

# Compliance with Marketplace Requirements: Reminders for Agents and Brokers



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*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](http://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
- Compliance Provisions in the Notice of Benefit and Payment Parameters for 2020 Final Rule
- Requirements for Agents and Brokers
- Maintaining Compliant Business Relationships
- Requirement to Obtain Consumer Consent Prior to Assistance
- Key Reminders and Resources

# Compliance with Marketplace Requirements: Reminders for Agents and Brokers



*Compliance Reminders*

# Maintaining Compliance: Reminders

- Obtain consent from each client you work with prior to assisting him or her with Marketplace coverage, including prior to searching for a current application using an approved Classic Direct Enrollment/Enhanced Direct Enrollment website.
- Do not 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 may be eligible.

# Maintaining Compliance: Reminders (continued)

- Consumer HealthCare.gov 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 consumers you know are eligible for Medicare with enrolling in Marketplace coverage if it duplicates Medicare coverage.

# Compliance with Marketplace Requirements: Reminders for Agents and Brokers



*Compliance  
Provisions in the  
Notice of Benefit  
and Payment  
Parameters for  
2020 Final Rule*

# 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 upon notice to the agent or broker 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)(3)(i) 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.



# 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 Classic Direct Enrollment (DE)/Enhanced Direct Enrollment (EDE) Pathways.

# Compliance with Marketplace Requirements: Reminders for Agents and Brokers



*Requirements for Agents  
and Brokers*

# Registration Requirements for Agents and Brokers

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

- Completing remote identity proofing through the Identity Management (IDM) System
- Completing an Agent/Broker profile on the MLMS
- Executing 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 do not need to redo their identity proofing. These individuals should ensure they are using the same FFM User ID they used previously and their Social Security Number (SSN) is populated in IDM. Individuals should also ensure their contact information and National Producer Number (NPN) are correct in their MLMS profile. An agent or broker must execute the applicable AB Marketplace Agreement(s) each plan year.

# 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 **NOT** the same as your state license number. You should be sure to use your NPN, not a state license number.
- If your NPN is on a Marketplace application and subsequent enrollment, we recommend that you create a record of the date, time, and person from whom you received consent in case of future disputes.

### **Please Note:**

To update or confirm the NPN associated with an MLMS profile, select the “MLMS Training” hyperlink on the Marketplace Training – Agent/Broker tab 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, among other things:
  - Provide correct information to both consumers and the Marketplace;
  - Provide correct consumer information (e.g., consumer name, date of birth, address, email address) 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 at <https://www.agentbrokerfaq.cms.gov/s/article/What-are-proper-uses-of-CMS-systems-that-agents-and-brokers-are-required-to-abide-by-when-accessing-HealthCare-gov-the-CMS-Enterprise-Portal-and-the-Direct-Enrollment-Pathway>*

# Licensure Requirements for Agents and Brokers



- You must have an active licensure status with an approved health-related line of authority for 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.
- CMS has authority under §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.

# Compliance with Marketplace Requirements: Reminders for Agents and Brokers



*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.
- Agents or brokers are still required to obtain consent from the consumer—even if that consumer has already spoken with and given consent to a customer service representative or sales lead-generating employee or vendor.
- 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, including prior to searching for a current application using Classic Direct Enrollment/Enhanced Direct Enrollment approved partner websites.
  - Consumers enrolled in a QHP through the Marketplace 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.
  - Agents or brokers may not assist or enroll Marketplace consumers identified through sales leads without first obtaining consent from the consumer.
  - You are still responsible for the enrollments you facilitate and the applications that include your NPN when using an entity that offers complete enrollment information.

# Compliance with Marketplace Requirements: Reminders for Agents and Brokers

CONSENT

*Requirement to  
Obtain Consumer  
Consent Prior to  
Assistance*

# Obtain Consent Prior to Assisting with Marketplace Transactions

Agents and brokers should only make updates to a consumer's application/policy at the direction of the consumer. The Marketplace standards of conduct specify that agents and brokers must obtain the consent of an individual, employer, or employee prior to providing assistance to Marketplace consumers. This includes but is not limited to:

- Conducting a search for consumer applications using an approved Classic Direct Enrollment/Enhanced Direct Enrollment website
- Helping them apply for financial help and/or enrolling in a Marketplace QHP
- Calling the Marketplace Call Center to ask about the status of a Marketplace enrollment or make consumer changes

## **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 an agent or broker in the Marketplace.

# Format of Consumer Consent

CMS does not prescribe a standard format or process for obtaining or recording the consent, 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. Recording these conversations is a best practice; however, PII/PHI should never be stored in these recordings.
- 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), broker(s), or agency 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 using approved Classic Direct Enrollment/Enhanced Direct Enrollment websites 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. As a best practice, if you are ever unsure of whether a client has decided to work with you, you should contact the client.
- Consent documents must be appropriately secured and retained for 10 years.
- If agents or brokers sell or transfer their book of business to another producer, they should inform consumers impacted by the sale and change of NPN. Before working with any new clients, the new agent or broker is required to document consumer consent.

## **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).

# Compliance with Marketplace Requirements: Reminders for Agents and Brokers



*Key Reminders and  
Resources*



# Points to Remember

- Under the Notice of Benefit and Payment Parameters for 2020 final rule which went into effect on June 24, 2019, agents and brokers are subject to:
  - 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(s) 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 using approved Classic Direct Enrollment/Enhanced Direct Enrollment websites 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 using approved Classic Direct Enrollment/Enhanced Direct Enrollment websites 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](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

# 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	<ul style="list-style-type: none"> <li>• CMS Enterprise Portal password resets and account lockouts</li> <li>• Other CMS Enterprise Portal account issues or error messages</li> <li>• General registration and training questions (not related to a specific training platform)</li> <li>• Login issues on the Direct Enrollment agent/broker landing page</li> <li>• Technical or system-specific issues related to the MLMS</li> <li>• User-specific questions about maneuvering in the MLMS site, or accessing training and exams</li> </ul>	Mon-Fri 8:00 AM–8:00 PM ET October–November only: Sat- Sun 10:00 AM–3:00 PM ET
Agent/Broker Email Help Desk	<a href="mailto:FFMProducer-AssisterHelpDesk@cms.hs.gov">FFMProducer-AssisterHelpDesk@cms.hs.gov</a>	<ul style="list-style-type: none"> <li>• General enrollment and compensation questions</li> <li>• Manual identity proofing/Experian issues</li> <li>• Escalated general registration and training questions (not related to a specific training platform)</li> <li>• Agent/Broker Registration Completion List issues</li> <li>• Find Local Help listing issues</li> <li>• Help On Demand participation instructions or questions</li> <li>• Report concerns that a consumer or another agent or broker has engaged in fraud or abusive conduct</li> </ul>	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: <ul style="list-style-type: none"> <li>• Password reset for a consumer HealthCare.gov account,</li> <li>• Special enrollment period not available on the consumer application, or</li> <li>• Consumer specific eligibility and enrollment questions</li> </ul>	Mon–Sun 24 hours/day

# Closing Remarks

