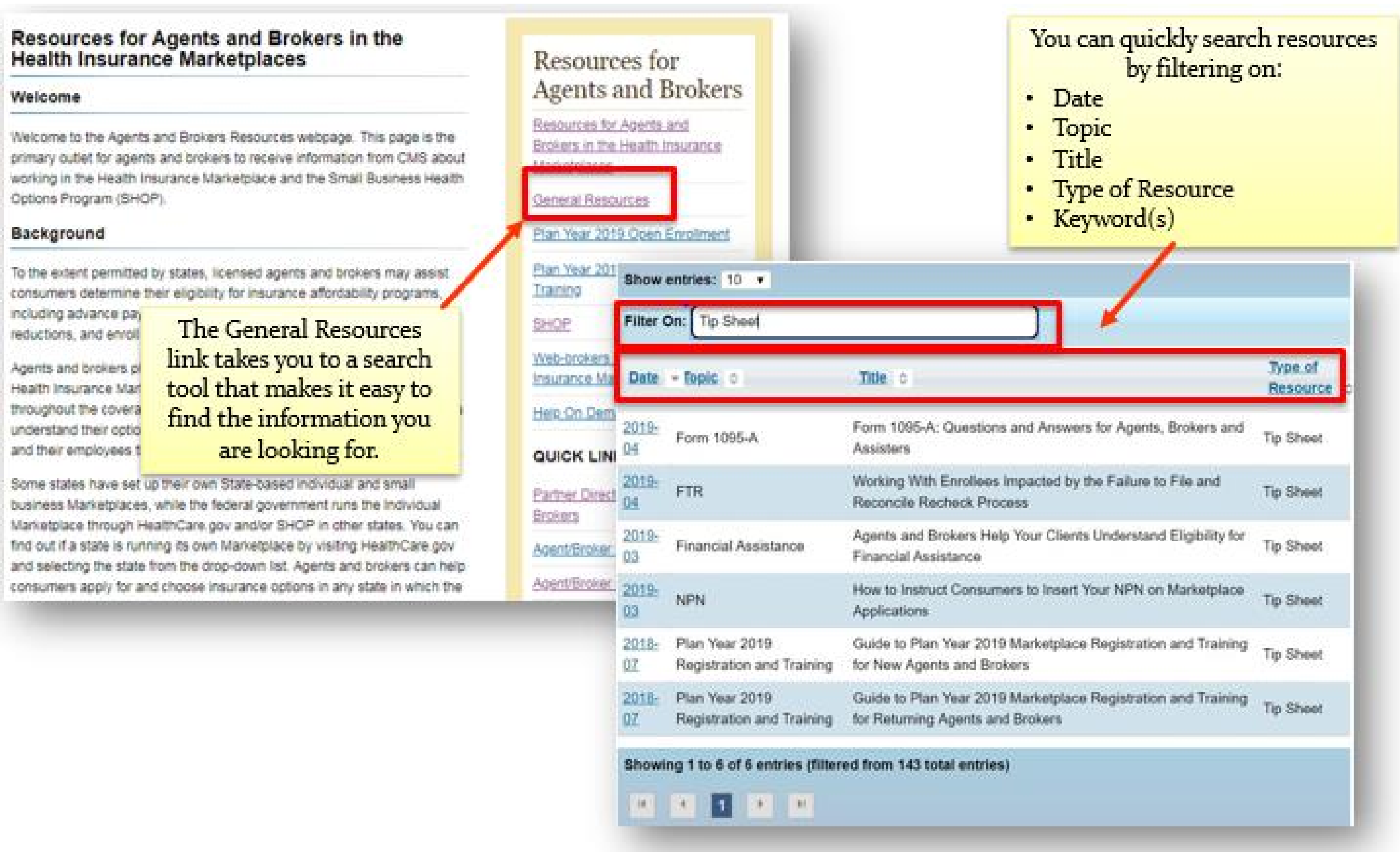
**Final topics will be announced prior to each session.*

Overview of the Resources for Agents and Brokers Webpage

- Primary resource for agents and brokers to receive information from CMS about working in the Health Insurance Marketplace
- Provides the latest news and resources, including newsletters, webinars, fact sheets, videos, and tip sheets
- http://go.cms.gov/CCIIOAB



