



# VCU Medical Center

## Office of Health Innovation

### Proposed Rule: Standards for Navigators and Non-Navigator Assistance Personnel

**Description:** This proposed rule would create conflict-of-interest, training and certification, and meaningful access standards applicable to Navigators and non-Navigator assistance personnel in Federally-facilitated Exchanges, including State Partnership Exchanges, and to non-Navigator assistance personnel in State-based Exchanges that are funded through federal Exchange Establishment grants. These proposed standards would help ensure that Navigators and non-Navigator assistance personnel will be fair and impartial and will be appropriately trained, and that they will provide services and information in a manner that is accessible.

### Major Provisions

The Affordable Care Act, and the regulation implementing its provisions direct all Exchanges to award grants to Navigators that will provide fair and impartial information to consumers about health insurance, the Exchange, QHPs, and insurance affordability programs including premium tax credits, Medicaid and the Children's Health Insurance Program (CHIP); and that will provide referrals to consumer assistance programs (CAP) and health insurance ombudsmen for enrollees with grievances, complaints, or questions about their health plan or coverage.

The Exchange regulations also authorize Exchanges to perform certain consumer service functions in addition to the Navigator program. A program established to fulfill the consumer assistance, education, and outreach functions through in-person consumer support, other than a Navigator program, is referred to in the proposed regulation as a "non-Navigator assistance program." State-based Exchanges may, but need not, establish non-Navigator assistance programs to provide consumer assistance, education, and outreach.

### **Navigator Funding**

HHS will have responsibility for the inherently governmental function of awarding federal Navigator grants for the Federally-facilitated Exchanges, including State Partnership Exchanges. Federally facilitated Exchanges, other than Consumer Partnership Exchanges, do not anticipate including a non-Navigator assistance program.

### **Navigator Program Standards**

The Affordable Care Act currently directs that, to receive a Navigator grant, an entity or individual must "meet any licensing, certification or other standards prescribed by the state or Exchange, if applicable." The proposed rule would clarify that any Navigator licensing, certification, or other standards prescribed by the state or Exchange should not prevent the application of the provisions of title I of the Affordable Care Act. Thus, for example, 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.

Under the ACA, a Navigator may not be a health insurance issuer; be a subsidiary of a health insurance issuer; be an association that includes members of, or lobbies on behalf of, the insurance industry; or receive any consideration, directly or indirectly, from any health insurance issuer in connection with the enrollment of any individuals or employees in a QHP or non-QHP. CMS proposes to amend the language to further clarify that a Navigator must also not be an issuer of stop loss insurance, or a subsidiary of an issuer of stop loss insurance, and must not receive any consideration, directly or indirectly, from any issuer of stop loss insurance in connection with the enrollment of individuals or employers in a QHP or non-QHP.

### **Standards Applicable to Navigator's and Non-Navigator Assistance Personnel**

The proposed regulation proposes conflict-of-interest standards that are substantially similar for both Navigators and non-Navigator assistance personnel. These proposed conflict-of interest standards would apply to all Navigators and non-Navigator assistance personnel in a Federally-facilitated Exchange (including a State Partnership Exchange), and to federally-funded non-Navigator assistance personnel in a State-based Exchange. State-based Exchanges would not be required to adopt the conflict-of-interest standards proposed in this rule for their Navigators or for their non-Navigator assistance personnel that are not funded through Exchange Establishment grants.

### **Conflict of Interest Standards for Navigators**

Because any individual or entity with conflicts of interest would be barred from participating as a Navigator, the first proposed conflict-of interest standard would require that a Navigator entity, including a Navigator grant applicant, submit to the Exchange a written attestation that the Navigator and its staff do not have any of these prohibited conflicts of interest. All Navigator entities submit to the Exchange a written plan to remain free of conflicts of interest during their term as a Navigator.

All Navigator entities, including Navigator grant applicants, must submit to the Exchange a written attestation that the Navigator, including the Navigator's staff:

- Is not a health insurance issuer or issuer of stop loss insurance;
- Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;
- Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and
- Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

Certain conflicts of interest, while not a bar to serving as a Navigator, should be disclosed to the Exchange and to each consumer receiving application assistance (which includes pre-enrollment and

post-enrollment services, but does not include outreach and education assistance), both by the Navigator individual and the entity.

Under the proposed rule, in order to mitigate conflicts of interest, there are three types of information that Navigators should disclose to the Exchange and to their consumers.

