



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

July 11, 2012

The Honorable Adam Kinzinger
U.S. House of Representatives
Washington, DC 20515

Dear Representative Kinzinger:

Thank you for your letter regarding your concerns with licensing requirements and liability coverage related to Exchange Navigators. I appreciate your writing about this important matter.

I agree that states should have the authority and flexibility to institute appropriate licensing and certification standards for Navigators. This is reflected in the Establishment of Exchanges and Qualified Health Plans Final Rule, which requires the Navigators to “meet any licensing, certification, or other standards prescribed by the state or Exchange.” The final rule also requires that Exchanges develop training standards to ensure Navigators have expertise in:

- (i) the needs of underserved and vulnerable populations;
- (ii) eligibility and enrollment rules and procedures;
- (iii) the range of Qualified Health Plan (QHP) options and insurance affordability programs; and,
- (iv) the privacy and security standards applicable under section 155.260.

States or Exchanges may link such standards to a Navigator licensing or certification process if they deem it appropriate.

In response to the proposed rule for Establishment of Exchanges and Qualified Health Plans, the Department of Health and Human Services (HHS) received many public comments asking that Navigators not be required to hold producer licenses. As you are aware, the final rule requires that at least two types of entities be awarded grants to serve as Navigators in an Exchange, one of which must be a community and consumer-focused nonprofit group. Furthermore, because the final rule defines an “agent or broker” as “a person or entity licensed by the state as an agent, broker, or insurance producer,” a requirement that Navigators hold a producer license would make every Navigator an agent or broker, and thus violate the standard that at least two types of entities serve as Navigators.

Moreover, we do not think that holding an agent or broker license is necessary or sufficient to perform the duties of a Navigator as these licenses generally do not address areas in which Navigators are required to have expertise, including public health coverage options. Finally, we think producer licenses are unnecessary for Navigators because they will not offer advice about which QHP is better or worse for a particular individual or employer. Instead, Navigators will provide impartial information to help consumers understand the differences in premium amounts, cost-sharing policies, and benefit structures among plans, and they will help consumers submit

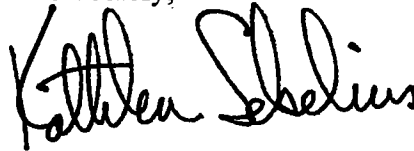
information to begin the eligibility and enrollment process. They will not advise consumers about which health plan they should choose.

I also share your concern for consumer protection, and I am similarly committed to ensuring consumers are protected when seeking information about Exchanges and QHPs. This commitment is reflected in the final rule, which requires that the Exchanges develop and disseminate conflict of interest standards that must apply to all Navigators. The preamble to the final rule also addresses the importance of this issue by encouraging states to develop conflict of interest standards that give consumers recourse if they have been negatively affected by the actions of a Navigator.

While errors and omissions coverage is a financial liability tool that is often required of agents and brokers, HHS believes there are many other options available to the Exchanges to ensure consumers are protected in their interactions with Navigators. Requiring errors and omission coverage may serve as a significant barrier to entry for entities that may otherwise be well-qualified to serve as Navigators. I want to reassure you that I am fully committed to ensuring consumer protection across all aspects of the Exchange, and that this is an area which we are reviewing and refining our policy on an ongoing basis. I encourage you to work with your state and the Exchanges to develop model policies that ensure consumers can get impartial and accurate information from trusted sources such as community and consumer-focused nonprofits.

Again, thank you for your interest in this important issue. Please do not hesitate to contact me if you have any further thoughts or concerns. I will also provide a copy of this response to the cosigners of your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is written in a cursive, flowing style.

Kathleen Sebelius