General Resources: Dynamic List



Recently Posted Resources Available on the Resources for Agents and Brokers Webpage

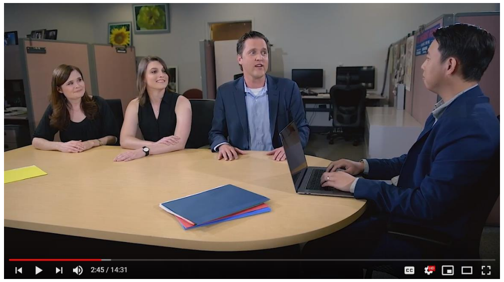
Resource	Date
New Agents' and Brokers' Guide to Plan Year 2020 Marketplace Registration and Training	August 2019
Returning Agents' and Brokers' Guide to Plan Year 2020 Marketplace Registration and Training	August 2019
Agent and Broker Plan Year 2020 Marketplace Registration and Training Process Workflow	August 2019
How to Instruct Consumers to Insert Your National Producer Number on Marketplace Applications	July 2019
News for Agents and Brokers	July 2019

Agent and Broker Resource Catalog

- The quarterly CMS Marketplace Agent and Broker Resource Catalog is available.
- This catalog contains references to online resources, brief descriptions of offerings from the Agents and Brokers General Resources webpage, links to informative videos and webinars, and much more.
- CMS will release an updated catalog quarterly, as new resources become available.

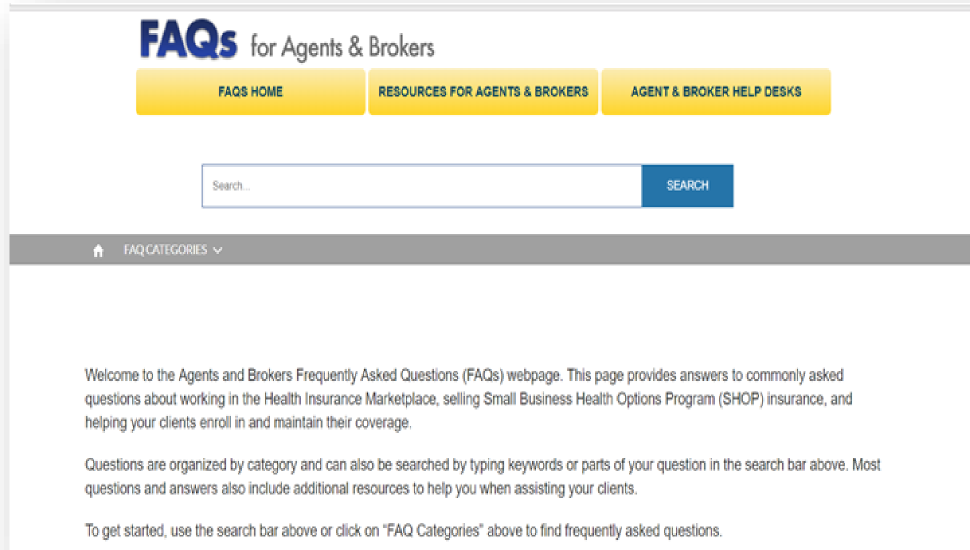
Agent and Broker Learning on Demand

- Check out the CMS web series: **A Marketplace Original Series: Agent and Broker Learning On Demand**.
- This self-paced learning series gives agents and brokers the tools they need to maximize enrollments and provide the best service to consumers who are looking to buy individual health insurance through the Marketplace.
- In this video series, agents and brokers explore new developments and topics that are important to enrolling clients.
- The videos can be viewed in any order and at your own pace.
- Visit the CMS YouTube channel at www.youtube.com/user/CMSHHSgov and click on "Playlists" to find the series. You can also download the Companion Guide.



Agents and Brokers Frequently Asked Questions Webpage

- The Agent and Broker Frequently Asked Questions (FAQs) webpage provides answers to commonly asked questions about working in the Marketplace, selling SHOP coverage, and helping your clients enroll in and maintain their coverage.
- FAQs are organized by category and can also be searched by typing keywords or parts of your question in the search bar.
- Most FAQs also include additional resources to help you when assisting your clients.



