

## Confidential



**BlueCross BlueShield  
Association**

An Association of Independent  
Blue Cross and Blue Shield Plans

May 6, 2013

Ms. Marilyn Tavenner  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Blvd.  
Baltimore, MD 21244

Submitted via the Federal Rulemaking Portal: <http://www.regulations.gov>

### **RE: Standards for Navigators and Non-Navigator Assistance Personnel**

Dear Ms. Tavenner:

The Blue Cross and Blue Shield Association ("BCBSA") appreciates the opportunity to provide comments on the Proposed Rule: "Standards for Navigators and Non-Navigator Assistance Personnel," as issued in the *Federal Register* on April 5, 2013 [78 Fed. Reg. 20581-20597]. The Proposed Rule establishes standards to govern navigators and non-navigator assisters in the federally facilitated exchange and clarifies standards on the role of navigators and on who can serve as a navigator in all exchanges.

BCBSA is a national federation of 38 independent, community-based, and locally-operated Blue Cross and Blue Shield Plans ("Plans") that collectively provide health care coverage for more than 100 million – one in three – Americans. Blue Cross and Blue Shield Plans offer coverage in every market and every ZIP Code in America. Plans also partner with the government in Medicare, Medicaid, the Children's Health Insurance Program, and the Federal Employees Health Benefits Program.

It will be vitally important over the next five months until open enrollment begins for consumers to understand the new subsidized coverage options available through exchanges. BCBSA supports the Centers for Medicare and Medicaid Services' (CMS) efforts to provide outreach and information about exchanges and the availability of subsidies. Blue Plans recognizes that consumers will need significant help and will employ a range of education and outreach programs to educate both insured and uninsured populations.

We appreciate the opportunity to provide comments regarding the Proposed Rule and look forward to continuing to work with the Department as further guidance is issued. The following are our comments regarding Standards for Navigators and Non-Navigator personnel:

#### **Scope of Consumer Assistance Personnel Roles (§155.205(d))**

**Issue:** There is a lack of clarity on the various enrollment channels and how consumers will learn about exchanges from each of these entities.

**Recommendation:** As recommended in BCBSA's comments on the Proposed Rule on Appeals, CMS should clearly define what types of organizations could be designated as Certified Application Counselors ("CACs") and differentiate the roles of CACs, Navigators, in-person assistors, authorized representatives, and agents and brokers more clearly. Since

application counselors would assist persons in facilitating enrollment in QHPs, standards should clearly prohibit such counselors (or any other individual engaged in consumer assistance) from directing high risk individuals to specific QHPs to minimize adverse selection. For example, provider-based application counselors or counselors affiliated with disease advocacy organizations should be prohibited from “steering” prospective patients to specific health plans (i.e., those with the most generous benefits or reimbursement rates).

Standards must also clarify what conflict of interest standards would apply and the legal and liability rules between application counselors and QHP issuers (e.g., would they be required to maintain errors and omissions coverage?).

**Rationale:** As we recommended in our comments on the proposed Appeals Rule, additional clarity should be provided on the roles that consumer assistance personnel can provide. It appears that the activities of CACs would extend to advising individuals in the selection of a QHP. The Rule leaves it up to the exchange to designate organizations from whose staff/volunteers can fill this role. The Preamble also refers specifically to health care providers and entities as well as community-based organizations as CACs, but there is no list of permissible organizations or individuals. Without written guidance on the roles that different consumer assistance personnel can play, there is the potential for confusion on the part of consumers, states and other stakeholders about the role that such individuals can play with regard to exchanges in 2014.

### **Training and Certification Standards (§155.215(b) (2))**

**Issue:** Any individual providing consumer assistance, including Navigators, is required to be trained in QHP options, eligibility, and benefit rules for all insurance affordability programs operated in the state.

**Recommendation:** BCBSA supports the training and certification standards that any individual providing consumer assistance – including Navigators, agents and brokers and CACs – be required to be trained in QHP options, eligibility, benefit rules for all insurance affordability programs operated in the state, and receive up to 30 hours of training covering 15 categories of topics in the curriculum. In some cases, states may want to add additional training requirements. We propose that CMS consult with Issuers in the development of the training modules and include Issuers in the evaluation and ongoing monitoring of the training and certification program.

To alleviate the confusion on who is able to provide services to enrollees, states should provide a registry of certified Navigators and Non-Navigator personnel.

**Rationale:** Exchanges are required to certify CAC and they should be held to the same training and certifications standards as Navigators. This process will ensure that CAC’s are qualified to help people apply for Medicaid, the Children’s Health Insurance Program, and QHPs sold through the exchange (as well as premium tax credits and cost-sharing reductions). This standard also will create a level playing field for those using different enrollment channels.

