

NAIC CONSUMER REPRESENTATIVE COMMENTS (4/23/14)

Draft: 3/20/14

Underlining and overstrikes show the changes from the Nov. 25, 2013 draft. Comments are being requested on this draft by April 23. Comments should be sent only by email to Jolie Matthews at jmatthews@naic.org.

Part III

Navigator, Non-Navigator Assistance Personnel and Certified Application Counselor Outreach Functions

Open enrollment through the health insurance exchanges began Oct. 1, 2013. There are a number of individuals, each with a different function, who will play a role in assisting both individual consumers and small employers and their employees to enroll through an exchange. Navigators, non-navigator assistance personnel, certified application counselors and licensed insurance producers all will provide consumer-focused assistance with completing applications for and enrollment in qualified health plans (QHPs) and insurance affordability programs. Navigators and certified application counselors will perform these functions in all exchanges—federally facilitated, partnership and state-based exchanges. Licensed insurance producers also will perform these functions in federally facilitated and partnership exchanges and state-based exchanges, subject to any participation requirements ~~they may establish, state-based exchanges~~ a state-based exchange may establish. Non-certified entities, such as the U.S. Department of Health and Human Services (HHS) “Champions ~~offer~~ Coverage” also are described, including the outreach functions they may perform and limitations on those functions.

I. Functions of Navigators

Authorized under section 1311(i) of the federal Affordable Care Act (ACA) and federal regulations, a navigator is an entity that employs individuals trained to help consumers understand the insurance policies available through an exchange and answer consumer questions about the exchange. Navigators can also answer questions about insurance affordability programs, including Medicaid and CHIP (Children’s Health Insurance Program) and educate consumers about their health insurance policy options and help them apply for coverage.

Navigator functions include a number of consumer assistance activities designed to help consumers prepare electronic and paper applications to establish eligibility and enroll in health insurance coverage through the exchange. As part of this function, a navigator can help consumers to compare QHPs and answer questions about health insurance policies in general. They also can answer questions from consumers about the differences in QHPs and what that might mean for them, but a navigator cannot recommend or suggest which QHP would be best for consumers and their families. In addition, navigators must provide referrals to offices of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act (PHSA) or to any other appropriate state agency or agencies and assist consumers with grievances, complaints or questions regarding their health plan, coverage or a determination under such plan or coverage. States may require navigators to perform additional functions or impose restrictions on the functions they may perform. However, any additional functions or restrictions that a state may decide to impose may not conflict with federal requirements such that they would “prevent the application” of federal law. Under proposed rule 45 C.F.R.155.210 (c)(1)(iii)(E) issued March 21, 2014 states with Federally-facilitated Marketplaces would not be able to impose standards that exclude from Navigator certification entities or individuals that would be eligible to participate as Navigators under the federal rules.

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Navigators must provide information in a fair, accurate and impartial manner, and may not sell, solicit, or negotiate insurance coverage in a QHP through the exchange because these activities may only be performed by a licensed insurance producer. They also may not charge consumers for assistance, or steer them to someone who charges. Navigators may not collect premium payments on behalf of a health insurer or the exchange. Navigators are compensated through grant awards from an exchange. Federally facilitated exchanges will charge participating plans a fee to cover administrative costs, including grants to navigators; state-based exchanges may charge a fee or use other sources of funds to compensate navigators.

Navigators may not be health insurers nor have a relationship with a health insurers or stop-loss insurers. Insurance producers may act as a navigator, but if they are a navigator, they cannot receive any compensation from a health insurer in the state for which they received the navigator grant award, as provided in the signed Navigator Cooperative Agreement (whether for exchange coverage or off-exchange coverage), to avoid any conflicts of interest. In addition, to meet specific standards for selection, any entity selected as a navigator may not receive any consideration directly or indirectly from any health insurer in connection with the enrollment of any qualified individuals or employees of a qualified employer in insurance coverage in a QHP.

