

The Honorable Kathleen Sebelius, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Sebelius,

Thank you for making important clarifications regarding the Affordable Care Act's (ACA) navigator program in your July 11, 2012 letter to some members of Congress. It provides helpful interpretations for states as they develop their navigator programs to assist consumers in connecting with comprehensive health coverage options that will be made available through affordable health Exchanges. We believe it is important to provide these and other clarifications regarding consumer assistance, through a Q & A or other sub-regulatory communication from the Center for Consumer Information and Insurance Oversight (CCIIO).

Your letter clearly notes that states cannot require any navigators to be licensed insurance brokers or agents, although states can establish certification or licensing standards specific to navigators. You explain that broker/agent licensure is neither necessary nor sufficient to perform the duties of a navigator. The letter goes on to describe a fundamental distinction between brokers/agents and navigators in that brokers not acting as navigators are allowed to recommend a specific plan (and we note, without a duty to impartiality) while a navigator must provide impartial information to help consumers understand the differences in premiums, cost-sharing and benefits among the various plans. We think this is a critical distinction in helping states think broadly about the role of navigators vs. brokers/agents. However, some states appear to think they can require some but not all navigators to be licensed as brokers. This issue requires further clarification.

We believe that navigators' required duties do not include recommending a specific plan. However, one of navigators' required — and critical — roles will be helping consumers understand the key factors to consider when choosing a plan. Many of the people navigators will serve lack experience in the often-complicated process of purchasing insurance. Thus, these consumers may seek advice from navigators with respect to aspects of coverage they should consider in selecting a plan including premiums, cost-sharing charges, and benefit structures. Your letter confirms this by noting that navigators will help consumers understand these differences among plans. We are concerned, however, based on reports from discussions at the August NAIC meeting, that the use of the word "advice" in your letter is being cited as a reason for states to prevent navigators from guiding consumers and advising them on factors to consider when selecting a plan.

Your letter goes on to suggest that navigators "will help consumers submit information to begin the eligibility and enrollment process." While we understand that it is ultimately the exchange and/or state agency that determines eligibility and processes enrollment, we are concerned that the letter could be taken literally and used to prevent navigators from fulfilling their duty to "facilitate selection in a QHP." This duty requires that navigators not only help consumers "begin" but also complete the eligibility and enrollment process

through the exchange. We believe it is very important for HHS to clarify that “facilitating selection in a QHP” means assuring that consumers are successfully enrolled in coverage, including assisting consumers in completing the application, receiving an eligibility determination, selecting a plan, submitting enrollment information and making their first premium payment as required by the exchange. Additional comments about the definition of “facilitate selection in a QHP” are noted below.

Beyond the points addressed in your letter, we believe that further federal clarification or action are needed on a number of issues relating to navigator programs and other consumer assistance services to ensure that consumers are protected and that their needs are best served.

State flexibility to set licensing, certification and other standards. Despite your clarification above that an insurance broker license is not necessary or sufficient, producer organizations continue to urge states to ensure that navigators are subject to many or all of the same requirements as insurance producers. An Iowa law on navigators largely adopts this approach by establishing licensing standards and other provisions for navigators that are nearly identical to requirements the state has in place for producers. While we strongly support a robust certification or credentialing process and training standards specific to navigators, mirroring producer licensing requirements imposes unnecessary red tape on organizations seeking to be navigators while failing to address other standards that should apply to navigators. It will be important for HHS to provide clear guidance and monitor compliance to ensure that states do not circumvent the federal regulations by merely adopting language that mirrors existing producer license requirements.

Clarify that “facilitate selection in a QHP” does not have the same meaning as “solicit, negotiate or sell insurance.” In addition to concerns raised above regarding navigator assistance in plan enrollment, some states allow only licensed insurance broker or agents to “solicit, negotiate or sell” insurance. The NAIC Producer Licensing Model Act defines each of these activities and it is clear that the duties of navigators and their relationship to consumers and issuers do not constitute “soliciting, negotiating or selling.” It is important for HHS to clarify that providing impartial assistance to consumers in selecting and enrolling in a QHP cannot be defined as “soliciting, negotiating or selling” insurance and is not in conflict with state insurance laws and regulations. Otherwise, navigators in these states could be prohibited from fulfilling all of the duties required of navigators. Additionally, requiring consumers to enroll only through a licensed broker or agent will unnecessarily drive up the operating cost of the exchange, and ultimately the cost of coverage.

Navigator program adequacy/readiness. The preamble to the final regulations regarding navigators indicates that exchanges should “plan to have a sufficient number of navigators available to assist qualified individuals and employers from various geographic areas and with varying needs.” Since state-based exchanges are prohibited from using Exchange establishment funds to make grants to navigators, we are concerned that states will not develop navigator programs that are adequate to meet these requirements and the needs of consumers. It is important for HHS to set benchmarks and provide technical

assistance to states to ensure that the navigator program is sufficient to adequately serve underserved and vulnerable populations in each state. This is particularly critical given that the new category of “in-person assister” (addressed later in this letter) can be funded through establishment grants, potentially impacting state willingness to invest adequately in navigator programs.

