

# Agent, Broker, and Web-broker Guidelines for Compliant Marketplace Advertising and Marketing

## Reminders about Key Marketplace Rules that Impact Your Advertising and Marketing

### You May Not Mislead Consumers

You may not provide consumers with inaccurate or misleading information or omit material information about the Marketplace, qualified health plans (QHPs) offered through the Marketplace, premium tax credits, cost-sharing subsidies, and other insurance affordability programs. Agents, brokers, and web-brokers who mislead consumers in these ways will face enforcement action.

### You Must Obtain and Document Consumer Consent as well as Review and Confirmation of the Accuracy of Eligibility Application Information

Before assisting a Marketplace consumer with submitting an eligibility application or enrolling in a QHP or insurance affordability program, you must appropriately document the consent of the consumer (or their authorized representative) and that the consumer (or their authorized representative) reviewed and confirmed the accuracy of their eligibility application information before submission of the application to the Marketplace, even in the case of purchased leads. For more information on these requirements, please see these [consent](#) and [eligibility application review FAQs](#). You must maintain that documentation for at least 10 years and produce it to CMS upon request,

even if you leave the agency the enrollment was associated with when it occurred.

### You May Not Offer Rebates or Incentives to Consumers for Enrolling them in Coverage

CMS requires that you comply with state laws and regulations, including those in most states prohibiting offering rebates or incentives to enroll consumers in Marketplace coverage. To the extent states prohibit these practices, you may not advertise rebates or incentives, such as gift cards, free vacations, or cash rewards, for enrolling consumers in Marketplace coverage. In addition, under Marketplace rules, misrepresenting premium tax credits as “cash incentives” is prohibited and is considered inaccurate or misleading information about Marketplace insurance affordability programs.

### You Can be Subject to Enforcement Action if You Knowingly Enroll Consumers Based on Misleading Advertisements

CMS expects you to be familiar with the business practices of the companies you work with, including lead generators and marketing companies. You should review how the company handles compliance with the Affordable Care Act (ACA), the Health Insurance Portability and Accountability Act (HIPAA), Telephone Consumer Protection Act (TCPA), and other applicable federal statutes and regulations. You can be subject to enforcement action by CMS if you provide enrollment assistance to a Marketplace consumer

without acting to correct any misleading information relating to the Marketplace, QHPs offered on the Marketplace, premium tax credits, cost-sharing subsidies, or other insurance affordability programs that you know a third-party business you work with previously provided to the consumer.

### **You Will Face Enforcement Actions for Non-Compliant Practices**

CMS is taking actions to combat and remove non-compliant agents, brokers, and web-brokers from the Marketplace. CMS is also referring non-compliant agents, brokers, and web-brokers to other federal agencies and state Departments of Insurance (DOIs) for further investigation.

### **Reminders about Key Marketplace Rules that Impact Your Use of Third Parties**

Below are some important things to keep in mind when considering working with lead generators and marketing companies:

- You should ask about these companies' practices to ensure that consumer information is safeguarded. You should also review how the company handles compliance with the ACA, the HIPAA, the TCPA, and any other federal statutes and regulations.
- You must document and obtain consent of the consumer (or their authorized representative) compliant with federal regulations prior to providing any application or enrollment assistance to Marketplace consumers, including consumers received through leads.
- You must document that the consumer (or their authorized representative) reviewed and confirmed the accuracy of their eligibility application information prior to submission of the application to the Marketplace, including for consumers received through leads.
- You should avoid purchasing a lead that has been sold to multiple agents, brokers or web-

brokers. Consumer information sold to multiple entities may lead to consumer confusion and complaints.

- You should ask about these companies' practices for collecting leads, including the marketing tactics used and geographic areas and consumer segments they target. You should review creative materials and online advertisements from the company to ensure the materials align with your business practices, and do not mislead consumers.
- You should evaluate the results of the purchased leads to ensure they continue to provide valuable contacts with consumers seeking Marketplace coverage.

### **Be Aware of "Click-to-Enroll" Platforms or Lead Generators**

In cases where consumers initiate a relationship by providing information through an online form via a lead, website, social media, or marketing survey response, you must obtain and document consent from the consumer (or their authorized representative) that meets the applicable federal requirements. You can obtain and document this consent through an in-person conversation, phone call, text message, or email. However, simply [checking a box](#) in an online form would likely not be sufficient evidence of consumer consent.

You must document that the consumer (or their authorized representative) reviewed and confirmed the accuracy of the consumer's eligibility application information in a manner that meets applicable federal requirements before submitting their application to the Marketplace.

Practices that do not align with these guidelines are not allowed and are non-compliant. CMS is aware that some lead generators are engaging in "click-to-enroll" practices pursuant to which agents, brokers, and web-brokers may provide consumers with enrollment assistance in a manner that does not meet federal requirements for obtaining and documenting consumer consent or documenting

consumer review and confirmation of the accuracy of the eligibility application information. CMS is taking appropriate actions to address non-compliant practices by agents, brokers, and web-brokers.

## Your Role in Addressing Non-Compliant Marketing and Advertising Practices in the Marketplaces

### Problem

CMS is aware that some lead generators and marketing companies are using misleading and deceptive tactics to advertise to Marketplace consumers. Using or forming business relationships with these companies can put your ability to work in the Marketplaces at risk.

### How to Tell if You're Getting Leads from one of these Entities?

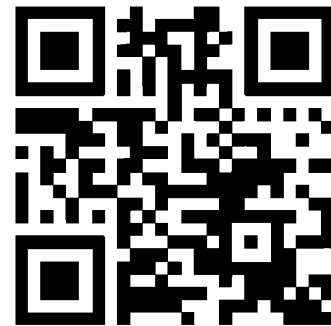
Look for these warning signs:

- Referred consumers are enrolled in Marketplace coverage already.
- Referred consumers ask for cash, discounts, or rebates when you speak with them.



### What Can You do to Help?

- Do not purchase leads from the lead generator.
- Report the lead generator or marketing company to applicable state DOIs and federal authorities, such as the Federal Trade Commission: [Reportfraud.ftc.gov](https://www.ftc.gov/report-fraud)



*The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance upon which it is based. This document summarizes current policy and operations as of the date it was published. Readers should refer to the applicable statutes, regulations, and other interpretive materials for complete and current information, including the regulations under [45 CFR 155.220](#).*

*In this document, the term "Marketplace" refers to the Federally-facilitated Marketplaces, or FFMs, including FFMs where states perform plan management functions and State-based Marketplaces on the Federal Platform, or SBM-FPs.*