

New Consumer Consent and Eligibility Application Confirmation Requirements

Two new requirements established by the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) have gone into effect. The 2024 Notice of Benefit and Payment Parameters (NBPP) outlined additional requirements agents and brokers must take when assisting consumers with the Marketplace. [Click here](#) to view.

Requirements go into effect June 18, 2023.

1. New consumer consent requirements

Agents are required to obtain and document consumer consent prior to assisting with or facilitating an enrollment for coverage through Federally-Facilitated Exchanges and State-Based Exchanges on the Federal platform or assisting an individual with applying for advance premium tax credit or cost-sharing reduction.

This consumer consent requires the consumer or authorized representative to take action to produce a record, like providing a signature or recording a verbal confirmation, and it must contain, at a minimum, the following information:

- A description of the scope, purpose, and duration of the consent provided by the consumer or their authorized representative.
- The date the consent was given.
- The name of the consumer or their authorized representative.
- The name of the agent being granted consent; and
- A process through which the consumer or authorized representative may rescind the consent.

2. New eligibility application confirmation requirements.

Agents are required to obtain and document that eligibility application information has been reviewed by and confirmed to be accurate by the consumer prior to application submission for coverage through Federally-Facilitated Exchanges and State-Based Exchanges on the Federal platform.

This consumer consent for application accuracy requires the consumer or authorized representative to take action to produce a record (e.g., providing a signature or recording

a verbal confirmation) that must include, at a minimum, the following information:

- The date the application information was reviewed.
- The name of the consumer or their authorized representative.
- An explanation of the attestations at the end of the eligibility application; and
- The name of the agent providing the assistance.

Important: Documentation for both of these new requirements must be retained for a minimum of 10 years and made available upon request in response to monitoring, audit, and enforcement activities.

Compliant Business Practices:

Agents and brokers must ensure compliance with Marketplace regulations and guidance when establishing business relationships (e.g., for purposes of lead generation).

- Enrollment assistance must be provided by licensed and registered agents and brokers.
- Agents and brokers are required to obtain consent from the consumer or their authorized representative. Third-party means, such as lead generators, do not constitute consent in a manner that complies with 45 C.F.R. §155.220.

For example, consumers merely checking a box to indicate that they attest to being enrolled in Marketplace coverage does not constitute consumer consent for purposes of complying with CMS Marketplace requirements.

These new requirements have been formed under the Patient Protection and Affordable Care Act: HHS Notice of Benefit and Payment Parameters for 2024 and will assist with:

- Resolving consumer complaints related to incorrect information on their eligibility applications or unauthorized enrollments
- Resolving disputes between agents and consumers or between multiple enrolling entities.

If you have any questions, you can reach out to us at compliance@messerfinancial.com for more help.