

*Navigator Program*

*RESEARCH/ALTERNATIVES ANALYSIS REPORT #1*

*Arkansas' Federally Facilitated  
Exchange Partnership Planning  
Consumer Assistance Advisory Committee*

**Navigator Program Eligibility**

*May 11, 2012*

**Research/Alternatives Analysis report #1**  
**Navigator Program Eligibility**

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## 1. Executive Summary

The goal of this *Research/Alternatives Analysis report #1 – Navigator Program Eligibility*, is to inform the Consumer Assistance Advisory Committee of the federal requirements surrounding eligibility of the Navigator Program. For this Committee’s consideration, this Report provides summary information regarding available federal regulations, CCIIO guidance, and opinions and activities from other sources.

There are two main questions that sit before the Committee:

- 1) Beyond the regulatory requirements, what Goals and Duties does Arkansas want to require of the Navigator Program?
- 2) Should Brokers and Producers be eligible to become Navigators?

According to federal regulations a Navigator’s duties include:

- (1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;
- (2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs;
- (3) Facilitate enrollment in QHPs;
- (4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
- (5) 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, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act

The Committee may choose to use these duties, as is, or expand the list, as some states are considering.

Navigator program participation is defined in Federal regulations, as well. Arkansas’ Navigator Program must include at least one community and consumer-focused nonprofit group and an entity from at least one of the other following categories:

- Trade, industry, and professional associations;
- Commercial fishing industry organizations, ranching and farming organizations;
- Chambers of commerce;
- Unions;
- Resource partners of the Small Business Administration (SBA);
- Licensed agents and brokers (“Agent or broker” is defined in § 155.20 as “a person or entity licensed by the State as an agent, broker, or insurance producer.”); and
- Other public or private entities that meet the requirements of this section. Other entities may include but are not limited to Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

Federal regulations also allows the participation of insurance brokers and producers as long as they meet all Federal requirements and conflict of interest rules but does not require a state to select brokers and producers as Navigators. In providing information for this decision, PCG has provided a few different viewpoints for the Committee to consider.

CCIIO leaves this decision up to the states but an excerpt provided from the Impact Analysis they released says that while CCIIO expects that licensed brokers and producers will play a role in the Navigator program, they also provide an example of a program that exists without brokers and producers, namely the SHIP program. Within the report are additional opinions provided from the National Association of Insurance Commissioners and a consumer advocacy group.

The Committee can decide to let the regulations stand on their own and accept the regulations as is by allowing brokers and producers to participate as Navigators as long as they meet all Federal requirements.

#### Consumer Assistance Advisory Committee – Goals for May 2012

The Consumer Assistance Advisory Committee will develop recommendations to the FFE Steering Committee that will:

1. Define the goals and duties of the Navigator Program beyond those required under the regulations, if the Committee chooses to do so;
1. Define Navigator Program participation specifically, beyond those required under the regulations; and,
2. Determine whether or not, and/or what kind, of participation Brokers and Producers will have in the Navigator Program.

## 2. Introduction

The Navigator Program is intended to promote the availability and affordability of health coverage through the Exchange and facilitate consumer enrollment into Arkansas Medicaid or private insurance plans that best meet the consumer's needs. In order to qualify as Navigators, applicants must demonstrate existing relationships or demonstrate the ability to form existing relationships with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan and be able to present information in an unbiased, understandable, and culturally appropriate manner. Many uninsured individuals are likely to be unfamiliar with engaging in enrollment with insurance providers; the Navigator Program can decode complex information and multiple options, and consequently smooth the pathway to access.

While Federal regulations for Navigators are relatively prescriptive, there is enough flexibility to allow for Arkansas to tailor its Navigator Program to meet the specific needs of Arkansas' citizens. It is important to understand these federal regulatory requirements before designing the Navigator Program for the Federally Facilitated Exchange (FFE) in Arkansas.

The goal of this *Research/Alternatives Analysis report #1 – Navigator Program Eligibility*, is to inform the Consumer Assistance Advisory Committee of the federal requirements surrounding eligibility of the Navigator Program. The Research/Alternatives Analysis report contains summary information of the regulations (full text included as an appendix), CCIIO guidance, examples of other state actions to date, and considerations that the Committee can discuss.

