

MARKETPLACE ASSISTER TOOLKIT

Standard Operating Procedures Manual for Assisters in the Individual Federally-facilitated Marketplaces Consumer Protections: Privacy and Security Guidelines



Version 5.0 November 2016. This information is intended only for the use of entities and individuals that are certified to serve as Navigators, certified application counselors, or non Navigator assistance personnel in a Federally facilitated Marketplace. The terms “Federally facilitated Marketplace” and “FFM,” as used in this document, include FFMs where the state performs plan management functions and State Partnership Marketplaces. Some information contained in this manual may also be of interest to individuals helping consumers in State based Marketplaces and Federally supported State based Marketplaces.



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Consumer Protections: Privacy & Security Guidelines

Privacy & Security Guidelines

When you help consumers apply for health coverage through a Marketplace, they may provide personal information to you. Consumers should be able to trust you to handle their personal information with care. Some of this information will be personally identifiable information (PII). The term “personally identifiable information” means information that can be used to distinguish or trace an individual's identity. Examples of PII include the consumer's:

- Name
- Social Security number
- Date of birth
- Address
- Income
- Protected health information
- Tax information

Another way to think about PII is that this information alone, or when combined with other personal information, can be linked to a specific individual.

In general, consumers should input their own information in an online or paper application, unless a consumer asks for help typing or using a computer to learn about, apply for, and enroll in FFM coverage online. An assister may then use the keyboard or mouse but must follow the consumer's specific directions, with the consumer physically present.

In summary, an assister must not log in to the consumer's online Marketplace account, fill out the online or paper Marketplace application, or select a plan unless directed by the consumer. The consumer must be physically present, and a consent form must be completed by that consumer or by his or her authorized representative.

Note: If you are working for a non-Navigator organization in a State Partnership Marketplace, please contact the Marketplace in the state where you are providing assistance for more information about what privacy and security standards apply to you.

1. Personally Identifiable Information

Review the guidelines in this section to understand your role in protecting consumers' PII and to be aware of situations in which you may come into contact with PII. Also review [How to Obtain a Consumer's Authorization before Gaining Access to Personally Identifiable Information \(PII\)](#) for more information on obtaining consumers' authorization prior to accessing their PII.

The guidance in this section summarizes and supplements privacy and security standards that are specifically listed or incorporated in your or your organization's agreement with CMS, as required under 45 CFR § 155.260(b), and/or in your agreement with your organization. Additionally, under CMS regulations, you must obtain a consumer's authorization (also referred to in this document as consent) prior to accessing a consumer's



PII (see [SOP-1, Receive Consent Before Accessing Consumer PII](#)). You are allowed to access, keep, and use consumer PII to carry out your assister “authorized functions,” which are listed in the privacy and security standards, and which generally include the activities you are authorized under CMS regulations to perform in your role as an assister, as well as for any other purpose for which a consumer has provided specific consent, consistent with applicable law. In the event that you encounter a consumer’s PII, you must adhere to all applicable privacy and security standards.

Your responsibilities include:

- Knowing, understanding, and complying with the privacy and security standards in any grant, contract, or agreement between CMS and you and/or your assister organization, and/or in the terms and conditions of any contract or agreement between you and your assister organization.
- Recognizing and protecting consumers’ private information, including PII, and any other sensitive information that belongs to consumers.
- Informing consumers how their PII will be secured.
- Obtaining consumers’ authorization (or consent) prior to gaining access to their PII.
- Maintaining a record of a consumer’s authorization for at least six years (unless a different and longer retention period has already been provided under other applicable federal law); and informing consumers that they can revoke this authorization at any time.
- Providing consumers with a written privacy notice statement that has been developed by your organization (or ensuring that your organization has provided consumers with this privacy notice statement) prior to collecting PII or other information from them in connection with carrying out your assister duties. However, the privacy notice statement doesn’t need to be provided to consumers prior to collecting their name, physical address, email address or telephone number if that information is being used only to make future contact with the consumer to carry out an authorized function, such as setting up an appointment, or to send them educational information directly related to your authorized functions.
- Only sharing consumers’ PII with other individuals or organizations as authorized by the terms and conditions of any grant, contract, or agreement between CMS and you and/or your organization; the terms and conditions of any contract or agreement between you and your assister organization; or with a consumer’s express consent.
- Maintaining an account of any and all disclosures of PII, except for those disclosures that are necessary to carry out your authorized functions. Your accounting should contain the date, nature, and purpose of such disclosures, and the name and address of the person or agency to whom the disclosure is made. You should retain the account for at least six years after the disclosure, or the life of the record, whichever is longer. This account must be made available to CMS or the consumer who is the subject of the record, upon request. Disclosures of PII that have not been authorized by the consumer may be considered a privacy breach or incident depending on the circumstances.

