

Information and Tips for Assisters: How and when to provide information about agent and broker services to consumers, and other information about engaging with agents and brokers

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Introduction

Navigators, certified application counselors (CACs), and in-person assisters in the Federally-facilitated and State Partnership Marketplaces (collectively referred to as “assisters” or “you” in this document) play a crucial role in helping consumers to make informed decisions when selecting health insurance plans.ⁱ To do so, assisters often need to educate consumers about the differences between health plans based on features like the level of cost sharing, providers included in a plan’s network, and types of services covered. This type of assistance is integral to your work, as is the knowledge of how and when to help consumers connect with certain types of qualified professionals that can provide additional expertise.

In some cases, consumers may find it helpful to discuss their health coverage options with a **health insurance agent or broker**, a private entity or individual that is licensed and regulated by a state and typically gets a payment, or commission, from a health insurer with whom they have a contractual relationship for enrolling a consumer into the insurer’s plans.ⁱⁱ To the extent permitted by the state, a licensed health insurance agent or broker may assist consumers in applying for and enrolling in coverage and insurance affordability programs through the Marketplaces, including public programs such as Medicaid and CHIP, provided he or she has registered with the Marketplace and successfully completed Marketplace training requirements.ⁱⁱⁱ

“**Web-brokers**” is a term used by the Centers for Medicare & Medicaid Services (CMS) to refer to agents or brokers that own and manage their own enrollment websites (or use the website of another agent or broker), as an alternative to using HealthCare.gov.

A few notes about web-brokers:

- Web-brokers are required to display all individual market qualified health plans (QHPs) available in a Marketplace service area and all QHP information provided to them by the

Marketplace or directly by QHP issuers. A web-broker might not be able to provide all information needed for a consumer to make a decision about enrolling in a specific QHP, however, unless they have a contractual relationship or other arrangement with the QHP's issuer which gives the web-broker access to this information

- Web-brokers whose web sites do not display the same information that is required on HealthCare.gov must prominently display a standard disclaimer and include a link to HealthCare.gov so consumers who are interested in looking at all available plan information can go to HealthCare.gov to obtain it.^{iv}
- Web-broker sites are generally focused on enrolling persons into private health insurance coverage, and web-brokers, similar to other agents and brokers, generally receive compensation from health insurance issuers for these enrollments.

Unless otherwise specified, references in this document to “agent” and/or “broker” include web-brokers.

It is important to understand when it might be appropriate to inform a consumer about the services agents and brokers provide, and how you can collaborate and engage with agents and brokers in a way that does not violate the legal requirements that apply to you in your assister role.

Additional Guidelines: Differences between Assisters and Agents and Brokers

For cases in which it is appropriate to inform consumers about services provided by agents and brokers, you should **make sure that consumers understand the following about these services** and that they know that while both assisters and agents and brokers can perform similar services for consumers, **assisters differ from agents and brokers in important ways.**

- All assisters in the Federally-facilitated Marketplaces (including State Partnership Marketplaces) **are prohibited from receiving consideration directly or indirectly from health insurers or stop-loss insurance issuers** in connection with the enrollment of any individuals into QHPs or non-QHPs.^v In addition, assisters in these Marketplaces are **required to disclose to consumers certain relationships they have with health insurance issuers and insurance affordability programs.**^{vi} Further, assisters are **required to provide information in a fair, accurate, and impartial manner.**^{vii} Assisters must also inform consumers about all of the QHPs and insurance affordability programs for which they are eligible.^{viii}
- With one limited exception for some certified application counselors,^{ix} all assisters in the Federally-facilitated Marketplaces (including State Partnership Marketplaces) must help all persons who ask for their assistance, regardless of any particular status.^x

- There is no federal requirement that agents or brokers help all persons who ask for their assistance.
- States have a long-established role in regulating the conduct of agents and brokers operating within their borders. Since the extent to which agents and brokers owe particular duties to consumers will usually depend on whether any such duties have been established under state law, assisters should familiarize themselves with any standards of conduct established for agents and brokers in their state.
- Agents and brokers are typically compensated by insurance companies with whom they have a contract, and are sometimes exclusively affiliated with a specific health insurance company or companies to sell certain products. With the exception of web-brokers, agents and brokers are not required by federal law to display all available QHPs or to facilitate enrollment into all QHPs.
- Finally, agents and brokers might not be required or prepared to help individuals learn whether they are eligible for Medicaid or CHIP.

