

VIA ELECTRONIC SUBMISSION

May 6, 2013

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9955-P
P.O. Box 8010
Baltimore, MD 21244-1850

RE: **CMS-9955-P**
Comments on CMS' Proposed Rule on the Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel

Dear Sir/Madam:

The undersigned Texas organizations appreciate the opportunity to comment on the proposed regulations regarding Navigators and non-Navigator personnel conduct and duties under the Affordable Care Act. We applaud the Department of Health and Human Services and Centers for Medicare & Medicaid Services for making strides to protect consumers and working to implement an outreach and enrollment component of the Affordable Care Act (ACA). Your continuing work in supporting strong Navigator programs will help ensure millions of uninsured Texans are able to take advantage of expanded health insurance coverage options. We are pleased that these regulations define standards for Navigator programs, as they are a critical step toward ensuring these programs are run effectively.

The **Center for Public Policy Priorities** is a nonpartisan, nonprofit 501(c)(3) policy institute established in 1985 and committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. Improving access to health care for Texans has been at the core of our mission and activities since our founding. We have worked closely with statewide advocacy networks, state decision-makers, and our state Medicaid and CHIP programs to improve access to care for Texans and to seek solutions to Texas' severe uninsured problem.

The center is joined in these comments by **Caritas of Austin, Children's Defense Fund-Texas, Children's Hospital Association of Texas, Disability Rights Texas, Methodist Healthcare Ministries, One Voice Central Texas, Proyecto Juan Diego, Seton Healthcare Family, and Texans Care for Children.**

Caritas of Austin has been fighting poverty, hunger, and homelessness since 1964. Caritas provides a service continuum for those experiencing poverty that begins with a safety net and links them to resources to achieve self-sufficiency.

The **Children's Defense Fund** provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, drop out of school, get into trouble or suffer family breakdown. CDF began in 1973 and

is a private, nonprofit organization supported by foundation and corporate grants and individual donations.

The **Children's Hospital Association of Texas** (CHAT) is a non-profit association whose mission is to support the development of an effective, comprehensive, high-quality and appropriately funded children's healthcare delivery system in Texas. Since 1989, CHAT has worked to advance its goals and public policy objectives in cooperation with other trade associations, advocacy groups, state agencies and the Texas Legislature. CHAT represents eight not-for-profit children's hospitals in Texas, who are committed to providing specialized and comprehensive medical services for all children in need.

Disability Rights Texas' mission is to help people with disabilities understand and exercise their rights under the law, ensuring their full and equal participation in society. Access to health care is a critical component for full and equal participation in society, and as such it is a high priority for our agency.

Methodist Healthcare Ministries (MHM) is a private, faith-based, not-for-profit organization dedicated to providing medical, dental and health-related human services to low-income families and the uninsured in South Texas. The mission of the organization is "Serving Humanity to Honor God" by improving the physical, mental and spiritual health of those least served in the Southwest Texas Conference area of The United Methodist Church. MHM is one-half owner of the Methodist Healthcare System - the largest healthcare system in South Texas.

Established in 1983, **One Voice Central Texas** is a network of 77 community-based health and human service organizations representing a broad spectrum of critical and essential services in our community. The mission of One Voice Central Texas is to convey the human service needs of the Austin area community to policy makers and the public and to support member organizations in meeting these needs.

The mission of **Proyecto Juan Diego** is to provide education and formation for the community, especially in the health and social service areas and personal and family development, within a targeted area in Brownsville, Texas, including Cameron Park and surrounding colonias.

The **Seton Healthcare Family's** mission inspires us to care for and improve the health of those we serve with a special concern for the poor and the vulnerable.

For the last twenty-five years, **Texans Care for Children** has served as the state's leading multi-issue child advocacy organization and now has a membership network of more than 240 organizations and individuals across Texas that build support for changes at the state level.

All of our organizations support the primary goal of the ACA - to expand access to affordable health coverage to millions of currently uninsured individuals. Because of our worst-in-the-nation uninsured rate, Texas likely stands to gain more from the ACA in terms of newly covered individuals than any other state.

There are a few specific areas on which we would like to comment to support access to high quality health care. In addition, we would also like to highlight the interaction between

these proposed rules and proposed legislation to create state-level Navigator standards in Texas.

§155.210 Navigator Program Standards

We are supportive of the clear indication that a state law that imposes any licensing, certification or training standards upon Navigators that prevent the provisions in Title I of the Affordable Care Act is pre-empted. If Navigator programs are to be effective in helping to enroll people in coverage, it is very important that states do not implement legislation that has the potential to hinder the delivery of the full scope of Navigator duties.

