



May 6, 2013

Submitted electronically via: <http://www.regulations.gov>

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-9955-F
P.O. Box 8010
Baltimore, MD 21244-8010

Re: CMS-9955-F – Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel

Dear Sir or Madam:

Enroll America is a nonpartisan, 501(c)(3) organization whose mission is to ensure that all Americans are enrolled in and retain health coverage. We are a collaborative organization, working with partners that span the gamut of health coverage stakeholders—health insurers, hospitals, doctors, pharmaceutical companies, employers, consumer groups, faith-based organizations, civic organizations, and philanthropies—to engage many different voices in support of an easy, accessible, and widely available enrollment process.

The proposed regulations on Navigator and non-Navigator assistance personnel address policies central to our work, and we appreciate the opportunity to offer our comments.

The historic expansion of eligibility for health care benefits under the Affordable Care Act (ACA) will provide millions of Americans and their families with their first opportunity to enroll in free and reduced-cost health care coverage. Simply expanding eligibility, however, will not be enough to successfully connect many of the newly eligible to coverage. Enrolling in health coverage is a significant obstacle for many Americans and their families. Many face challenges such as limited access to technology, low literacy skills, and language or cultural barriers. While the ACA simplifies the enrollment process and makes it much more consumer-friendly, many will need the assistance of trained and compassionate advisors in order to understand their coverage options and enroll in the most appropriate public program and/or health plan.

The ACA recognized this important need for in-person assistance by requiring all health insurance exchanges to provide Navigator grants to entities for conducting public education activities to raise awareness about the new coverage options, helping people apply for and enroll in plans offered through the exchanges, and providing referrals. Enroll America applauds the efforts of the Department of Health and Human Services (HHS) to implement this critical aspect of the ACA and its work with states to support the development of non-Navigator assistance programs like the in-person assistance (IPA) program. There are several steps HHS can take to build on these efforts and strengthen the availability of assistance, particularly in states served by the federally facilitated marketplace:

Recommendation: Reiterate and clarify the requirement for all exchanges – state-based, consumer partnership, and federally facilitated – to establish a fully funded Navigator program. Under the transitional policy described in the preamble to the proposed rule, state-based exchanges that do not have sufficient funds during the initial year of operation to achieve all the goals of the Navigator program can use section §1311(a) grant funds to establish a non-Navigator assistance program that will fill any gaps in its limited Navigator program. We strongly support the use of §1311(a) grant funds to support this transitional policy. State-based exchanges pursuing this option should also be required to outline the future funding stream(s) that will ensure the state-based exchange has sufficient resources after section §1311(a) grant funds are no longer available to support a fully funded Navigator program that fulfills all of the goals of the required exchange function.

Recommendation: Provide section §1311(a) grant funds for State activities related to establishment of non-Navigator assistance programs in any state served by a federally facilitated exchange (FFE). Such grant funds have been made available to several FFE states (Ohio, Nebraska, Kansas, and Montana) to conduct marketplace plan management functions, and recently, HHS announced that §1311(a) funds can be used for marketing and outreach under specific conditions. Extending this funding to consumer assistance activities that are necessary to support the FFE, including in-person assistance, would extend the capacity of states with an FFE to assist consumers.

Recommendation: Clarify how private support can leverage federal Medicaid matching funds to provide enrollment assistance. Many different kinds of entities, including private foundations and health care providers/provider organizations may be willing to generously support enrollment assistance efforts in their communities. It would be helpful for HHS to clearly articulate the circumstances and process in which private funds could be used to leverage additional federal Medicaid matching funds for a state.

Recommendation: Establish a dedicated technical assistance unit and helpline to support Navigators and assisters working in states served by the FFE. Providing an adequate level of easily accessible expert technical assistance is considered a best practice in Medicaid, and Medicare counselors have identified the dedicated counselor line as one of the most important tools they use to assist consumers. This type of support can: (1) help Navigators and assisters resolve more complex eligibility and enrollment issues; (2) reduce call volume to the call center; (3) provide an effective loopback mechanism to pinpoint systematic issues and other recurring problems; and (4) identify gaps in training requirements.

Recommendation: Establish a web-portal with enhanced functionality for Navigators and assisters, including Certified Application Counselors. An enhanced portal goes beyond tracking applications by assister. It would: (1) allow assisters to check the status of applications and enrollment; (2) provide other functionality, such as reporting the birth of a child or other changes in circumstances or checking the status of needed verifications; (3) facilitate reporting of problems directly associated with a specific application or account; and (4) provide a key consumer protection by clearly identifying when data and other changes are submitted by Navigators or non-Navigator assistance personnel rather than consumers themselves.

