

# MARKETPLACE ASSISTER TOOLKIT

## *Standard Operating Procedures Manual for Assisters in the Individual Federally-facilitated Marketplaces*

### *SOP 1—Receive Consent Before Accessing Consumer PII*





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## SOP 1—Receive Consent Before Accessing Consumer PII

### A. Introduction

As an assister, you must receive consumers' consent (referred to in Center for Medicare and Medicaid Services [CMS] regulations as an authorization) before accessing their personally identifiable information (PII), and must inform consumers of the functions and responsibilities of your assister type (Navigator, non-Navigator assistance personnel, or certified application counselor [CAC]). This is an essential step to ensure that consumers are making an informed decision to share their PII with assisters. As a best practice, to ensure that you receive informed consent from consumers, first have a conversation with consumers about your roles and responsibilities as an assister, including all the consumer protection standards that apply to your assister type through CMS regulations, such as conflict of interest requirements, rules about accepting payment and providing gifts, etc.

Next, ask consumers to provide consent, which could be done by asking each consumer to complete a consumer consent form. A [model consumer consent form for Navigator grantees](#) and [CAC-designated organizations in Federally-facilitated Marketplaces \(FFMs\)](#) is available at [Marketplace.CMS.gov](https://marketplace.cms.gov) and can be used to obtain written consent from each consumer you assist. If you obtain consent verbally rather than through a form or other written document, you should keep a written record of the consent as described in the procedures below. These model forms are also available in Spanish at: <https://marketplace.cms.gov/technical-assistance-resources/draft-authorization-form-navigators-spanish.pdf> and <https://marketplace.cms.gov/technical-assistance-resources/model-auth-form-template-for-cacs-spanish.PDF>.

You must follow the privacy and security standards that apply to your assister type; these are contained in the terms and conditions of the grant, contract, or agreement between CMS and you and/or your organization; and/or the terms and conditions of the contract or agreement between you and your assister organization. You must also comply with these and other applicable standards or policies, including your organization's privacy and security policies, when collecting and storing consent forms. Note that all assister organizations are federally required to store written consumer consent forms and other records of consumer authorization for at least six years, unless a different and longer retention period has already been provided under other applicable federal law. For more information on obtaining a consumers' consent to access their PII, see the guidance available at <https://marketplace.CMS.gov/technical-assistance-resources/obtain-consumer-authorization.pdf>.

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.

The remainder of this Standard Operating Procedure (SOP) provides guidance on how to receive informed consent before assisting consumers.



## B. Procedures

### 1. Inform Consumers of Your Assister Roles and Responsibilities

Inform consumers of the functions and responsibilities that apply to your specific assister type (e.g., Navigator, non-Navigator assistance personnel, or CAC), including all the consumer protection standards that apply through CMS regulations to your assister type, such as (as applicable):

- a. The requirement to provide information in a fair, accurate, and impartial manner;
- b. Conflict of interest requirements<sup>1</sup>;
- c. Rules about accepting payment and providing gifts;
- d. Rules about unsolicited direct contact with consumers, including “robo-calls;”
- e. Rules about nondiscrimination<sup>2</sup> and providing culturally and linguistically appropriate services and services accessible to consumers with disabilities; and
- f. That you are not acting as a tax adviser or attorney when providing assistance as an assister, and cannot provide tax or legal advice within your capacity as an assister.

### 2. Review Methods of Protecting PII

**Step 1.** You are strongly encouraged to review with consumers the privacy and security standards required under the terms and conditions of the grant, contract, or agreement between CMS and you and/or your assister organization; and/or the terms and conditions of the contract or agreement between you and your assister organization. Explain to the consumer:

- a. PII is information which can be used to distinguish or trace an individual’s identity, such as their name, Social Security number, or biometric records, alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother’s maiden name;
- b. Assisters and assister organizations are required to follow privacy and security standards to protect consumers’ PII;
- c. What your authorized functions are, as set forth in the terms and conditions of the grant, contract, or agreement between CMS and you and/or your assister organization; and/or the terms and conditions of the contract or agreement between you and your assister organization; and

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<sup>1</sup> Additional guidance on conflict of interest requirements for assisters is available at <https://marketplace.cms.gov/technical-assistance-resources/conflict-of-interest-requirements.PDF>.

