



## **ADVISORY MEMORANDUM**

**TO:** North Carolina producers, CMS approved web-brokers, and Licensed Marketplace insurers.

**FROM:** Agent Services Division, Consumer Services Division, Market Regulation Division

**DATE:** November 4, 2024

**RE:** Prohibition on the Use of the NPN Override Feature for Marketplace Plan Enrollment or Changes for North Carolina Consumers

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The purpose of this advisory memorandum is to remind producers<sup>1</sup>, CMS approved web-brokers<sup>2</sup> and Marketplace insurers that using the “NPN override” feature available on some Enhanced Direct Enrollment (“EDE”) platforms violates North Carolina insurance laws and is not permitted under any circumstance.

Over the last year, the Department received a number of complaints from North Carolina consumers who were enrolled in the Affordable Care Act Health Insurance Marketplace (“Marketplace”) plans or who had their Marketplace plans<sup>3</sup> changed without their knowledge and consent.<sup>4</sup> In the course of investigating those complaints, the Department has learned that some insurance agencies are designating one or more agents to obtain and maintain the necessary appointments with Marketplace insurers while also employing numerous agents who are

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<sup>1</sup> The terms “producer” and “agent” as used in this Bulletin are synonymous.

<sup>2</sup> “Web-broker” or “web-based entity” (WBE) are terms CMS uses to describe an individual agent or broker, group of agents or brokers, or company that hosts a non-Exchange website to assist consumers with direct enrollment in Marketplace insurance plans offered through the Exchanges as described in 45 CFR § 155.220(c)(3) or § 155.221.

<sup>3</sup> Also referred to as “QHPs” or qualified health plans.

<sup>4</sup> Although this Bulletin does not specifically address the issue of unauthorized Marketplace plan enrollments or changes, it should be noted that the Commissioner will seek to take disciplinary action against the license of any agency and/or agent found to have enrolled a North Carolina consumer in a Marketplace plan or to have made changes to a consumer’s Marketplace plan without the consumer’s knowledge and consent or found to have aided and abetted any agent to do so pursuant to the applicable subsections of N.C.G.S. § 58-33-46(a).

unappointed with Marketplace insurers to solicit, complete, and submit applications for enrollment in Marketplace plans and requests for plan changes to Marketplace insurers using the National Producer Numbers (“NPNs”) of those designated appointed agents. This practice, referred to throughout the Marketplace industry as “NPN overrides,” is facilitated by web-brokers which have developed features on their enrollment pathways enabling agents to submit applications to Marketplace insurers using the NPNs of appointed agents.”<sup>5</sup> Through its investigations, the Department has also learned that some Marketplace insurers have knowingly accepted Marketplace applications and requests for plan changes that are completed and submitted by unappointed agents using the NPNs of their appointed agents. The practice of NPN overrides violates North Carolina requirements that a person must be both licensed *and* appointed to act as an agent for an insurer.

Under both 45 C.F.R. §§ 155.220(e) and 155.220(j)(2)(v) agents are required to comply with North Carolina insurance laws when completing and submitting applications for Marketplace enrollment or requests for changes to Marketplace plans.<sup>6</sup>

Each agent who assists a North Carolina consumer to complete and submit an application for enrollment in a Marketplace plan or to complete and submit a Marketplace plan change request to a Marketplace insurer must be properly licensed as an agent. N.C. Gen. Stat. § 58-33-5 states that “[a] person shall not sell, solicit or negotiate insurance in this State for any kind of insurance unless the person is licensed for [that] line of authority in accordance with this Article.”<sup>7</sup> “Sell,” “solicit,” and “negotiate” are defined in our statutes as follows:

“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

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<sup>5</sup> At least one web-broker has established a “referral program” which similarly enables unappointed agents to complete and submit applications for Marketplace plans and changes to those plans and to refer those applications or plan changes to the web-broker, which in turn submits those applications or plan change requests to the Marketplace insurer using the NPN of a duly licensed and appointed agent designated and employed by the web-broker.

<sup>6</sup> See 45 C.F.R. § 155.220(e) (providing that: “An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with applicable State law relating to agents and brokers . . .”) and (j)(2)(v) (stating that an agent, broker or web-broker that assists with or facilitates [enrollment through the Marketplace] must “[c]omply with all applicable Federal and State laws and regulations.”).

<sup>7</sup> N.C.G.S. § 58-33-5 (2023); see also N.C.G.S. § 58-33-26.

“Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

“Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract or insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.<sup>8</sup>

North Carolina law also clarifies that the terms sell, solicit, and negotiate do “not mean a referral to a licensed insurance producer that does not include a discussion of specific insurance policy terms and conditions.”<sup>9</sup>

Additionally, North Carolina requires insurance company appointments. N.C. Gen. Stat. § 58-33-40(a) provides that “[e]xcept as provided in subsection (b), no individual who holds a valid insurance producer license issued by the Commissioner shall either directly or for an insurance agency solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed.”<sup>10</sup> Therefore, each agent who assists a North Carolina consumer to complete and submit an application for enrollment in a Marketplace plan or to complete and submit a Marketplace plan change request to a Marketplace insurer must also have an appointment with that insurer.

