

For informational purposes only, the Exchange staff provides the Advisory Committees with the following comments and reports on the Navigator programs.

Please note that first three reports are white papers that were all published before the federal government released its Final Rule pertaining to the Navigator/Broker/Agent functions. The

Reports attached:

Illinois

“Crossroads Coalition Community – Agent/Broker Partnership” (8-18-2011)

By Crossroads Coalition (of Illinois) in partnership with the Illinois Insurance Agent and Broker Health Exchange Stakeholder Working Group

National

“Comparative Role of Navigator and Producers in an Exchange” (Draft 6-2-2011)

By National Association of Insurance Commissioners

New York

“Connecting Consumers to Coverage: The Role of Navigators and Consumer Assistance Programs in Implementing Health Reform in New York” (9-21-2011)

By New York State Health Foundation

Nevada

“A Navigator and Broker Participation Plan for Silver State Health Insurance Exchange” (6-8-2012)

By the Silver State Health Insurance Exchange Staff

Crossroads Coalition Community - Agent / Broker Partnership

Partnership White Paper

August 18, 2011

Written by: A collaborative effort between the members of Crossroads Coalition and the Illinois Insurance Agent and Broker Health Exchange Stakeholder Working Group

Crossroads Coalition Community – Agent / Broker Partnership Executive Summary

On July 23, 2011, the State of Illinois legislature passed the Illinois Health Benefit Exchange Act, which established their intent to create a State Health Benefit Exchange. In accordance with the federal Affordable Care Act, the primary goal of the Illinois Health Benefit Exchange is to make health insurance more affordable and accessible for individuals and small businesses hoping to thereby decrease the number of uninsured individuals. The Health Benefit Exchange will act as an information and resource tool for individuals, families and small employers (currently under 50 employees) seeking insurance coverage. It will also be a portal for private insurers to offer a standardized set of health insurance programs in compliance with the state and federal mandated package of essential health benefits. Purchasers will also be able to determine if they qualify for any state/federal public aid programs or subsidies for coverage through the Exchange.

The Exchange will rely on two important distribution partners. Navigators, who consist primarily of organized community groups, will inform the hard to reach, underserved, culturally and ethnically responsive populations of the offerings through the Health Benefit Exchange. They will then direct interested members to the proper resources to facilitate exploration of options and enrollment. Navigators will require Certification through training as outlined by the Illinois Department of Insurance. The other distribution partner will be through existing and an expanded number of licensed Agents and Brokers. In addition to their normal licensing, they will also need to be Exchange Certified. Their function will be to advise, enroll, and fulfill the ongoing service needs of the insured.

Throughout the past year, stakeholder groups met separately with the Department of Insurance to review the Health Benefit Exchange concept. In anticipation of the need, the *Illinois Insurance Agent and Broker Health Exchange Stakeholder Working Group* reached out to and met multiple times with *Crossroads Coalition*, an organized community group and potential Navigator whose membership is quite diverse and whose geographic area mirrors that initially identified by the state for the Health Information Exchange as Medical Trading Area 14. As a result, it was recognized how critical both roles of Agents / Brokers and Navigators would be to the success of the Illinois Health Benefit Exchange.

In an unprecedented manner, our group came together to prepare a vision for the training, expectations, duties and compensation of both. Additionally, we have identified a number of unique opportunities for Navigators and Agents/Brokers to collaborate and partner in order to meet a number of common goals.

We developed a common Mission - To improve access to healthcare coverage and services for all Illinoisans, with particular focus on access through the Illinois Health Benefit Exchange.

We developed common goals starting with bridging the gap between agents/brokers and community organizations. Our collaboration also sought to decrease impediments to access; link hard-to-reach populations to vital information and resources regarding qualified health insurance plans; establish effective business community and civic collaborations; and ultimately develop benchmarks to measure performance and create accountability.

The attached partnership white paper includes an extensive description of how we hope to achieve our goal. Included in it is a detailed description of the role, qualifications and compensation of the Navigator and Agent/Broker. Beyond that we have identified a number of additional areas that these two groups might be able to partner and collaborate in the future to attain further progress on our common goals.

This document is considered a work in progress realizing the needs of the community, healthcare providers, healthcare delivery systems and state/federal funding programs can change. In addition there are several - yet to be defined provisions of the Affordable Care Act which could have an impact.

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I. Preamble

On July 23, 2011, the State of Illinois legislature passed the Illinois Health Benefit Exchange Act, which established their intent to create a State Health Benefit Exchange. In accordance with the federal Affordable Care Act, the primary goal of the Illinois Health Benefit Exchange is to make health insurance more affordable and accessible for individuals and small businesses hoping to thereby decrease the number of uninsured individuals. The Health Benefit Exchange will act as an information and resource tool for individuals, families and small employers (currently under 50 employees) seeking insurance coverage. It will also be a portal for private insurers to offer a standardized set of health insurance programs in compliance with the state and federal mandated package of essential health benefits. Purchasers will also be able to determine if they qualify for any state/federal public aid programs or subsidies for coverage through the Exchange.

The Exchange will rely on two important distribution partners. Navigators, who consist primarily of organized community groups, will inform the hard to reach, underserved, culturally and ethnically responsive populations of the offerings through the Health Benefit Exchange. They will then direct interested members to the proper resources to facilitate exploration of options and enrollment. Navigators will require Certification through training as outlined by the Illinois Department of Insurance. The other distribution partner will be through existing and an expanded number of licensed Agents and Brokers. In addition to their normal licensing, they will also need to be Exchange Certified. Their function will be to advise, enroll, and fulfill the ongoing service needs of the insured.

Throughout the past year, stakeholder groups met separately with the Department of Insurance to review the Health Benefit Exchange concept. In anticipation of the need, the *Illinois Insurance Agent and Broker Health Exchange Stakeholder Working Group* reached out to and met multiple times with *Crossroads Coalition*, an organized community group and potential Navigator whose membership is quite diverse and whose geographic area mirrors that initially identified by the state for the Health Information Exchange as Medical Trading Area 14. As a result, it was recognized how critical both roles of Agents / Brokers and Navigators would be to the success of the Illinois Health Benefit Exchange.

Our group has recognized how critical both roles will be to the success of the Illinois Health Benefit Exchange. In an unprecedented manner, we have come together to prepare our vision for the training, expectations, duties and compensation of both groups. Additionally, we have identified a number of unique opportunities for Navigators and Agents/Brokers to collaborate and partner in order to meet a number of common goals.

This document is considered a work in progress realizing the needs of the community, healthcare providers, healthcare delivery systems and state/federal funding programs can change. In addition there are several - yet to be defined provisions of the Affordable Care Act which could have an impact.

II. Our Mission:

Develop a Community Partnership working to improve access to healthcare coverage and services for all Illinoisans, with particular focus on access through the Illinois Health Benefit Exchange.

III. Goals and Objectives:

- Bridge the gap between agents and brokers and community organizations.
 - 1) Define the role of the Navigator
 - 2) Development of a Navigator program
 - 3) Define the role of the Agent / Broker as it pertains to the Illinois Health Benefit Exchange
 - 4) Define the relationship between Agents / Brokers and Navigators

- Decrease the impediments to access
 - 1) Address cultural, linguistic, and other barriers that impeded the enrollment of individuals in qualified health insurance plans.
 - 2) To provide culturally and ethnically appropriate information on the health insurance enrollment requirements of healthcare reform (PPACA).
- Link hard-to-reach populations to vital information and resources regarding qualified health insurance plans.
- Establish effective business / community and civic collaborations.
 - 1) To support the enrollment of individuals in qualified health insurance plans.
 - 2) Develop a community based advisory board.
- With Guidance from the Illinois Department of Insurance and Illinois Health and Human Services, develop benchmarks to measure performance and create accountability.

IV. Defining the Navigator Role, Compensation and Training

- Role of the Navigator:
 - 1) Develop a Plan in collaboration with the community to reach out to target audience.
 - 2) Facilitate Community Information Presentations to raise awareness of the availability of qualified health plans.
 - 3) Provide referrals to Exchange certified insurance agents or brokers to enroll individuals in a qualified health insurance plan.
 - 4) Refer individuals with complaints or grievances to the insurance agent or broker that originally placed the business or if that not apply, to the appropriate agencies.
 - 5) Education on Accessibility to: Providers, Certified Agents & Brokers, Public Agencies.
 - 6) Managing expectations – What does it mean to be insured.
 - 7) Assist with understanding and development of wellness initiatives to create a culture that fosters healthier, safer and more productive employees / individuals which can mitigate rising health care costs.

Compensation: We expect navigators to be hired by non-profit community based entities that will apply for and obtain annual grant money from the Exchange specifically designated for the Navigator program.

Training Requirements:

- Navigator Certification
- Insurance Exchange Certification - Knowledge of Exchange requiring an additional 8 CE hours
 - 1) Exchange Programs
 - 2) Role of a Navigator
 - 3) Community / Culture Awareness
 - 4) Subsidies
 - 5) HIPAA Privacy Training
 - 6) Graham Leach Bliley (Financial Privacy) Act

Qualifications:

- GED or High School Graduate, College preferred
- Must be able to pass and maintain a Certified Background Check
- Proficient in Reading, Writing and Speaking English
- Comfortable speaking to group setting
- Legally eligible to work in the state of Illinois

Certificate Training Program:

Model proposed contingent on funding capabilities and approved by the Department of Insurance.

A Twelve Week Program made up of Classroom and Practical experience.

- **Program consists of:**

- 1) **Class Time**

- a) Three times per week, three hours per day

- 2) **Practical Experience**

- a) Weeks 11 and 12 devoted to field training

- 3) **Curriculum:**

- a. Insurance: How Insurance works, provider options and how claims get filed and paid.
- b. HIPAA: What is HIPAA? Why is Privacy so important? How it applies to Navigators and the Insured.
- c. The Gramm-Leach Bliley Act -(Financial Privacy)
- d. Ethics
- e. Personal Health Management: How it applies to Navigator and the Insured.
- f. Navigating: Guiding the client to the correct resources will aid them to combining the correct Insurance coverage and the clients Personal Healthcare management will lead to healthier outcomes. (Consider How the Exchange works. Behind the scenes view of plans, subsidies)
- g. Health home: What does it mean to coordinate care, select primary care provider and coordinate resources
- h. Public Speaking: Navigator candidate should be able to demonstrate competency in communicating to groups of 25. Note: Optimal training class size is 20.

- 4) **Practical Experience:**

- a) The Navigator Candidate will work within the Community under supervision for two weeks demonstrating skills to certification Mentor. Note: Certification time may be shortened if candidate validates competencies within a shorter period of time.

Renewal of Certification Requirements:

- Bi-Annual Continuation Education 12 hour program to be established to maintain a working knowledge of Emerging Trends in Health Insurance.
- Maintain registration with the Exchange.
- Maintain original Qualifications
- Meet all continuing education requirements for re-certification.

V. Defining the Agent Broker Role, Compensation and Training

Role of the Agent / Broker:

- Develop a Plan in collaboration with Navigators to reach out to target audience.
- Partner with Navigators to facilitate Community information presentations to raise awareness of the availability of qualified health plans.
- Educate the Insured on Accessibility to: Providers, Certified Navigators and Public Agencies.
- Manage expectations based on plans the Individual purchases or is qualified through subsidies.

In addition, the following 8 categories commonly describe the day to day functions of an Agent/Broker:

- 1) Assessment and Review**
 - a) Assess clients' current position and challenges (i.e. budget, potential subsidy, personal or business needs, location – provider accessibility, and if a business: benefit philosophy and collective bargaining - contractual requirements);
 - b) Discuss Affordable Care Act, explain the differences of Grandfather vs. Non-Grandfathered plans;
 - c) Review ACA timetable;
 - d) Review risk tolerance (e.g. high deductible – HSA, HRA);
 - e) Review of market trends to ensure plan compliance; and
 - f) If a business: periodic review of plan service performance and cost-versus-industry/region benchmarks. The Agent/Broker usually purchases benchmark data from third party resources.
- 2) Plan Design Consultation**
 - a) Plan design consultation, market trends and benefit benchmarking.
 - b) If a business: benefit and cost analysis, including detailed claims (if available) or utilization spend studies;
 - c) If a business: contribution modeling (i.e. help develop employer-employee premium cost share models; strategies can include multiple plan offerings and/or incentive-based programs for wellness).
- 3) Administration**
 - a) Ensure accurate implementation of new policy and/or changes with carrier(s) / Insurance Exchange:
 - i) Billing
 - ii) Eligibility
 - iii) Carrier on-line resources and tools;
 - b) Assist with individual and group applications, which can run from 10 – 15 pages long per applicant.
 - c) Renewal contracts and plan summaries reviewed for accuracy (e.g. insurance carrier summary plan descriptions or certificates and group applications);
 - d) Assist with simplification of administrative procedures.
- 4) Consumer Claims Advocacy, Employee Communication**
 - (a) Act as a HIPAA compliant Consumer Advocate resource for difficult claim situations and escalated issues.
 - (b) Serve as a resource for insurance exchange / carrier and health care provider questions or issues;
 - (c) Act as a consumer advocate resource for clients with carriers to accommodate hardship provisions, if business: late entrants, missed COBRA or State Continuation applicants; and
 - (d) If a business: On-site benefit communication (involved in initial roll-out of new carrier, new plan or new product, as well as renewals) including: preparation of materials and of formal presentation, face-to-face presentations or webinars for multi-shift or multi-site employers. This also includes ongoing updates relating to carriers, vendors, providers, and legislation. On the employee level, education on understanding benefits, health care consumerism, plan utilization, and provider-interaction;
- 5) Compliance Assistance**
 - a) Filings and model plan notices to remain compliant with ACA i.e. Grandfathered status, etc.;
 - b) Help Individuals and Employers of all sizes ensure compliance and serve as a resource for state and federal laws including COBRA, ARRA, CHIP, ongoing CMS reporting, HIPAA Privacy, Mental Health Parity requirements, Section 125, Small business Tax credits, and Individual Subsidies. On larger groups FMLA.
 - c) If business: communication with management, human resources/ benefit personnel regarding benefits program issues;
 - d) Legislative and regulatory updates with communication regarding state and federal mandates – This happens quite frequently under ACA.

- e) On-staff (if available) or outsourced legal expertise many times required due to ACA changes.
 - f) If business: client education seminars on new legislation; Educate individuals on the use of HRA and HSA plans to help mitigate rising costs, if business: also FSA. Coordination of benefits at the time of claim, regarding the interaction of workers compensation with COBRA, FMLA and ADA compliance.
- 6) Renewal Marketing Analysis (Individual and Group)**
- a) Renewal preparation (current insurance carrier) with plan changes, alternative options, and cost summaries; Most carriers offer over 100 plan design options with the largest offering 252 on small group and close to 100 on individual. Many times these options are needed due to collective bargaining or contractual requirements.
 - b) Review of market analysis that shows alternate insurance carrier quotations and options;
 - c) For larger groups, conduct provider network efficiency study and provider disruption/discount analysis
 - d) Review coverage and service compatibility analysis- what changes can the individual / group expect in coverage and service with a change of carriers or plan design.
- 7) Proactive Wellness and Health Risk Management**
- a) Assist clients with understanding and development of wellness initiatives to create a culture that fosters healthier, safer and more productive employees / individuals which can mitigate rising health care costs..
 - b) Review and implementation of proven health cost containment and disease management support services.
 - c) For businesses: assist clients with educating employees on importance of becoming engaged in the health care process through proactive wellness and a consumer driven purchasing mindset.
 - i) This can include onsite health screenings, planned seminars, planned activities and a multitude of health awareness promotions.
 - ii) Introduce incentive programs to gain 90%+ participation in wellness screening and activities.
- 8) Claims Analysis – Large Groups 100+ lives**
- a) Plan performance reviews with claim analysis and claim trends;
 - b) Annual detailed claims analysis using carrier data with drill-down analysis capabilities;
 - c) Benchmarking and trend data research and analysis for measurement and comparison to client-specific experience data; and
 - d) Carrier experience reporting (interpretation, explanation and summarization for executive overview).

Compensation: We expect agents and brokers to continue to be compensated in the form of commissions paid by insurance carriers who are offering programs through the Exchange. So to avoid any adverse selection/steering carriers should offer the same level of commission in and out of the exchange.

Training Requirements for Agent / Broker:

As approved by The Department of Insurance

Exchange Certification:

- Knowledge of Exchange requiring 8 CE hours
- Exchange Programs
- Role of a Navigator
- Community / Culture Awareness
- Subsidies

License Requirements

- Agent/Broker -- Life, Accident and Health Licensing
 - 1) Pre licensing education requirement of 20 hours per line of authority; 7.5 of the 20 hours must be completed in a classroom setting.
 - 2) Required to show proof of completion of pre-licensing at the test center before being allowed to sit for the exam.
 - 3) Sit for and pass exam at a qualified test center

License Renewal Requirement:

- Agent/Broker – Life, Accident and Health Licensing (24months)
All resident producers are required to have 24 hours of CE on file with the Department: three of which must be classroom ethics prior to requesting an extension of an insurance producer license.

VI. Joint Navigator – Agent / Broker Activities:

- Promote resources enabling greater access to care and services
 - 1) **Illinois Insurance Exchange**
 - 2) **Qualified Exchange Partner**
 - a) Navigator
 - b) Agent / Broker
 - c) Provider Network

The role of exchange partners is to help set up information dissemination activities with their communities. Exchange partners will also participate in other marketing and promotion activities designed to raise awareness of the need for individuals to sign up for a qualified health insurance plan.

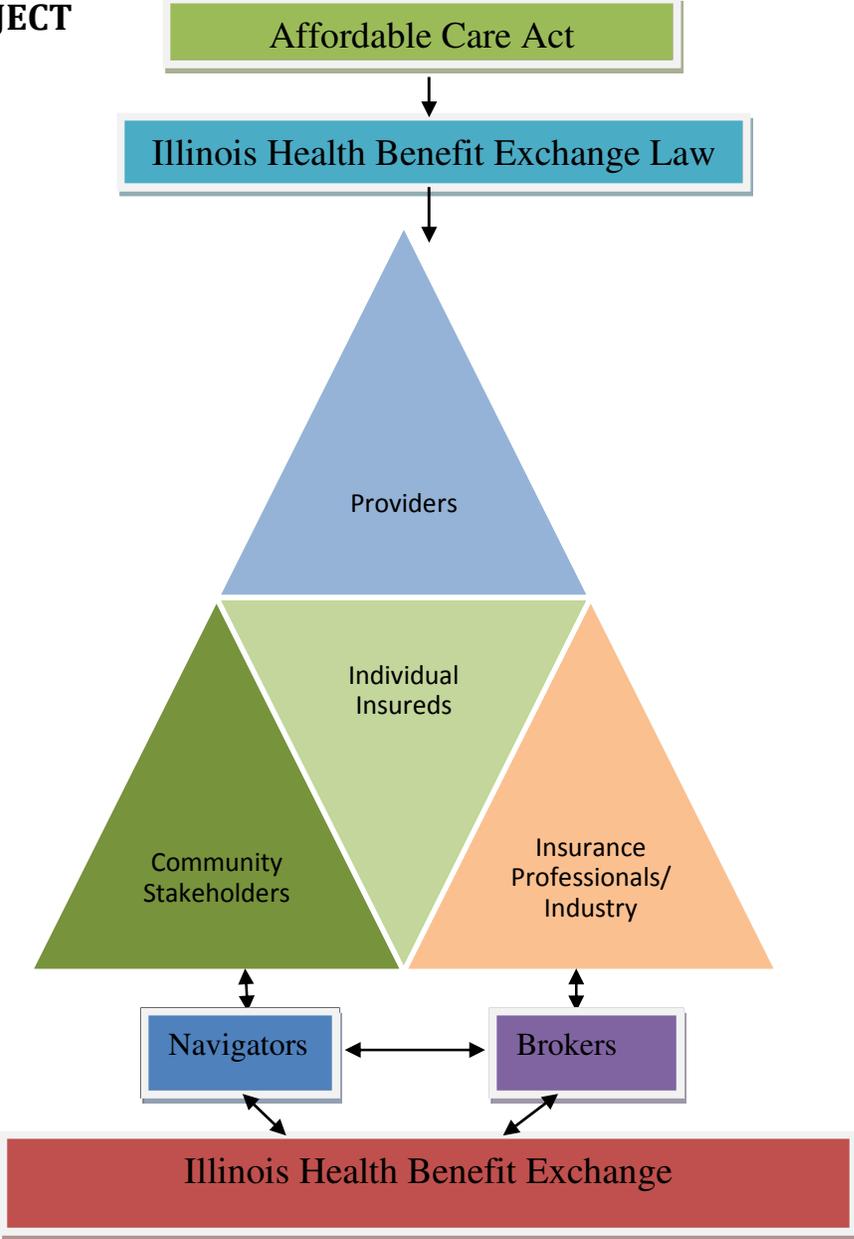
- Organize Community Meetings
 - 1) Community Based Organizations
 - 2) Faith – Based Organizations
 - 3) Professional Organizations

Information Presentations - The work of the Exchange will consist of conducting information presentations in community and faith-based settings. These sessions will discuss the need for individuals to enroll in a qualified health insurance plan, answer any questions or concerns individuals might have regarding enrolling in a health insurance plan, and provide information on Exchange partner brokers who can assist individuals in selecting the right plan and enrolling in that plan. Navigators will facilitate the information sessions. Where possible, brokers will also be present to answer questions and concerns.