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II. Functions of Non-Navigator Assistance Personnel

Non-navigator assistance personnel (also known as in-person assistance personnel) generally will perform the same functions as navigators. Authorized under federal regulations, non-navigator assistance personnel also can help ensure that an exchange is providing outreach, education and assistance to as broad a range of consumers as possible so that all consumers can receive help when accessing health insurance coverage through an exchange. Also, like navigators, non-navigator assistance personnel must provide referrals to offices of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHSA or to any other appropriate state agency or agencies and assist consumers with grievances, complaints or questions regarding their health plan, coverage or a determination under such plan or coverage.

Non-navigator assistance personnel can help consumers in a fair, accurate and impartial manner to compare QHPs and answer questions about health insurance policies in general. They also can help educate consumers about health insurance policies and help them apply for coverage. Non-navigator assistance personnel can answer questions from consumers about the differences in QHPs and how those differences might affect them, such as explaining deductibles or out-of-pocket limits. As with navigators, the non-navigator assistor personnel may not recommend or suggest which QHP would be best for consumers and their families. Also, like navigators, non-navigator assistance personnel may not sell, solicit, or negotiate insurance coverage in a QHP through the exchange because these activities can only be performed by a licensed insurance producer. Non-navigator assistance personnel also ~~non-navigator assistance personnel~~ may not be health insurers or stop loss insurers or have a relationship with insurers.

Federally facilitated exchanges will not have non-navigator assistance personnel; state-based exchanges and state partnership exchanges carrying out consumer assistance functions for a federally facilitated exchange may have such personnel and can receive federal grants to fund their activities.

III. Functions of Certified Application Counselor (CAC) Organizations

Certified application counselor (CAC) organizations can perform some of the same activities as navigators and non-navigator assistance personnel, but with some key differences. These organizations, and the individuals working for or volunteering with these organizations who are certified as certified application counselors, can: 1) provide information to individuals and employees about insurance affordability programs and coverage options; 2) assist individuals and employees in applying for coverage in a QHP through the exchange and in insurance affordability programs; and 3) help facilitate enrollment in QHPs and insurance affordability programs. Unlike navigators and non-navigator assistance personnel—who have a duty to provide referrals to offices of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHSA, or to any other appropriate state agency or agencies and assist consumers with grievances, complaints, or questions regarding their health plan, coverage, or a determination under such plan or coverage—CAC organizations are not expected to have the knowledge to make these types of referrals since their role is limited to providing enrollment assistance to consumers. In addition, unlike navigator grant applicants and non-navigator assistance personnel who cannot have any conflicts of interest to be selected, CACs applicants are required only to disclose to the CAC organization and potential applicants any conflicts of interest the CAC may have with QHPs or insurance affordability programs or other potential conflicts of interest.

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CAC organizations can provide application assistance to consumers in entities such as community health centers, health care providers, social service organizations and local governmental entities. They also can help consumers to compare QHPs and answer questions about health insurance policies in general. CAC organizations also can answer questions from the consumer about the differences in QHPs and what they might mean to them, such as explaining deductibles or maximum out-of-pocket limits, but the CAC organization cannot recommend or suggest which QHP would be best for consumers and their families. However, CAC organizations must act in the best interest of the applicant. CAC organizations may not sell, solicit, or negotiate insurance coverage in a QHP through the exchange because these activities may only be performed by a licensed insurance producer. They also may not charge consumers for assistance, or steer them to someone who charges. There are no federal or state grant funds for CAC organizations, although some funding through the Health Resources Services Administration (HRSA) has been made available to federally qualified health centers to provide enrollment assistance as CAC organizations.

An organization that applies for and has been designated by an exchange to perform the functions of a CAC organization must ensure that those staff members and volunteers the organization or the exchange certifies as application counselors meet and comply with the application counselor certification and other requirements, including completing a federal training program to be certified as an application counselor for a federally facilitated exchange or, state training to be certified as an application counselor for a state-based exchange if the state-based exchange chooses not to use the federal training program. All exchanges whether a federally facilitated, state-based or partnership exchange must include CAC organizations.

