



FAQ: 2024 Payment Notice Requirements

This frequently asked questions (FAQ) document provides guidance on the new requirements adopted in the 2024 Payment Notice¹ that apply to agents, brokers, and web-brokers who assist with or facilitate enrollment in Marketplace² coverage (with or without financial assistance). The questions below address changes made to 45 C.F.R. § 155.220(j), focusing on the new requirements to document and maintain records that a consumer or their authorized representative has provided consent prior to providing assistance with applying for or enrolling in Marketplace coverage,³ as well as reviewed and confirmed the accuracy of their eligibility application information prior to submitting the application to the Marketplace.⁴ The list of questions was curated utilizing questions and comments from the Agent/Broker Summit held in May 2023, as well as inquiries from other interested parties.

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. That is, consumer consent must be obtained prior to assisting the consumer with applying for or enrolling in Marketplace coverage.⁵ 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.⁶ 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

¹ Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024; Final Rule, 88 Fed. Reg. 25740 (Apr. 27, 2023).

² For purposes of this document, the term “Marketplaces” refers to Federally-facilitated Exchanges (FFE) and State-based Exchanges on the Federal Platform (SBE-FPs). See 45 CFR 155.220(j) and (l).

³ 45 CFR 155.220(j)(2)(iii). Also see 88 Fed. Reg. at 25809 – 25814.

⁴ 45 CFR 155.220(j)(2)(ii). Also see 88 Fed. Reg. at 25804 – 25809.

⁵ See supra note 3.

⁶ See supra note 4.

occurred. For example, a document or electronic file could include a timestamped⁷ communication showing when the consumer (or their authorized representative) provided their consent to the agent, broker, or web-broker, and a second timestamped⁸ 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.

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?

The new requirements adopted in the 2024 Payment Notice were effective on June 18, 2023. As such, agents, brokers, and web-brokers assisting Marketplace consumers need to comply with the new documentation requirements in § 155.220(j)(2)(iii)(A)-(C) for current clients for any application or plan changes that occur on or after 6/18/2023. The documentation required under § 155.220(j)(2)(iii)(A) 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 6/18/2023. Similarly, the new requirements in § 155.220(j)(2)(ii)(A)(1)-(2) regarding documentation reflecting that the consumer, or their authorized representative, reviewed and confirmed the accuracy of the eligibility information in their application also applies prospectively as of the effective date of the 2024 Payment Notice (6/18/2023). Therefore, 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 6/18/2023, the documentation outlined in § 155.220(j)(2)(ii)(A) 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.

However, 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.

How do the consent requirements adopted in the 2024 Payment Notice relate to 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,

⁷ See 45 CFR 155.220(j)(2)(iii)(B). Also see Appendix A for a summary of these minimum content requirements for documenting consent.

⁸ See 45 CFR 155.220(j)(2)(ii)(A)(1). Also see Appendix A for a summary of these minimum content requirements for documenting the review and confirmation of eligibility application information.

pursuant to § 155.220(j)(2)(iii). 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.

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 § 155.220(j)(2)(iii)(B). Consistent with § 155.220(j)(2)(iii)(A), the consumer or authorized representative must act to produce a record (i.e., documentation) to confirm their consent was provided. The documentation of consent must include the content specified in § 155.220(j)(2)(iii)(B).⁹

Non-exhaustive examples of acceptable documentation that would be sufficient to demonstrate compliance with § 155.220(j)(2)(iii) include documents that capture the date consent was provided, along with the signature of the consumer or authorized representative (electronically or otherwise), verbal confirmation by the consumer or authorized representative that is captured in an audio recording, 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 HHS in guidance, provided the documentation also satisfies the other minimum content requirements in § 155.220(j)(2)(iii)(B).¹⁰ The documentation must allow CMS to confirm that the consumer, or their authorized representative, provided consent to the agent, broker, or web-broker to assist with applying for or enrolling in Marketplace coverage and that this consent was provided prior to the agent, broker, or web-broker assisting with the Marketplace application or enrollment. 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.

