

Navigating the Health Insurance Marketplace:

Community Health Centers and Consumer Assistance Programs

Supplemental Report



August 2013

Introduction

This paper is intended as a supplement to NACHC's April 2013 issue brief, *Navigating the Health Insurance Marketplace: Community Health Centers and Consumer Assistance Programs*,¹ which explains, in greater depth, the three types of marketplace² consumer application and enrollment assistance programs created in federal law:

- Navigators (who must meet the lengthy and detailed standards set forth in 45 C.F.R. §155.210 and §155.215);
- Non-Navigator assistance personnel (also referred to as In-Person Assisters) who likewise are subject to the extensive requirements applicable to Navigators; and
- Consumer assistance counselors (CACs), who are subject to more limited standards set forth in 45 C.F.R. §155.225.

As health centers and Primary Care Associations (PCAs) decide whether or not to apply for Navigator grants, to become non-navigator assistance personnel or CACs, there are a few new and developing issues to consider. These considerations, while not exhaustive, are discussed below. *Because of the evolving nature of public policy surrounding health insurance marketplace operations, including their consumer assistance functions, the issues raised in this report are, in many ways, still subject to interpretation and change; every health center and PCA will have to make their own determination as to which type of assister program is right for them, based on what we know from federal regulations and how their individual states choose to regulate these entities.* What is clear is that health centers will play a central role in assisting newly eligible individuals with the application and enrollment process.

Further Guidance on Certified Application Counselors

On July 17, 2013 a final federal rule³ was released and the Preamble made clear the requirements for becoming a CAC are much less stringent than for Navigators and non-navigator personnel. For example, the Preamble states that Navigators (and non-navigator personnel) cannot be issuers or issuer subsidiaries or receive compensation from an issuer. As expected, this strongly indicates that health centers that are owners of health center-owned plans could not be Navigators. However, this prohibition does not apply to CACs, who instead, simply must disclose any conflicts. Navigators and non-Navigator assistance personnel also must meet explicit conflict of interest, training, and accessibility standards. The standards for CACs – as well as their duties and their ongoing training obligations -- are more limited, as summarized in Appendix A.

¹ [Navigating the Health Insurance Marketplace: Community Health Centers and Consumer Assistance Programs. State Policy Report #43, April 2013.](#)

² The term "marketplace" is used throughout this document and refers to a state-based, federally-facilitated or partnership exchange.

³ [45 CFR Part 155](#)

State Regulation of Navigators

The final federal rule recognizes the authority of states to regulate Navigators⁴, regardless of what type of marketplace is operating in the state (Federally-Facilitated Marketplace, State Partnership Marketplace, or State-Based Marketplace), as long as the standards are not in conflict with the Affordable Care Act (ACA). Because the Navigator program is part of a federal law, its terms are preemptive, and state laws that prevent the federal program from achieving its purpose would be superseded. In other words, if a state passes legislation or otherwise imposes regulation that in any way prevents Navigators from fulfilling their duties under the ACA, the state law would arguably be invalid. For example, a state can require a CAC or other classes to register, be trained, disclose conflicts, etc., but could not bar counseling in a clinic or in a social services center or similarly constrain their ability to do what federal law commands. While the ACA is silent on whether states can regulate non-navigator personnel and CACs, this does not mean that states cannot regulate these entities in a similar fashion. Federal preemption would similarly apply in such cases.

A review was conducted⁵ of state Navigator laws (see Appendix B) and identified 9 states whose Navigator bills explicitly include broad language differentiating their definitions from that found in the final federal rule. Such discrepancies may be of concern to health centers, because of their potential to apply to outreach and enrollment efforts by non-Navigators. State agencies in charge of implementing these laws may further expand on the underlying legislative intent regarding their reach.

