

# Understanding the Agent/Broker Agreements

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

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*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](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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# Agenda



## General Agreement

- | **01** Background and Definitions
- | **02** Registration, Training, and Licensing
- | **03** System Use, Consent, Privacy and Security
- | **04** Termination

## Privacy and Security Agreement

- | **01** Authorized/Unauthorized Functions
- | **02** Personal Identifiable Information (PII)
- | **03** Renewal and Termination

# General Agreement

# Background and Key Definitions



- » “Pursuant to section 155.220(d) and subject to State law, this Agreement establishes the **general standards** and requirements for ABE to: (a) **assist** Consumers, Applicants, Qualified Individuals, and Enrollees in **applying for Advance Premium Tax Credit (APTC), and/or Cost Sharing Reductions (CSRs) for Qualified Health Plans (QHPs)**; and (b) **enroll** Qualified Individuals in a QHP through the **individual market FFEs and SBE-FPs** in a manner that constitutes enrollment through the exchange.”
- » **ABE**
  - As defined for the purposes of this Agreement, ABE is a collective term for Agents, Brokers, and Agent or Broker Entities that have entered into this Agreement with CMS.
- » **CMS Systems**
  - As defined for the purposes of this Agreement, CMS systems that agents and brokers access when assisting consumers, including but not limited to the CMS Enterprise Portal, HealthCare.gov, and the Direct Enrollment Pathways.
- » **Consumers**
  - As defined for the purposes of this Agreement, a person who, for himself or herself, or on behalf of another individual, seeks information related to eligibility or coverage through a QHP offered through an Exchange or an Insurance Affordability Program, or whom an Agent or Broker (including Web-brokers), Navigator, Issuer, Certified Application Counselor, or other Entity assists in applying for coverage through a QHP, applying for APTC and/or CSRs, and/or completing enrollment in a QHP for individual health insurance coverage offered through an Exchange.

# Background and Key Definitions (Cont.)



## » **Person Search**

- As defined for the purposes of this Agreement, means use of an ABE's CMS Enterprise Portal Account and/or the Direct Enrollment Pathways to seek information from CMS Systems about an Applicant's or existing Enrollee's Exchange application or plan, where the Applicant or Consumer has given the ABE consent to work with them for purposes of applying for and enrolling in a QHP or applying for APTC and/or CSRs.

## » **Personally Identifiable Information (PII)**

- Has the meaning contained in the Glossary of Management and Budget (OMB) Memorandum M-17-12 (January 3, 2017) and means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.

## » **Web-broker**

- As defined for the purposes of this agreement, means individual agent or broker, group of agents or brokers, or business entity registered with an Exchange under § 155.220(d)(1) that develops and hosts a non-Exchange website that interfaces with an Exchange to assist consumers with direct enrollment in QHPs offered through the Exchange as described in § 155.220(c)(3) or § 155.221.

# Registration, Training, & Licensing



## » **Registration**

- Annually register with the FFEs or SBE-FPs prior to assisting with QHP enrollment.

## » **Training**

- Complete annual CMS training.
- On QHP options and Insurance Affordability Programs offered through the FFEs or SBE-FPs.

## » **Licensing**

- Maintain licensure in all states in which the ABE assists with QHP enrollment.
- Comply with:
  - Individual State laws.
  - The Affordable Care Act (ACA) and all applicable regulations and guidance.

# System Use, Consent, and Security



## » **System Use**

- Only maintain one CMS Portal account, accessible by the registered ABE.
- Only conduct one log-in session at a time.
- No scripting or automation unless previously approved.

## » **Consent**

- ABE may conduct only one Person Search at a time during the log-in session.
- ABE may only conduct Person Searches for Consumers who have given ABE consent to access and use their PII for purposes of assisting the Consumer in applying for and enrolling in a QHP through an FFE or SBE-FP or coverage in an Insurance Affordability Program.

## » **Privacy and Security**

- Meet all standards adopted by FFEs, SBE-FPs, state Departments of Insurance, CMS Agreements, and other applicable laws.
- Allowed to be audited pursuant to 45 CFR 155.260(b).

# Termination



- » **Governed by 45 CFR 155.220**
  - Four non-compliance notices in any calendar year; or
  - Failure to maintain valid state licensure in at least one FFE or SBE-FP State and in each State that ABE facilitates enrollment in a QHP through an FFE or SBE-FP
  
- » **Agreement Termination = FFE Registration Termination**
  - The AB will no longer be able to assist consumers
  - The AB will no longer be eligible to obtain compensation for assisting consumers

# Privacy and Security Agreement

# Authorized/Unauthorized Functions



## » **Key Authorized Functions**

- Assist with application, eligibility, plan selection, enrollment, renewal, and disenrollment activities
- Assist consumers apply for APTC and CSR eligibility determinations
- Educate consumers on Insurance Affordability Programs, Medicaid, and CHIP, if applicable
- Meet legal responsibilities and conduct quality assurance

