

Step by Step: **Documenting** **Consumer Consent I**

Follow this comprehensive guide to understand the step-by-step process of documenting consumer consent, ensuring compliance and clarity in your procedures



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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. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

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 Agent and Broker 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).

The Importance of CMS Compliance in the Insurance Market

Compliance with CMS regulations is crucial in the insurance market, especially for agents and agencies. Firstly, adhering to CMS compliance ensures that agents and agencies operate ethically and legally, protecting both themselves and their clients from potential legal and financial repercussions. By following CMS guidelines, agents demonstrate their commitment to upholding industry standards and safeguarding the interests of policyholders.

Moreover, CMS compliance helps maintain the integrity of the insurance market by fostering transparency and accountability. It ensures that agents provide accurate information to clients, thereby building trust and credibility within the industry. Compliance also promotes fair competition among insurance providers, preventing unethical practices and ensuring a level playing field for all participants.

Furthermore, CMS compliance is essential for accessing government-funded healthcare programs such as Medicare and Medicaid. Agents and agencies must adhere to CMS regulations to participate in these programs and offer eligible clients access to essential healthcare services. Failure to comply with CMS requirements can result in loss of accreditation, fines, or even legal action, jeopardizing the reputation and viability of the business.

Introduction

Our ebook, 'Step by Step: Documenting Consumer Consent,' is designed to serve as an indispensable resource for professionals in the health insurance industry seeking clarity and guidance in this complex arena.

As privacy regulations become increasingly stringent, agents and agencies face growing pressure to obtain and document consent accurately and transparently. From HIPAA to emerging state laws, the regulatory framework demands meticulous attention to detail. Our ebook provides a thorough examination of best practices and legal considerations for effectively documenting consumer consent in the context of health insurance.

Whether you're a seasoned compliance expert or just beginning to navigate the intricacies of data protection in the health insurance sector, our ebook offers actionable insights and practical advice tailored to your needs. From understanding the nuances of consent forms to implementing robust record-keeping processes, each chapter equips you with the knowledge and tools necessary to ensure compliance while building trust with clients.

In addition to offering expert guidance, our ebook includes real-world case studies and examples relevant to the health insurance industry. By learning from the experiences of peers and industry experts, you can gain valuable insights into common challenges and successful strategies for compliance.

2024 Payment Notice Updates: Review Documentation Requirements

Review Documentation Requirements

- The new requirements adopted in the 2024 Payment Notice were effective on June 18, 2023.
- Agents and brokers assisting Marketplace consumers need to comply with the new requirements for current clients for any application or plan changes that occur on or after June 18, 2023.
- The documentation required in the 2024 Payment Notice showing the consumer, or their authorized representative, provided consent prior to the agent, broker, or web-broker providing assistance will also need to be created and maintained for new clients for any application or plan changes that occur on or after June 18, 2023.
- Similarly, in advance of submission of a new Marketplace application and whenever there are changes to the eligibility application information in a consumer's existing application on or after June 18, 2023, the documentation outlined in the 2024 Payment Notice capturing that the consumer, or their authorized representative, reviewed and confirmed the accuracy of the eligibility information contained in the application must be created and retained.
- If an existing client's plan renews automatically and there are no changes to the Marketplace application, the new documentation requirements adopted in the 2024 Payment Notice would not be triggered until such time that the consent provided by the consumer (or their authorized representative) expires or is otherwise rescinded, or there is a need to update and make changes to the consumer's Marketplace eligibility application information.

Consumer Consent and Application Review FAQs

When do agents, brokers, and web-brokers need to begin documenting and retaining consumer consent pursuant to the new documentation requirements established in the 2024 Payment Notice?

Agents, brokers, and web-brokers are required to document that eligibility application information has been reviewed by and confirmed to be accurate by the consumer or their authorized representative prior to application submission.