Two bills that will create state standards for Navigators, House Bill 459 and Senate Bill 1795, are currently moving through the Texas Legislature. In general, the bills authorize a contingency system of rules, registration, and training at the state level, to be set up only if the Texas Department of Insurance determines that the federal system is not adequate to ensure Navigators can meet all required standards and qualifications and only after a good faith effort on the part of the state to work with the U.S. Department of Health and Human Services to improve or ensure compliance standards. The bills contain the following standards or qualifications that exceed the proposed federal rule, but generally appear unlikely to prevent Navigators from performing their duties:

Navigators cannot:

- have had a professional license suspended or revoked;
- have had disciplinary action taken against them by an insurance or financial regulator;
- have been convicted of a felony;
- indicate or suggest professional superiority in ads or other materials;
- use certain phrases in their materials including insurance agent, insurance advisor, insurance consultant, or insurance counselor;
- provide information on insurance products not offered through the exchange; and
- accept any compensation that is wholly or partly depending on whether a person enrolls in coverage.

We believe that several of the state requirements that exceed proposed federal requirements are generally good consumer protections. However, we are concerned that potentially having two different regulators and a parallel state registration and training system, if triggered, could discourage Navigator applicants, create additional administrative hurdles, and/or divert limited resources from consumer assistance.

To prepare Navigators in Texas to be compliant with state law while at the same time minimizing both unnecessary expenses for Navigators and the hoops they must jump through, we recommend HHS develop, or allow states to develop training modules for state Navigator standards and qualifications that could be incorporated into the FFE web-based training and certification system outlined in §155.215 (b). We further recommend that the attestation and plan related to conflicts of interest outlined in §155.215 (a)(1)(i) and (ii) or Navigator grant contracts/terms and conditions incorporate the ability of applicants to attest to state-level conflict-of-interest and qualification requirements (such as no professional license revocations and limitations on certain phrases in marketing materials).

We believe that if HHS will implement these recommendations through rule, subregulatory guidance, or grant contracts and periodically share a list of Navigator individuals certified in Texas with their associated Navigator organizations with the Texas Department of Insurance, we can avoid any unnecessary parallel state registration, training, and/or certification systems which could divert resources from consumer assistance.

Recommendation: Develop or allow training modules for state-specific standards and qualifications within the FFE training and certification to streamline administration and ensure Navigators can focus as many resources as possible on assistance.

Recommendation: Ensure that through the attestation and plan related to conflicts of interest in §155.215 (a)(1) or grant contracts and administration, Navigators can attest to or otherwise demonstrate compliance with state standards and qualifications and HHS will communicate such information to state regulators, especially for states like Texas that will only set up a state Navigator registration system if the federal one cannot ensure requirements are met.

Although we feel relatively confident that the legislation currently moving in Texas will not prevent a Navigator from performing all federally required functions, the legislation could still change or legislation in future years could seek to impede the role of Navigators. We urge HHS to reassure prospective Navigators that the agency will monitor state requirements and intervene when necessary so Navigators are not caught in the middle of any potential conflict between federal and state standards.

Recommendation: Assure prospective Navigator applicants and actively monitor, and intervene as necessary, when state requirements interfere with Navigators' ability to fulfill all of their legal responsibilities.

§155.215 (a) Conflict of Interest Standards

Ensuring that Navigators can provide unbiased information is an essential consumer protection. We support the rule's addition that Navigators cannot be a stop loss insurer or receive compensation from stop loss insurers. We also support the clarification that individuals receiving "trailer" commissions cannot act as Navigators.

We strongly recommend that the final rule prohibit Navigators from accepting any referral fees from insurance brokers and agents. We greatly appreciate the clarification in the proposed rule that the role of navigators includes providing assistance through the entire eligibility and enrollment process, including facilitating plan selection. Receiving consideration or compensation from insurance brokers and agents creates a conflict of interest that could provide an incentive to make unnecessary handoffs that would interrupt and delay the enrollment process

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

We support the rule's requirement that Navigator grant applicants submit to the Exchange a written attestation of compliance with the conflict of interest standards and a written plan to remain conflict-free. We believe these regulations maintain a balance between ensuring integrity and impartiality of Navigators while not imposing regulations

§155.215 (b) Training Standards for Navigators

We generally support the proposed rule's training, certification, and annual re-certification requirements. We recommend that continuing education should include routine opportunities for the exchange of information between the FFE and Navigators and among Navigators to identify and share best practices, collect feedback from the field, and identify systemic and recurring issues.

