

Protecting Consumer Information

Privacy, Security, and Fraud: Part 1 of 4



Introduction

This training discusses consumer consent requirements, and privacy and security standards applicable to BeWell and the Center for Medicare and Medicaid Services (CMS). It emphasizes the importance of privacy and security in handling confidential consumer data, including consumer personally identifiable information (PII), and addresses potential risks, best practices for preventing these risks, and handling data breaches. Assistors (a collective term for agents, brokers, and enrollment counselors (ECs)) have an ethical and a legal obligation to protect that information from anyone who does not have authorization to access it. This sensitive information is only safe if BeWell and all affiliates work to protect confidentiality. The increase of security breaches involving consumer data has risen dramatically over the past few years.

Main Topics

- Privacy, Security, and Confidentiality
- Personally Identifiable Information
- Privacy Laws and Requirements
- Consumer Consent
- Restrictions on Use of PII
- Protecting PII

Privacy, Security, and Confidentiality



- After an assister obtains a consumer's personally identifiable information (PII), they must utilize certain safeguards to secure PII regardless of whether it is held or transferred in hard copy or electronic form.
- Privacy and security work together to protect consumers' PII and confidential information. These safeguards are designed to make sure that:
 - Consumer information is accurate.
 - Information is used only when necessary and relevant to the activity at hand.
 - Confidentiality is protected to comply with all applicable laws and create trust between assisters, BeWell, and consumers.
 - Preventative measures are taken against fraud or other misuse of consumer information.
 - Appropriate, swift action is taken when an incident or breach occurs.

Privacy, Security, and Confidentiality (Continued)



- Privacy
 - Privacy is the consumer's right to control how their personal information is used or disclosed.
- Security
 - Security refers to the systems and physical safeguards in place to protect a consumer's personal information.
- Confidentiality
 - Confidentiality means respecting limitations when accessing or disclosing a consumer's information. Assistants should abide by relevant laws and safeguard consumers' personal privacy and proprietary information.

PII (1 of 4)

- What is PII?
 - PII is information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.

PII (2 of 4)

- Examples of PII include:
 - Name
 - Social Security Number (SSN)
 - Date and place of birth
 - Mother's maiden name
 - Medical, educational, financial, and/or employment information
 - Phone number
 - Home address
 - Driver's license number
 - Electronic/paper tax documents (e.g., 1040, 941, 1099, 1120, and W-2)

PII (3 of 4)

- BeWell is involved in data exchange with many different entities to determine eligibility, administer financial help, and enroll people in plans. The process involves the creation, collection, exchange, and disclosure of PII, that is, information that can distinguish or trace someone's identity.
 - Examples include financial information, tax information, and social security numbers.
- Ensuring privacy and security of personal information is a key component to building the trust required to serve New Mexico consumers.

PII (4 of 4)



- Assistors will likely collect, disclose, access, maintain, store, and/or use consumer PII each time they help consumers:
 - Create a BeWell account;
 - Assess options for lowering costs of coverage;
 - Complete the eligibility process and submit an application for coverage; and/or
 - Enroll in a Marketplace health plan through BeWell.

Privacy Laws and Requirements (1 of 8)



- The Affordable Care Act (ACA) requires strong limits on what data can be collected about a person seeking insurance through BeWell.
- Data collection is limited "to the information strictly necessary to authenticate identity, determine eligibility, and determine the amount of the credit or reduction."
- Additionally, BeWell can use such information only "for the purpose of, and to the extent necessary in, ensuring the efficient operation of the Marketplace."
- SSN can only be required from applicants seeking health insurance benefits, not New Mexicans simply exploring the Marketplace or comparing plans.

Privacy Laws and Requirements (2 of 8)



- PII created or collected by the Marketplace to perform the core functions may not be used or disclosed by the Marketplace except to carry out those functions.
- Any individual who knowingly or willfully violates this limitation may be subject to a civil penalty of not more than \$25,000 per person or entity, in addition to any other penalties that might apply.

Privacy Laws and Requirements (3 of 8)



- Regardless of how a person's PII is lost or stolen, the consequences to the victim include, at the very least, hours of lost time to report the potential identity theft and protect their bank accounts and credit cards.
- Consequences of an individual's financial situation can be much graver if the identity theft goes unnoticed and the information is used to establish new accounts in the victim's name. Using these accounts, identity thieves can run up huge bills in the victim's name, leaving the victim in dire situations.

Privacy Laws and Requirements (4 of 8)



- Specifically, the consequences include:
 - Risk to integrity of confidential information, such as data corruption, destruction, or unavailability of information in an emergency;
 - Risk to security of personal information (e.g., identity theft);
 - Loss of valuable business information;
 - Loss of confidentiality, integrity, and availability of data (and time) due to poor or untested disaster data recovery plan;
 - Embarrassment, bad publicity, media coverage, or news reports;
 - Loss of consumer trust, employee trust, and public trust;
 - Internal disciplinary action(s), such as termination of employment; and
 - Penalties, prosecution, and potential for sanctions/lawsuit.

