DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

Date: October 19, 2026

From: Peter Nelson, Deputy Administrator and Director, Center for Consumer Information & Insurance Oversight

Subject: **Best Practices for Issuers for Plan Year 2027 Agent and Broker Oversight**

Purpose

Qualified Health Plan (QHP) issuers are essential in CMS' effort to aggressively crush fraud and eliminate improper enrollments and improper plan switches on the Federally-facilitated Exchange[1] (FFE). Agents and Brokers (ABs) that issuers appoint play a central role in the enrollment process. Since issuers pay ABs for enrollments, they play an important role in encouraging compliance with Exchange standards and deterring AB misconduct. Under 45 CFR § 156.340, issuers are responsible for ensuring their downstream and delegated entities, including agents and brokers, comply with applicable Exchange standards and requirements.

Unfortunately, many issuers are not adequately monitoring the actions of, and taking action against noncompliant ABs on a timely basis, including by suspending commission payments and terminating appointed agents and brokers, when appropriate. This document describes best practices for FFE issuers to take more proactive, focused actions in two specific areas.

First, recognizing QHPs issuers hold control over key enrollment records, CMS recommends QHP issuers on the FFE regularly evaluate their enrollment records for patterns that may indicate AB noncompliance or misconduct, including by investigating appointed ABs with disproportionately high rates of open Data Matching Issues (DMIs). Especially during Open Enrollment, QHP issuers need to frequently review, and initiate timely and appropriate action against, ABs associated with disproportionally high rates of enrollments with open DMIs, including by suspending commission payments and terminating appointments for those agents and brokers when appropriate, and should regularly report those results to CMS. For issuers that do so, CMS will offer a standardized reporting mechanism that QHP issuers on the FFE can use to report these results.

Second, consistent with analogous, and successful Medicare Advantage (MA) and Part D plan practices, CMS recommends QHP issuers on the FFE direct their appointed ABs to record their calls with consumers starting this Open Enrollment and continuing for Plan Year 2027. It is CMS's expectation that ABs are, as a best practice, recording Marketplace consumer enrollment calls, including interactions for plan comparisons, enrollment, and marketing and sales interactions that may result in enrollment. Issuers with existing call recording programs are encouraged to review those programs against the standards described in these best practices and make any conforming adjustments.

[1] Unless indicated otherwise, the Federally-facilitated Exchange includes Federally-facilitated Exchange (FFE) and State-based Exchanges on the Federal Platform (SBE-FPs).

Issuer Evaluation of Agent or Broker Assisted Enrollment Data

Background

In accordance with statute and regulation, when the FFE is unable to complete all necessary eligibility verifications electronically, consumers receive a data matching issue (DMI) and are required to submit documentation for review in order to maintain advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSRs). The existence of an open DMI on its own does not indicate AB noncompliance.

However, CMS has observed a consistent pattern of elevated rates of DMI generation among some AB-assisted Marketplace enrollments, compared to enrollments submitted without AB assistance. The higher prevalence of DMIs among some AB-assisted enrollments may indicate that the associated enrollments were unauthorized or potentially deliberately submitted with incomplete or inaccurate information on behalf of consumers who would otherwise be ineligible for coverage or financial assistance.

This concern is especially significant for Plan Year 2027. Congress passed, and President Trump signed, the Working Families Tax Cut legislation (P.L. 119-21), which changes the law to require verification of eligibility before a consumer is eligible for the premium tax credit. However, this requirement does not take effect until Plan Year 2028, leaving Plan Year 2027 subject to a weaker verification process that some ABs may exploit. The recommendations in this document are intended to mitigate that exposure.

CMS believes that QHP issuers' obligations to review and take appropriate action against ABs with disproportionally high rates of enrollments with open DMIs will help ensure that AB-assisted enrollments are legitimate (e.g. not fraudulent enrollments) and include correct consumer information. Altogether these actions will result in ABs helping their clients complete the verification process so enrollees can retain coverage.

Best Practices

CMS recommends QHP issuers review and take appropriate action against appointed ABs who are associated with high rates of enrollments associated with open DMIs. This review may include the QHP issuer evaluating patterns that may indicate noncompliance or misconduct or contacting the AB or consumer for more information or to ensure the consumer is aware of the enrollment. Following review, CMS recommends QHP issuers take appropriate action (e.g., terminate their contracts with the AB or suspend commissions when appropriate), and report to CMS on a regular basis on the status and outcome of these reviews.