### Consumer Assistance Advisory Committee – Goals for May 2012

The Consumer Assistance Advisory Committee will develop recommendations to the Exchange Steering Committee that will:

2. Define the goals and duties of the Navigator Program beyond those required under the regulations, if the Committee chooses to do so;
3. Define Navigator Program participation specifically, beyond those required under the regulations; and,
4. Determine whether or not, and/or what kind, of participation Brokers and Producers will have in the Navigator Program.

### 3. Guidance on the Navigator Program

#### 3.1 ACA Requirements

The following paragraphs provide a summary of the federal rules released by the Center for Medicare and Medicaid Services (CMS) on March 27, 2012.<sup>1</sup>

To receive a Navigator grant an entity must demonstrate that it has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan.

Navigators must include at least one community and consumer-focused nonprofit group, and an entity from at least one of the other following categories:

- Community and consumer-focused nonprofit groups;
- Trade, industry, and professional associations;
- Commercial fishing industry organizations, ranching and farming organizations;
- Chambers of commerce;
- Unions;
- Resource partners of the Small Business Administration (SBA);
- Licensed agents and brokers (“Agent or broker” is defined in § 155.20<sup>2</sup> as “a person or entity licensed by the State as an agent, broker, or insurance producer”); and,
- Other public or private entities that meet the requirements of this section. Other entities may include but are not limited to Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

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<sup>1</sup> Appendix A, 45 CFR §155.210

<sup>2</sup> Appendix B, 45 CFR §155.220

The Exchange must ensure that a **Navigator must not:**

- (1) Be a health insurance issuer; subsidiary of a health insurance issuer, or an association that includes members of or lobbies on behalf of the insurance industry; or
- (2) Receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or qualified employees in a Qualified Health Plan (QHP).<sup>3</sup>

Arkansas may permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs. A State may choose to permit agents and brokers to –

- (1) Enroll qualified individuals, qualified employers or qualified employees in any QHPs in the individual or small group market as soon as the QHP is offered through an Exchange in the State; and
- (2) Assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs, subject to the following:
  - An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with the terms of agreement between the agent or broker and the Exchange under which the agent or broker at least 1) registers with the Exchange in advance of assisting qualified individuals enrolling in QHPs through the Exchange, 2) receives training in the range of QHP options and insurance affordability programs, and 3) complies with the Exchange's privacy and security standards.
  - An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with applicable state laws related to confidentiality and conflicts of interest.<sup>4</sup>

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<sup>3</sup> Appendix A, 45 CFR §155.210

<sup>4</sup> Appendix B, 45 CFR §155.220

Navigators are to be designed to perform the following duties:

- (1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;
- (2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs;
- (3) Facilitate enrollment in QHPs;
- (4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
- (5) 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, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

### 3.2 Additional CCIIO Guidance

Center for Consumer Information and Insurance Oversight (CCIIO) provided an impact analysis entitled “Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, Exchange Standards for Employers (CMS-9989-FWP) and Standards Related to Reinsurance, Risk Corridors and Risk Adjustment (CMS-9975-F) Regulatory Impact Analysis in March of 2012. CCIIO provided the following comments about the Navigator Program. This is an excerpt from the impact analysis:

*Subpart C of part 155 of the Exchange rule also proposes requirements for Exchanges in connection with the Navigator program. Navigators are grant-funded entities that educate the public about the availability of health coverage through the Exchange and facilitate the enrollment of individuals in QHPs through Exchanges. Exchanges, which must have Navigator Programs, have substantial flexibility in designing these programs.*

*By statute, Navigator Programs may be funded only through Exchange operational funds, which are separate from the Exchange Planning and Establishment Grants awarded to States. The Exchange must publicly disseminate training and certain conflict of interest standards for Navigators.*

*CCIIO expects Navigators to increase access to and enrollment in QHPs. For example, Navigators will provide a potential means of accessing the Exchange for individuals who lack easy access to technology, such as computers and telephones. Estimating the impact of Navigator programs on enrollment is difficult due to the level of flexibility States have when establishing Navigator Programs in State Exchanges.*

