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## **Frequently Asked Questions: Consumer Consent & Application Review Requirements**

### **1) What attestations do I need to explain to the consumer?**

*Published June 12, 2024*

- Agents, brokers, and web-brokers need to [explain all attestations](#) that appear at the end of their consumers' Marketplace eligibility applications to the consumer (or their authorized representative). When a consumer applies for coverage through the Marketplace, they are required to agree (or “attest”) to the truth of the information in the eligibility application prior to submission. Different attestations will appear based on whether a consumer is applying for advance payment of the premium tax credit (APTC) and cost-sharing reductions (CSRs), or if the consumer may be eligible for other insurance affordability programs, such as Medicaid or CHIP.

As explained in the [2024 Payment Notice](#), when agents, brokers, and web-brokers are actively assisting a consumer with completing a new Marketplace eligibility application or updating an existing one, they must explain these attestations to the consumer. This is to ensure the consumer is aware of what they are agreeing to and that they have confirmed the accuracy of the information in their Marketplace eligibility application prior to submission.

An agent, broker, or web-broker must document consumer review of the attestations in some way, such as an email, audio recording, written response, or other [satisfactory method](#) meeting the [minimum requirements](#), and document that they have read or provided the written attestations to the consumer and received from the consumer a positive confirmation that the consumer understands what the attestations indicate. For example, an agent or broker reading the Marketplace application, including the relevant attestations, to the consumer and answering questions from the consumer about the meaning of the attestations on a recorded phone call could use the recording to meet the attestation aspect of the eligibility application review documentation requirements. An agent, broker, or web-broker could also meet this aspect of the eligibility application review documentation requirement by including language in the documentation of consumer review of eligibility application information stating, “The attestations at the end of the application were explained to me.” The documentation of consumer review of eligibility application information must demonstrate that the agent, broker, or web-broker explained or provided an explanation of the relevant attestations to the consumer, but the actual attestation language does not need to be included in the documentation.

## 2) What actions on behalf of a Marketplace consumer require me to obtain and document their consent?

*Published June 12, 2024*

- Per the Federally-facilitated Marketplace (FFM) [standards of conduct](#), which also applies to agents, brokers, and web-brokers assisting a consumer (or their authorized representative) on the [State Based Exchanges on the Federal Platform \(SBE-FP\)](#), you must obtain and document the consent of the consumer before:
  1. Collecting or using any consumer personally identifiable information (PII) for the purposes of providing a quote or estimate on Marketplace coverage options.
  2. Conducting a person search for consumer eligibility applications using an approved Classic Direct Enrollment (Classic DE) or Enhanced Direct Enrollment (EDE) website.
  3. Actively helping a consumer apply for Marketplace coverage or financial assistance by completing an eligibility application on their behalf.
  4. Actively enrolling a consumer in a Marketplace qualified health plan (QHP).
  5. Making updates to a consumer's eligibility application throughout the year via an approved Classic DE or EDE website.
  6. Checking the status of a consumer's coverage or their eligibility application, including their eligibility for financial assistance.

There may be situations where the initial consent you collect from the consumer provides consent for subsequent actions such that you may not need to generate a new consent form for each action. For example, agents, brokers, and web-brokers may establish an agreement with their consumers (or their authorized representatives) at the time of initial Marketplace enrollment that allows them to check the status of eligibility applications throughout the year to help resolve data matching issues. In such situations, as long as this consent has not been rescinded or expired, an agent, broker, or web-broker may rely on this consent to check the status of the consumer's eligibility application throughout the year. If that documentation of consent provided agency-wide consent (i.e., consent to other agents, brokers, and web-brokers who are part of the agency to take the authorized action), those other agents and brokers may also rely on this consent to check the status of the consumer's eligibility application throughout the year. As a reminder, the documentation of consumer consent must be maintained for a minimum of 10 years and produced to CMS upon request in response to monitoring, audit, and enforcement activities.

However, any time an agent, broker, or web-broker takes an action to update a consumer's eligibility application or plan selection, and the existing documentation of consumer consent does not authorize the agent broker to take those actions, they must obtain and document consumer consent to those actions and [maintain that consent documentation](#). Agents, brokers, and web-brokers must never change a consumer's eligibility application information or plan selection without documenting that the consumer [consented to the change](#). Further, agents, brokers, and web-brokers must also always document that the consumer [reviewed and confirmed the accuracy of the eligibility application information](#) prior to the agent or broker submitting the eligibility

application to the Marketplace, including updates or changes to an existing Marketplace application.

### **3) Can I regularly check on the status of my client’s Marketplace application using the Direct Enrollment person search functionality after obtaining and documenting their consent if they have not asked me to check on something or to make a change to their eligibility application?**

*Published June 12, 2024*

- You may check on the status of a consumer’s Marketplace eligibility application using the Classic Direct Enrollment (Classic DE) or Enhanced Direct Enrollment (EDE) person search functionality if you have obtained consent to do so from the consumer (or their authorized representative) and that consent has not yet expired or been rescinded by the consumer.

No changes can be made to the consumer’s eligibility application without their [documented consent](#) and [review of their eligibility application information](#). Additionally, you must maintain documentation of [consumer consent](#) and [review of eligibility application information](#) for a minimum of 10 years and produce it upon request to CMS in response to monitoring, audit, and enforcement activities.

Some approved Classic DE or EDE websites may provide tools or functionality, such as a dashboard, to check the status of your consumer’s eligibility application. You may similarly only use these tools if you have obtained consent to do so from the consumer and that consent has not yet expired or been rescinded. Please note that you may not need to obtain and specifically document a new record of consent every time you check a consumer’s eligibility application status if your existing documentation of the consumer’s consent reflects authorization for you to check the consumer’s eligibility application status and that consent has not yet expired or been rescinded.

If you are aware of an agent, broker, or web-broker who is conducting a person search for consumer eligibility applications using approved Classic DE or EDE websites, enrolling consumers in Marketplace qualified health plans, or submitting consumer eligibility applications without the consent of the consumer or [inappropriately accessing CMS systems](#), such as [HealthCare.gov](#), report it to the Agent/Broker Email Help Desk at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

### **4) Can I conduct a person search for someone prior to obtaining their consent?**

*Published June 12, 2024*

- No. You may only use the Classic Direct Enrollment (Classic DE) or Enhanced Direct Enrollment (EDE) person search functionality if you have obtained, and appropriately documented, the consumer’s (or their authorized representative’s) consent to do so and that consent has not yet expired or been rescinded. For example, if you are assisting the consumer with the current plan year’s coverage and they ask you to check the status of their eligibility application, make an update on their behalf, or otherwise assist them with their eligibility

application in a way that requires you to use the Classic DE or EDE person search functionality, you can conduct a person search for the consumer's Marketplace eligibility application. Remember to appropriately document the consumer's (or their authorized representative's) consent and maintain those records for a minimum of 10 years so it can be produced to CMS upon request in response to monitoring, audit, and enforcement activities.

