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From: Center for Consumer Information and Insurance Oversight
Title: Health Insurance Marketplace Guidance
Subject: Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces

Consumers who access health insurance coverage through an Affordable Insurance Exchange, or Health Insurance Marketplace, will be able to receive assistance in a variety of ways, including in-person, online, and through telephone support. Agents and brokers, including web-brokers, are among those who will play a role in educating consumers about Marketplaces and insurance affordability programs, and in helping consumers receive eligibility determinations, compare plans, and enroll in coverage. In particular, CMS anticipates that agents and brokers will play a critical role in helping qualified employers and employees enroll in coverage through the Small Business Health Options Programs (SHOPs).

Section I of this document provides a high-level overview of the role of agents and brokers, including web-brokers, in Federally-facilitated Marketplaces and State Partnership Marketplaces. In section II, we address common questions raised by states and other stakeholders on the role of agents and brokers in all Marketplaces – including State-based Marketplaces. In section III, we address questions specific to web-brokers. Finally, the Appendix includes process flows for both pathways.

I. Role of Agents and Brokers in Federally-facilitated and State Partnership Marketplaces

Where permitted under state law, CMS will work with agents and brokers to assist consumers in completing the eligibility application, comparing and selecting qualified health plans (QHPs), and enrolling consumers through the Marketplace.

Agents and brokers intending to work with consumers in Federally-facilitated and State Partnership Marketplaces will be able to assist consumers in two ways: (a) an issuer-based pathway, through which an agent or broker uses an issuer's website to assist the consumer; or (b) a Marketplace pathway, through which an agent or broker assists the consumer using the Marketplace website. As explained in more detail below, both pathways will transmit to the Marketplace an agent's or broker's identifying information to the appropriate issuer to facilitate the issuer's payment to the agent or broker for each enrollment transaction. In addition, either pathway will allow an agent or broker to assist a qualified individuals and/or employers and employees with initial enrollment and changes during the coverage year, including changes that impact eligibility (e.g., adding a dependent). More information about each pathway is included below.

A. Registration with the Marketplace

In states where a Federally-facilitated or State Partnership Marketplace is operating, all agents and brokers must register with CMS so that they may assist qualified individuals for individual Marketplace coverage.¹ We expect that an online registration process administered by CMS will begin in the summer of 2013, prior to open enrollment. In completing the registration process, the agent or broker will:

- (1) Confirm his or her identity by answering a number of simple questions online.
- (2) Complete a Marketplace-specific online training course.
- (3) Agree to comply with federal and state laws, rules, standards and policies, including those related to privacy and security policies, as a condition of working with consumers in the Marketplace.

Once an agent or broker has completed these three steps, he or she will receive an active Federally-facilitated Marketplace user ID. This user ID is the agent or broker's unique identifier in the Marketplace, and it, along with the agent's or broker's national producer number (NPN), will be essential for the agent or broker to receive compensation from an issuer.

¹ CMS also encourages agents and brokers working exclusively in SHOPS to register and complete training.

B. Issuer-based Pathway for Assisting Consumers

Many agents and brokers already use issuer websites to assist consumers, and will be able to continue using issuer websites to work with consumers in the Federally-facilitated Marketplaces. This issuer-based pathway will be available to agents and brokers who are assisting individual consumers starting in the fall of 2013.

As is the case today, agents and brokers will be appointed by issuers; issuers will check the agent's or broker's licensure status and will verify an agent or broker's registration with the Federally-facilitated or State Partnership Marketplace. Agents and brokers will provide copies of their Federally-facilitated Marketplace training certificates and user IDs to issuers as part of the appointment process.

An agent or broker initiates this pathway by logging on to the issuer's website. Once the consumer determines that he or she would like to apply for coverage through the Federally-facilitated Marketplace, the agent or broker will be securely redirected from the issuer's agent website to the Marketplace website to complete the eligibility application, using his or her Federally-facilitated Marketplace user ID to access the Marketplace website. The agent or broker will be prompted to enter his or her Federally-facilitated Marketplace user ID and NPN as part of the eligibility application. As part of the discussion with the consumer, CMS expects that the agent or broker will inform the consumer that the agent or broker will provide information for certain QHPs with which he or she has a business relationship, but that the consumer could directly access the Federally-facilitated Marketplace website, where additional QHP information and choices are available.