- Understanding of What the Exchange is
- Basic Understanding of Benefits
- Wellness Benefits Available
- Resources

* Navigator – as defined by ACA with modifications to State and Community needs

VII. FLOW CHART of PROJECT

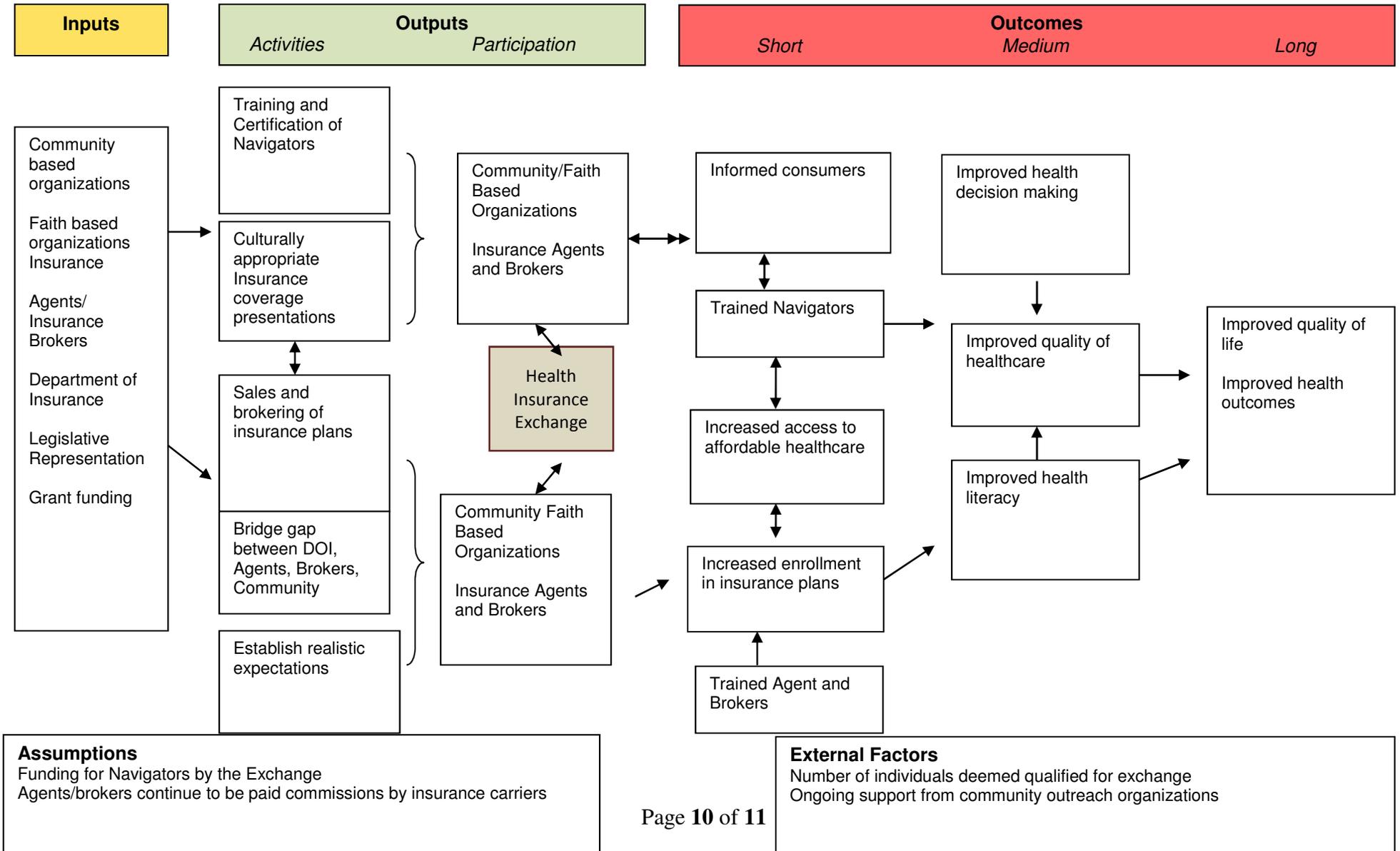


VIII. Logic Model

Program: Crossroads Community/Agent/Broker Partnership Logic Model

Mission: Develop a Community Partnership working to improve access to healthcare coverage and services for all Illinoisans.

Objective: Establish an Exchange Navigator Program



IX. Committee Members of the Partnership

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Proposed Revisions for consideration and adoption by the Health Insurance and Managed Care (B) Committee

The Comparative Roles of Navigators and Producers in an Exchange What are the Issues?

The purpose of this document is to assist state policymakers with the implementation of health insurance exchanges and to identify and discuss issues concerning the roles of producers¹ and navigators² in the operation of an Exchange³.

Introduction and Background Regarding Navigators and Producers

In order to appreciate the comparative roles of ~~these distinct entities~~ navigators and producers and how they must cooperate in the successful implementation of the Exchange, the following background information is provided describing the current role of producers in the health insurance marketplace and the expected role of navigators. While the federal Patient Protection and Affordable Care Act (ACA)⁴ provides some information about navigators, additional insight is expected from regulations to be promulgated by the Secretary of the U.S. Department of Health and Human Services (Secretary).

Navigators

In accordance with the ACA, an Exchange must establish a program under which it awards grants to entities called navigators to perform the following duties:

- Conduct public education activities to raise awareness of the availability of qualified health plans⁵;
- Distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits and cost-sharing reductions in accordance with federal tax laws;
- Facilitate enrollment in qualified health plans;
- Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman, 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
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange.

Navigators may include trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration (SBA)⁶, other licensed insurance agents and brokers, and other entities that are capable of carrying out the required duties⁷, meet the standards established by the Secretary and provide information that is fair, accurate, and impartial.

To be eligible to receive a grant from the Exchange, an entity must demonstrate to the Exchange involved 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 qualified to enroll in a qualified health plan. Grants must be made from the operational funds of the Exchange and not federal funds received by the state to establish the Exchange.

The Secretary must establish standards for navigators including provisions to ensure that any private or public entity that is selected as a navigator is qualified, and licensed, if appropriate, to engage in the navigator activities described and to avoid conflicts of interest. Under these standards, a navigator shall not be a health insurance issuer or receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.

The Secretary, in collaboration with states, must also develop standards to ensure that information made available by navigators is fair, accurate, and impartial. (See ACA §1311(i)(5), 42 USC §18031(i)(5)).

Furthermore, in accordance with the ACA, a qualified health plan means, among other things, a plan offered by a health insurance issuer that agrees to charge the same premium rate for each qualified health plan it offers without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent. (See ACA § 1301(a)(1)(C)(iii), 42 USC §18021(a)(1)(C)(iii))

Producers

States have been regulating the activities of producers for decades. Thus, substantial background information is available to describe the ~~importance of the~~important role producers play in the procurement of health insurance. However, a full discussion is beyond the scope of this document. In summary, producers are universally regulated by the various states and territories. Typically, a producer is an individual or business entity appointed by a health insurance issuer to sell, solicit, or negotiate insurance contracts on its behalf. The term “producer” is used in many states to include both agents and brokers. A broker negotiates the purchase of insurance on behalf of the consumer (individual or business entity) rather than the health insurance issuer.

Producers are representatives of the health insurance issuer and are subject to terms of the contract or written agreement between themselves and the health insurance issuers they represent. In the conduct of their business as an agent, the producer essentially stands in the shoes of the health insurance issuer and regulators may hold their health insurance issuer liable for the errors or misconduct of the appointed producer. Producers are subject to strict rules in the state in which they operate. Producers must be licensed, must meet various educational requirements, including continuing education requirements, are accountable for their actions, and must demonstrate financial responsibility. These state requirements function to assure competency and professionalism, and also serve to provide a mechanism protecting consumers by license suspensions and revocations where violations of the law are found.

Navigators and Producers Will Play a Crucial Role in the Success or Failure of an Exchange

States should consider how best to deploy navigators and producers in a complementary manner to be sure individuals and small employers currently purchasing insurance as well as uninsured individuals or small employers who do not currently offer health insurance to their employees understand all the new options effective in 2014. Independent studies have documented the significant increase in the number of individuals expected to enter the market for health insurance coverage.¹ While there is no doubt many of those currently insured will turn to producers, navigators are expected to be particularly useful in reaching out to the uninsured as well as those who may face cultural or linguistic barriers in accessing health insurance. The effective use of navigators and producers will contribute to the success of an Exchange.

In looking at the historical background of producers in the health insurance marketplace and issues surrounding the establishment of a navigator program under the ACA, it is clear that determining the future role of producers is a vital part of the implementation process for the Exchanges. States must consider not only what role producers will play in the start-up and day to day operations of an Exchange but how producers will ~~interact~~network together with ~~the~~navigators to educate, engage and provide needed assistance to individuals, families and business owners. There are many issues in this regard, but experience has shown that all issues must be considered with the firm belief that producers, as well as navigators, are can be crucial players in the success or failure of an Exchange. Producers already have a significant relationship of trust with the individuals covered by both the individual market and the small employer insurance market. There are also segments of the individual market that are better reached and represented by producers rather than consumer and industry groups. Producers who are accountable and trained on the functions of the Exchange and the products and services available can increase public awareness of the Exchange and increase consumer traffic to the Exchange websites. Also, eCconsumers who are directed to the Exchanges will need education and assistance to determine which products best suit their needs and affordability standards. As such, pProducers will need to expand their knowledge base to include helping consumers understand plan quality rates, plan selection, satisfaction surveys, and the value of different “metal” tiers created by the ACA. Producers can assist with these matters. Lastly, 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.

Issues

A number of substantial issues have been identified concerning how producers and navigators will interact in an Exchange. Again, this interaction will be further fleshed out in regulations promulgated by the Secretary. As state policymakers consider

¹ The Congressional Budget Office has estimated that 29 million people will access coverage through the Exchange and the RAND Corporation has suggested this number could be as high as 68 million.

the following issues, two overarching guiding principles should be: (1) preserving state flexibility to design an exchange that best services the unique market needs in a particular state; and (2) ensuring the protection of consumers participating in the Exchange.

The ACA does not clearly distinguish between the roles that navigators and producers will play in facilitating exchange enrollment. The law provides that navigators will conduct public education activities and distribute information about enrollment in qualified health plans, but the requirement to “facilitate enrollment” is left undefined, leaving open the question of whether navigators will or should stop short of assisting with enrollment in a particular product selling insurance coverage (and providing related services, such as advising consumers on specific plan options and actually helping them enroll in the option of their choice). Absent any federal standards, states will need to evaluate the roles that navigators will play to determine the appropriate certification or licensure requirements.

1. Will the regulations promulgated by the Secretary establish a ceiling of standards or will states have flexibility with regard to the oversight and role of producers and navigators in their Exchanges?

While most states have adopted uniform laws concerning the regulation of producers, the states currently retain flexibility to adapt to the specifics of their markets. The ACA requires that an Exchange “shall establish a program under which it awards grants to [navigator entities].” Further, the ACA states that an entity seeking to receive a navigator grant “shall demonstrate to the Exchange” its relationships or ability to establish relationships needed to perform the duties of a navigator. Both of these provisions suggest that the states, through their Exchanges, will also have flexibility vis-à-vis navigators.

The ACA also directs that the Secretary “shall establish standards for navigators,” and contemplates that those standards will address such factors as qualifications, licensure, and the avoidance of conflicts of interest. How the Secretary presents these standards may dictate whether they are a floor or a ceiling. However, the nature of the eligibility criteria in ACA §1311(i)(2), 42 USC §18031(i)(2), suggest that eligibility will depend on factors that require qualitative evaluation of “existing relationships.” In addition, the ACA suggests a wide range of entities that might qualify as navigators. Those entities may differ substantially from state to state, and even within a state. For example, a commercial fishing industry organization in Massachusetts may be far more equipped to perform navigator activities than one in Kansas, and a professional counseling association may be far more equipped to serve as navigators than a professional hairdressers’ association. Therefore, it is suggested that the Secretary’s standards should substantially defer to a state’s Exchange to make qualitative evaluations, articulated in part through an Exchange’s competitive grant process for selecting navigators.

Finally, the standard preemption provision of the Public Health Service Act (PHSA) is adopted into the Exchange provisions of the ACA. Accordingly, the state Exchange may not have rules that “prevent the application” of the federal law or regulations, see ACA§1311(k), 42 USC § 18031(k). In the context of the PHSA, this standard approach has been interpreted to mean that the federal law is a floor. In sum, the language of the ACA suggests that the Secretary’s regulations, when drafted, will operate as a floor, rather than a ceiling.

2. Should the states license or certify navigators?

The navigator provision in the ACA does not negate or preempt state laws requiring producers to be licensed to sell, solicit, or negotiate insurance. On the other hand, the ACA does state that the “Secretary shall establish standards for Navigators ... including provisions to ensure [that a navigator] is qualified, and is licensed if appropriate.” Again, how prescriptive the proposed regulations will be shall significantly impact this question. However, since states each have licensing and certification provisions which depend on the particular characterizations of the states, flexibility is essential so that states may enforce their existing licensure laws. States also may have a variety of certification or licensure arrangements for community partners or others with a consumer assistance orientation⁹.

To assure consistency with ~~those~~these already existing state laws, the states should be permitted, if they choose to do so, to require parallel competency requirements for navigators that include educational and continuing education requirements. States may also want to consider a system of reciprocity to allow licensure in multiple states if certain standards have been met.

This may be similar to the flexibility shown in the Long Term Care Partnership provisions of the Deficit Reduction Act of 2005, where the state insurance department is tasked with assuring sufficient training and understanding on the part of individuals selling partnership policies so that the state Medicaid agency may be satisfied of the seller’s competence. The satisfaction of the training requirements in one state is deemed to satisfy the training requirements in any other state. In the same way, the Secretary will be looking for a certain level of competency in navigators, and may ~~be anticipated to opt to~~ rely on the state or the state’s Exchange to assure that competency.

To ensure that consumers have clarity about the role that navigators will play with guiding them through the Exchange, states may also want to consider requiring navigators to provide to all consumers with whom they interact a clear and concise description both of the services they can perform for consumers and how they will be paid for those services.

Finally, should it be determined that licensure or certification of navigators is appropriate, the following should be considered in the development of the standards in addition to educational requirements:

- A clear definition of the actions and responsibilities requiring a license or certification;
- The services that can be provided under the license or certification;
- Whether applicants should be subject to criminal background checks;
- Accountability standards that should be adhered to by licensees; and
- Privacy protections for information received and provided by licensees.

The extent to which states will need to regulate navigators will depend on the scope of services they provide. If navigators' services are defined to include services/activities that require licensure for producers, then navigators should be subject to the same state regulations as producers (e.g., licensure, requirements to hold errors and omission coverage, compliance with privacy regulations).

~~To ensure that consumers have clarity about the role that navigators can play, states should consider requiring navigators to provide to all consumers with whom they interact a clear and concise description both of the services they can perform for consumers and how they will be paid for those services.~~

3. Who will establish educational and continuing education requirements for navigators?

As noted above, to the extent navigators are selling, soliciting, or negotiating insurance in effect, acting as producers, they should be subject to the laws applicable to producers in the jurisdiction in which they are operating. To do otherwise would be to allow persons or entities to avoid licensure requirements by using the term "navigator," thus undercutting the states' regulation of the insurance marketplace for the protection of the consumer.

Moreover, because the Exchanges in the various states will operate differently, and will operate in jurisdictions with different producer and navigator roles, it is expected that there will need to be some variation in the education requirements, though perhaps with a set floor (as in the Long Term Care Partnership provisions of the Deficit Reduction Act of 2005).

4. How will navigators be held accountable for errors? Will they be required to have errors and omissions coverage as do producers?

Some states have a statutory requirement making it mandatory for a producer to carry errors and omissions insurance or other forms of coverage to demonstrate financial responsibility. If navigators are not required to be licensed or certified, there will be no mechanism for an errors and omissions coverage requirement. Yet, depending on the scope of a navigator's role in assisting consumers in getting the coverage that is most appropriate for them, and then assisting them further in claims resolution matters, a consumer who is harmed by a navigator's error or omission should have some recourse. Navigators should be encouraged to carry professional liability insurance that would protect them and the consumer in the event of an error.

In addition to ~~errors and omissions~~professional liability insurance and other forms of coverage to demonstrate financial responsibility, states may also want to consider the following ~~can also be considered~~ to further ensure that consumers are properly protected:

- Subjecting navigators to the oversight and regulation of state insurance regulators, including state unfair trade practices acts;
- Developing a process for handling navigator-related complaints from consumers, with the ability to take appropriation action against individual navigators and entities ~~that receive~~awarded navigator grants when fraud or other improper conduct occurs; and
- Developing a process for reviewing entities ~~that receive navigator grants in order~~awarded navigator grants to detect and protect against waste, fraud and abuse.

States may wish to consider including these consumer protections as requirements in the grant process for selecting navigators.

5. What is meant by “facilitate enrollment”? How will the navigator be involved with Medicaid and other public programs? What will navigators need to know?

Navigators and producers must have a thorough knowledge of the Exchange marketplace. They should understand the private insurance market and public programs. Similar to the health insurance advisory service program established in 42 USCS 1395b-3 (for Medicare-eligible individuals), navigators may facilitate enrollment by providing information, counseling, and assistance to individuals with respect to:

- The private insurance market;
 - eligibility;
 - benefits (both covered and non-covered);
 - the process of payment for services;
 - rights and process for appeals of determinations; and
- Public programs:
 - eligibility, benefits, and the application process;
 - linkages between the Exchange, tax credits and Medicaid programs; and
 - state and local agencies involved in the Medicaid program.

~~Navigators can be especially helpful in underserved populations by partnering with community-based organizations that have experience working with the uninsured, populations with language barriers and other under served communities. Community-based organizations would be particularly effective navigators for underserved populations. These groups have experience working with the uninsured, populations with language barriers and other underserved communities.~~

On the other hand, the ACA, in describing the duties of a navigator, consistently makes reference to qualified health plans to the exclusion of public plans or programs. Therefore, it is unclear whether navigators are expected to facilitate enrollment in public plans or programs. ~~However, if navigators are expected to serve Medicaid or Children’s Health Insurance Program (CHIP) populations, then funding for navigators should also come from these programs in order to assure that consumers purchasing private insurance coverage through exchanges are not assessed for these costs. However, the ACA appears to envision that the Exchange will provide a “no wrong door” access point for consumers, regardless of income or eligibility for public programs. Thus, it will be important for navigators to have experience and understanding of the eligibility and enrollment process in public programs. Because there will be this need for linkages with public programs like Medicaid and the Children’s Health Insurance Program (CHIP), funding for navigators should also come from these programs in order to assure that consumers purchasing private health insurance coverage through Exchanges are not assessed for these costs.~~ Such funding could come from ACA Section 5313, which provides for grants for community health workers requiring such workers to educate and provide outreach regarding enrollment in health insurance, including Medicaid and CHIP.

Some may consider the role of a navigator to be analogous to the role that State Health Insurance and Assistance Programs (SHIPs) play with respect to Medicare consumers and the role that facilitated enrollers in some states play in the Medicaid and CHIP programs. States may want to consider reviewing these programs for guidance in developing the role that a navigator will play in the Exchange.

6. Will HIPAA and GLBA apply to navigators? If so, how?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the various privacy regulations promulgated there under generally apply to three “covered entities”: (1) health care providers, (2) health care clearinghouses, and (3) health plans. Since producers act on behalf of health insurance issuers and health plans, some health insurance issuers consider producers to be “business associates” and require them to sign confidentially agreements to safeguard protected health information (PHI) and specify how the producer may use or disclose PHI.

The Gramm-Leach-Bliley Act (GLBA) requires financial institutions, which includes health insurance issuers, to safeguard a customer’s personal information, provide notice to consumers regarding the company’s information-sharing practices, and provide an opportunity for the customer to “opt-out” if the customer does not want personal information to be shared outside of the company (or its affiliates). Additionally, GLBA created a mechanism for federal oversight, the National Association of Registered Agents and Brokers (NARAB), which preempts state law and will regulate producer licensing unless a majority of the states implement and maintain uniformity and reciprocity standards for producer licensing.

In response to these federal laws, the NAIC adopted model laws and regulations related to producer licensing, the privacy of consumer financial and health information, and safeguarding consumer information. The majority of states have enacted these models. Therefore, if navigators become licensees of the various departments of insurance, navigators will be required to comply with state laws and regulations designed to implement the various provisions of GLBA and HIPAA. If navigators are not regulated by state departments of insurance, then these entities may not have the knowledge or tools to safeguard consumer information to the same extent as producers. The Secretary and the states should consider the information that navigators may have in their possession and how personal information (including PHI) will be safeguarded. Consideration could include standards in any licensure, certification or other regulatory oversight requirements for navigators, or a provision to comply with privacy laws in any contractual agreement entered into between the Exchange and navigators regardless of whether navigators are licensed.

7. How do you identify, reach out, and oversee non-insurance industry partners acting as navigators?

The ACA requires that an entity serving as a navigator demonstrate to the Exchange that they have existing relationships or could readily establish relationships with employees, employers, and consumers that are qualified to enroll in a qualified health plan. Further guidance is needed to determine what will constitute sufficient representation of the various areas in the community needing representation within an Exchange. Will Exchanges require a certain level of need for representation in specific areas to merit a grant to specialized entities (i.e. fishing industry, ranching industry, etc.)? For example, a commercial fishing industry organization in Massachusetts may be far more equipped to perform navigator activities than one in Kansas, and a professional counseling association may be far more equipped to serve as navigators than a professional hairdressers association. Also, what type of documentation will be required to demonstrate relationships or ability to form relationships with individuals in the community in order to be qualified as a navigator?

Exchanges will need to establish a certification program for all navigators (that does not vary by industry) to assure that each navigator has sufficient basic knowledge of the Exchange to assist and educate their consumers.

