Recommended Consumer Protections[1] for Web-based Agents and Brokers offering Exchange Coverage

Many states and the Federal government contemplate allowing web-based agents and brokers (hereinafter "web-based brokers") to list and sell exchange-offered health plans. Federal exchange rules require that such web-based brokers enter into an agreement with the Exchange. Per Federal rules, the internet website of an agent or broker must meet certain standards for display. However, these rules are general[2] and provide leeway for manipulative displays by web-based brokers that might steer consumers towards high-commission plans, emphasize ancillary products over exchange products, or function as vehicles to collect information about consumers for resale or downstream marketing.

In order to avoid the potential pitfalls described on page 4, when web-based brokers offer Exchange plans policymakers should:

Require Consistency Between Web-based Broker Displays and the Exchange

- Require web-based brokers to display all qualified health plan (QHP) information and data provided by the Exchange, *in a manner consistent with the display at the Exchange*, such that a consumer is able to access all of the same information as at the Exchange.
- Require prior approval before web-based brokers use any display *features* or *tools* that vary from those available on the Exchange website.
- Require that web-based broker sites prominently display all consumer choice tools that the Exchange website makes available, such as the required premium and cost-sharing calculator or the ability to filter by whether a particular physician is in a plan's network. In particular, it must be made clear to consumers which plans will provide them the most affordability assistance. Consumers must be able to view the premiums and cost-sharing amounts for each plan based on what their *individual* costs would be (after their premium and cost-sharing assistance is accounted for).
- Require that web-based broker sites use a default sort order for QHP choices that is the same default sort order from the Exchange website and allow consumers to easily alter the sort order by the same options available at the Exchange. When the consumer hides or filters out choices, there must be a clear indicator that not all choices are currently displayed.
- Prohibit web-based brokers from utilizing confusing, look-alike data elements such as "customer reviews," "quality ratings" or "best seller" designations that are less robust than or contradictory to similar items found on the Exchange website (such as the results from user experience surveys, standardized quality ratings and other data that Exchanges are required by statute to provide).

---

[1] To discuss these recommendations or the potential consumer pitfalls described on page 4, please contact Lynn Quincy, Senior Health Policy Analyst, at Consumers Union: 202-462-6262 or lquincy@consumer.org.

[2] The federal display standards only apply to brokers conducting enrollment "through the Exchange" – enrollment that makes the consumer eligible for subsidies. If a broker is merely using its web site for plan selection or is assisting people with applying for premium tax credits/cost-sharing reductions, it is not clear what standards would apply.

9/13/2012

Avoid Conflicts of Interest and Promote Transparency

- Prohibit web-based brokers from including sponsored links.
- Prohibit web-based brokers from offering non-Exchange plans alongside qualified health plans offered through an exchange, so as to streamline consumer shopping. If non-Exchange QHP products are permitted to be sold, they must be clearly labeled as such.
- Prevent web-based brokers from marketing non-QHP ancillary products (like adult dental) that are not also offered on the Exchange, so as not to interfere with the consumers' examination of exchange QHP information. If such marketing is permitted, it is critical to clarify that the federal prohibition regarding use or disclosure of consumers' information for non-Exchange purposes (Section 155.260(a)) means that information collected from a consumer by a web-based broker's exchange lookalike site cannot be used to market these ancillary products. This should be spelled out in exchange agreements with web-based brokers.
- Prohibit web-based brokers from using proprietary data or methods to sort health plans or to create new measures describing health plans. A clear, plain language, complete and non-proprietary explanation for all aspects of the display's "choice architecture" must be readily available.
- Hold web-based brokers accountable for the accuracy and timeliness of information provided at its site, ensuring, for example, that a provider search tool is accurate, updated regularly and that any limitations are clear to consumers.
- Require that web-based broker websites have a clear and prominent statement on every page that indicates to consumers that they may return to the Exchange's website at any time to complete enrollment.
- Require web-based brokers to display up-to-date information regarding total compensation that they receive from QHP issuers and/or the Exchange directly, as well as from non-QHP issuers, so that consumers understand how web brokers are paid for enrollment.[3]
- Display a "Good Housekeeping"-type seal of approval on exchange-sanctioned web-based broker sites, indicating that they have entered into a formal agreement with the Exchange and are adhering to its requirements. Ideally, this logo will be standard design across the country, better enabling consumers to recognize it and learn its function. In addition, official state or federally facilitated Exchange websites should have easily identifiable logos and trademarks or other protections to distinguish them from both exchange-sanctioned, web-based brokers and unregistered web entities. The fact that the brokers' web sites are private and not the same as the Exchange should be conveyed clearly and prominently to the consumer.
- Undertake active oversight of web-based brokers offering exchange products to avoid any problems (described below) with steering that might occur, given that no set of rules will anticipate all the ways in which web-based brokers might engage in steering. This oversight should include data collection and analysis to compare plan enrollment for individuals who use web-based brokers to enroll in QHPs versus plan enrollment for individuals who enroll directly through the Exchange to detect any patterns of steering by web-based brokers.