Once the agent or broker has completed the application with the consumer and received the consumer's eligibility determination from the Federally-facilitated Marketplace, the agent or broker will be securely redirected to the issuer's website to assist the consumer with plan comparison, plan selection, and enrollment. The agent's or broker's identifying information will be included in the official Federally-facilitated Marketplace enrollment record sent to the issuer.

C. Marketplace Pathway for Assisting Consumers

An agent or broker will also be able to assist consumers directly on the Federally-facilitated Marketplace website using the Marketplace pathway. In fall 2013, agents and brokers will be able to use this pathway to help enroll qualified individuals with individual Marketplace options, as well as qualified employers and employees with SHOP options.

In the Marketplace pathway, the consumer, employer, or employee will log directly into his or her own Marketplace account. The agent or broker may assist the consumer in creating his or her account if needed, but the consumer or a legally authorized representative must create his or her

own Marketplace username and password and should not share this information with third parties, including agents and brokers.

The agent or broker will then work with the consumer to complete the eligibility application. The consumer will be prompted to enter the agent or broker's Federally-facilitated Marketplace user ID and NPN on the application to indicate that the agent or broker assisted the consumer.

After the consumer receives an eligibility determination, the agent or broker can assist the consumer in comparing QHPs on the Marketplace website and submitting the consumer's selection. All plan choices will be displayed. As with the eligibility application, the consumer will enter the agent's or broker's Federally-facilitated Marketplace user ID and NPN as part of the enrollment transaction to indicate that the agent or broker assisted the consumer with plan selection and enrollment.

To the extent permitted by a state, starting with the initial open enrollment period beginning in October 2013, CMS intends to work with web-brokers that meet all applicable requirements to provide an alternate option to help consumers select QHPs online. Please see section III for more information about web-brokers in the Federally-facilitated Marketplace.

II. Questions and Answers

The following questions and answers provide additional detail and clarification on the role of agents and brokers in all Marketplaces, including State-based Marketplaces.

1. *Can a State-based Marketplace establish a commission schedule or pay commissions? How will Federally-facilitated Marketplaces, including State Partnership Marketplaces, address compensation?*²

Nothing in the Exchange final rule prohibits a state from establishing laws, regulations and standards for issuer compensation of agents or brokers, including for enrolling individuals through that state's Marketplace. Accordingly, State-based Marketplaces may establish parameters for compensating agents and brokers, by direct compensation from the Marketplace, or by having issuers pay commissions. If issuers will be paying commissions to agents or brokers, we encourage State-based Marketplaces to consider providing information to issuers to facilitate these transactions (*e.g.*, by providing the agent or broker's national producer number or state license number).

Federally-facilitated Marketplaces, including State Partnership Marketplaces, will not establish a commission schedule or pay commissions directly to agents or brokers. As is the case in the market today, we expect that the amount and terms of any commission would be negotiated by the issuer and the agent or broker. However, we note that HHS has established a QHP certification standard for issuers seeking certification in Federally-facilitated Marketplaces and Federally-facilitated SHOPS (FF-SHOPS) that would require QHP issuers to pay the same agent and broker compensation for enrollment through the Federally-facilitated Marketplaces and FF-SHOPS and for enrollment in similar health plans offered outside the Federally-facilitated Marketplaces and FF-SHOPS.³ CMS will re-evaluate this approach in the future. As described in Section I of this document, Federally-facilitated Marketplaces and State Partnership Marketplaces will transmit agent and broker identifying information to issuers to facilitate payment.⁴

2. *May a state participating in a State Partnership Marketplace modify processes and infrastructure for agents and brokers, including for training and registration?*

For Federally-facilitated Marketplaces, including State Partnership Marketplaces, CMS will be responsible for registering agents and brokers and conducting Marketplace-related training.

² Compensation includes commissions, fees, or other incentives as established in the relevant agreement between an issuer and an agent or broker.

³ HHS Notice of Benefit and Payment Parameters (78 F.R. 15410 – 15541). Available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-04902.pdf>.

⁴ Agents and brokers who are acting as Navigators may not receive compensation from issuers.

Upon completion of the registration and training, agents and brokers will complete a privacy and security agreement and obtain a Federally-facilitated Marketplace user ID.

States will continue to license and regulate agents and brokers, including those who assist consumers in the Marketplace. States will also continue to establish licensure and continuing education requirements for agents and brokers, and may require additional state-specific training as a condition of licensure. However, the Federally-facilitated Marketplace training will not include state-specific training requirements in 2014.

