



Healthcare Reform Update

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Proposed Rule on Exchange Navigator Programs

April, 2013

The Affordable Care Act (ACA) calls for the creation of state-based competitive marketplaces, known as Affordable Health Insurance Exchanges (Exchanges), for individuals and small businesses to purchase private health insurance. The ACA requires the Exchanges to become operational in 2014, with enrollment beginning Oct. 1, 2013.

To help consumers use the Exchanges and review insurance options, the ACA requires each Exchange to establish a Navigator program. Navigators are organizations that will provide unbiased information to consumers about health insurance, the Exchange, qualified health plans (QHPs) and public programs including Medicaid and the Children's Health Insurance Program (CHIP). In addition to Navigators, Exchanges will also provide other consumer assistance services such as call centers, in-person assistance personnel, certified application counselors, and agents and brokers.

On April 5, 2013, HHS released a proposed regulation on consumer assistance programs through the Exchanges. This regulation outlines standards for Navigators and non-Navigator assistance personnel in Federally-facilitated Exchanges (FFE) and state partnership Exchanges and clarifies earlier guidance about the Navigator program.

The Role of Navigators and Non-Navigator Assistance Personnel

The proposed regulation clarifies that states are expected to establish both Navigator and non-Navigator assistance programs. States are prohibited from using federal grants to create Navigator programs, but can use federal funds to create non-Navigator assistance programs. Until state-based and state partnership Exchanges have funds to pay for a Navigator program, it is expected that these states will establish non-Navigator assistance programs that will continue to help consumers at least until their Navigator programs are up and running.

Assistance Personnel Duties

At a minimum, Navigators will be required to facilitate enrollment in QHPs, maintain expertise in eligibility, enrollment and program specifications and raise awareness for the Exchanges. In addition, Navigators are expected to provide information and services in a fair, accurate and impartial manner. This includes providing information in a culturally and linguistically appropriate manner for the needs of the Exchange population.

In the case of grievances, complaints or questions, or where an issue arises beyond the Navigator's competence, the Navigator will be expected to refer consumers to other Exchange resources, including any applicable consumer-assistance program or ombudsman.

The proposed rule clarifies that Navigators will not make eligibility decisions or select QHPs for consumers. Instead, Navigators will help consumers through the enrollment process.

Eligibility Requirements

To become a Navigator or non-Navigator assister, an entity must demonstrate that it has existing relationships or could readily establish relationships with employers, employees, consumers or self-employed individuals likely to be eligible for enrollment in a QHP. Additionally, the entity must meet certain licensing, certification or other standards imposed by the state or Exchange.

Exchanges are required to include entities from at least two of a variety of categories, including community and consumer-focused nonprofit groups, unions, trade, industry, and professional associations, and licensed agents and brokers. However, a Navigator must not be a health insurer or receive any direct or indirect consideration from a health insurer.

Standards Applicable To Navigators and Non-Navigator Assistance Personnel

The proposed regulation sets minimum conflict-of-interest, training and certification and meaningful access standards for Navigators and non-Navigator assistance personnel in FFEs and state partnership Exchanges. These rules would also apply to non-Navigator assistance personnel in state-based Exchanges that are funded through federal Exchange Establishment grants.

States that used their own money to set up Exchanges would not have to meet the same assistance program standards, but might find the proposed standards to be useful examples. In addition, the proposed rule does not apply to certified application counselors, a new category established by the recent proposed rule on Medicaid eligibility, but comments are requested on whether they should apply to this category of assisters as well.

Conflict-of-Interest Standards

The proposed rule expands the conflict-of-interest prohibition found in the original rule.

Navigator conflict-of-interest standards would also apply to non-Navigator assistance personnel, including federally funded non-Navigator assistance personnel in state-based Exchanges. Under existing rules, Navigators may not:

- Be health insurance issuers, subsidiaries of issuers or associations of insurers;
- Lobby for insurers; or
- Receive direct or indirect consideration for insurers, including trailer commissions for past sales.

