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From: Center for Consumer Information & Insurance Oversight
Title: Health Insurance Marketplace Guidance
Subject: Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces

Consumers who access health insurance coverage through an Affordable Insurance Exchange, or Health Insurance Marketplace, are able to receive assistance in a variety of ways, including in-person, online, and through telephone support. Agents and brokers, including web-brokers, are among those who play a role in educating consumers about Marketplaces and insurance affordability programs, and in helping consumers receive eligibility determinations, compare qualified health plans (QHPs), and enroll in coverage. Agents and brokers also play a critical role in helping qualified employers and employees enroll in coverage through the Small Business Health Options Programs (SHOPs).

Section I of this document provides a high-level overview of the role of agents and brokers, including web-brokers, in the Federally-facilitated Marketplace (FFM).¹ In section II, we address common questions raised by states and other stakeholders on the role of agents and brokers in all Marketplaces – including State-based Marketplaces. In section III, we address questions specific to web-brokers. Finally, the Appendix includes process flows for the pathways that agents and brokers can use to assist consumers with eligibility applications and enrollment in QHPs through the FFM.

I. Role of Agents and Brokers in FFM

Where permitted under state law and after fulfilling the FFM registration requirements, agents and brokers are able to assist consumers in completing eligibility applications, and in comparing and enrolling in QHPs through the FFM.

During plan year 2015 open enrollment, agents and brokers in the individual market are able to assist FFM consumers in two ways: (a) via the direct enrollment pathway (also known as issuer-based enrollment), through which an agent or broker uses a QHP issuer's or web-broker's website to assist the consumer; and (b) via the Marketplace pathway, through which an agent or broker assists the consumer using the HealthCare.gov website. As explained in more detail below, both pathways transmit an agent's or broker's identifying information to the appropriate QHP issuer to facilitate the QHP issuer's payment to the agent or broker for each enrollment transaction. Either pathway allows an agent or broker to assist qualified individuals with annual enrollment. More information about each pathway is included below, as well as in the Appendix of this guidance.

¹ The FFM includes Marketplaces where the state is performing plan management functions. The FFM consists of the FFM for the individual market and the Federally-facilitated Small Business Health Options Program (FF-SHOP).

Beginning with 2015 plan year, the FF-SHOP Marketplace will have online application and enrollment capabilities and a portal for agents and brokers to assist their FF-SHOP Marketplace clients at HealthCare.gov. In the FF-SHOP, agents and brokers will have direct access, through the FF-SHOP Agent Broker Portal, to authorized employer application information, enrollment, and case management functions.² Agents and brokers working with the FF-SHOP Marketplace will directly access the FF-SHOP Marketplace system by visiting the Log-in page on HealthCare.gov and clicking the link to the SHOP Agent Broker Portal, or by accessing the following direct link: <https://www.healthcare.gov/marketplace/small-businesses/agent>. A process flow of the FF-SHOP Enrollment Pathway can be found in the Appendix.

A. Initial Registration with the FFM

CMS requires agents and brokers to complete certain registration activities in order to participate in the FFM. The initial registration process for agents and brokers in the FFM is comprised of two parts:

- Part I: Completion of training, testing, and Agreements on the Medicare Learning Network® (MLN) at <https://marketplace.medicarelearningnetworklms.com>
- Part II: Creation of an FFM user account and completion of identity proofing on the CMS Enterprise Portal at <https://portal.cms.gov/>

All agents and brokers who wish to participate in the FFM are required to complete Parts I and II as part of initial registration with the FFM. Table 1 summarizes the initial registration activities for agents and brokers participating in the FFM.

² Each employer must create its own HealthCare.gov account, and after logging in to its account, the employer can provide an authorization to an agent or broker to assist it and its qualified employees with the QHP enrollment process through the FFM. An agent or broker cannot gain access to the employer's account and its respective employees' application information until such authorization is provided.