You may come across consumers’ PII when you:

- Obtain their authorization to provide assistance;
- Assist them with creating an account through the FFM;
- Assist them with the FFM eligibility application for health coverage; and/or
- Assist them with certain issues related to exemptions from the individual shared responsibility payment and the requirement to maintain minimum essential coverage, or with understanding how to file an FFM eligibility appeal.

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Some requests or collections of PII are prohibited, however. For example, you and your organization are not permitted to:

- Request or require a Social Security number, information regarding citizenship, status as a U.S. national, or immigration status for any individual who is not seeking coverage for himself or herself on an application.
- Request information from or concerning any individual who is not seeking coverage for himself or herself, unless that information is necessary for the FFM eligibility application of another person seeking coverage, or is required as part of a Small Business Health Options Program (SHOP) employer application. Such necessary information may include information on individuals who are in an individual's tax household or who live with an individual applying for coverage, including contact information, addresses, tax filing status, income and deductions, access to employer-sponsored coverage, familial or legal relationships, American Indian or Alaska Native status, or pregnancy status.
- Use consumers' PII to discriminate against them, such as by refusing to assist consumers who have significant or complex health care needs.

Exhibit 1 is a resource to answer common questions from consumers about assister use of PII in the Marketplace.

Exhibit 1—Common Consumer Questions about Assister Use of PII

Why might you ask for my personal information?	What will NOT happen with my personal information?
<p>To help you apply for health coverage through an FFM</p> <ul style="list-style-type: none"> • To help you apply for programs to lower costs of health coverage • To help you identify qualified health plan (QHP) options available through an FFM • To schedule appointments with you • To provide assister services in a culturally and linguistically appropriate manner, and/or in a manner that is accessible to persons with disabilities 	<ul style="list-style-type: none"> • Information will not be used for purposes unrelated to the assister's authorized functions or for purposes to which a consumer hasn't consented

2. Tips for Protecting PII

Here are some tips that will help you protect consumers' PII.

Handling PII

- You are required to keep or store any copies of documents containing a consumer's PII only in a manner that is consistent with the privacy and security standards that apply to you. If you need to keep a consumer's

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document containing PII to carry out an authorized function, it's a good idea to keep a copy and return the originals to the consumer.

