



May 6, 2013

Mr. Gary Cohen
Deputy Administrator & Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Re: **Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel**

Dear Director Cohen:

The Regulatory Education and Action for Patients (REAP) Council would like to thank you for the opportunity to comment on the Proposed Rule entitled “Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigator and Non-Navigator Assistance Personnel ” (the Proposed Rule), which was published in the *Federal Register* on April 5, 2013.¹

REAP is an umbrella coalition comprised of patient advocacy groups whose goal is to strengthen current relationships and build new relationships with government agencies that have the responsibility for implementing provisions of the Affordable Care Act (ACA),² as amended, and to ensure that implementation of the ACA’s provisions is patient-centric. The unique experience and expertise of each REAP member organization allows REAP to provide the patient voice in a cross-disciplinary manner.

REAP’s mission is to communicate issues to Federal and State regulatory bodies, Congress, health care insurers and others to regulate, develop, manage and/or improve health delivery, coverage, cost, and availability of services to the United States population. REAP will, through its member entities, contribute information and perspectives regarding important health care decisions to a degree that has not been possible heretofore by health care advocacy groups in the regulatory arena.

Both REAP and its member organizations are deeply committed to expansion of access to affordable health insurance for all Americans under ACA. We are proponents of state and Federally-facilitated health insurance Exchanges, as mandated by ACA, and we advocate for the development of various forms of health coverage, including the expansion of state Medicaid and Children’s Health Insurance

¹ 78 Fed. Reg. 20,581 (Apr. 5, 2013).

² Pub. L. 111-148.

Programs (CHIP) programs, Basic Health Plans (BHPs) and the development of consumer-friendly Exchanges in which Qualified Health Plans (QHPs) will be offered. We are also ardent supporters of the Navigator program and the availability of other non-Navigator educational resources to educate consumers using different techniques and at different educational levels on health coverage options available via Exchanges and otherwise. We applaud the Centers for Medicare & Medicaid Services (CMS) for proposing regulations aimed at ensuring that Navigators and other non-Navigator assistance personnel serve as competent, impartial resources dedicated to educating consumers so that they can make intelligent, pragmatic choices regarding their health coverage. We have learned from our experience with the Medicare Part D program that unbiased educational assistance can result in increased participation in a voluntary health program. We sincerely hope that the Navigator program as well as the availability of non-Navigator assistance personnel will help facilitate enrollment in QHPs and identify previously uninsured individuals who qualify for Medicaid, CHIP or other assistance programs.

We have limited our comments to suggestions that we believe will help the Center for Consumer Information and Insurance Oversight (CCIIO) fine-tune the Proposed Rule to ensure that Navigators and non-Navigator assistance personnel are the patient-oriented educational resources that both Congress and CMS clearly intend them to be.

Minimum Qualifications and Standards for Navigators and Non-Navigator Assistance Personnel

In the Proposed Rule, CMS has set forth minimum standards for Navigators operating in states with Federally-facilitated Exchanges and for non-Navigator assistance personnel operating in states with Federally-facilitated Exchanges but has stopped short of mandating the same minimum standards for Navigators in states with state-run Exchanges or for certified application counselors or other non-Navigator assistance personnel. REAP appreciates that CMS is sensitive to the bounds of its authority to regulate assistance providers associated with state-run Exchanges when it is not providing grant funding to such providers. However, it appears consistent for CMS to set minimum standards for all Navigator and non-Navigator assistance personnel, regardless of whether they are operating in a state with a state-run or Federally-facilitated Exchange. This approach would still permit states to adopt more stringent standards than those set forth by CMS. In addition, this approach is consistent with the approach CMS took when it established standards for the Exchanges themselves, even if state-run. Consequently, we recommend that CMS extend the designated Navigator qualifications such as the training and conflict-of-interest requirements to all Navigator and non-Navigator assistance personnel (including certified application counselors) whether operating in states with state-run or Federally-facilitated Exchanges.

We previously commended CMS on its proposal that Navigators be free of conflict of interests, and REAP members were pleased to see that CMS extended the conflict-of-interest prohibition to non-Navigator assistance personnel. As stated above, we recommend that the conflict-of-interest prohibition be extended to Navigators providing outreach and education in states with state-run Exchanges and to all non-Navigator personnel, including certified application counselors. We were also pleased to see CMS expand the conflict-of-interest prohibition to include remunerated relationships with stop-loss insurance carriers. On the other hand, REAP members remain troubled that under the Proposed Rule CMS would permit Navigators and non-Navigator assistance personnel to receive commission or other compensation related to enrollments in insurance plans or programs, other than health coverage, such as long-term care insurance or life insurance. REAP members believe that Navigator and non-Navigator assistance personnel should be true educational resources, not brokers or sales agents. Even if Navigators or non-Navigator assistance personnel cannot sell health insurance, the fact that they can