*Medicare's existing State Health Insurance Assistance Program ("SHIP") offers a somewhat comparable example that may be useful when estimating the cost of operating a Navigator Program. SHIPs are grant-funded, State-based offices that provide education, outreach, and assistance to Medicare beneficiaries. SHIPs employ volunteers for much of the outreach and assistance they provide to consumers, while Navigators will receive grant funding directly from the Exchange. Although the population served by SHIPs differs from the population Navigators will serve, SHIPs' operating data provides a baseline for comparison. CMS estimates that SHIPs have reached 4.7 million people through outreach events in the same year; SHIPs conducted 54,656 public information and outreach events.*

*Either in their existing role or as Navigators, and consistent with State requirements, CCIIO expects that agents and brokers will enroll individuals into qualified health plans through an Exchange, similar to the work currently performed in the individual and small group markets.<sup>5</sup>*

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<sup>5</sup> <http://cciiio.cms.gov/resources/files/Files2/03162012/hic3r-ria-032012.pdf>

## 4. Considerations for the Committee

There are two main topic areas that require recommendations by the Consumer Assistance Advisory Committee:

- 1) Are there any Navigator goals or principles that the Committee would like to recommend that are above and beyond the Navigator Program requirements in the ACA?
- 2) Does the committee see a role for Brokers and Producers in the Navigator Program? If so, what role/functions?

### 4.1 Defining Goals and Principles for the Arkansas Navigator Program

#### 4.1a – Defining Goals and Principles

The decision before the Consumer Assistance Advisory Committee is to recommend goals, objectives, and minimum thresholds for who can and should serve the citizens of Arkansas as Navigators. The following list of Goals or Principles is intended to begin the Committee's discussion and debate around this decision point, and is intended to drive the development of the Navigator Program.

#### Framed as Goals

- To ensure selected Navigators are trusted sources of health care coverage information in the communities they choose to serve;
- To ensure that services are culturally and linguistically appropriate; and,
- To ensure that information is relayed in a way that simplifies choices and considers the individual needs of each consumer and their families.

#### Framed as Principles

- (1) Accountability to the Consumer
  - a. Provide health insurance options in a way that is fair and impartial and protects Protected Health Information
  - b. Receive no financial consideration directly or indirectly from an insurance company or QHP

- (2) Using plain language, provide consumer with an understanding of Qualified Health Plans available, premium tax credits and cost sharing provisions, understanding of the differences in metal plans, eligibility and enrollment processes, and understanding of public programs and eligibility,
- (3) Demonstrate there is no conflict of interest in providing the full range of services,
- (4) Demonstrate existing relationships or demonstrate ability to form existing relationships with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan.
- (5) Provide application assistance
- (6) Provide Services in a culturally and linguistically appropriate manner
- (7) Provide resources or avenues to register complaints and grievances with any service provided through the exchange.

#### 4.1b – Other State Example: California

The Committee may want to consider recommending a formal list of Navigator Program goals be developed. Below is an example of what several groups from the State of California have drafted as recommendations for the state to consider toward this end.

##### State of California

##### **Recommended Guiding Principles for Consumer-Focused Navigators:**

1. **Duty to the Consumer.** Navigators have a duty to first serve the consumer in their role as navigator; this includes the prohibition against “steering” a consumer toward or away from any particular coverage option for the purpose of maximizing financial benefit to the navigator, and ensuring that navigators handle all sensitive and protected personal consumer health information in accordance with applicable privacy laws. As stipulated by the ACA, navigators may not receive any financial consideration directly or indirectly from a health insurance issuer for enrollment in a qualified health plan.
2. **Accountability and Oversight.** All navigators are required to provide “fair and impartial information” and will be accountable, through the navigator entity or otherwise, to the Exchange or another designated state entity, as appropriate. Appropriate procedures and processes will need to be developed to ensure navigators are subject to suitable accountability measures and that a consumer who is harmed by a navigator’s error or omission has sufficient recourse.

