



Corning Tower, Suite 2580
Albany, NY 12237

**INDIVIDUAL AND SMALL BUSINESS MARKETPLACE
AGENT / BROKER AGREEMENT**

Background

NY State of Health, The Official Health Plan Marketplace (“NY State of Health” or “Marketplace”) allows consumers to compare health insurance options and to apply for and enroll in coverage through a web-based application process. Individuals and families may determine their eligibility for Qualified Health Plans (“QHPs”) certified by the Marketplace, and for insurance affordability programs including premium tax credits, cost-sharing reductions, Medicaid, Child Health Plus and the Essential Plan; select a plan and enroll in coverage.

The Marketplace is the only place where small employers can verify their Marketplace eligibility and take advantage of the federal Small Business Health Care Tax Credit. Small employers may enroll directly through health plan issuers and brokers certified by the Marketplace and still receive the tax credit, if otherwise eligible.

To maximize access to health insurance coverage, the NY State of Health desires to certify certain licensed brokers and agents (“Producers”) to:

- (1) assist eligible employers in purchasing QHPs directly from health plan issuers certified by the Marketplace; and
- (2) assist individuals and families in applying for coverage through the Individual Marketplace;

provided that the Producer has satisfied the requirements set forth in this Agreement and a signed copy of this Agreement has been filed with the NY State of Health.

Producers who have been certified by the Marketplace will at no time be agents or employees of the NY State of Health or the State of New York and shall receive no remuneration from the NY State of Health or the State of New York.



Agreement

In consideration of the terms outlined below and the promises and obligations of each party to the other, the **NY STATE OF HEALTH OF THE NEW YORK STATE DEPARTMENT OF HEALTH (DOH)** and the **undersigned AGENT OR BROKER** (hereinafter collectively referred to as "Producer"), hereby acknowledge and agree as follows:

For the purpose of this document, Brokers and Agents will be collectively referred to as "Producers".

Producers may assist individuals with applying for coverage through the NY State of Health Marketplace. Producers may also assist employers with purchasing coverage certified by the Marketplace. Producers must meet all following requirements:

1. Producer is duly licensed and in good standing with the New York State Department of Financial Services (DFS).
2. Prior to and as a condition of providing any services to consumers with respect to applying for coverage through NY State of Health, Producer must be approved and certified by NY State of Health to provide such services and to access the Agent / Broker portal on the NY State of Health website. Producers must be re-certified every other year. Certification requires a Producer to:
 - A) Provide NY State of Health with proof of licensure from DFS;
 - B) Complete a training program regarding the Individual and Small Business Marketplace that has been approved by NY State of Health (the "NY State of Health Certification Training Program") and;
 - i. Confirm the successful completion of NY State of Health Certification Training Program;
 - ii. Execute the Rules of Behavior for the NY State of Health System; and
 - iii. Receive written notification from NY State of Health that the Producer is certified to assist eligible New Yorkers with applying for and enrolling in programs available through NY State of Health.
3. Producer shall not solicit or assist individuals, employers and/or their employees with respect to enrollment in NY State of Health programs or receive remuneration from a health plan issuer (Issuer) for these services unless they are certified. Producers are responsible for procuring Producer Agreements and/or Certificates of Appointment from Issuers participating on the NY State of Health. Additionally, Producers must secure Broker of Record (BOR) letters from individuals and employers to be compensated by Issuers for the Producer's services in connection with enrollment in a NY State of Health program, if any. This agreement does not provide the undersigned Producer with the authority to represent or be compensated by an Issuer, or to represent or be compensated by an



individual, employer or employee seeking to enroll in an insurance program through the NY State of Health. The NY State of Health will not monitor, collect, or pay any monies related to Producer services.