- You may use or disclose PII only to carry out your authorized functions or with a consumer's specific consent.
- If you send information that may contain PII to other individuals or organizations, you may do so only to carry out your authorized functions or with a consumer's consent, and must do so in a manner that is consistent with the privacy and security standards that apply to you.
- You should not leave files or documents containing PII where others could inadvertently see them. As a best practice, pick up documents that contain PII promptly from printers and fax machines, and secure any documents that contain PII before leaving your desk or workstation.
- When assisting consumers who will be mailing their PII (such as a hard copy FFM application), advise them that it's a good idea to use an opaque envelope or container, and, if possible, use a traceable delivery service.
- When assisting consumers who will be faxing PII, it's a good idea to double check that the recipient's fax number is correct and that someone is able to receive the faxed information promptly.
- Remind consumers they should keep their PII in a secure place that they will remember.
- If consumers mistakenly or accidentally leave behind PII at a facility or enrollment event, return it to consumers as soon as possible and store the PII securely until that time.
- If it is not possible to return PII to a consumer and the PII is not in the form of an original document (such as an original Social Security card or government-issued identification card), you should consider destroying the PII and maintaining a record of its destruction. If the PII is in the form of an important original document like a Social Security card or government-issued identification card, we recommend that you return the document to the agency or entity that issued it and keep a record of its submission to that agency.
- Assisters should use email accounts, websites, and mobile devices in a manner consistent with their organization's implementation of the privacy and security standards when collecting, transmitting, or accessing PII.
- As a best practice, clear your web browser history after using your browser to access PII, so that another person using the same computer and web browser does not inadvertently access the PII.
- Use passwords to protect electronic accounts that may contain PII, as well as any additional safeguards to protect electronic accounts, consistent with your organization's implementation of the privacy and security standards. Remind consumers to do the same.

**Reporting a Breach of PII**

- Your organization must have its own breach¹ and incident² handling procedures that are consistent with CMS's Risk Management Handbook Standard 7.1 Incident Handling and Breach Notification. These procedures must identify the designated Privacy Official for the organization (if applicable), and/or identify other personnel who are authorized or responsible for reporting and managing privacy and security incidents or breaches to CMS.
- You must comply with your organization's breach and incident handling procedures.
- Your organization's breach and incident handling procedures must address how to identify an "incident." An "incident" is the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data, and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent.
- If an incident occurs, your organization's policies and procedures should be followed to determine if PII is involved in the incident.
- If you discover that a potential incident or breach of PII has occurred, you should immediately report this to your organization's designated Privacy Official and/or any other person who has been identified as responsible for reporting or managing a breach of PII for your organization.
- Your organization must report any incident or 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 within one hour of discovery of the incident or breach.
- In addition, your organization must complete a CMS Security Incident Report.
- You and your organization must cooperate with CMS in resolving any incident or breach and provide details regarding identification, response, recovery, and follow-up of incidents and breaches. Your organization must also make its designated Privacy Official or other authorized personnel available to CMS upon request.

¹ Breach is defined by OMB Memorandum M-07-16, Safeguarding and Responding to the Breach of Personally Identifiable Information (May 22, 2007), as the compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, loss of control or any similar term or phrase that refers to situations where persons other than authorized users or for other than an authorized purpose have access or potential access to Personally Identifiable Information (PII), whether physical or electronic. The determination of whether a Centers for Medicare & Medicaid Services (CMS) privacy incident rises to the level of a breach is made exclusively by the CMS Breach Analysis Team (BAT).

² Incident, or Security Incident, means the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent.



Appendix: Acronyms & Definitions

The proceeding sections describe the commonly used acronyms and terms that appear throughout the Manual.

Frequently Used Acronyms

Exhibit 2—Frequently Used Acronyms

Acronyms	Descriptions
APTC	Advance payments of the premium tax credit
CAP	Consumer Assistance Program
CCIIO	Center for Consumer Information & Insurance Oversight
COBRA	Consolidated Omnibus Budget Reconciliation Act
CFR	Code of Federal Regulations
CHIP	Children's Health Insurance Program
CMS	Centers for Medicare & Medicaid Services
CSR	Cost-sharing Reduction
DHS	Department of Homeland Security
DMI	Data-matching Issue
EHB	Essential Health Benefits
FAQ	Frequently Asked Questions
FFM	Federally-facilitated Marketplace
FPL	Federal Poverty Level
HDHP	High Deductible Health Plan
HHS	Department of Health & Human Services
HMO	Health Maintenance Organization
HSA	Health Savings Account
ID	Identification
IHS	Indian Health Service
IRS	Internal Revenue Service
MAGI	Modified Adjusted Gross Income
MEC	Minimum Essential Coverage
PII	Personally Identifiable Information
QHP	Qualified Health Plan
SBC	Summary of Benefits and Coverage
SEP	Special Enrollment Period
SHIP	State Health Insurance Assistance Program
SHOP	Small Business Health Options Program
SOP	Standard Operating Procedure
SSI	Supplemental Security Income
SSN	Social Security Number

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Acronyms	Descriptions
VA	Veterans Affairs
VHA	Veterans Health Administration

Definitions

The following is a list of terms from HealthCare.gov, CCIIO, and the Affordable Care Act explained in plain language that you may reference to assist consumers.

