

Publications

July 29, 2024 • Updates

CMS Changes Agent Requirements to Address Unauthorized Consumer Marketplace Enrollments

The Centers for Medicare and Medicaid Services (“CMS”) announced on July 19, 2024 that it is taking action to help stop unauthorized changes by agents and brokers to Federally Facilitated Marketplace (“FFM”) enrollments. CMS reported that in the first six months of 2024, it had received 134,368 complaints from consumers alleging they were enrolled in the FFM without their consent and also had received 73,884 complaints from consumers alleging that their insurance plans were changed without their consent. As a result of these consumer complaints, CMS indicated that it has issued 200 suspensions of agent or broker Marketplace Agreements due to suspicion of fraud or abusive conduct related to unauthorized enrollments or unauthorized plan switching.

The CMS statement also informed agents and brokers that unless they were already associated with a consumer’s FFM enrollment, they must take additional steps before they may update a consumer’s enrollment. Specifically, effective July 19, 2024, new agents or brokers are required to do one of three things:

1. Conduct a three-way call with a consumer and the Marketplace Call Center (agents or brokers may call the Agent Broker Partner line at 1-855-788-6275 and enter the National Producer Number (NPN);
2. Direct consumers to submit the change of agent or broker themselves through Healthcare.Gov; or
3. Submit a URL to consumers via an approved Classic Direct Enrollment (“DE”) or Enhanced Direct Enrollment (“EDE”) website with a consumer pathway to permit the consumer to set up an account and complete and validate the change themselves.

CMS clarified during a recent training session that this ***includes agents or brokers within the same production agency, even if the agency otherwise holds a consent under prior CMS Rules.*** CMS also added that for these types of claims, changes should not be made to an existing customer plan for open enrollment for the new plan year unless agents or brokers have been able to actually reach their customers and discuss the details

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of their updated plans.

CMS also recently reported it is concerned with social media and advertising that it believes is misleading, which includes references to “cash cards” and “grocery cards,” and which consumers confuse with their subsidy, which is only based on their household income amount and reduces the amount of their premium. CMS indicated that it is educating consumers about these misleading advertisements and that it is reminding agents that they cannot use any misleading advertisements. ***CMS added a comment that other federal agencies are looking into this matter as well (the use of misleading advertisements).***

Finally, CMS has implemented a change to the manner in which agents and brokers may log in to their CMS Enterprise Portal Accounts, including credentials to access approved DE or EDE websites. Agents and brokers must reauthenticate their access, using a method of two-factor authentication every 12 hours and must never share login credentials. All EDE partners must ensure that each agent or broker using their platform re-authenticate and that they are not logged in on different devices or using multiple sessions with the same credentials.

For More Information Regarding Our Insurance Producer Team

Polsinelli’s Insurance Producer Team assists insurance producers and insurance agencies with state insurance department and CMS enforcement actions and investigations, as well as assisting with other regulatory and compliance issues. Our Insurance Producer Team also licenses insurance producers and insurance agencies on both a multi-state and national basis and assists with contract drafting and negotiation. Our Insurance Producer Team includes attorneys who were formerly state insurance regulators, former in-house counsel at national insurance agencies and a former U.S. Attorney and Assistant U.S. Attorney.

To learn more about our Insurance Producer Team services, please contact a member of our Insurance Group or visit the Insurance Group section on our website.