§155.215 (b)(1)(v). We have some concerns about the proposal to require Navigators to be prepared to serve both the individual and SHOP (small employer) exchanges. While we firmly believe that through the awarding of grants, HHS should seek to ensure that Navigators exist that will serve both families and small businesses, we think requiring every Navigator applicant to meet that standard will limit the pool of applicants. It is possible that the community organizations with the strongest connections to and most trust among uninsured and low-income individuals do not have strong connections to small business, and vice versa.

Recommendation: Allow Navigators to choose to serve only one exchange, and at the same time, ensure that Navigator resources are available to assist eligible employers in the SHOP as well as people in the individual exchange throughout each state. Ensure that Navigators who only assist with one of the Exchanges will be expected and trained to make effective referrals to other Navigators when necessary.

§155.215(b)(2)(i) describes the type of QHP information that will be included in the training, including rights and processes for appeals and grievances. One core function of Navigators is to refer consumers with complaints or grievances to a health insurance consumers assistance program (CAP) or other state agency. Texas did not apply for the second round of CAP funding and no longer has a robust CAP.

Recommendation: Ensure that training incorporates how to make an effective referral to a state Department of Insurance or other state agency, and that it provides resources for Navigators to make other relevant referrals, especially if a robust CAP does not exist, for example to Legal Aid organizations, when appropriate.

As comments from children's advocates note, it is important that Navigators understand and communicate how pediatric dental benefits will be administered in the FFE. While pediatric dental services are expressly required as part of the essential health benefit package, federal guidance allows QHPs to forego providing pediatric dental services if such benefits are available through a stand-alone dental plan. The lack thus far of an effective way to aggregate or coordinate cost-sharing limitations (premiums and co-payments) across standalone health and dental plans creates financial implications for families that Navigators should understand.

Recommendation: Ensure that training includes a thorough understanding of the implications of pediatric dental benefits accessed through stand-alone plans.

§155.215(b)(2)(ii) requires training on all insurance affordability programs, including Medicaid and CHIP. As children’s advocates have noted, it is not clear to what extent training will include state-specific content, such as Medicaid and CHIP eligibility levels or eligibility and enrollment requirements in states like Texas that will not be using the FFE to make Medicaid determinations. We recommend that Navigator training include state-specific content so that Navigators can fulfill their duty to maintain expertise in eligibility, enrollment, and program specifications for all of the insurance affordability programs and to assist with all coverage options. Resources, such as state Medicaid and CHIP eligibility levels and verification requirements available through CMCS, should be used to provide state-by-state details on eligibility levels and procedures that should be included in Navigator resource materials and linked in the web-based training. Additionally, these materials should specify that states like Texas that have adopted the option to cover lawfully-residing immigrant children and/or pregnant women in Medicaid and CHIP.

Recommendation: Compile state-by-state data on final MAGI-equivalence levels for Medicaid and CHIP, and use state verification plans to detail enrollment procedures as resources for Navigators to ensure they have expertise in Medicaid and CHIP eligibility, enrollment and program specifications.

§155.215(b)(2)(viii) requires training on culturally and linguistically appropriate services. For immigrant communities and mixed-status families especially, culturally-appropriate services include specific understanding of the special concerns of these families. Parents in many mixed-status immigrant households are afraid to apply for and enroll their family members in health coverage. In the past, immigrants have experienced hostility, language barriers, harassment and threats when seeking services from federal, state, and local government agencies. At times, benefits agencies have reported immigrants to immigration enforcement, resulting in deportation of a family member, separating families.

Mixed-status families face especially complex and confusing eligibility rules, difficulty completing the application process due to language barriers, and concerns about whether adverse “public charge” determinations due to receiving assistance from a government agency may impair their application for a green card. Navigators and assisters should be trained in and sensitive to these issues and provide reassurances that overcome these barriers for mixed-status families.

Understanding and addressing these concerns will help ensure that all eligible persons are enrolled, and that states comply with civil rights and privacy laws, while helping states reduce administrative errors and costs. At a minimum, Navigators must be trained to avoid creating barriers to participation. Goals for training should include creating a gateway to health care for mixed-status immigrant families that is welcoming, informative, credible, and secure.

Recommendation: Navigators should be well versed in the common concerns and anxiety faced by families with mixed immigration status and trained to

provide reassurances and accurate information to help mixed immigration status families overcome barriers to coverage.