Of the nine state bills that appear to extend their definition of a Navigator beyond the federal definition, six have been signed into law (Arkansas, Georgia, Indiana, Maryland, Missouri, and Utah), and three are pending in the legislature (Idaho, Louisiana, New Mexico). Examples of legislative language that may go beyond the scope of the Navigator Final Rule are as follows:

- Georgia's HB 198, which defines a navigator as "an individual, including assistants, application counselors, or other persons, authorized pursuant to the Federal Act."
- Idaho's HB 433, which defines a navigator as "a person who assists with eligibility, enrollment, program specifications and public education activities related to the exchange."
- Louisiana's HB 614, which defines a navigator as someone who "could reasonably be described or designated as a navigator, in-person assister, enrollment assister, application assister, or application counselor."

In addition to broad definitions of what a "Navigator" is, other problematic language has found its way into state Navigator legislation. For example:

- Missouri's SB 262 states that "Upon contact with a person who acknowledges having existing health insurance coverage obtained through an insurance producer, a navigator shall advise the person to consult with a licensed insurance producer regarding coverage in the private market".⁶
- An amendment to Wisconsin's FY2014 budget legislation (2013 Wisconsin Act 20) sets licensing fees to become a Navigator and requires each entity that is a Navigator and each individual not affiliated with an entity to

⁴ Navigator Final Rule (45 C.F.R. §155.210(c)(1)(iii))

⁵ Rosenbaum, Zomorrodian, Dorley, and Grace, The George Washington University School of Public Health and Health Services, 2013.

⁶ Emergency Rule 20 CSR 400-11.100 seems to correct this conflict with federal law. An analysis conducted by the St. Louis University School of Law notes that the only written examination that meets by the requirements for obtaining a state Navigator license is federal training for Navigators, certified application counselors and others. As a condition of federal certification, Navigators are required to provide consumers with all information required by federal law.

furnish a bond in an amount no less than \$100,000 from an insurer authorized to do business in the state or provide evidence of other financial responsibility.⁷

In at least two states, Federally Qualified Health Centers have been granted exemptions from state Navigator licensing requirements exemptions (See Appendix B for exact language):

- Ohio's HB 3 includes an exemption from certain requirements for Federally Qualified Health Centers and Health Center Look-Alikes.
- Utah's HB 160 includes an exemption for Federally Qualified Health Centers, the details of which are being finalized by the rules process.

Impact on Existing Health Center Outreach and Enrollment Efforts

As part of their 330 program requirements, health centers conduct outreach activities and assist individuals in gaining health coverage. While it is concerning that some state legislation may be written so broadly as to capture these activities in their definitions of what constitutes a Navigator for purposes of licensure and regulation, federal preemption should apply in these cases. It is unclear, however, how or whether the federal government can prevent any of these laws from taking hold.

Since the Health Resources and Services Administration (HRSA) announced \$150 million in grants to health centers⁸ to conduct outreach and enrollment activities on July 10, 2013, questions have arisen with regard to how the grant requirements intersect with any efforts undertaken as a Navigator, non-navigator assister or CAC, should a health center choose to become one of these in the future, and specifically, how states' definitions of Navigators may impact health centers who have accepted the HRSA grants. Again, these concerns will likely vary state to state depending on how Navigators are regulated. HRSA has stated that health centers in Federally-Facilitated Marketplace and State Partnership Marketplace states receiving outreach and enrollment supplemental funds from HRSA must apply to the Centers for Medicare and Medicaid Services (CMS) to become CAC organizations in order to certify appropriate health center staff and volunteers as CACs⁹. This federal requirement does not apply to health centers in states that have opted to run their own State-Based Marketplace; however, those states may impose a similar requirement.

Key Points

- Many issues surrounding the regulation of Navigators, non-navigator personnel and CACs remain unclear as public policy continues to evolve.
- Requirements for CACs are less stringent than those for Navigators and non-navigator personnel.
- The final federal rule acknowledges a role for states in regulating Navigators; while no such acknowledgement has been made with regard to non-navigator personnel or CACs, this does not mean that states cannot regulate these entities.
- Some state laws include broad definitions of Navigators that may impact health centers conducting outreach and enrollment assistance, even if not as Navigators as defined by the ACA.
- Federal law governing the Navigator program is preemptive, meaning it supersedes any state law that infringes on its intent. State laws must not impede Navigators from fulfilling their duties as outlined in the ACA. Similarly, should a state law regulating Navigators conflict with the 330 program requirements, federal preemption would apply.