Table 1. Summary of Initial Registration Activities for Agents and Brokers in the FFM

Initial FFM Registration Activities				
	PART I			PART II
Agents and brokers participating in the...	Create an Account on MLN	Complete the FFM Training	Execute FFM Agreement(s)	Create an FFM User Account and Complete Identity Proofing on the CMS Enterprise Portal
FFM for the Individual Market and FF-SHOP	Required	Required: Basics, P&S, IM Recommended: SHOP	Required: GA, P&S IM, P&S SHOP	Required
FFM for the Individual Market	Required	Required: Basics, P&S, IM	Required: GA, P&S IM	Required
FF-SHOP	Required	Recommended: Basics, P&S, SHOP	Required: P&S SHOP	Required
TRAINING & AGREEMENTS				
	Basics	Affordable Care Act and Marketplace Basics Course & Exam		
	P&S	Privacy and Security Standards Course & Exam		
	IM	Individual Marketplace Course & Exam		
	SHOP	SHOP Marketplace Course & Exam		
	GA	Agent Broker General Agreement for the FFM Individual Market		
	P&S IM	Agreement between Agent or Broker and CMS for the FFM Individual Market		
	P&S SHOP	Agreement between Agents and Brokers and CMS for the FF-SHOP		

Once an agent or broker has completed these steps, his or her FFM user ID becomes active. This user ID is the agent or broker's unique identifier in the FFM, and it, along with the agent's or broker's National Producer Number (NPN), is essential for the agent or broker to receive compensation from a QHP issuer.

B. Annual Registration with the FFM

Once an agent or broker has completed the initial registration process with the FFM, he or she needs to complete certain registration activities annually in order to continue his or her participation in the FFM. CMS deactivates the agent/broker credential associated with the FFM user ID for any agents or brokers who do not complete the annual registration activities by the expiration date on the FFM Agreement(s). The agent or broker is not permitted to participate in the FFM until these activities are complete. Table 2 summarizes the annual registration activities for agents and brokers participating in the FFM.

Table 2. Summary of Annual Registration Activities for Agents and Brokers in the FFM

Annual FFM Registration Activities				
	PART I			PART II
Agents and brokers renewing their participation in the...	Log in to MLN using existing MLN User ID	Complete the FFM Training	Execute FFM Agreement(s)	Create an FFM User Account and Complete Identity Proofing on the CMS Enterprise Portal
FFM for the Individual Market and FF-SHOP	Required	Required: Basics, P&S, IM Recommended: SHOP	Required: GA, P&S IM, P&S SHOP	No activity required
FFM for the Individual Market	Required	Required: Basics, P&S, IM	Required: GA, P&S IM	No activity required
FF-SHOP	Required	Recommended: Basics, P&S, SHOP	Required: P&S SHOP	Required (Note: Agents and brokers who did not complete this requirement as part of registration for the 2014 plan year must do so as part of registration for the 2015 plan year.)
TRAINING & AGREEMENTS				
Basics	Affordable Care Act and Marketplace Basics Course & Exam			
P&S	Privacy and Security Standards Course & Exam			
IM	Individual Marketplace Course & Exam			
SHOP	SHOP Marketplace Course & Exam			
GA	Agent Broker General Agreement for the FFM Individual Market			
P&S IM	Agreement between Agent or Broker and CMS for the FFM Individual Market			
P&S SHOP	Agreement between Agents and Brokers and CMS for the FF-SHOP			

C. Issuer-based Pathway for Assisting Consumers (i.e., “Direct Enrollment” Pathway)

QHP issuers have authority over their affiliated agents and brokers via the appointment process. QHP issuers must check all of their appointed agents’ and brokers’ state licensure statuses and verify that they fulfilled the FFM registration requirements before allowing them to access the issuer’s tools and assist consumers via the issuer-based pathway. Agents and brokers must provide copies of their FFM training curriculum certificates to each QHP issuer and web-broker with which they are affiliated. Agents and brokers may also need to provide their FFM user IDs to the QHP issuers and/or web-brokers with which they are affiliated.