As state departments of insurance will not necessarily have regulatory authority over navigators, Exchanges should also consider a complaint process for consumers who are dissatisfied with the performance of a navigator. This process should take into account the varied types of “community partners” that could serve as a navigator. The process should include consideration whether certification may be withdrawn as needed.

It would appear that, in the absence of oversight by the commissioner of insurance, the Exchange governing board must be given authority under the enabling legislation to promulgate regulations to oversee the functions of navigators.

8. What funding source may Exchanges use for navigator programs?

The ACA requires an Exchange to contract with, and finance, navigators. Additionally, a navigator may not receive any direct or indirect compensation from a health insurance issuer. An Exchange may charge a separate fee to compensate the navigator. Regardless of the group size, plan design or health insurance issuer chosen by the consumer, compensation should not vary. A transparent compensation model that provides a market competitive payment to a producer or navigator will best serve consumers.

Proper disclosure also will be necessary to address the inherent conflict in the funding of navigators that exists in the ACA. Specifically, while navigators are to be funded “out of the operational funds of the Exchange,” ACA §1311(i)(6), 42 U.S.C. §13031(i)(6), the ACA also contemplates that the Exchange will “charge assessments or user fees to participating health insurance issuers, or ... otherwise generate funding, to support its operations.” ACA §1311(d)(5)(A), 42 U.S.C. §13031(d)(5)(A). Thus, it is quite likely that health insurance issuers will be funding the operations of the Exchange, including the operational funds used for funding navigators. It is therefore important to keep funding for navigators reasonable, to keep overall Exchange administrative costs low, since such funding will directly impact affordability of premiums for Exchange enrollees. That said, this must be accomplished without violating §1311(i)(4)(ii), 42 U.S.C. §13031(i)(4)(ii), which prohibits navigators from receiving “any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.” As noted earlier, if navigators are expected to service Medicaid or CHIP populations, then funding for these new entities should also come from these programs.

The role of navigators may change over time. States should consider that the role will evolve as consumers become familiar with the steps needed to access coverage through Exchanges. Thus the funding levels may need to be adjusted as the exchange marketplace develops.

9. May producers serve as navigators? How will commissions be paid?

The ACA provisions relating to medical loss ratio requirements and relating to the role of navigators in the Exchange demonstrate that one concern behind this legislation is the question of who producers truly work for and the value that they bring for the consumer. There are some indications that the marketplace is moving toward a structure that would allow compensation of producers by employers in lieu of carriers, however this may not be true of all market segments, such as small groups under 50 members that may not have the resources to pay direct fees in addition to premiums. Discussions with the Secretary would indicate that this is a route with which the Secretary would concur. States should anticipate that producers will continue to serve a vital role in the industry, although it is expected that the nature of their services will evolve.

States will want to look closely at ~~the~~ ways to make allowances for producers in the future marketplace. Some states have statutory schemes in place that would prevent a producer from being compensated by an employer. Statutory analysis may be needed to determine if legislation should be pursued to allow new compensation schemes. This may include setting parameters for producers to place business within an Exchange and receive some kind of compensation for that service. Or it may include allowing producers that are not receiving compensation from health insurance issuers to function as navigators.

There are special considerations for producers in the small group market. Producers form a working relationship with client employer groups, with the employer often utilizing the producer as an expert. If a producer is working with a small employer group that decides to send their employees to the Exchange to purchase coverage, how can the producer continue to assist the employer and their employees obtain coverage? In this instance, the producer (as opposed to a navigator) may be the individual with the best relationship and tie to these individuals.

States should examine the goals of the navigator program and determine if producers are suited to this function or if it would be more advisable to limit producers interaction with individuals to simply enrolling them in qualified health plans. Exchanges would have to consider how a producer might interface with Medicaid or CHIP programs. Also, producers may not have the necessary knowledge to assist with subsidy issues.

If a state determines that navigators should “facilitate” enrollment in the Exchange and producers may be used to complete enrollment within qualified health plans, how will the Exchange ensure that navigators ~~aren't~~are not using preferential treatment in producer referrals? What if producers are paying “commission” to navigators?

Regardless of the exact role of the producer within the Exchange (navigator or producer), producers will not have the necessary knowledge to fully utilize the system without additional training. As noted earlier, States may want to look to the educational requirements of the Long Term Care Partnership provisions of the Deficit Reduction Act of 2005 for ideas about the design of the required education for producers with regard to Exchanges. ~~Under the Deficit Reduction Act of 2005, the state insurance department is tasked with assuring sufficient training and understanding on the part of individuals selling partnership policies so that the state Medicaid agency may be satisfied of the seller's competence. In the same way, the Secretary will be looking for a certain level of competency in navigators, and it may be anticipated that the Secretary will rely on the state or the state's Exchange to assure that competency. It is~~would be advisable to set a “floor” of core competencies required by producers who are involved with the Exchange ~~and in order to~~ allow individual states to determine further educational requirements as needed based on the individual needs of their consumers. Notwithstanding the roles to be played by navigators or producers, state Medicaid departments and ~~the state~~ agency/agencies that oversees public programs will ultimately be responsible ~~to make~~for making enrollment/entitlement determinations.

10. Ethical issues for producers who wish to serve as navigators

The ACA requires that navigators avoid conflicts of interest and provide fair and impartial information concerning enrollment in qualified health plans. An Exchange must consider if there is an inherent conflict of interest if producers desire to function as navigators for the Exchange. These conflict-of-interest considerations will give rise to numerous issues requiring resolution. For example, does a conflict exist (1) if a producer is currently receiving commissions on unrelated blocks of business and is acting as a navigator, (2) if a producer is receiving commissions with regard to large group products that cannot be offered through the Exchange and is acting as a navigator; or (3) if a producer is receiving trailer commissions from an insurer and is acting as a navigator. The states should also consider whether a conflict exists if a producer that works solely in the self-funded marketplace wishes to serve as a navigator.

Exchanges will need to set criteria or ~~must~~ seek guidance from the Secretary as to what level of health insurance issuer-related activity constitutes a conflict of interest.

11. Issues relating to multi-state plans offered by U.S. Office of Personnel Management (OPM) through eExchanges.

ACA § 1334, 42 USC § 18054 authorizes the U.S. Office of Personnel Management (OPM) to enter into multi-state plans with insurers for one-year terms, automatically renewable, to offer individual or small group coverage through the eExchange. Plans that have contracts with OPM are deemed to be certified to participate in ~~thean~~ eExchanges. In order for these plans to be offered through any state eExchange, they must be available in 60 percent of the states in the first year, 70 percent in year two, 85 percent in year three, and 100 percent thereafter. At least two plans must be offered in each state and one must be offered by a non-profit and at least one plan cannot cover abortions.

Since these plans will be offered through the Exchange, states will need to address the issue of how navigators and producers will be involved. Hopefully, federal regulations will address some of these questions. It is also expected that it will be sometime after 2014 before 60 percent of the state eExchanges are ready to issue these OPM plans through Exchanges.

Conclusion

There are many interrelated issues that must be addressed to assure that the professional competencies of producers, as well as the educational assistance function of navigators, may benefit the consumers of the Exchange. By presenting the background and information above, this paper may assist states in considering how best to structure their Exchanges with regard to producers and navigators.

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- 1 States differ in licensure terminology. For purposes of this document, unless otherwise stated, “producer” shall include agent, broker, consultant, insurance producer, and any other term or designation currently used to refer to those individuals or entities that are required to be licensed by the state to be engaged in the solicitation, sale, negotiation and servicing of insurance, regardless of whom they represent.
 - 2 For the purposes of this document, “navigators” refers to entities carrying out the program established under ACA §1311(i), 42 USC § 18031(i)
 - 3 On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act. Then, on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 was signed into law. The two laws are collectively referred to in this document as the Affordable Care Act or ~~(ACA)~~
 - 4 For the purposes of this document, “Exchange” refers to the American Health Benefit Exchange as described in ACA §1311(b), 42 USC § 18031 (b)
 - 5 A “qualified health plan” is defined at ACA §1311(c), 42 USC §18021(a). The Secretary must promulgate regulations to establish the criteria for certification of health plans offered through the Exchange. See 42 USC §18031(c).
 - 6 The SBA provides small business counseling and training through a variety of programs and resource partners, located strategically around the country. One example is the Office of Small Business Development Centers (SBDC) which provides management assistance to current and prospective small business owners. SBDCs offer one-stop assistance to individuals and small businesses by providing a wide variety of information and guidance in central and easily accessible branch locations. The program is a cooperative effort of the private sector, the educational community, and federal, state, and local governments and is an integral component of Entrepreneurial Development’s network of training and counseling services.
 - 7 Although not specifically mentioned in the ACA, community partners that assist in the SHIP and CHIP programs of various states have been suggested as performing parallel functions to those duties performed by a navigator.
 - 8 ACA uses the term “health insurance issuer” to describe a health insurer or health insurance company. For purposes of this document, health insurance issuer is an entity licensed by the state or territory that is engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of health insurance.
 - 9 Community partners may be community-based agencies, organizations, coalitions, hospitals, church groups, guidance counselors, school nurses, health care providers, and other groups or individuals that wish to help an interested person learn about or receive some service or benefit. Typically their work focuses on outreach and education, but may also include providing assistance in completing applications for those services or benefits. Community partners are not licensed, and therefore are not permitted to sell, solicit, or negotiate contracts of insurance. While community partners may be subject to some form of state approval, this approval typically functions as a means to access electronic application systems, rather than as regulatory oversight.



Connecting Consumers to Coverage: The Role of Navigators and Consumer Assistance Programs in Implementing Health Reform in New York

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The Empire Justice Center is a statewide organization devoted to improving the systems under which low-income New Yorkers live. Empire Justice engages in policy advocacy and analysis, provides back-up support to legal services and community-based organizations, and engages in impact litigation in health access and other issue areas critical to low-income families.

The Community Service Society of New York (CSS) is an informed, independent, and unwavering voice for positive action that serves the needs of low-income New Yorkers.

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Executive Summary

New York has the historic opportunity to successfully link its consumers and small businesses with health coverage as it implements the new Federal health reform law, the Affordable Care Act (ACA). The ACA promises to provide coverage to 32 million Americans and help bring down the cost of coverage for millions of others.¹ Individuals will be mandated to have coverage and employers will either have additional coverage incentives or responsibilities, depending on the number of people they employ. Enrollment systems in each state will have to be brought to scale in relatively little time to prepare for the surge of new consumers.

Recognizing this enrollment challenge, the ACA requires that each state either establish its own state-based health insurance exchange or default to a Federal exchange by 2014. The exchanges will facilitate individual enrollment in public coverage and affordable commercial coverage. Low- and middle-income consumers who do not qualify for public coverage will receive subsidies to purchase private insurance. Additionally, small businesses will be able to purchase coverage for their employees through the exchange. While the details have yet to be settled upon, a broad consensus has emerged that New York will opt to establish its own exchange, which is expected to enroll as many as 1.2 million—out of a total 2.6 million uninsured—New Yorkers.

The success of New York's exchange will depend largely on the ability of individuals and small businesses to enroll in and maintain health insurance coverage. No doubt, successful coverage rates will require a broad publicly-funded social marketing campaign—much like the one Massachusetts used when it implemented its State-based health reform effort.² But despite the best laid marketing plans, purchasing and enrolling in coverage will remain a daunting task for many individuals and small businesses alike.

To help consumers with the enrollment challenge, the ACA directs state exchanges to establish a Navigators program (Navigators) to coordinate with Consumer Assistance Programs (CAPs). Together, these programs are charged with helping individuals and small businesses make good coverage choices, streamline enrollment, and troubleshoot coverage problems when and if they arise. The ACA assigns functions to Navigators and CAPs and provides some examples of the type of entities that could serve as Navigators and CAPs, but the exact parameters and interplay between the two programs remain unsettled.

Both programs are charged with providing enrollment assistance and education for consumers. Navigators are specifically charged with providing culturally and linguistically appropriate education information and enrollment assistance. CAPs likewise are charged with providing education and enrollment information, but also are directed to provide consumers and small businesses with information on consumer rights and responsibilities, assist them with appeals, and conduct trends analysis. Federal guidance is unclear about how the two programs will coordinate with each other beyond requiring Navigators to make referrals to CAPs for more

Executive Summary *(continued)*

intensive consumer assistance.³ Likewise, Federal guidance is opaque about the continuing role of existing systems of insurance enrollment—health plans, brokers, local government offices, health care providers, and so forth.

Despite the ACA's recognition that effective enrollment and consumer assistance is an essential component of health reform, important design questions about the Navigators and CAPs remain unanswered and must be resolved for New York to move forward: What should be the core functions of Navigators and CAPs in New York? How should New York structure and administer its Navigators and CAPs to maximize integration and avoid duplication of efforts? How should New York leverage existing enrollment and consumer assistance resources into the Navigators and CAPs? How much will the Navigators and CAPs cost and how should they be funded?

This paper seeks to address these questions and the unresolved ambiguities presented by the ACA. To do so, we conducted an analysis of New York's existing enrollment and assistance landscape; held a series of facilitated conversations and interviews around New York State with key stakeholders—nearly 250 in all; and augmented unanswered questions with legal analysis and a review of the existing literature. Although this report takes into consideration the viewpoints of a variety of stakeholders around New York representing different interests, the final recommendations are the authors' own.

Accordingly, this report addresses the ambiguities concerning the duties of the two programs, distills key points from stakeholder discussions and research, and presents recommendations on how New York should design its Navigators and CAPs in order to avoid duplication and best meet the ACA's enrollment and assistance challenges. Key recommendations about how New York should implement its Navigators and CAPs are as follows:

RECOMMENDATION #1: THE ESSENTIAL FUNCTIONS OF NAVIGATORS AND CAPS SHOULD BE INTEGRATED INTO A SINGLE PROGRAM

Stakeholders were routinely confused by the perceived functional overlap between Navigators and CAPs under the ACA and believed consumers would likewise confuse the two programs given their apparent redundancy of services. To avoid duplication and confusion, we recommend that:

- ▶ New York should create one integrated program that meshes the full range of functions of both the Navigators and CAPs.
- ▶ All New Yorkers in need of health care help, including small businesses, should be eligible for assistance from the new, integrated program, regardless of the form of coverage they qualify for or purchase. However, the program should prioritize those groups who need the most assistance navigating the health care system.
- ▶ The integrated program should not be responsible for the exchange's broad-based social marketing/media promotion campaign, but should be consulted to ensure appropriate targeting and consistency in message and materials.

RECOMMENDATION #2: THE NAVIGATOR/CAP SHOULD USE A “HUB-AND-SPOKES” ADMINISTRATIVE INFRASTRUCTURE

Stakeholders pointed out that not every consumer or small business needs every service offered by the Navigators and CAPs, and that services could be performed by different groups with different areas of expertise. However, all New Yorkers should receive high-quality, internally consistent services. To best allocate limited public resources, we recommend that:

- ▶ The integrated Navigator/ CAP should feature a single entity or exchange staff serving as a central hub to ensure consistency of the services throughout the State. This hub should contract with the other entities (“spoke groups”) around the State best suited to provide the required services to targeted populations.
- ▶ To ensure that New Yorkers can access high-quality, consistent services, we recommend that the central hub:
 - implement a training and quality assurance program and develop common outreach and educational materials;
 - maintain a central web-based database to enroll consumers and small businesses, monitor spoke groups’ performance, and analyze trend data;
 - ensure that an appropriate level of liability insurance is adopted; and
 - establish uniform privacy protection standards for all Navigator/CAP entities.

RECOMMENDATION #3: THE NAVIGATOR/CAP SHOULD LEVERAGE EXISTING RESOURCES BY SOLICITING GRANT APPLICATIONS, FORMALIZING RELATIONSHIPS, AND OFFERING TECHNICAL ASSISTANCE

Stakeholders noted that many of New York’s existing resources, including community-based facilitated enrollers, chambers of commerce, affinity groups, and nonprofits, are ideally positioned to provide Navigator and CAP services. To leverage these existing resources, we recommend that:

- ▶ Existing community-based and business-oriented groups should be solicited to become spoke groups. Care should be taken in this transition to ensure that current enrollment and assistance capacity is maintained and exceeded in 2014.
- ▶ Navigator/CAP spoke groups should have a formalized relationship with State and local officials, who will remain an important resource.
- ▶ The central hub should offer resources to and accept consumer assistance referrals from groups who offer significant enrollment assistance but may be barred from becoming Navigators. Resources should include training and other materials.

Executive Summary *(continued)*

- ▶ To further ensure consistency of services throughout the State, New York should continue support for plan-based facilitated enrollers in the public insurance market to maintain critical enrollment capacity for low-income people not legally mandated to carry coverage.

RECOMMENDATION #4: FINANCING FOR THE NAVIGATOR/CAP SHOULD BE SECURED FROM AVAILABLE FEDERAL FUNDS AND FEES ON INSURERS OPERATING INSIDE AND OUTSIDE THE EXCHANGE

Stakeholders identified a variety of financing possibilities. We recommend that:

- ▶ Funding currently designated for enrollment assistance and consumer support should be rolled over into New York's new Navigator/CAP, including:
 - Exchange and Establishment Grant funds (in the near term, 2011-2014); and
 - Funds currently set aside for community-based facilitated enrollment, once those enrollers are transitioned into the new Navigator/CAP.
- ▶ A portion of the Medicaid administrative funding that will be used to support the exchange should be directed to the new Navigator/CAP.
- ▶ Ongoing funding from exchange activities should be generated through broad-based fees on insurers both inside and outside the exchange.

Introduction

The Core Functions of Navigators and Consumer Assistance Programs

Under the ACA, most residents of the United States—with some notable exceptions—will be mandated to have health insurance coverage.⁴ States must design and implement a health insurance exchange, or opt into a Federal one, to facilitate enrollment in coverage. Exchanges essentially will be web-friendly marketplaces where individuals and small businesses can view their health insurance options, enroll in public coverage or private plans, and apply for subsidies. As a result, in 2014, an estimated 32 million uninsured people are expected to enroll in coverage.⁵

For New Yorkers, the ACA means that many of the existing 2.6 million uninsured will soon be required to either have coverage, seek an exemption from doing so, or pay a penalty. Because the individual mandate will not apply to everyone, and largely because it will not apply to New York's lowest-income residents, experts believe that approximately 1.2 million New Yorkers will gain coverage,⁶ as follows:

- ▶ Roughly half of enrollment will be in Medicaid, as eligibility is expanded to include people with incomes up to 138% of the Federal Poverty Level (FPL) (or \$25,600 for a family of three in 2011).⁷
- ▶ Potentially, another 467,000 New Yorkers would enroll in a Basic Health Plan, if New York adopts one.⁸
- ▶ If New York does not adopt a Basic Health Plan, roughly 600,000 people with incomes up to 400% of FPL (or \$67,000 for a family of three) will enroll in subsidized commercial health plans in the new exchange.⁹
- ▶ Some individuals who do not qualify for subsidies will purchase coverage through the exchange,¹⁰ and others will accept job-based offers of coverage rather than pay a penalty.¹¹

As described immediately below, the ACA provides for two programs designed to educate and assist these varied consumers with enrollment and use of their health coverage: Navigators Programs (Navigators) and Consumer Assistance Programs (CAPs). Their core functions are as follows.

NAVIGATOR PROGRAMS

Starting in 2014, state exchanges must establish Navigators which will “at least”¹² : act as insurance information experts, facilitate enrollment into Qualified Health Plans (QHPs),¹³ and make appropriate referrals to CAPs.¹⁴ Navigators must offer culturally and linguistically appropriate outreach and education in order to facilitate enrollment.¹⁵ Federal law and guidance does not require Navigators to enroll consumers into public health insurance programs as

Introduction *(continued)*

well as QHPs. However, Federal guidance does offer Federal funding to states that elect to use Navigators to enroll consumers into federally-funded Medicaid and the State Children’s Health Insurance Program.¹⁶

The ACA specifies the types of organizations that might qualify as Navigators (including trade groups, professional associations, and community nonprofits), and explicitly bars any entity serving as a Navigator from receiving compensation from a health insurance plan in connection with enrollment.¹⁷ As described later, this is potentially problematic for brokers, who customarily are compensated directly by insurers. In July 2011, the U.S. Secretary of Health and Human Services issued proposed exchange guidance indicating exchanges must provide Navigator grants to groups from at least two of the following categories: **(1)** community and consumer-focused nonprofit groups; **(2)** trade, industry, and professional associations; **(3)** commercial fishing, ranching, and farming groups; **(4)** Chambers of Commerce; **(5)** unions; **(6)** resource partners for the small business administration; **(7)** licensed agents and brokers; and **(8)** other public or private entities (e.g., Indian tribes, State or local human service agencies).¹⁸

CONSUMER ASSISTANCE PROGRAMS (CAPS)

The ACA also creates state-based CAPs to help consumers understand and use the complex new health coverage options. The CAPs’ duties are to: **(1)** assist consumers with grievance and appeals; **(2)** collect and track consumer problems with health plans; **(3)** provide education and information to consumers about their rights and responsibilities; **(4)** assist consumers with enrollment; and **(5)** resolve consumer problems with securing tax credits. Initial Federal funding for CAPs was authorized in October 2010. Consumer assistance related to exchange activities will be available to states through 2014 under Exchange Establishment Grants. Unlike Navigators, CAPs must help individuals whether they acquired coverage through the exchange or through other means.

