

**Covered California
Comments on CMS Proposed Rules on Navigators and Non-Navigator Assistance Personnel**

COVERED CALIFORNIA COMMENTS ON CMS APRIL 5, 2013, PROPOSED RULES

Standards for Navigators and Non-Navigator Assistance Personnel

45 CFR Part 155

[CMS-9955-P]

RIN 0938-AR75

PROPOSED REGULATORY REQUIREMENT	CALIFORNIA COMMENTS
<p>Preamble: These proposed rules apply to any program established to fulfill the consumer assistance, education, and outreach functions under § 155.205(d) and (e) through in-person consumer support. Although subsections (d) and (e) encompass the Navigator program, it is not limited to that type of consumer assistance. Persons or programs involved in non-Navigator consumer assistance, education, or outreach functions are referred to as non-Navigator assistance personnel or programs. These programs include the In-Person Assisters. (Pages 8-9)</p>	
<p>Preamble: The Navigator program must be administered through grants. Non-Navigator programs may be administered through contracts, direct hiring, or grants, subject to state law. (Page 10)</p>	
<p>§ 155.210 Navigator program standards.¹</p> <ol style="list-style-type: none"> 1. Would amend § 155.210(c)(1)(iii) to clarify, consistent with Affordable Care Act section 1321(d), that to receive a Navigator grant, an entity or individual must meet any licensing, certification or other standard prescribed by the State or Exchange, if applicable, as long as such standards do not prevent the application of the provisions of title I of the Affordable Care Act. 2. Would amend section 155.210(d) to further clarify that a Navigator must also not be an issuer of stop loss insurance, or a subsidiary of an issuer of stop loss issuer, and must not receive any consideration, directly or indirectly, from any issuer of stop loss insurance in connection with the enrollment of individuals or employers in a QHP or non-QHP. 	

¹ Two amendments to the final 155.210 are proposed here. This section applies to all Navigators.

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§ 155.215 Standards applicable to Navigators and non-Navigator Assistance Personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210 in a Federally-facilitated Exchange and to non-Navigator Assistance Personnel Funded Through an Exchange Establishment Grant.²

(a) Conflict of Interest standards

1. Conflict-of-interest standards for Navigators³

- i. Written attestation that Navigator entity and staff does not have a prohibited conflict of interest listed in 155.210(d).
- ii. Written plan for the Navigator entity (not individual staff, unless individual is working solo) to remain free of conflicts
- iii. Directs Navigator entities and individual staff to provide information to consumers about the full range of QHP options and insurance affordability programs.
- iv. Certain conflicts of interests that are not a bar to serving as a Navigator must be disclosed by the entity and the individual staff to the Exchange and to each consumer receiving application assistance. (Application assistance includes pre and post enrollment services but not include outreach and education). These conflicts include:
 - A. Any lines of insurance business intended to be sold by the Navigator while serving as a Navigator.⁴
 - B. Any existing and former employment relationship by the individual staff, their spouse or domestic partner within the past five years with any of the prohibited parties in 155.210(d).
 - C. Any existing or anticipated financial, business, or contractual relationships with any of the prohibited

(a) (1) (ii) Covered California believes the requirements related to the written plan for Navigators and non-Navigator assistance personnel will be duplicative of other agreements between Covered California and non-Navigator assistance personnel. Covered California requests clarification that contracts or other written agreements between an Exchange and Navigators and non-Navigator assistance personnel are an effective satisfaction of the written plan requirement.

²155.215 is a new section. In State-based Exchanges, these standards are required for non-Navigator assistance personnel that are funded through the federal Exchange Establishments grants. These standards could be used by State-based Exchanges at their discretion for their Navigator programs and for any non-Navigator assistance programs not funded by Establishment grants. These standards do not apply to certified application counselors (CACs). Proposed rules would require that CACs are established in every Exchange. (Page 16)

³ This requirement applies to the entire entity as well as all of its employees. So, for instance, an entity could not have one branch or one person selling health insurance in the entire entity, because that would comprise a conflict-of-interest.

⁴ The sale of health insurance or stop loss insurance could not be mitigated through disclosure and are therefore not encompassed in this rule.