<sup>2</sup> With a limited exception for certain certified application counselor designated organizations that receive Federal funds to provide services to a defined population under the terms of Federal legal authorities, all assisters are prohibited from discriminating based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation. See 45 CFR §155.120(c). Assisters must also comply with any other local, state, and federal nondiscrimination and civil rights laws, if applicable, such as section 1557 of the Affordable Care Act and its implementing regulations.

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- d. Assisters might access their PII, such as their names, dates of birth, financial information, or Social Security numbers when the assisters carry out their authorized functions.

**Step 2.** Explain the methods you will use to protect consumers' PII.

- a. CMS permits you to access, keep, and use consumer PII only to carry out your authorized functions or with a consumer's specific consent. In the event that you encounter a consumer's PII, you must adhere to all applicable privacy and security standards. If you are authorized to share consumers' PII with individuals or entities, you will share only the minimum necessary consumer information.
- b. You will take precautions while handling consumers' PII to protect the confidentiality of their information.
- c. When disposing of physical or electronic copies of consumers' PII, you will adhere to all privacy and security standards that apply to you.

**Step 3.** Answer consumers' questions about the privacy and security of the PII they share with you. If needed to answer consumers' questions, refer to the model consumer consent form; your organization's Privacy Notice Statement; or the terms and conditions of your Navigator organization's grant, , Enrollment Assistance Program contract, the agreement between you and your CAC organization, or your CAC organization's agreement with CMS.

### 3. Discuss Consumers' Responsibilities

**Step 1.** Assisters are strongly encouraged to remind consumers that they have certain responsibilities when applying for health coverage through the Marketplace.

- a. Consumers must provide complete and accurate information on the Marketplace eligibility application.
- b. Consumers must accurately report all required sources and amounts of income.
- c. Consumers should not ask assisters to misrepresent consumers' information while applying for health coverage.
- d. Consumers must notify the Marketplace of any inaccurate information included on their eligibility application.

### 4. Obtain Consumers' Consent

**Step 1.** You can obtain a consumer's consent orally and/or in writing, or use the model form provided by CMS. At a minimum, the consent should include the following:

- a. An acknowledgment that you informed the consumer of the functions and responsibilities that apply to your specific assister role (e.g., Navigator, non-Navigator assistance personnel, CAC) (including that assisters are not acting as tax advisers or attorneys, and cannot provide tax or legal advice within their capacity as assisters, as well as all the consumer protection standards that apply through CMS regulations to your assister type, such as conflict of interest requirements, rules about accepting payment and providing gifts, etc.);
- b. Consent for you to access and use the consumer's PII to carry out your authorized functions; and

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.



- c. An acknowledgment that the consumer may revoke any part of the authorization at any time, as well as a description of any limitations that the consumer wants to place on your access or use of the consumer's PII.

We also recommend that the authorization include:

- a. An explanation of what PII includes and examples of the kinds of PII you may request from the consumer;
- b. An acknowledgment that the consumer is not required to provide you with any PII;
- c. An explanation that the help you provide is based only on the information the consumer provides, and that if the information given is inaccurate or incomplete, you might not be able to offer all the help that is available for the consumer's situation;
- d. An acknowledgment that you will ask only for the minimum amount of PII necessary for you to carry out your functions and responsibilities; and
- e. Any applicable specific consents to obtain access to consumer PII for CMS-approved purposes that are not already captured in the list of purposes set forth in the terms and conditions of your Navigator organization's grant, Enrollment Assistance Program, the agreement between you and your CAC organization, or your CAC organization's agreement with CMS.