3. **Health Care Expertise Across the Full Range of Coverage Options.** All navigators must demonstrate competency with and knowledge of both qualified health plans and public health coverage programs, as well as the relevant enrollment processes and eligibility requirements, including proficiency with the income calculation(s) for determining eligibility for public programs and federal tax credits/subsidies. However, it may be desirable for some navigators to specialize their activities on specific functions or populations.
4. **Training and Certification.** All navigators must meet training and certification standards:
  - a) Initial training that covers both public and private health coverage options (e.g., qualified health plans in the Exchange, including the availability of premium tax credits and cost-sharing limits for those eligible; Medi-Cal; Healthy Families; Medicare; COBRA; ERISA; etc.).
  - b) An ongoing annual training requirement to ensure that navigators are up-to-date on programs, plans, and eligibility and enrollment systems.
  - c) Certification that ensures those providing navigator services meet specific quality and other standards.
5. **Independence and Disclosure.** All navigators must perform their navigation scope of work independently of any relationship they have with a health insurance issuer, impartially, and within professionally-accepted ethical standards. To avoid conflicts of interest, a navigator shall be required to provide to all consumers with whom they interact a clear and concise description both of the services they can perform for consumers and disclosure of how they will be paid for those services. Consumers should also be informed that they may select or change navigators at any time.
6. **Full Range of Services.** Navigator entities must provide the full range of services outlined in the Affordable Care Act to help consumers “navigate” the health care arena including, but not limited to:
  - a) Educating consumers about private and public health care options in plain language, including the value of the different “metal” tiers in the Exchange, the availability of premium tax credits and cost-sharing subsidies, the individual mandate including the penalties for failure to comply with it, and the availability of public programs for those at the lowest income levels.

- b) Providing fair and impartial information about selection among the qualified health plans in the Exchange, including benefit level options, implications of cost-sharing, and the applicability of premium tax credits or subsidies, as well as eligibility for public programs.
  - c) Facilitating enrollment in qualified health plans through application assistance, which may include troubleshooting during the enrollment process, and verification of successful enrollment, as well as assistance during times of renewal or during coverage transitions that arise when income or other life circumstances change.
  - d) Providing consumer assistance in areas such as how to utilize health coverage benefits and offering referrals to the ombudsman program or to another appropriate agency for those with grievances, complaints, or questions about their health plans, coverage, or determinations.
7. **Cultural and Linguistic Competency.** Navigator entities must demonstrate expertise and cultural competency in assisting populations served by the Exchange or by public health coverage programs, including communities of color and vulnerable populations, such as low-income families, individuals who are not functionally literate or have low-English literacy, families of individuals with special health care needs.<sup>6</sup>

#### 4.1c – Other State Example: Maryland

The State of Maryland took a different approach, instead developing these Navigator Program guiding principles, which are intended to support the Exchange’s policies, functions, and operations:

- 1. make health care coverage more accessible to Marylanders;
- 2. promote affordable coverage;
- 3. contribute to the Exchange’s long-term sustainability;
- 4. build on the strengths of the State’s existing health care system to support the Exchange’s stability;
- 5. address longstanding disparities in health care access and health outcomes;

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<sup>6</sup> <http://cchi4families.org/pdf/uploads/Navigator%20Guiding%20Principles%20Oct%2011.pdf>

6. facilitate flexibility to enable the Exchange to respond nimbly to changes in the insurance market, health care delivery system, and economic conditions while also maintaining sensitivity and responsiveness to consumer needs and demands; and,
7. function with the transparency necessary to render it accountable, accessible, and easily understood by the public.<sup>7</sup>

## 4.2 Brokers and Producers Role in the Arkansas Navigator Program

While ACA certainly allows broker and producer participation, federal regulations allow Arkansas to consider Navigator Program models that exclude brokers and producers from participation. The state must be satisfied that no actual or perceived conflict of interest exists and that these groups can satisfy all the preconditions required of Navigators. Opinions vary, depending on the source and perspective. Below are examples of opinions taken from Families USA, a national consumer advocacy group, as well as the National Association of Insurance Commissioners (NAIC) regarding the appropriate use of Brokers and Producers in the Navigator Program.

### 4.2a –Families USA Perspective

*Families USA*, a well-known national consumer advocacy group, considered these issues in a position paper entitled: “Navigators Need Not Be Licensed as Insurance Brokers or Agents.” *Families USA* posed this question and presented the SHIP model as a viable alternative in the excerpt below. It is important to note that Families USA provided this opinion and this does not represent the views of the advocacy community at large, but rather provides another perspective from an advocacy group.

