

New CMS Marketing Guidelines: The ACA Final Rule

Consumer Consent and Eligibility Application Confirmation Requirements

On June 18, 2023, two new requirements established by the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) will go into effect.

#1 - New Consumer Consent Documentation 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, broker, web-broker, or agency being granted consent;
- A process through which the consumer or their authorized representative may rescind the consent.

The agent, broker, or web-broker must maintain the documentation for a minimum of 10 years, and make available upon request in response to monitoring, audit, and enforcement activities.

[Click here to view the CMS Model Consent Form](#) - This an example and best practice for obtaining and documenting the consumer consent requirement.

#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 assisting agent, broker, or web-broker.

The agent, broker, or web-broker must maintain the documentation for a minimum of 10 years, and make available upon request in response to monitoring, audit, and enforcement activities.

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

Resources

- [CMS Model Consent Form](#) - View the CMS Model Consent Form as an example and best practice for obtaining and documenting the consumer consent requirement.
- [HHS Notice of Benefit and Payment Parameters for 2024 Final Rule](#)
- [Marketplace Compliance and Agent/Broker Regulations Presentation](#)

Questions? Reach out to our Agent Care Team - **877.612.7317**

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