3. *When assisting qualified individuals enrolling through a Marketplace, must an agent or broker display all QHPs? Must an agent or broker be able to enroll individuals in all QHPs?*

With the exception of web-brokers, the Exchange final rule does not require agents and brokers to display all QHPs or to facilitate enrollment into all QHPs (*see* 45 C.F.R. §155.220).⁵ State-based Marketplaces have discretion to implement policies that would require agents and brokers to display all QHPs. For example, State-based Marketplaces may establish additional requirements for QHP issuers under state law or as part of the State-based Marketplace QHP certification process, consistent with the Exchange final rule. State-based Marketplaces may also provide information to consumers on agent and broker relationships with issuers, including issuer appointment and compensation arrangements.

In Federally-facilitated Marketplaces, including State Partnership Marketplaces, CMS will not require agents and brokers to facilitate enrollment into all available QHPs.⁶ If the agent or broker is using the Marketplace pathway to assist consumers, all QHP choices will be displayed. All agents and brokers must comply with applicable state laws, regulations, and Marketplace requirements, including standards related to relationships or appointments with issuers.⁷

4. *What happens if an individual working with an agent or broker is determined to be eligible for Medicaid or CHIP?*

We expect that agents and brokers who are approached by individuals and families looking for assistance with Marketplace enrollment will work with all consumers, including individuals who are ultimately determined to be eligible for Medicaid or CHIP. Any individual who is working with a registered agent or broker and is determined by a

⁵ As noted in the response to question 11 in this document, web-brokers must display all QHPs available in a Marketplace.

⁶ Agents and brokers who are acting as Navigators would be required to facilitate enrollment into all available QHPs.

⁷ CMS has also issued Minimum Acceptable Risk Standards for Exchanges (MARS-E) requirements. The MARS-E baseline was established in a collaboration with the Internal Review Service and other key stakeholders, and is based on the National Institute of Standards and Technology Special Publication 800-53 (NIST SP 800-53) and IRS Publication 107.

Marketplace to be eligible for Medicaid or CHIP will receive an appropriate notice of assessment or determination of Medicaid/CHIP eligibility from the Marketplace. In such cases, we expect that the agent or broker would refer the individual to state agency. We anticipate that agent and broker training will provide information on where to direct Medicaid or CHIP-eligible individuals.

5. *How will agents and brokers work with qualified employers in FF-SHOPs?*

Agents and brokers who assist qualified small employers in enrolling through an FF-SHOP will use the Marketplace pathway, except that agents and brokers will not be required to obtain a Federally-facilitated Marketplace user ID. As in the Marketplace pathway for consumers shopping for individual coverage, the SHOP application will include a field in which the employer or agent/broker can enter a Federally-facilitated Marketplace user ID (if applicable) and/or NPN. This information will be transmitted to the QHP issuer selected by the employer as part of the group enrollment.

6. *To what extent can agents and brokers continue communicating with consumers after they have been enrolled in a QHP through a Marketplace?*

Agents and brokers (including web-brokers) may continue to communicate with qualified individuals after they have enrolled in a QHP, to the extent that such communications comply with applicable laws and regulations. Such communication also must comply with the privacy and security standards adopted by the Marketplace pursuant to 45 C.F.R. §155.260, which limit how an agent or broker may use any information gained as part of providing assistance and services to a qualified individual. CMS expects to issue additional rulemaking on privacy and security requirements for non-Marketplace entities. With respect to the FF-SHOP, CMS expects that agents and brokers will be in continual contact with employers both before and after enrollment, as they will serve as a primary contact for customer service issues for employers.

III. Additional Guidance for Web-brokers

45 C.F.R. 155.220(c)(3) establishes requirements that would apply when consumers in the Health Insurance Marketplaces for individual health insurance products select a QHP through an agent's or broker's website. CMS refers to such agents or brokers who enroll consumers through public-facing websites as "web-brokers." We expect web-brokers to provide another option for consumers seeking to enroll in QHPs through the Marketplaces for individual products, alongside traditional agents and brokers who will also be assisting consumers enroll through the Marketplace.

CMS recognizes that many consumers currently purchase insurance online from web-brokers. This guidance answers common questions about the role of web-brokers in Marketplaces.