Recommendation: Release final regulations outlining the role of Certified Application Counselors (CACs) as soon as possible, and clarify that states are not prohibited from funding CACs. According to the proposed regulations released on January 12, 2013, CACs

cannot obtain funding from an exchange. It is our understanding that HHS is also not offering the use of federal funds under section §1311(a) of the ACA to support the role of CACs. CACs will be a key enrollment assistance resource for consumers – particularly in states that will be served by a federally run health insurance marketplace. States should not be barred from providing much-needed resources to community-based organizations and safety net providers as they attempt to serve this critical role as a CAC.

We also offer several suggestions in our comments below to strengthen the proposed Navigator and Non-Navigator Assistance Personnel regulations.

Comments on the Proposed Navigator and Non-Navigator Assistance Personnel Regulations

Sec. 155.210 Navigator Program Standards

1. Revision to 155.210(c)(1)(iii) – Entities and Individuals Eligible to be a Navigator

The proposed revision at 155.210(c)(1)(iii) clarifies that states and exchanges may prescribe licensing, certification, or other standards for Navigators as long as they do not prevent the application of the provisions of Title I of the ACA. Under section 1311(i) of Title I of the ACA, exchanges are required to establish a Navigator program that awards grants to at least two types of entities – one of which is a community and consumer-focused nonprofit group – that will each provide, at a minimum, the duties listed at 155.210(e).

We strongly support the revision at 155.210(c)(1)(iii) to prevent state and exchange licensing, certification, and other standards from interfering with a Navigator’s ability to provide the duties listed at 155.210(e). All of these duties are critical to getting the uninsured enrolled.

According to 155.210(e), all Navigators must fulfill the following duties:

- Maintain expertise in eligibility, enrollment, and program specifications;
- Conduct public education activities to raise awareness about the exchange;
- Provide information and services in a fair, accurate and impartial manner (including information about other health programs and insurance affordability programs);
- Facilitate selection of a qualified health plan (QHP);
- Provide referrals for questions, complaints, and grievances regarding an enrollee’s health plan, coverage, or determination under such plan or coverage to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act;
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange; 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.

The clarification at 155.210(c)(1)(iii) reduces some of the confusion potential Navigator grant applicants have regarding their eligibility for the grants. However, a number of other outstanding questions remain. In order to ensure successful implementation of an effective Navigator program we recommend HHS make the following clarifications:

Recommendation: Provide a clear definition for a “community and consumer-focused nonprofit group.”

Recommendation: Clarify that a diverse consortium of organizations can, for purposes of eligibility for the Navigator grant, apply as a single entity and together provide the full scope of required duties listed at 155.210(e). Requiring all entities in a consortium to individually provide all of the required duties listed at 155.210(e) will unnecessarily limit the pool of applicants for Navigator grants.

2. Revision to 155.210 (d)(1), 155.210 (d)(2), and 155.210 (d)(4)

We support the revisions at 155.210 (d)(1), 155.210 (d)(2), and 155.210 (d)(4). These provisions will help ensure that Navigators provide information in a fair, accurate, and impartial manner. The proposed revisions at 155.210(d)(1) and 155.210(d)(2) prohibit a Navigator entity from being a health insurance issuer, an issuer of stop loss insurance, a subsidiary of a health insurance issuer, or a subsidiary of an issuer of stop loss insurance. The proposed revisions at 155.210(d)(4) prohibit Navigator entities from receiving any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of individuals or employers in a QHP or non-QHP. HHS should also prohibit Navigators from receiving referral fees in connection with enrollment from any individuals or entities with a financial relationship with a health insurance issuer. However, this should not preclude entities that may have a financial relationship with a health insurance issuer from being eligible to serve as a navigator, as long as the financial relationship is not based on enrollment or referrals for enrollment of individuals in a QHP or non-QHP.

Recommendation: Amend §155.215(a)(1)(i)(D) and §155.215(a)(2)(ii)(D) to read as follows: “Will not receive any consideration directly or indirectly from any health insurance issuer, any issuer of stop loss insurance, or any persons with a financial relationship with a health insurance issuer in connection with enrollment or referrals for enrollment of any individuals or employees in a QHP or non-QHP.”