The proposed rule expands prohibited relationships to entities with relationships to issuers of stop loss insurance, including those who are compensated directly or indirectly by issuers of stop loss insurance in connection with enrollment in any health plan. Agents or brokers may serve as

Navigators. However, if an agent or broker serving as a Navigator sells health or stop loss insurance, this must be disclosed to the consumer.

HHS is concerned that insurers may tempt small employers to “self-insure,” purchasing generous stop-loss insurance to limit their risk, instead of purchasing group insurance, thus opting out of many of the ACA’s small group market protections. The new prohibition will limit the ability of stop loss insurers to use Navigators to steer small businesses in this direction.

The proposed rule clarifies that the same ineligibility criteria that apply to Navigators would also apply to non-Navigator assistance personnel in FFEs and state partnership Exchanges, as well as to federally funded non-Navigator assistance personnel in state-based Exchanges.

Under the proposed rule, Navigators will be required to submit the following certification to the Exchange:

- An attestation that they are free from conflicts of interest; and
- A written plan to ensure that they will remain free from conflicts of interest.

In addition, Navigators must provide consumers with information on the full range of QHP options and insurer affordability programs, and disclose any conflicts of interest that may potentially exist. If an agent or broker serving as a Navigator sells health or stop loss insurance, this must be disclosed to consumers.

Navigators and their staff members would also have to disclose any past relationships with health or stop loss insurers in the past five years, any insurer relationships with spouses or domestic partners and any existing or anticipated financial, business or contractual relationships with an insurer.

Training and Certification Standards

The proposed rule includes details on certification, registration, training and examination of Navigators and non-Navigator assistance personnel in FFEs and state partnership Exchanges, and federally funded non-Navigator assistance personnel in state Exchanges. To become a Navigator or non-Navigator assistant, an entity must meet certain licensing, certification or other standards imposed by the state or Exchange.

The proposed rule clarifies that any Navigator licensing, certification or other standards imposed by the state or an Exchange must not prevent the application of the statutory requirements in the ACA for Navigators. States may not impose severe limitations on the kind of advice and guidance Navigators can offer consumers. Additionally, states cannot require Navigators to:

- Be licensed as agents or to carry errors and omissions insurance like agents; or
- Undergo background checks, fingerprinting, surety bond or other requirements that, when taken cumulatively, could make it overly burdensome to become a Navigator.

Prior to providing assistance to consumers, the entity must register with the Exchange, be certified as having received the necessary training and pass an HHS-approved exam. The proposed rule specifies that Navigators and non-Navigator assistance personnel must receive up to 30 hours of training. Existing rules require Navigators and non-Navigator assistance personnel to be trained regarding:

- QHP options;
- Insurance affordability programs;
- Eligibility; and
- Benefits rules for all insurance affordability programs operated in the state, as implemented in the state.

The proposed rule outlines the topics that must be covered in the training program, including privacy and security issues. Navigator and non-Navigator assisters must be trained to assist with both SHOP Exchange and individual Exchange issues. In addition, Navigators must receive continuing education and be recertified on at least an annual basis.

Meaningful Access Standards

The proposed rule also establishes standards to ensure meaningful access to services for individuals with limited English proficiency and for people with disabilities. Under the proposed rule, Navigators and non-Navigator assistance personnel would be required to:

- Be familiar with the racial, ethnic and cultural groups in their area;
- Have access to oral interpretation and written translations of appropriate documents in non-English languages without cost to the consumer;
- Rely on family or friends for interpreters only when that is the consumer's preferred alternative; and
- Have access to telephone interpretive services.

Non-English speakers must be informed of the availability of these services. Auxiliary aids and services must also be available without cost to ensure that services are available to people with disabilities.

Navigator and other consumer assistance programs must implement strategies to recruit and promote a staff that is representative of the demographic characteristics of the community. In addition, FFEs and state partnership exchanges must monitor compliance with navigator program requirements.

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