



POLICY & ACTION FROM CONSUMER REPORTS

May 6, 2013

Secretary Kathleen Sebelius
Department of Health and Human Services
Centers for Medicare & Medicaid Services
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 20144-1850

Re: **CMS-9955-P - Patient Protection and Affordable Care Act; Exchange Functions:
Standards for Navigators and Non-Navigator Assistance Personnel**

Submitted via website at <http://www.regulations.gov>

Dear Secretary Sebelius:

Consumers Union, the policy and advocacy division of Consumer Reports, submits these comments regarding the proposed rule, CMS-9955-P, establishing standards for navigators and non-navigator assistance personnel.

We appreciate the effort to create clear and uniform standards for navigators and non-navigator assistance personnel that will apply to the federally-facilitated exchange, state partnerships, and state-based exchanges. The navigator program will be an essential component of the ACA to ensure consumers have meaningful access to a single, streamlined eligibility and enrollment process. With this in mind, we articulate our comments below.

§155.210 Navigator program standards.

Consumers Union supports the clarification in this proposed rule that prevents states from requiring licensing or other standards that would limit entities eligible to be navigators and/or the activities they can undertake to provide assistance to applicants. In addition, we believe that HHS will need to rigorously monitor state requirements to ensure that no laws or rules are passed to limit navigators' abilities to perform their required ACA functions.

CU recommendation: Actively monitor and intervene, as necessary, to ensure that state licensing, certification and other requirements do not interfere with navigators' abilities to fulfill all of their legal responsibilities.

§155.215(a) Conflict of interest standards.

Consumers Union appreciates the proposal to establish strong conflict of interest standards. In particular, we agree that stop loss insurance issuers should be included in the list of entities prohibited from serving as navigators. We also support navigators being prohibited from receiving consideration directly or indirectly from stop loss insurers, as well as any other insurer or agent of an insurer.

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Moreover, we urge HHS to clarify that navigators and other assisters should be prohibited from receiving referral fees from insurance brokers and agents.¹

CU recommendation: Amend §155.215(a) to prohibit payment or other valuable consideration for referrals to insurance agents or brokers: “Will not receive any consideration directly or indirectly from any health insurance issuer, any issuer of stop loss insurance, or any licensed insurance agent or broker in connection with enrollment or referrals for enrollment of any individuals or employees in a QHP or non-QHP.”

§155.215(b) Training standards for navigators and non-navigator assistance personnel carrying out consumer assistance functions.

Consumers Union appreciates the rule that establishes uniform certification and annual re-certification standards for navigators. CMS should create template ACA materials that would help avoid duplication of effort by states, saving scarce resources, and enhancing uniformity in substantive training on the ACA across the nation. Additionally, we support that states with state-based exchanges will be able to establish their own training and certification programs, with approval from HHS. HHS oversight would ensure that training and certification of navigators and non-navigator assistance personnel in state exchanges is no less robust than for the federal one.

For those states using the FFE’s (i.e., those without their own state-based exchanges), but that also will impose additional for their state navigators via state-specific requirements, HHS should not only approve those requirements to ensure that they don’t violate the ACA, but should also coordinate with the states so as to alleviate confusion for those wishing to be certified as navigators (we don’t want to see individuals get certified through the FFE and only later discover that they don’t meet the additional state-specific requirements).

We look forward to future guidance from HHS (with the opportunity for public comment), that establishes the minimum criteria HHS will use to approve state training and certification programs.

CU recommendation: Review and approve state-specific requirements for navigator certification and training. Coordinate to communicate effectively both federal and state certification and training information for prospective navigators to ensure compliance.

We appreciate the expectation that navigators will have to participate in continuing education and recertification, at least on an annual basis. We know there will be ongoing rule and practice changes over time, and that the role of navigators and other assisters should be one of continuous improvement. It will, therefore, be just as important to have a robust training program after the first year, as it will be when navigators are first learning how to assist people with eligibility and enrollment. We urge HHS to develop more details about what will be required for recertification and training after the first year someone is certified as a navigator, including avenues for navigators

¹ California’s exchange staff has anticipated this issue and has proposed strict rules preventing outreach and education “grantees and Assisters from accepting payment or other valuable consideration from agents for referrals and/or enrollment services” (and the reverse, prohibiting agents and brokers, trained and certified by the exchange, from providing payment or other valuable consideration to Assisters as a condition of program participation). (See, Board Recommendation Brief: Agent and Enrollment Entity Relationship Requirements, April 23, 2013, Available at <http://www.healthexchange.ca.gov/BoardMeetings/Documents/April%202023,%2020213/BRB%20-%20Agent%20and%20Enrollment%20Entity%20Relationship%20Requirements.pdf>)

to learn about best practices and to benefit from the wide variety of experiences around the ACA during the first year of implementation.