Under the ACA, states can designate an independent agency or an ombudsman to serve as their CAP. In October 2010, New York designated Community Health Advocates (CHA), a project of the Community Services Society, to act as New York State’s CAP. CHA currently performs the first four of the required CAP functions and is exploring mechanisms to conduct outreach and provide tailored services to the small business community.¹⁹

Table 1 presents key components of the two programs in a side-by-side comparison, describing the functions with language from the most recent Federal guidance (statutory terms are used for CAPs because no Federal guidance has been issued to date).

Introduction (continued)

TABLE 1: Key Components of Consumer Assistance and Navigator Programs Under the ACA		
	NAVIGATORS	CAPS
ACA Section	§1311(i)	§1002
Timing	Start date: 2014	Start date: October 2010
Funding & Administration	<ul style="list-style-type: none"> Exchange generates funding for Navigators & awards grants. Qualifying states may also claim a share of Medicaid/SCHIP administrative match. 	<ul style="list-style-type: none"> States receive HHS funding for state-based programs. ACA authorization \$30 million (\$2.2 million in New York State) in FY 2011. HHS funding for consumer assistance related to exchange activities under Exchange Establishment grants through FY 2014.
Functions	<p>NAVIGATORS MUST “AT LEAST” PERFORM THE FOLLOWING DUTIES:</p> <ul style="list-style-type: none"> Maintain expertise in eligibility, enrollment, and program specifications and conduct public education; Provide information and services in a fair, accurate, and impartial manner; Facilitate enrollment in QHPs; Refer enrollees with questions, grievances, or complaints about health plans or coverage to CAPs or other appropriate State agency; and Provide information in a culturally and linguistically appropriate way, ensuring access for consumers with disabilities. 	<p>CAPS MUST PERFORM THE FOLLOWING DUTIES:</p> <ul style="list-style-type: none"> Assist consumers with appeals and grievances; Collect, track, and quantify problems and inquiries from consumers with group health plans and other health insurance coverage; Educate consumers on their rights and responsibilities with respect to health insurance coverage; Help consumers with enrollment in health insurance coverage by providing information, referrals and assistance; and Resolve consumer problems with obtaining tax credits.
Entities	<p>BROAD LIST OF BUSINESS AND COMMUNITY GROUPS ELIGIBLE. GRANT RECIPIENTS MUST INCLUDE ENTITIES FROM AT LEAST TWO CATEGORIES:</p> <ul style="list-style-type: none"> Community and consumer-focused nonprofit groups; Trade, industry, and professional associations; Commercial fishing, ranching, and farming groups; Chambers of Commerce; Unions; Resource partners for the small business administration; Licensed agents and brokers; and Other public or private entities (e.g., Indian tribes, State or local human service agencies). 	<p>STATE HAS CHOICE OF:</p> <ul style="list-style-type: none"> Independent office of health insurance consumer assistance; or State ombuds program.

SOURCES: ACA, PL 111-148, §§1002, 1311(i); Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155); Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges. Special Programmatic Terms and Conditions, ¶1.

Introduction *(continued)*

The ACA's description of the functions of Navigators and CAPs creates an ambiguity and overlap between the two programs—especially in the area of education and enrollment in coverage—and raises important questions about how the two programs should relate to one another, as well as to existing consumer enrollment and assistance resources. This report seeks to address these questions in New York.

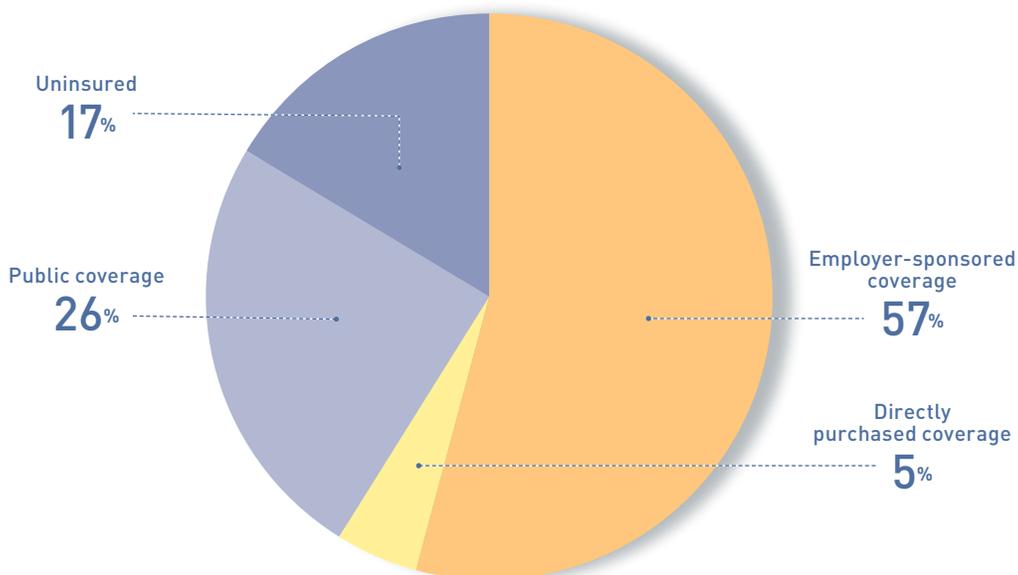
We begin with a review of existing enrollment and consumer assistance infrastructure, and then provide input gained through a broad series of meetings held with stakeholders around the State. The result is a series of recommendations on how New York should design its Navigator and CAP in order to avoid duplication of programs and services and deliver critically needed consumer assistance in the most efficient and effective manner possible.

THE CURRENT LANDSCAPE IN NEW YORK: Where New Yorkers Go to Get Help with Enrolling in and Using Their Health Care Coverage

New York has led the nation in providing both enrollment and consumer assistance services. The ACA provides an important opportunity for New York to review and build on this foundation. This section briefly reviews the existing enrollment and assistance landscape formed in response to the current distribution of insurance coverage in New York. Appendix A lists entities that offer enrollment assistance to small businesses and individuals seeking or using health coverage. Appendix B lists groups that are active in assisting consumers with problems that arise after coverage is in place.

Providers of consumer enrollment and assistance in New York reflect the sources of coverage currently available to consumers. As described in Table 2, more than half of the 16.7 million New York residents under the age of 65 have insurance through their employers, which traditionally offer enrollment and basic troubleshooting assistance by human resources departments in large and mid-sized employers and by brokers and agents or Chambers of Commerce and other professional associations for small-sized employers.

TABLE 2: 2009 SOURCES OF HEALTH COVERAGE FOR NEW YORKERS UNDER AGE 65



SOURCE: CSS Analysis of U.S. Census Bureau, Current Population Survey, 2010 Annual Social and Economic Supplement (numbers do not total to 100% because individuals report multiple forms of coverage during the reporting year).

The Current Landscape in New York: Where New Yorkers Go to Get Help with Enrolling in and Using Their Health Care Coverage *(continued)*

One quarter of New Yorkers (approximately 4.2 million) are enrolled in public health programs. There are many programs to assist them with enrollment and navigation, including State and local government offices, Maximus, CHA, and other community-based organizations (CBOs). As described in detail in Appendix A, local governments and Facilitated Enrollers (FEs) are responsible for handling hundreds of thousands of public insurance applications and renewals each year.

Approximately 17% (2.6 million) of New Yorkers are uninsured. Most of these people have incomes below 300% percent of the FPL (\$67,000 for a family of three in 2011). Many uninsured people use free or low-cost health care clinics for their health care, and seek insurance information through the Internet and the groups listed in the preceding paragraph.

The individual market in New York is tiny (fewer than 25,000 enrollees)²⁰ because of extremely expensive premiums—running to more than \$1,000 per month for an individual.²¹ Only 5% of consumers purchase coverage for themselves directly from an insurance carrier. These consumers seek enrollment assistance most often from the insurance carriers themselves, the Internet, or affinity groups. Consumers in the individual market who encounter problems also resort to informational websites, and seek assistance from state and local agencies, CHA, professional associations, and other affinity groups.

When a consumer enrolled in job-based coverage encounters a problem accessing services, generally the first step is to contact the employer, insurer, or health care provider. That first call often resolves the problem. Small business employees often turn to brokers, agents, and Chambers of Commerce who helped set up their coverage when a call to the carrier does not resolve the issue.²²

As described in Appendix B, State regulatory agencies and CBOs also play an important role in assisting consumers with problems that are not easily resolved, such as: enrollment and eligibility issues, denials of eligibility, claims and billing disputes, health plan and charity care denials, grievances, and appeals. New York's regulatory agencies help consumers with thousands of requests for help with public and private coverage every year. The Department of Health, Department of Insurance, Attorney General, and Division of Consumer Protection are principal government venues for health consumer assistance.²³ Each of these State units screens calls to determine whether the unit can use its enforcement powers to resolve the problem, or refer it to another State agency.

Consumer-oriented advocacy groups and community nonprofits offer services through trusted, mission-driven employees who often live and work in the communities they serve. These community-based resources have proved vital whenever consumers have experienced major health coverage transformation: for example, the transition to managed care for Medicaid beneficiaries, and the roll-out of private drug plans in Medicare.²⁴

BUILDING TOWARD THE FUTURE:

Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York

As described earlier, the ACA requires states to establish Navigator programs to help individuals and small businesses enroll in coverage and CAPs to address more complex issues as they arise. The ACA and Federal guidance provide little direction on how best to coordinate or integrate the two programs. New York stakeholders have important input to offer as New York moves forward with developing its Navigator and CAP and we asked them to help address these questions:

- ▶ How can New York best achieve the core functions of the Navigators and CAPs?
- ▶ How should New York structure and administer its Navigators and CAPs to assure integration and coordination?
- ▶ How can New York leverage existing resources into the Navigators and CAPs?
- ▶ How much will the Navigators and CAPs cost and how should they be financed?

The answers to these questions, addressed through in-depth discussions with a significant number of stakeholders and supplemented with additional legal and policy research, are summarized below.

STAKEHOLDER MEETINGS

The findings of this report are based on original policy research conducted by the Community Service Society (CSS) and the Empire Justice Center (Empire Justice). CSS conducted a literature review of relevant laws, regulations, and guidance and policy papers. CSS and Empire Justice created materials including a conversation guide and presentation to be used in stakeholder convenings. To ensure geographic diversity, nine convenings were held around the State, in New York City, Rochester, Buffalo, Troy, Binghamton, Watertown, and Long Island. Participants in these meetings included consumer advocates, facilitated enrollers, brokers, immigrant organizations, providers, government agencies, consumers, and more. The convenings were facilitated by the Children's Defense Fund – New York (CDF-NY), the New York Immigration Coalition (NYIC), the Public Policy and Education Fund of New York, the Medicare Rights Center (MRC), The Legal Aid Society (LAS), Medicaid Matters New York (MMNY), and the New York Association on Independent Living (NYAIL). CSS and Empire Justice conducted interviews with an additional 46 individual stakeholders, including staff at existing consumer assistance programs in New York State, brokers, general agents, New York City and State officials, public health insurance plans, and affinity groups. In all, we met or spoke with more than 240 Stakeholders.²⁵ A complete list of interviews can be found in Appendix C. Input from these Stakeholders has been integrated into the recommendations discussed in this paper.

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

HOW CAN NEW YORK BEST ACHIEVE THE CORE FUNCTIONS OF THE NAVIGATORS AND CAPS?

This section addresses how New York can best deliver the core Navigator and CAP functions, while simultaneously avoiding duplication of services. As described in the introduction above, the ACA requires Navigators to focus on: (1) public education and (2) enrollment into QHPs offered through the exchange. While CAP services overlap with Navigator services in the areas of (1) public education and (2) enrollment, they also provide (3) assistance to consumers with appeals and grievances; (4) collection and reporting of data and identification of trends in consumer problems; and (5) resolution of consumer problems with tax credits. As described below, this report recommends that New York integrate all five functions into a single Navigator/CAP capable of helping all New Yorkers access health care coverage and services.

One-Stop Shopping

The stakeholders with whom we met were consistently challenged by the apparent functional overlap of services offered by Navigators and CAPs, as described in the ACA. Concern about potential duplication of services in the area of education and enrollment led some to suggest that Navigators conduct all education and enrollment, and CAPs should focus on helping consumers use their health plans, appeal adverse decisions, collect data and monitor trends.²⁶ Others felt that both types of entities should perform education and enrollment.²⁷ Virtually all stakeholders expressed concern that consumers would confuse the two programs and get lost in a maze of referrals. They stressed the need for “one-stop shopping” for consumers.

Ultimately, most stakeholders recommended that consumers should be able to get information and enrollment help whether they arrive at the door of a Navigator or a CAP.²⁸

Another wrinkle to this apparent overlap about the programs' functions stems from a confusion about which types of consumers are supposed to be served by each program. The ACA indicates that Navigator services should target enrolling people into QHPs offered by the exchange, while CAP services target consumers with any type of health insurance, regardless of whether it's acquired inside or outside the exchange (e.g., people who have employer-sponsored coverage, self-insured plans, union sponsored plans, or Medicare and other public programs).

Stakeholders urged that New York adopt an integrated Navigator/CAP proficient in serving all consumers, regardless of the source of their coverage. In support of this position, stakeholders cited a broadly-circulated report which estimated that as many as

“
CHA is a one-stop shopping experience for New York health care consumers. We help consumers with everything from finding coverage to appealing a coverage denial, helping consumers with individual or employment-based commercial insurance, public coverage, or no coverage at all.

”

PRIYA MENDON
Director, Community Health Advocates

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

50% of those newly eligible for coverage are likely to have eligibility shifts between Medicaid and the exchange during the course of a single year.²⁹ Bolstering the argument for serving all consumers is the fact that recently issued Federal guidance does offer Federal funding to states that elect to use Navigators to enroll consumers into federally-funded Medicaid and the State Children's Health Insurance Program.³⁰

In further support of the idea of an integrated "one-stop shopping" experience, stakeholders identified three potentially overlooked groups of consumers who might need extra assistance: **(1)** consumers transitioning between, into, or out of job-based coverage; **(2)** consumers transitioning onto Medicare and/or other forms of public coverage;³¹ and **(3)** mixed immigrant status families (where different individual members would be eligible for different coverage, such as job-based coverage, QHPs, public insurance, or low-cost care at clinics or hospital-based financial assistance).³² All of these groups are likely to have a high need for the services of a Navigator/CAP.

The ACA requires Navigators to help small businesses/employers access tax credits and purchase coverage through the exchange, but it is difficult to predict how many small businesses will use a Navigator/CAP. Small businesses that do not offer coverage face no penalties, and many of their employees may seek coverage directly through the exchange as individuals. While not dispositive, the experience in Massachusetts indicates that only 4,500 of the 220,000 consumers enrolled through the Massachusetts Connector are from small businesses.³³ One survey of employers claimed that as many as 30% would "definitely or probably" drop coverage after 2014.³⁴ Another study quickly refuted that prediction.³⁵

Stakeholders stressed that the Navigator/CAP should reach employers and employees including the self-employed, as well as individual consumers.³⁶ At the same time, many of the broker and business stakeholders we interviewed felt that small businesses would continue their existing purchasing practices, despite the launch of a New York exchange.³⁷ We believe that small business should be actively engaged by the Navigator/CAP. However, we recommend that the initial focus of the integrated Navigator/CAP be primarily on individuals, who will need the most support and, secondarily, on small businesses that currently appear to rely on already established forms of assistance (e.g., brokers or Chambers of Commerce, as described in more detail below).

Broad-Based Outreach Campaign

Many stakeholders suggested that integration of the two programs would be the best way to leverage the available resources for education and enrollment so that staff would be knowledgeable about the broad array of coverage options.³⁸ They stressed the need for standardized outreach and education materials, so that consumers receive consistent messages about their options in familiar formats.³⁹

Stakeholders emphasized the need to adopt a regionally-responsive outreach model. They felt strongly that consumers should be able to get information about health coverage in many different ways, according to their customs and needs, including: radio or TV, ethnic media, billboards, and doctors. Several emphasized that Navigators and CAPs will not only have to

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

provide information, but also counter a great deal of misinformation, and that these efforts will not be successful without a broad-based campaign.⁴⁰ We recommend that such a campaign be launched with resources independent of the Navigator/CAP, but campaign design staff should involve the Navigator/CAP staff to ensure consistency of messaging.

Finally, any public education campaign should link the public with the Navigator/CAP as part of its message content. While it is relatively easy to have outreach efforts direct consumers to stationary Navigator/CAP sites in urban areas with good public transportation systems, the campaign also must be tailored to connecting consumers to the Navigator/CAP in geographically underserved or rural areas where staff may have to travel significant distances to reach consumers and small businesses⁴¹ and where Internet access may be limited.⁴²

Some constituencies might be hard to reach through general outreach and advertisements, or may need a different kind of assistance than most. For example, new immigrants and people with limited English proficiency or low literacy will require specialized outreach and assistance.⁴³ Hotline and Internet resources, as well as Navigator/CAP office sites, must also be carefully designed to ensure that they are accessible to people with disabilities.⁴⁴

RECOMMENDATION #1: To avoid duplication of services and to reduce confusion among consumers, we recommend that the essential functions of the Navigator and CAP be integrated into a single program. The integrated Navigator/CAP should mesh the full range of functions of both the Navigator and CAP. All New Yorkers, including small businesses, in need of health care help should be eligible for assistance from the new, integrated program, regardless of the form of coverage they qualify for or purchase. However, the program should prioritize those groups who need the most assistance navigating the health care system. The integrated Navigator/CAP program should not be responsible for the exchange's broad-based social marketing/media promotion campaign, but should be consulted to ensure appropriate targeting and consistency in messages and materials.

HOW SHOULD THE NAVIGATOR AND CONSUMER ASSISTANCE PROGRAMS BE STRUCTURED AND ADMINISTERED TO ASSURE INTEGRATION AND COORDINATION?

The ACA does not dictate the administrative structure of Navigators or CAPs, but recently proposed Federal regulations indicate that the CAP and Navigator structure should be well integrated within the exchange, stating "[t]he exchange must have a consumer assistance function, including the Navigator program ... and must refer consumers to consumer assistance programs in the State when available and appropriate."⁴⁵ A number of potential administrative models for the Navigators and CAPs were identified by the stakeholders. Given the diversity of the stakeholders' views, no uniform consensus emerged about the program's administrative structure. This section describes the administrative issues identified, and ultimately recommends that New York adopt a "hub-and-spokes" model, described below.

Some stakeholders argued that the Navigator/CAP should be administered by various regions or even counties. For example, New York City's Human Resources Administration believes there

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

should be a New York City-specific, data-driven Navigator program that leverages existing government resources. This program would make grants to entities able to successfully engage hard-to-reach individuals, such as those in culturally isolated communities, and small businesses.⁴⁶ Other stakeholders felt that different regions of the State might need geographic-specific models. For example, grants might be made to CBOs in regions where they are strong, and grants might be made to government or private entities in other areas where there is less capacity to serve as Navigator or CAP entities.⁴⁷

In the end, it appeared that the majority of stakeholders preferred to have one central statewide entity coordinate and support the grantees. These stakeholders cited ongoing difficulties that exist now with the State and 58 local governments administering enrollment for public coverage programs.⁴⁸ Some participants in the Binghamton and Watertown meetings were familiar with the CHA hub-and-spokes model and recommended its adoption as the integrated Navigator/CAP.⁴⁹ Stakeholders who participated in CHA, or who knew about CHA's work, approved of the hub-and-spokes system.⁵⁰ One stakeholder, whose program was funded as a CHA agency, said that being part of a network helped her agency remain up to date on program developments and gave it the resources needed to help consumers more effectively.⁵¹

The CBO Facilitated Enroller (FE) stakeholder participants also recommended that one central "hub" provide uniform training, a single database, and technical support for community-based "spokes," to ensure programmatic uniformity and consistency of service.⁵² Centralized data and quality control measures could ensure uniform and high-quality assistance in all parts of the State, as well as public access to performance and sentinel data.⁵³

Some suggested that a State agency should perform the hub functions because it would be accountable and have regulatory enforcement powers.⁵⁴ Others preferred that a nonprofit act as the hub, arguing that it would be more responsive to community needs.⁵⁵ Ultimately, no consensus emerged on whether the hub should be a government agency or a nonprofit.⁵⁶

Accordingly, we recommend that New York adopt an integrated hub-and-spokes model Navigator/CAP. The central hub would contract with local entities best suited to provide Navigator/CAP services across the State and should have the flexibility to contract with different agencies for different functions when appropriate. Some agencies will have the capacity to perform all of the CAP functions, while others will have the capacity only to perform the outreach, education, and referral functions assigned to Navigators. The central hub should ensure that all Navigator/CAP functions are available in all regions of the State and strive to create a network that maximizes one-stop shopping for all New Yorkers in need of assistance with accessing health care services.

We next address four related administrative issues: (1) ensuring consistent training and quality assurance; (2) collecting data; (3) adopting liability insurance; and (4) protecting consumer privacy.

