



American Hospital
Association

SPECIAL BULLETIN

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This bulletin is five pages.

CMS RELEASES FINAL RULE ON INSURANCE MARKETPLACE STANDARDS FOR NAVIGATORS AND OTHER CONSUMER ASSISTANCE COUNSELORS

On July 12, the Centers for Medicare & Medicaid Services (CMS) released its [final rule](#) implementing the *Patient Protection and Affordable Care Act* (ACA) provisions regarding consumer assistance programs for the federally-facilitated insurance Marketplace (Exchange) and state-partnership Marketplaces. The rule finalizes standards for navigators, non-navigator assistance programs, and certified application counselors. The standards relate to training, conflicts of interest, privacy and security of personal information, nondiscrimination and serving people with limited English proficiency and people with disabilities. State-based Marketplaces may use these standards or develop their own. CMS will announce the navigator grants for the federally-facilitated Marketplaces on August 15.

Consumer assistance programs are intended to provide unbiased information to consumers about their coverage options, including insurance plans offered through the Marketplaces as well as public programs including Medicaid, the Children's Health Insurance Program (CHIP), federal premium assistance, and other available programs.

Our View: CMS responded positively to the concerns raised by the AHA on behalf of hospitals and health systems.

Highlights of the final rule follow.

Consumer Assistance Roles. Official consumer assistance is provided through three programs: navigators, non-navigator assistance personnel and certified application counselors. The final rule clearly distinguishes between the first two categories that receive federal and/or state funds to perform the comprehensive range of consumer assistance functions, and the third category of certified application counselors who provide assistance on a voluntary basis and are not required to perform all of the required functions for navigators and non-navigator assisters (see the tables on p. 5). **CMS also clarifies that while certification is encouraged, non-certified assistance organizations and individuals are not prohibited from assisting individuals or engaging in community outreach and education.**

Navigators and non-navigator assisters must provide full and impartial information on all available coverage options, plan selection and enrollment assistance, community outreach and education, and assistance and referrals regarding complaints. They have the same functional and training requirements. Navigators play a role in all three types of Marketplaces (federally-facilitated, state-partnership and state-based) but non-navigator assisters play a role only in state-based and some state-partnership Marketplaces. Certified application counselors are not expected to perform all of these functions – they focus primarily on helping individuals identify coverage and premium assistance options, select a plan and enroll. Certified application counselors are not required to conduct community outreach activities or handle complaints. While many of the requirements are the same, certified application counselor requirements are tailored to the functions that they perform. Certified application counselors play a role in all three types of Marketplaces. See CMS's [Health Insurance Marketplace factsheet](#).

Training and Certification. Federal standards dictate training and certification requirements for federally-facilitated and state partnership Marketplaces. CMS's website will offer the 30 hours or more of federal training using content-specific training modules, which are expected to be available by the end of August. Marketplaces may certify individual employees or volunteers of a designated organization. Alternatively, Marketplaces can certify an organization to certify individual employees or volunteers to serve as certified application counselors. (See CMS's July 12 [Guidance on Certified Application Counselor Program](#) for more details). Federally-facilitated Marketplaces will designate only organizations to certify certified application counselors. State-based Marketplaces can establish their own standards for any or all three types of official assistance personnel or they can use the federal standards.

Hospitals, community health centers, social services agencies and Medicaid-certified application counselor organizations are eligible to serve as certified application counselors, or to become marketplace-designated organizations that can certify their employees or volunteers as application counselors. An online application will be available at <http://Marketplace.cms.gov> at the end of July for marketplace-designated CAC organizations. Certified application counselors will not receive federal grant money through the Marketplace and may not charge those seeking assistance. They could, however, receive federal funding through other grant programs or Medicaid to help support their consumer assistance and enrollment activities.

Conflicts of Interest. The final rule also clarifies conflict of interest rules that apply to navigators in federally-facilitated and state-partnership Marketplaces. Navigators may not be health or stop-loss insurers, their subsidiaries or associations, or receive any consideration (including grants, gifts or free travel) from health insurers in connection with the enrollment of individuals or employees in a health plan. **Hospitals and other providers that perform navigator functions will not be prevented from receiving payment for medical services or grants for unrelated purposes. But hospitals will**

need to disclose these payments to the Marketplaces and to consumers receiving application assistance. The same rules apply to non-navigator assistance programs in the state-partnership Marketplaces.