To assist in this effort, starting with the 2027 Open Enrollment period, CMS will provide QHP issuers with a new recurring file that outlines the list of Plan Year 2027 policies associated with open DMIs and the associated AB National Producer Number (NPN) so issuers can more easily monitor and investigate specific AB activity.

Accordingly, beginning November 1, 2026, with coverage for Plan Year 2027, CMS recommends QHP issuers take the following actions:

- Promptly and regularly – generally each month – evaluate their enrollment records for patterns that may indicate AB noncompliance or misconduct. These evaluations should include reviewing records on open DMIs provided by CMS.

- Review appointed ABs associated with patterns that suggest noncompliance or misconduct, including any AB with disproportionately high rates of enrollments that CMS records identify as being associated with open DMIs.
- Initiate timely and appropriate action, generally at least within one month, against ABs found to be noncompliant with CMS requirements.
- Promptly review enrollments associated with any AB found to be significantly noncompliant, investigate whether the enrollments are appropriate, and if suspected to be unauthorized, report those policies to CMS through the issuer-identified Unauthorized Enrollment process.
- Report monthly to CMS on the status of those AB investigations.

Recording of Consumer Calls by Agents or Brokers

Background

CMS programs have successfully implemented and utilized call recording requirements to combat fraud, waste, and abuse. For example, Medicare successfully implemented call recording requirements on Medicare Advantage (MA) and Part D plan ABs to monitor enrollment processes. As of 2024, these MA and Part D requirements apply to all marketing and sales calls that third party marketing organizations, including agents and brokers, make with beneficiaries (see 42 CFR 422.2274(g)(2)(ii) and 423.2274(g)(2)(ii). MA plans must provide these recordings to CMS upon request for casework complaints or investigations. These recordings are used to protect Medicare beneficiaries from misleading or high-pressure sales tactics, ensure ABs provide accurate plan benefit information, and inform audits.

The Marketplace can build on this model. Similar to MA and Part D issuers, QHP issuers on the FFE play a significant role in driving compliance of their appointed ABs, and call recording by Marketplace ABs will align practices with MA, as well as strengthen existing oversight and reduce fraud, waste, and abuse.

Recent developments make this the right moment to act. Discussions with QHP issuers have highlighted the need for a consistent approach to consumer call recordings issuer to issuer. At the same time, the rapid advancement of Super Intelligence (SI, also known as artificial intelligence or AI) tools – including Machine Learning (ML), Large Language Models (LLMs), Generative AI (GenAI), and Natural Language Processing (NLP) – has significantly increased the risk of noncompliance and misconduct. Call recordings are a timely and viable mechanism to address these growing threats.

Best Practices

For Plan Year 2027, CMS recommends that QHP issuers on the FFE have their appointed ABs record calls with new and existing Marketplace consumers to capture interactions involving plan comparison and selection, enrollment, sales and marketing.

CMS recommends that QHP issuers adopt these best practices for all appointed ABs that enrolled at least 100 Plan Year 2026 policies with a parent organization by November 1, 2026, and appointed ABs that enrolled fewer than 100 Plan Year 2026 policies with a parent organization by March 1, 2027, or once the AB enrolls 100 or more Plan Year 2027 policies, whichever is earlier.

CMS recommends QHP issuers to take the following actions:

- Direct appointed ABs to maintain their recordings in a form and manner that they can be provided to the issuer or CMS upon request.
- Use these recordings in the issuer's monitoring and oversight processes of their appointed ABs to ensure compliance by downstream and delegated entities.

- Direct appointed ABs to maintain the call recording data in accordance with privacy and security standards established at 45 C.F.R. §§ 155.260, 164.103, and 164.512(a), and ensure that recordings must comply with applicable Federal and State consent laws.

These best practices reinforce the goals of the requirements under 45 C.F.R. § 155.220(j)(2)(ii) and (iii) that require ABs and web-brokers to use HHS-approved and HHS-created consumer consent forms to meet the eligibility application review and consumer consent documentation requirements for enrollments for plan years beginning on or after January 1, 2028. As these requirements under 45 C.F.R. § 155.220(j)(2)(ii) and (iii) will not be in effect until Plan Year 2028, the best practices described in this document achieve similar integrity and consumer protection goals. In addition, recording of consumer calls is also a mechanism that ABs can use today to demonstrate compliance with the existing and currently applicable requirements under 45 C.F.R. § 155.220(j)(2)(ii) and (iii) that ABs and web-brokers: (1) document that the consumer reviewed and confirmed to be accurate the information in their Exchange eligibility application prior to submission to the FFE, and (2) obtain and document the receipt of the consumer's consent.