An agent or broker initiates the issuer-based pathway by logging on to the issuer’s or web-broker’s website. Once the consumer determines that he or she would like to apply for coverage through the FFM, the agent or broker is securely redirected from the QHP issuer’s or web-broker’s website to HealthCare.gov to complete the eligibility application with the consumer, using the agent or broker’s FFM user ID. The agent or broker is then prompted to enter the password associated with his or her FFM user account. As part of the discussion with the consumer, CMS expects the agent or broker to inform the consumer that the agent or broker will provide information for certain QHPs with which he or she has a business relationship, but that

the consumer could choose to directly access HealthCare.gov, where additional QHP information and choices are available.

Once the agent or broker has completed the application with the consumer and receives the consumer's eligibility determination from the FFM, the agent or broker is securely redirected back to the QHP issuer's or web-broker's website to assist the consumer with QHP comparison and enrollment. The agent's or broker's identifying information is included in the official FFM enrollment record that is sent to the QHP issuer electronically.

D. Marketplace Pathway for Assisting Consumers

In the Marketplace pathway (or "side by side" pathway), agents and brokers can help qualified individuals obtain eligibility determinations for insurance affordability programs, as well as with QHP comparison and enrollment.

Using this pathway, the consumer logs directly into his or her Marketplace account. The agent or broker may assist the consumer in creating a consumer account if needed, but the consumer or a legally authorized representative of the consumer must create his or her own Marketplace username and password and should not share this information with third parties, including agents and brokers.

After the consumer has logged in to his or her consumer account, the agent or broker then works with the consumer to complete the eligibility application. If using the Classic FFM application, the consumer should enter the agent's or broker's FFM user ID and NPN when prompted to indicate that the agent or broker provided assistance. If the consumer is using the Marketplace 2.0 application, the consumer should check the "Another person is helping me" box to enter the agent's or broker's NPN without the FFM User ID.

After the consumer receives an eligibility determination, the HealthCare.gov website displays all QHP choices available. The agent or broker can assist the consumer in comparing QHPs and submitting the consumer's enrollment.

Additionally, CMS has approved web-brokers that meet all applicable requirements to provide an alternate channel to help consumers select QHPs online. Please see section III for more information about web-brokers in the FFM for the individual market.

II. Questions and Answers

The following questions and answers provide additional detail and clarification on the role of agents and brokers in all Marketplaces, including State-based Marketplaces.

- 1. Can a State-based Marketplace establish a commission schedule or pay commissions? How does the FFM address compensation?³*

Nothing in the Exchange final rule prohibits a state from establishing laws, regulations and standards for issuers' compensation of agents or brokers, including for enrolling

³ Compensation includes commissions, fees, or other incentives as established in the relevant agreement between an issuer and an agent or broker.

individuals through that state's Marketplace. Accordingly, State-based Marketplaces may establish parameters for compensating agents and brokers, by direct compensation from the Marketplace, or by having issuers pay commissions. If issuers are paying commissions to agents or brokers, we encourage State-based Marketplaces to consider providing information to issuers to facilitate these transactions (e.g., by providing the agent or broker's NPN or state license number).

The FFM does not establish a commission schedule and does not pay commissions directly to agents or brokers. Commissions are a contractual matter between the QHP issuer and the agent or broker. However, we note that the Department of Health & Human Services (HHS) has established a QHP certification standard for issuers seeking certification in the FFM that requires QHP issuers to compensate agents and brokers equally for selling a plan inside or outside the FFM.⁴ As described in Section I of this document, the FFM transmits agent and broker identifying information to issuers to facilitate payment.⁵

2. *May a state participating in a State Partnership Marketplace modify processes and infrastructure for agents and brokers, including for training and registration?*

No. For the FFM, including State Partnership Marketplaces, CMS is responsible for registering agents and brokers and conducting Marketplace-related training, which includes executing Marketplace Agreement(s).

Upon completion of the registration and training, agents and brokers obtain an active FFM user ID.

States continue to license and regulate agents and brokers, including those who assist consumers in the FFM. States also continue to establish licensure and continuing education requirements for agents and brokers, and may require additional state-specific training as a condition of licensure. However, the FFM agent and broker training does not include state-specific training requirements.