- The consumer or their authorized representative must take an action to produce the documentation.
- The documentation must contain, at a minimum, the following information:
 - The date the information was reviewed.
 - The name of the consumer or their authorized representative.
 - An explanation of the attestations at the end of the eligibility application.
 - The name of the assisting agent, broker, or web-broker.
- The agent, broker, or web-broker must maintain the documentation for a minimum of 10 years.

Consumer scenario

Your client's plan has renewed automatically with no changes to their Marketplace application.

Do you need to maintain a record that they provided you consent to assist them?

If an existing client's plan renews automatically and there are no changes to the Marketplace application, the new documentation requirements adopted in the 2024 Payment Notice would not be triggered until such time that the consent provided by the consumer (or their authorized representative):

- Expires or is otherwise rescinded, or
- There is a need to update and make changes to the consumer's Marketplace eligibility application information.



Consumer Consent and Application Review FAQs

What are acceptable methods by which an agent or broker may document consumer consent?

- Acceptable documentation of a consumer's consent may be obtained in a manner that best suits the business practices of the agent, broker, or web-broker, provided the documentation meets the requirements of the 2024 Payment Notice.
- The consumer or authorized representative must act to produce a record (i.e., documentation) to confirm their consent was provided.
- Non-exhaustive examples of acceptable documentation that would be sufficient to demonstrate compliance with the 2024 Payment Notice include:
 1. Documents that capture the date consent was provided, along with the signature of the consumer or authorized representative (electronically or otherwise),
 2. Verbal confirmation by the consumer or authorized representative that is captured in an audio recording,
 3. A written response (electronic or otherwise) from the consumer or authorized representative to a communication sent by the agent, broker, or web-broker, or other similar means specified by the Department of Health and Human Services (HHS) in guidance, provided the documentation also satisfies the other minimum content requirements in the 2024 Payment Notice.
- Since documentation is required to record and verify that consent was provided, an unrecorded verbal attestation by the consumer that is not memorialized in a written record will not suffice to demonstrate compliance.

Consumer Consent and Application Review FAQs

Does CMS have a model consent form that agents, brokers, and web-brokers may use to document consumer consent?

- Yes, CMS developed a model consent form that agents, brokers, and web-brokers may use to document consumer consent. The form can be found [here](#).
- Please note that this is merely an example form and using it is not compulsory. This form does not include the new application review requirements.

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CMS Model Consent Form for Marketplace Agents and Brokers

I, _____ [insert name of primary household contact], give my permission to _____ [insert name of the person or entity who has the consumer's consent] to serve as the health insurance agent or broker for myself and my entire household if applicable, for purposes of enrollment in a Qualified Health Plan offered on the Federally Facilitated Marketplace. By consenting to this agreement, I authorize the above-mentioned Agent to view and use the confidential information provided by me in writing, electronically, or by telephone only for the purposes of one or more of the following:

1. Searching for an existing Marketplace application;
2. Completing an application for eligibility and enrollment in a Marketplace Qualified Health Plan or other government insurance affordability programs, such as Medicaid and CHIP or advance tax credits to help pay for Marketplace premiums;
3. Providing ongoing account maintenance and enrollment assistance, as necessary; or
4. Responding to inquiries from the Marketplace regarding my Marketplace application.

I understand that the Agent will not use or share my personally identifiable information (PII) for any purposes other than those listed above. The Agent will ensure that my PII is kept private and safe when collecting, storing, and using my PII for the stated purposes above.

I confirm that the information I provide for entry on my Marketplace eligibility and enrollment application will be true to the best of my knowledge. I understand that I do not have to share additional personal information about myself or my health with my Agent beyond what is required on the application for eligibility and enrollment purposes. I understand that my consent remains in effect until I revoke it, and I may revoke or modify my consent at any time by _____ [insert method to revoke consent].