Protect Consumer Privacy and Security

---

[3] This memo from the Connecticut Office of Legislative Research lists state policies with respect to broker compensation disclosure. http://www.cga.ct.gov/2007/rpt/2007-R-0709.htm

9/13/2012

- Require web-based brokers to provide consumers with the ability to anonymously explore or search the website to learn more about the health coverage programs and plans available to them, including insurance affordability programs. Consumers should be able to explore the website without being required or prompted to share information beyond the minimum information needed to generate a premium: ZIP code, age (or age band) and tobacco use (if permitted by state law) for each family member seeking coverage.

- Prior to requesting personal information, require that web-based brokers inform consumers how individually identifiable information is collected, used and disclosed; for how long it is retained; and whether and how they can exercise choice over such collection, use, and disclosure. Consumers should be informed when they have the option to provide personal information directly to the Exchange. Further, no information regarding such browsers or explorers (including her/his internet provider address) should be collected or saved (a.k.a. "cached") without the person affirmatively consenting to begin the enrollment process.

- Require that web-based brokers enter into uniform, detailed agreements with exchanges as to the nature, timing and use of personal information collected about the consumer. For example, "help me shop" tools cannot be fronts for collecting information about health status that could be used for improper steering. Like other exchange vendors, web-based brokers must adhere to the same or more stringent privacy and confidentiality requirements imposed upon the Exchange (See section 155.265(b)).

Problems we are seeking to avoid:

Selective Display of Plans

Exhibit 1 is the first screen of results from a web-based broker (www.Joppel.com) selling Medicare plans. Written in the smallest type is the fact that not all available plans are included in the "results." In order to see all plans, the user would have to:

- Notice the information indicating not all plans are in results.
- Click on "Modify Your Results" (not as intuitive as "See All Plans")
- On the resulting page, scroll down to find the check box "Include plans that are not contracted with Joppel" – the least prominent item on the page.
- Avoid selecting the prominent buttons on the top of the page ("Go Back" and "Close") – choosing either of these would not save the user's selection.
- Instead, scroll down some more to find the "I want to SAVE and view my plans now" button.

Approaches such as this one are not sufficient to meet the requirement that all plans be displayed. Confusing navigation and other design elements are structured so that selected plans continue to be prominently displayed – even though no information has yet been provided to suggest these are the best ones for the consumer.

Exhibit 1: Joppel screen shot after age and ZIP code provided

Accessed 8/14/2012 using: ZIP code 35201, female and birth date 11/13/1937.

When the same ZIP Code and age criteria are entered into <u>Ehealthinsurance</u>, the results include just four Medicare Advantage plans. Near the top of the screen, the page says "4 plans found." If the user scrolls to the bottom, there is a message saying "We offer more Medicare health plans by phone." Again, the fact that there are more plan options is not sufficiently prominent. Finding the missing options requires a disproportionate amount of work for user (see discussion of "tolls" below).

Hiding Rationale for Plan Display Order

The plans in **Exhibit 1** are designated as #1, #2 and #3 – why? It is not clear. Yet the fact that a plan is listed first will have a profound effect on the selection made by the consumer.[4] Perhaps companies pay for this placement. This is important information for consumers. Similarly, when Ehealthinsurance provides its default display of health plans (both private and Medicare), there is no way to ascertain the criteria used to sort the plans. However, in both cases the display seems to imply that the top plans are "better."

Sponsored Links

Even if labeled "sponsored," links that look like search results will be selected by consumers (see yellow box in **Exhibit 2**).[5] This has the result of directing consumers to a limited set of plans that is inconsistent with the goals of the Exchange.