3. *When assisting qualified individuals enrolling through a Marketplace, must an agent or broker display all QHPs? Must an agent or broker be able to enroll individuals in all QHPs?*

With the exception of web-brokers, agents and brokers are not required to display all QHPs or to facilitate enrollment into all QHPs (see 45 C.F.R. 155.220).⁶ State-based Marketplaces have discretion to implement policies that would require agents and brokers to display all QHPs. For example, State-based Marketplaces may establish additional requirements for QHP issuers under state law or as part of the State-based Marketplace QHP certification process, consistent with the Exchange final rule. State-based Marketplaces may also provide information to consumers on agent and broker relationships with issuers, including issuer appointment and compensation arrangements.

⁴ HHS Notice of Benefit and Payment Parameters (78 F.R. 15410 – 15541). Available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-04902.pdf>

⁵ Agents and brokers who are acting as Navigators may not receive compensation from issuers.

⁶ As noted in the response to question 11 in this document, web-brokers must display all individual market QHPs available to a consumer accessing the Marketplace.

In the FFM, CMS does not require agents and brokers to facilitate enrollment into all available QHPs.⁷ However, if the agent or broker is using the Marketplace pathway to assist consumers, all QHP choices are displayed. All agents and brokers must comply with applicable state laws, regulations, and Marketplace requirements, including standards related to relationships or appointments with issuers.⁸

4. *What happens if an individual working with an agent or broker is determined to be eligible for Medicaid or the Children's Health Insurance Program (CHIP)?*

We expect that agents and brokers who are approached by individuals and families looking for assistance with Marketplace enrollment will work with all consumers, including individuals who are ultimately determined to be eligible for Medicaid or CHIP. Any individual who is working with a registered agent or broker and is determined by a Marketplace to be eligible for Medicaid or CHIP receives an appropriate notice of assessment or determination of Medicaid or CHIP eligibility from the Marketplace. In such cases, we expect that the agent or broker would refer the individual to the appropriate state agency. The FFM agent and broker training provides information on where to direct Medicaid or CHIP-eligible individuals.

5. *How do agents and brokers work with qualified employers in the Federally-facilitated Small Business Health Options Program (FF-SHOP)?*

Agents and brokers who assist qualified small employers in enrolling through the FF-SHOP use the FF-SHOP Enrollment Pathway. For the FF-SHOP Enrollment Pathway, agents and brokers may directly access the FF-SHOP Marketplace system by logging into the SHOP Agent Broker Portal. Once an authorization has been established with an employer, the agent or broker can help the employer complete the eligibility application, select plans, and create enrollment offers for employees. The FF-SHOP application will include the authorized agent's or broker's FFM user ID and NPN. This information, along with the agent's or broker's organization name, contact information, and taxpayer identification number (TIN), is transmitted to the QHP issuer selected by the employer at the time of group enrollment, and whenever any enrollment data items change.

6. *To what extent can agents and brokers continue communicating with consumers after they have been enrolled in a QHP through a Marketplace?*

Agents and brokers (including web-brokers) may continue to communicate with qualified individuals after they have enrolled in a QHP, to the extent that such communications comply with applicable laws and regulations. Such communication also must comply with the privacy and security standards adopted by the Marketplace pursuant to 45 C.F.R. 155.260, which limit how an agent or broker may use any information gained as part of providing assistance and services to a qualified individual. With respect to the FF-SHOP, CMS expects agents and brokers to be in continual contact with employers both before and

⁷ Agents and brokers who are acting as Navigators are required to facilitate enrollment into all available QHPs.

⁸ CMS has also issued Minimum Acceptable Risk Standards for Exchanges (MARS-E) requirements. The MARS-E baseline was established in a collaboration with the Internal Revenue Service and other key stakeholders, and is based on the National Institute of Standards and Technology Special Publication 800-53 (NIST SP 800-53) and IRS Publication 107.

after enrollment, as they serve as a primary contact for customer service issues for employers.