*Please note that express CMS approval for any activities requiring a consumer's specific consent that are not already captured in the list of purposes set forth in an assister organization's agreement with CMS or its grant terms and conditions is required for the assister organization to use CMS grant or contract funds on those activities.*

## 5. Check Consumers' Understanding and Complete Consent Form

**Step 1.** Ask consumers if they have any questions about the information and/or form you have shared with them, and answer their questions. It's a good idea to have the consumer verbally confirm that they understand what you have told them before they sign the form.

**Step 2.** Ask consumers to read and sign your organization's consumer consent form before assisting them. When you obtain consent verbally (e.g., over the phone), explain to the consumer the consent components (as described above), obtain consent, and make a written record of the consent.<sup>3</sup> The record of the consumer's consent should contain, at a minimum:

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<sup>3</sup> You may obtain consumers' consent verbally by reading them your organization's standard written consent form or a script that contains, at a minimum, the required elements of the authorization that are summarized above. You must record in writing that the consumer's consent was obtained. The record of the authorization must include at a minimum, the required components summarized in Item 5, Step 2. Assisters are strongly encouraged to create a record of the authorization as it is being provided, and then read back the content of the record to the consumer once it is complete, so that the consumer can confirm that the record is accurate and complete, and correct it if it is not. Assisters are also strongly encouraged to provide a copy of the record to the consumer at the earliest available opportunity.

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- a. The consumer's name (and, if applicable, the name of the consumer's authorized representative);
- b. The date the consent was given;
- c. Your name and/or the name of the assister to whom the consent was given (and the names of any other assisters that the consumer authorized to access the consumer's PII);
- d. Notes regarding limitations, if any, the consumer makes on the scope of the consent provided; and
- e. Notes recording all acknowledgments and consents obtained from the consumer, including any applicable specific consents to access consumer PII for CMS-approved purposes that are not already captured in the list of purposes set forth in your agreement with CMS and/or your organization.

Store a signed copy of the consumer consent form or record of authorization (paper or electronic) for at least six years (unless a different and longer retention period has already been provided under other applicable federal law) in a secure manner in accordance with your agreement with CMS and/or your organization. If any changes are later made to the consent, including if and when a consumer revoked the consent or part of the consent, this should be included with the original record.

It is strongly recommended that you provide the consumer with a copy of the signed consumer consent form (or, if applicable, the record of a verbally given consent).

## C. Next Steps

1. Proceed to SOP-2 Assess Consumers' Knowledge & Needs to assess the type of assistance consumers require.
2. For more help answering consumers' specific questions, see the Frequently Asked Questions (FAQs) related to [SOP-1 Receive Consent to Access Consumer Information](#).



## Appendix A: Frequently Asked Questions (FAQs)

The FAQs below are designed to help assisters answer consumers' specific questions on giving consent. For more information on this topic, see SOP-1 Receive Consent Before Accessing Consumer PII.

FAQ 1. Why are you asking me to provide consent?

- Answer: Your consent is an important step in the consumer assistance process. It ensures that you are aware of your rights and responsibilities within an Individual Marketplace, understand the role of assisters, and are making an informed decision to share your personal information with an assister.



## Appendix B: Acronyms & Definitions

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

### Frequently Used Acronyms

Exhibit 1—Frequently Used Acronyms

Acronyms	Descriptions
APTC	Advance payments of the premium tax credit
CAP	Consumer Assistance Program
CCIO	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](http://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](http://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](http://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](http://CMS.gov). (Reference: [HealthCare.gov/glossary/centers-for-medicare-and-medicaid-services](http://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](http://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)

**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](http://HealthCare.gov/glossary/health-coverage))

**Individual Marketplace:** The Marketplace for individuals to purchase health insurance plans for themselves or their families other than through an employer-sponsored group health plan. (Reference: Affordable Care Act §1304(a)(2))

**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),

**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](http://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 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](http://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](http://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 Marketplace<sup>SM</sup>, 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](http://HealthCare.gov/glossary/qualified-health-plan))