⁷ Details are still being finalized in rulemaking process.

⁸ [HHS Press Release, "Health Centers to Help Uninsured Americans Gain Affordable Health Coverage", July 10, 2013.](#)

⁹ Primary Health Care Digest, HRSA, August 1, 2013.

Considerations for Health Centers and PCAs

- Health centers and PCAs must make their own determinations, based on their circumstances and individual state regulations, about whether or not to apply to become Navigators.
- PCAs and Health Centers must be aware of how their state is regulating or considering regulating Navigators. Navigators in all types of marketplaces (Federally Facilitated, State Partnership and State-Based) are subject to state regulation.
- Health centers and PCAs need to determine whether state laws regulating Navigators apply to them, based on their state's definition of a Navigator.
- If accepting HRSA outreach and enrollment grants, health centers in a Federally Facilitated or State Partnership marketplace, must register as a CAC with CMS. More information is available [here](#). Further clarification or questions can be addressed to bphc-oe@hrsa.gov

APPENDIX A

Issue	Navigator/Non-Navigator Assistance Personnel (45 C.F.R. §§155.210 and 215)	Consumer Assistance Counselors (45 C.F.R. §155.225)
Duties	<p>Expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange</p> <p>Promote information in a fair, accurate and impartial manner</p> <p><u>Facilitate selection of a QHP</u></p> <p>Provide referrals to consumer assistance offices and other state offices for consumers with grievances regarding health plan, coverage, or a coverage determination under their plan</p> <p>Comply with extensive Culturally and Linguistically Appropriate Services (CLAS Standards) related to culturally and linguistically appropriate information and assistance including knowledge about the racial and ethnic groups assisted, assistance in the individual’s preferred language at no cost, receipt of ongoing training, and other requirements. Navigators must also use enrollment tools and websites that are fully compliant with the Americans with Disabilities Act (ADA).</p>	<p>Provide information about the full range of Qualified Health Plan (QHP) options and insurance affordability programs</p> <p><u>Assist in applying for QHPs and insurance affordability programs</u></p> <p><u>Help facilitate enrollment into QHPs and insurance affordability programs</u></p> <p>Through a referral to a Navigator or the Exchange, provides information in a manner that is compliant with the Americans with Disabilities Act (ADA)(need not achieve ADA compliance itself with respect to information)</p>
Certification	<p>By the marketplace</p> <p>Compliance with all 155.215 training and certification rules</p> <p><u>Is free of any conflict of interest (not merely a disclosure)</u></p> <p>Take and pass certification exams that meet federal training program module</p>	<p>The marketplace can designate an organization to certify CACs</p> <p>Completes Exchange training and passes exams</p>

	<p>requirements (215 (b)(2) including understanding tax law)</p> <p>Be prepared to serve both the individual and SHOP Exchanges (small businesses)</p>	<p><u>Discloses conflicts</u></p> <p>Acts in the best interest of individuals served</p>
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APPENDIX B