North Carolina insurance laws prohibit insurance companies from paying an unlicensed person (and an unlicensed person from accepting) a commission or service fee for the sale, solicitation, and negotiation of insurance.<sup>11</sup> They also prohibit producers who are not *both* duly licensed and appointed from accepting any consideration for acting as an agent for an insurance company.<sup>12</sup>

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<sup>8</sup> See N.C.G.S. §§ 58-33-10(15)(defining “negotiate”), (17)(defining “sell”), & (18)(defining “solicit”).

<sup>9</sup> *Id.*

<sup>10</sup> N.C.G.S. § 58-33-40(a).

<sup>11</sup> See N.C.G.S. § 58-33-82(a) (“A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this Article and is not so licensed.”) and N.C.G.S. § 58-33-82(b) (“A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this Article and is not so licensed.”).

<sup>12</sup> See N.C.G.S. § 58-33-82(d) (stating that: “Except as provided in subsection (e) of this section, only insurance producers who are duly licensed with appropriate company appointments, licensed limited lines producers, or licensed limited representatives may directly accept any

The Department is also aware that NPN overrides have also led to the appointed agent receiving commission payments on applications completed by unappointed agent. Pursuant to N.C. Gen. Stat. § 58-33-82(e) commissions can only be assigned or directed to:

- (1) To a business entity by a person who is an owner, shareholder, member, partner, director, employee, or agent of that business entity.
- (2) To a producer or limited representative, in connection with renewals of insurance business originally sold by or through the licensed person or for other deferred commissions.
- (3) In connection with the indirect receipt of commissions in circumstances in which a license is not required under G.S. 58-33-26(n).<sup>13</sup>

Appointed agents receiving commissions for applications they did not assist with through the NPN override process violates the provisions of N.C. Gen. Stat. § 58-33-82(e).

Thus, each agent who assists a North Carolina consumer to complete and submit an application for enrollment in a Marketplace plan or to complete and submit a Marketplace plan change request to a Marketplace insurer must be both duly licensed as an agent and appointed with the Marketplace insurer in North Carolina. Insurance agencies and agents are responsible for ensuring that they comply with licensing and appointment laws and Marketplace insurers are responsible for ensuring that each agent assisting North Carolina consumers to complete and submit applications for enrollment in Marketplace plans and plan change requests is both duly licensed and appointed with the Marketplace insurer in North Carolina.

Agencies and agents who submit insurance applications using the NPN of another agent, and designated appointed agents who allow those agents to use their NPN to submit Marketplace applications and plan change requests do so in violation of N.C. Gen. Stat. § 58-33-105, which prohibits any person<sup>14</sup> from knowingly and willfully making “any false or fraudulent statement or representation in or with reference to an application for insurance” or any statement “for the purpose of

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commission, fee, or other valuable consideration for the sale, solicitation, or negotiation of insurance.”)

<sup>13</sup> N.C.G.S. § 58-33-82(e).

<sup>14</sup> N.C.G.S. § 58-33-10(16) states that “Person” means “an individual or business entity, but does not include a county, city, or other political subdivision of the State of North Carolina.”

obtaining a fee, commission, money, or benefit from any insurance company engaged in the business of insurance in this state.”<sup>15</sup>

Insurance agencies, agents, web-brokers, and insurers are subject to regulation under North Carolina’s unfair trade practices laws. N.C. Gen. Stat. § 58-63-10 provides: “No person<sup>16</sup> shall engage in this State in any trade practice which is defined in this Article or determined pursuant to this Article to be an unfair method of competition or an unfair or deceptive act in the business of insurance.” The practice of NPN overrides is not expressly defined as an unfair method of competition or as unfair and deceptive trade practice in the business of insurance. However, the Department considers any agency, agent, web-broker, or insurer engaging in or allowing or requiring others to engage in the practice of NPN overrides to potentially be engaging in an “unfair method of competition or unfair and deceptive act or practice in the business of insurance” in violation of N.C. Gen. Stat. § 58-63-10.

CMS has also made it clear that agents cannot submit a Marketplace application with and NPN that is not their own in states that require appointments, like North Carolina. In a July 3, 2024 FAQ (republished September 30, 2024)<sup>17</sup> which addresses the question “Can agents and brokers submit a Marketplace application with an NPN that is not their own”, CMS answers the question, in pertinent part: “Yes. In some cases, a Marketplace-registered agent, broker, or web-broker may submit a Marketplace application with an NPN that is not their own. However, agents, brokers, and web-brokers must ensure that they comply with Marketplace requirements, including the standards of conduct under 45 CFR § 155.220(j), Marketplace agreements and applicable state laws and regulations, when they do so.” But regarding states that require appointments, it further states:

The following is a non-exhaustive list of situations where an agent, broker or web-broker **may NOT** submit an NPN that is not their own when assisting with or facilitating a Marketplace consumer enrollment or submission of an eligibility application.