Ensuring Consistent Training and Quality Assurance

The ACA directs HHS to establish standards for Navigator grantee training and licensing, if appropriate. The proposed Federal regulations essentially delegate this question to the

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

states, merely stating that in order to receive a grant, a Navigator must “[m]eet any licensing, certification or other standards prescribed by the State or the exchange, if applicable.”⁵⁷

Training needs will be significant for an integrated Navigator/CAP, given the complexities involved in assessing eligibility for multiple programs. “Spokes” program staff will need to be trained to help consumers sign up for public coverage, private coverage, and subsidies, as well as to facilitate movement between coverage owing to changes in family income or circumstances.⁵⁸ Program staff will also need to ensure that small businesses are aware of all enrollment and coverage options, integrating FE-like and broker-like functions.⁵⁹

Nationally, there is a lively debate about the training and qualifications of Navigators. Consumer representatives to the National Association of Insurance Commissioners (NAIC) proposed that HHS or NAIC develop a model training program and certification exam for Navigators.⁶⁰ NAIC, upon intensive lobbying by the brokers, issued draft recommendations suggesting that Navigators be subject to the same state licensing requirements as brokers.⁶¹

In New York, there are two parallel training and certification programs. Agents and brokers who sell health insurance must take a training course approved by the State Department of Insurance and pass an exam.⁶² Facilitated Enrollers have State Department of Health training requirements, but are not licensed or certified.⁶³ Some brokers would support a proposal that the exchange develop an independent Navigator training and certification program, as long as it includes essential information about New York insurance law to protect consumers.⁶⁴

We recommend that the central hub require all spoke groups to participate in a comprehensive basic training on eligibility and enrollment in public and private options.⁶⁵ Assigned staff should pass an exam based on the curriculum in order to be certified as Navigators/CAP service providers. Program staff should also be required to take continuing education courses approved by the exchange and to pass recertification exams on a regular basis. Serious consideration should be given to continuing education requirements.⁶⁶

Given the myriad laws that apply to the services consumers will use, program staff will also need extensive training to help consumers with problems that arise once coverage is in place.⁶⁷ Some suggested that the most sensible use of resources would be to maintain separate CAP-trained advocates rather than trying to train every advocate to perform the full range of Navigator and CAP functions.⁶⁸ The central hub should have the flexibility to consider this option, among others, to erect the most effective and efficient statewide network possible.

The central hub should implement a vigorous quality assurance program to ensure that spoke groups are well trained and offering consistent services. Stakeholders urged that every consumer in the State should have a consistent experience, regardless of which Navigator/CAP group the consumer uses.⁶⁹ Accordingly, to ensure statewide consistency of services, the quality assurance program should consist of reviewing a randomized number of enrollments and other CAP services provided by spoke groups. In addition, regular meetings of spoke groups should be convened to ensure that issues are correctly identified, experiences and strategies

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

are shared, and trends are spotted. This information should be shared with exchange staff and other government regulators, as appropriate. The next section addresses how data collection can further support the Navigator/CAP quality assurance mechanisms.

Collecting Data and Optimizing Web-based Tools

The ACA directs CAPs to collect and report data to HHS about problems and inquiries encountered by consumers, thus performing a “sentinel function” by analyzing the data for trends.⁷⁰ Stakeholders stressed the importance of this function and further urged that the public be able to access the analysis as well as any evaluations by the government of the performance of the program.⁷¹

We recommend requiring each spoke group in the new Navigator/CAP to collect basic data about the services provided to consumers and report these data to the central hub. The hub should use these data and other quality assurance measures to ensure that consumers receive consistent and high-quality assistance in every location, and to identify systemic enrollment issues and track the success of outreach efforts. The central hub should report data on quality assurance and trends in consumer access issues to relevant government agencies on a quarterly basis, and to the public at least annually.

A centralized hub will also be able to support the web-based tools Navigator/CAP staff will need to assist with enrollment and advocate for consumers. Stakeholders supported giving Navigator/CAP staff the ability to access the exchange's centralized web-based enrollment program to help consumers apply for coverage and resolve problems with their coverage.⁷² Meeting participants came up with several ideas for useful web-based tools, many of which coincide with State officials' priorities for its Early Innovator grant.⁷³

- ▶ Stakeholders agreed that the enrollment website should include an option for people to enter their income and be screened and directed, if eligible, to the public coverage application.⁷⁴
- ▶ Many felt the system should have the capacity to screen and pre-approve people for Emergency Medicaid or hospital financial assistance when they apply for coverage through the exchange and are ineligible for other options.⁷⁵
- ▶ Several meeting participants suggested that the system should have the ability to track application status and an online tool to sort and compare plans by using standardized benefits packages on an “apples-to-apples” basis.⁷⁶
- ▶ Many stressed the need for translating enrollment tools, applications, and the web portal into multiple languages and ensuring accessibility to low literacy or disabled consumers.⁷⁷
- ▶ Stakeholders also felt Navigators should have access to mobile devices to allow them to conduct enrollment in the field.⁷⁸

“
**What gets measured gets done,
so data collection is important.**

AILEEN MARTIN

Executive Director of the North Country Children's Clinic

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

Adopting Liability Insurance

Stakeholder conversations in New York and related conversations nationally have raised the issue of whether and to what extent Navigators and CAPs should carry liability coverage. Federal law and guidance is essentially silent on this issue.

Most brokers maintain “errors and omissions” coverage, a sort of malpractice insurance for brokers who advise consumers about health insurance.⁷⁹ Stakeholders representing national broker groups urge that all Navigators be required to carry errors and omissions insurance coverage.⁸⁰ The existing consumer enrollment and assistance programs, including CHA and the State’s Facilitated Enrollment program do not require grantees to obtain errors and omissions coverage.⁸¹ Rather than carrying this type of insurance, consumer advocates suggest that Navigator entities could carry professional liability coverage.⁸² The exchange itself could also choose to provide liability coverage or otherwise indemnify all its Navigator/CAP entities.

We recommend that the integrated Navigator/CAP hub require a minimum level of either “errors and omissions” or professional liability coverage, as appropriate.

Protecting Consumer Privacy

This section addresses the issue of how a Navigator/CAP should integrate consumer privacy protection rules. Experts have questioned whether Navigators are subject to Federal health and finance privacy laws, specifically the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Gramm-Leach-Bliley Act (GLBA). Stakeholders also identified possible privacy concerns for consumers.⁸³

Federal exchange guidance allows “responsible parties,” presumably including a Navigator/CAP, to file electronic applications on behalf of consumers and sets out a framework for privacy and security standards.⁸⁴ Based on this guidance, it appears that New York’s exchange will be governed by the HIPAA privacy rule since it will determine a consumer’s eligibility for insurance subsidies and public coverage. The HIPAA privacy rule poses a challenge for the Navigator/CAP program because it requires covered entities to obtain a written release before accessing protected health information—potentially a significant barrier to enrollment.⁸⁵

Two solutions present themselves. First, the exchange could consider the Navigator/CAP a “business entity” under HIPAA, enabling it to access exchange records without a separate release.⁸⁶ Second, the exchange could include a “check off” box on applications so that Navigator/CAP staff can be deemed “responsible parties” with consent to handle protected health information. We suggest adopting both of these solutions. The large civil penalty of \$25,000 against any person who knowingly or willfully discloses or inappropriately uses confidential information by the exchange offers further privacy safeguards.⁸⁷

Finally, we do not believe that the Navigator/CAP program falls under the GLBA because their staff will not be selling insurance.⁸⁸ Federal guidance does not refer to GLBA as a relevant standard for state exchanges.⁸⁹

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

RECOMMENDATION #2: We recommend that the Navigator/CAP use a “Hub-and-Spokes” administrative infrastructure. A single entity or exchange staff should act as the central hub to ensure consistency of the services throughout the State. This hub should contract with the other entities (“spoke groups”) around the State best suited to provide the required services to targeted populations. This administrative structure will ensure that consumers and small businesses are able to access the appropriate level of service to meet their unique needs. To ensure that New Yorkers can access high-quality, consistent services, we recommend that the central hub: **(1)** implement a training and quality assurance program and develop common outreach and educational materials; **(2)** maintain a central web-based database to enroll consumers and small businesses, monitor spoke performance, and analyze trend data; **(3)** ensure that an appropriate level of liability insurance is adopted; and **(4)** establish uniform privacy protection standards for all Navigator/CAP entities.

HOW CAN NEW YORK LEVERAGE EXISTING RESOURCES INTO A NEW NAVIGATOR/CAP?

This section addresses the potential concern that New York might not build on its existing resources when establishing a Navigator/CAP. Among the stakeholders, there was strong consensus that New York’s Navigator/CAP should build on the solid foundation of existing enrollment and consumer assistance agencies active in the State.⁹⁰ These entities are described in Appendices A and B.

While some felt that governmental agencies should be given preference for inclusion in New York’s new Navigator/CAP,⁹¹ many preferred nonprofit CBOs in the role of Navigator/CAP grantees.⁹² A number of stakeholders pointed to the success of the community-based FEs, which reach isolated and vulnerable populations, including rural residents, seniors, consumers in transition or crisis, low-income and unemployed people, homeless, migrant and seasonal workers, persons with physical and mental disabilities, young adults, and immigrants.⁹³

New York’s FE program has been a national leader in increasing enrollment of eligible children and adults in public coverage. Through this program, New York funds services provided by trained advocates at both CBOs and public health plans (PHPs).⁹⁴ Community-based FEs are uniquely able to perform effective community outreach to hard-to-reach populations. We recommend transitioning the CBO-based FEs into the integrated Navigator/CAP. Their functions should be broadened accordingly to enable them to work effectively with elderly and disabled consumers, small businesses, and middle-income consumers who will be purchasing insurance or otherwise getting information through the exchange. PHP-based FEs should be maintained outside of the new Navigator/CAP, as described in greater detail below.

Nonprofits and those Chambers of Commerce and affinity groups which are not barred from participation as Navigators also should be transitioned into the new Navigator/CAP. Those with existing relationships with small businesses and other key constituencies will be critical spokes in the wheel of the Navigator/CAP. Some of these entities are described in Appendices A and B.

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York (continued)

Resources Outside the New Navigator/CAP

Some existing enrollment and consumer assistance resources will not or cannot be incorporated in the Navigator/CAP. These resources will remain an important source of assistance and should be supported:

► **Affinity Groups:** Often New Yorkers receive assistance through affinity groups such as unions, professional organizations, and Chambers of Commerce. Some, such as the Freelancers Union, directly sell insurance to their members.⁹⁷ Others, like some Chambers of Commerce, act as brokers to sell coverage to members.⁹⁶ The Dairylea Cooperative both sells insurance to the dairy farmer members of the cooperative and acts as a broker for non-farmers that support the dairy industry.⁹⁷ These entities appear to be barred from accepting Navigator grants under the ACA when they directly sell insurance or receive commissions from a carrier. Those affinity groups that merely provide information, but do not sell or broker coverage, can participate in the Navigator/CAP.⁹⁸

“
Many Chambers already fulfill the role of Navigator. We want to be part of the exchange, we want to help promote the exchange and distribute the products within it as long as we have some input into those products. As long as the financial structures that are currently in place for compensation to Associations remain in place, there's really no reason why the State or Federal government should be paying us to be play the role of Navigator.
”

TODD TRANUM
President/CEO, Chautauqua County
Chamber of Commerce

► **Brokers:** Stakeholders felt that employers would want to continue to use brokers in 2014.⁹⁹ The ACA clearly states that brokers are one category of entity that can become Navigators, but the conflict of interest provision, discussed above, prohibits a Navigator from getting direct compensation from a carrier to enroll a consumer into a QHP.¹⁰⁰ Brokers may have to choose between accepting commissions for sales of coverage and accepting Navigator grants. If brokers cannot help small businesses and consumers to enroll in exchange-based coverage, it could have an impact on the exchange's distribution of risk, individual and small business purchasing behavior, and the exchange's purchasing power. This apparent paradox cannot be resolved without further Federal and State guidance. The exchange should conduct a study, soliciting input from consumer advocates, small businesses and their representatives, and brokers to resolve this paradox. The study should also determine whether brokers should receive commissions for sales of individual policies, which is currently prohibited by law.

► **State Regulatory Agencies:** Currently, consumers can go to SDOI for help with commercial insurance products regulated by the State and to the SDOH for help with public insurance products and the Division of Consumer Protection or the Attorney General's Health Bureau for general insurance problems.

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York (continued)

Stakeholders noted that advocates often work closely with these agencies.¹⁰³ Government agencies are uniquely empowered with regulatory enforcement authority—a valuable resource for the Navigator/CAP. We recommend that this relationship be formalized with regular meetings.

- ▶ **Providers:** Many providers (e.g., hospitals and health centers) enroll consumers in coverage.¹⁰⁴ Providers are a critical outreach and enrollment resource for some hard to reach consumers.¹⁰⁵ In Massachusetts, State-trained safety net providers, along with CBOs, drove much of the State's enrollment in Medicaid and subsidized coverage through its exchange.¹⁰⁶ While few providers are likely to participate in a Navigator/CAP, they will continue to perform enrollment services both to ensure revenue and to help patients.
- ▶ **Plan-Based FEs:** The ACA's clear prohibition of Navigator grant funding to insurance carriers appears to bar the exchange from grants to plan-based FEs.¹⁰⁷ New York permits health plans to include FE services in the administrative portion of premiums.¹⁰⁸ Given the large number of applications (330,000 in 2010) that are submitted by plan-based FEs, we recommend that this program be continued after 2014. Plan-based FEs should be trained to identify and refer subsidy-eligible and other consumers to the Navigator/CAP.

RECOMMENDATION #3: We recommend that the Navigator/CAP leverage existing resources by soliciting grant applications, formalizing relationships, and offering technical assistance to grantees and non-grantees alike. Stakeholders identified that many of New York's existing resources, including community-based FEs, Chambers of Commerce, affinity groups and nonprofits, are ideally positioned to provide Navigator and CAP services. To leverage these existing resources, we recommend: **(1)** existing community-based and business-oriented groups should be solicited to become spoke groups, making special efforts to transition current enrollment and assistance capacity; **(2)** Navigator/CAP spoke groups should have a formalized relationship with State and local officials, who will remain an important resource; **(3)** the central hub should offer resources (including training and educational materials) to and accept consumer

BROKER COMMISSION CONTROVERSY RELATES TO NEW ADMINISTRATIVE COST RULES UNDER THE ACA

There is pressure on insurers to cut back on the administrative portions of insurance premiums, including broker commissions. Insurance companies want to reduce their administrative costs (called medical loss ratios) by replacing percentage-based broker commissions with a flat per member per month fee. Brokers have worked hard to influence the national debate, with mixed results.¹⁰¹ Now, the brokers are taking their cause to the states, lobbying legislators and local regulators. They are pressuring some states to enact legislation ensuring that only they can serve as Navigators—with accompanying strong compensation requirements.¹⁰²

Flat-fee structures are already used in some exchanges. Utah charges a flat \$37 per employee per month; Massachusetts employers pay a flat fee of \$10 per employee per month. Both exchanges charge the flat fee to every small business purchaser; if no broker is involved, the fee goes to the exchange to cover administrative costs.

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

assistance referrals from groups who offer significant enrollment assistance but may be barred from becoming Navigators. To further ensure consistency of services throughout the State, New York should continue support for plan-based FEs in the public insurance market to maintain critical enrollment capacity for low-income people not legally mandated to carry coverage.

HOW MUCH WILL A NAVIGATOR/CAP COST? AND HOW SHOULD IT BE FINANCED?

This report addresses two financing questions: **(1)** how much will it cost New York to run an integrated Navigator/CAP; and **(2)** what sources of financing are available to support the Navigator/CAP? We address these points in turn below.

The Cost of a Navigator/CAP in New York

Determining how much it costs to assist each consumer varies greatly depending on the type of service being provided—enrollment assistance versus consumer assistance.

New York's community-based FE program spends about \$150 for each application submitted, spending approximately \$17 million annually on 112,000 public insurance enrollments.¹⁰⁹ However, the New York public insurance application is an extremely detailed eight-page questionnaire that requires extensive documentation of personal information. While the Federal government has yet to issue guidance about new application rules, it is reasonable to assume that in 2014 the public insurance and exchange application process will be significantly easier to complete.

When Massachusetts implemented its health reform, it provided \$3.5 million annually to fund Navigator-like CBOs to provide outreach and enrollment assistance.¹¹⁰ From 2006 through 2009, the Massachusetts CBOs helped 92,000 individuals with application assistance,¹¹¹ at an approximate cost of \$114 per person.

Because CAPs provide such a variety of services, it is difficult to estimate how much each consumer interaction costs—estimates range from \$45 to \$781 per case. CAPs are not able to quantify all of the assistance provided, and different tasks take different amounts of time and effort. Cost-per-case estimates for CAPs around the country vary significantly: California's Health Consumer Alliance (\$781); Connecticut's Office of the Healthcare Advocate (\$375); Nevada's Office of the Governor, Consumer Health Assistance Office (\$87); and Massachusetts's Health Care for All (HCFA) (\$45).¹¹² In New York, CHA spends an average of approximately \$143 on each case, including one-on-one assistance and presentations.¹¹³

Table 3 provides an estimated cost to New York in 2014 for providing enrollment assistance and consumer assistance, based on extrapolations from the enrollment experience of Massachusetts and the current assistance rates in New York. Between 2006 and 2009, when Massachusetts implemented its health reform, 430,000 (two-thirds) of its 650,000 uninsured residents enrolled in coverage.¹¹⁴ Assuming that the CBOs' application assistance resulted in successful enrollments, they probably assisted more than one in every four consumers who enrolled during that time (or approximately 30,000 people a year). One study predicts that up to

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

1.2 million New Yorkers will enroll in coverage through the exchange between 2014 and 2019.¹¹⁵ If New York's Navigator/CAP similarly helps one in four of these uninsured consumers, it will assist approximately 100,000 consumers annually between 2014 and 2019. Adding in the 112,000 annual enrollments currently conducted by the community-based FE program, we estimate that the Navigator/CAP will enroll 212,000 consumers annually¹¹⁶ in the first two years of the exchange's operations, at a cost of \$31.8 million each year, and 145,000 consumers¹¹⁷ in each of the next three years, at a cost of \$21.8 million a year. [\(See Table 3.\)](#)

We can estimate the need and overall cost for consumer assistance services in New York based on similar extrapolations. Although CHA estimates it spends approximately \$143 per consumer served, with the augmentation of its central hotline, the program is now able to serve more New Yorkers at a lower cost. For example, this year CHA will serve approximately 25,000 consumers for a cost of \$2.2 million, or roughly \$88 per consumer.¹¹⁸ During 2007, the first full year of health reform implementation in Massachusetts, the number of cases served by its CAP, Health Care for All, quadrupled.¹¹⁹ It continued to grow slightly each year through 2009, as the individual mandate and other reforms took effect. If CHA's case load quadruples in 2014 to approximately 110,000 consumers, the program will need a budget of \$15.7 million (using the \$143 per consumer rate).

TABLE 3: ESTIMATED NEED AND COSTS FOR ENROLLMENT AND CONSUMER ASSISTANCE

	MASSACHUSETTS	NEW YORK (2014 ESTIMATES)
ENROLLMENT ASSISTANCE		
Uninsured before exchange	650,000	2.6 million
Enrolled during first three–five years of exchange	430,000	1.2 million
Number of assisted enrollments per year	30,000	212,000
Cost per consumer	\$114	\$150
Annual Cost for Enrollment	\$3.5 million annually	\$21.8–\$31.8 million annually
CONSUMER ASSISTANCE		
Consumer Assistance Numbers	37,000 (calls in 2009)	110,000 (consumers in 2014)
Cost per consumer	\$15 (per call)	\$88–\$143 (per consumer)
Annual Budget	\$554,275	\$9.7–\$15.7 million
Grand Total New York Navigator/CAP Estimated Annual Budget		\$31.5–\$47.5 million

These estimates drive an overall budget for a combined Navigator/CAP that could range from approximately \$31.5 million to \$47.5 million per year. Importantly, these estimated costs do not include any cost-of-living or trend adjustments.

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

Potential Sources of Financing

The ACA and HHS guidance state that Navigators must be financed by the exchange.¹²⁰ But recent Federal guidance indicates that Medicaid financing can be used to support Navigators when they engage in activities related to Medicaid or SCHIP beneficiaries—an important option for New York.¹²¹ Nationally, CAPs, on the other hand, received \$30 million dollars in initial funding under the ACA, of which New York's portion was \$2.2 million. New York can continue to receive Federal funding for consumer assistance related to exchange activities under the Exchange Establishment grants through 2014—but these grants cannot support Navigators.¹²² Accordingly, come 2014, New York will need to finance a significant portion of both programs with State funds.

Policy experts have identified a number of financing options for the exchange. For example, a New York-based foundation, the United Hospital Fund, has identified four New York-specific financing options for the exchange: (1) State general funds; (2) assessments on insurers operating in New York; (3) administrative fees on exchange carriers; and (4) existing mechanisms created under the Health Care Reform Act (HCRA).¹²³ National consumer advocates support broad-based fees on insurers, both inside and outside the exchange,¹²⁴ arguing that the exchange will benefit insurers that do not offer plans on the exchange by educating consumers about coverage options and improving the functioning of the overall market.¹²⁵ Some New York stakeholders also suggested that funding should be raised through assessments on all products.¹²⁶ Imposing fees only on plans sold on the exchange could result in higher premiums for those plans, reducing consumer incentives to participate in the exchange.¹²⁷

We first recommend maximizing Federal matching funds for Navigator/CAP activities related to Medicaid and SCHIP enrollment and assistance. Currently, New York draws approximately \$8.5 million in Federal funding for its community-based FE program, but this is only a small piece of the Federal matching funds that are potentially available. Federal guidance indicates that states that choose to use Navigators to assist with Medicaid and SCHIP enrollment can access Federal administrative matching funds as long as the work is performed under a contract that specifies a method for identifying expenditures attributable to Medicaid and SCHIP activities.¹²⁸ This allows all Navigator/CAP staff that assist with public program enrollment to be supported with the Federal administrative matching funds. Accordingly, the total Federal match available to support the Navigator/CAP program in New York should be well in excess of the \$8.5 million currently channeled into the community-based FE program.

To augment this base of Federal and State matched funding, we recommend imposing broad-based fees on insurers, both inside and outside the exchange, as means for generating the additional funding that will be needed to run an integrated Navigator/CAP in New York.