Privacy Laws and Requirements (5 of 8)



- Before an assister begins helping consumers, there are some important actions they must take to follow privacy requirements:
 1. Make sure they have appropriate policies and procedures for collecting, protecting, and securing all personal information.
 2. Provide consumers with a Privacy Notice Statement before they collect PII or other information from them. If they use a paper or electronic form to gather or request PII from consumers, this statement may be included on that form.
 3. Clearly display the Privacy Notice Statement on a public-facing website, if the assister uses such a website, to collect PII or other consumer information.

Privacy Laws and Requirements (6 of 8)



- Assistors should:
 - Obtain the consumer's consent (authorization) before discussing or accessing their personal information.
 - Let consumers know what personal information they will collect, why it is collected, how they will use it, with whom it can be shared, and what happens if they do not want to provide it.
 - Only collect information that is necessary to assist consumers unless they give you specific consent for additional uses.

Privacy Laws and Requirements (7 of 8)



- Assistors should:
 - Explain to consumers that, both, BeWell and assistors have privacy and security standards and procedures in place to protect consumer information.
 - assure consumers that PII collected will be used only for fulfilling Marketplace functions.

Privacy Laws and Requirements (8 of 8)



- Before an assister begins assisting consumers, they should make sure the consumers understand how they and BeWell will use their PII to help them apply for and enroll in coverage. Assisters should tell consumers that BeWell uses consumer PII to:
 - Assess eligibility for Medicaid coverage.
 - Determine eligibility on the Marketplace for programs to lower costs of coverage.
 - Display plan options.
 - Process eligibility appeals, if applicable.

Consumer Consent



- Assistors should be familiar with two important documents that they must use to comply with privacy standards:
 - Privacy Notice Statement; and
 - The record of the consumer's consent.

Consumer Consent: Privacy Notice Statement



- Before an assister can collect PII or other information from consumers, they must provide a Privacy Notice Statement to them. Among other things, this statement explains:
 - What personal information is collected.
 - Why it is collected.
 - How it will be used.
 - With whom the information can be shared.
 - For what purposes it can be shared.
 - How the information will be kept secure.

Consumer Consent: Privacy Notice Statement (Continued)



- The Privacy Notice Statement:
 - Must be written in plain language and, to the extent possible, provided in an accessible and timely manner to people with disabilities and people with Limited English Proficiency (LEP).
 - Must be prominently and clearly displayed on an assister's website—if they maintain a website—that is used to gather or request PII or other consumer information.
 - Should explain how consumers can file a complaint with BeWell related to the assister's activities with respect to their information.
 - Must be reviewed at least annually and revised as necessary, including after any change to an assister's privacy policies and procedures.

Consumer Consent: Record of Consent



- The record of a consumer's consent is one of the most important documents an assister will use in their work with consumers.
- Before an assister helps consumers, they must discuss their roles and responsibilities with them and obtain consent to access their PII. This is sometimes called getting the consumer's authorization.

Consumer Consent: Consent Requirements (1 of 3)



- Assistors are free to develop their own form or procedures as long as the consumer's consent includes, at a minimum:
 - An acknowledgment the assister informed the consumer of the functions and responsibilities which apply to their specific role.
 - Consent for the assister to access and use the consumer's PII to carry out their functions and responsibilities.
 - An acknowledgment the consumer may revoke any part of the consent at any time, as well as a description of any limitations the consumer wants to place on the assister's access or use of the their PII.

Consumer Consent: Consent Requirements (2 of 3)



- BeWell also recommends including the following in the consent and/or in your standard procedures or forms for obtaining consumer consent:
 - An explanation of what PII includes and examples of the kinds of PII an assister might request from the consumer.
 - An acknowledgment the consumer is not required to provide the assister with any PII.
 - An explanation that the help the assister provides is only based on the information the consumer provides, and if the information given is inaccurate or incomplete, the assister might not be able to offer all help available for the consumer's situation.
 - An acknowledgment that the assister will ask only for the minimum amount of PII necessary for them to carry out their functions and responsibilities.
 - Any applicable specific consent needed to obtain access to consumer PII for Marketplace-approved purposes not included in the list of purposes set forth in the assister's agreement.

Consumer Consent: Consent Requirements (3 of 3)



- Assistors must keep a record of the consumer's consent, which could include the consent form used by the assister. At a minimum, this should include:
 - The consumer's name and (if applicable) the name of the legal or authorized representative providing consent on the consumer's behalf.
 - The date the consent was given.
 - The name of the person to whom consent was given.
 - Notes regarding any limitations placed by the consumer on the scope of the consent.
 - Notes recording all acknowledgments and consents obtained from the consumer, including any applicable specific consent to access consumer PII for Marketplace-approved purposes not included in the list of purposes set forth in your agreement.
 - If any changes are later made to the consent, including if and when a consumer revokes the consent or any part thereof, these should be included with the original record.