Quickly find answers to common questions in the following categories:

- Basic Information
- Registration and Training
- Helping Consumers
- Compensation
- Direct Enrollment
- Privacy and Security
- SHOP

Agent and Broker Resources

Resource	Link
Agents and Brokers Resources webpage	http://go.cms.gov/CCIIOAB
Agent and Broker FFM Registration Completion List	https://data.healthcare.gov/ffm_ab_registration_lists
Agent and Broker Marketplace Registration Tracker	https://data.healthcare.gov/ab-registration-tracker/
Find Local Help Tool	https://localhelp.healthcare.gov/
Help On Demand	https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Help-On-Demand-for-Agents-and-Brokers.html
Agent and Broker National Producer Number Search Tool	www.nipr.com/PacNpnSearch.htm
Issuer & Direct Enrollment Partner Directory	https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Private-Partner-Enrollment.html

A full list of useful websites is available from the Agents and Brokers Resources webpage (http://go.cms.gov/CCIIOAB) under Quick Links.

Most Frequently Used Agent/Broker Marketplace Help Desks and Call Centers

Name	Phone # and/or Email Address	Types of Inquiries Handled	Hours (Closed Holidays)
Marketplace Service Desk	1-855-CMS-1515 1-855-267-1515 CMS_FEPS@cms.hhs.gov	• CMS Enterprise Portal password resets and account lockouts • Other CMS Enterprise Portal account issues or error messages • General registration and training questions (not related to a specific training platform) • Login issues on the Direct Enrollment agent/broker landing page • Technical or system-specific issues related to the MLMS • User-specific questions about maneuvering in the MLMS site, or accessing training and exams	Mon-Fri 8:00 AM–8:00 PM ET
Agent/Broker Email Help Desk	FFMProducer-AssisterHelpDesk@cms.hhs.gov	• General enrollment and compensation questions • Manual identity proofing/Experian issues • Escalated general registration and training questions (not related to a specific training platform) • Agent/Broker Registration Completion List issues • Find Local Help listing issues • Help On Demand participation instructions or questions • Report concerns that a consumer or another agent or broker has engaged in fraud or abusive conduct	Mon-Fri 8:00 AM–6:00 PM ET
Marketplace Call Center Agent/Broker Partner Line	1-855-788-6275 Note: Enter your NPN to access this line. TTY users 1-855-889-4325	Specific consumer application questions related to: • Password reset for a consumer HealthCare.gov account, • Special enrollment period not available on the consumer application, or • Consumer specific eligibility and enrollment questions	Mon–Sun 24 hours/day

Most Frequently Used Agent/Broker Marketplace Help Desks and Call Centers (Continued)

Help Desk Name	Phone # and/or Email Address	Types of Inquiries Handled	Hours of Operation (Closed Holidays)
SHOP Call Center	800-706-7893 TTY users 1-888-201-6445	• Inquiries related to SHOP eligibility determinations on HealthCare.gov • Contact the insurance company for most questions about SHOP plans, such as applications, enrollment, renewal, or changing or updating coverage.	Monday-Sunday 24 hours/day
Direct Enrollment Email Help Desk	DirectEnrollment@cms.hhs.gov	• All inquiries specifically related to becoming and/or operating as a direct enrollment web-broker in the Marketplace	Monday-Friday 9:00 AM-5:00 PM ET
Marketplace Appeals Center	1-855-231-1751 TTY users 1-855-739-2231	• Status of a Marketplace eligibility appeal • How to appoint an Authorized Representative to request Marketplace eligibility appeal on a consumer's behalf	Monday-Friday 7:00 AM–8:30 PM ET

A full list of Agent/Broker Help Desks and Call Centers is available from the Agents and Brokers Resources webpage (http://go.cms.gov/CCIIOAB) under Quick Links.

Acronym and Abbreviation Definitions

Acronyms/ Abbreviations	Definition
CCIIO	Center for Consumer Information and Insurance Oversight
CMS	Centers for Medicare & Medicaid Services
EIDM	Enterprise Identity Management System
FAQ	Frequently Asked Question
FFM	Federally-facilitated Marketplace
HHS	Department of Health & Human Services
MLMS	Marketplace Learning Management System
NPN	National Producer Number
PHI	Protected Health Information
PII	Personally Identifiable Information
QHP	Qualified Health Plan
REGTAP	Registration for Technical Assistance Portal
SBM	State-based Marketplace
SBM-FP	State-based Marketplace on the Federal Platform