CMS has not indicated how training will be evaluated and modified during the program. BCBSA supports the CMS proposed standards but suggest that states and issuers are included as a stakeholder. Issuers should be able to provide feedback to CMS and identify areas that need modification or additional training due to problems that occur during initial QHP selection.

States should maintain a list of personnel that have completed and passed their certification requirements. CMS should hold a centralized registry of certified consumer personnel to prevent confusion added confusion on who is eligible to provide outreach and education to enrollees.

### **Licensing (§155.210(c) (1) (iii))**

**Issue:** Some states have considered legislation that would regulate Navigators as if they were licensed brokers. Under this approach, state insurance department would generally regulate navigators using the same standards applied to agents and brokers. However, while HHS stated in earlier guidance that Navigators receiving federal grants must “meet any licensing, certification or other standards prescribed by the state or exchange, if applicable,” the Proposed Rules states that “a requirement by a state or an exchange that Navigators be agents and brokers or obtain errors and omissions coverage would violate [the requirement] that at least two types of entities must serve as navigators, because it would mean that only agents or brokers could be navigators.”

**Recommendation:** BCBSA recommends that CMS clearly allow states to require licensure or other certification of Navigators. State education, training, or examination requirements unique to navigator or navigator assisters should be permitted as long as they do not interfere with HHS requirements.

**Rationale:** Permitting states to license Navigators and assisters will ensure a level playing field between Navigators and agents and brokers, and ensure consumers are receiving advice and guidance that best reflect their needs. This approach also will enable states to track and monitor who is providing services to consumers and will help prevent unqualified individuals from recommending insurance products to consumers that do not meet their needs.

### **Conflicts of Interest (§155.215)**

**Issue:** The proposed rule lists potential conflicts of interest that must be disclosed to the exchange and to each consumer receiving assistance, but that would not necessarily bar an entity or individual from participating in the Navigator program. Navigators and non-Navigator personnel would be required to submit a written attestation that they do not have any of the prohibited conflicts of interest, and that they plan to remain free of such conflicts.

**Recommendation:** BCBSA supports having strong conflict of interest standards. As such, we ask that CMS clarify that Navigators and non-Navigator personnel attest to these conflicts of standards, at least annually. Additionally, for those entities that do have conflict of interest standards, the proposed rule does not specify the manner in which these must be disclosed. BCBSA recommends that consumers have access to these disclosures in written format, or electronically—but we ask that the rule clarify that verbal disclosure would not be sufficient.

**Rationale:** BCBSA is committed to ensuring consumers have a positive experience when purchasing coverage through the exchange, therefore, it is imperative that Navigators and non-Navigator personnel disclose their conflicts of interest in a way that is transparent and easy for consumers to understand.

**Meaningful Access (§155.215(c))**

**Issue:** Navigators and non-navigator personnel must provide culturally and linguistically appropriate services and ensure access by persons with disabilities.

**Recommendation:** Navigators and consumer assistance personnel should be required to meet the same level of standards as issuers.

**Rationale:** BCBSA requests clarification from CMS that consumer assistance personnel following provisions for meaningful access in the proposed rule would meet the same meaningful access requirements. Providing issuers with flexibility in implementing this provision and permitting issuers to use the procedures and systems already implemented to ensure linguistic appropriateness for outreach and education is consistent with our recommendation for providing flexibility within the compressed timeframes.

**Ongoing Monitoring (§155.215(e))**

**Issue:** The Proposed Rule provides for monitoring of Navigator and non-navigator assistance personnel by exchanges and by CMS:

- Exchanges will monitor compliance with standards and requirements for consumer assistance personnel.
- CMS will review attestations, conflict-of-interest plans submitted to exchanges, and Navigator reports; conduct discussions with states in which Navigator grantees and non-Navigator assistance personnel exercise their functions; and review casework and complaints filed with exchanges or states.

**Recommendation:** Issuers should be included in the monitoring process for both Navigators and non-Navigator assistance personnel.

**Rationale:** Issuers are well positioned to know if Navigators and non-Navigator assistance personnel are complying with certain standards, such as whether these entities are providing information to consumers about the full range of coverage options, and whether they are sharing an accurate understanding of these coverage options. For example, individuals who enroll through such entities may, through communications with issuers, indicate that they received inaccurate or misleading information from the Navigators or other assistance personnel. In addition, issuers are uniquely positioned to know if such entities are steering a disproportionate share of higher-risk individuals to certain issuers.

If you have any questions, please contact [kris.haltmeyer@bcbsa.com](mailto:kris.haltmeyer@bcbsa.com) or 202.626.4814.

Sincerely,



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Blue Cross Blue Shield Association