***Are there models of “facilitated enrollment” in other programs that are not handled by agents/brokers?***

*Yes. Community-based organizations assist with enrollment in Medicaid and CHIP in many states. Community-based organizations and volunteers provide Medicare counseling and assist with plan enrollments as part of the federally funded State Health Insurance Assistance Program (SHIP).*

*Medicaid and CHIP agencies in some states enter into agreements with community-based organizations and other entities to help people enroll in Medicaid and CHIP. In some states, the enrollment assister helps the person enroll only in the public program, and then plan selection takes place later; but in other states, such as New York and California, the facilitated enrollment counselor, or “application assister,” also helps the person enroll in a plan.*

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<sup>7</sup> <http://mlis.state.md.us/2012rs/bills/sb/sb0238f.pdf>

*Grant agreements between the state and the community-based organization require the counselor to provide unbiased information.*

*See [http://www.healthyfamilies.ca.gov/EEs\\_CAAs/Forms.aspx#CAA\\_Agreement](http://www.healthyfamilies.ca.gov/EEs_CAAs/Forms.aspx#CAA_Agreement) online for more information about California's agreements with enrollment entities for its Healthy Families (CHIP) Program. A wide range of organizations can become Healthy Families enrollment entities, including community-based organizations, health providers, tax assisters, insurance brokers, and others. The entity must use "certified application assistants" who have taken a five-hour, web-based training course and passed an exam. In addition, they must sign a code of conduct that requires them to wear an identifying badge; not accept money; not recommend one plan over another; not coach an applicant to omit income information, for example, on an application for benefits; as well as other requirements. Violations can lead to termination of certification for the assister and termination of the agreement with the enrollment entity.*

*In Medicare, SHIP counselors assist Medicare beneficiaries with enrollment in Part D drug plans and provide counseling on Medicare, Medicare Advantage, and Medicare Supplemental policies. SHIP counselors regularly assist Medicare beneficiaries in using the medicare.gov online tools to compare and enroll in drug plans, but under CMS guidance, only the beneficiary, the beneficiary's legal representative, or someone authorized under state law can actually execute the enrollment request.<sup>8</sup> As of 2009, about two-thirds of states had established certification programs for SHIP counselors and additional states were in the process of developing programs.<sup>9</sup> Certification requirements often include training, competency testing, and a period of supervision by a mentor before the SHIP counselor is permitted to counsel alone. Currently, however, there is no national SHIP certification program; states design their own training and certification requirements. A related program, the Senior Medicare Patrol, is a nationwide network of volunteers that helps Medicare and Medicaid beneficiaries detect fraud. The Administration on Aging funds a resource center for the state-based patrols that provides national training materials. Upon completion, volunteers take an assessment test and receive a certificate of completion.<sup>10</sup>*

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<sup>8</sup> Centers for Medicare and Medicaid Services, *Medicare Prescription Drug Manual*, Chapter 3: Eligibility, Enrollment, and Disenrollment (Baltimore: Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, August 2009 update), p. 68, available online at <http://www.cms.gov/MedicarePresDrugEligEnrol/Downloads/PDPErollmentGuidanceUpdateFINAL2010.pdf>.

<sup>9</sup> Health Assistance Partnership, "State of the SHIPS: A Summary of Results of the 2009 SHIPS Needs Assessment Survey" (Washington: Families USA, January 2010), available online at <http://www.hapnetwork.org/assets/pdfs/state-of-the-ships-report/2010.pdf>. Methods of certification are described at <http://www.hapnetwork.org/shipcertification/methods.html>.

<sup>10</sup> <http://www.familiesusa.org/health-reform-central/publications.html>, "Navigators Need Not Be Licensed as Insurance Brokers or Agents March 2011"

#### 4.2b NAIC Perspective

Alternatively, the National Association of Insurance Commissioners (NAIC) argues that brokers/producers are valuable resources for small businesses, as well as the individual market. NAIC argues that it would be a mistake to exclude brokers/producers from participation in Navigator Programs assuming they meet all certification requirements adopted by the AID and have a legacy of trust with the population(s) in question.

The National Association of Insurance Commissioners (NAIC) developed a white paper<sup>11</sup> on the issue of allowing brokers and producers to participate as Navigators. A subgroup of NAIC's Health Insurance and Managed Care Committee tasked with analyzing ACA's PPACA's state exchanges released the eight-page draft report on May 19, 2011. In part the white paper argued that "Producers" are "crucial players in the success or failure" of the exchanges. The report states that determining the Producers' role is "a vital part of the implementation process" for an Exchange. "Producers have a significant relationship of trust with the individuals covered by both the individual market and the small employer insurance market," the report notes. In addition, it states, producers can increase public awareness of Exchanges and drive consumer traffic to an exchange's website.