List of Vocabulary in SOP:

Affordable Care Act: The comprehensive health care reform law enacted in March 2010. Congress passed the law in two parts. The President signed the Patient Protection and Affordable Care Act into law on March 23, 2010, which was amended by the Health Care and Education Reconciliation Act of 2010 on March 30, 2010. The name “Affordable Care Act” refers to the amended version of the law. (Reference: HealthCare.gov/glossary/affordable-care-act)

Agent: When registered with a Marketplace, an individual or entity that helps individuals and businesses apply for and enroll in QHPs through the Marketplace and may assist in applying for advance payments of the premium tax credit and cost-sharing reductions. States grant licenses to agents to sell insurance in their respective jurisdictions. They may receive compensation from insurance companies with whom they have a contractual relationship to enroll consumers in a QHP or non-QHP. (Reference: Affordable Care Act §1312(e) and 45 CFR §155.20)

Authorized Representative: Someone whom consumers designate in writing to act on their behalf with the Marketplace, like a family member or other trusted person. (Reference: 45 CFR §155.227)

Broker: When registered with a Marketplace, an individual or entity that helps individuals and businesses apply for and enroll in a QHP through the Marketplace and may assist in applying for advance payments of the premium tax credit and cost-sharing reductions. States grant licenses to brokers to sell insurance in their respective jurisdictions. They may receive compensation from an insurance company with whom they have a contractual relationship to enroll consumers into a QHP or non-QHP. (Reference: Affordable Care Act § 1312(e) and 45 CFR §155.20)

Center for Consumer Information & Insurance Oversight (CCIIO): A part of the Department of Health & Human Services that helps to implement many provisions of the Affordable Care Act, the historic health reform bill that became law in March 2010. CCIIO oversees the implementation of the provisions related to private health insurance. (Reference: CMS.gov/CCIIO)

Centers for Medicare & Medicaid Services (CMS): The federal agency that runs the Medicare, Medicaid, and Children's Health Insurance Programs, as well as the Federally-facilitated Marketplaces. For more information, visit CMS.gov. (Reference: HealthCare.gov/glossary/centers-for-medicare-and-medicaid-services)

Certified Application Counselor (CAC): In an FFM, an individual (affiliated with an organization designated by CMS, as operator of the FFMs) who is trained and able to help consumers as they look for health coverage options through the Marketplace, including helping them complete eligibility and enrollment forms. Their services are free to consumers. (Reference: HealthCare.gov/glossary/certified-applicant-counselor)

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Certified Application Counselor Designated Organization (CDO): In an FFM, an organization designated by CMS, as operator of the FFMs, to certify staff members or volunteers to act as certified application counselors. (Reference: 45 CFR §155.225)

Eligibility Appeal: In an Individual Marketplace, a request by an individual for a reevaluation of a Marketplace eligibility decision or an eligibility decision by a state Medicaid or CHIP agency. (Reference: [HealthCare.gov/can-i-appeal-a-marketplace-decision](https://www.healthcare.gov/can-i-appeal-a-marketplace-decision))

Health Coverage: Consumers' legal entitlement to payment or reimbursement for their health care costs for covered services or items generally under a contract with a health insurance company, a group health plan offered in connection with employment, or a government program like Medicare, Medicaid, or CHIP. (Reference: [HealthCare.gov/glossary/health-coverage](https://www.healthcare.gov/glossary/health-coverage))