Sec. 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.

1. 155.215(a) – Conflict of Interest Standards

The conflict of interest standards at 155.215(a) will help ensure that Navigators and non-Navigator Assistance Personnel provide information in a fair, accurate, and impartial manner. We believe that these standards generally strike an appropriate balance between encouraging a robust pool of Navigators and ensuring that all Navigators have the integrity, fairness, and impartiality to carry out all of their required duties appropriately. We offer several suggestions in our comments below to strengthen the proposed conflict of interest standards.

Recommendation: Enroll America supports the requirements at 155.215(a)(1)(iv) and 155.215(a)(2)(v) that potential conflicts of interest be disclosed to the exchange and to each consumer receiving application assistance. Clarify that this disclosure must occur at every encounter with a consumer and be provided in a manner that is easy-to-understand in languages commonly used by populations served by the Navigator.

Recommendation: Clarify the types of notice that will constitute meaningful disclosure. At a minimum, notices should be posted conspicuously wherever Navigators provide services, included on any website maintained by the Navigator, and provided to a consumer at the time any services are provided.

Recommendation: The notification requirements for potential conflicts of interest at 155.215(a)(1)(iv) and 155.215(a)(2)(v) only apply to consumers receiving application assistance. Clarify the reasoning as to why the notification requirements are limited to application assistance and are not required during a Navigator or non-Navigator Assistance Personnel's outreach and education activities. Potential conflict of interest disclosure requirements should apply to any situation – including outreach and education activities.

The preamble to the proposed rule also requests comments as to whether conflict of interest standards outlined at 155.215 should be applied to Certified Application Counselors (CACs). While Enroll America supports standards that will help ensure that CACs act in the best interests of consumers, we do not believe the conflict of interest standards proposed for Navigators are appropriate for CACs. If the proposed Navigator conflict of interest standards are applied to CACs, then a number of important stakeholders, like primary care associations, community health centers, and hospitals, may, in some cases, be ineligible to participate in any formalized assistance programs. Because these stakeholders are trusted sources of information for consumers and have a desire to connect the populations they reach to coverage, they merit an opportunity to be certified to provide application assistance.

Furthermore, health insurance and safety net health plans can also be a vital and trusted source of information for consumers. In our public education research that was conducted late last fall, more than one-third of our national survey panel—35 percent—identified “someone from a health insurance plan” as a key source of application and enrollment assistance.* The most important trait that people are looking for in a source of application or enrollment assistance is knowledge. They want someone who is very knowledgeable about the plan, what is and is not covered by the plan, and the costs involved. This is precisely the kind of information a health plan employee is often well-positioned to provide.

We have attached, incorporated, and reiterated the comments we submitted to HHS on February 21, 2013, with respect to Certified Application Counselors (see Appendix). Enroll America supports the formalized role of Certified Application Counselors (CACs). We believe this designation will allow entities that are not official Navigator or non-Navigator Assistance Personnel to play an important and meaningful role in connecting individuals to coverage.

Recommendation: Conflict of interest standards associated with the Certified Application Counselor (CAC) designation should allow different kinds of trusted stakeholders – like primary care associations, community health centers, safety net health plans, and hospitals – to provide “full-service” application assistance to many consumers, while at the same time protecting the best interests of the consumer.

* See “Informing Enroll America's Campaign: Findings from a National Study” available online at: http://files.www.enrollamerica.org/best-practices-institute/public-education-resources/EA_Final_Report.pdf

2. 155.215(b) – Training standards for Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210

The standards proposed at 155.215(b) will help ensure that Navigators and non-Navigator Assistance Personnel in a federally facilitated exchange, a state partnership exchange, or a federally funded non-Navigator assistance program in a state-based exchange are qualified, trained, and certified to fulfill Navigator duties. We generally support the certification and training standards at 155.215(b) for Navigators and non-Navigator Assistance Personnel and the flexibility for state-based exchanges and state partnership exchanges to create and administer their own training programs. We offer several suggestions in our comments below to strengthen the proposed standards:

Recommendation: Training and certification programs based on the standards at 155.215(b) should be made available as soon as possible so that individuals and entities interested in providing enrollment assistance and/or outreach and education activities have sufficient time to prepare for the start of open enrollment on October 1, 2013.