III. Additional Guidance for Web-brokers

CMS uses the term “web-broker” to describe an individual agent or broker, group of agents and brokers, or company that provides a non-FFM website to assist consumers in the QHP selection and enrollment process as described in 45 C.F.R. 155.220(c)(3).⁹ Web-brokers provide another option for consumers seeking to enroll in QHPs through the FFM for the individual market, alongside traditional agents and brokers who assist consumers with enrollment through the Marketplaces. Pursuant to 45 C.F.R. 155.220(i), beginning January 1, 2015, SHOPS may permit agents and brokers, in states that permit such activity under state law, to use a website to provide assistance to qualified employers and facilitate enrollment of qualified employees in SHOP QHPs, subject to the requirements of 45 C.F.R. 155.220(c)(3), if the SHOP has the technical capability to make this possible. CMS does not currently anticipate that the FF-SHOP will make this functionality available in 2015.¹⁰

CMS recognizes that many consumers currently purchase insurance online from web-brokers. This guidance answers common questions about the role of web-brokers in Marketplaces.

7. *Can State-based Marketplaces work with web-brokers?*

Yes. In addition to operating its own Marketplace website, a State-based Marketplace can work with web-brokers to provide an alternate plan selection option for consumers. States may allow web-brokers to use their websites to provide consumer information for comparing and selecting QHPs, subject to the standards specified in 45 C.F.R. 155.220(c) and (i).

State-based Marketplaces must continue to perform eligibility determination functions as set forth in subpart D of part 155 of the Exchange final rule and transmit enrollment information to QHP issuers for all individuals enrolling through the Marketplace – including those who enroll through the Marketplace with the assistance of web-brokers – as described in 45 C.F.R. 155.400.

8. *May FFM consumers enroll in a QHP through the website of a web-broker?*

Yes, the FFM offers the web-broker option for the FFM. To the extent permitted by a state, CMS works with web-brokers that meet all applicable requirements to provide an alternate option to help consumers select QHPs online. Web-brokers provide an additional channel for the FFM to reach consumers and to help them enroll in individual market QHPs. CMS has developed the capability to support Direct Enrollment integration between web-brokers’ websites and HealthCare.gov using secure redirect and application programming interface (API) mechanisms. The Direct Enrollment pathway enables a qualified individual to initiate his or her shopping experience on the web-broker’s website, connect securely to

⁹ Appendix B of the Privacy and Security Agreement for the FFM for the individual market, FF- SHOP, and web-brokers

¹⁰ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015; Final Rule, 79 FR 13744, 13792 (March 11, 2014) (45 C.F.R. Parts 144, 147, 153, et al.)

HealthCare.gov to complete the eligibility application and determination process, and return securely to the web-broker's site to compare plans and enroll in a QHP.

9. *How do web-brokers working with the FFM obtain consumer and QHP data?*

In the FFM, the API facilitates the secure transmission of key eligibility and enrollment information between the Marketplace and the web-broker.

CMS makes available to web-brokers QHP data, including premium information, provided by issuers to CMS. Web-brokers also receive consumer-specific eligibility information via a Fetch Eligibility web service from the Marketplace Data Services Hub. These data include contact information for the application filer and the individual or family's eligibility determination, including information on the maximum premium tax credit and cost-sharing reductions for which the individual or family is eligible.

After the consumer selects a QHP and the premium tax credit amount has been determined, the web-broker transmits the individual's or family's QHP selection, including the applicable premium, the advance payment amount that will be applied to the premium, and the agent or broker identifier, back to the Marketplace via a Submit Enrollment web service.

The Marketplace, as the system of record for all eligibility and enrollment transactions, conveys all enrollment information to appropriate QHP issuers, including information identifying the web-broker in order to facilitate compensation by the issuer. Individuals determined eligible for Medicaid and CHIP are referred by the Marketplace to the appropriate state agency.