The report also acknowledges that including a role for producers will also save the states money: "An exchange that uses the already established system of producers to market, advertise and assist with the exchanges can save on costly overhead and administrative expenses."<sup>12</sup>

#### 4.2c Other States

PCG reviewed a few other states and found no common theme or information that would lend additional information with which to make a decision on the question of allowing brokers/producers to function as Navigators.

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<sup>11</sup> [http://www.naic.org/documents/committees\\_b\\_110622\\_governance.pdf](http://www.naic.org/documents/committees_b_110622_governance.pdf)

<sup>12</sup> [http://www.naic.org/documents/committees\\_b\\_110622\\_governance.pdf](http://www.naic.org/documents/committees_b_110622_governance.pdf)

## 5. Information Sources

The information in this Research/Alternatives Analysis Report was derived from the Federal regulations regarding the Navigator Program. Additionally, below are a collection of additional resources (i.e., white papers and other guidance) that may be useful for your consideration.

Link	Description
<a href="http://www.regulations.gov/#!documentDetail;D=HS-OS-2011-0020-2420">http://www.regulations.gov/#!documentDetail;D=HS-OS-2011-0020-2420</a>	ACA regulations published March 2012 45 CFR §155.210
<a href="http://cciio.cms.gov/resources/files/Files2/03162012/hic3r-ria-032012.pdf">http://cciio.cms.gov/resources/files/Files2/03162012/hic3r-ria-032012.pdf</a>	Regulatory Impact Analysis, CCIIO
<a href="http://www.familiesusa.org/assets/docs/.../Navigators-need-not-be-brokers.docx">www.familiesusa.org/assets/docs/.../Navigators-need-not-be-brokers.docx</a>  <a href="http://cchi4families.org/pdf/uploads/Navigator%20Guiding%20Principles%20Oct%202011.pdf">http://cchi4families.org/pdf/uploads/Navigator%20Guiding%20Principles%20Oct%202011.pdf</a>	Families USA position document
<a href="http://www.naic.org/documents/committees_b_110622_governance.pdf">http://www.naic.org/documents/committees_b_110622_governance.pdf</a>	NAIC position document
<a href="http://mlis.state.md.us/2012rs/bills/sb/sb0238f.pdf">http://mlis.state.md.us/2012rs/bills/sb/sb0238f.pdf</a>	Maryland senate bill citing guiding principles for the state of Maryland exchange
<a href="http://www.regulations.gov/#!documentDetail;D=HS-OS-2011-0020-2420">http://www.regulations.gov/#!documentDetail;D=HS-OS-2011-0020-2420</a>	ACA regulations published March 2012 45 CFR §155.220

## 6. Timeline

May				
Monday	Tuesday	Wednesday	Thursday	Friday
	1	2	3	4 Co-Chair Preparatory Meeting <hr/> Research/Alternatives Analysis report distributed to Committee Members
7	8	9	10	11 Research/Alternatives Analysis report Discussed at Consumer Assistance Advisory Committee Meeting
14	15	16 PCG Updates Research/Alternatives Analysis report and includes Committee Recommendations <hr/> Updated Research/Alternatives Analysis report distributed to Committee Members	17	18 PCG Prepares Final Advisory Committee Issue Recommendation <hr/> Advisory Committee Issue Recommendation distributed to Steering Committee
21	22	23	24 Steering Committee discusses and adopts final recommendation to the Commissioner	25
28	29	30	31	