Recommendation: The training programs should be free of charge and made available to public – not just Navigators, non-Navigator Assistance Personnel, and Certified Application Counselors (CACs) – so that all entities and individuals who wish to provide enrollment assistance, education, or outreach services to consumers have an opportunity to become trained (regardless of whether or not they choose to become certified).

Recommendation: Release further guidance and provide an opportunity for comment on the criteria that will be used by HHS for approval of training and certification programs administered by a state-based exchange or state government agency, such as a department of insurance.

2a. 155.215(b)(1) – Certification and recertification standards

The proposed certification and recertification provisions at 155.215(b)(1) require Navigators and non-Navigator Assistance Personnel to obtain certification from an exchange and complete an HHS-approved training before carrying out any consumer assistance or Navigator functions in the exchange. We generally support these requirements and believe the continuing education requirement at (b)(1)(iv) should include regular opportunities for information sharing between exchanges, Navigators, and non-Navigator Assistance Personnel, as well as the sharing of best practices among all types of assisters. This kind of feedback has proven to play a critical role in pinpointing systemic and recurring problems and identifying opportunities for quality improvement over time.

Recommendation: Ongoing education for Navigators and non-Navigator Assistance Personnel should include routine opportunities for the exchange of information, sharing of best practices and expertise, and feedback from the field through regular conference calls, webinars, and face-to-face meetings. Certified Application Counselors should have the opportunity to participate in these ongoing education and information-sharing sessions as well.

Subsection (b)(1)(v) indicates that Navigators and non-Navigator Assistance Personnel should be prepared to serve both the individual exchange and SHOP. We believe this will limit the pool of applicants for Navigator grants, and we urge you to reconsider this provision.

Recommendation: Strike the provision at §155.215(b)(1)(v) and replace with “Be prepared to help any individual who presents him or herself for assistance with all required duties as described at § 155.210(e).”

2b. 155.215(b)(2) – Training module content standards

The range of training topics listed in §155.215(b)(2)(i) – (xv) largely incorporates the broad range topics that are needed to ensure that Navigators and other assisters have the training and skills necessary to provide reliable, effective assistance to consumers. We urge HHS to work with knowledgeable stakeholders to review and comment on more detailed training materials in order to ensure that all the critical content areas and best practices are incorporated.

Recommendation: Provide an opportunity for stakeholders to review and comment on detailed training materials in order to ensure that the most comprehensive content and best practices are incorporated.

We support comments submitted by the Center for Children and Families (CCF) at Georgetown University’s Health Policy Institute with respect to additions and clarifications to specific training content areas listed at § 155.215(b)(2)(i) – (xv). As CCF outlines in greater detail in their comments, HHS can take several steps to improve training standards for Navigators and other assisters:

- Ensure that the training incorporates **how to make effective referrals** to other consumer assistance programs for grievances and complaints.
- Include **state-specific content** in trainings so that Navigators can fulfill their duty to assist with all coverage options.
- Training on tax implications of enrollment decisions should enable Navigators and other assisters to articulate **how tax credits are reconciled** through the federal tax filing process for the applicable coverage year.
- Training should include detailed information on **who is subject to the individual responsibility requirement**, as well as who may be exempt and the process for securing an exemption.
- Navigators and assisters should be well versed in the common concerns and anxiety faced by mixed immigration families and trained to provide reassurances to **help mixed immigration status families overcome barriers to coverage**.
- Provide Navigators and other assisters with fact sheets or guidance with detailed **information about other public assistance programs** (SNAP, WIC, LIHEAP, TANF, etc.) and safety net providers.
- The training should cover the availability of **tax credits for small businesses** that provide health insurance to their employees.
- Ensure that training includes a thorough understanding of the implications of **pediatric dental benefits available through stand-alone plans**.

3. 155.215(c) – Providing Culturally and Linguistically Appropriate Services

We strongly support the inclusion of the culturally and linguistically appropriate services standards in the proposed rule and their regulatory application to Navigators and non-Navigators. These standards have long been helpful and exemplary guidelines in other health care contexts, and this inclusion in federal regulation elevates them by giving them the force and effect of law, making the standards enforceable for the first time. We offer several suggestions in our comments below to strengthen the proposed standards.

As recognized by the Enhanced CLAS (Culturally and Linguistically Appropriate Services) Standards recently released by the HHS and its Office of Minority Health (OMH), “culture” includes more than race, ethnicity, and language, but also religious, spiritual, biological, geographical, and sociological characteristics. OMH’s “Blueprint” for advancing and sustaining culturally and linguistically appropriate services defines culture to incorporate other factors such as age, gender identity, physical ability or limitations, sex, sexual orientation, and socioeconomic status.[†] Thus, the regulatory text should include a broader definition of culture or a direct cross-reference to the new CLAS Standards.

