

MARKETPLACE ASSISTER TOOLKIT

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

SOP 1-RECEIVE CONSENT BEFORE ACCESSING CONSUMER PII



Version 1.0 March 2020. This information is intended only for the use of entities and individuals certified to serve as Navigators or certified application counselors 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. Some information in this manual may also be of interest to individuals helping consumers in State-based Marketplaces and State-based Marketplaces using the Federal Platform. This document is intended only as a summary of legal requirements and to provide operational information and does not itself create any legal rights or obligations. All legal requirements are fully stated in the applicable statutes and regulations. This material was produced and disseminated at U.S. taxpayer expense.



Table of Contents

- SOP 1—Receive Consent Before Accessing Consumer PII.....1**
- A. Introduction1**
- B. Procedures2**
 - 1. Inform Consumers of Your Assister Roles and Responsibilities 2
 - 2. Review Methods of Protecting PII..... 2
 - 3. Discuss Consumer’s Responsibilities 3
 - 4. Obtain Consumers’ Consent 3
 - 5. Check Consumers’ Understanding and Complete Consent Form 4
- C. Next Steps5**
- Appendix A: Frequently Asked Questions (FAQs)6**



SOP 1—Receive Consent Before Accessing Consumer PII

A. Introduction

As an assister, you must receive consumers' consent (referred to in Centers for Medicare & Medicaid Services [CMS] regulations as an authorization) before accessing their personally identifiable information (PII). In addition, you must inform consumers of your required functions and responsibilities as a Navigator or certified application counselor (CAC). These essential steps ensure consumers are adequately informed when they choose to share PII with you. As a best practice, make sure to discuss your roles and responsibilities as an assister with each consumer, including all the consumer protection standards that apply to your assister type through CMS regulations, such as conflict of interest requirements, and rules about accepting payment and providing gifts or incentives.

You may obtain consent by asking each consumer to complete a consumer consent form. [Navigator grantees](#) and [CACs](#) in a Federally-facilitated Marketplace (FFM) can use a model consumer consent form available at [Marketplace.cms.gov](https://www.cms.gov/Marketplace) to obtain written consent from each consumer you assist. If you obtain consent verbally rather than through a form or other written document, keep a written record of the consent as described in the procedures below. The model authorization forms for [Navigators](#) and [CACs](#) are available in Spanish.

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. According to 45 CFR 155.210(e)(6), 155.215(g), and 155.225(f), please 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 or state law. [Guidance for obtaining a consumers' consent to access their PII.](#)

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 or CAC), including all the applicable consumer protection standards that apply to your assister type under CMS regulations, such as:

- a. The requirement to provide information in a fair, accurate, and impartial manner;
- b. Conflict of interest requirements;¹
- c. Rules about accepting payment and providing gifts;
- d. Rules about unsolicited direct contact with consumers, including “robo-calls”;
- e. Rules about nondiscrimination,² including providing culturally and linguistically appropriate services, and ensuring services are accessible to consumers with disabilities;
- f. That you are not acting as a tax adviser or attorney when providing assistance as an assister; and
- g. That you 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. Be sure consumers understand the following:

- 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, either 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. Your authorized functions 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
- d. Assisters might access consumers’ PII, including their names, dates of birth, financial information, or Social Security numbers when carrying out their authorized functions.

¹ [Additional guidance on conflict of interest requirements for assisters.](#)

² 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.

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

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

- 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 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 PII.
- 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; and the terms and conditions of your Navigator organization's grant or the agreement between you and your CAC organization and/or your CAC organization's agreement with CMS.

3. Discuss Consumer's 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 or 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
- 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.



SOP 1—Receive Consent Before Accessing Consumer 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, the agreement between you and your CAC organization, or your CAC organization's agreement with CMS.

Please note that assister organizations must obtain CMS approval to use CMS grant or contract funds 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.

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 be sure they understand your answers. 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 the consent components described above, obtain consent, and make a written record of the consent.³ The record of the consumer's consent should contain, at a minimum:

- 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);

³ 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.



SOP 1—Receive Consent Before Accessing Consumer 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, you understand the role of assisters, and you are making an informed decision to share your personally identifiable information with an assister.