STATES AND NAVIGATOR LAWS		
<u>State & Bill Number</u>	<u>Concerning language? (bolded)</u>	<u>Description</u>
BILLS THAT ARE SIGNED INTO LAW		
Arkansas (SB 1189) Signed into law (4/23/2013)	Yes	<ul style="list-style-type: none"> • “Navigator” means a person authorized under the federal act to assist consumers to shop for and select health insurance offered through a health insurance marketplace, including providing information to a consumer on a health benefit plan or coverage offered through a health insurance marketplace, or facilitates enrollment in a health insurance marketplace. • “Navigators”, “Certified Application Counselors” and In-Person Assisters (“Guides”) are required to be licensed. • Navigators may provide services consistent with the Federal Rule and a person shall not act like a navigator unless licensed. • A licensee is subject to the insurance laws of the state, including those concerning privacy, market conduct, and unfair trade practices. • Penalties: The Commissioner may deny, suspend, revoke, or refuse to issue a license; the Commissioner may also impose a civil penalty on a licensee for violations.
Florida (S 1842) Signed into law (5/31/2013)	No	<ul style="list-style-type: none"> • “Navigators” described as under the federal definition. • Penalties: An individual may not act as a navigator unless registered. If they do they are subject to a penalty of up to \$1,500. Department may issue a cease and desist order to any person in violation.
Georgia (HB 198) Signed into law (5/6/2013)	Yes	<ul style="list-style-type: none"> • “Navigator” includes assistors, application counselors, or other persons authorized pursuant to the Federal Act to provide insurance advice and guidance to uninsured groups and individuals seeking health insurance coverage. • “Patient Navigator” is an individual who offers assistance to patients, families, and caregivers to help overcome health care system barriers. • Penalties: violations of any provisions of this title or federal act are grounds for denial, suspension, or revocation of the license.
Illinois (SB 1194) Signed into law (8/23/2013)	Possibly	<ul style="list-style-type: none"> • “Navigator” (including but not limited to in-person assisters) means a person/entity as described under the federal definition, including those that receive grant funds from the US Department of Health and Human Services, the States of Illinois, or an exchange, or private funds to perform these duties. • “Certified application counselor” defined as per the federal definition. • No individual/entity shall perform or offer to perform navigator duties unless licensed. • Penalties: The Director may place on probation, suspend, or revoke a certificate or may levy a civil penalty against a navigator. They may enforce the provisions of and impose any penalty or remedy authorized by this Act against any person under investigation even if the person’s certificate has been surrendered or has lapsed by operation of law.
Indiana (HB 1328) Signed into law (5/11/2013)	Yes	<ul style="list-style-type: none"> • A “Navigator” means an individual who: (1) is described in Section 1311(i) of Patient Protection and Affordable Care Act (PPACA) (42 U.S.C. 18031 (i)); (2) assists other individuals with application for and enrollment in a health benefit exchange or public health insurance program; or (3) performs the functions of a navigator with respect to a health benefit exchange as established by the commissioner.

		<ul style="list-style-type: none"> • An “Application Organization” means an entity that is a navigator as described by the federal definition. • The term does not include an individual who makes presumptive eligibility determinations concerning an individual’s enrollment in public health insurance programs.
Maryland (HB 228) Signed into law (5/2/2013)	Possibly	<ul style="list-style-type: none"> • "Individual Exchange Navigator" means an individual who (1) holds an individual exchange navigator certification and (2) provides the services described in section 31-113 (d)(1) of this title. • It is a fraudulent insurance act for a person to act as or represent to the public that the person is a navigator of the small business health options program or of the individual exchange. • Penalties: The penalties available to the Commissioner under this subsection are in addition to any criminal or civil penalties imposed for fraud or other misconduct under any other State or federal law.
Minnesota (HF 5) Signed into law (3/20/2013)	No	<ul style="list-style-type: none"> • A “Navigator” has the meaning described in section 1311 (i) of the federal PPACA. • Entities eligible to be navigators may also serve as in-person assisters.
Missouri (SB 262) Signed into law (7/12/2013)	Yes	<ul style="list-style-type: none"> • “Navigator” is a person that for compensation provides information or services in connection with eligibility, enrollment, or program specifications of any health benefit exchange operating in this state, including any person that is selected to perform the activities and duties identified in 42 U.S.C. 18031 (i) in this state, any person who receives funds from the United States Department of Health and Human Services, or a health benefit exchange operating in this state, to perform such defined or related duties irrespective of whether such a person is identified as a navigator, certified application counselor, in-person assister, or other title. (It does not include a not-for profit entity disseminating to a general audience public health information). • No individual or entity shall perform or offer to perform navigator duties unless licensed. • Penalties: The director may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator license or may levy a fine not to exceed one thousand dollars for each violation or any combination of actions. In addition, the director may require that restitution be made to any person who has suffered financial injury.
Montana (HB 250) Signed into law (4/22/2013)	No	<ul style="list-style-type: none"> • A “navigator” means a person certified by the commissioner and selected to perform the activities and duties identified in 42 U.S.C. 18031, et seq. • Penalties: The director may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator license.
Nebraska (LB 568) Signed into law (6/5/2013)	Possibly	<ul style="list-style-type: none"> • “Navigator” means any individual or entity, other than an insurance producer or consultant, that receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform the duties identified in 42 U.S.C. 18031(i)(3). • Penalties: The director may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator license.
New York (S 2606)	No	<ul style="list-style-type: none"> • “Navigator” defined as per the federal definition. • Penalties: Civil penalty in amount received as compensation/commission.