Some approved Classic DE or EDE websites may provide tools or functionality, such as a dashboard, to check the status of your client's Marketplace eligibility application. You may similarly only use these tools to do so if you have obtained consent from the consumer to do so and that consent has not yet expired or been rescinded. Please note that you may not need to obtain and specifically document a new record of consent every time you check a consumer's application status if your existing documentation of the consumer's (or their authorized representative's) consent authorizes you to check the consumer's application status and that consent has not yet expired or been rescinded.

## **5) How long may consumer consent documentation remain valid? How long does a signed consent document remain valid?**

*Published June 12, 2024*

- CMS does not provide a specific timeframe for how long consumer consent documentation can be effective. You may determine the duration of consent with your consumers (or their authorized representative). Agents, brokers, and web-brokers must include a description of the scope, purpose, and duration of the consent, as well as a process through which the consumer may rescind consent [in the consent documentation](#).

Please note that the consumer may rescind their consent at any time. Consumers (or their authorized representatives) may also choose to work with another agent, broker, web-broker, or document at any time to make plan changes without rescinding consent to the original agent, broker, web-broker, or agency. [Pursuant to the consumer consent requirements](#), if a consumer's eligibility application includes changes that were not made by you, **you must check with the consumer to see if those changes were authorized prior to reverting them**. If you revert those changes, you must also maintain consent documentation indicating that the consumer authorized you to do so. Please note that you may not need to obtain and specifically document a new record of consent every time you provide assistance to a Marketplace consumer if your existing documentation of the consumer's consent authorizes you to provide that assistance and the consent has not yet expired or been rescinded.

In addition, prior to submitting the revised eligibility application to the Marketplace to revert those changes, you must document that the consumer [reviewed and confirmed the accuracy of the consumer's eligibility application information](#). If a consumer asks you to make a change to the consumer's Marketplace eligibility application including a plan change to revert unauthorized changes, the requirement for appropriately documenting a consumer's (or their authorized representative's) review of the consumer's eligibility application information prior to submission

to the Marketplace would be triggered.

## **6) What if the eligibility application of a consumer I have consent to work with was changed by another agent, broker, web-broker, or agency?**

*Published June 12, 2024*

- Prior to reverting changes to an application in this instance, you must check with the consumer (or their authorized representative) to see if they authorized the changes, as it is possible the consumer decided to work with another agent, broker, web-broker, or agency but failed to rescind their initial consent with you. If the consumer confirms they did not authorize the application changes, and they authorize you to revert them, you may revert the changes to the consumer's application. However, you [must maintain documentation](#) indicating that the consumer authorized you to revert those changes for a minimum of 10 years and produce the documentation to CMS in response to monitoring, audit, and enforcement activities, and that documentation must [contain all the required information](#). Please note that you may not need to obtain and specifically document a new record of consent every time you provide assistance to a Marketplace consumer if the documentation of consumer consent authorizes you to provide the assistance and the consent has not yet expired or been rescinded.

In addition, prior to submitting the revised eligibility application to the Marketplace to revert those changes, you must document that the consumer [reviewed and confirmed the accuracy of the consumer's eligibility application information](#) being submitted to the Marketplace. If a consumer asks you to make changes to the consumer's Marketplace eligibility application, including a plan change to revert unauthorized changes, the requirement for appropriately documenting a consumer's (or their authorized representative's) review and confirmation of their eligibility application information prior to submission of the update to the Marketplace would be triggered.

## **7) Is there a model form for documenting consumer review of their eligibility application information?**

*Published June 12, 2024*

- No, CMS does not offer a model form for documenting that a consumer (or their authorized representative) has reviewed and confirmed the accuracy of the consumer's eligibility application information.

CMS does not prescribe a standard format or process for documenting consumer review and confirmation of their eligibility application information. However, we note that the [eligibility application review regulations](#) require agents, brokers, and web-brokers to include certain content in the documentation to demonstrate compliance with the requirements. Agents, brokers, and web-brokers must maintain such documentation for a minimum of ten years and produce it to CMS upon request in response to monitoring, audit, and enforcement activities. Agents, brokers, and web-brokers are free to develop their own forms and processes for these purposes but must be sure those forms and processes meet [the requirements](#).

## 8) What are acceptable methods by which an agent or broker may document consumer review of their eligibility application information?

*Published June 12, 2024*

- CMS does not prescribe a particular method for documenting consumer review and confirmation of their eligibility application information. [The documentation is compliant](#) if it is a record that can be maintained by the agent, broker, or web-broker and produced to confirm that the consumer (or their authorized representative) has reviewed and confirmed the accuracy of the consumer's eligibility application information, and it contains the [required information](#) below:
  1. The date the information was reviewed;
  2. The name of the consumer;
  3. An explanation of the attestations at the end of the eligibility application; and
  4. The name of the assisting agent or broker.

The documentation must allow CMS to confirm that the consumer reviewed and confirmed the accuracy of the consumer's [eligibility application information](#) prior to the agent, broker, or web-broker submitting the eligibility application to the Marketplace. This requirement applies to the submission of new applications and submission of updates or changes to existing applications. Non-exhaustive examples of documentation that would be sufficient to demonstrate [compliance](#) (assuming they met [all the requirements](#)) include:

1. A document signed by the consumer or their authorized representative (electronically or otherwise);
2. Verbal confirmation by the consumer that is captured in an audio recording;
3. A written response (electronic or otherwise) from the consumer to a communication sent by the agent, broker, or web-broker; and
4. Other similar documentation specified by the Department of Health and Human Services (HHS) in guidance.

Since documentation is required to verify that the consumer reviewed and confirmed the accuracy of the consumer's eligibility application information, a verbal attestation by the consumer that is not captured in a recording or writing will not suffice to demonstrate compliance. Written transcripts of a verbal conversation not captured in a recording will suffice to demonstrate compliance only if the transcripts meet the [regulatory requirements](#). Documentation of [consumer review of eligibility application information](#) must be maintained for a minimum of 10 years and produced to CMS upon request in response to monitoring, audit, and enforcement activities.

Agents, brokers, and web-brokers must not assume they have accurately entered consumer eligibility application information on the Marketplace eligibility application without reviewing and confirming its accuracy with the consumer and [documenting that review](#). Provided the documentation requirements are met, the agent, broker, or web-broker may walk through the eligibility application information with the consumer however they prefer prior to the submission of the eligibility application to the Marketplace. As a reminder, agents, brokers, and web-brokers

must adhere to additional requirements regarding [the use of a consumer's HealthCare.gov account](#).