General Tips

Broadly, assisters cannot:

1. endorse specific agents and brokers or refer consumers to specific agents and brokers;
2. accept consideration of any kind (direct or indirect, cash or in-kind) from an agent or broker that could be tied to the compensation received by that agent or broker from a health insurance or stop loss insurance issuer for enrolling a person in a QHP or non-QHP; or
3. use or rely upon the services of agents and brokers as a substitute for performing any of your federally-required duties.

It may be appropriate for you to inform a consumer about services provided by agents and brokers in the following scenarios:

1. If a **consumer specifically asks** about the services that agents and brokers provide and expresses a desire to talk to an agent or broker—this might occur before or after you've had a chance to show the consumer all of his or her enrollment options.
2. If, after you show a consumer all of his or her enrollment options, the **consumer expresses a desire to receive a recommendation** about which plan or type of plan to choose, and **if agents and brokers are permitted under state law to make such recommendations**. In this case, you should remind the consumer that you cannot make plan recommendations. In addition, you could suggest that the consumer speak to an agent or broker if they wish to receive a plan recommendation.

3. If you received a Navigator grant from a state-based SHOP-only Marketplace in a state that has a Federally-facilitated Marketplace for the individual market, and the state has opted to permit you to do so, some of your SHOP-specific Navigator duties may be fulfilled by making referrals to agents and brokers. These duties include: assisting SHOP consumers with facilitating the selection of a QHP, and providing referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act, or any other appropriate state agency or agencies, for any enrollee in coverage through the SHOP who has a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage.^{xi}

When you help a consumer find out more about agent/broker services, we recommend you do the following:

- Tell the consumer about the differences between the services provided by agents and brokers and those provided by assisters. See the “Additional Guidelines” section above on page 2 for a description of these differences.
- Refer consumers to general resources that they can use to search for an agent or broker near where they live. For example, the Find Local Help feature on Healthcare.gov has a searchable listing of agents and brokers who have registered with the Federally-facilitated Marketplace.^{xii} State Departments of Insurance might also have resources available, such as directories posted on their websites or other information available upon request. If, after the consumer looks at a general listing of agents and brokers and selects a specific agent or broker to contact, he or she asks for your help with contacting that agent or broker, you may also provide that help.

What you should not do:

1. Except for Navigators in a state-based SHOP-only Marketplace (as discussed above), **you must *not* refer consumers to agents and brokers as a substitute for fulfilling any of your federally-required duties.** Assisters perform an important role by providing information to consumers that is required to be fair, accurate, and impartial.
2. You **may *not* try to persuade a consumer to use a specific agent or broker** because doing so would serve as an implicit endorsement and therefore CMS would consider this activity to violate your duty to provide impartial information.
3. You **may *not* try to persuade a consumer to use a specific web-broker or recommend a particular web-broker or subset of web-brokers** because CMS would consider doing so to be an implied endorsement for a particular health insurance web-broker, which violates your duty to provide impartial information.
4. You **must *not* use a web-broker site when performing online application and enrollment assistance, unless you are using it as a reference tool to supplement**

the information available on HealthCare.gov, since Healthcare.gov should always be the primary website you use to perform these assister functions. If you do consult a web-broker site at the request of a consumer, we recommend that you educate the consumer about the fact that the web-broker site might charge a fee to access certain tools or content, or might provide limited information about some QHPs (as compared to HealthCare.gov).

5. An assister entity or individual **may not advertise or otherwise display a link or widget to a specific web-broker at its service location or on its website (as applicable)**. Again, linking to one site to the exclusion of others would be an implied endorsement of one site over others.
6. As mentioned briefly above, an assister entity or individual **may not accept consideration of any kind (direct or indirect, cash or in-kind) from an agent or broker that could be tied to the compensation received by that agent or broker from a health insurance or stop loss insurance issuer for enrolling a person in a QHP or non-QHP**. Doing so would be a violation of the prohibition on an assister receiving any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals in a QHP or a non-QHP.^{xiii} In particular, assisters should exercise caution about referrals to agents and brokers and requests to link to or otherwise publicize web-broker sites, and ensure that they are not receiving any economic benefit from taking these steps and are not endorsing specific agents or brokers. If a consumer uses an agent or broker to enroll in coverage, that agent or broker will generally be compensated by the issuer, and the assister should take care not to receive any part of that compensation.
7. You **must not host or reserve space for agents and brokers at your service locations**, regardless of whether you are receiving any payments, services, or other consideration in exchange for the space. CMS considers hosting or reserving space for agents and brokers within an assister's service location problematic because it would give the appearance of endorsing the particular agents or brokers who use the space. Doing so is also problematic because a consumer who comes to your service location desiring to obtain assister services might unwillingly (or unknowingly) receive assistance from an agent or broker instead.