Given the broad implications of culture, we would suggest HHS consider dividing (c) into two subparts – one focusing on cultural issues and one specific to language issues. Subsections (1), (2), (5), and (6) would apply more broadly than language and also include people with disabilities. Subsections (3) & (4) are more tailored to language access. It may also be helpful to include the disability standards as a subpart of this same section to demonstrate that disability is a part of culturally and linguistically appropriate services as well.

Recommendation: Include a definition of culture as it is outlined in the Enhanced CLAS (Culturally and Linguistically Appropriate Services) Standards recently released by the HHS and its Office of Minority Health (OMH). To meet this new CLAS Standard, the definition should include a direct cross-reference to the new CLAS Standards and encompass age, disability, sex, sexual orientation, and gender identity.

Regarding 155.215(c)(3) we have a number of suggestions to ensure that the intent of the provision is clear.

First, we are concerned that the regulation requires provision of oral interpretation and written translation “where necessary for effective communication.” These services should be provided **when requested** by a consumer. A Navigator should not be required to determine if the services are “necessary.” The current language could leave “when necessary” open to the Navigator’s determination.

Recommendation: Amend §155.215(c)(3) to read as follows: “Provide consumers with information and assistance in the consumer’s preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when ~~necessary~~ **requested by the consumer** to ensure meaningful access.”

[†] Office of Minority Health, *National Standards for CLAS in Health and Health Care: A Blueprint for Advancing and Sustaining CLAS Policy and Practice*, at 28-29, available at <https://www.thinkculturalhealth.hhs.gov/Content/clas.asp>.

Second, we have serious concerns about allowing a consumer's family or friends to provide translation or interpretation services if other interpreter services are offered and declined. The application process is complex and requires accurate information to ensure correct eligibility determinations. Interpreting requires specialized skills and abilities that must be learned; being bilingual is insufficient.[‡] Further, OMH's Enhanced CLAS Standards also reiterate that "the use of untrained individuals and/or minors as interpreters should be avoided."

Individuals who choose to have their family members or friends serve as advocates during the eligibility process should be encouraged to do so. But to avoid mistakes and ensure compliance with federal law, assisters should always utilize competent interpreters and credible translations. If a consumer insists on using a family member or friend to interpret, the Navigator should have a competent interpreter available to monitor the interaction and intervene if a family member or friend makes errors. The regulation should also specifically prohibit the use of children as interpreters. Navigators should also provide written materials that have been appropriately translated into the consumer's preferred language whenever possible.

We would suggest that HHS implement an effective and cost-efficient way to provide access to interpreter services for Navigators. HHS could enter into contracts with language services providers and allow Navigators access. HHS should also provide the application, application instructions, and outreach materials in multiple languages (both for consumers to access directly, and for Navigators to use when assisting consumers).

Recommendation: In § 155.215(c)(3), strike the following text: ~~Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services.~~

4. 155.215 (d) – Standards ensuring access by persons with disabilities

We strongly support the inclusion of these standards in the proposed rule and their regulatory application to Navigators and non-Navigators. We recommend a couple of changes to strengthen this provision and to ensure that people with disabilities will have adequate access to Navigator and non-Navigator personnel services.

We are concerned that the regulation requires provision of auxiliary aids and services "where necessary for effective communication." These services should be provided when requested by a consumer and the Navigator should not have discretion to determine if the services are "necessary." The current language could leave "when necessary" open to the assister's determination and thus HHS should clarify it. We recommend changing this language to "when requested by the consumer to ensure effective communication."

Recommendation: Amend §155.215(d)(2) to read as follows: "Provide auxiliary aids and services for individuals with disabilities, at no cost, ~~where necessary~~ *when requested by the consumer* for effective communication. . ."

[‡] See National Health Law Program, *What's in a Word: A Guide to Understanding Interpreting and Translation in Health Care*, available at http://www.healthlaw.org/index.php?option=com_content&view=article&id=240%3Alanguage-access-publications&catid=45&Itemid=196.

We further suggest that HHS provide Navigators with information about commonly needed auxiliary aids and services, how to access/purchase them, how to use them, and how to identify those who may need them. Many Navigators will not have direct experience working with auxiliary aids and services and will need this information and training to effectively assist people with disabilities.