**9) When does an agent, broker, or web-broker need to document that the consumer (or their authorized representative) has reviewed and confirmed the accuracy of the consumer's eligibility application information, including the relevant attestations, and confirmed the information's accuracy?**

*Published June 12, 2024*

- Documentation that the consumer (or their authorized representative) has [reviewed and confirmed the accuracy of the consumer's eligibility application information](#), including the relevant attestations, and confirmed the information's accuracy must be obtained prior to submitting the eligibility application to the Marketplace on the consumer's behalf. The same timing would generally apply to documentation of consumer review and confirmation of the accuracy of eligibility application information if the agent, broker, or web-broker makes changes or updates the eligibility application information on behalf of the consumer after an application has been submitted to Marketplace. That is, the agent, broker, or web-broker would need to document that the consumer [reviewed and confirmed the accuracy of the consumer's eligibility application information](#), including the relevant attestations, and confirmed the information's accuracy prior to submitting the updates to the eligibility application to the Marketplace on the consumer's behalf. As a reminder, agents, brokers, and web-brokers must also ensure they obtain and maintain documentation of the consumer's (or their authorized representative's) consent to make changes to their eligibility application information prior to submission of any updates or changes to the Marketplace.

**10) Can agents, brokers, or web-brokers document consumer consent and review of eligibility application information in languages other than English?**

*Published June 12, 2024*

- Yes, documentation of [consumer consent](#) and review and confirmation of the accuracy of [eligibility application information](#) may be obtained in the consumer's preferred language, including languages other than English, as long as the documentation meets all the requirements of documenting [consumer consent](#) and review of eligibility application information.

**11) Is documentation of consumer consent or review of eligibility application information required for consumers who auto-renew?**

*Published June 12, 2024*

- If an existing consumer's plan renews automatically and there are no changes being made by the agent, broker, or web-broker to the Marketplace eligibility application, the documentation of [consumer consent](#) and [review of eligibility application information](#) requirements adopted in the [2024 Payment Notice](#) are not triggered until there is a need to update the consumer's Marketplace eligibility application information or an agent, broker, or web-broker actively assists the consumer (or their authorized representative) with enrolling the consumer in a qualified health

plan (QHP) or applying for advance payments of the premium tax credit (APTC) or cost-sharing reductions (CSRs) through a Federally-facilitated Marketplace or State Exchange using the Federal platform in a manner that is not authorized by the existing documented consent.

## **12) Do agents and brokers need to provide documentation of consumer consent and review of eligibility application information to CMS?**

*Published June 12, 2024*

- Agents, brokers, and web-brokers must provide documentation of [consumer consent](#) and [review of eligibility application information](#) to CMS upon request. They must maintain documentation of consumer consent and review of eligibility application information that demonstrates compliance with applicable requirements for a minimum of 10 years. CMS reserves the right to request this documentation at any time during this 10-year window in connection with monitoring, audit, and enforcement activities. Agents and brokers are not required to proactively provide this documentation to CMS for each consumer in the absence of such a request.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

## **13) Can you provide a quote to a consumer (or their authorized representative) without documenting their consent to your collection and use of their information?**

*Published June 12, 2024*

- You may not collect or use any personally identifiable information (PII), such as SSNs, addresses, and phone numbers, unless you have obtained and documented consent from the consumer (or their authorized representative), including for the purpose of generating a quote or estimate for Marketplace coverage. If you only collect a subset of general information, such as estimated income, age, zip code, the state in which the consumer resides, household size, or whether or not the consumer is a U.S. citizen, *that when collected together is not linked or linkable to a specific individual*, you do not need to obtain and document consent before using that information to provide an estimate or quote for Marketplace coverage. However, any other information collected and used for an estimate or quote for Marketplace coverage (aside from coverage start date and tobacco use) that could be linked to a specific individual would require consent.

## **14) What do I need to submit when CMS asks for documentation of consumer consent?**

*Published June 12, 2024*

- CMS regulations at 45 C.F.R. § 155.220(j)(2)(iii)(A) require that agents, brokers, and web-brokers obtain and document consumer consent prior to assisting with or facilitating enrollment in a Qualified Health Plan (QHP) offered through a Federally Facilitated Exchange (FFE) or State-Based Exchange on the Federal platform (SBE-FP) or assisting a consumer with applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs offered through an FFE or SBE-FP. Under § 155.220(j)(2)(iii)(A), obtaining and documenting receipt of

consent must involve the consumer taking an action that produces a record that can be maintained and produced by the agent, broker, or web-broker to confirm the consumer's consent has been provided. Section 155.220(j)(2)(iii)(C) provides that an agent, broker, or web-broker must maintain that consumer consent documentation for a minimum of 10 years and produce it to CMS upon request in response to monitoring, audit, and enforcement activities.

Most of the time, the consumer's action to confirm consent that is required by § 155.220(j)(2)(iii)(A) is clear on the face of the documentation, such as when the consumer applies their wet signature or an electronically-applied signature to a document memorializing their consent; or the consent is memorialized in an email from the consumer or a recorded verbal conversation during which the consumer grants their consent; the consumer sends an email indicating their consent; the consumer sends an email establishing their consent; or other means. Sometimes, however, the consumer's action is not as clear from the documentation – for example, when the consumer's signature is simply typed on a consent form, but the form contains no other indication that it was signed or agreed to by the consumer. In this situation, an agent/broker must prepare additional support to show the action that the consumer took to give consent to the agent/broker. The further support could be, for example, an email from or a recorded verbal conversation with the consumer that shows that the consumer typed their name on the consent form or authorized the agent/broker to type their name on the consent form.

Upon request from CMS, agents, brokers, and web-brokers must submit all consumer consent documentation to CMS. However, agents, brokers, and web-brokers should only submit consent documentation to CMS in response to a request. CMS may request consent documentation at any time during the above-described 10-year period.

### **15) Can agents and brokers obtain a consumer's verbal consent without recording it to satisfy the Marketplace consent requirements?**

*Published June 20, 2024*

- No, a consumer's (or their authorized representative's) unwritten verbal consent must be documented by the agent, broker, or web-broker in a record – in an audio recording or other documentation – and satisfy other regulatory requirements to meet the Federally-facilitated Marketplace (FFM or Marketplace) [standards of conduct for consent](#). The Marketplace standards of conduct also [apply to agents, brokers, and web-brokers who assist consumers on State Exchanges using the Federal platform](#).

Per the requirements, a recording or other documentation of consumer consent must include a description of the scope, purpose, and duration of consent provided, the date consent was given, the name of the consumer, the name of the agent, broker, web-broker, or agency being granted consent, and a process through which the consumer may rescind the consent. In addition, [per the requirements](#), the agent, broker, or web-broker being granted consent must maintain the recording or other documentation of consumer consent for a minimum of 10 years and produce it to the Centers for Medicare and Medicaid Services (CMS) upon request in response to monitoring, audit, and enforcement activities. Accordingly, if an agent, broker, or web-broker only transcribes

a consumer's verbal consent into a written note for their records, and that writing does not satisfy [the other requirements](#), that agent, broker, or web-broker does not meet the FFM [standards of conduct for obtaining and documenting the consumer's consent](#). A written transcription of a consumer's review and confirmation of the accuracy of the consumer's eligibility application information [that does not satisfy the other requirements](#) would also not meet the FFM [standards of conduct for documenting the review and confirmation of the consumer's eligibility application](#).