Navigators in federally-facilitated Marketplaces must submit a written attestation that they have no conflicts of interest, will remain free from conflicts of interest, and that they will provide information to consumers on the full range of insurance options and publicly supported programs.

The rule recognizes that some potential conflicts of interest are inherent but these must be disclosed to Marketplaces and to consumers receiving application assistance by navigators in a federally-facilitated marketplace. Examples of such conflicts of interest include the sale of lines of insurance other than health or stop loss (for agents who are navigators); employment relationships with insurers, stop-loss insurers, or their subsidiaries within the previous five years; or employment relationships between an insurer, stop-loss insurer, or subsidiary, and the navigator or staff member's spouse or domestic partner. The same rules apply to non-navigator assistance personnel with state-partnership Marketplaces or state Marketplaces that receive establishment grants.

Hospitals or health systems with health plans within their corporate structure are not prohibited from participating as certified application counselors as long as employees of the health plan are not involved and they disclose the conflict of interest to the marketplace and potential enrollees.

Serving People with Limited English Proficiency and People with Disabilities. The final rule identifies the *Culturally and Linguistically Appropriate Standards* (CLAS) as a resource for best practices. Certified application counselors can serve people with disabilities or people with limited English proficiency directly or through appropriate referrals to other marketplace consumer assistance sources such as the Marketplaces and the CMS toll-free consumer assistance call line.

State Laws Pre-empted. The final rule clarifies that navigator licensure or certification requirements may be imposed by states and Marketplaces, but only if the requirements do not prevent the implementation of the ACA. For non-navigator assistance personnel or certified application counselors, the state also cannot impose requirements that would prevent the effective operation of these programs.

Consumer Assistance Roles in the ACA Insurance Marketplace

The insurance marketplace will provide individuals with assistance through the following roles: navigators, non-navigators assistance personnel, or certified application counselors. Agents and brokers also can provide consumers with help in applying for coverage through the marketplace. Below are descriptions of the activities and training requirements of the consumer assistance available in the Marketplaces.

What kind of assistance will be available through the Marketplace?

	Navigators	Non-Navigator assistance personnel	Certified application counselors	Agents and brokers
State-based Marketplace	Yes	Optional for states	Yes	Optional for states
State Partnership Marketplace	Yes	Yes	Yes	Yes, if a state permits it
Federally-facilitated Marketplace	Yes	Not applicable; Navigators provide this assistance	Yes	Yes, if a state permits it

How are these roles funded?

	Navigators	Non-Navigator assistance personnel	Certified application counselors	Agents and brokers
State-based Marketplace	State-based grant program	State-based grants or contracts, which can be funded by Exchange Establishment grants	Certified application counselors will not receive new federal grant money through the Marketplace. Federal funding through other grant programs or Medicaid may be available. Some examples of possible application counselors include staff at community health centers, hospitals, other health care providers, or social service agencies.	Agents and brokers can be compensated by insurance companies or consumers, consistent with state law.
State Partnership Marketplace	Federal grant applications are being reviewed and awards will be announced in late summer 2013	State-based grants or contracts, which can be funded in states with consumer partnerships by Exchange Establishment grants		
Federally-facilitated Marketplace	Federal grant applications are being reviewed and awards will be announced in late summer 2013	Not applicable		

What training and certification is required?

	Navigators	Non-Navigator assistance personnel	Certified application counselors	Agents and brokers
State-based Marketplace	State training and certification (state may choose to use federal training)	State training and certification (state may choose to use federal training)	State training and certification (state may choose to use federal training)	State training and certification (state may choose to use federal training)
State Partnership Marketplace	Federal training and certification, which may be supplemented by the state	Federal training and certification, which may be supplemented by the state	Federal training and federal designation of organizations, which may be supplemented by the state	Federal training and registration
Federally-facilitated Marketplace	Federal training and certification	Not applicable	Federal training and federal designation of organizations	Federal training and registration
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