Navigator entities. It will be helpful for HHS to clarify that the federal regulations apply to both navigator entities, and individual staff members who perform the duties. For example, an insurance agency should not be allowed to employ both navigators and brokers who sell QHPs. Thus, the conflict of interest requirements should apply to both the entity and the individual who serves as a navigator. States, as well as the FFE, should have a process whereby they certify a navigator entity, and in turn, provide training and certification for individuals who will work directly with consumers.

Navigator portal. It is critical for states, as well as the FFE, to provide a specific web portal for navigators to use in facilitating and submitting an application on behalf of consumers. Such a portal will increase the submission of electronic applications, which benefit consumers given the ability to use dynamic questioning to tailor the online application process and to tap the federal hub and state data sources to accommodate real-time eligibility. Increasing the volume of applications submitted electronically is also the most efficient and cost-effective way for the FFE, as well as state exchanges, to administer eligibility and enrollment. By establishing a separate web portal, states are better equipped to evaluate the effectiveness of the navigator program and can develop audit trails to track the source of data, thereby providing an important consumer protection. While the regulations stop short of requiring states to provide a separate portal for navigators, they should be encouraged to do so. Additionally, it is our understanding that HHS has committed to providing a separate portal for brokers/agents but not for navigators. This seems inconsistent with the ACA, which requires a navigator program but gives states the option of working through brokers/agents.

Providing information regarding consumer assistance. Navigators are a required consumer assistance service and their obligation to provide impartial information about the full range of insurance affordability options and QHPs provides a more objective source of assistance for consumers. The FFE or state exchanges should be required to provide a listing of navigators and other free, impartial consumer assistance on its website and in all outreach materials.

Assistance with all insurance affordability programs. Roughly 1 in 5 individuals enrolled in both the exchange and in Medicaid will have an income change that makes them eligible for coverage in the other program.¹ Additionally, 75% of parents in subsidized

¹ Pamela Farley Short, Katherine Swartz, Namrata Uberoi & Deborah Graefe, “Realizing Health Reform’s Potential: Maintaining Coverage, Affordability and Shared Responsibility When Income and Employment Change,” Commonwealth Fund, May 2011. Based on the 2004 Survey of Income and Program Participation, the study concluded that 17% of the families qualifying for exchange coverage with incomes between 133% and 200% FPL experienced a drop in income below 133%, which would qualify them for Medicaid; while 24% in the Medicaid income range had increases in income that would qualify them for the exchange.

exchange plans will have children eligible for Medicaid or CHIP.² We urge HHS to establish standards to ensure that all consumer assistance entities, including navigators, in-person assisters, agents and brokers, certified to operate in connection with a state-based exchange or FFE, provide an appropriate level of assistance to people who may be eligible for Medicaid and other public programs as well as those likely eligible for private insurance coverage. We note that the California Exchange plans to require agents and brokers to help consumers with public program enrollment without compensation if they are registered with and certified by an exchange. At a minimum, agents and brokers should have to refer individuals to the appropriate state agency or other consumer assistance programs, including navigators.

Federal funding for navigator program development. It would be helpful for HHS to specifically state that the cost of developing navigator standards and training, hiring staff to develop and manage the navigator program, and other activities to ready the navigator program are all appropriate expenditures that can be covered by Exchange establishment grants.

In-person assisters vs. navigators. In the June 29, 2012 release of the federal funding opportunity for establishment grants, HHS includes a new category of assister that qualifies for federal funding. While it is important to provide consumers with multiple ways to receive education and assistance, the distinctions between navigators and in-person assisters are unclear. Minimally, we believe that it is vitally important for in-person assister programs to build on the existing infrastructure of community-based and non-profit organizations that have experience assisting low-income families in accessing public coverage. In the near future, we will provide additional recommendations on maximizing assistance opportunities while ensuring the adequacy of navigator programs.

Thank you for the opportunity to share our suggestions and concerns. We would be more than happy to elaborate on any of these issues or provide additional information you or your staff would find helpful.

Respectfully submitted,

American Cancer Society Cancer Action Network
American Diabetes Association
American Federation of State, County & Municipal Employees (AFSCME)
Community Catalyst
Consumers Union
Enroll America
Families USA
Georgetown Center for Children and Families
Health Care for America Now

² L. Dubay and G. Kenney. Memorandum to Interested Parties re: The Need for a Seamless Enrollment System Under the Affordable Care Act. (Washington, DC: Urban Institute, 2011).

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National Partnership for Women and Families
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