While CMS offers an optional [Model Consent Form](#) for agents, brokers, and web-brokers to use to meet the requirements for consent documentation, it does not mandate specific methods for capturing consumer consent. However, [per the requirements](#), you must use a process that allows the consumer to take an action to provide consent that produces a record that can be maintained and produced to CMS upon request to confirm consent has been provided, which could include recorded phone calls, text messages, emails, or a signed electronic consent form. This Model Consent Form does not meet the separate documentation requirements for consumer review and confirmation of the accuracy of their eligibility application information.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

## **16) Does CMS provide advance approval of the method(s) for how agents and brokers obtain and document consumer consent and review and confirmation of the accuracy of eligibility application information?**

*Published June 20, 2024*

- No, CMS does not provide advance approval of the documentation, including the verbiage in that documentation, or methods that agents, brokers, and web-brokers use to meet the Federally-facilitated Marketplace (FFM or Marketplace) standards of conduct related to documenting consumer consent and review and confirmation of the accuracy of eligibility application information. The Marketplace standards of conduct also [apply to agents, brokers, and web-brokers who assist consumers \(or their authorized representatives\) on State Exchanges using the Federal platform](#). Given that CMS does not mandate specific methods for documenting consumer consent and eligibility application review, you may use any method to do so provided it meets the requirements of obtaining and documenting [consent](#) and [review and confirmation of the accuracy of the consumer's eligibility application](#).

Agents, brokers, and web-brokers should only submit documentation to CMS in response to a request. [Per the requirements](#), all documentation of consumer consent and review and confirmation of the accuracy of eligibility application information must be maintained for a minimum of 10 years. Furthermore, the requirements [for documenting consumer consent and review and confirmation of the accuracy of the eligibility application information](#) also state that this documentation must be produced to CMS upon request in response to monitoring, audit, and enforcement activities. CMS may request this documentation at any time in that 10-year period.

**17) If the consumer consent obtained and documented by an agent or broker provides consent to the agent or broker’s agency, would that consent apply to all agents and brokers within the agency?**

*Published June 20, 2024*

- A consumer (or their authorized representative) can grant consent at the agency level, which would apply to all agents and brokers within the agency. The documentation of consent granted to an agency [must include the specific name of the agency](#) granted consent. By contrast, if consent is granted only to individual agents or brokers, the documentation of consumer consent must include the names of those agents or brokers. Consent to an unnamed “agency,” “designee,” or “back-up agent” does not demonstrate that consumer consent has been given to that agency or individual agents and brokers.

Consistent with [the requirements](#) (which also apply [to agents, brokers, and web-brokers who assist consumers on State Exchanges using the Federal platform](#)), if a consumer has granted agency-wide consent and the consent has not expired or been rescinded, the agency will not be required to obtain new consumer consent for other agents and brokers (i.e., other agents and brokers who work for that agency who are taking action authorized by the consumer’s consent) to assist the consumer with enrollment in a qualified health plan or submission of an application for advance payments of premium tax credits or cost-sharing reductions through a Federally-facilitated Marketplace or State Exchange using the Federal platform. However, agents, brokers, and web-brokers are required to document consumer review and confirmation of the accuracy of their eligibility application information prior to making updates to their existing enrollment or application.

As a best practice, we recommend that documentation of agency-wide consumer consent include the name and National Producer Number (NPN) of the individual agents or brokers who will work directly with the consumer (i.e., the name(s) and NPN(s) of the writing agent(s)), along with the agency’s name and NPN, to avoid consumer confusion about who they will be working with and which agents and brokers they have given consent to assist with their enrollment or application.

If consent is being granted to more than one individual agent or broker (as opposed to an agency), the specific names of each agent or broker and their respective NPNs should be listed in all places in the consent documentation that indicate who is receiving consent. Under these circumstances, CMS does not consider consent to an unnamed “designee” or “back-up agent” to be sufficient to demonstrate that consent has been given to individual agents or brokers.

Additionally, if the agency’s NPN is included on the Marketplace eligibility application instead of the writing agent's NPN, as a best practice, the agency or writing agent should inform the consumer to avoid confusion on the consumer’s part about who they are working with.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

## 18) Is there a model consent form available in Spanish?

Published June 20, 2024

- Yes, CMS developed a Spanish language model consent form that agents, brokers, and web-brokers may use to document consumer consent. The form can be found [here](#).

Please note that this is an example of a form that that [includes all the required elements](#) for consent documentation.\* Agents, brokers, web-brokers, and agencies can modify this form or use other forms or methods for documenting consumer consent as long as the documentation [meets the requirements](#). Agents, brokers, web-brokers, and agencies may also use consent documentation in other languages appropriate to the primary language of each consumer.

*\*The model consent form does not meet the separate requirements for documentation of consumer review and confirmation of the accuracy of their eligibility application information.*

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

## 19) Does consumer consent need to be obtained if I am speaking with the Marketplace Call Center on the consumer's behalf?

Published June 20, 2024

- Yes. Agents and brokers are required to follow a two-step process when working with the Marketplace Call Center on behalf of a consumer (or their authorized representative) without the consumer's participation in the call (for example, when agents and brokers call the Marketplace Call Center on a consumer's behalf, without their presence on the call, to access their account information or check the status of their submitted eligibility application):
  1. **Document [consumer consent](#) and consumer [review and confirmation of the accuracy of their eligibility application information](#) (these may be obtained from the consumer's authorized representative) per the regulations finalized in the 2024 Payment Notice:** If you are assisting consumers with enrolling in a qualified health plan or with submitting an application for financial assistance through the Federally-facilitated Marketplace or State Exchange using the Federal platform through a call with the Call Center without the consumer's participation, you need to document receipt of their consent and review and confirmation of the accuracy of the consumer's eligibility application information. For more information, see the 2024 Payment Notice [here](#).
  2. **Obtain authorization that you can work on behalf of the consumer with the Marketplace Call Center:** Consumers can grant permission to allow you to call the Marketplace Call Center to access their account information without being present for the call, including to check the status of their submitted application. To do so, the consumer must call the Marketplace Call Center beforehand at 1-800-318-2596, provide the Marketplace Call Center with your name and National Producer Number (NPN) and elect the length of time the authorization is valid – the authorization can be for one call or up to 365 days. This

authorization allows you to call the Marketplace Call Center and access a consumer's information on the consumer's behalf. You are only able to use the Marketplace Call Center to check the status of Marketplace applications with which you are affiliated (i.e., applications on which you are listed as the assisting agent or broker) and for which you have received authorization to work on behalf of the consumer with the Marketplace Call Center.