CU recommendation: Develop more detailed standards for recertification that take into account sharing information and lessons learned.

§155.215(b)(1)(v) Serving individual and SHOP exchanges.

Consumers Union believes that employers should have the option to use navigators for assistance enrolling in the SHOP. This is especially important because for many Limited English Proficient employers, it can be difficult to find an agent who speaks their language. As a result, employers will likely seek assistance from navigators (not just agents) on how to take advantage of all of the opportunities provided under the ACA and to engage navigators in providing assistance to their employees.

We also are aware that some states are proposing to prohibit navigators and non-navigators from providing assistance to employers in the SHOP exchange and only allowing agents and brokers to provide that assistance. We think such a position is short-sighted. We support the proposed rule that requires all navigator and non-navigator assistance personnel be trained in issues that impact both the individual and SHOP exchanges. All navigators and non-navigator assistance personnel should be made aware of potential eligibility for SHOP to help those individuals who may be better served via the SHOP.

§155.215(b)(2) Training module content standards.

As HHS develops its specific training curriculum and materials, we urge that you work with knowledgeable stakeholders, including those with a history training community-based application assisters and enrolling individuals in low- or no-cost insurance programs, to review more detailed training materials in order to ensure that all the critical content areas and best practices are incorporated.

CU recommendation: Provide an opportunity for stakeholders to review and comment on training materials.

There are some important provisions in the ACA that will require navigator training to ensure that applicants understand the implications of their eligibility and enrollment; for example, pediatric dental stand-alone plans, reconciliation of advance premium tax credits (APTCs), and individual exemptions from the mandate to have minimum essential coverage.

CU recommendation: The training content should include, but not be limited to, detailed modules on pediatric stand-alone dental plans, APTCs and the reconciliation process, all insurance affordability programs, the process for grievances, complaints and appeals, and detailed information on who is subject to and exempt from the individual responsibility requirement, and the process for obtaining an exemption.

Additionally, the training program should include contact information for appropriate state public agencies, in order for navigators and non-navigator assistance personnel to provide information to consumers regarding health care options not offered through an exchange, including specific state and county programs. At a minimum, the navigator training should provide an extensive list of safety net resources for this purpose.

Equally important is helping navigators and non-navigator assistance personnel to address the concerns and anxiety faced by mixed immigration families. Navigator training and certification should include information about mixed status families so that navigators can be sensitive to and provide reassurances for mixed immigration status families so that they can otherwise overcome barriers to coverage. In addition, privacy and security standards for mixed status families are critical to ensure that their personal information is protected. Navigators should be well trained to understand which family members are applicants and which ones are non-applicants, in order to gather needed information from only those applying for coverage, without deterring participation.

In addition, going into the first year of ACA implementation and thereafter, Consumers Union is very concerned about the widespread misunderstanding and misinformation that is proliferating about ACA requirements. As when any new government program is established, unscrupulous interests may try to take unfair advantage through fraudulent marketing practices. Most often these target low-income communities and the most vulnerable populations, including those with Limited English Proficiency. We recommend that HHS develop a navigator training module that includes information about such predatory practices, so that navigators can educate consumers about such practices, as well as a section about the relevant state authority to report marketing violations.

§155.215(e) Monitoring.

Consumers Union believes that monitoring of navigators and non-navigator assistance personnel is important, not just for the FFE but for all exchanges, to ensure that the best interests of consumers are well served and that navigators and non-navigator assistance personnel are effective in enrolling and retaining consumers in health coverage. It is important that data be collected on performance measures and that this information is publicly available and shared with navigators and non-navigator assistance personnel so they can learn from each other. We urge that such information also be collected by state exchanges and shared between the states and the FFE to optimize learnings and illustrate best practices.

We look forward to seeing revised rules and working with HHS and others to ensure that FFE and state-based exchange training and certification standards are robust, comprehensive, and developed in the best interest of consumers.

Sincerely,



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