Consumer Consent: Retention and Expiration



- Assisters may obtain a consumer's general consent to access their PII to carry out authorized functions (e.g., over the phone, in writing, or both) as long as a record of the consent is maintained consistent with BeWell and CMS requirements.
 - Retention Period
 - Assisters must keep a record of the consumer's consent for ten years unless a longer retention period applies under another federal law.
 - Expiration of Consent
 - A consumer's consent may last indefinitely unless they revoke their consent, or the assister chooses to set their own expiration date for consumer consent.
 - Under Marketplace and CMS regulations, assisters must permit consumers to revoke their consent at any time, which includes permitting consumers to place a time restriction on the consent at any time.

Consumer Consent: Who Can Give Consent



- Consumers may give consent themselves or choose to have a legal or authorized representative provide consent on their behalf.
 - The representative must have the authority to act on the consumer's behalf.
- Assistors may obtain a consumer's general consent to access their PII to carry out authorized functions (e.g., over the phone, in writing, or both) as long as a record of the consent is maintained consistent with BeWell and CMS requirements.

Consumer Consent: Language and Translation



- Consent forms should be written in plain language, and assisters should explain them verbally to consumers before they sign (or orally consent).
- When appropriate, consent forms and materials should be translated and made available in the languages spoken within the community, including but not limited to consumers with Limited English Proficiency (LEP) and/or those who communicate through American Sign Language (ASL).
- Translated consent forms and materials should be provided in simple, understandable language at an appropriate literacy level, preferably at the fourth-grade level.

Restrictions on Use of PII (1 of 3)



- Important restrictions on how assisters can use consumers PII:
 - Assisters cannot collect PII beyond what is necessary to perform their authorized functions without the specific, informed consent of the consumer.
 - Assisters cannot use PII to discriminate against consumers, such as refusing to assist individuals who are older or who have complex healthcare needs.

Restrictions on Use of PII (2 of 3)



- Important restrictions on how assisters can use consumers PII (Continued):
 - Assisters cannot make cold calls, send unsolicited emails, or use other means of unsolicited direct contact for the purpose of providing application or enrollment assistance, unless:
 - An assister has a pre-existing relationship with a consumer; or
 - The assister has complied with all other applicable state and federal laws.
 - Assisters cannot request information from or concerning any individual who is not seeking coverage for themselves, unless the information is needed for the Marketplace to determine an applicant's eligibility for enrollment in a health plan or an insurance affordability program.

Restrictions on Use of PII (3 of 3)



- These privacy and security requirements are designed to make sure that:
 - Consumers' information is accurate.
 - Information is used only when necessary and relevant to the activity at hand.
 - Consumers know and agree to all uses of information.
 - Appropriate, swift action is taken when an incident or breach occurs.
 - Confidentiality is protected to comply with all applicable laws and create trust between assisters, BeWell, and consumers.

Protecting PII (1 of 4)

- To protect consumer privacy, assisters should:
 - Establish and follow policies and procedures in compliance with privacy, security, and confidentiality standards.
 - Follow all applicable restrictions related to the use and disclosure of personal information.
 - Implement reasonable safeguards to ensure confidentiality, integrity, and availability, and to prevent unauthorized or inappropriate access, use, or disclosure.

Protecting PII (2 of 4)



- To protect PII, assisters must:
 - Let consumers know how their PII and other personal information is used or shared by the Marketplace.
 - Make sure that anyone who has access to a consumer's PII keeps this information private and secure.
 - Protect a consumer's personal information provided to them from unauthorized use or disclosure.

Protecting PII (3 of 4)



- To protect PII, assisters must (continued):
 - Have protections in place to prevent consumers from having their personal information used or shared in a harmful way or in a manner not authorized by federal law.
 - Comply with all other applicable federal and state laws related to the privacy and confidentiality of PII.
 - Understand that BeWell and CMS place a high value on privacy to maintain consumers' trust. To reassure consumers that their sensitive and personal information is safe, consumers can access at [BeWell's Privacy Policy](#).

Protecting PII (4 of 4)

- Remember that a consumer's general consent typically permits an assister to create, collect, disclose, access, maintain, store, and use the consumer's PII only to the extent necessary to perform their authorized functions as an assister.
 - **Example:** If a consumer provides their preferred contact information on a sign-up sheet, the assister has limited consent to use that contact information. They may only use it to follow up or setup an appointment with that consumer. They may not retain any other PII for later use.

Reminder for Assisters

As part of the annual certification process, assisters sign a Privacy and Security Agreement that authorizes them to create, collect, disclose, access, maintain, store, and use specific data and PII. Assisters cannot release, publish, or disclose consumer PII to unauthorized personnel, and must protect this information in accordance with federal laws and regulations regarding the handling of PII.

Key Points

- PII is a type of information that can be used to distinguish or trace a consumer's identity alone or in combination with other personal or identifying information that is linkable to a specific individual.
- Assisters may use or disclose PII as needed to carry out their required or authorized functions.
- If an assister retains any consumer PII, they must always get the consumer's consent first and maintain PII privately and securely in a manner that complies with privacy and security standards that apply to them.
- Assisters sign a Privacy and Security Agreement that authorizes them to create, collect, disclose, access, maintain, store, and use specific data and PII.



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