

ACA FINAL RULE

Documentation and Review Window Requirements

All agents, brokers, and web-brokers are required to abide by all statutory requirements when assisting consumers on the FFMs. These requirements will take effect beginning June 18, 2023.

Beginning June 18th, 2023, agents, brokers, and web-brokers will need to meet the new consent requirements listed in 45 C.F.R. 155.220(j)(2)(iii) and all agents, brokers and web-brokers will be required to document and maintain consumer consent. 155.220(j)(2)(iii)(B) requires this documentation include:

- A description of the scope, purpose, and duration of the consent provided by the consumer or the consumer's 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 to whom consent was granted (Note that this could include additional names of agents or brokers if the consenter authorized multiple agents or brokers within the same organization);
- A process through which the consumer or their authorized representative may rescind the consent.

This documentation must be maintained for a minimum of 10 years.

Beginning on June 18th, 2023, CMS will also require agents, brokers, and web-brokers to meet the new requirements under 45 C.F.R. 155.220(j)(2)(ii) to document a consumer or their authorized representative reviewed their application and attested to the information being accurate. CMS does not require all parties on an application review their information and confirm it is accurate or provide consent. While it is a best practice to ensure all parties on an application do these things, it is not a realistic expectation in all scenarios. Therefore, CMS allows either a consumer or a consumer's authorized representative designated in compliance with § 155.227 to take the action that produces a record that can be maintained by the assisting agent, broker, or web-broker attesting they have reviewed their application information and it is accurate.

The documentation created by the consumer or the consumer's authorized representative must contain the minimum requirements listed in 155.220(j) to be compliant. 155.220(j)(2)(ii)(A)(1) requires the documentation must include:

- The date the 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

This documentation must be maintained for a minimum of 10 years.

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The Centers for Medicare & Medicaid (CMS) does not prescribe a standard format or process for obtaining the documentation of consent or application review or for maintaining these records, provided the requirements listed in 45 C.F.R. § 155.220(j)(2)(ii) and (iii) are met.

Additionally, you may obtain consent or confirmation of application review verbally (such as over the phone), electronically (such as via email), or in person. Thus, you have flexibility to determine how you will meet the documentation requirement. While CMS does not require a form, or specify that a form must be signed, you can use the draft model consent form that CMS has developed, available by downloading the ZIP file found at:

<https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995>

This form is optional, but if it aligns with state law in your state, it may provide a template for meeting the consent documentation requirement. You can also use a Broker of Record (BOR) form from an issuer or state Department of Insurance (DOI) or the applicable state regulatory agency to satisfy this requirement. If you are assisting verbally (such as over the phone), you may obtain consent and confirmation of application review by reading a script that contains, at a minimum, the required elements summarized above, and must maintain a record demonstrating that the requirements were obtained. As CMS does not prescribe a particular method, any recording method that contains the elements required is acceptable.

For the most up-to-date information on the roles and requirements of agents and brokers in the Marketplace, visit <https://www.cms.gov/ccio/programs-and-initiatives/health-insurance-marketplaces/a-b-resources>