



May 6, 2013

Submitted electronically: <http://www.regulations.gov>

Gary Cohen  
Deputy Administrator and Director  
Center for Consumer Information and Insurance Oversight (CCIIO)  
Centers for Medicare & Medicaid Services  
US Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

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

Dear Mr. Cohen:

We are writing on behalf of America's Health Insurance Plans (AHIP) to offer comments in response to the Centers for Medicare and Medicaid Services (CMS) Proposed Rule on Standards for Navigators and Non-Navigator Assistance Personnel (CMS-9955-P) published April 3, 2013 in the Federal Register.

Training Standards

The proposed rule outlines the training and certification standards for Navigators and non-Navigator assistance personnel. Specifically, these entities and individuals, prior to certification by an Exchange, must: 1) register for and complete the training modules developed by HHS; 2) achieve a passing grade on all certification examinations; and 3) be recertified at least annually. The training modules will encompass a range of topics, including "QHPs...and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans." (78 FR 20596)

The importance of robust training of Navigators and non-Navigators cannot be overstated. As CMS works to develop these training modules, we strongly recommend extensive consultation with issuers regarding qualified health plans (QHPs) offered through the Exchanges. Issuers have a long history of providing information and education about their product offerings and will be able to offer unique and valuable expertise as the training content is developed. Further, we know such consultation will assist in ensuring that information about health plan options is provided in a "fair, accurate and impartial manner." (78 FR 20586)

May 6, 2013

Page 2

We also recommend that CMS clarify how it will evaluate the training modules it develops to ensure that necessary information is being communicated to consumers. Further, we recommend that CMS specify its process for refining and updating training materials in subsequent years, including how CMS will incorporate feedback from health insurance issuers and other stakeholders.

#### Unique Identifier for Navigators and non-Navigators

Under the proposed rule, all Navigators and non-Navigators would be required to register with an Exchange (78 FR 20589). The proposed rule, however, does not indicate whether these entities and individuals will be assigned unique identification numbers as part of the registration process. We also note that the individual application issued on April 30 includes an “ID number” field under the section applicable to counselors, Navigators, and brokers, but no detailed instructions are provided.<sup>1</sup>

We strongly recommend that CMS clarify that it will be issuing unique identification numbers for both Navigators and non-Navigators, similar to the National Producer Number (NPN) for agents and brokers issued by the National Insurance Producer Registry (NIPR). We also recommend that such information be required on Exchange applications. If a unique identifier is missing upon initial submission of an enrollee application, we believe follow-up efforts should be made to obtain this information. The inclusion of unique identifiers is an important consumer protection and will be critical in monitoring performance of Navigators and non-Navigators and will help ensure that any issues with a specific Navigator or non-Navigator can be identified quickly and remediated.

#### List of Navigators and non-Navigators Who are Agents or Brokers

While the proposed rule clarifies certification standards for Navigators and non-Navigators, the rule does not address how stakeholders will be provided with a list of certified individuals who are also licensed as agents or brokers.

We recommend that CMS clarify that Exchanges will be responsible for providing a comprehensive list of certified Navigators and non-Navigators that also delineates individuals who are licensed as agents or brokers. The provision of such information by an Exchange is needed to eliminate any potential confusion by consumers and to ensure successful implementation of the conflict-of-interest requirements under Sec. 155.210(d). We also recommend that CMS clarify how this information will be communicated to interested stakeholders in advance of the initial open enrollment period that commences October 1, 2013 and how this information will be updated on a regular basis.

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<sup>1</sup>Application available at: [http://cciio.cms.gov/resources/other/Files/AttachmentB\\_042913.pdf](http://cciio.cms.gov/resources/other/Files/AttachmentB_042913.pdf)

May 6, 2013

Page 3

#### Consumer Protections and Monitoring

Under the proposed rule, all Navigators and non-Navigators would be required to register and be certified by an Exchange and also must complete HHS-approved training (*78 FR 20589*). The proposed rule, however, does not specify how consumers can be assured that a Navigator or non-Navigator has met these requirements. Further, the proposed rule does not address how these entities and individuals will be monitored or how consumer complaints or grievances will be handled.

We recommend that CMS specify how consumers can be assured that any Navigator or non-Navigator they are working with has met CMS' certification and training standards. This may include developing a consumer-friendly website where certification and training can be confirmed. We also urge CMS to clarify how it will track complaints, grievances, or other concerns regarding Navigators and non-Navigators and outline how this information will be made available to consumers and other stakeholders.

#### Certified Application Counselors

In the proposed rule, CMS seeks comments on whether all or some of the standards for Navigators and non-Navigators should also apply to certified application counselors (*78 FR 20585*).

We believe that certified application counselors will serve an important role in assisting consumers. We also note an important distinction highlighted in previous CMS regulations proposed at 45 CFR 155.225 that certified application counselors are staff and volunteers of Exchange-designated organizations that are "not funded through the Exchange, through grants or directly, or licensed by states as agents or brokers." (78 CFR 4633). As such, as the Department finalizes its regulations on certified application counselors, we recommend that application counselors should comply with conflict-of-interest standards based on robust disclosure provisions; however these should not be the same standards that apply to Navigators and non-Navigators.

#### Conflicts of Interest

Under proposed Section 155.215(a), Navigators and non-Navigator personnel would be required to submit to the Exchange a written attestation that they do not have any of the prohibited conflicts of interest as well as a written plan for remaining free of any such conflicts (*78 FR 20587-20588*).

As currently drafted, it appears that Navigators and non-Navigators may only be required to provide this attestation upon initial certification; we recommend that CMS clarify that attestation will be required annually.

May 6, 2013

Page 4

Potential Conflicts of Interest

CMS notes that some conflicts of interest, while not a bar to serving as a Navigator or non-Navigator, should still be disclosed to the Exchange and to consumers. Thus, under the proposed rule, Navigators and non-Navigators would be required to disclose to the Exchange, and to each consumer who receives application assistance, information such as former employment, financial, or contractual relationships with issuers. (78 FR 20587)

The proposed rule does not specify the manner in which such disclosure should be made. We recommend disclosures to consumers be provided either in a written format or electronically; verbal disclosure would not be sufficient, as it would be difficult to track if future issues are identified with a particular Navigator.

Stakeholder Involvement Moving Forward

During the early weeks of the open enrollment period that commences on October 1, CMS will undoubtedly face operational issues on a number of fronts, including the Navigator and non-Navigator programs. To that end, we urge CMS to outline how it plans to utilize the experience of all stakeholders, including health plan issuers, as it makes real time adjustments to the Navigator and non-Navigator programs during the initial weeks of Exchange enrollment.

Thank you for the opportunity to comment on the Proposed Rule on Navigators and non-Navigator personnel. We believe health plan issuers have an important role to play in these efforts. We look forward to working with you over the coming months as you work to get the consumer outreach program off the ground and welcome the opportunity to partner with you to support these important programs.

Sincerely,



Colleen (Candy) M. Gallaher  
Senior Vice President  
State Policy