§155.215(b)(2)(xi) notes that the training will include the section §155.260 privacy and security standards, which is critical to ensuring the safeguard of personally identifiable information for everyone. For immigrant families, privacy and security is even more important. Confidentiality concerns of parents in mixed-status families are paramount and should be addressed directly by Navigators. A threshold requirement for Navigators is to understand which family members are applicants and which are non-applicants in order to gather needed information without deterring participation.

Recommendation: Training in privacy standards must include specific applicability to mixed-status households. For example, direct and clear messages for immigrants to help address their confidentiality needs, presented at a timely point in the application process, should clearly communicate information such as the following:

- Only citizen and lawfully present members of immigrant families are eligible for services, but ineligible adults are encouraged to file applications on behalf of eligible family members.
- Ineligible, non-applicant family members will never be required to provide their own citizenship or immigration status in order to apply for others in their family. There should be no indirect questions asked for use as a proxy for immigration status such as inquiring about a non-applicant's place of birth.
- Requests for Social Security numbers (SSNs) are *always* optional for non-applicants and never required for determining the eligibility of family members who are applying for benefits. The SSN of a non-applicant who chooses to provide the number, will be used only for the administration of the health care program and not for immigration enforcement purposes.
- Any information regarding immigration status and SSNs that is required of applicants will be used solely for administration of the health care program and not for immigration enforcement purposes.
- Questions about SSNs, race, ethnicity and primary language are asked in order to help insure equity and are never used to discriminate; answering these questions is voluntary and declining to answer will not affect the application or an eligibility determination.

§155.215(b)(2)(xii). We support training to enable Navigators to work effectively with individuals with limited English proficiency, people with a full range of disabilities, and vulnerable, rural and underserved populations.

§155.215(c) Providing culturally and linguistically appropriate services.

We strongly support the proposed standards to ensure Navigators provide culturally and linguistically appropriate services. We ask HHS to align standards from providing culturally and linguistically appropriate services with the Enhanced CLAS Standards recently released

by the Office of Minority Health to incorporate other factors that inform cultural diversity such as age, gender identity, physical ability or limitations, sex, sexual orientation and socioeconomic status.

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

We strongly support the standards for both cultural competency and accessibility for people with disabilities. These requirements will ensure that people who have had barriers to adequate health coverage will get the help they need to choose the right health care option.

§ 155.215(e) Monitoring.

We support effective monitoring of Navigators. It will be essential for HHS to engage in systematic monitoring to ensure that the best interest of consumers is served and that Navigators provide effective, efficient and high-quality assistance. One tool that will assist with monitoring is a dedicated Navigator web portal that each Navigator accesses through a unique ID. A web portal would identify when Navigators submit changes on behalf of a consumer, for example, as opposed to the consumer making the change themselves. Without a portal, Navigators will have to access consumers' accounts directly on their behalf, effectively "impersonating" individuals, something that should be avoided.

Recommendation: Launch a navigator/assister portal with enhanced functionality as soon as possible.

Finally, we have concerns about the adequacy of the about \$8 million earmarked for Texas Navigators in the FFE to truly meet the need for in-person consumer assistance in a state as large, diverse, and populous as Texas. We would like to echo our support of steps advocated by many consumer advocates that HHS can take to better support and strengthen the availability of assistance:

- Allow section 1311 funds to be used to provide consumer assistance in full FFE states.
- Clarify how private support can leverage federal Medicaid matching funds to provide enrollment assistance.
- Establish a dedicated unit and helpline in the FFE to support Navigators and assisters who encounter more complex issues and barriers to coverage, or who are helping a consumer resolve an eligibility problem.
- Establish a web portal for Navigators that will allow them to check the status of applications, enrollment, and needed verification and report changes. A portal will not only allow Navigators to provide better customer assistance, it will offload administrative responsibilities from the FFE call center and technical assistance staff.
- Provide key resources needed by Navigators through the FFE, such as language translation services and key assistive technologies, so that limited Navigator grants can be dedicated to direct consumer assistance.

Thank you for your continued leadership in ensuring that more people have access to health care. We are at a critical time in implementation. Navigators will help to ensure that the ACA will be a success. On behalf of consumers in Texas, we look forward to regulations that provide access to coverage for all. If you have any questions about these comments, please contact Stacey Pogue with the Center for Public Policy Priorities at pogue@cPPP.org or (512) 320-0222 x 117.

Respectfully submitted,

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