The proposed regulation only permits assistance from a *legally* authorized representative. We urge HHS to delete “legally”. Many individuals with disabilities will have an authorized representative who was not legally determined. Indeed, the draft single, streamlined application permits an individual to select an authorized representative to assist with the application. This same individual (or another authorized by the applicant) should be able to assist someone with a disability in making informed decisions without having to obtain judicial consent. Otherwise, it would render the ability to designate an authorized representative on the application moot since the individual with a disability would have to also obtain a legally authorized representative if seeking information from an assister.

Similarly, removal of the term “legally” would make this proposed rule consistent with the way HHS described “authorized representative” in its earlier proposed rule (CMS-2334-P) § 435.923(a) and § 155.227(a) requiring the Medicaid agency and the exchange to permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual’s application and renewal of eligibility and other ongoing communications with the agency. It is critically important that the individual be able to select a trusted friend, family member or other person they choose, rather than having to rely on legal guardians or other legal arrangements.

Recommendation: Amend § 155.215(d)(4) to read as follows: “Ensure that ~~legally~~ authorized representatives are permitted to assist an individual with a disability to make informed decisions;”

5. 155.215(e) – Monitoring

We strongly support the monitoring requirement. Monitoring of Navigators and other assisters will be key to ensure that the best interests of consumers are well served and that Navigators and assisters are effective and efficient. HHS should make the results of any compliance monitoring available to the public. Proposed performance indicators could include:

- Number and type of outreach activities; estimated number of consumers reached;
- Number and type of public education activities; estimated number of consumers reached;
- Analysis of the outreach partnerships that Navigators and assisters regularly engage;
- Number of applications facilitated; number of applicants enrolled in QHPs, Medicaid, or CHIP (or referred to Medicaid/CHIP);
- The rate of completed enrollments relative to applicants assisted (assuming the marketplace and Medicaid agencies in a given state are prepared to provide this information to the Navigator and non-Navigator Assistance Personnel);
- The demographic breakdown of facilitated applications and enrollments, particularly the targeted populations;
- The proportion of applications submitted online;
- Number of referrals to social services programs such as the Supplemental Nutrition Assistance Program (SNAP) or the Women, Infants, and Children (WIC) program;

- Data from customer satisfaction surveys; post-enrollment surveys should be deployed to seek consumer feedback on their enrollment experience;
- Enrollment patterns (to ensure consumers are not being steered to one plan or another).

Thank you for this opportunity to offer our comments on this regulation, which brings the nation closer to ensuring that the eligibility and enrollment processes for health coverage are as simple and streamlined as possible. We look forward to working with you as the policies in the proposed regulation are implemented, and we welcome any questions or further consultation you wish to have with us. Please direct any questions to Jennifer Sullivan at jsullivan@enrollamerica.org or Deepak Madala at dmadala@enrollamerica.org.

Appendix: Comments submitted to CMS in February 2013 regarding Certified Application Counselors

155.225	Certified application counselors
435.908	Assistance with application and renewal
457.340	Application for and enrollment in CHIP

These sections codify existing practices with respect to Medicaid and CHIP application assisters, and create a new designation of assisters that, in addition to Navigator programs, separate In-Person Assister programs, and informal assistance, may help consumers apply for coverage through an exchange. We recognize that no matter how simplified the application process is, it will be challenging for many consumers. Enroll America’s own research found that people describe feeling “confused” “overwhelmed” “worried” and “helpless” about the process of getting health insurance. Three out of four of those surveyed would like personalized assistance with the application and enrollment process.[§]

Given this need, we are encouraged by the formalized role of Certified Application Counselors, and believe this designation will allow entities that are not official Navigator Entities or In-Person Assistance Programs to play an important and meaningful role in connecting individuals to coverage. This seems especially important for stakeholders like primary care associations, community health centers, and hospitals, which may in some cases be ineligible to participate in more formalized assistance programs, but who nonetheless are trusted sources of information for consumers, and have a desire to connect the populations they reach to coverage. Furthermore, health plans can also be a vital and trusted source of information for consumers. In our public education research conducted late last fall, over one-third of our national survey panel—35 percent—identified “someone from a health insurance plan” as a key source of application and enrollment assistance.^{**} The most important trait people are looking for in a source of application or enrollment assistance is knowledge. They want someone who is very knowledgeable about the plan, what is covered and not covered by the plan, and the costs involved; this is precisely the kind of information a health plan employee is often well-positioned to provide.