Note: Authorization that you may work on a consumer's behalf with the Marketplace Call Center alone will likely not meet the requirements for an agent or broker to [document consumer consent](#) and [review and confirmation of the accuracy of the consumer's eligibility application](#). Similarly, documentation of consumer consent and review and confirmation of the accuracy of the consumer's eligibility application information [meeting the requirements](#) will not automatically provide authorization to act on their behalf with the Marketplace Call Center. If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

**20) Is a consumer's authorized representative able to provide consent and review and confirm the eligibility application information on behalf of the consumer?**

*Published June 20, 2024*

- Yes, a consumer's [authorized representative](#) may provide consent and review and confirmation of the accuracy of the eligibility application information on behalf of the consumer for an agent, broker, or web-broker to assist with the consumer's enrollment in a qualified health plan or submission of an application for advance payments of premium tax credits or cost-sharing reductions through the [Federally-facilitated Marketplace](#) or a [State Exchange using the Federal platform](#), including making updates to the enrollment or application on the consumer's behalf.

[Per the requirements](#), the consumer must designate their authorized representative in a written document signed by the consumer, or through another legally binding format subject to applicable authentication and data security standards.

If CMS requests documentation of consumer consent or review and confirmation of the accuracy of eligibility application information for a consumer whose authorized representative provided the consent or review and confirmation of the accuracy of eligibility application information, agents, brokers and web-brokers must ensure that [authorized representative designation documentation](#) is provided along with that requested documentation.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

**21) Can a Marketplace eligibility application filer provide consent to an agent or broker to assist with an eligibility application or enrollment that covers adult or minor members of an application filer's household? May the application filer review and confirm the accuracy of the eligibility application information of all persons whose information is entered on the eligibility application?**

*Published June 20, 2024*

- Yes, an adult Marketplace eligibility application filer may provide consent to an agent, broker, or web-broker for assistance with a Marketplace eligibility application that seeks coverage for adult or minor household members, as long as that application filer is also seeking coverage and included on that Marketplace eligibility application. In this situation, consent from an adult application filer is sufficient to authorize the agent, broker, or web-broker to assist with the application and any enrollments made based on those applications. Adult application filers are also authorized to review and confirm the accuracy of the eligibility application information of adult or minor household members whose information is entered on the same Marketplace eligibility application, as long as that application filer is also seeking coverage and is included on that eligibility application.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

**22) Do all applicants included on the eligibility application need to provide separate consents and confirm that they all reviewed their eligibility application information?**

*Published June 20, 2024*

- Per the requirements, you must [document consent](#) from and [review and confirm the accuracy of eligibility application](#) information by all consumers (or their authorized representatives) that you assist with enrollment in a qualified health plan or submission of an application for advance payments of premium tax credits or cost-sharing reductions through the Federally-facilitated Marketplace (FFM or Marketplace) or a State Exchange using the Federal platform (SBE-FP). These Marketplace standards of conduct also extend to updates to enrollments and applications submitted to an FFM or SBE-FP.

However, in some cases, other parties may be able to provide consent and review and confirmation of the accuracy of eligibility application information on behalf of a consumer. Such cases may include:

- Adults, on behalf of other adult family members who are members of the same household and are on the same eligibility application;
- Adults, on behalf of minors who are members of the same household and are on the same eligibility application; and
- A consumer's legally authorized representative, on behalf of a consumer.

If CMS requests documentation of consumer consent or review and confirmation of the accuracy of eligibility application information for a consumer whose authorized representative provided the consent or review and confirmation of the accuracy of eligibility application information, agents and brokers must ensure that [authorized representative designation documentation](#) is provided along with that requested documentation.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

### **23) What should an agent or broker do if a consumer refuses or is unable to provide consent or review their eligibility application information?**

*Published June 20, 2024*

- [Per the requirements](#), if a consumer (or their authorized representative) is unwilling or unable to provide consent, you may not assist or otherwise function as the agent, broker, or web-broker for that consumer with regards to their enrollment in a qualified health plan or submission of an application for advance payments of premium tax credits or cost-sharing reductions through the Federally-facilitated Marketplace (FFM) or State Exchange using the Federal platform (SBE-FP). Additionally, if a consumer is unwilling or unable to review and confirm the accuracy of the consumer's eligibility application information, you may not submit an eligibility application on their behalf through an FFM or SBE-FP. Similarly, if a consumer has requested that you update the eligibility information in the consumer's Marketplace eligibility application that was previously submitted to an FFM or SBE-FP, but the consumer is unwilling or unable to review and confirm the accuracy of the consumer's updated eligibility application information, you may not submit the update to their eligibility application information to an FFM or SBE-FP.

If consumers are unable or unwilling to provide consent or review and confirmation of the accuracy of their eligibility application information and would still like to submit an enrollment or eligibility application, as a best practice, you should direct them to [HealthCare.gov](https://www.healthcare.gov), the Marketplace Call Center, an Enhanced Direct Enrollment (EDE) partner's website, or a Classic Direct Enrollment (Classic DE) partner's website to complete and submit the consumer's enrollment or eligibility application on their own. However, you would not be able to function as the agent, broker, or web-broker representing them on or submitting that enrollment or eligibility application to an FFM or SBE-FP. If the consumer is unable to provide or communicate consent or review and confirmation of the accuracy of their eligibility application information, or is unable to understand the agreements or information they are reviewing in the language in which the agent or broker is working, the consumer may be referred to the Marketplace Call Center for [interpretation services](#).

If the consumer is physically or intellectually unable to provide consent or review and confirmation of the accuracy of their eligibility application information, you should request consent and review and confirmation of the accuracy of their eligibility application information from their authorized representative, if they have one, or any adult family members who are part of the same household and are also included on their eligibility application. Courts may appoint legally authorized representatives for consumers who are physically or intellectually unable to provide consent or review and confirmation of the accuracy of their eligibility application information.

If CMS requests documentation of consumer consent or review and confirmation of eligibility application information for a consumer whose authorized representative provided the consent or

review and confirmation of the accuracy of eligibility application information, agents, brokers, and web-brokers must ensure that [authorized representative designation documentation](#) is provided along with that requested documentation.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

**24) If a consumer grants an agent or broker consent to enroll them in a qualified health plan through the Marketplace, does that authorize the agent or broker to access their HealthCare.gov account?**

*Published June 20, 2024*

- No, pursuant to each agent, broker, and web-broker's Privacy and Security Agreement entered into at the beginning of each Open Enrollment period, an agent, broker, or web-broker is never allowed to log into a consumer, applicant, or enrollee's [HealthCare.gov](#) account, including to enter or review and confirm the accuracy of their eligibility application information, or create a [HealthCare.gov](#) account on behalf of a consumer, applicant, or enrollee. Consumer consent scripts used by agents, brokers, web-brokers, and agencies, and forms and other documentation for consumer consent used to meet [the requirements](#), must not indicate that the consumer consent would allow the agent, broker, or web-broker to log in to the consumer's [HealthCare.gov](#) account or create a [HealthCare.gov](#) account for the consumer. For more information on restrictions on agent, broker, or web-broker use of consumer [HealthCare.gov](#) accounts and related agent, broker, and web-broker responsibilities with respect to consumer personally identifiable information, please refer to your Privacy and Security Agreement.

