July 9, 2014

Jennifer Cook  
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National Association of Insurance Commissioners  
Executive Office  
701 Hall of the States  
444 North Capitol Street, N.W.  
Washington, D.C. 20001-1509

Re: Consumer Information (B) Subgroup Revisions to NAIC ACA FAQs Publication

Dear Ms. Cook:

Per the discussion during the Consumer Information (B) Subgroup conference call held on June 17, 2014, NAIFA appreciates the opportunity to provide suggestions to amend the NAIC ACA FAQs publication designed to assist insurance departments in responding to common questions from consumers. NAIFA commends the Subgroup for developing the set of FAQs and for initiating a review process to allow interested parties to offer suggestions for consideration.

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation’s oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA’s mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.

NAIFA recommends the Subgroup enhance select questions in the FAQs document to more clearly delineate the difference between the permissible functions of licensed insurance producers and Navigators. In recent weeks, some of our members have reported to NAIFA staff instances where Navigators have recommended specific health insurance policies to insurance consumers. In accordance with the ACA, Navigators are to provide fair and impartial information to those individuals seeking to obtain health insurance coverage through the federal or a state health exchange. It is important that consumers are made aware that under state law only licensed insurance professionals are permitted to recommend, sell, solicit, or negotiate an insurance policy. Further, Navigators should be instructed as to what constitutes selling, soliciting, and negotiating insurance, and informed that if they engage in such activities, they must be licensed as insurance producers.
While the current set of FAQs states some activities that agents and Navigators can and cannot do, we believe these questions can be enhanced to further clarify the differences between licensed insurance producers and Navigators. NAIFA recommends the Subgroup review the following questions and consider including our bolded language:

- **Q 57:** Where do consumers go for help to choose and enroll in a plan?

  A. Insurance agents or brokers

  Health insurance agents and brokers sell insurance coverage from one or more insurance companies. Health insurance agents and brokers are licensed by [insert name of state] and receive continuing education related to their job. They can help educate consumers about health insurance policies, help consumers apply for coverage, and advise consumers about the type of health insurance coverage that best suits them and their family. Under [insert name of state] law, only licensed insurance agents are allowed to sell, solicit, or negotiate insurance coverage. Agents and brokers can sell consumers insurance plans in the market outside the exchange, as they always have.

  Agents and brokers who want to sell policies through the [insert name of state exchange] will have had extra training from the U.S. Department of Health and Human Services (HHS) or the [insert name of state exchange]. They will have passed a test at the end of their training to sell insurance policies through the [insert name of state exchange]. [Insert name of state] requires agents and brokers to have extra state-specific training before they sell through the [insert name of state exchange]. A list of agents and brokers authorized to sell through the [insert name of state exchange] is available © 2013 National Association of Insurance Commissioners 16 on the [insert name of state exchange] website at [insert link]. Consumers may want to talk with more than one agent or broker before they decide which plan to buy (see Question 71).

- **Q 64:** How will insurance agents and brokers be able to help consumers with enrollment through the [insert name of state exchange]?

  In [insert name of state], health insurance companies will appoint agents and brokers. Insurance companies will make sure the agent’s license is valid and registered with the [insert name of state exchange]. The agent can help consumers log-on to the [insert name of state exchange] website at [insert state exchange website]. Consumers will log-in to their own [insert name of state exchange] account. The agent or broker will then work with consumers to complete the application. Consumers will be prompted to enter the insurance professional’s [insert name of state exchange] user identification number and national producer number on the application to show that the professional helped them.

  The agent or broker can help consumers compare qualified health plans (QHPs) and submit the application (see Question 71). The agent or broker can answer questions from consumers about the differences in QHPs and which plan would be best for consumers and their families. Under [insert name of state] law, licensed insurance agents are the only entities permitted to sell, solicit, or negotiate insurance coverage for consumers.
• Q 65: How will a navigator be able to help consumers with enrollment through the [insert name of state exchange]?

In [insert name of state], navigators can help consumers log-on to the [insert name of state exchange]. Consumers will log-in to their own [insert name of state exchange] account. The navigator can help consumers as needed to complete the application. Consumers may be prompted to enter the navigator’s [insert name of state exchange] user identification number on the application to show that the navigator helped them.

The navigator can help consumers to compare qualified health plans (QHPs) and answer questions about health insurance policies in general. The navigator can answer questions from consumers about the differences in QHPs and what they might mean for them, but the navigator CANNOT recommend or suggest which health plan would be best for consumers and their families. Navigators are not permitted to collect premium payments on behalf of an insurer or the [insert name of state exchange].

Navigators CANNOT sell, solicit, or negotiate a QHP through the [insert name of state exchange]. They CANNOT suggest that one plan would be better for the individual than another. These functions may only be performed by insurance agents who are licensed and regulated by the [insert name of state] Department of Insurance.

• Q 66: How will the in-person assistor or the certified application counselor be able to help consumers with enrollment through the [insert name of state exchange]?

In [insert name of state], the in-person assistor or certified application counselor can help consumers log-on to the [insert name of state exchange]. Consumers will log-in to their own [insert name of state exchange] account. The in-person assistor or certified application counselor can help consumers as needed to complete the eligibility application. Consumers may be prompted to enter the in-person assistor’s or the certified application counselor’s [insert name of state exchange] user identification number on the application to show that the assistor or counselor helped them.

The in-person assistor or certified application counselor can help consumers to compare qualified health plans (QHPs) and answer questions about health insurance policies in general. The assistor or counselor can answer questions from the consumer about the differences in QHPs and what they might mean to them (such as explaining deductibles or out-of-pocket limits), but the assistor or counselor CANNOT recommend or suggest which QHP would be best for consumers and their families.

The in-person assistor or certified application counselor CANNOT sell, solicit, or negotiate a QHP through the [insert name of state exchange]. They CANNOT suggest that one plan would be better for the individual than another. These functions may only be performed by insurance agents who are licensed and regulated by the [insert name of state] Department of Insurance.

We look forward to continue working with the Subgroup on this important effort, and we thank regulators for taking our views into consideration. Please feel free to contact me if you have any questions.
Sincerely,

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