American Hospital Association

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May 3, 2013

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS-9955-P Patient Protection and Affordable Care Act; Exchange Functions; Standards for Navigators and Non-Navigator Assistance Personnel (Vol. 78, No. 66, April 5, 2013)

Dear Ms. Tavenner:

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our nearly 42,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule creating conflict of interest, training and certification, and meaningful access standards applicable to navigators and non-navigator assistance personnel in federally facilitated exchanges (FFEs), including state partnership exchanges (SPEs), and to non-navigator assistance personnel in state-based exchanges that are funded through federal exchange establishment grants under the *Patient Protection and Affordable Care Act* (ACA).

The AHA commends CMS for issuing this proposal and for its effort to create a seamless process to coordinate enrollment in available coverage options for the millions of uninsured who will become eligible under the ACA. We also commend CMS for its close attention to ensuring that federally financed navigators and non-navigator assisters are adequately trained and accessible to all. The AHA and its members are committed to assisting uninsured individuals enroll in health coverage. America's hospitals play a vital role in their communities, providing not only access to needed health care services but also connections to health care coverage. Providing consumer education and assistance about the benefits of the ACA, as well as coverage and financial assistance options available to low-income individuals and families, will require an "all-hands-on-deck" approach combining as broad a cross-section of stakeholders as can be mustered. **Our concerns relate to needed clarification about the role, responsibilities and requirements for those who provide assistance to consumers on a voluntary basis, without federal financial assistance. We do not wish to see any disincentives for hospitals or others to lend their hands to the task of enrolling individuals in health coverage.**

CONSUMER ASSISTANCE ROLES

CMS describes several different types of official assistance personnel to help consumers who are uninsured get enrolled in their choice of coverage options. The three main types are as follows:

- **Navigators:** Individuals or entities designated by health insurance exchanges to provide a comprehensive range of consumer education and assistance. These individuals or entities are supported by federal grants (in the case of FFEs or state partnership exchanges (SPEs)) or by grants from state-based exchanges (SBEs) using funds other than those provided through the exchange establishment grants. Since navigator grants in states with state-based exchanges cannot be supported by federal grant funds, it is assumed that those states may have difficulty funding navigator programs until after the initial year of their exchanges when they begin generating user fees from health plans to support their overall operation.

- **In-Person Assisters (IPAs):** Individuals or entities designated by health insurance exchanges to provide many of the same services as navigators, except that they may be funded from a portion of federal exchange establishment grants given to states with state-based exchanges. CMS views IPAs as a transitional way to support the consumer assistance function. IPAs will not be established in states with FFEs or SPEs where navigator grants will be available.

- **Certified Application Counselors (CACs):** Individuals or entities recognized by health insurance exchanges to provide some or all of the services of navigators and IPAs, except that they volunteer their services and function without any compensation for their assistance. In many respects, these counselors are modeled after those individuals and entities (such as hospitals and other providers) that have long provided assistance to uninsured low-income individuals in applying for Medicaid, the Children's Health Insurance Program (CHIP) and other financial assistance programs.

The proposed rules establish standards for navigators and IPAs regarding training and certification, conflict of interest and access for all, especially those who have limited English proficiency, limited literacy or disabilities. In the current proposal, CMS asks whether the same standards should be applied to CACs that were included in an earlier Jan. 22, 2013, proposal on how Medicaid and CHIP enrollment will interact with the insurance exchanges so that a seamless enrollment process is available. In the earlier proposal, CMS indicated its desire to make use of the application counselors long used by many states for Medicaid/CHIP enrollment and created this new category, called CACs, and described them as providing many of the same services as navigators and IPAs, except without payment.

In reading these two proposals together, it is unclear how these different types of assisters fit into the overall fabric of consumer assistance under the ACA, and whether those wishing to provide assistance in one form or another must become one of these three types of official assisters. **The AHA recommends that the consumer assistance programs and standards be consolidated into one set of rules that provide greater clarity on which entities can perform which functions, and which standards apply to each type of assister. We further recommend that**

CMS explicitly discuss the ground rules for assistance provided outside these three official categories to avoid creating the impression that *no* assistance can be provided except through these official channels.

Some specific issues needing clarification are discussed below.

Training and Certification. The proposal would require that navigators and IPAs receive approximately 30 hours of computer-based training on all of the consumer assistance functions, pass a test to confirm their understanding of all the material, and then be certified before they engage in any assistance provided to individuals. For these two categories where the assistance function is funded, we agree that the individuals providing assistance need to be trained in all aspects of the coverage and financial assistance options, as well as privacy and conflict of interest requirements. But if the full panoply of training is required for those providing a more limited scope of assistance on a voluntary basis, the time and cost involved could prove deterrents to providing assistance.

The AHA would not recommend applying all of these requirements to unfunded certified application counselors. Required training and certification should be limited to a condensed overview of all the reforms and financial assistance available, and then in-depth training for those functions being performed. However, we urge CMS not to duplicate training that some will already have, such as hospital employees trained to be Medicaid and CHIP application counselors. Also, the computer-based training modules should be made available to all individuals providing assistance. On an April 24 call with those interested in applying for navigator grants, CMS said that the training modules would be made available only to those who receive a navigator grant. This sort of restriction would not further the cause of engaging as many assisters as possible and giving them the tools they need to provide impartial and accurate information and assistance.

Accessibility. The proposal would require that navigators and IPAs offer their services to all individuals, including those with limited English proficiency, those with literacy problems and the disabled. Specifically, the Culturally and Linguistically Appropriate Services (CLAS) standards and the *Americans with Disabilities Act* (ADA) reasonable accommodation standards would be required.

Here, too, we believe that these requirements are appropriate for those entities and individuals receiving compensation for their assistance. **However, in contemplating application of these same standards to CACs, the AHA recommends that unfunded assisters have the ability to refer some individuals requiring significant special assistance to the local navigators and/or IPAs receiving funds to help cover these costs.** For example, a hospital providing assistance through CACs generally would have the ability in house to provide interpretation services for commonly encountered languages. Their facilities also would meet ADA requirements for physical access. These requirements are already applied to the provision of health care services. However, where they would have to purchase services from outside sources, they should not be compelled to do so. It should be their option whether to fund the services voluntarily or refer the individual to local navigators and/or IPAs.

Furthermore, we are disappointed to see that most of the materials directed to consumers are available only in English and Spanish. **We again urge CMS make consumer or beneficiary information available in the 15 to 20 most frequently encountered languages on a centralized basis to avoid duplicative costs at the local level.** Centralized translations could then be downloaded from the CMS website by anyone trying to help individuals understand what is available and how to enroll in coverage.

Thank you for consideration of our comments. We look forward to working with you and your staff on further implementation of the ACA. If you have any questions, please feel free to contact me or Molly Collins Offner, director of policy development, at (202) 626-2326 or mcollins@aha.org, or Ellen Pryga, director of policy, at (202) 626-2267 or epryga@aha.org.

Sincerely,

/s/

Richard J. Pollack
Executive Vice President