If you need additional assistance, contact the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

**25) Do agents, brokers, or web-brokers need documentation of consumer consent when only changing the National Producer Number (NPN) on a Marketplace eligibility application?**

*Published October 28, 2024*

- Yes. Before changing an NPN on a Marketplace eligibility application for enrollments through a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) from one agent, broker, web-broker, or agency's to another's and submitting the updated application to the applicable Marketplace, the new agent, broker, or web-broker must obtain and document consent from the consumer (or their authorized representative) per [the applicable requirements](#). But in cases where the consumer has granted agency-wide consent meeting [the applicable requirements](#), that consent has not expired or been rescinded, and the consent documentation authorizes making changes to the application, agents, brokers, and web-brokers associated with that agency are not required to obtain or document new consumer consent prior to changing the NPN (provided the new NPN belongs to that agency or an agent, broker, or web-broker associated with that agency). However, please note that even if agency-wide consent was previously obtained and documented, and that consent has not expired or been rescinded, if

information in the Marketplace eligibility application (such as the NPN on the application) or the consumer's plan selection is being changed from what the consumer previously reviewed and confirmed as accurate, the agent, broker, or web-broker making the NPN or other Marketplace eligibility application change must obtain new documentation of consumer review and confirmation of the accuracy of their Marketplace eligibility application information meeting [the applicable requirements](#) before submission of the updated eligibility application to the applicable Marketplace.

**26) What should an agent, broker, or web-broker do if they suspect their, or their agency's, National Producer Number (NPN) was accidentally or intentionally removed from a consumer's Marketplace eligibility application?**

*Published October 28, 2024*

- If an agent, broker, or web-broker has a reason to believe their, or their agency's, NPN was accidentally or intentionally removed from a consumer's Marketplace eligibility application for enrollments through a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) and that agent, broker, or web-broker has consent from the consumer (or their authorized representative) meeting [the applicable requirements](#), that agent, broker, or web-broker should contact the consumer to confirm whether they provided consent to a new agent, broker, or web-broker, or agency and asked that the NPN on their application be changed. If the consumer did not provide consent to a new agent, broker, web-broker, or agency and did not request the change to their application, and if the prior consent established with the consumer has not expired or been rescinded, the agent, broker, or web-broker who believes their, or their agency's, NPN was accidentally or intentionally removed must document that the consumer reviewed and confirmed the accuracy of their updated Marketplace eligibility application information (such as the updates to the NPN), consistent with [the applicable requirements](#), and may then submit an updated application to the applicable Marketplace to change the NPN on the application back to theirs, or their agency's. If the consumer provided consent to a new agent, broker, web-broker, or agency and authorized the change to the NPN, the agent, broker, or web-broker who thought their, or their agency's, NPN was accidentally or intentionally removed must not change the NPN on the consumer's Marketplace eligibility application.

The fastest method to update the NPN on an application and resolve any related consumer coverage issues is to contact Marketplace Call Center via a three-way call with the consumer. A consumer may also contact the Marketplace Call Center at 1-800-318-2596, and an agent, broker or web-broker may contact the Marketplace Call Center Agent Broker Partner Line at 1-855-788-6275, to report Marketplace consumer fraud if unauthorized changes were made to the consumer's Marketplace eligibility application or plan selection. For additional support or if an agent, broker, or web-broker is unable to resolve the consumer's coverage issue, you can submit the application ID with a description of the problem (without consumer [personally identifiable information](#)) to the Agent/Broker Email Help Desk via email at [FFMProducer-AssisterHelpDesk@cms.hhs.gov](mailto:FFMProducer-AssisterHelpDesk@cms.hhs.gov).

Additionally, an agent, broker, or web-broker may contact the respective qualified health plan

(QHP) issuer directly or the state's Department of Insurance (or its equivalent) to discuss the situation. Please note that the Marketplace does not direct agent, broker, or web-broker compensation, which is a contractual matter between the agent, broker, or web-broker and the QHP issuer.

**27) Are agents, brokers, and web-brokers required to document when a consumer rescinds their consent?**

*Published October 28, 2024*

- No. CMS does not require agents, brokers, or web-brokers assisting consumers on a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) to document withdrawal of consent by the consumer (or their authorized representative). However, once a consumer takes the prescribed action to rescind the consent granted to an agent, broker, web-broker, or agency, that agent, broker, or web-broker, and any agents, brokers, or web-brokers associated with that agency, may no longer take any action to assist the consumer with enrolling in a Marketplace plan or submitting a Marketplace eligibility application. This includes any agent, broker, or web-broker action to update the consumer's Marketplace qualified health plan enrollment or eligibility application (including plan selection changes and/or National Producer Number (NPN) updates), check the status of their coverage, or search for their application on an approved private Classic Direct Enrollment (Classic DE) or Enhanced Direct Enrollment (EDE) website. Agents, brokers, and web-brokers may document withdrawal of consumer consent using a method that meets their business needs as long as the method ensures that no further action is taken by that agent, broker, or web-broker to assist the consumer with enrolling in a Marketplace plan or submitting a Marketplace eligibility application from the time the consumer withdrew their consent. Per [the applicable requirements](#), the consent documentation an agent, broker, or web-broker obtains from a consumer must include a process through which the consumer may rescind the consent. This documentation must be maintained for 10 years and produced to CMS upon request.

Further, per [the applicable requirements](#), CMS requires that agents, brokers, and web-brokers (including agents, brokers, and web-brokers working on behalf of agencies) include in their consumer consent documentation information on the process through which the consumer may rescind the consent. The description of this process in the consumer consent documentation must clearly identify the steps the consumer can take to rescind consent. The documentation should also include a phone number, email address, address, and/or other contact method that the consumer can use to contact the agent, broker, or web-broker to rescind consent. CMS does not mandate the specific methods that agents, brokers, or web-brokers (including agents, brokers, and web-brokers associated with an agency to whom the consumer granted agency-wide consent) must offer to consumers to rescind consent. One example of an acceptable method for rescinding consent includes the agent, broker, or web-broker having a designated email address or phone number the consumer can contact to notify the agent, broker, or web-broker of the withdrawal of their consent. However, this is not the only acceptable rescission method.