Given the sensitive nature of personally identifiable information, web-broker websites are required to comply with all existing and future privacy and security standards established by HHS pursuant to 45 C.F.R. 155.260, related to the use and handling of personally identifiable information obtained during the enrollment process, regardless of whether the enrollment is completed. These security standards also require authentication of consumers to prevent unauthorized access to sensitive information.

10. *Under 45 C.F.R. 155.220(c)(3)(iv), web-brokers must display all QHPs available through a Marketplace. Has the FFM established standards for appointments with issuers?*

The FFM has not established standards for appointments with QHP issuers. However, web-brokers must display all individual market QHPs available through a Marketplace, irrespective of compensation or appointment arrangements. Web-brokers must comply with all applicable state law, including state law related to appointments, as a condition of enrolling individuals through the Marketplace. If a consumer intends to enroll in a QHP for which the web-broker does not hold an appointment, the web-broker should direct the consumer to HealthCare.gov.

11. *What QHP data must web-brokers display?*

Web-brokers must disclose and display all QHP information provided by the FFM or directly by QHP issuers, as required under 45 C.F.R. 155.220(c)(3)(iv). Similar to last year, CMS is providing a limited subset of 2015 QHP data for all individual market QHPs offered through the FFM (“2015 QHP Limited File”). The 2015 QHP Limited File contains data for web-brokers to list all QHPs that are available to consumers on the FFM through HealthCare.gov, including QHPs offered in states performing plan management functions. This data will include:

- QHP issuer details: QHP issuer name, address and contact information
- QHP details: QHP name, type of plan, level of coverage, and the state in which the QHP is offered.

The 2015 QHP Limited File will NOT contain QHP rate, benefit, cost-sharing, network, payment uniform resource locator (URL), or service area information.

In the current health insurance market, web-broker entities obtain additional information on health plan products that are displayed on their websites directly from those health insurance issuers with whom they have a contractual relationship. Web-brokers work with these issuers to ensure that the data displayed on their websites is accurate. CMS seeks to continue to leverage such practices, and would encourage web-brokers to work directly with QHP issuers with whom the web-broker has a contractual relationship to obtain additional QHP details.

Web-brokers are responsible for the accuracy of QHP information displayed on their websites. They must prominently display a standardized disclaimer provided by CMS on their websites. This standardized disclaimer informs consumers that the website is not the official Federally-facilitated Marketplace website, and provides a link to HealthCare.gov. To the extent that not all information required under 45 C.F.R. 155.205(b)(1) is displayed on the web-broker’s website for a QHP, web-brokers must also prominently display a standardized disclaimer provided by CMS stating that information required under 45 C.F.R. 155.205(b)(1) for the QHP is available on the FFM, and provide a link to HealthCare.gov.

12. *In the FFM, are web-brokers able to modify the display of QHPs presented on their websites? What consumer protections must web-brokers keep in mind?*

In the FFM, CMS expects that the sort order of or sorting algorithm for QHPs will not steer a consumer to a particular QHP based upon financial consideration to the web-broker. CMS also expects that a web-broker discloses to the consumer the specific source and nature of web-broker compensation and that the compensation does not affect the display of QHP options or the premiums charged. CMS expects that consumers are not charged a separate transaction or service fee for shopping or enrolling in a QHP through a web-broker’s services or website.

Web-brokers also may offer additional tools or decision support that the consumer can use to navigate or refine the display of QHPs. In addition, CMS expects web-brokers to display

QHPs separately from non-QHPs, and offer a QHP plan selection experience that is free from advertisements or information for other health insurance-related products and sponsored links advertising health insurance-related products (e.g., an advertisement for a QHP issuer). Once a consumer has completed QHP plan selection and enrollment, the web-broker may offer the consumer the ability to search for additional products or services if desired. CMS expects that such offers are made in a section of the web-broker's website that is separate from the QHP display.

A web-broker must adhere to the website disclosure and display standards specified in 45 C.F.R 155.205(b)(1) and (c). In particular, we expect a web-broker to make available quality information on each QHP offered through a Marketplace easily accessible to consumers, including consumers with disabilities and limited English proficiency.