Health Insurance: A contract that requires a consumer's health insurer to pay some or all of the consumer's health care costs in exchange for a premium. (Reference: [HealthCare.gov/glossary/health-insurance](https://www.healthcare.gov/glossary/health-insurance))

Individual Shared Responsibility Payment (also referred to as a "Fee"): Starting January 1, 2014, if applicable individuals do not maintain health coverage that qualifies as MEC or obtain an exemption, they may have to pay a fee, known as the individual shared responsibility payment, that increases every year from 1% of household income (or \$95 per adult, whichever is higher) in 2014, 2.0% of household income (or \$325 per adult) in 2015, to 2.5% of household income (or \$695 per adult) in 2016, up to a maximum of \$2,085. The fee for children is half the adult amount. If applicable, consumers will pay this fee on their annual tax return. People with very low incomes and others may be eligible for exemptions. (Reference: [HealthCare.gov/glossary/fee](https://www.healthcare.gov/glossary/fee))

Marketplace: A marketplace for health insurance, also known as an "Exchange," operated by a governmental agency or non-profit entity that meets applicable government standards. A Marketplace makes QHPs available to qualified individuals and/or qualified employers. Generally, in CMS documents, this term is often used to refer both to Marketplaces serving the individual market for qualified individuals and to Small Business Health Options Program (SHOP) Marketplaces serving the small group market for qualified employers, and is often used regardless of whether a Marketplace is established and operated by a State or by HHS. However, in this document, the term Marketplace generally is used to refer only to the Federally-facilitated Marketplaces (FFMs), and frequently is used to refer only to the FFMs for the individual market. (Reference: 45 CFR §155.20)

Minimum Essential Coverage (MEC): The type of health coverage individuals need to have to avoid having to make the individual shared responsibility payment (unless they qualify for an exemption) when they file a federal income tax return. Many types of coverage qualify as MEC, including qualified health plans offered through the Marketplace, job-based coverage, Medicare, Medicaid, CHIP, and TRICARE. (Reference: Section 5000A(f) of the Internal Revenue Code)

Navigator: An individual or organization that receives a grant from the Marketplace and that is trained and able to help consumers, including small employers and their employees, as they look for health coverage options through the Marketplace, including helping them complete the eligibility and enrollment process. These individuals and organizations are required to be unbiased. Their services are free to consumers. (Reference: [HealthCare.gov/glossary/navigator](https://www.healthcare.gov/glossary/navigator))

Non-Navigator Assistance Personnel: Individuals or organizations that are trained and able to provide help to consumers, including small employers and their employees, as they look for health coverage options through a Marketplace, including helping them complete the eligibility and enrollment process. These individuals and

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organizations are required to be unbiased. Their services are free to consumers. Also referred to as “in-person assisters.” (Reference: [HealthCare.gov/glossary/in-person-assistance-personnel-program](https://www.healthcare.gov/glossary/in-person-assistance-personnel-program))

Open Enrollment Period: The period of time during which individuals who are eligible to enroll in a QHP can enroll in a plan through the Marketplace. For coverage starting in 2017, the individual market Open Enrollment period is November 1, 2016 – January 31, 2017. Individuals may also qualify for special enrollment periods if they experience certain qualifying events. Consumers can apply for Medicaid or CHIP at any time of the year. (Reference: [HealthCare.gov/glossary/open-enrollment-period](https://www.healthcare.gov/glossary/open-enrollment-period))

Qualified Health Plan (QHP): Under the Affordable Care Act, an insurance plan that is certified by a Health Insurance MarketplaceSM, provides essential health benefits, follows established limits on cost-sharing (like deductibles, copayments, and out-of-pocket maximum amounts), and meets other requirements. Each QHP is certified by the Marketplace through which the plan is offered. (Reference: [HealthCare.gov/glossary/qualified-health-plan](https://www.healthcare.gov/glossary/qualified-health-plan))