7. *Can State-based Marketplaces work with web-brokers?*

Yes. In addition to operating its own Marketplace website, a State-based Marketplace can work with web-brokers to provide an alternate plan selection option for consumers. States may allow web-brokers to use their websites to provide consumer information for comparing and selecting QHPs, subject to the standards specified in 45 C.F.R. 155.220(c) for individual market QHPs.

State-based Marketplaces must continue to perform eligibility determination functions as set forth in subpart D of part 155 of the Exchange final rule and transmit enrollment information to QHP issuers for all individuals enrolling through the Marketplace – including those who enroll through the Marketplace with the assistance of web-brokers – as described in 45 C.F.R. 155.400.

8. *Will Federally-facilitated Marketplaces offer the web-broker option?*

Yes. To the extent permitted by a state, beginning in October 2013, CMS intends to work with web-brokers that meet all applicable requirements to provide an alternate option to help consumers select QHPs online. Web-brokers will provide an additional channel for Federally-facilitated Marketplaces to reach consumers and to help them enroll in QHPs. CMS is developing the capability to support integration between the web-broker's website and the Federally-facilitated Marketplace's website using secure redirect and application programming interface mechanisms. The application programming interface will allow a qualified individual to initiate his or her shopping experience on the web-broker's website, connect securely to the Federally-facilitated Marketplace website to complete the eligibility application and determination process, and return securely to the web-broker's site to compare plans and select a QHP.

9. *How will web-brokers working with Federally-facilitated Marketplaces obtain consumer and QHP data?*

In Federally-facilitated Marketplaces, the application programming interface will facilitate the secure transmission of key eligibility and enrollment information between the Marketplace and the web-broker.

CMS will make available to web-brokers QHP data, including premium information, provided by issuers to CMS. CMS will provide further technical guidance on how QHP data will be conveyed to web-brokers. Web-brokers will also receive consumer-specific eligibility information via a secure redirect from the Marketplace. These data will include contact information for the application filer and the individual or family's eligibility determination, including information on the maximum advance payment of premium tax credit (APTC) and cost-sharing reductions for which the individual or family is eligible.

After the consumer selects a QHP and the APTC amount has been determined, the web-broker will transmit the individual or family's QHP selection, including the applicable premium, APTC amount that will be applied to the premium, and broker identifier, back to the Marketplace.

The Marketplace, as the system of record for all eligibility and enrollment transactions, will convey all enrollment information to appropriate QHP issuers, including information identifying the web-broker in order to facilitate compensation by the issuer. Individuals determined eligible for Medicaid and CHIP will be referred by the Marketplace to the appropriate state agency.

Given the sensitive nature of personally identifiable information, web-broker websites will be required to comply with all existing and future privacy and security standards established by HHS pursuant to 45 C.F.R. 155.260, related to the use and handling of personally identifiable information obtained during the enrollment process, regardless of whether the enrollment is completed. These security standards will also require authentication of consumers to prevent unauthorized access to sensitive information.

10. *Under 45 C.F.R §155.220(c)(3)(iv), web-brokers must display all QHPs available through a Marketplace. Is the Federally-facilitated Marketplace establishing standards for appointments with issuers?*

Web-brokers must display all QHPs available through a Marketplace, irrespective of compensation or appointment arrangements. Web-brokers must comply with all applicable

state law, including state law related to appointments, as a condition of enrolling individuals through the Marketplace. If a consumer intends to enroll in a QHP for which the web-broker does not hold an appointment, the web-broker should direct the consumer to the Federally-facilitated Marketplace.

11. In the Federally-facilitated Marketplace, will web-brokers be able to modify the display of QHPs presented on their websites? What consumer protections must web-brokers keep in mind?

In Federally-facilitated Marketplaces, CMS expects that the sort order of or sorting algorithm for QHPs will not steer a consumer to a particular QHP based upon financial consideration to the web-broker. CMS also expects that a web-broker will disclose to the consumer the specific source and nature of web-broker compensation and that the compensation does not affect the display of QHP options or the premiums charged. CMS expects that consumers will not be charged a separate transaction or service fee for shopping or enrolling in a QHP through a web-broker's services or website.