The CAC designation will allow all these different kinds of entities to provide “full-service” application assistance to many consumers, while also protecting the consumer’s privacy, data security, and confidentiality.

Responsibility for Certification

Paragraph (c)(1) of Section 435.908 mentions that CACs must come from State-designated organizations. One could imagine circumstances when an entity (e.g. a community-based organization or a health provider) has an interest in serving as a CAC, while the State has an interest in managing its budget and overall enrollment in Medicaid. In other words, interests differ, and the State may not be inclined to allow the entity to serve as a CAC. Section 155.225(a) implies that such an entity could, as an alternative, apply to be certified as a CAC by the exchange instead. Given this implied reciprocity, what is the purpose of allowing the Medicaid agency the choice of whether or not to certify an entity, while requiring it of the exchange?

[§] A national survey commissioned by Enroll America and conducted by Lake Research Partners in October 2012 found that 75 percent of those surveyed wanted in-person assistance to help apply for and enroll in health coverage.

^{**} See “Informing Enroll America’s Campaign: Findings from a National Study” available online at: http://files.www.enrollamerica.org/best-practices-institute/public-education-resources/EA_Final_Report.pdf

Recommendation: Require both Medicaid agencies and exchanges to certify CACs, or clarify why Medicaid agencies have the choice of whether or not to certify CACs, while exchanges must do so.

Also, while the preamble to section 435.908 states that CACs would not need to go through two different certification processes, the regulation text does not make this clear. The preamble to 155.225 also says that states may develop a single set of training materials for Navigators, In-Person Assistants, and CACs, although this is not clear in the regulation text. Aligning these trainings will reduce administrative burdens for exchanges and Medicaid agencies, and will ensure consumers get consistent information and referrals no matter where or from whom they seek assistance.

Recommendation: Clarify in 435.908 that Medicaid agencies must grant reciprocity to CACs certified by an exchange, and in 155.225, that exchanges must grant reciprocity to CACs certified by a Medicaid agency.

Recommendation: Clarify, with a cross-reference to 155.210(b)(2), that states may use a unified training program for its Navigator (or other enrollment assistance) program and its CAC program.

Certification Requirements and CAC Responsibilities

Section 435.908 paragraph (c)(1) lays out the following requirements for CACs certified by the Medicaid agency, and Section 155.225(b) describes the certification requirements for CACs certified by an exchange.

435.908(c)(1) Requirements	155.225(b) Requirements
<ul style="list-style-type: none"> • Authorized and registered to provide application and renewal assistance 	<ul style="list-style-type: none"> • Registration with the exchange
<ul style="list-style-type: none"> • Trained in eligibility and benefits rules and regulations for all QHP options and insurance affordability programs available in the state 	<ul style="list-style-type: none"> • Trained about insurance affordability programs and QHP options, eligibility, and benefits rules and regulations
<ul style="list-style-type: none"> • Trained in and subject to the safeguarding and confidentiality of information and conflict of interest regulations 	<ul style="list-style-type: none"> • Compliance with exchange privacy and security standards
	<ul style="list-style-type: none"> • Disclosure of any relationships the CAC has with QHPs, insurance affordability programs, or other potential conflicts of interest
	<ul style="list-style-type: none"> • Compliance with applicable state law regarding application counselors, including conflicts of interest
	<ul style="list-style-type: none"> • Agreement to act in the applicant’s best interest
	<ul style="list-style-type: none"> • Provision of reasonable accommodations for people with disabilities
	<ul style="list-style-type: none"> • Participation in an agreement with the exchange to comply with these requirements

As the simple table above shows, the requirements differ depending on which agency certifies the counselor. We believe that the exchange requirements around conflicts of interest, accommodations for people with disabilities, and acting in the consumer’s best interest should also apply on the Medicaid side. We also believe that the Medicaid requirements to provide assistance not only with applications but with renewals should also apply on the exchange side. Finally, neither certification program requires provision of information in a culturally and linguistically appropriate manner appropriate to the needs of the population being served, including people with limited English proficiency (although this is mentioned in the preamble to 435.908). These inconsistencies and omissions will create confusion for the entities seeking to serve as CACs, and they may undermine the overall efficacy of CACs’ efforts.