Signed into law (3/28/2013)		
Ohio (HB 3) Signed into law (4/30/2013)	No	<ul style="list-style-type: none"> • “Navigator” means a person selected to perform the activities and duties identified in division (i) of section 1311 of the Affordable Care Act. • Penalties: Suspend/revoke certification and/or civil penalty. • (3)(a) The superintendent shall not certify as an insurance navigator, and shall revoke any existing insurance navigator certification of, any individual, organization, or business entity that is receiving financial compensation, including monetary and in-kind compensation, gifts, or grants, on or after October 1, 2013, from an insurer offering a qualified health benefit plan through an exchange operating in this state. • (b) Notwithstanding division (G)(3)(a) of this section, the superintendent may certify as a navigator a qualified health center and a federally qualified health center look-alike, as defined in section 3701.047 of the Revised Code.
Tennessee (HB 881) Signed into law (5/14/2013)	No	<ul style="list-style-type: none"> • “Navigator” means a person selected to perform the activities and duties identified in Section 1311 (i) of the Federal Affordable Care Act. • No penalties listed.
Texas (SB 1795) Signed into law (6/14/2013)	No	<ul style="list-style-type: none"> • “Navigator” means an individual or entity performing the activities and duties of a navigator as described by 42 U.S.C. Section 18031 or any regulation enacted under that section. • No penalties listed.
Utah (HB 160) Signed into law (4/1/2013)	Possibly – but includes exemption for FQHCs	<ul style="list-style-type: none"> • “Navigator” means a person who facilitates enrollment in an exchange by offering to assist, or who advertises any services to assist, with: (i) the selection of and enrollment in a qualified health plan or a public program offered on an exchange; or (ii) applying for premium subsidies through an exchange; and (b) includes a person who is an in-person assister or an application assister as described (i) federal regulations or guidance issued under PPACA; and (ii) the state exchange blueprint published by CCIIO & CMS. • Navigators must have a license, character, examination & training requirements, and continuing education. • The commissioner may not require a license as a navigator of (a) a person who is employed by or contracts with: (i) a health care facility that is licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, to assist an individual with enrollment in a public program or an application for premium subsidy; or (ii) the state, a political subdivision of the state, an entity of a political subdivision of the state, or a public school district to assist an individual with enrollment in a public program or an application for premium subsidy; (b) a federally qualified health center as defined by Section 1905(1)(2)(B) of the Social Security Act which assists an individual with enrollment in a public program or an application for premium subsidy... • Penalties: Cease doing business, civil actions, or other penalties may be decided.
Virginia (HB 2246) Signed into law (3/20/2013)	No	<ul style="list-style-type: none"> • “Navigator” means an individual or entity described in 42 U.S.C. Section 1311 (i)(2) that is selected to perform the activities and duties identified in 42 U.S.C. Section 18031 (i) in the Commonwealth. Navigator does not include an individual or entity licensed as an agent. • No penalties listed.