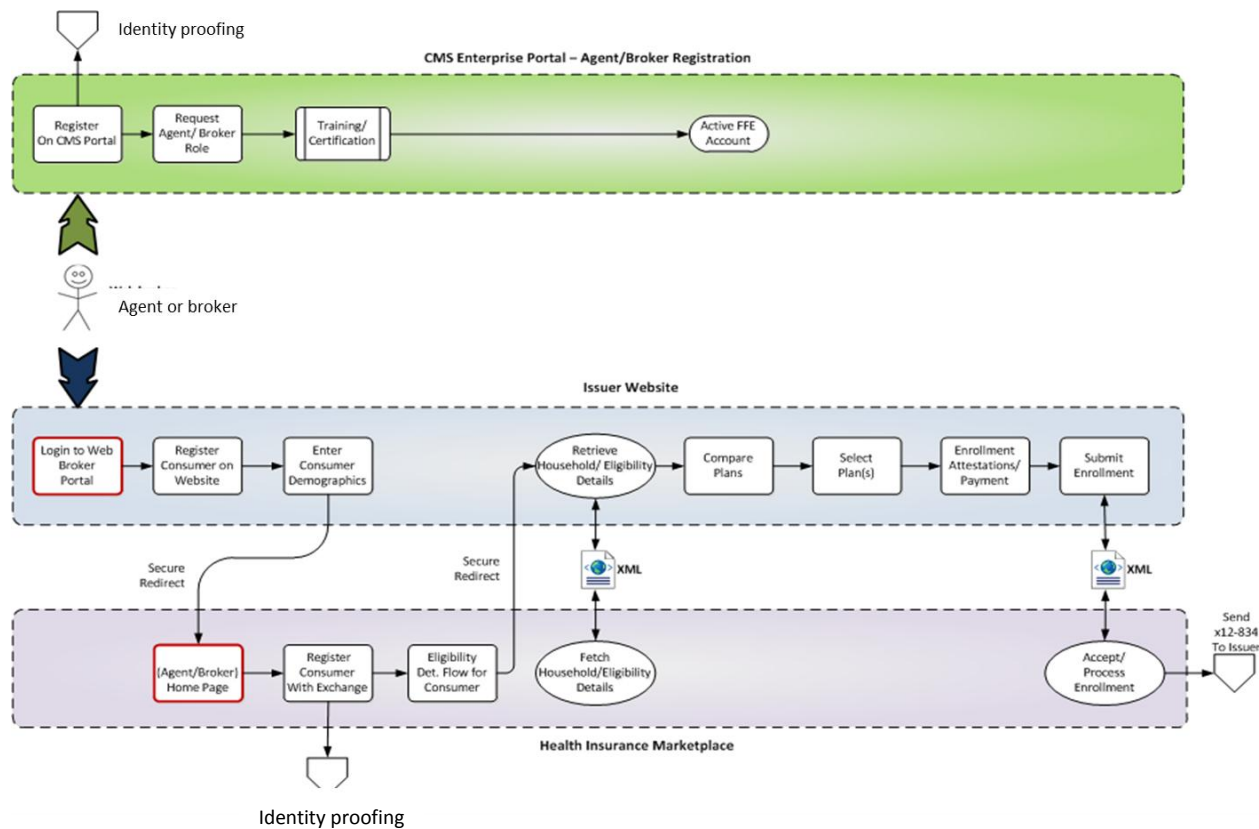
Web-brokers also may offer additional tools or decision support that the consumer can use to navigate or refine the display of QHPs. In addition, CMS expects web-brokers to display QHPs separately from non-QHPs, and offer a QHP plan selection experience that is free from advertisements or information for other health insurance-related products and sponsored links advertising health insurance-related products (e.g., an advertisement for a QHP issuer). Once a consumer has completed QHP plan selection and enrollment, the web-broker may offer the consumer the ability to search for additional products or services if desired. CMS expects that such offers will be made in a section of the web-broker's website that is separate from the QHP display.

A web-broker must adhere to the website disclosure and display standards specified in 45 C.F.R. 155.205(b)(1) and (c). In particular, we expect a web-broker to make available quality information on each QHP offered through a Marketplace easily accessible to consumers, including consumers with disabilities and limited English proficiency.

CMS also expects the web-broker to prominently display language explaining to consumers that the web-broker has entered into an agreement with CMS and has agreed to conform to website display and security standards in 45 C.F.R. 155.220(c)(3) and 155.260. Such language will also explain that the web-broker's website is distinct from the Federally-facilitated Marketplace website, and that consumers may opt to use the Federally-facilitated Marketplace website at any time. CMS will provide standard language that a web-broker may use on its website for this purpose in future guidance.

Appendix: Process Flows for Agent/Broker Pathways

Issuer-based Pathway



Marketplace Pathway