Building Toward the Future: Implementing the ACA's Navigator and Consumer Assistance Program Framework in New York *(continued)*

RECOMMENDATION #4: We recommend that financing for the Navigator/CAP be secured from available Federal funds and fees on insurers operating inside and outside the exchange. Funding that is currently designated for enrollment assistance and consumer support should be rolled over into New York's new Navigator/CAP, including: (1) Federal Exchange and Establishment Grant funds (in the near term, 2011-2014) and (2) funds currently set aside for the community-based FE program, once they are transitioned into the new Navigator/CAP. In addition, the program should maximize Federal financing (Medicaid and SCHIP administrative funding) to support the exchange and its Navigator/CAP. Finally, supplemental funding should be generated by the exchange through broad-based fees on insurers both inside and outside the exchange.

Conclusion

Implementation of the ACA will bring new opportunities for millions of New Yorkers to enroll in health coverage. New York is already a leader in providing consumer assistance for education, enrollment, navigation, and more. But our State's existing services are driven by limited forms of coverage. Come 2014, the wave of newly eligible consumers will require some heavy lifting by enrollment and consumer assistance providers to ensure smooth transitions to new forms of coverage.

The bulk of enrollment effort in the exchange is likely to be directed toward individuals without job-based coverage who are uninsured; most experts and current data do not indicate a huge jump in rates of small businesses taking advantage of tax credits and new plans offered on the exchange. The diversity of the population and the complexity of the screening and enrollment task beg for a dynamic and robust but integrated Navigator/CAP to catch those who would fall through the cracks, guide those who need help, and to speak out when problems arise. New York will need the help of every trained consumer assistance provider in the State, including brokers, providers, and carriers.

While discussion and suggestions set forth in this report have taken into consideration the viewpoints of a variety of stakeholders representing different interests around New York, the final recommendations are the authors' own. As such, they are not meant to be taken as points of consensus among every stakeholder with whom we spoke. However, the recommendations do represent a common goal shared by every stakeholder we spoke with, which is to bring the promise of the ACA to fruition.

A strong, integrated, Navigator/CAP will be fundamental to this cause.

Appendix A

Entities That Offer Enrollment Assistance

- ▶ **Brokers and Agents for Small Businesses:** There are 1.6 million New Yorkers enrolled in coverage through the small group market,¹²⁹ where New York small businesses typically obtain coverage through insurance brokers or agents.¹³⁰ An insurance agent generally represents one or more carriers, while a broker represents the consumer and may sell coverage from any insurance company licensed in the State. General agents, who serve as wholesalers and provide technical support to brokers, are involved in enrollment of many small groups.¹³¹ In 2009, there were 19,850 brokers and agents in New York.¹³²
- ▶ **Chambers of Commerce and Affinity Groups for Small Businesses:** In some regions of the State, small businesses also use local Chambers of Commerce, Granges, and other local organizations, such as the Dairylea Cooperative, for help enrolling in commercial coverage.¹³³ In New York City and nine other downstate counties, brokers can help small businesses and sole proprietors purchase coverage from a health insurance exchange called HealthPass, which covers 33,000 consumers.¹³⁴ HealthPass customers receive consumer assistance through contracts with private companies called Health Advocate and Medical Cost Advocate.¹³⁵
- ▶ **Affinity Groups and Internet Resources for Moderate-Income Individuals:** Moderate-income consumers are typically on their own when it comes to seeking enrollment assistance in New York. Agents and brokers do not receive commissions on individual products, but they are compensated for enrolling people into HealthyNY, a State-sponsored commercial product for moderate-income consumers.¹³⁶ Other coverage alternatives include affinity groups such as the Freelancers Union.¹³⁷ There are a variety of websites that aggregate and display coverage options.¹³⁸ However, it is usually up to the consumer to follow up with a program or carrier. For those unable to find affordable private plans, the only means of accessing care is often through community-based clinics or financial assistance programs at local hospitals.
- ▶ **Local Governments:** Fifty-eight local departments of social services (LDSS) also provide assistance with enrollment. In New York City, the largest LDSS, the Human Resources Administration's (HRA) Medicaid Helpline, assists 7,000 consumers a day through an interactive voice response system, and counselors assist an additional 2,000 consumers a day.¹³⁹ Other City hotline numbers assist more than 4,000 consumers a day with questions about Medicaid.¹⁴⁰ HRA's Medical Insurance and Community Services Administration (MICA) Managed Care Client Service unit and the NYC Department of Health and Mental Hygiene assist providers and consumers with managed care plan issues.¹⁴¹ Social service districts upstate are faced with diminishing resources and struggle to process applications and provide essential consumer assistance within the timelines required by Federal law.

Appendix A (continued)

- ▶ **Maximus:** Maximus is a private vendor which performs two functions for New York. First, it runs New York's Statewide Enrollment Center, launched in June 2011. Its staff will assist eligible New Yorkers with public program enrollment Medicaid phone and mail renewal using an information technology program that automates determinations and allows workers to confirm and verify certain information in real time. Second, it conducts Medicaid managed care and Family Health Plus enrollment and consumer assistance for approximately 4,000 callers daily from 23 counties.¹⁴²
- ▶ **Facilitated Enrollers for Low-Income Individuals:** Facilitated Enrollers (FEs) can only enroll low-income individuals into public coverage: Child Health Plus, Medicaid Managed Care, and Family Health Plus. Currently, FEs are not funded to help consumers apply for disability-related Medicaid.¹⁴³ There are two types of FEs: those who work for community-based organizations (CBOs) (including health and human service providers, immigrant organizations, and local government agencies) and those who work for public health insurance plans. Both employ FE workers who are local community members able to provide assistance during the day, evenings, and on weekends and can reach isolated consumers with home visits.¹⁴⁴ Both provide outreach to those potentially eligible for public insurance, educate them about their coverage options, and help them enroll in or renew their coverage.¹⁴⁵ There are currently 1,386 FEs working for the public health plans in New York¹⁴⁶ In addition, 41 CBO-based FEs are spread throughout the State. Combined, New York's FE program provides services in more than 60 languages.¹⁴⁷ In 2010, FEs submitted more than 430,000 public coverage applications for consumers.¹⁴⁸

Appendix B

Entities That Offer Assistance with Health Coverage Problems

State Regulatory Agencies

- ▶ **New York State Department of Health (SDOH):** Consumers with public coverage (Medicaid, Family Health Plus, Child Health Plus, and other Medicaid-related programs) can call the toll-free private call center listed on the back of their card. Difficult questions are forwarded to the SDOH Division of Coverage and Enrollment Local District Support Office, where 20 staff members receive hundreds of calls each week, with as many e-mails and written requests for help.¹⁴⁹ Another SDOH office, the Complaint and Utilization Review Unit of the Bureau of Managed Care Certification and Surveillance, helps providers and consumers with managed care plan issues. The unit's 5.5 staff members, along with 5.5 staff members in regional offices, take 1,000 calls a month; they processed more than 900 contacts that were formally identified as complaints in 2010.¹⁵⁰
- ▶ **New York State Department of Insurance (SDOI):** The SDOI's Consumer Services Bureau Health Unit helps consumers address problems with commercial insurance, including enrollment, termination of coverage, plan navigation, and billing issues. In 2009, the Bureau received 31,500 complaints about accident and health plans, and processed 4,200 external appeals.¹⁵¹ Six employees work on external appeals, while 18 staff members address other kinds of complaints.¹⁵² In addition to helping consumers resolve individual cases, the Bureau is able to assess administrative penalties on carriers that do not follow the law.
- ▶ **The State Attorney General:** The Office of the Attorney General helps consumers with individual advocacy and impact litigation through its Health Care Bureau (HCB), which staffs a Health Care Helpline. Calls from consumers involve benefit and coverage denials, billing and payment problems, medical discount scams, predatory lending issues, and other health coverage navigation problems.¹⁵³ The office can offer more help with plans governed by New York State law, including individual policies and fully-insured employer-sponsored plans, than with self-insured employer-sponsored coverage.¹⁵⁴ In 2010, the HCB received 3,700 complaints and made 3,800 referrals to other agencies.¹⁵⁵

Nonprofit Sources of Consumer Assistance

- ▶ **Community Health Advocates (CHA):** The Community Service Society of New York (CSS) operates New York's ACA-funded statewide independent Consumer Assistance Program, which serves consumers with all forms of insurance coverage and access to care issues. CSS, in partnership with three specialist nonprofits, the Empire Justice Center (Empire Justice), the Legal Aid Society (LAS) and the Medicare Rights Center (MRC), serves as the hub for 21 CBOs located in geographically diverse areas of the State and provides training, support, quality assurance, and

Appendix B (continued)

a central live-answer consumer helpline with a toll-free number. The CBOs, trusted resources in their communities, provide education workshops and one-on-one counseling for consumers. CHA staff members provide linguistically and culturally competent services on the ground where consumers live and work. Between November 2010 and June 2011, CHA helped consumers with one-on-one assistance in more than 7,600 cases in 58 counties throughout New York, and more than 8,750 consumers through outreach and education.

- ▶ **Health Insurance Information Counseling and Assistance Program (HIICAP) for Medicare Beneficiaries:** Based out of the State Office for the Aging, HIICAP is New York's State Health Insurance Program (SHIP), a Federally-funded initiative to provide education and one-on-one assistance to 3 million Medicare beneficiaries in New York.¹⁵⁶ HIICAP serves every county in New York with roughly 500 paid and volunteer counselors.¹⁵⁷ In 2010, HIICAP helped more than 134,000 Medicare beneficiaries one-on-one, and conducted 4,000 presentations.¹⁵⁸ The State Office for the Aging also funds a consortium of seven community-based agencies to provide technical assistance to HIICAP programs, and legal representation to HIICAP consumers with appeals.¹⁵⁹
- ▶ **Other Nonprofits:** The Legal Aid Society (LAS) and Medicare Rights Center provide direct consumer assistance services to consumers, technical assistance, and policy analysis. Empire Justice is a back-up center for legal services programs and other groups. Selfhelp Community Services provides both technical assistance to advocates and assistance to low-income consumers with chronic health needs. LAS, Empire Justice, and Selfhelp operate a web resource for health advocates across New York, NYHealthAccess.org. Other organizations that provide assistance to consumers and advocates include: the New York Immigration Coalition (NYIC), the Center for Independence of the Disabled and other Independent Living Centers in New York City, the Urban Justice Center, the New York Legal Assistance Group, New York Lawyers for the Public Interest, Independent Living Centers, member organizations of New York State Community Action, Inc., and a network of legal services offices.

Appendix C (continued)

ADDITIONAL STAKEHOLDER INTERVIEWS

AFFINITY GROUPS • MARCH 1, 2011

CSS: Elisabeth Benjamin, Carrie Tracy, Nora Chaves, Priya Mendon
Shawn Nowicki, Director of Health Policy, HealthPass
Mark Kessler, Director of Strategic Initiatives HealthPass
Vince Ashton, Executive Director, HealthPass
Adam Huttler, Executive Director, Fractured Atlas
James Brown, Director of Health Services, The Actors Fund

FREELANCERS UNION AND FREELANCER INSURANCE COMPANY • March 9, 2011

CSS: Elisabeth Benjamin
Sara Horowitz, Executive Director, Freelancers Union

GENERAL AGENTS • March 4, 2011 and March 31, 2011

CSS: Elisabeth Benjamin, Priya Mendon, Carrie Tracy, Nora Chaves

Phil Fina, Vice President and CFO, FILCO
Ilana Arbeit, Benefits Consultant, FILCO

J.P. Galaris, Savoy Associates
Brian Bulger, First National Administrators

HEALTH INSURANCE INFORMATION COUNSELING AND ASSISTANCE PROGRAM • April 5, 2011

CSS: Carrie Tracy, Priya Mendon

Linda Petrosino, HIICAP Coordinator, New York State Office for the Aging

INSURANCE BROKERS • April 1, 2011

CSS: Elisabeth Benjamin, Priya Mendon, Carrie Tracy

Jim Cosares, Jimco Associates
Richard Schoetz, Schoetz & Cohen Insurance Broker
Alex Miller, Millennium Medical Solutions
Stephen DeMaria, Associated Consulting Group

Appendix C (continued)

LOCAL CHAMBERS OF COMMERCE • March 17

CSS: Elisabeth Benjamin, Carrie Tracy

Carl Hum, President and CEO, Brooklyn Chamber of Commerce
Dean Mohs, Vice President, Insurance Services, Brooklyn Chamber of Commerce and Executive Director, Brooklyn HealthWorks
Todd Trantum, President/CEO, Chautauqua County Chamber of Commerce

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION • February 25, 2011

CSS: Elisabeth Benjamin, Priya Mendon, Carrie Tracy

Marjorie Cadogan, Executive Deputy Commissioner of the Human Resources Administration's Office of Citywide Health Insurance Access (OCHIA)
JoAnne Bailey, Director of Policy and Research, OCHIA
Linda Hacker, Medical Insurance and Community Services Administration
Stana Nakhle, Director of Private Health Insurance Initiatives, OCHIA

NEW YORK STATE ASSOCIATION OF HEALTH UNDERWRITERS • May 11, 2011

CSS: Elisabeth Benjamin, Carrie Tracy

Dan Colacino, Chair of Legislative Committee, NYSAHU

NEW YORK STATE ATTORNEY GENERAL HEALTH CARE BUREAU • May 12, 2011

CSS: Carrie Tracy

Brant Campbell, Assistant Attorney General, Health Care Bureau

NEW YORK STATE DEPARTMENT OF HEALTH AND DEPARTMENT OF INSURANCE • May 4, 2011

CSS: Elisabeth Benjamin, Priya Mendon, Carrie Tracy

Laura Dillon, Principal Examiner, Consumer Services Bureau, Health Unit, State Department of Insurance
Mary Lou Festa, Office of Health Insurance Programs, Bureau of Medicaid and FHP enrollment, Division of Coverage and Enrollment, Local District Support Office

Appendix C (continued)

Carol Anne McKay, Research Analyst, Health Reform, Bureau of Policy Analysis and Initiatives,
Division of Coverage and Enrollment, Office of Health Insurance Programs

Hope Goldhaber, Bureau of Managed Care Certification and Surveillance,
Division of Managed Care, Complaint/Utilization Review Unit

NEW YORK DEPARTMENT OF STATE, DIVISION OF CONSUMER PROTECTION • April 29, 2011

CSS: Carrie Tracy

Lisa Harris, Acting Director, Division of Consumer Protection

Jorge Montalvo, Director of Strategic Initiatives, Division of Consumer Protection

PUBLIC HEALTH PLANS • March 17, 2011

CSS: Elisabeth Benjamin, Carrie Tracy

Empire Justice Center: Trilby de Jung

Patricia Boozang, Managing Director, Manatt Health Solutions

Alice Lam, Manager, Manatt Health Solutions

Sandra Oliver, VP Compliance, Health Plus

David Willhoft, VP Marketing, Health Plus

Mark Santiago, Senior VP Marketing, Hudson Health Plan

Cathy Clancy, Senior VP for Corporate Development Strategy & Network, Hudson Health Plan

Ishmael Carter, Director of Marketing, Neighborhood Health Providers

Hannah Erickson, Marketing Analyst, Neighborhood Health Providers

David Thomas, Senior VP and CEO, Fidelis Care New York

Pamela Hassen, Chief Marketing Officer, Fidelis Care New York

Roger Milliner, Deputy Executive Director of Marketing, MetroPlus Health Plan

Stanley Glassman, COO, MetroPlus Health Plan

Daniel P. McCarthy, EVP and COO, Healthfirst

George Hulse, VP External Affairs, Healthfirst

RURAL/FARMING ASSOCIATIONS • April 4, 2011

Empire Justice Center: Trilby de Jung

Kevin O'Keefe, Vice President, Sales & Marketing, DairyLea Cooperative

Andrea Haradon, SAY2 Rural Health Network

Endnotes

- ¹ Letter from Congressional Budget Office to John Boehner, Speaker of the U.S. House of Representatives, January 6, 2011.
- ² Massachusetts spent \$7.2 million between 2006 and 2011 on its three-phase social marketing campaign promoting its health reform law. “Implementing a Successful Public Education & Marketing Campaign to Promote State Health Insurance Exchanges,” Health Reform Toolkit Series: Resources from the Massachusetts Experience, Blue Cross Blue Shield of Massachusetts Foundation, May 2011.
- ³ See Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, § 1311(i)(3)(D); see also Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ⁴ See Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, §5000A. Exemptions include: religious conscience; health care sharing ministry members; undocumented immigrants; incarcerated individuals; individuals for whom the required contribution would exceed 8% of their household income; taxpayers with income below the filing threshold; members of Indian tribes; and a hardship exemption to be determined by HHS.
- ⁵ Congressional Budget Office letter, *supra* n. 1.
- ⁶ P. Boozang, M. Dutton, A. Lam, and D. Bachrach, “Implementing Federal Health Care Reform: A Roadmap for New York State,” New York State Health Foundation, August 2010.
- ⁷ *Id.* Much of the Medicaid enrollment is expected to be from consumers who are currently eligible, but unenrolled, in public coverage.
- ⁸ E. Benjamin and A. Slagle, “Bridging the Gap: Exploring the Basic Health Insurance Option for New York,” Community Service Society of New York, June 2011.
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ C. Eibner, F. Girosi, C. Price, A. Cordova, P. Hussey, A. Beckman, and A. McGlynn, “Establishing State Health Insurance Exchanges: Implications for Health Insurance Enrollment, Spending, and Small Businesses,” Rand Corporation, 2010.
- ¹² Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ¹³ Under the ACA, state exchanges are to offer Qualified Health Plans (QHPs). QHPs must be certified according to Federal and state laws and guidelines and must offer an essential health benefits package. See ACA §1301; see also Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ¹⁴ See Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, § 1002; see also, Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ¹⁵ ACA, *supra*, n. 3 at §1311(i).
- ¹⁶ See Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, § 1002; see also, HHS Discussion of Proposed Regulation, 76 Fed. Reg. 136, 41878 (July 15, 2011), stating: “If the State chooses to permit or require navigator activities to address Medicaid and CHIP administrative functions, and such functions are performed under a contract or agreement that specifies a method for identifying costs or expenditures attributable to Medicaid and CHIP activities, the Medicaid or CHIP agencies may claim Federal funding for a share of expenditure incurred for such activities at the administrative Federal financing participation rate described in 42 C.F.R. § 433.15 for Medicaid and 42 C.F.R. § 457.618 for CHIP.”
- ¹⁷ The full list of examples of Navigator entities in the law are: “trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration, other licensed insurance agents and brokers, and other entities...” ACA, *supra*, n. 3. at §1311(i)(2). §1311(i)(4) states that “a navigator shall not...receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.”
- ¹⁸ Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).

Endnotes (continued)

- ¹⁹ CHA cannot currently assist individual consumers with tax subsidy issues because the subsidies are not yet available.
- ²⁰ P. Newell, "The Big Picture III: Private and Public Health Insurance Markets in New York, 2009," United Hospital Fund, April 2011.
- ²¹ New York State Insurance Department, *Premium Rates for HMO Standard Individual Health Plans by County*, available at <http://www.ins.state.ny.us/ihmoindx.htm>.
- ²² Personal communication with Ilana Arbeit and Phil Fina, FILCO, March 4, 2011; personal communication with Jim Cosares, Jimco Associates, Richard Schoetz, Schoetz & Cohen Insurance Broker, Alex Miller, Millennium Medical Solutions, Stephen DeMaria, Associated Consulting Group, April 1, 2011; personal communication with J.P. Galaris, Savoy Associates and Brian Bulger, First National Administrators, March 31, 2011.
- ²³ The Complaint and Utilization Review Unit also collects complaint data from each managed care plan certified by the Department of Health on a quarterly basis and analyzes the data to identify trends. The Unit works with the plans to identify the cause of a trend and address it. The Unit has the authority to take disciplinary action, ranging from a letter of concern requiring a corrective plan to fines. Personal communication with Hope Goldhaber, Department of Health, Bureau of Managed Care Certification and Surveillance, Complaint and Utilization Review Unit, May 4, 2011. The State Division of Consumer Protection also helps consumers mediate health care billing issues. Personal communication with Lisa Harris, Acting Director for Division of Consumer Protection, April 29, 2011.
- ²⁴ C. Tracy, E. Benjamin, and C. Barber, "Making Health Reform Work: State Consumer Assistance Programs," Community Service Society of New York, September 2010.
- ²⁵ For a full list of all stakeholders who participated, see Appendix C.
- ²⁶ Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ²⁷ Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ²⁸ Report on NYC Stakeholder Conversation, February 15, 2011.
- ²⁹ B.D. Sommers and S. Rosenbaum, "Issues in Health Reform: How Changes in Eligibility May Move Millions Back and Forth Between Medicaid and Insurance Exchanges," 30 *Health Affairs*. 228-36 (2011).
- ³⁰ See HHS Discussion of Proposed Regulation, 76 Fed. Reg. 136, 41878 (July 15, 2011) (stating: "If the State chooses to permit or require navigator activities to address Medicaid and CHIP administrative functions, and such functions are performed under a contract or agreement that specifies a method for identifying costs or expenditures attributable to Medicaid and CHIP activities, the Medicaid or CHIP agencies may claim Federal funding for a share of expenditure incurred for such activities at the administrative Federal financing participation rate described in 42 C.F.R. § 433.15 for Medicaid and 42 C.F.R. § 457.618 for CHIP." See also, Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155). ("An entity that serves as a Navigator must carry out at least the following duties...").
- ³¹ Report on the Medicare Rights Center Stakeholder Conversation, February 24, 2011.
- ³² Report on Rochester Stakeholder Conversation, February 28, 2011; Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ³³ S. Corlette, J. Alker, J. Touchshner and J. Volk, "The Massachusetts and Utah Health Insurance Exchanges: Lessons Learned," Georgetown University Health Policy Institute, March 2011.
- ³⁴ S. Singhal, J. Stueland, and D. Ungerman, "How US health care reform will affect employee benefits," McKinsey Quarterly, June 2011.
- ³⁵ S. McMorro, L.J. Blumber, and M Buettgens, "The Effects of Health Reform on Small Businesses and Their Workers," Urban Institute, June 2011.
- ³⁶ Personal communication with New York City HRA, February 25, 2011; Report on New York Immigration Coalition (NYIC) Stakeholder Conversation, February 15, 2011; Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Rochester Stakeholder Conversation, February 28, 2011.
- ³⁷ Personal communication with Shawn Nowicki, Mark Kessler, Vincent Ashton, HealthPass, March 1, 2011.
- ³⁸ Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011; Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Buffalo Stakeholder Conversation, March 14, 2011 .
- ³⁹ Report on Medicare Rights Center Stakeholder Conversation, February 24, 2011.