**28) Are consumers required to rescind consent provided to an agent, broker, web-broker, or agency prior to engaging another agent, broker, web-broker, or agency for a new Marketplace enrollment, plan changes, or revisions to an eligibility application?**

*Published October 28, 2024*

- No. The [requirement](#) for agents, brokers, and web-brokers assisting consumers on a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) to obtain and document consumer consent, including a process to rescind that consent in the documentation, does not require consumers (or their authorized representatives) to rescind consent prior to providing consent to another agent, broker, web-broker, or agency for that other agent, broker, or web-broker, or an agent, broker, or web-broker associated with that agency, to assist them with enrolling in a Marketplace plan, making plan changes, or making revisions to a Marketplace eligibility application. Further, even if an agent, broker, web-broker, or agency has already obtained and documented consent from the consumer that has not been rescinded or expired, agents, brokers, and web-brokers are required to obtain and document consumer review and confirmation of the accuracy of the Marketplace eligibility application information before submitting an eligibility application (or any update thereto) to the applicable Marketplace. This requirement applies where, for example, the agent, broker, or web-broker makes changes to a previously submitted application on the consumer's behalf to restore a consumer's enrollment in a Marketplace plan or insurance affordability program that had been changed by a different agent, broker, or web-broker.

**29) Can an agent, broker, or web-broker with unexpired, unrescinded consumer consent revert changes made to a consumer's Marketplace eligibility application or plan selection by another agent, broker, or web-broker?**

*Published October 28, 2024*

- Yes, assuming that the agent, broker, or web-broker's documented consumer consent authorizes the reversions, and they confirm the consumer consents to the reversions and documents that the consumer has reviewed and confirmed the accuracy of the eligibility application information prior to submission of the changes to the Marketplace. In such a case, the consumer may have provided consent to a new agent, broker, or web-broker for them to make those changes but forgot or chose not to notify the prior agent, broker, or web-broker. Therefore, if an agent, broker, or web-broker assisting consumers on a Federally Facilitated Marketplace (FFM) or State-Based Marketplace on the Federal Platform (SBM-FP) identifies changes in a Marketplace eligibility application or plan selection for a Marketplace consumer whose documented consent has not expired or been rescinded, the agent, broker, or web-broker must contact the consumer (or their authorized representative) prior to submitting a revised eligibility application or plan selection change to the Marketplace on their behalf. If the consumer then requests that the prior agent, broker, or web-broker revert the changes made to the consumer's Marketplace eligibility application or plan selection, prior to submitting an eligibility application or plan selection change to the Marketplace on the consumer's behalf, the agent, broker, or web-broker must obtain and document new consumer review and confirmation of the accuracy of the eligibility application information meeting [the applicable requirements](#).

If the agent, broker, or web-broker cannot or does not obtain this new documentation of review and confirmation of the accuracy of Marketplace eligibility application by the consumer, they may not revert the changes made to the consumer's plan selection or Marketplace eligibility application.

**30) Do these rules regarding consumer consent and review and confirmation of the accuracy of Marketplace eligibility application apply to State-based Marketplaces that do not rely on the Federal Platform?**

*Published October 28, 2024*

- No. The federal requirements for documenting and obtaining [consumer consent](#) and [review and confirmation of the accuracy of the consumer's eligibility application](#) only apply to agents, brokers, and web-brokers who assist consumers with enrolling in qualified health plans and submitting Marketplace eligibility applications on Federally-facilitated Marketplaces (FFMs) and State-based Marketplaces on the Federal Platform (SBM-FPs). These requirements do not apply to agents, brokers, and web-brokers who assist consumers on State-based Marketplaces (SBMs) that do not rely on the Federal platform. However, these SBMs may have similar or alternative documentation and review requirements, and agents, brokers, and web-brokers assisting consumers with enrollment and the submission of Marketplace eligibility applications in these SBMs should consult the relevant state authorities to confirm that their practices would be compliant with those SBMs' requirements.

**31) Do agents, brokers, and web-brokers need to obtain and document consumer consent and review and confirmation of the accuracy of Marketplace eligibility application information when assisting small employers with enrolling in SHOP coverage?**

*Published October 28, 2024*

- Yes. The requirements for obtaining and documenting [consumer consent](#) and [review and confirmation of the accuracy of the consumer's eligibility application information](#) apply to agents, brokers, and web-brokers as they assist consumers on a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) and qualified employers and qualified employees through the Federally-facilitated Small Business Health Options Program (FF-SHOP) and SBM-FP Small Business Health Options Program (SBM-FP-SHOP) with enrolling in Marketplace plans or submitting Marketplace eligibility applications. As such, these requirements also extend to agents, brokers, and web-brokers as they assist small businesses, employers, and their employees with enrolling in FF-SHOP and SBM-FP-SHOP coverage.

**32) What is the penalty for agents, brokers, and web-brokers who do not document consumer consent and/or consumer review and confirmation of the accuracy of Marketplace eligibility application information and maintain that documentation for 10 years?**

*Published October 28, 2024*

- Agents, brokers, and web-brokers assisting consumers on a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) whose documentation practices are not compliant with the [consumer consent](#) and [eligibility application information review](#) requirements may have their General Agreement, Individual Market Privacy and Security Agreement, and/or Small Business Health Options Program (SHOP) Privacy and Security Agreement, as applicable, suspended or terminated, which would prevent them from assisting consumers with Marketplace enrollments and submitting Marketplace eligibility applications. Additionally, these agents, brokers, and web-brokers may be denied the right to enter into Marketplace agreements with CMS in future years and could be subject to civil money penalties per [the applicable requirements](#). Pursuant to the applicable [consumer consent](#) and [eligibility application information review](#) documentation requirements, CMS may request, and the agent, broker, or web-broker must provide, documentation of consumer consent and review and confirmation of the accuracy of eligibility application information for enrollments and application submissions they facilitate at any time within 10 years of the enrollment or application submission.

### **33) Do agents, brokers, and web-brokers need to obtain consent from consumers enrolling in off-Marketplace plans?**

*Published October 28, 2024*

- While the consent requirements of [the applicable regulations](#) only apply to agents, brokers, and web-brokers who assist consumers with enrollment in qualified health plans offered on a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP), agents, brokers, and web-brokers enrolling consumers in plans off the Marketplace may be subject to consent requirements under applicable state law or regulations. Agents, brokers, and web-brokers should contact the applicable state regulatory authority if they have any questions about state law or regulations.

### **34) Do agents, brokers, and web-brokers need to maintain documentation of consumer consent and review and confirmation of the accuracy of eligibility application information for 10 years even if they stopped working with that consumer?**

*Published October 28, 2024*

- Yes. Documentation of consumer consent and review and confirmation of the accuracy of eligibility application information must be maintained for a minimum of 10 years, regardless of whether the agent, broker, or web-broker continues to actively assist the consumer with enrolling in Marketplace coverage or submitting Marketplace eligibility applications (or updates thereto) during that time. This documentation must be maintained for 10 years following the enrollment or application submission, and submitted to CMS upon request, even where the consumer (or their authorized representative) rescinded consent to the agent, broker, or web-broker, the consent expired, the consumer left the Marketplace (e.g., enrolled in coverage offered outside of a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP)), or the consumer elected to work with another agent, broker, or web-broker. This applies to agents, brokers, and web-brokers assisting consumers on an FFM or SBM-FP.