4. Producer shall not charge any fee to individuals for assistance in applying for coverage through NY State of Health.
5. Producer's access to and use of the Agent / Broker portal on NY State of Health's website is conditioned upon compliance with the Rules of Behavior for the NY State of Health System.
6. Producer must accurately and completely record and submit to the NY State of Health all information that is required to process eligibility determinations for individual consumers and enrollment in coverage. Producer must comply with the policies and procedures of NY State of Health and the individual program requirements, including by providing all required documentation within the required timeframes. Non-compliance with these policies may result in disciplinary action including termination of this broker agreement.
7. Producer must maintain adequate books and records in accordance with applicable law and standards within the health care insurance industry.
8. The Producer shall preserve and retain all records relating to Producer's performance under this Agreement in readily accessible form during the term of this Agreement and for a period of ten (10) years thereafter.
9. Producer agrees to audit by the DOH on reasonable and customary terms, subject to applicable State and federal law regarding the confidentiality of and release of confidential Protected Health Information of Enrollees.
10. Producer shall comply with NY State of Health's Privacy and Security standards, including all incident and breach reporting requirements, which are consistent with the provisions of 45 CFR § 155.260 and the privacy and security standards of the Health Insurance Portability and Accountability Act ("HIPAA").
11. Producer acknowledges and agrees that at no time will Producer be acting as an agent or employee of NY State of Health or the State of New York and shall receive no remuneration from NY State of Health or the State of New York.
12. Producer shall not collect premiums and shall not bind coverage.
13. If Producer's license or certification is suspended, revoked, or not renewed by New York State, their authorization under this Agreement will be terminated automatically.



14. Producer shall comply with New York State law related to agents and brokers, including applicable State law regarding licensing, confidentiality, and conflicts of interest.
15. Producer acknowledges and agrees that they will perform all services with respect to the application for and enrollment in coverage through NY State of Health in accordance with the highest ethical standards relating to Producer services.
16. Any advertising material distributed by Producer regarding NY State of Health shall use the logo and branding designated by the DOH in referring to NY State of Health. Producer shall seek approval in advance of using such materials and provide copies of advertising material and a description of its advertising material to the DOH upon request.
17. Producer may not distribute any advertisement, circular, or promotional literature that is inaccurate or misleading, and shall comply with the requirements of Title 11, Parts 215.1 *et seq* of the New York Code of Rules and Regulations (Regulation 34) regarding Advertisements of Accident and Health Insurance.
18. Producer is prohibited from door-to-door solicitation or distribution of material and may not engage in “cold calling” inquiries or solicitation.
19. Producer may not use marketing practices that will have the effect of discouraging the enrollment of Individuals or employees with significant health needs.
20. Producer acknowledges and agrees that their name and contact information may be listed on NY State of Health website, together with certain descriptive information including languages spoken, and Issuers represented.
21. If NY State of Health provides a Producer with a referral to a particular individual or small business interested in enrolling in an insurance program through NY State of Health, the Producer shall contact the individual or business promptly, without unreasonable delay.
22. Producer shall comply with all provisions of New York State and federal law regarding advertising material and marketing practices.
23. Producer may not offer incentives of any kind to potential applicants to enroll in a program through NY State of Health.
24. Producer agrees to provide DOH, upon request, with information relating to Producer’s arrangement(s) with NY State of Health certified Issuers.



25. Producer will indemnify and hold harmless New York State and its employees, agents, and independent contractors, from any claims, liability, judgments, damages, or costs asserted or awarded against, or incurred because of, any act, error, or omission of Producer.
26. No waiver of any breach of this Agreement shall be deemed a waiver of any subsequent breach of the same type, or a breach of any other provision of this Agreement.
27. This Agreement and the Certification is specific to the undersigned Producer and may not be assigned.
28. Producer understands and agrees that the term of this Agreement is two (2) years. At the expiration of this term, a Producer may reapply to NY State of Health for Recertification.
29. NY State of Health may terminate this Agreement at any time for failure of the Producer to comply with the terms of this Agreement.
30. Any notices provided under this Agreement shall be in writing and directed to (1) the Agent/Broker at the mailing address or email address that the undersigned has provided to NY State of Health and (2) NY State of Health, as follows:

NY State of Health
NYS Department of Health
Corning Tower Suite 2580
Albany, NY 12237
Attn.: Small Business Marketplace Director