Endnotes (continued)

- ⁴⁰ Report on Medicare Rights Center Stakeholder Conversation, February 24, 2011.
- ⁴¹ Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011; Report on Long Island Stakeholder Conversation, March 15, 2011.
- ⁴² Report on Binghamton Stakeholder Conversation, March 10, 2011.
- ⁴³ Report on NYC Stakeholder Conversation, February 15, 2011; Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ⁴⁴ Report on Troy Stakeholder Conversation, February 23, 2011.
- ⁴⁵ Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 [proposed July 15, 2011] (to be codified at 45 CFR pt. 155).
- ⁴⁶ M.A. Cadogan, J.R. Bailey, A.M. Diop, S. Nakhle, *Healthcare Reform at the Local Level: Framework for a Navigator Program in New York City*, New York City Human Resources Administration Office of Citywide Health Insurance Access (2011) http://www.nyc.gov/html/hra/downloads/pdf/HRA_NYC_Navigator_Program.pdf
- ⁴⁷ Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Rochester Stakeholder Conversation, February 28, 2011.
- ⁴⁸ M. Dutton, W. Bernstein, K. Bhandarkar, and S. Ingargiola, "The Role of Local Government in Administering Medicaid in New York," United Hospital Fund, 2009. Participants in one conversation vehemently opposed a suggestion that Department of Social Services offices serve as the local Navigator/CAP, perceiving them to be ineffective. Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ⁴⁹ Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011; Report on Watertown Stakeholder conversation, March 8, 2011.
- ⁵⁰ Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011.
- ⁵¹ Report on NYC Stakeholder Conversation, February 15, 2011.
- ⁵² Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011. Others voiced that every consumer in the state should have the same experience. Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ⁵³ Report on Medicare Rights Center Stakeholder Conversation, February 24, 2011.
- ⁵⁴ Report on Binghamton Stakeholder Conversation, March 10, 2011.
- ⁵⁵ Report on NYC Stakeholder Conversation, February 15, 2011.
- ⁵⁶ Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011.
- ⁵⁷ Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 [proposed July 15, 2011] (to be codified at 45 CFR pt. 155).
- ⁵⁸ B.D. Sommers and S. Rosenbaum, "Issues in Health Reform: How Changes in Eligibility May Move Millions Back and Forth Between Medicaid and Insurance Exchanges," 30 Health Affairs 228-36 (2011).
- ⁵⁹ Personal communication with Kevin O'Keefe, Dairylea Cooperative, and Andrea Haradon, SAY2, April 4, 2011.
- ⁶⁰ NAIC Consumer Representatives comments on the draft NAIC white paper, "The Comparative Roles of Navigators and Producers in an Exchange: What are the Issues?," submitted March 18, 2011.
- ⁶¹ National Association of Insurance Commissioners (NAIC), "The Comparative Roles of Navigators and Producers in an Exchange What are the Issues?" (*draft white paper* April 28, 2011); "Core Principles Relating to Health Care Reform Initiatives in New York To Protect the Interests of Consumers and Producers," Independent Insurance Agents and Brokers of New York, Inc., March 11, 2011; Independent Insurance Agents and Brokers of America, comments on the draft NAIC white paper "The Comparative Roles of Navigators and Producers in an Exchange: What are the Issues?," submitted March 18, 2011; BenefitMall comments on the draft NAIC white paper "The Comparative Roles of Navigators and Producers in an Exchange: What are the Issues?," submitted March 18, 2011; The Council of Insurance Agents and Brokers comments on the draft NAIC white paper "The Comparative Roles of Navigators and Producers in an Exchange: What are the Issues?," submitted March 18, 2011; National Association of Health Underwriters comments on the draft NAIC white paper "The Comparative Roles of Navigators and Producers in an Exchange: What are the Issues?," submitted March 18, 2011.

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- ⁶² New York State Department of Insurance website, <http://www.ins.state.ny.us/licinfo.htm>. Brokers and agents can choose between taking a 20-hour course and related exam to sell health and accident insurance products, or taking a 40-hour course and related exam to sell health, accident, and life insurance products. See generally PSI licensure, New York State Insurance Department Candidate Information Bulletin, effective January 13, 2011. To renew a license every two years, a broker or agent must submit proof of having attended 15 hours of continuing education courses. See New York State Department of Insurance website. In addition to information about commercial coverage, the training and exam include information about public health coverage programs, including worker's compensation, Social Security and state disability insurance, Medicaid and Medicare; approximately 10% of the health and accident exam covers these issues. See PSI licensure, New York State Insurance Department Candidate Information Bulletin, effective January 13, 2011.
- ⁶³ HIICAP has a three-day training module that local programs use to train new staff and volunteers. Counselors participate in a monthly update call and program coordinators attend an annual two-day training to prepare for open enrollment season. Personal communication with Linda Petrosino, HIICAP Coordinator, New York State Office for the Aging, April 5, 2011. The New York State Department of Health (NYSDOH) offers basic and advanced training to FEs through a training contractor, with additional trainings for updates on changes to public programs or more intensive training on complex issues. All FEs are required to complete the basic two and a half day training, which covers the basics about public health programs, documentation and the application process, how to help a client choose a managed care plan, and more. Personal communication with New York State Department of Health personnel, April 28, 2011. CHA also has a two-day training and monthly update calls. Personal communication with Priya Mendon, Director, Community Health Advocates, April 22, 2011.
- ⁶⁴ Personal communication with Daniel Colacino, Chair of Legislative Committee, New York State Association of Underwriters, May 10, 2011.
- ⁶⁵ Report from Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011; Report on NYC Stakeholder Conversation, February 15, 2011; Report on Rochester Stakeholder Conversation, February 28, 2011; Personal communication with Andrea Haradon of SAY2, April 4, 2011; Report on Medicare Rights Center Stakeholder Conversation, February 24, 2011.
- ⁶⁶ Report on Medicare Rights Center Stakeholder Conversation, February 24, 2011.
- ⁶⁷ Report on NYC Stakeholder Conversation, February 15, 2011; Report on Binghamton Stakeholder Conversation, March 10, 2011.
- ⁶⁸ Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Buffalo Stakeholder Conversation, March 14, 2011; Report on Long Island Stakeholder Conversation, March 15, 2011.
- ⁶⁹ Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ⁷⁰ ACA, *supra*, n. 3 at §1002(d).
- ⁷¹ Report on Troy Stakeholder Conversation, February 23, 2011; Report on Watertown Stakeholder Conversation, March 8, 2011.
- ⁷² This would allow a consumer to begin the enrollment process at one location, then follow up with a Navigator or CAP staff at a different location to complete enrollment or seek other assistance. Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011.
- ⁷³ J. Arnold, "Early Innovator," presentation at United Hospital Fund Coordinating Medicaid and the Exchange meeting, May 12, 2011.
- ⁷⁴ Report on Troy Stakeholder Conversation, February 23, 2011.
- ⁷⁵ Report on Rochester Stakeholder Conversation, February 28, 2011; Report on NYC Stakeholder Conversation, February 15, 2011.
- ⁷⁶ Personal communication with Shawn Nowicki, Mark Kessler, Vincent Ashton, HealthPass, Adam Huttler, Fractured Atlas, and Jim Brown, Actors Fund, March 1, 2011; Personal communication with NYC HRA, February 25, 2011; Report on Rochester Stakeholder Conversation, February 28, 2011.
- ⁷⁷ Report on Troy Stakeholder Conversation, February 23, 2011; Report on NYC Stakeholder Conversation, February 15, 2011; Report on Buffalo Stakeholder Conversation, March 14, 2011.
- ⁷⁸ Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011.
- ⁷⁹ Personal communication with Richard Schoetz, May 23, 2011.
- ⁸⁰ Independent Insurance Agents and Brokers of America, comments on the draft NAIC white paper "The Comparative Roles of Navigators and Producers in an Exchange What are the Issues?", submitted March 18, 2011; BenefitMall comments on the draft NAIC white paper "The Comparative Roles of Navigators and Producers in an Exchange What are the Issues?", submitted March 18, 2011; National Association of Health Underwriters comments on the draft NAIC white paper "The Comparative Roles of Navigators and Producers in an Exchange What are the Issues?", submitted March 18, 2011.

Endnotes (continued)

- ⁸¹ Personal communication with New York State Department of Health personnel, April 29, 2011.
- ⁸² NAIC Consumer Representatives comments on the draft NAIC white paper “The Comparative Roles of Navigators and Producers in an Exchange What are the Issues?”, submitted March 18, 2011; Families USA, National Women’s Law Center, Center on Budget and Policy Priorities, AFSCME, SEIU comments on the draft NAIC white paper “The Comparative Roles of Navigators and Producers in an Exchange: What are the Issues?”, submitted March 18, 2011.
- ⁸³ Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011.
- ⁸⁴ See HHS Discussion of Proposed Exchange Regulation, 76 Fed. Reg. 136, 41882, 4196 (July 15, 2011). Security standards will be dictated by HIPAA, which require covered entities to maintain reasonable and appropriate administrative, technical, and physical safeguards for protecting electronic information. Privacy standards, on the other hand, will be dictated by HIPAA only if a state’s exchange functions satisfy the definition for covered entities handling protected health information as defined in HIPAA regulation.
- ⁸⁵ Office for Civil Rights, U.S. Department of Health and Human Services, Summary of the HIPAA Privacy Rule, OCR Privacy Brief, available at: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf>.
- ⁸⁶ However, in Massachusetts, the state CAP is not considered a business entity, and must obtain a written release before accessing a consumer’s records in the state database. Personal communication with Brian Rosman, Health Care For All Massachusetts, April 21, 2011.
- ⁸⁷ ACA, *supra*, n. 3 at § 1411(g); see also Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ⁸⁸ The GLBA statute requires financial institutions, including health insurance issuers, to follow specified standards to protect consumers’ personal information. NAIC Consumer Representatives comments on the draft NAIC white paper “The Comparative Roles of Navigators and Producers in an Exchange: What are the Issues?”, submitted March 18, 2011.
- ⁸⁹ HHS indicates that it will require compliance with both HIPAA (as discussed above) and the confidentiality and safeguarding requirements of Section 6103 of the Tax Code. Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ⁹⁰ Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Community-based Facilitated Enroller Stakeholder Conversation, February 24, 2011; Report on NYC Stakeholder Conversation, February 15, 2011; Report on Rochester Stakeholder Conversation, February 28, 2011; Report on Watertown Stakeholder conversation, March 8, 2011.
- ⁹¹ Report on Binghamton Stakeholder Conversation, March 10, 2011.
- ⁹² Report on Long Island Stakeholder Conversation, March 15, 2011. Immigrant advocates said that many immigrants would be more likely to trust a CBO than a government agency. Report on NYC Stakeholder Conversation, February 15, 2011.
- ⁹³ See, e.g., Report on Binghamton Area Conversation, March 10, 2011.
- ⁹⁴ Personal Communication with Public Health Plan representatives, March 17, 2011.
- ⁹⁵ Personal communication with Sara Horowitz, Freelancers Union and Freelancers Insurance Company, March 9, 2011. The Freelancers Union has a subsidiary company—Freelancers Insurance Company—that sells insurance to their members. See <https://www.freelancersinsuranceco.com/fic/about-us/index.html>.
- ⁹⁶ Personal communication with Carl Hum and Dean Mohs of Brooklyn Chamber of Commerce, and Todd Tranum, Chautauqua County Chamber of Commerce, March 17, 2011.
- ⁹⁷ Personal communication with Kevin O’Keefe, Dairylea Cooperative, April 4, 2011.
- ⁹⁸ For example, the Actors Fund has a program that helps artists learn about coverage and affordable care options and provides telephone and in-person counseling. Personal communication with Jim Brown, Actors Fund, March 1, 2011.
- ⁹⁹ Personal communication with Carl Hum and Dean Mohs, Brooklyn Chamber of Commerce, March 17, 2011; Personal communication with Shawn Nowicki, Mark Kessler, and Vincent Ashton, HealthPass, March 1, 2011.

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¹⁰⁰ ACA, *supra*, n. 3 at § 1311(i)(4). This has already created conflict in other states as some producer organizations argue that brokers can, or should be allowed to, receive commissions from insurers and receive Navigator grants. Producers in some states appear to be interested in becoming Navigators, and possibly preventing others from serving as Navigators, for two reasons: to replace lost income as commissions are reduced and to retain market share by preventing other entities from entering the business of selling coverage. Producers can play a positive or negative role in the implementation of the exchange. If producers are not allowed to be compensated for selling coverage, they may steer sales out of the exchange. Exchanges created in the past found that most small businesses continued to seek the help of producers, and the employers who enrolled without the help of a producer required more time and attention from exchange staff. See, e.g., J. Yegian, T. Buchmueller, J. Robinson, and A. Monroe, "Health Insurance Purchasing Alliances for Small Firms: Lessons from the California Experience," California HealthCare Foundation, May 1998. On the other hand, some non-producer stakeholders do not believe it would be appropriate for brokers to serve as Navigators, because of real or perceived conflicts of interest. Report on Long Island Stakeholder Conversation, March 15, 2011; Personal communication with Jim Brown, Actors Fund, March 1, 2011.

¹⁰¹ NAIC, the trade group for state insurance regulators, adopted a resolution that declared support for the brokers and urged Federal officials to ensure that producers would be "adequately compensated" by exchanges. (Resolution to Protect the Ability of Licensed Insurance Professionals to Continue to Serve the Public, Adopted August 17, 2010, NAIC.) But NAIC and the U.S. Department of Health and Human Services, the Federal agency charged with implementing the ACA, ruled that broker commissions must count in the non-medical costs portion of the MLR calculation.

¹⁰² Iowa Legislature, Senate File 391 Section 7(1)(c).

¹⁰³ Report on Troy Stakeholder Conversation, February 23, 2011.

¹⁰⁴ The amount of provider-based enrollment is potentially very significant. For example, the New York City Human Resources Administration estimates that as many as 12% of its annual enrollment is generated by hospital-originated applications for Medicaid. Personal communication with Human Resources Administration officials, May 25, 2011.

¹⁰⁵ Report on NYC Stakeholder Conversation, February 15, 2011; Report on Binghamton Stakeholder Conversation, March 10, 2011; Report on Long Island Stakeholder Conversation, March 15, 2011; Report on Rochester Stakeholder Conversation, February 28, 2011.

¹⁰⁶ S. Dorn, I. Hill and S. Hogan, "The Secrets of Massachusetts' Success: Why 97 Percent of State Residents Have Health Coverage," The Urban Institute, November 2009.

¹⁰⁷ ACA, *supra*, n. 3 at § 1311(i)(4); see also Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).

¹⁰⁸ *Id.*

¹⁰⁹ Community-based facilitated enrollers submitted 112,000 applications in 2010, with a program budget of \$17 million. Personal communication with New York State Department of Health staff, June 24, 2011. Because the plan-based facilitated enrollment is funded through the administrative portion of a plan's premium cost, it is not possible to estimate the cost of this program or the cost per application submitted.

¹¹⁰ The program received \$500,000 in funding during 2006. In 2010, the funding level was reduced to \$2.5 million. The sources of funding for the grants also changed. From 2006-2009, the Legislature appropriated money from the general fund for these grants. In 2009 and 2010, some or all of the funding came from transfers to Medicaid from quasi-public agencies, Health and Educational Facilities Authority (HEFA) and the Health Connector Authority. Beginning in 2010, the grants are funded entirely by the Health Connector Authority. Personal communication with Kate Bicego, Health Care for All Massachusetts, June 28, 2011.

¹¹¹ *Id.*

¹¹² C. Tracy, E. Benjamin, and C. Barber, "Making Health Reform Work: State Consumer Assistance Programs," Community Service Society of New York, September 2010. These figures are not directly comparable. Each program has a different method of counting the number of consumers served. The case mix, from outreach to appeals, is different for each program as well. HCFA reports the number of contacts with consumers, rather than the number of cases. For the purposes of this calculation, we estimated that each case requires an average of three calls to resolve.

¹¹³ Community Health Advocates 2010 Annual Report.

¹¹⁴ Kaiser Family Foundation, Kaiser Commission on Medicaid and the Uninsured, "Massachusetts Health Care Reform: Three Years Later," September 2009.

Endnotes (continued)

- ¹¹⁵ P. Boozang, M. Dutton, A. Lam, and D. Bachrach, "Implementing Federal Health Care Reform: A Roadmap for New York State," New York State Health Foundation, August 2010.
- ¹¹⁶ This figure includes 100,000 new enrollees engaged through the exchange, added to the existing annual demand for community-based FE services of 112,000.
- ¹¹⁷ This figure includes 33,000 new enrollees engaged through the exchange, added to the existing annual demand for community-based FE services of 112,000.
- ¹¹⁸ CHA's statewide program is in its first year; this number is extrapolated from the current rate of consumer assistance.
- ¹¹⁹ Health Care for All did not receive a grant from the Commonwealth to support this consumer assistance work.
- ¹²⁰ ACA, *supra*, n. 3 at §1311; see also Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ¹²¹ See HHS Discussion of Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155). stating: "If the State chooses to permit or require navigator activities to address Medicaid and CHIP administrative functions, and such functions are performed under a contract or agreement that specifies a method for identifying costs or expenditures attributable to Medicaid and CHIP activities, the Medicaid or CHIP agencies may claim Federal funding for a share of expenditure incurred for such activities at the administrative Federal financing participation rate described in 42 C.F.R. §433.15 for Medicaid and 42 C.F.R. §457.618 for CHIP."
- ¹²² U.S. Department of Health and Human Services, Office of Consumer Information and Insurance Oversight, Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges, January 20, 2011; see also, Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges, Special Programmatic Terms and Conditions, ¶1.
- ¹²³ P. Newell and R. L. Carey, "Building the Infrastructure for a New York Health Exchange: Key Decisions for State Policymakers," United Hospital Fund, 2011. For more information on New York's existing funding mechanisms for health coverage programs, see E. Benjamin and A. Garza, "Three Steps to Affordable Health Coverage for New York's Employers," Community Service Society of New York and New York State Health Foundation, June 2010.
- ¹²⁴ Comments by Center on Budget and Policy Priorities on NAIC draft white paper "Financing the Exchange," submitted March 18, 2011.
- ¹²⁵ *Id.*
- ¹²⁶ Personal communication with New York City Human Resources Administration, February 25, 2011.
- ¹²⁷ Comments by Illinois Chamber of Commerce and Association of Washington Business on NAIC draft white papers "Financing the Exchange" and "The Comparative Roles of Navigators and Producers in an Exchange: What Are the Issues?," submitted March 18, 2011.
- ¹²⁸ See HHS Discussion of Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41866 (proposed July 15, 2011) (to be codified at 45 CFR pt. 155).
- ¹²⁹ P. Newell, "The Big Picture III: Private and Public Health Insurance Markets in New York, 2009," United Hospital Fund, April 2011.
- ¹³⁰ Personal communication with Ilana Arbeit and Phil Fina, FILCO, March 4, 2011; Personal communication with Jim Cosares, Jimco Associates, Richard Schoetz, Schoetz & Cohen Insurance Broker, Alex Miller, Millennium Medical Solutions, Stephen DeMaria, Associated Consulting Group, April 1, 2011; Personal communication with Shawn Nowicki, Mark Kessler, and Vincent Ashton, HealthPass, March 1, 2011; Personal communication with J.P. Galaris, Savoy Associates and Brian Bulger, First National Administrators, March 31, 2011.
- ¹³¹ Personal communication with Dean Mohs, Brooklyn Chamber of Commerce, June 5, 2011.
- ¹³² Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, New York State Insurance Sales Agents, May 2009.
- ¹³³ Personal communication with Carl Hum and Dean Mohs, Brooklyn Chamber of Commerce, March 17, 2011; Todd Trantum, Chautauque County Chamber of Commerce, March 17, 2011; Personal communication with Kevin O'Keefe, Dairylea, and Andrea Haradon, SAY2, April 4, 2011.