IV. Functions of “Champions ~~of~~ Coverage” and Other Non-Certified Entities

Champions ~~of~~ Coverage are organizations that request recognition by HHS as an outreach and education partner to inform consumers about exchanges. HHS has specified a number of different ways that Champions ~~of~~ Coverage can carry out this function, including: 1) sending the organization’s partners, members and/or customers to the official consumer assistance sources to learn about the exchange and get coverage; 2) sending an email to its network about the exchange; 3) posting the HealthCare.gov and/or CuidadoDeSalud.gov widget on its website; 4) hanging posters and/or giving out fact sheets and brochures about the exchange; 5) hosting a conference call, webinar or other educational event about the exchange; 6) including a story about the exchange in the organization’s newsletter or other organizational publication; 7) recording and sending out a public service announcement about the exchange; 8) hosting educational sessions about the exchange for its staff and/or members; 9) connecting with its partners, members and/or customers through official exchange social media channels to share their stories; and 10) hosting enrollment sessions or fairs (ideally with computers with connectivity to the exchange website so consumers can check out the exchange online).

Champions ~~of~~ Coverage organizations will not be directly: 1) assisting consumers in comparing QHPs; 2) answering questions from consumers about the differences in QHPs and what those differences might mean to them, such as explaining deductibles or maximum out-of-pocket limits; or 3) assisting consumers in completing applications for enrolling through an exchange. These organizations serve only as an additional resource HHS is using to reach out to consumers and inform them on the existence of the exchange.

Further, organizations recognized as “Champions ~~of~~ Coverage” do not enter into any legally binding contract with HHS; however, they have consented to having their organization’s name publicly listed as a “Champion for Coverage,” and have agreed to refrain from suggesting or implying that designation as

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a “Champion for Coverage” constitutes an endorsement of the organization, its policies, activities or products by HHS or the federal government. In addition, participating “Champions for Coverage” entities do not become agents, employees or representatives of HHS for any purpose, and undertake their efforts without any expectation of compensation from HHS or any other federal agency. There are no training requirements for Champions ~~o~~for Coverage.

V. Functions of Licensed Insurance Producers and Web-Brokers

To the extent permitted by state law and if all exchange requirements are met, licensed insurance producers may enroll individuals, small employers and employees in coverage through an exchange by using an insurer’s website or an exchange pathway through which the producer assists the consumer using the exchange website. Insurance producers must ensure that if they use a website, they provide consumers with the ability to view all QHPs offered through the exchange. Like navigators and non-navigator assistance personnel, insurance producers are expected to refer consumers who have been determined to be eligible for Medicaid or CHIP to the appropriate state agency for additional assistance.

Insurance producers will be compensated by the insurer or by the consumer to the extent permitted under state law, but are not required to disclose to the consumers they are assisting the payment arrangements they have with any particular plan. Federal and state training and certification requirements will apply to agents and brokers who enroll or assist consumers in enrolling through an exchange.

Insurance producers also may enroll consumers through exchanges via public-facing websites. Insurance producers utilizing this method of enrollment are known as “web-brokers.” If permitted by a state-based exchange, web-brokers will provide an alternate path to QHP selection options for consumers. Through these public-facing websites, web-brokers may provide consumer information for comparing and selecting QHPs from the individual exchange. However, web-brokers using these public-facing websites, at a minimum, must disclose and display all QHP information provided by the exchange or directly by QHP issuers in a way that provides standardized comparative information on each available QHP that includes premium cost-sharing information, the summary of benefits and coverage and whether the plan is bronze, silver, gold, platinum or a catastrophic plan and satisfy other requirements, including website accessibility requirements, described in the federal rules. Web-brokers also can provide an additional channel for federally facilitated exchanges to reach consumers and to help them enroll in QHPs. Web-brokers must comply with all applicable state law, including state law related to compensation and appointments, as a condition of enrolling individuals through the exchange.

VI. Distinction from Functions of Licensed Insurance Producers

The main distinction between the functions that can be performed by licensed insurance producers and the other types of consumer assistance entities and personnel discussed above is that only licensed insurance producers may sell, solicit, or negotiate a specific QHP through the exchange. In addition, licensed insurance producers will receive compensation from the insurer or the consumer to the extent permitted under state law related to the enrollment.

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