## » **Unauthorized Functions**

- Create a HealthCare.gov account for a consumer, applicant, qualified individual, or enrollee
- Save and store HealthCare.gov account information for consumers
- Log into the HealthCare.gov account of a consumer, applicant, qualified individual, or enrollee
- Use PII to log into HealthCare.gov as a consumer, applicant, qualified individual, or enrollee

# Collection and Use of PII



## » Collection of PII

- ABE may create, collect, disclose, access, maintain, store, and use PII from consumers, applications, qualified individuals, enrollees, or these individuals' legal representatives or authorized representatives
- Marketplace PII includes: Name, address, birthdate, phone number, email, Social Security Number, household income, etc. of the consumer seeking coverage
- Privacy Notice Statement: Prior to collecting PII, the Non-Exchange Entity must provide a notice that is prominently and conspicuously displayed on a public-facing website, if applicable, or on the electronic and/or paper form the Non-Exchange Entity will use to gather and/or request PII

## » Use of PII

- PII may only be used for the authorized functions discussed earlier in the context of completing an application for QHP, APTC, or CSRs eligibility, if applicable, or enrolling in a QHP, or any data transmitted from or through the Marketplace, if applicable
- PII may not be used for any other purposes not outlined in these agreements **without the explicit consent of the consumer**

# Duty to Protect PII



## » **Duty to Protect PII**

- ABE may not release, publish, or disclose PII to unauthorized personnel or for unauthorized purposes and must protect PII in accordance with provisions of any applicable laws
- ABE understands and agrees that they will exclusively be held financially and legally liable for misuse of PII
- ABE shall train and monitor staff working with ABE on such requirements related to authorized use and sharing of PII with third parties and any potential consequences of misuse

## » **Ability of Consumers to Limit Collection and Use of PII**

- ABE agrees to provide the consumer, applicant, qualified individual, or enrollee, or these individuals' legal representatives or authorized representatives, the opportunity to consent to the ABE collecting, creating, disclosing, accessing, maintaining, storing, and using their PII as well as a mechanism through which they can limit the ABEs abilities to do so
- Consent documents must be appropriately secured and retained for 10 years

# Duty to Protect PII (Cont.)



## » **Commitment to Protect PII**

- Web-brokers shall not release, publish, or disclose consumer, applicant, qualified individual, or enrollee PII to unauthorized personnel and shall protect such information in accordance with provisions of any Federal and State laws and regulations governing the adequate safeguarding of consumer, applicant, qualified individual or enrollee PII
- Web-brokers understand and agree that they will exclusively be held financially and legally liable for misuse of PII
- Web-brokers shall train and monitor staff on such requirements related to authorized use and sharing of PII with third parties and any potential consequences of misuse
- The overall sensitivity level of data or information that will be made available or exchanged across the interconnection will be designated as MODERATE as determined by Federal Processing Standards (FIPS) publication 199

## » **Reporting a Breach**

- ABE is required to report any breach of PII to the CMS IT Service Desk by telephone at (410) 786-2580 or 1-800-562-1963 or via email notification at [cms\\_it\\_service\\_desk@cms.hhs.gov](mailto:cms_it_service_desk@cms.hhs.gov) within 24 hours from knowledge of the breach
- Incidents must be reported to the CMS IT Service Desk by the same means as breaches within 72 hours from knowledge of the Incident

# Renewal and Termination



## » **Renewal**

- Effective Date:
  - Date of electronic execution
- End Date:
  - Day before first day of OEP
- Renewal:
  - For one-year periods

## » **What Does Agreement Termination Mean**

- Terminates registration between FFE and ABE
- Terminates Agreement(s) between AB and CMS
- The AB will lose their ability to assist consumers, their access to Direct Enrollment and Enhanced Direct Enrollment (DE/EDE) will be revoked, and they will not be eligible for compensation

# Renewal and Termination (Cont.)



## » **Termination without Cause**

- If the agent, broker, or web-broker does not renew their Marketplace registration at the end of a plan year
- 30 days advance written notice for reasons other than non-renewal of Marketplace registration

## » **Termination for Cause**

- Governed by standards under 45 C.F.R. 155.220(g) and (h)
  - Severe finding of noncompliance or pattern of noncompliance
  - Failure to maintain proper licensing
  - State finding of fraud or abusive conduct
- Habitual Default
  - AB receives four or more non-compliance notices in any calendar year

## » **Termination for Failure to Maintain State Licensure**

- Maintain licensure in each state ABE assists consumers, applicants, qualified individuals, or enrollees
- CMS may terminate with a 30 days written notice

# Agent and Broker Resources



- » Agent and Broker General Resources: [https://regtap.cms.gov/reg\\_librarye.php?i=4182](https://regtap.cms.gov/reg_librarye.php?i=4182)
- » Agent and Broker Help Desk Information: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Agent-Broker-Help-Desks.pdf>
- » Agent and Broker FAQs: <https://www.agentbrokerfaq.cms.gov/s/>



Agents and brokers are valued partners to all of us at CMS for the vital role you play in enrolling consumers in qualified health coverage.

We thank you for the trusted advice, support, and assistance you provide throughout the year and wish you continued success!