Do I need consent when I assist a consumer who was referred to me through Help On Demand¹¹?

- 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

⁹ Please see Appendix A for a summary of these minimum content requirements for documenting consent.

¹⁰ Ibid.

¹¹ Help On Demand is a consumer assistance referral system that connects consumers seeking assistance with Marketplace-registered, state-licensed agents and brokers in their area who can provide immediate assistance with Marketplace plans and enrollments. Help On Demand is a CMS-contracted service developed and hosted by Help On Demand (formerly known as BigWave Systems).

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.

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 § 155.220(j)(2)(iii) and documenting that eligibility application information has been reviewed by and confirmed to be accurate by the consumer or consumer's authorized representative under § 155.220(j)(2)(ii).¹² The agent, broker, and web-broker standards of conduct related to marketing are set forth in § 155.220(j)(2)(i).

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.

Do the consent requirements, including documentation of consent under § 155.220(j)(ii), 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.

¹² Ibid.¹³ See <https://www.federalregister.gov/documents/2022/12/21/2022-27206/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2024>.

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.

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. For example, if a consumer is applying for APTC and CSRs, there are attestations they will need to review and attest to that a consumer who is not applying for federal financial assistance would not need to review or attest to. This is because the application of the consumer applying for APTC and CSRs requests information, such as household income, that is not requested by the application submitted by consumers not applying for financial assistance. 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 Notice¹³, 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.”

What constitutes “eligibility application information” as referenced in § 155.220(j)(2)(ii)?

The phrase “eligibility application information” when used in § 155.220(j)(2)(ii) includes all information provided in response to Marketplace eligibility application questions. As explained in the preamble of the final rule¹⁴, 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 § 155.220(j)(2)(ii). Consistent with the policies adopted in the 2024 Payment Notice, application filers may confirm the

¹³ See <https://www.federalregister.gov/documents/2022/12/21/2022-27206/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2024>.

¹⁴ See <https://www.federalregister.gov/documents/2022/12/21/2022-27206/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2024>.

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).¹⁵

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 § 155.220(j)(2)(ii) must be met.

¹⁵ See 88 Fed. Reg.at 25806 - 25807

Appendix A: Documentation Requirements

Consumer Consent: Minimum Content Requirements¹⁶

Creating and retaining documentation showing the receipt of consent requires the consumer, or the consumer's authorized representative designated in compliance with § 155.227, to take an action that produces a record that can be maintained and produced by an individual or entity described in 45 C.F.R. § 155.220(j)(1) to confirm the consumer's or their authorized representative's consent has been provided. This consent must be provided prior to providing the consumer assistance with applying for or enrolling in Marketplace coverage.

The documentation must contain at least the minimum content listed in 155.220(j)(2)(iii)(B), which includes:

- A description of the scope, purpose, and duration of the consent provided by the consumer or their authorized representative;
- The date the consent was given;
- The name of the consumer or their authorized representative;
- The name of the assisting agent, broker, or web-broker; and
- A process through which the consumer or their authorized representative may rescind the consent.

This documentation must be maintained for a minimum of 10 years.

Eligibility Application Information: Minimum Content Requirements¹⁷

Creating and retaining documentation showing that eligibility application information has been reviewed by and confirmed to be accurate by the consumer or the consumer's authorized representative requires the consumer or their authorized representative to take an action that produces a record that can be maintained and produced by the individual or entity described in 45 C.F.R. § 155.220(j)(1) to confirm the consumer or their authorized representative reviewed and confirmed the accuracy of the eligibility application information prior to submission of the application to the Marketplace. The documentation must contain at least the minimum content listed in 155.220(j)(2)(ii)(A)(1), which includes:

- 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; and
- the name of the assisting agent, broker, or web-broker.

This documentation must be maintained for a minimum of 10 years.

¹⁶ 45 C.F.R. § 155.220(j)(2)(iii).

¹⁷ 45 C.F.R. § 155.220(j)(2)(ii).

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