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<p>parties.</p> <ol style="list-style-type: none">2. Conflict-of-interest Standards for Non-Navigator Assistance Personnel Carrying out Consumer Assistance Functions under 155.205(d) and (e)<ol style="list-style-type: none">i. Comply with Navigator conduct of 155.210(d)ii. Written attestation (same as Navigator)iii. Written plan (same as Navigator)iv. Provide information (same as Navigator)v. Disclose (same as navigator) <p>(b) Training standards for Navigators and non-Navigator Assistance Personnel carrying out consumer assistance function under 155.205(d) and (e) and 155.210.⁵</p> <ol style="list-style-type: none">1. Certification and recertification standards.<ol style="list-style-type: none">i. Obtain certification by the Exchange prior to any consumer assistance.ii. Register for and complete HHS approved trainingiii. Complete and achieve a passing score on all approved certification examinations.iv. Obtain continuing education and be certified and/or recertified on at least an annual basis; ANDv. Be prepared to serve both the SHOP and the individual Exchange.2. Training Module Content^{6 7}<ol style="list-style-type: none">i. QHPs and the metal tiersii. Insurance affordability programsiii. Tax implicationsiv. Eligibility for APTC and CSR.v. Contact infovi. Basic health insurance concepts.	<p>(b)(1)(ii) Covered California seeks confirmation that HHS approved training does not apply to State-Based Exchanges.</p> <p>(b)(1)(v) Covered California does not agree with the proposed requirement that non-Navigator assistance personnel be required to serve the SHOP market. Consistent with current market practice, Covered California intends to use certified agents to facilitate enrollment in the SHOP. While we intend to train non-Navigator assistance personnel in basic elements of the SHOP, providing the training necessary for them to complete a group enrollment would be both costly and duplicative of services provided today by agents. We request that this requirement be removed from the final regulation.</p>
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⁵ 155.215 although this language is not clearly limited to Federally funded Navigators, the language of the preamble is clear in explaining that State based Exchanges can decide on whether or not to apply the training standards for Navigators. However, these standards must be applied for federally funded non-Navigator programs such as the In Person Assistance and Outreach and Education programs.

⁶ Preamble states that Non-Navigator assistance personnel must receive comparable training with respect to their specific responsibilities.

⁷ Although the Preamble discusses that there would be up to 30 hours of training, this is not actually found in the regulations. It is also discussed in the preamble for purposes of calculating costs in relation to how long it would take to complete training, but that is not a requirement either.

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- vii. Eligibility and enrollment rules, including appeals
- viii. Culturally and linguistically appropriate services.
- ix. Ensuring physical and other accessibility for people with a full range of disabilities.
- x. Understanding the difference among health plans.
- xi. Privacy and security standards.
- xii. Working effectively with individuals with limited English proficiency, people with a full range of disabilities, and vulnerable, rural, and underserved populations.
- xiii. Customer services standards
- xiv. Outreach and Education methods and strategies.
- xv. Applicable administrative rules, processes and systems related to Exchanges

(c) Providing Culturally and Linguistically Appropriate Services (CLAS Standards)

1. Develop and maintain general knowledge about diverse groups in the service area
2. Collect and maintain updated information on the composition of communities and languages spoken.
3. Provide services in consumer's language at no cost. Use family interpreter only when requested by the consumer.
4. Provide oral and written notice of language assistance and how to access it to limited English proficient⁸
5. Ongoing education and training in CLAS delivery
6. Implement strategies to recruit, support and promote staff that is representative of the demographic and languages spoken in the service area.

(d) Standards Ensuring access by persons with disabilities.⁹

1. Ensure that any education materials or tools used for consumer assistance are accessible to persons with disabilities.
2. Provide auxiliary aids and services at no cost. Using family must be

(b)(2)(vii) Although Covered California does plan for outreach and education grantees to be trained in enrollment, they will not be trained in the details of enrolling consumers as their role is narrowly defined. We seek confirmation that when a state-based Exchange has separate but complementary outreach and education, and enrollment programs, this approach is compliant with the proposed regulation.

(155.210)(c)(d)- Covered California seeks clarification on the requirements to provide services that meet CLAS standards in section (c) as well as the requirements to provide services that are accessible to persons with disabilities in section (d). Per the preamble, "Each Navigator and non-Navigator assistance personnel should have the ability to help any individual who presents him or herself for assistance. However, there may be some instances where a Navigator, or non-Navigator assistance personnel, does not have the immediate capacity to help an individual. In such cases, the Navigator or non-Navigator assistance personnel should be capable of providing assistance in a timely manner but should also refer consumers seeking assistance to other Exchange resources,

⁸ Preamble states that this could be done with taglines in non-English languages placed on documents or websites to indicate availability. (Page 35)

⁹ These standards are in accordance with the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

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<p>requested by consumer.</p> <ol style="list-style-type: none">3. Provide assistance in locations accessible by all4. Ensure legally authorized representatives can help individuals with a disability make informed decisions.5. Acquire knowledge to be able to refer people with disabilities to other government support programs as needed.6. Be able to work with all individuals regardless of age, disability, or culture, and seek advice or experts when needed. <p>(e) Monitoring</p> <ol style="list-style-type: none">1. A federally operated Exchange will monitor compliance standards with this section, 155.205(d) & (e), and 155.210.	<p><i>such as the toll-free Exchange Call Center, or to another Navigator or non- Navigator assistance personnel in the same Exchange who might have better capacity to serve that individual more effectively".</i> Accordingly, Covered California recommends that the final rule reflects the direction taken in the preamble in that assistance personnel may refer consumers to other resources in instances where that assister is not able to provide full enrollment services for a particular person with special language or disability needs. It would be inefficient, costly, and not lead to a first-class consumer experience if each individual Navigator or non-Navigator assistance personnel were (for example) required to provide interpreter services. We seek confirmation that this approach would be compliant with the regulation.</p>
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