Name of Primary Writing Agent: _____
Agent National Producer Number: _____
Phone Number: _____
Email Address: _____

Name of Agency (if applicable): _____
Agency National Producer Number: _____
Owner of Agency: _____
Phone Number: _____
Email Address: _____

Name of Primary Household Contact and/or Authorized Representative: _____
Phone Number: _____
Email Address: _____
Signature: _____
Date: _____

Consumer Consent and Application Review FAQs

How do the consent requirements adopted in the 2024 Payment Notice relate to National Producer Numbers (NPNs) being changed on Marketplace applications?

- When an NPN on a Marketplace application is changed from one individual agent's, broker's, or web-broker's to another's, the new agent, broker, or web-broker must obtain consent from the consumer (or their authorized representative) and document that consent prior to providing assistance with applying for or enrolling in Marketplace coverage, pursuant to the 2024 Payment Notice.
- If a consumer (or their authorized representative) has granted agency-wide consent and the consent has not expired or been rescinded, the agency will not be required to obtain new consumer consent when the NPN on the consumer's Marketplace application changes, provided the new NPN belongs to an agent, broker, or web-broker of the agency to whom the consumer (or their authorized representative) granted consent.

Consumer Consent and Application Review FAQs

How do the new consent documentation requirements adopted in the 2024 Payment Notice impact advertisements that include a box for consumers to check to indicate that they consent to enrolling in health insurance?

- If an agent, broker, web-broker, agency, or brokerage only requires the consumer to check a box to confirm they provided their consent, that practice will likely not be sufficient to meet the new requirements applicable to obtaining and documenting consumer consent under the 2024 Payment Notice and documenting that eligibility application information has been reviewed by and confirmed to be accurate by the consumer or consumer's authorized representative under the 2024 Payment Notice.
- The agent, broker, and web-broker standards of conduct related to marketing are set forth [here](#).

Consumer Consent and Application Review FAQs

Do the consent requirements, including documentation of consent under the 2024 Payment Notice, apply when the consumer (or their authorized representative) fills out the Marketplace application on their own, as opposed to an agent, broker, or web-broker providing assistance with completion and submission of the Marketplace application?

- The requirement related to obtaining and maintaining documentation of consumer consent do not apply under these circumstances.
- The requirements do not apply in this situation because the consumer (or their authorized representative) is the individual completing the application, and the agent, broker or web-broker is not providing active assistance with the completion or submission of the Marketplace application.

Consumer Consent and Application Review FAQs

When working with a CMS-approved Enhanced Direct Enrollment (EDE) partner that provides a consumer-facing webpage that consumers can use to enroll themselves, does the agent, broker, or web-broker have to document that the consumer reviewed their application information and consented to the enrollment?

- If the application and enrollment were completed by the consumer through a consumer-facing webpage on an approved non-Exchange website without any active assistance from the agent, broker or web-broker, the agent, broker, or web-broker does not need to create or retain documentation that the consumer (or their authorized representative) provided consent to the enrollment, or reviewed and confirmed the accuracy of, the eligibility application information prior to submission of the application to the Marketplace.
- The documentation requirements do not apply in this situation because the consumer (or their authorized representative) is the individual completing the application, and the agent, broker or web-broker is not providing active assistance with the completion or submission of the Marketplace application.

Consumer Consent and Application Review FAQs

Do I need consent when I assist a consumer who was referred to me through Help On Demand?

- Consent must be obtained when assisting Marketplace consumers, including those referred to an agent, broker, or web-broker through a referral received from Help On Demand.
- A referral of this nature merely indicates the consumer is interested in health insurance and gives you permission to contact that consumer. The agent, broker, or web-broker must obtain consent during the initial contact with the consumer (or their authorized representative) and prior to providing assistance to a consumer with applying for or enrolling in Marketplace coverage, including before searching for an existing application.

Consumer Consent and Application Review FAQs

Does an agent, broker, or web-broker need to document that every change made to eligibility information on a consumer's Marketplace application, including plan and enrollment changes, has been reviewed by and confirmed to be accurate by the consumer or their authorized representative?