1. Navigator and all Navigator staff members would be required to disclose to the Exchange and to each consumer who receives application assistance from the Navigator entity or individual, any lines of insurance business, other than health insurance or stop loss insurance, which the Navigator intends to sell while serving as a Navigator.
2. Navigators and their staff members would be required to disclose to the Exchange and each consumer receiving application assistance, any existing and former employment relationships they have had within the last five years with any issuer of health insurance or stop loss insurance, or subsidiaries of such issuers.
3. Navigators and their staff members would also be required to disclose to the Exchange and to each consumer receiving application assistance any existing or anticipated financial, business, or contractual relationships with one or more issuers of health insurance or stop loss insurance or subsidiaries of such issuers.

If an entity or organization is awarded a grant to be a Navigator, the entity as a whole is considered to be a Navigator. While a Navigator could retain staff members who serve as agents and brokers, those staff members – and the organization itself – could not receive compensation from health insurance or stop loss insurance issuers for enrolling individuals or employees in QHPs or health insurance plans outside of the Exchange. Such staff members, however, could continue to be compensated for selling other insurance products (for example, auto, life, and homeowners' policies).

#### **Conflict of Interest Standards for Non-Navigator Assistance Personnel**

The proposed rule would establish a set of parallel conflict-of-interest standards that would apply in Federally-facilitated Exchanges (including State Partnership Exchanges) to non-Navigator assistance personnel carrying out consumer assistance, and to federally-funded non-Navigator assistance personnel in a State-Based Exchange.

#### **Training Standards for Navigators and Non-Navigator Assistance Personnel**

Under existing regulations, training standards developed by the Exchange must ensure Navigator expertise in eligibility and enrollment rules and procedures, the range of QHP options and insurance affordability programs, the needs of underserved and vulnerable populations, and privacy and security requirements applicable to personally identifiable information.

CMS now proposes a specific set of training standards that would require up to 30 hours of training, including standards for certification and recertification, for all Navigators and non-Navigator assistance personnel, to ensure that these entities and individuals can satisfy the duties and obligations of serving as Navigators or non-Navigator assistance personnel.

All Navigators and Non-Navigator Assistance Personnel who carry out the consumer assistance functions must receive training in the following subjects:

1. QHPs (including the metal levels), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;
2. The range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program (CHIP), and other public programs;
3. The tax implications of enrollment decisions;
4. Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;
5. Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;
6. Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through an Exchange; and the individual responsibility to have health insurance;
7. Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;
8. Providing culturally and linguistically appropriate services;
9. Ensuring physical and other accessibility for people with a full range of disabilities;
10. Understanding differences among health plans;
11. Privacy and security standards for handling and safeguarding consumers' personally identifiable information;
12. Working effectively with individuals with limited English proficiency, people with a full range of disabilities, and vulnerable, rural, and underserved populations;
13. Customer service standards;
14. Outreach and education methods and strategies; and
15. Applicable administrative rules, processes and systems related to Exchanges and QHPs.

The proposed recertification requirement for Navigators and non-Navigator assistance personnel would ensure that they remain appropriately trained to adequately serve consumers. The rule also proposes that Navigators and non-Navigator assistance personnel should obtain continuing education and be certified and/or recertified on at least an annual basis.

#### **Providing Culturally and Linguistically Appropriate Services (CLAS Standards)**

The Affordable Care Act directs that Navigator entities have a duty to provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges. According to the regulation implementing this provision, Navigators must "provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency"

The specific standards proposed in this rule require that Navigators and non-Navigator assistance personnel develop, maintain, and regularly update general knowledge about the racial, ethnic, and

cultural groups in their service area, including the primary languages spoken, and continue to use this information. The proposed requirements would also include that such entities and individuals provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, which would include oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary to ensure meaningful access.

### **Standards Ensuring Access by Persons with Disabilities**

The proposed rule would require Navigators and non-Navigator assistance personnel to provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities. In addition, the proposed rule would direct Navigators and non-Navigator assistance personnel to ensure that any consumer education materials, websites, or other tools utilized for consumer assistance purposes are accessible to people with disabilities.

### **Use of Navigator Grant Funds**

The proposed rule clarifies some details regarding the use of exchange establishment grants to cover costs associated with Navigators grants. Section 1311(a) of the Affordable Care Act prohibits Exchanges from using section 1311(a) grant funds to fund Navigator grants. However, these grant funds may be used to cover the Exchange's cost of administering the Navigator program, including, for example, the cost of Navigator training, grants management, and oversight.

As long as grant funds under section 1311(a) are available to the state, a State-based Exchange need not be self-sustaining during its initial year of operation. Accordingly, as long as section 1311(a) grant funds are available to the state, a State-based Exchange may not have sufficient funds independent of section 1311(a) grant funds during its initial year of operation to achieve all of the goals of the Navigator program. As a transitional policy in such circumstances, a State-based Exchange may use a non-Navigator assistance program in its initial year of operation to fill in any gaps in its Navigator program and otherwise ensure that the full range of services that its Navigator program will provide in subsequent years are provided during its initial year of operation.