Exhibit 2: E-health screen shot of private plan search results
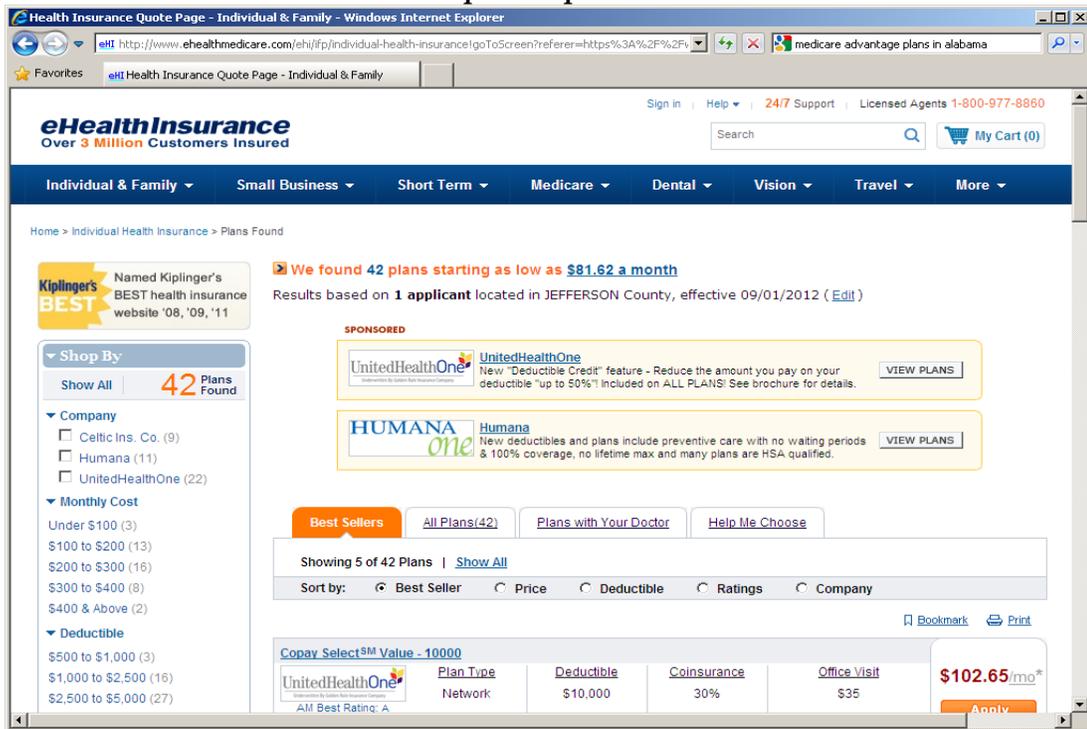
Accessed 8/14/2012 using: ZIP code 35201, female, birth date 11/13/1965, no tobacco use, not a college student.

---

[4] Kleimann Communications Group, Inc and Consumers Union. *Choice Architecture: Design Decisions that Affect Consumers Health Plan Selections*, July 2012.
[5] Ibid.

Difficulty Accessing Important Plan Information

Ehealthinsurance's display of private health coverage results provides prominent display of key plan features like premium, deductible, coinsurance and co-payments (**Exhibit 3**). You can even sort by premium or deductible. But it is less convenient to compare plans based on the maximum out-of-pocket – a key aspect of the overall protection provided. To see this plan attribute (if the consumer even realizes that they should take this into consideration), the consumer must select a few plans to compare and then scroll down.

Exhibit 3: E-health screen shot of private plan search results – after scrolling down

Accessed 8/14/2012 using: ZIP code 35201, female, birth date 11/13/1965, no tobacco use, not a college student.

Alternatively, the consumer can click on "Plan Details" from the results page but the subsequent webpage actually includes no new details but an opportunity to buy high profit ancillary products (**Exhibit 4**). Only if the consumer *again* selects "Show All Plan Details" is this information provided.

Exhibit 4: E-health screen shot of private plan search results – after selecting "Plan Details"

Accessed 8/14/2012 using: ZIP code 35201, female, birth date 11/13/1965, no tobacco use, not a college student.

Inappropriate Marketing of Ancillary Products

As **Exhibit 4** illustrates, the "plan details" link is misleading because it leads the consumer to high profit add-on products instead of the information the consumer requested.[6] The consumer must get past these marketing requests in order to reach more detailed information about the plan that is critical to making an informed decision.