Recommendation: Align CAC certification requirements such that all CACs must be trained in providing application and renewal services, provide reasonable accommodations for people with disabilities, provide information that is culturally and linguistically appropriate for the population being served (including people with limited English proficiency), and agree to act in the applicant/consumer’s best interest.

Section 435.908 paragraph (c)(2) describes CAC assistance for CACs certified by a Medicaid agency, and Section 155.225(a) describes (essentially) the duties CACs certified by an exchange are to provide.

435.908(c)(2) – Meaning of “providing assistance”	155.225(a) – CAC duties
<ul style="list-style-type: none"> • Providing information about insurance affordability programs and coverage options 	<ul style="list-style-type: none"> • Provide information about insurance affordability programs and coverage options
<ul style="list-style-type: none"> • Helping consumers complete an application or renewal 	<ul style="list-style-type: none"> • Assist individuals and employees to apply for coverage in a QHP through the exchange and for insurance affordability programs
<ul style="list-style-type: none"> • Gathering required documentation 	<ul style="list-style-type: none"> • Help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs
<ul style="list-style-type: none"> • Submitting applications and renewals 	
<ul style="list-style-type: none"> • Interacting with the Medicaid agency on the status of applications and renewals 	
<ul style="list-style-type: none"> • Assisting consumers with responses to the Medicaid agency 	
<ul style="list-style-type: none"> • Managing the case between the determination and renewal 	

Once again, there are relatively significant differences between what CACs certified by a Medicaid agency can (or must?) do, and what CACs certified by an exchange must do. Individuals will seek help from CACs without knowledge of which program they will ultimately be found eligible for. Many families and households applying for coverage will also be split between two or more different insurance affordability programs. For these reasons, it is important to better align CAC duties, regardless of certifying agency, so that consumers can get the help they need and so that CACs can ably assist any consumer seeking their help.

Recommendation: Align CAC duties listed at 435.908(c)(2) and 155.255.(a) so that all CACs can provide consumers assistance with application, enrollment, and renewal in all insurance affordability programs. CACs should also be required to be trained in providing referrals to other assistance programs that may be able to provide more in-depth assistance, such as Navigator programs, Consumer Assistance Programs, and In-Person Assistance Programs (where applicable).

We also note that the preamble for this section indicates CACs would not “receive notices or other communications” as authorized representatives may do. While CACs should not receive notices on behalf or in lieu of applicants, we believe it is helpful to allow applicants and enrollees to opt for their designated CAC to receive copies of notices or to authorize their designated CAC to access electronic notices in the client account. This is alluded to in 435.908(c)(2), in that part of the assistance CACs provide includes “interacting with the agency on the status of such applications and renewals” and “assisting the individual with responding to any requests from the agency,” but it would be helpful if this were clarified as follows.

Recommendation: In 435.908(c)(2), before “interacting with the agency on the status of such applications and renewals,” insert “accessing electronic notices in an individual’s electronic account, if the applicant or enrollee so authorizes.”

Web Portal

For CACs certified by a Medicaid agency, section 435.908 paragraph (3)(i) requires the state to establish a designated web portal that includes a secure way of ensuring that CACs only perform the activities for which they are certified. This will allow states to monitor CACs for quality assurance, and—it seems—may also allow capacity for the CAC to easily access useful information about all the individuals they have assisted, such as application and enrollment status, anticipated renewal date, etc. However, there is no parallel requirement for CACs certified by an exchange. Such a requirement would make sense for exchange-certified CACs for the same reasons it makes sense for Medicaid-certified CACs. Exchange-certified CACs will likely also be helping some consumers connect with Medicaid coverage, so the ability for all CACs to use the same portal may be the most streamlined and efficient way to monitor CAC performance and give CACs access to the information they need about their clients’ cases.

Recommendation: Require that all CACs use a designated web portal (possibly the same web portal Navigators and In-Person Assisters will use) to perform their duties, regardless of the agency that certifies the CAC.

Prohibition from Charging Applicants

We strongly support the provision at 435.908(c)(4) which prohibits CACs from imposing charges on applicants or beneficiaries. However, we believe that CACs provide (or will provide) a valuable service to Medicaid and CHIP agencies and exchanges, and states should not be restricted from providing these entities with resources to support their work.

Recommendation: It would be extremely helpful for HHS to provide states with sub-regulatory guidance on the availability of federal funding to help support payments to CACs. In particular, information about how Medicaid administrative claiming can be used to match community-based investments in application assistance would be very helpful.