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<sup>15</sup> N.C.G.S. § 58-33-105 provides that agents who violate this statute “shall be guilty of a Class 1 misdemeanor.” The license of any agency or agent may be suspended or revoked for violating any North Carolina insurance law or any insurance law of another state or for “using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, dishonesty, untrustworthiness, or financial irresponsibility in the conduct of business” in North Carolina or elsewhere pursuant to N.C.G.S. § 58-33-46(a)(2) and (8), respectively.

<sup>16</sup> The term “person” is defined as meaning “any individual, corporation ... engaged in the business of insurance under this Chapter. . .” N.C.G.S. § 58-63-5(2).

<sup>17</sup> [Can agents and brokers submit a Marketplace application with a National Producer Number \(NPN\) that is not their own?](#)

- In a state that requires appointments, the agent, broker or web-broker actively assisting the consumer with the application, plan selection and/or enrollment is not appointed with the issuer of the plan in which the consumer enrolls.
  - Agents, brokers and web-brokers may not use a referral program from another agent, broker, agency or web-broker as a means to violate state appointment rules.
  - Agents, brokers and web-brokers may refer consumers to, or receive referrals from, other entities as permitted by state laws and regulations. The agent, broker or web-broker who receives the referral must be the one to actively assist the client with the Marketplace application and/or enrollment and must be appointed with the issuer.
  - Agents, brokers and web-brokers should contact the relevant state authority for information on the licensing and appointment requirements in the states in which they assist consumers.

Because North Carolina insurance law prohibits NPN overrides, it is never allowable for agents and brokers to submit applications or make any plan changes for North Carolina consumers utilizing the NPN of another agent.

### **OTHER POSSIBLE VIOLATIONS**

Producers, CMS approved web-brokers, and licensed Marketplace insurers are also advised that in addition to violating the North Carolina insurance laws discussed above, NPN overrides may also be in violation of the following additional statutes:

- Agencies and agents who submit insurance applications using the NPN of another agent, and appointed agents who allow those agents to use their NPN to submit Marketplace applications and plan change requests do so in violation of N.C. Gen. Stat. § 58-33-105, which prohibits any person from knowingly and willfully making “any false or fraudulent statement or representation in or with reference to an application for insurance” or any statement “for the purpose of obtaining a fee, commission, money, or benefit from any insurance company engaged in the business of insurance in this state.” Such actions may constitute a Class 1 Misdemeanor.
- Engaging in or allowing or requiring others to engage in the practice of NPN overrides may be determined to be an unfair method of competition or unfair and deceptive act or practice in the business of insurance, in violation of N.C. Gen. Stat. § 58-63-10.

Insurance agencies and agents are responsible for ensuring that they comply with licensing and appointment laws and Marketplace insurers<sup>18</sup> are responsible for ensuring that each agent assisting North Carolina consumers to complete and submit applications for enrollment in Marketplace plans and plan change requests is both duly licensed and appointed with the Marketplace insurer in North Carolina. Any licensed insurance agency, agent, web-broker, or Marketplace insurer found to have violated the foregoing North Carolina insurance laws, to have aided and abetted violations of those laws, to have used fraudulent or dishonest practices, or to have engaged in unfair methods of competition or unfair and deceptive acts or practices in the business of insurance in the manner described herein or through any other means may be subject to disciplinary action by the Department, including the imposition of fines and/or license suspension or revocation as authorized by N.C. Gen. Stat. §§ 58-2-70(b) & (c), 58-3-100(a)(1)<sup>19</sup> and 58-33-46(a)(2), (7)<sup>20</sup> & (8).

Questions about the advisory memorandum can be directed to Angela Hatchell, Senior Deputy Commissioner of NCDOT's Consumer Services Division, at (919) 814-9847 or [Angela.Hatchell@ncdoi.gov](mailto:Angela.Hatchell@ncdoi.gov).

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<sup>18</sup> Using a CMS web application called SEED (System of Exchange Enrollment Data), Marketplace insurers can readily identify the unappointed agents who submit these applications. SEED is a web application that provides issuers and third-party administrators (TPAs) with a secure way to access real-time FFE data. SEED supports the FFE EDA and casework processes.

<sup>19</sup> N.C.G.S. § 58-3-100(a)(1) states that: "(a) The Commissioner may, after notice and opportunity for a hearing, revoke, suspend, or restrict the license of any insurer if: (1) The insurer fails or refuses to comply with any law, order, or rule applicable to the insurer."

<sup>20</sup> N.C.G.S. § 58-33-46(a)(7) provides that the license of any agency or agent may be suspended or revoked for "Having admitted or been found to have committed any insurance unfair trade practice or fraud."