Endnotes (continued)

- ¹³⁴ Personal communication with Shawn Nowicki, Mark Kessler, and Vincent Ashton, HealthPass, March 1, 2011.
- ¹³⁵ Personal communication with Shawn Nowicki, HealthPass, May 16, 2011; See HealthPass Website FAQs <http://www.healthpass.com/faqs1.html>.
- ¹³⁶ In addition to serving small businesses and sole proprietors, at least two Chambers of Commerce (Brooklyn and Syracuse) help individual consumers find appropriate health insurance options as part of their contracted Healthy NY responsibilities with the Department of Insurance.
- ¹³⁷ Personal communication with Sara Horowitz, Freelancers Union and Freelancers Insurance Company, March 9, 2011; Personal communication with Adam Huttler, Fractured Atlas, March 1, 2011.
- ¹³⁸ The U.S. Department of Health and Human Services recently set up www.healthcare.gov, which provides a consolidated list of coverage options to individuals and small businesses who enter basic information. At the State level, the State Department of Health's website lists public coverage options, and the State Department of Insurance also lists all individual plans and HealthyNY plans available in the State, by county, with premium rates and insurer contact information. See New York State Department of Health: http://www.health.state.ny.us/health_care/index.htm, New York State Department of Insurance: <http://www.ins.state.ny.us/chealth.htm>. New York City's Human Resources Administration's Office of Citywide Health Insurance Access also has a website, NYC Health Insurance Link, which allows consumers to perform a tailored search for individual or small business coverage, available at www.nyc.gov/hilink.
- ¹³⁹ Personal communication with Marjorie Cadogan, NYC HRA, June 8, 2011.
- ¹⁴⁰ *Id.* HRA's Infoline handles 1,763 dailycalls related to Medicaid on average and 2,109 each day on average through its IVRS. On average, 418 calls a day to 311 are related to Medicaid.
- ¹⁴¹ *Id.*
- ¹⁴² Personal communication with New York State Department of Health and Maximus, May 8, 2011. In March 2011, Maximus took an average of 3,921 calls every day from consumers in the 23 counties.
- ¹⁴³ Personal communication with Heidi Siegfried, Director of Health Policy, Center for Independence of the Disabled of New York, May 18, 2011.
- ¹⁴⁴ Children's Aid Society and Children's Defense Fund-New York, "Community-based Facilitated Enrollment: Meeting Uninsured New Yorkers Where They Are," February 2005.
- ¹⁴⁵ *Id.*
- ¹⁴⁶ Personal communication with New York State Department of Health personnel, April 28, 2011.
- ¹⁴⁷ Personal communication with New York State Department of Health personnel, April 13, 2011.
- ¹⁴⁸ Personal communication with New York State Department of Health personnel, April 13, 2011.
- ¹⁴⁹ Local District offices also call this office for help with complicated issues. Personal communication with Mary Lou Festa, State Department of Health's Division of Coverage and Enrollment Local District Support Office, May 4, 2011.
- ¹⁵⁰ Personal communication with Hope Goldhaber, Department of Health, Bureau of Managed Care Certification and Surveillance, Complaint and Utilization Review Unit, May 4, 2011.. The Unit processed 936 complaints in 2010.
- ¹⁵¹ Personal communication with Laura Dillon, Principal Examiner, Consumer Services Bureau, Health Unit, State Department of Insurance, May 4, 2011.
- ¹⁵² *Id.*
- ¹⁵³ New York Attorney General's Health Care Bureau, "Real Problems with Health Care Real Solutions for New Yorkers," available at http://www.ag.ny.gov/bureaus/health_care/pdfs/real_problems_with_health_care.pdf.

Endnotes (continued)

¹⁵⁴ Personal communication with Brant Campbell, Assistant Attorney General, May 12, 2011.

¹⁵⁵ Personal communication with Brant Campbell, Assistant Attorney General, May 17, 2011.

¹⁵⁶ The program has focused primarily on seniors, who make up the bulk of New York's nearly 3 million Medicare beneficiaries, but strives to serve younger, disabled Medicare beneficiaries as well.

¹⁵⁷ Personal communication with Linda Petrosino, Health Insurance Information Counseling Assistance Program (HIICAP) Coordinator, New York State Office for the Aging, April 5, 2011.

¹⁵⁸ HIICAP saw a 31% increase in calls to its Helpline last year, from 36,022 to 47,214 calls. Personal communication with Linda Petrosino, HIICAP Coordinator, New York State Office for the Aging, April 27, 2011.

¹⁵⁹ The seven organizations funded to provide back up to HIICAP are Selfhelp Community Services, Legal Services for the Elderly in Western New York, Empire Justice Center, New York Statewide Senior Action Counsel, Medicare Rights Center, the Legal Aid Society and the Community Service Society.



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Consumer Assistance Advisory Committee

AGENDA ITEM

For Possible Action
 Information Only

Date: June 8, 2012
Item Number: V
Title: Navigators and Brokers in the Exchange

Summary¹

Establishing an effective, efficient and sustainable consumer assistance and outreach program will be one of the more important activities undertaken by the Silver State Health Insurance Exchange (Exchange). Enrolling a large number of individuals and families, which represent a broad and diverse population, will be critical to attracting and retaining commercial health insurers to participate on the Exchange, and will be necessary for the long-term success of the Exchange.

With over 550,000 uninsured residents in Nevada, many of whom will be eligible for coverage through the expansion of Medicaid or subsidized health insurance through the Exchange, the Exchange will likely need to engage a number of individuals and entities to help potential enrollees learn about the new health coverage programs and select a health plan that best meets their needs.

As Nevada works on developing the infrastructure, resources and policies to establish its Exchange, a number of important decisions will need to be made regarding the structure and focus of the consumer assistance and outreach program. This report reviews the potential roles of Navigators and Brokers, within the broader context of a comprehensive consumer engagement strategy.

¹ Much of the information provided in this report was provided by RLCarey Consulting.

The final Exchange rule, CMS-9989-F, issued on March 27, 2012 by the U.S. Department of Health and Human Services (HHS)² lays out a number of requirements and expectations for the Exchange's Navigator program. The rule also clarifies, to a certain extent, the distinction between Navigators and Brokers. Attachment A included excerpts from the final regulation regarding consumer assistance tools and programs of an exchange (45 CFR 155.205), navigator program standards (45 CFR 155.210) and ability of states to permit agents and brokers to assist qualified individuals, qualified employers or qualified employees enrolling in Qualified Health Plans (QHP) (45 CFR 155.220).

This report provides recommendations regarding the following items as they pertain to Navigators and Brokers:

- a. Definition
- b. Roles and responsibilities
- c. Licensing, Certification and Training
- d. Compensation structure
- e. Conflicts of interest and relationship with insurers
- f. Performance metrics

Report

Recommendation: Staff recommends the Committee submit to the Board the following plan for Navigators and Brokers:

Silver State Health Insurance Exchange Navigators Defined

Navigators will consist of public and private entities that will communicate with, educate and enroll consumers in Qualified Health Plans (QHPs) through the multiple enrollment methods provided by the Exchange. Navigators and Brokers will work in concert to ensure all individuals have access to health insurance coverage provided as a result of the Affordable Care Act (ACA). Navigators' duties and responsibilities will fall into one or both of the following classifications:

- Education
- Enrollment

While the responsibilities and certification requirements are different for the two classifications of Navigator, an individual or entity may serve in both capacities if they are certified to provide both services.

Roles and Responsibilities of Education Navigators

Education Navigators will be responsible for outreach and education for the currently uninsured or underinsured populations and will present to those populations the options available under the

² <http://cciio.cms.gov/resources/regulations/index.html#hie>

ACA. This outreach and education will include information regarding the ACA as it relates to the Exchange including but not limited to:

- Program Eligibility- Rules to purchase subsidized insurance through the Exchange and eligibility for Medicaid, CHIP, Medicare or other programs;
- Methods of Purchase- Different means available to purchase and enroll in a QHP: Exchange web portal, Exchange call-in center, walk-in centers, kiosks located in community service centers and state agencies, mail in applications and fax applications;
- Reasons to Purchase- Education on the benefits of health insurance and what health insurance provides for the individual;
- Definitions of health insurance terms- For Example, aiding the consumer to understand the difference between a premium, deductible and co-insurance;
- Dispute Resolution- Aiding the consumer to find avenues to resolve disputes with carriers, such as directing them to the DOI and GOVCHA, and referring enrollment disputes to the Exchange;
- Cultural Diversity- Providing culturally and linguistically appropriate health insurance education to Hispanics, Asians, American Indians and other groups; and
- Group Outreach Opportunities- Outreach to consumers typically in group settings, focusing on broad topics related to health insurance and coverage options.

Roles and Responsibilities of Enrollment Navigators

Enrollment Navigators will provide consumers with a physical walk-in location and the tools necessary to assist the individual learn about, and enroll in QHPs. If the Enrollment Navigator does not have a physical walk-in location, the Navigator must be able to go to the enrollee.

Enrollment Navigators will be public or private entities that can perform the following functions:

- Access to physical locations- Provide access to brick and mortar locations or mobile computing centers that will facilitate access to the Exchange's web portal, call center, or FAX line or provide the ability to print and mail hard copies of enrollment documents to the Exchange processing center;
- Answer enrollment questions- Address questions regarding access to any of the enrollment methods and the submission of enrollment documentation to the Exchange;
- Explain eligibility criteria- Explain the eligibility criteria for purchasing insurance through the Exchange, enrolling in Medicaid and other State programs designed to provide medical coverage;
- Provide definitions of health insurance terms for consumers engaged in the enrollment process- For example, aiding the consumer to understand the difference between a premium, deductible and co-insurance;
- Provide documentation- Provide the consumer with documentation regarding the available plans, enrollment letters stating the date coverage will start, etc.;
- Dispute Resolution- Aiding the consumer to find avenues to resolve disputes with carriers, such as directing them to the DOI and GOVCHA, and referring enrollment disputes to the Exchange; and

- Furnish unbiased explanations of coverage provided on the web portal- The enrollment Navigators must not offer any opinion or editorial on the QHPs in the Exchange. Information provided by Navigators must be limited to that information available on the web portal.

Licensing, Certification and Training of Navigators

Each of the two classifications of Navigators will require certification by State agencies including but not limited to the Exchange and the DOI. The requirements for certification and yearly recertification will differ between the two classifications.

Education Navigators

Education Navigators will be certified through training provided by the Exchange, and consist of a two day (sixteen hour) initial training course about the Exchange and health care coverage provided as a result of the ACA. After the completion of the initial training, all Education Navigators will complete a test to demonstrate what they have learned.

Recertification of Education Navigators will consist of two days of update training per year, one in the spring and one in the fall. Education Navigators need to attend these training sessions and complete an annual re-certification test to maintain their active Education Navigator status and funding source.

Enrollment Navigators

Enrollment Navigators will be certified by two state agencies. Enrollment Navigators will be licensed and certified through the DOI as Insurance Consultants. Enrollment Navigators will also be certified by training provided by the Exchange. This training will consist of an initial three day (24 hour) initial training course. Two days of this training session will be dedicated to topics relating to the Exchange and health coverage provided as a result of the ACA. The third day of training will be devoted to a computer lab session. This session will focus on training enrollment Navigators to use the Exchange web portal and completing a test to demonstrate what they have learned.

Recertification of enrollment Navigators will consist of two days of update training per year, one in the spring and one in the fall. Enrollment Navigators need to attend these trainings, complete an annual re-certification test, and prove that they are in good standing with the DOI to maintain their active Navigator status and funding source.

Enrollment Navigators must furnish a complete set of fingerprints and undergo a criminal history background check.

HHS indicates that it will release model Navigator training standards.

Navigator Compensation

All Navigators participating in the Exchange will receive funding through a competitive grant process. Potential Navigators will submit competitive grant applications to the exchange through a biennial request. The grant applications will be divided into the two classifications for Navigators (Enrollment and Education). The Exchange will review and award grants to qualified Navigator groups throughout the state of Nevada. The funding or grant allocations will be distributed to the Navigator classifications as follows:

- Education Navigators will be awarded grant funds for the purpose of conducting education and outreach events, presentation materials and possibly staff salaries.
- Enrollment Navigators will be awarded computer resources or funds to purchase computer resources, if necessary, to facilitate enrolling consumers in coverage through the Exchange, and funds to cover certification costs with DOI.

Navigators and conflicts of interest

Navigators cannot have conflicts of interest, financial or otherwise, and will need to comply with the Exchange's privacy and security standards. Specifically, Navigators cannot receive any consideration, financial or otherwise, from carriers. The final rule allows the Exchange to set the standards. However, the preamble to the rules suggests that the conflict of interest standards include, but not be limited to, the following:

“financial considerations; nonfinancial considerations; the impact of a family member's employment or activities with other potentially conflicted entities; Navigator disclosures regarding existing financial and non-financial relationships with other entities; Exchange monitoring of Navigator-based enrollment patterns; legal and financial recourses for consumers that have been adversely affected by a Navigator with a conflict of interest; and applicable civil and criminal penalties for Navigators that act in a manner inconsistent with the conflict of interest standards set forth by the Exchange.”³

HHS indicates that it will release model conflict of interest standards.

Roles and Responsibilities of Brokers in the Exchange

Brokers will assist qualified individuals, qualified employers and qualified employees with enrolment in QHPs in much the same manner as Enrollment Navigators. Brokers currently provide individuals and employers with information regarding health insurance and assistance in enrollment in health plans. While Brokers will be urged to provide only information that can be found on the web portal, Brokers are permitted to provide information based on their experience with a QHP, in much the same manner as is done today. Brokers that enroll individuals in the Exchange should also understand the basics of the premium tax credits, the QHPs and where to send individuals who require social services such as Medicaid, SNAP and TANF.

³ Preamble to the final rule, Federal Register, Vol. 77, No. 59, Tuesday, March 27, 2012, Rules and Regulations, page 18331.

The final rule allows the Exchange to determine the role that Brokers play within the Exchange. The rule allows Brokers to help individuals apply for premium tax credits through the Exchange and enroll in coverage. The Exchange will need to determine how best to use Brokers to help consumers, including both individuals and small employers, access coverage through the Exchange.

Brokers in Nevada play an important and influential role in the distribution of health insurance. Both individual consumers and businesses rely on Brokers to sort through their health insurance options, provide health plan recommendations, and serve as their agents throughout the year in dealings with insurance companies. This value provided by a Broker is measured by the commissions paid to Brokers by insurance carriers. If the service provided by Brokers was not valuable, Brokers would not receive commissions from the carriers. Furthermore, if Brokers are not allowed to service the Exchange market, it is likely they would drive business away from the Exchange toward plans offered by carriers for which they receive compensation. This would decrease enrollment making sustainability more difficult.

Finally, it should be noted that a large portion of uninsured Nevadans do not have insurance because it is not affordable. The premium tax credit will make health insurance much more affordable. Brokers are currently positioned to assist these new entrants into the health insurance market.

Licensing, Certification and Training of Brokers

The final rule requires Brokers to register with the Exchange, receive training on QHP options and other publicly subsidized insurance programs, and comply with the Exchange's privacy and security standards.

Nevada's Division of Insurance (DOI) has statutory responsibility for licensing and overseeing Brokers. The Division requires applicants to take and successfully pass the state insurance exam in the line(s) of authority for which the applicant is applying (e.g., health, property and casualty, life). Individuals applying for a resident license with the DOI must furnish a complete set of fingerprints and undergo a criminal history background check.

Staff will coordinate with the DOI to create training and licensure requirements that are in compliance with the ACA.

Broker Compensation

Brokers will receive compensation from carriers for enrollment in the Exchange, in accordance with the Brokers' contracts with the carriers. The enrollment system will accept a Broker ID and transmit that data to the carrier so that the Broker can receive the commission.

Brokers are contracted with insurers to enroll consumers in the insurers' plans. Rates paid by insurers to Brokers vary depending on the insurer, whether the Broker is enrolling an individual or group plan, and the size of the group plan.

There is concern that as a carrier raises its commissions, Brokers will enroll more individuals in that carrier's plans, regardless of whether that carrier offers the best product. One way to mitigate this adverse selection is to introduce a fixed commission for enrollment in all QHPs. However, if commissions for enrollment within the Exchange are fixed at a point that is too low, carriers could raise the commissions they offer to steer enrollment away from the Exchange. If commissions are too high, insurance coverage will be less affordable. Because carriers offer different rates, carriers will have commissions that are higher or lower than the fixed Exchange rate which will cause a situation in which enrollment is steered away from the Exchange.

It is important to note that the current state of Broker commissions has evolved over the years to its current state and continues to evolve as market conditions change. Introducing a fixed commission in the market introduces an additional complexity that would need to be monitored and adjusted regularly by Exchange staff.

Additionally, in its strategic plan, the Board declared one of its values to be, "...creating a business friendly environment for the simple purchase of health insurance."

Performance Metrics

Staff will monitor available enrollment metrics so that staff can provide reasonable recommendations for future improvements to the system. Brokers and Enrollment Navigators will enter a code into the web portal when assisting a consumer with enrollment. This code will help staff review enrollment trends and monitor post enrollment surveys. Enrollment trends can be analyzed to determine if any Navigators or Brokers are steering business toward a specific QHP.

Summary

Table 1 provides information regarding the applicability of various requirements as they pertain to Education Navigators, Enrollment Navigators and Brokers.

Table 1: Program requirements for Education Navigators, Enrollment Navigators and Brokers

	Education Navigators	Enrollment Navigators	Brokers
Information to be Provided to Consumer			
Eligibility information for coverage through the Exchange, premium tax credits or publicly subsidized programs such as Medicaid, CHIP, Medicare, etc.	X	X	X
Methods to purchase and enroll in a QHP: Exchange web portal, Exchange call-in center, walk-in centers, kiosks located in community service centers, mail in applications and fax applications.	X	X	X
Education on the benefits of health insurance and what health insurance provides for the individual.	X		
Definitions of health insurance terms, for example, aiding the consumer to understand the difference between a premium, deductible and co-insurance.	X	X	X
Aiding the consumer to find avenues available to resolve disputes with carriers or enrollment such as DOI, GOVCHA and the Welfare dispute center.	X	X	X
Providing culturally and linguistically appropriate health insurance education to groups in Nevada including but not limited to Hispanics, Asians and American Indians.	X	X	
Outreach to consumers typically in group settings, focusing on broad topics related to health insurance and coverage options.	X		
Compensation			
Funded by competitive grants from the Exchange	X	X	
Funded by commissions paid by the consumer or employer through the premium paid to the carrier			X
Licensing, Certification and Training			
Licensed and regulated by Nevada DOI		X	X
Certified by the Exchange	X	X	
Criminal background check required		X	X
Training provided by Nevada DOI			X
Training provided by the Exchange	X	X	
Enrollment			
Enroll consumers in plans offered in the exchange.		X	X
Enroll consumers in plans offered outside of the exchange.			X

	Education Navigators	Enrollment Navigators	Brokers
Provide unbiased explanation of coverage provided on the web portal. The enrollment Navigators must not offer any opinion or editorial on the QHPs in the Exchange.		X	
Assist in submission of enrollment documentation to the Exchange.		X	X
Provide the consumer with documentation stating the date coverage will start and the appropriate agencies to contact if the consumer encounters problems with enrollment, coverage or payment.		X	X

Recommendation:

Approve the Navigator and Broker participation plan as presented.

**Excerpts from Final Rule CMS-9989-F
Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified
Health Plans; Exchange Standards for Employers**

§155.205 Consumer assistance tools and programs of an Exchange.

- (a) Call center. The Exchange must provide for operation of a toll-free call center that addresses the needs of consumers requesting assistance and meets the requirements outlined in paragraphs (c)(1), (c)(2)(i), and (c)(3) of this section.
- (b) Internet Web site. The Exchange must maintain an up-to-date Internet Web site that meets the requirements outlined in paragraph (c) of this section and:
 - (1) Provides standardized comparative information on each available QHP, including at a minimum:
 - (i) Premium and cost-sharing information;
 - (ii) The summary of benefits and coverage established under section 2715 of the PHS Act;
 - (iii) Identification of whether the QHP is a bronze, silver, gold, or platinum level plan as defined by section 1302(d) of the Affordable Care Act, or a catastrophic plan as defined by section 1302(e) of the Affordable Care Act;
 - (iv) The results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act;
 - (v) Quality ratings assigned in accordance with section 1311(c)(3) of the Affordable Care Act;
 - (vi) Medical loss ratio information as reported to HHS in accordance with 45 CFR part 158;
 - (vii) Transparency of coverage measures reported to the Exchange during certification in accordance with §155.1040; and
 - (viii) The provider directory made available to the Exchange in accordance with §156.230.
 - (2) Publishes the following financial information:
 - (i) The average costs of licensing required by the Exchange;
 - (ii) Any regulatory fees required by the Exchange;
 - (iii) Any payments required by the Exchange in addition to fees under paragraphs (b)(2)(i) and (ii) of this section;
 - (iv) Administrative costs of such Exchange; and
 - (v) Monies lost to waste, fraud, and abuse.
 - (3) Provides applicants with information about Navigators as described in §155.210 and other consumer assistance services, including the toll-free telephone number of the Exchange call center required in paragraph (a) of this section.
 - (4) Allows for an eligibility determination to be made in accordance with subpart D of this part.
 - (5) Allows a qualified individual to select a QHP in accordance with subpart E of this part.

- (6) Makes available by electronic means a calculator to facilitate the comparison of available QHPs after the application of any advance payments of the premium tax credit and any cost-sharing reductions.
- (c) Accessibility. Information must be provided to applicants and enrollees in plain language and in a manner that is accessible and timely to--
 - (1) Individuals living with disabilities including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.
 - (2) Individuals who are limited English proficient through the provision of language services at no cost to the individual, including
 - (i) Oral interpretation;
 - (ii) Written translations; and
 - (iii) Taglines in non-English languages indicating the availability of language services.
 - (3) Inform individuals of the availability of the services described in paragraphs (c)(1) and (2) of this section and how to access such services.
- (d) Consumer assistance. The Exchange must have a consumer assistance function that meets the standards in paragraph (c) of this section, including the Navigator program described in §155.210, and must refer consumers to consumer assistance programs in the State when available and appropriate.
- (e) Outreach and education. The Exchange must conduct outreach and education activities that meet the standards in paragraph (c) of this section to educate consumers about the Exchange and insurance affordability programs to encourage participation.

§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.

§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 website 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 website 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.