- Yes. Only the consumer or their authorized representative may agree to a Marketplace application, enrollment, or plan change and confirm that their eligibility application information is accurate.
- Whenever there are changes made to the eligibility information on a consumer's Marketplace application, including plan and enrollment changes, the requirements in the 2024 Payment Notice must be met.

Consumer Consent and Application Review FAQs

May agents, brokers, and web-brokers utilize the same form to meet the documentation requirements for both consumer consent and consumer review and confirmation of the accuracy of eligibility application information?

- Yes, the same documentation may be used to comply with both requirements as long as it appropriately captures the two separate events.
- Consumer consent must be obtained prior to assisting the consumer with applying for or enrolling in Marketplace coverage. This is the first event that would need to be captured in the documentation created and retained by the agent, broker, or web-broker. In addition, the documentation would need to capture information showing that the consumer reviewed and confirmed the accuracy of the eligibility application information in their Marketplace application. This is the second event which must occur after the application has been completed, and prior to its submission to the Marketplace.
- Therefore, if the same documentation is used to meet both requirements, the agent, broker, or web-broker will need to ensure there is sufficient information in the documentation to demonstrate these two separate events occurred. For example, a document or electronic file could include a timestamped communication showing when the consumer (or their authorized representative) provided their consent to the agent, broker, or web-broker, and a second timestamped communication showing when the consumer (or their authorized representative) attested to having reviewed and confirmed the accuracy of the eligibility application information in their Marketplace application.

Consumer Consent and Application Review FAQs

What constitutes “eligibility application information” as referenced in the 2024 Payment Notice?

- The phrase “eligibility application information” when used in the 2024 Payment Notice includes all information provided in response to Marketplace eligibility application questions.
- While agents and brokers can assist a consumer with completing the Marketplace application, the consumer (or their authorized representative) are the individuals with the knowledge to provide and confirm the accuracy of the information on the application.
- Agents and brokers should not assume they have accurately entered consumer eligibility application information on the Marketplace application without reviewing and confirming its accuracy with the consumer (or the consumer’s authorized representative) they are assisting, and documenting that confirmation as required under the 2024 Payment Notice. Consistent with the policies adopted in the 2024 Payment Notice, application filers may confirm the accuracy of eligibility application information on behalf of the people they are legally authorized to represent (e.g., one spouse applying on behalf of a married couple, or a parent applying on behalf of a child).

Consumer Consent and Application Review FAQs

What attestations do I need to explain to the consumer?

- When a consumer (or their authorized representative) applies for coverage through the Marketplace, they are required to agree (or “attest”) to the truth of the information in the application prior to submission.
- The attestations appear at the end of the Marketplace application. Different attestations will apply based on the consumer’s circumstances. Prior to submitting the Marketplace application, the attestations that apply to a consumer’s circumstances will appear and must be completed.
- As explained in the 2024 Payment Notice, when an agent, broker or web-broker is assisting a consumer, these attestations must be reviewed and explained to the consumer to ensure they are aware of what they are agreeing to and that they have confirmed the accuracy of the information in their application prior to submission.
- For example, one of the attestations that all consumers must currently agree to before submission of their application states: “I’m signing this application under penalty of perjury, which means I’ve provided true answers to all of the questions to the best of my knowledge. I know I may be subject to penalties under Federal law if I intentionally provide false information.”

Consumer scenario

You are about to assist a client with enrolling in coverage, but are unsure of how to proceed with accurately documenting consumer consent to comply with the updated regulations.

In this case, what step should you take to ensure compliance with consumer consent and application review requirements regulations?

1. Consult the CMS Model Consent Form for an example of documenting consumer consent.
2. Consult the 2024 Payment Notice.
3. Send any questions you have to the Agent/Broker Email Help Desk at FFMProducer-
AssisterHelpDesk@cms.hhs.gov.
4. All of the above.



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