## **Appendix A**

### **45 CFR § 155.210**

#### **Navigator Program Standards**

- (a) *General Requirements.* The Exchange must establish a Navigator program consistent with this section through which it awards grants to eligible public or private entities or individuals described in paragraph (c) of this section.
- (b) *Standards.* The Exchange must develop and publicly disseminate—
- (1) A set of standards, to be met by all entities and individuals to be awarded Navigator grants, designed to prevent, minimize and mitigate any conflicts of interest, financial or otherwise, that may exist for an entity or individuals to be awarded a Navigator grant and to ensure that all entities and individuals carrying out Navigator functions have appropriate integrity; and
  - (2) A set of training standards, to be met by all entities and individuals carrying out Navigator functions under the terms of a Navigator grant, to ensure expertise in:
    - (i) The needs of underserved and vulnerable populations;
    - (ii) Eligibility and enrollment rules and procedures;
    - (iii) The range of QHP options and insurance affordability programs; and,
    - (iv) The privacy and security standards applicable under § 155.260.
- (c) *Entities and individuals eligible to be a Navigator.* (1) To receive a Navigator grant, an entity or individual must—
- (i) Be capable of carrying out at least those duties described in paragraph (e) of this section;
  - (ii) Demonstrate to the Exchange that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self employed individuals likely to be eligible for enrollment in a QHP;
  - (iii) Meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable;
  - (iv) Not have a conflict of interest during the term as Navigator; and,
  - (v) Comply with the privacy and security standards adopted by the Exchange as required in accordance with § 155.260.
- (2) The Exchange must include an entity as described in paragraph (c)(2)(i) of this section and an entity from at least one of the other following categories for receipt of a Navigator grant:
- (i) Community and consumer-focused nonprofit groups;
  - (ii) Trade, industry, and professional associations;
  - (iii) Commercial fishing industry organizations, ranching and farming organizations;

- (iv) Chambers of commerce;
- (v) Unions;
- (vi) Resource partners of the Small Business Administration;
- (vii) Licensed agents and brokers; and
- (viii) Other public or private entities or individuals that meet the requirements of this section. Other entities may include but are not limited to Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

(d) *Prohibition on Navigator conduct.*

The Exchange must ensure that a Navigator must not—

- (1) Be a health insurance issuer;
- (2) Be a subsidiary of a health insurance issuer;
- (3) Be an association that includes members of, or lobbies on behalf of, the insurance industry; or,
- (4) 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 a non-QHP.

(e) *Duties of a Navigator.* An entity that serves as a Navigator must carry out at least the following duties:

- (1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;
- (2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs;
- (3) Facilitate selection of a QHP;
- (4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
- (5) 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, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(f) *Funding for Navigator grants.* Funding for Navigator grants may not be from Federal funds received by the State to establish the Exchange.

## Appendix B

### 45 CFR 155.220

#### Ability of states to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

##### (a) General rule

A State may permit agents and brokers to—

- (1) Enroll individuals, employers or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State;
- (2) Subject to paragraphs (c), (d), and (e) of this section, enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange; and (3) Subject to paragraphs (d) and (e) of this section,
  - assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.

(b) *Web site disclosure.* The Exchange may elect to provide information regarding licensed agents and brokers on its Web site for the convenience of consumers seeking insurance through that Exchange.

##### (c) *Enrollment through the Exchange.*

A qualified individual may be enrolled in a QHP through the Exchange with the assistance of an agent or broker if—

- (1) The agent or broker ensures the applicant's completion of an eligibility verification and enrollment application through the Exchange Web site as described in § 155.405;
- (2) The Exchange transmits enrollment information to the QHP issuer as provided in § 155.400
  - (a) to allow the issuer to effectuate enrollment of qualified individuals in the QHP.
- (3) When an Internet Web site of the agent or broker is used to complete the QHP selection, at a minimum the Internet Web site must:
  - (i) Meet all standards for disclosure and display of QHP information contained in § 155.205(b)(1) and (c);
  - (ii) Provide consumers the ability to view all QHPs offered through the Exchange;
  - (iii) Not provide financial incentives, such as rebates or giveaways;
  - (iv) Display all QHP data provided by the Exchange;
  - (v) Maintain audit trails and records in an electronic format for a minimum of ten years; and

(vi) Provide consumers with the ability to withdraw from the process and use the Exchange Web site described in § 155.205(b) instead at any time.

(d) *Agreement.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with the terms of an agreement between the agent or broker and the Exchange under which the agent or broker at least:

- (1) Registers with the Exchange in advance of assisting qualified individuals enrolling in QHPs through the Exchange;
- (2) Receives training in the range of QHP options and insurance affordability programs; and
- (3) Complies with the Exchange's privacy and security standards adopted consistent with § 155.260.

(e) *Compliance with State law.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with applicable State law related to agents and brokers, including applicable State law related to confidentiality and conflicts of interest.