Scenarios illustrating when to inform consumers about agent and broker services:

Scenario 1: A consumer comes to your assister service location for a scheduled appointment. Before providing assistance, you inform her of your functions and responsibilities, and that your duties include informing the consumer about the full range of QHPs and insurance affordability programs for which the consumer may be eligible and helping her choose a plan. After you have helped the consumer submit the eligibility application through the Marketplace, the consumer receives her eligibility determination stating that she is eligible to enroll in a QHP through the Marketplace. The consumer thanks you for helping her find out what she is eligible for and then

informs you that she would prefer to select a QHP with the help of a licensed agent or broker.

How to respond: Since the consumer expressed her desire to complete plan selection with an agent or broker without any persuasion whatsoever on your part, and you informed the consumer that you could help her choose a plan, it would be permissible (and indeed, appropriate) to refrain from discussing QHP options or proceeding to “Plan Compare” with this consumer. However, we recommend that you inform the consumer of the differences between agents and brokers and assisters, as discussed on page 2. In addition, if the consumer consents for you to follow up with her, you may contact her at a later time. For example, you might want to make sure that she was able to enroll in a plan or offer to answer any questions she may have about her new coverage.

Scenario 2: Same consumer as before, although this time she also tells you that she doesn’t know how to go about finding an agent or broker in her area and asks you to help her locate one that is close by.

How to respond: You may help this consumer find contact information for agents or brokers in her area. As mentioned above, you could do this by directing the consumer to Find Local Help or showing the consumer a general listing of agents and brokers.

If the consumer asks you to provide a more specific listing of agents and brokers to help her decide who to contact, you must apply **objective sorting criteria** when creating such a listing, so that the information is provided in a fair and impartial manner, consistent with your federally-required duties.^{xiv} For example, you could generate a specific listing of all agents or brokers in a particular zip code or city and state. In addition, alone, or in combination with a geographically-targeted listing, a specific listing could include all agents or brokers that your state identifies as trained in or capable of assisting with Medicaid enrollments or that have expressed an interest in receiving referrals from assisters. It is important to inform consumers who would like to see a specific listing what sorting criteria were applied, who compiled the list, and that their choices are limited based on the objective sorting criteria applied. The listing itself should not be sorted in such a manner that it gives the appearance of endorsing certain agents or brokers. For example, an alphabetical listing would be appropriate, or a listing that is based on distance from a particular location.

Working with Agents and Brokers at Community Events

Scenario 1: Assistors and Agents and Brokers Attend Events Hosted or Sponsored by Third Parties

In some cases, it may be appropriate to attend a consumer-facing (i.e., public) education, outreach, or enrollment event sponsored by a non-assister organization that includes participation by agents and brokers. In general, CMS does not consider attending this type of event to be problematic, but we encourage assistors to keep in mind that **it is important not to substitute an agent or broker to perform any of the services required of you as an**

assister, unless the limited exception noted above with respect to Navigators in a state-based SHOP-only Marketplace applies. For example, you should not help consumers complete an application and then refer the consumer to an agent or broker at the event to complete plan selection (unless the consumer specifically asks for the referral, as discussed above), because you have a duty to facilitate the selection of a QHP or insurance affordability program and to provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible. This duty includes: providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping consumers make informed decisions during the health coverage selection process.

Scenario 2: Assisters Host or Sponsor Events that Include Agents and Brokers

We encourage assisters to consider how they can ensure a level of impartiality when inviting agents and brokers to assister-hosted public outreach, education, and enrollment events. For example, assisters should consider extending invitations to all agents and brokers in a particular area or having agents and brokers in a separate area of the event. If a select group of agents and brokers attend an assister-hosted event, assisters should be careful not to express or imply—by words or actions—an endorsement of, or preference for, the services of the group of agents and brokers that attend, or for a specific attendee. Please note that whether agents and brokers attend Navigator-hosted events does not affect a Navigator’s ability to use grant funds for the event. It is the Navigator’s duty of impartiality that matters.