<p>Wisconsin (2013 Wisconsin Act 20) (Amendment to Budget bill)</p> <p>Signed into law (6/30/2013)</p>	<p>Yes</p>	<ul style="list-style-type: none"> • “Navigator” as any natural person or an entity that supervises or employs a natural person who does the following: (a) performs any of the activities and duties identified in federal law related to the navigator program (42 USC 18031 (i) and 45 CFR 155.210) on behalf of the exchange; and (b) receives funding to perform any of the activities and duties identified in federal law related to the navigator program (42 USC 18031 (i) and 45 CFR 155.210) on behalf of the exchange. • Require each entity that is a Navigator and each individual not affiliated with an entity to furnish a bond in an amount no less than \$100,000 from an insurer authorized to do business in the state or provide evidence of other financial responsibility capable of protecting all persons against the wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator • Set the initial license fee for an individual navigator at \$75, and annual license renewal fee at \$35, unless the Commissioner specifies a different amount by rule. Set the initial registration fee for a navigator entity at \$100 and the annual registration renewal fee at \$100, unless the Commissioner specifies a different amount by rule.
<p>BILLS THAT ARE PENDING</p>		
<p>Idaho (H 433)</p> <p>Pending (Introduced 1/27/2012)</p>	<p>Yes</p>	<ul style="list-style-type: none"> • “Navigator” is a person who assists with eligibility, enrollment, program specifications, and public education activities related to the exchange. • A person shall not act as a navigator unless they are registered with the director of navigators.
<p>Louisiana (HB 614)</p> <p>Pending (Introduced 3/29/2013)</p>	<p>Yes</p>	<ul style="list-style-type: none"> • “Navigator” defined as an individual or entity, other than an insurance producer, who does at least one of the following: a) receives any funding, directly or indirectly from an exchange, the state, or the federal government to perform navigator duties as under federal law; b) facilitates enrollment of individuals or employers in health benefit plans or public insurance programs offered through an exchange; c) conducts public education or consumer assistance activities for or on behalf of an exchange; d) is described or designated, or could reasonably be described or designated, as a navigator, in-person assister, enrollment assister, application assister or application counselor. • No individual or entity shall perform or offer to perform navigator duties unless licensed. • Penalties: The Commissioner may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator license, or may levy a fine not to exceed five hundred dollars for each violation, or any combination of actions.
<p>Maine (HP 1098)</p> <p>Pending (Introduced 4/20/2011)</p>	<p>No</p>	<ul style="list-style-type: none"> • “Navigator” means an individual as described under the federal definition. • Penalties: The superintendent may deny, suspend or revoke the authority of a navigator certified pursuant to this section for good cause.
<p>Michigan (HB 4614)</p> <p>Pending (Introduced 4/24/2013)</p>	<p>No</p>	<ul style="list-style-type: none"> • “Navigator” means a person who is required to be licensed under the laws of this state to perform the activities described in the federal definition. • An individual may not act as or hold themselves out to be a navigator or receive funding from an exchange unless licensed. • Penalties: In addition to any other powers under this act, the director may place on

		probation, suspend, or revoke a license or may levy a civil fine.
New Mexico (HB 564) Pending (Introduced 2/13/2013)	Yes	<ul style="list-style-type: none"> • "Navigator" means a person, other than an insurance producer, who (1) receives funding, directly or indirectly, from an exchange, the state or the federal government to perform any of the activities and duties identified in the federal PPACA of 2010; (2) facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange; (3) conducts public education or consumer assistance activities for or on behalf of an exchange; or (4) is described or designated by an exchange, the state or the United States Department of Health and Human Services, or could reasonably be described or designated as, a navigator, an in-person assister, enrollment assister, application assister, or application counselor." • Navigator license required. • Penalties: The superintendent may place on probation, suspend, revoke or refuse to issue, renew or reinstate a navigator license, or may levy a fine not to exceed \$5,000, for each violation of the Insurance Code or for other good cause. The superintendent may require that restitution be made to any person who has suffered financial injury.
Oregon (SB 356) Pending (Introduced January 14, 2013)	No	<ul style="list-style-type: none"> • Establishes regulations and code of ethics for navigators. • No clear definitions or penalties.
Pennsylvania (HB1522) Pending (Introduced June 12, 2013)	No	<ul style="list-style-type: none"> • "Navigator" described according to the federal definition. • Navigators must be certified. • Penalties: Civil penalty of \$1,000 per act violation or put Navigator under supervision.

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