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sell other types of insurance is a clear conflict of interest. Entities may seek to become Navigators or non-Navigator assistants with the wrong motivations—not to teach and educate consumers about health coverage options but rather to utilize the position of trust and confidence to sell other insurance products, such as long-term care or life insurance. A Navigator could also promote a health insurance plan that is offered by an organization that provides compensation to that individual for other forms of insurance. As such, REAP recommends that CMS prohibit Navigators and non-Navigator assistants from selling any type of insurance. At a minimum, CMS should adopt “scope of appointment” rules similar to those employed in the Medicare Part D context³ such that Navigators and non-Navigator assistance personnel cannot discuss other types of insurance with consumers while fulfilling educational duties, unless specifically requested by such consumers.

Effective Oversight

REAP members applaud CMS for its commitment to monitoring Navigator and non-Navigator compliance with the ACA and regulatory requirements in states with Federally-facilitated Exchanges. We recommend that CMS require that states exercise the same or similar monitoring as CMS with respect to Navigators and non-Navigator assistants operating in states with state-run Exchanges. We also recommend that CMS, states and Exchanges regularly communicate and discuss findings learned via monitoring activities and that both best practices and potentially problematic practices be shared by and among the various educational assistants, whether Navigators, certified application counselors or otherwise. We also recommend that CMS develop and implement a hotline and web-based feedback form where consumers can submit complaints and provide positive feedback regarding experiences and encounters with Navigators and non-Navigator assistance personnel.

Appropriate Educational Materials

We commend CMS for recognizing that Navigator and non-Navigator assistance personnel will be providing educational services to a culturally and linguistically diverse consumer population. We applaud CMS for mandating that Navigators be able to provide information in a culturally and linguistically appropriate manner, including to individuals with limited English proficiency. We recommend that CMS extend this requirement to non-Navigator assistance personnel and provide more detail as to how such services are to be provided. For instance, REAP recommends that Navigator and non-Navigator assistant call centers have representatives proficient in languages other than English which are commonly spoken in a given state, such that the Navigator or non-Navigator assistant must be equipped to assist individuals with limited English proficiency. In addition, we recommend that CMS require, as it does for Medicare Part D plans, that educational materials be readily available in any language that is a primary language of at least 5% of the population in a given state.⁴

³ See Chapter 2 of the Medicare Prescription Drug Benefit Manual Section 70.10.3 discussing limitations related to the “scope of appointment” with a Medicare beneficiary.

⁴ See Chapter 2 of the Medicare Prescription Drug Benefit Manual Section 30.7.

Furthermore, as we have previously articulated to CMS, we expect that all Navigator and non-Navigator assistant educational materials -- whether in the form of a website, call center script or written hand-out -- be fair, accurate, impartial and presented in plain English at an acceptable reading level. We recommend that CMS provide additional requirements for acceptable educational materials, including mandating that such materials be drafted and presented at a sixth-grade reading level. In addition, we recommend CMS adopt a "file-and-use" style approval process, similar to that utilized with Medicare Part D marketing materials. CMS could exercise oversight for Navigator and non-Navigator assistant materials utilized in states with Federally-facilitated Exchanges and could impose similar oversight requirements in states with state-run Exchanges. Such review and oversight of educational materials developed and utilized by Navigators and non-Navigator assistance personnel is critical to ensuring that such materials are accurate, impartial and educational in nature and do not steer consumers toward one or more QHPs over other health coverage options which might be better suited for the individual consumers.

Again, we appreciate the opportunity to share our perspective on the Proposed Rule. REAP members stand ready to answer questions and provide any additional information about the patient groups for whom we advocate.

Sincerely,

Alpha-1 Association
Alpha-1 Foundation
American Brain Tumor Association
American Kidney Fund
Arthritis Foundation
Bladder Cancer Advocacy Network
C-Change
Cancer Support Community
Colon Cancer Alliance
COPD Foundation
Cutaneous Lymphoma Foundation
Friends of Cancer Research
Global Healthy Living Foundation
Hypertrophic Cardiomyopathy Association
International Myeloma Foundation
Kidney Cancer Association
Leukemia & Lymphoma Society
LIVESTRONG Foundation
National Alliance on Mental Illness
National Osteoporosis Foundation
National Patient Advocate Foundation
National Psoriasis Foundation



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Ovarian Cancer National Alliance

Prevent Cancer Foundation

Sisters Network

Susan G. Komen for the Cure

U.S. Pain Foundation

Us TOO International Prostate Cancer Education and Support Network

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