Scenario 3: Assisters Attend Events Hosted or Sponsored by Agents and Brokers

If an assister chooses to attend events sponsored by agents and brokers, we encourage assisters to consider how they can ensure a level of impartiality. For example, if an assister entity or individual attends an event sponsored or hosted by one specific agent or broker entity or individual, then we recommend that the assister strive to attend all other events sponsored or hosted by other agents or brokers to which the assister may also be invited to attend. In addition, if you attend an agent or broker-hosted event, you should be careful not to express or imply—by words or actions—an endorsement of or preference for the services of the hosting individual or company.

In any of the above 3 Scenarios, assisters should also do the following:

- Be careful not to accept any direct or indirect compensation (in cash or in kind, such as reimbursement for or waiver of a facility fee) from agents or brokers who attend these events if such compensation could be tied to the compensation that the agents or brokers receive from health insurance or stop loss issuers related to enrollment in QHPs or non-QHPs. Rather than accept compensation (including in-kind compensation) from an agent or broker that could be a type of prohibited compensation, you can co-host events with agents or brokers and pay your share of the overhead costs associated with hosting the event, such as the rental or other administrative costs associated with securing a venue

for the event.

- Provide information to consumers about availability and services of agents and brokers when appropriate. You may also assist a consumer in locating or contacting an agent or broker, if the consumer expresses a desire to receive assistance from an agent or broker as described in greater detail on page 3 and in Scenario 2 on page 5.

Sharing Expertise and Best Practices with Agents and Brokers

Finally, we recognize that both assisters and agents and brokers might benefit from sharing expertise and best practices with each other. For example, an assister might have experience assisting consumers who qualify for Medicaid or CHIP or specific populations (such as immigrants), while an agent or broker might have best practices for obtaining detailed plan information, how to recognize the distinctions among different coverage options, or different insurance companies' administrative or claims practices. We want to reassure you that nothing prohibits you from networking or sharing your knowledge and expertise with agents and brokers, or seeking out knowledge and expertise from an agent or broker provided that you do not use the agent or broker as a substitute for performing any of the services that are required of you as an assister, and provided that you do not receive any consideration of any kind (direct or indirect, cash or in-kind) from an agent or broker that could be tied to the compensation received by that agent or broker from a health insurance or stop loss insurance issuer for enrolling a person in a QHP or non-QHP.

ⁱ By "in-person assister" we mean non-Navigator assistance personnel carrying out consumer assistance functions under 45 CFR 155.205(d) and (e) in a Federally-facilitated Marketplace (including a State Partnership Marketplace) and Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant. "In-person assister" does not include an individual certified application counselor or his or her designated organization.

ⁱⁱ Source: "Agent." Glossary, HealthCare.gov. <https://www.healthcare.gov/glossary/agent/>

ⁱⁱⁱ Source: "Ways to Help Consumers Apply & Enroll in Health Coverage Through the Marketplace."

http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/AssistanceRoles_06-10-14-508.pdf

^{iv} The information that is required on HealthCare.gov is set forth under 45 CFR 155.205(b)(1).

^v 45 CFR 155.210(d)(4), 45 CFR 155.215(a)(2)(i), and 45 CFR 155.225(g)(2).

^{vi} 45 CFR 155.215(a)(1)(iv), 155.215(a)(2)(v), and 45 CFR 155.225(d)(2).

^{vii} See 45 CFR 155.210(e)(2), 45 CFR 155.215(a)(2)(i) (incorporating standards at 45 CFR 155.210(e)(2) by cross-reference), and 45 CFR 155.225(c)(1).

^{viii} See 45 CFR 155.215(a)(1)(iii), 155.215(a)(2)(iv), and 45 CFR 155.225(c)(1).

^{ix} Under 45 CFR 155.120(c)(1)(ii) and (2), a CAC organization that receives federal funds to provide services to a specific population, such as a Ryan White HIV/AIDS program or an Indian health provider, may limit its provision of certified application counselor services to that population, as long as it does not discriminate within that specific population.

^x See 78 FR 20589 and FR 42830, and also 79 FR 30278.

^{xi} 45 CFR 155.705(d) permits a State operating a State SHOP-only Marketplace to allow Navigators in that State-based SHOP to fulfill Navigator duties under 45 CFR 155.210(e)(3) and (4) through referrals to agents and brokers.

^{xii} <https://localhelp.healthcare.gov/>.

^{xiii} See 45 CFR 155.210(d)(4), 155.215(a)(2)(i), and 155.225(g)(2).



^{xiv} 45 CFR 155.210(e)(2), 45 CFR 155.215(a)(2)(i) (incorporating standards at 45 CFR 155.210(e)(2) by cross-reference), and 45 CFR 155.225(c)(1).