Collection of Fees or Non-critical Personal Information

Consumers should not be charged a fee for receiving services that they can get for free in the Exchange. Similarly, they should not have to give up their contact information in order to browse the options available to them. In **Exhibit 5**, after providing the information necessary to generate an eHealthinsurance Medicare Advantage price quote (ZIP code, gender and age), the user is taken to an intermediary screen that strongly steers the consumer towards calling the brokerage or at least providing contact information. Only if you read the smallest print very carefully it is clear that the user can just click on "get quotes" without providing any other information. The design of the page obscures this fact. Requiring (or appearing to require) contact information from shoppers in the early stage of

---

[6] Ibid

their shopping is a form of "toll" and should not be allowed. Recall that in an earlier example, a user could only view *all* Medicare Advantage plans by calling the brokerage.

Exhibit 5: E-health screen shot after age and ZIP code provided in Medicare Search
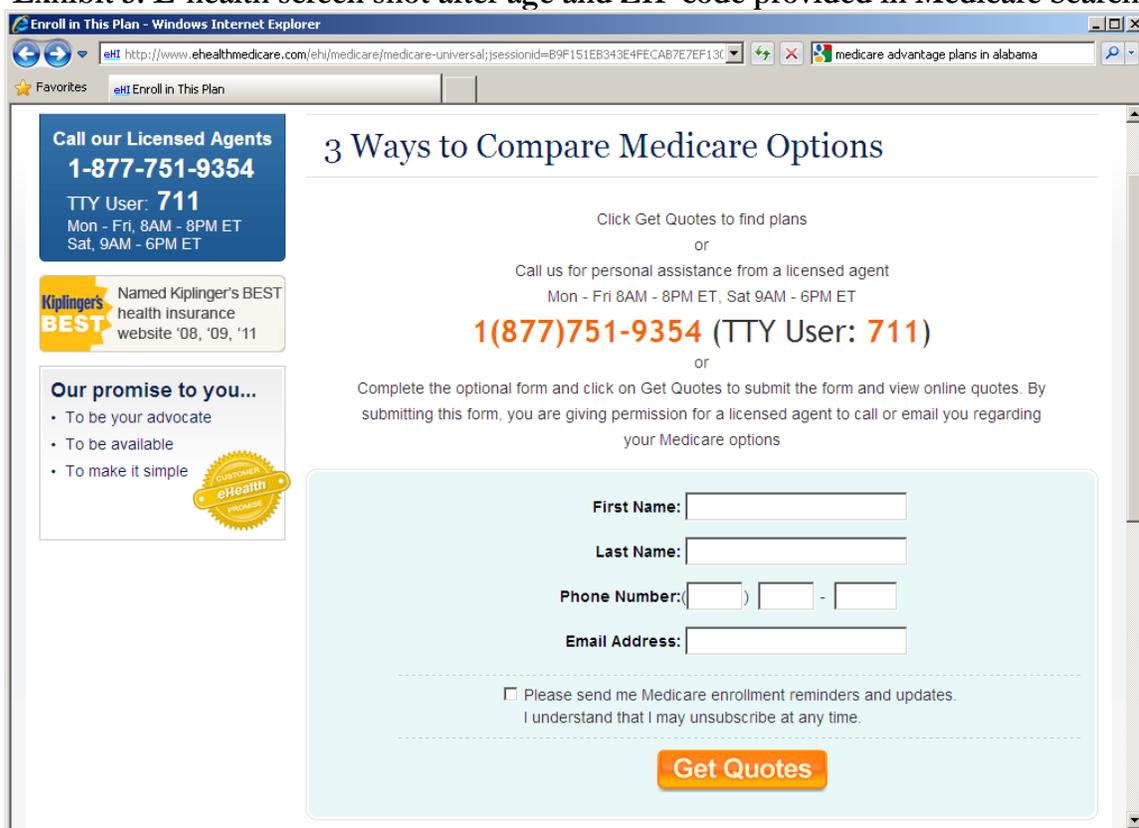
Accessed 8/14/2012 using: ZIP code 35201, female and birth date 11/13/1937

Fraudulent Websites

Websites seeking to leverage the concept of an exchange already are ubiquitous. Consumers should not have to sort through confusing lookalikes. Some have disclaimers – "a private health insurance exchange" – but this information is not nearly as prominent as other information. Examples include:

> *http://mdhealthexchange.com/Home.html*

> *http://oregon-health-insurance-exchange.com/*

> *http://washingtonhealthexchange.com/*

> (The final two sites have lookalike sites in other states)