CMS also expects the web-broker to prominently display language on its website explaining to consumers that the web-broker has entered into an agreement with CMS and has agreed to conform to website display and security standards specified in 45 C.F.R. 155.220(c)(3) and 155.260.

Such language must also explain that the web-broker's website is distinct from HealthCare.gov, and that consumers may opt to use HealthCare.gov at any time.

IV. Appendix: Process Flows for FFM Enrollments

Exhibit 1. Agent/Broker Direct Enrollment Pathway (Issuer-based Pathway)¹¹

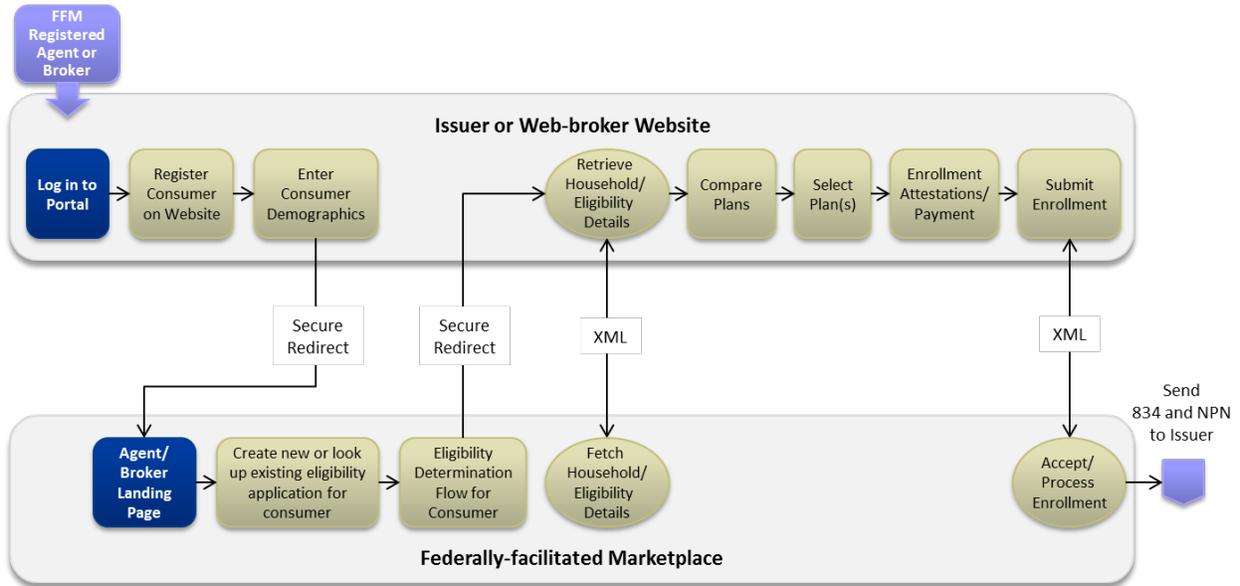
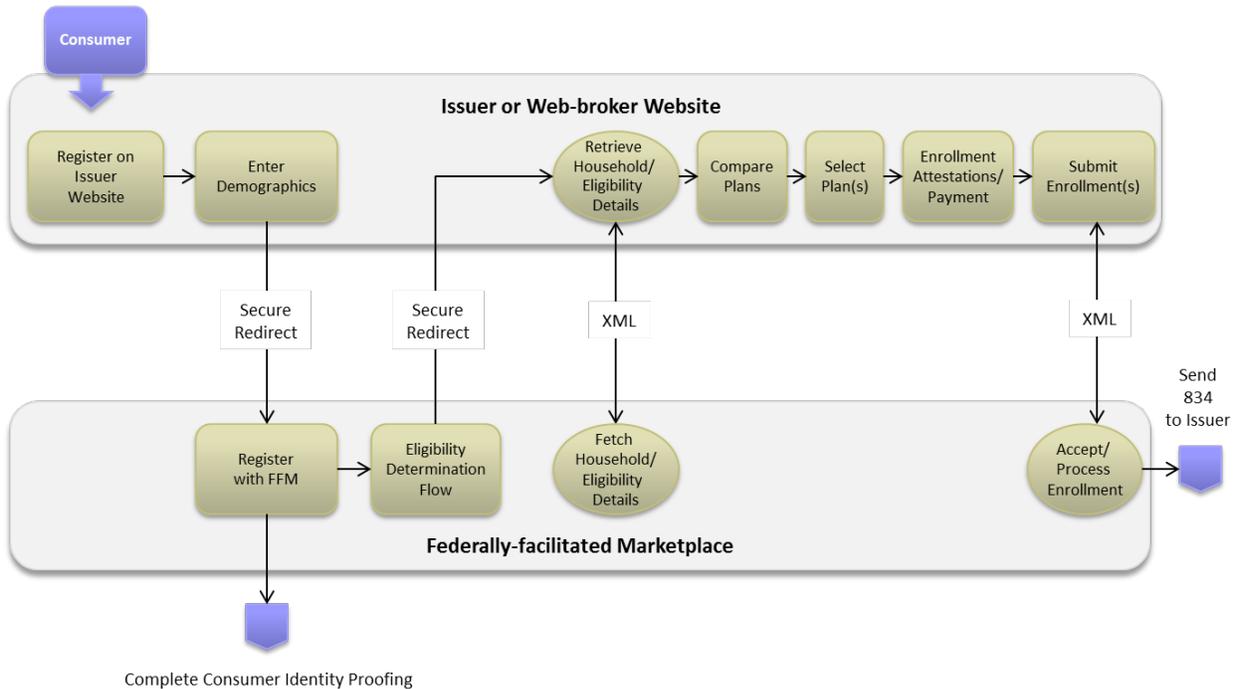