**35) Do agents, brokers, or web-brokers need to maintain documentation of consumer consent (including agency-wide consumer consent) and review and confirmation of the accuracy of eligibility application information for 10 years even if they stopped working for their former employer?**

*Published October 28, 2024*

- Yes. An agent, broker, or web-broker assisting consumers on a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) must maintain documentation of consumer consent and review and confirmation of the accuracy of eligibility application information for a minimum of 10 years for all Marketplace consumers they assist with enrollment in qualified health plans offered on the Marketplace or the submission of Marketplace eligibility applications (including updates thereto). This requirement extends to documentation of agency-wide consumer consent obtained by the agent, broker, or web-broker, and it applies even if the agency-wide consent documentation was originally obtained by another agent, broker, or web-broker associated with the agency for which the agent, broker, or web-broker used to but no longer works. This record retention obligation also applies in situations when the agent, broker, or web-broker stopped working for their former employer and the consumer (or their authorized representative) rescinded consent, the consent expired, the consumer left the Marketplace (e.g., enrolled in coverage offered outside of an FFM or SBM-FP), or the consumer elected to work with another agent, broker, or web-broker.

**36) Are Navigators and other assisters required to abide by the same consent requirements as agents, brokers, and web-brokers?**

*Published October 28, 2024*

- While similar requirements may apply, [the requirements applicable to agents, brokers, and web-brokers](#) do not apply to these entities. Navigators, certified application counselors (CACs), and enrollment assistance personnel (EAPs) (collectively referred to as “assisters”) assisting consumers on a Federally-facilitated Marketplace (FFM) must obtain and keep a record of a consumer's (or their authorized representative's) authorization prior to obtaining access to consumers' personally identifiable information (PII), or creating, collecting, handling, disclosing, accessing, maintaining, storing, and/or using PII, in order to carry out the roles and responsibilities of a Navigator, CAC, or EAP, as applicable.

At a minimum, per the requirements for [Navigators](#), [CACs](#), and [EAPs](#), a Navigator, EAP, or CAC (as applicable) must ensure that applicants:

1. are informed, prior to receiving assistance, of the functions and responsibilities of [Navigators/CACs/EAPs].
2. provide authorization in a form and manner as determined by CMS prior to a [Navigator/CAC/EAP] obtaining access to an applicant's PII, and that the [Navigator/CAC/EAP], maintains a record of the authorization provided in a form and manner as determined by CMS, for no less than six years, unless a different and longer

retention period has already been provided under other applicable federal and state law;  
and

3. may revoke at any time the authorization provided to the [Navigator/CAC/EAP].

The program documents establishing requirements between CMS and the Navigators, CACs, and EAPs also require assisters to obtain informed consent from consumers prior to any creation, collection, use, or disclosure of information that is not for the purpose of carrying out the roles and responsibilities of the Navigator, CAC, or EAP, as applicable. This consent must be in writing, signed by the consumer, and subject to a right of revocation. At a minimum, it must also:

1. Be provided in specific terms and in plain language;
2. Identify who will obtain access to the consumer's information under the terms of the informed consent;
3. Describe the purpose for which the informed consent is being obtained;
4. Explain what information the recipient will use or disclose to a specific recipient(s);
5. Provide notice of a consumer's ability to revoke the consent at any time; and
6. Include an expiration date or event, unless effectively revoked in writing by the consumer before that date or event.

The collection and documentation of authorization is considered to be separate and distinct from the collection and documentation of informed consent. However, both the authorization and the informed consent may be captured within the same form. Model authorization forms for [CACs](#) and [Navigators](#) are posted online. These contain the *minimum* amount of information that must be provided to consumers when obtaining their authorization and informed consent.

### **37) Can an agent, broker, or web-broker obtain and document consumer consent in advance of a meeting or phone call to assist the consumer with the Marketplace application, enrollment, and/or plan selection process?**

*Published October 28, 2024*

- Yes, an agent, broker, or web-broker assisting consumers on a Federally-facilitated Marketplace (FFM) or State-based Marketplace on the Federal Platform (SBM-FP) may obtain and document consumer consent prior to a meeting or phone call to provide assistance to the consumer with enrollment in Marketplace coverage or the submission of a Marketplace eligibility application, or at the beginning of a meeting or phone call to provide that assistance. In either case, consumer consent must be obtained and documented before the assistance is provided in the meeting or phone call.

Consent documentation meeting [the applicable requirements](#) must always be obtained prior to assisting consumers with enrolling in Marketplace coverage or submitting Marketplace eligibility applications. This assistance includes actions by an agent, broker, or web-broker to update a consumer's Marketplace enrollment (e.g., plan selection or NPN change), check the status of their coverage, or search for the consumer's Marketplace eligibility application on an approved private Classic Direct Enrollment (Classic DE) or Enhanced Direct Enrollment (EDE) website. This

assistance also includes the collection of consumer personally identifiable information (PII) that the agent, broker, or web-broker uses to provide the consumer (or their authorized representative) with an individualized quote for Marketplace coverage in advance of a phone call or meeting.

Agents, brokers, and web-brokers may not collect or use any consumer PII, such as Social Security Numbers, addresses, or phone numbers, unless they have obtained and documented consent from the consumer, including for the purpose of generating a quote or estimate for Marketplace coverage in advance or a phone call or meeting. If the agent, broker, or web-broker only collects a subset of general information, such as the consumer's estimated income, age, zip code, the state in which they reside, household size, or whether or not they are a U.S. citizen, *that when collected together is not linked or linkable to a specific individual*, that agent, broker, or web-broker does not need to obtain and document consent before using that information to provide an estimate or quote for Marketplace coverage to the consumer. However, any other information used for an estimate or quote for Marketplace coverage (aside from coverage start date and tobacco use) that could be linked to a specific individual would require documented consumer consent prior to collection or use.

The Centers for Medicare & Medicaid Services (CMS) does not prescribe how an agent, broker, or web-broker may engage with consumers to provide assistance with Marketplace enrollment or the submission of the Marketplace eligibility application, including updates to the enrollment or application. This assistance may be provided in the manner that best meets the business needs of the consumer, agent, broker, or web-broker, or the agency that the agent, broker, or web-broker is associated with, provided that all applicable requirements are satisfied. Similarly, while CMS offers a [model consent form](#) that agents, brokers, and web-brokers may use to document consumer consent, CMS does not prescribe a standard method or format for obtaining and documenting consumer consent, as long as consent meets [the applicable requirements](#) and is obtained and documented before the agent, broker, or web-broker provides the assistance to the consumer.