Exhibit 2. Consumer Direct Enrollment Pathway



¹¹ The “834” in these diagrams refers to the files in which Marketplaces and QHP issuers exchange enrollment transactions, using the Accredited Standards Committee (ASC) X12 834 Benefit Enrollment and Maintenance Version 5010.

Exhibit 3. Marketplace Pathway

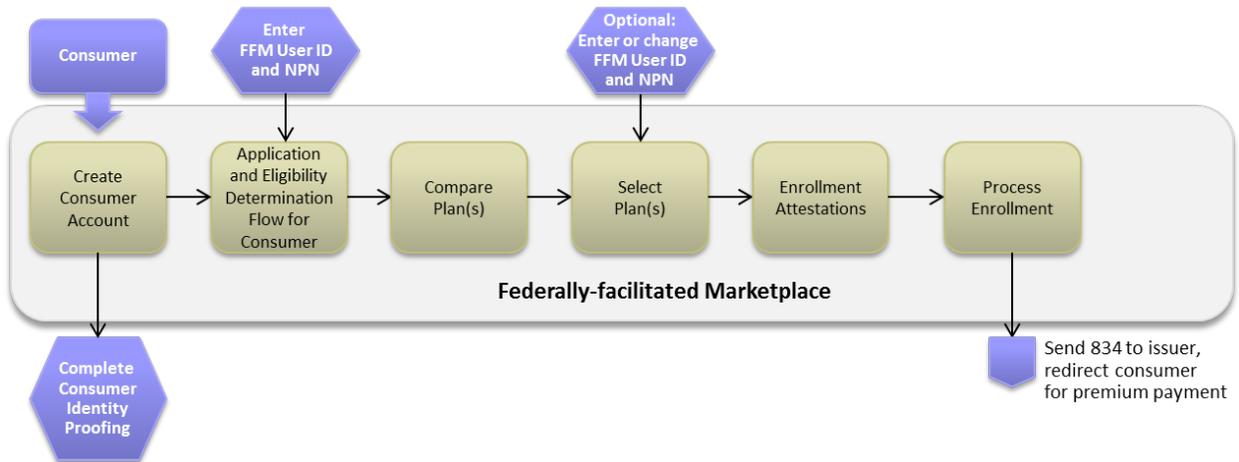


Exhibit 4. FF-SHOP Enrollment Pathway

