

February 21, 2014

Final Navigator Rules Much Improved

TDI and Navigators Moving Ahead with Registration; Timelines Pose a Challenge

Stacey Pogue, pogue@cppp.org

Texas has a long, successful history of partnering with informed community-based groups to help people enroll in health coverage like Medicaid, CHIP and Medicare. Congress modeled the Affordable Care Act's navigator program on these longstanding, successful enrollment partnerships, some of which have been operating in Texas for at least two decades. However, unlike the other community-based enrollment assistance programs, navigators under the Affordable Care Act (ACA) have come under intense scrutiny.

After a high-profile debate, the Texas Department of Insurance (TDI) finalized [rules](#) to regulate navigators in Texas. The new rules took effect on February 10, 2014. They require navigators to have completed [state registration](#) by March 1, 2014 and additional training by May 1, 2014.

The final rules contain several improvements over the [proposed rules](#). With rulemaking behind them, both TDI and navigators have begun working diligently and in good faith to complete registration; however, the short implementation timeline poses challenges for TDI and navigators alike.

Background on ACA Navigators

Navigators under the ACA are organizations and individuals who are trained, certified, and funded by the federal government to help people enroll in coverage options through the Health Insurance Marketplace, including private insurance, Medicaid and CHIP. Insurance is difficult to understand, especially for people who haven't had it before. Navigators provide in-person help—answering questions, deciphering plan options, and helping people enroll. Their help is crucial in a place like Texas, with more than 6 million uninsured individuals.

The federal government awarded nearly \$11 million in navigator grants to Texas organizations in August 2013. Groups funded to perform navigator duties include the United Way of Tarrant

KEY FINDINGS

- TDI's rules as finalized address several of the key concerns expressed by navigators and advocates.
- The short window in which to register creates significant demands on both navigators and TDI.
- TDI is making a concerted effort to educate and answer questions from navigators. Navigators are working diligently to come into compliance.
- It is unknown at this point whether all navigator services available statewide today will remain available on March 1.

County, Community Council of Greater Dallas, City of Houston Department of Health and Human Services, Alamo Area Agency on Aging, and MHP (formerly Migrant Health Promotion) in the Lower Rio Grande Valley. Navigator organizations are respected groups with strong community ties that generally have a long history, sometimes going back decades, of helping people connect to health coverage through Medicaid, CHIP, and Medicare.

Key Changes from the Proposed Rule

We wrote previously about our [significant concerns with the rules as proposed](#). TDI held two public hearings on the rule proposal and received nearly 300 pages of written comments. As finalized, TDI made a number of improvements to the rules as proposed, many of which are summarized in this [one-page comparison from TDI](#). Key changes include:

- *State training requirements reduced from 60 to 40 hours.* Navigators must take both the federal navigator training, which satisfies 20 hours of the rule's 40-hour requirement, and 20 hours of additional state training. State-required training will cover Texas-specific Medicaid and CHIP eligibility, enrollment and benefits; privacy; ethics, insurance terminology and how insurance works; exam preparation; and a one-hour exam. The federal training must be completed prior to March 1, 2014 and the state training must be completed before May 1, 2014 (state training is delayed, to provide time for training courses and exams to be created and approved through TDI).

Navigators under state rule will still have to take [more training than any comparable community-based applications assister](#), but the 40-hour requirement is more reasonable and less costly than the 60 hours originally proposed. TDI estimates that the additional training required in the final rule will cost \$100-\$400 per navigator, but notes that navigator organizations could also create and submit for certification their own training and exams, which would cost \$50 for TDI certification, in addition to the cost to create and administer the training.

- *Confusing and potentially restrictive prohibition dropped.* The rules as proposed prohibited navigators and others providing health coverage outreach and education from providing advice on the substantive and comparative benefits of different health plans. Many stakeholders testified that the prohibitions could keep navigators from performing an essential function—helping consumers understand their different plan options and make an informed choice. To prevent any confusion, TDI modified the language. The final rule prohibits offering advice on which plan is preferable.
- *\$50 registration fee dropped.* Navigators will incur other fees and costs associated with state registration, but TDI will not charge a \$50 fee per application for registration.
- *Limits on using the term “navigator” clarified.* The proposed rule appeared to broadly ban organizations and individuals from using the word “navigator” in job titles (like patient navigator and cancer navigator), if not registered. The final rule clarifies that

non-registered entities may not represent themselves as navigators in a health benefit exchange or use the term “navigator” in a title in a deceptive manner.

- *Exception added for assisting a close relative.* As proposed, the rule would have technically required a parent to register with the state before helping their child apply for coverage in the Marketplace, for example. In the final rule, TDI added an exception for people who help their close relatives apply. However, TDI did not extend this registration exception to people who help a friend, neighbor, coworker, etc, apply to the Marketplace.

As with the proposed rule, the final rule applies broadly to many people who help others apply for coverage through the Health Insurance Marketplace, not just organizations that receive federal navigator grant funding under the ACA. The flowchart on page 6 can help organizations and individuals determine whether and how they are subject to the new rule.

Challenges for TDI and Navigators Moving Forward

TDI made meaningful changes to many parts of the final rule in response to feedback from stakeholders; however, TDI did not change the aggressive implementation deadlines. TDI requires navigators to be registered with the department by March 1 and complete the additional 20 hours of training by May 1.

The March 1 registration deadline is the date by which navigators must have TDI approval, not the deadline for submitting applications to TDI. Navigators must submit their applications sufficiently before the March 1 deadline to allow time for TDI to process the paperwork. TDI indicates that it can process a complete navigator application in 7 working days (9-11 calendar days). Processing times are longer if anything on the application is incomplete or if the background check turns up history that needs further review. Given that the final rules were first circulated on January 21, 2014, navigators were given essentially three-and-a-half weeks to get paperwork into TDI if they wanted a chance to complete registration on time.

This remarkably tight deadline will challenge TDI and navigators alike. TDI has a short window in which to educate navigators on the new requirements and timely answer their questions. The short timeline makes it likely that TDI will receive the bulk of the navigator applications in the week or two before March 1, and may face a challenge processing this wave of applications quickly.

Navigator Registration Snapshot

As of February 18, 2014 TDI reports it has:

- Received 88 individual navigator applications:
 - 6 received more than one week ago have been reviewed and are complete. They are pending until their associated navigator entity(s) completes registration
 - 82 received less than one week ago are under review by TDI
- Received 4 navigator entity applications:
 - 1 entity has completed registration
 - 3 applications are pending with TDI

Navigators have identified additional challenges related to the timeline, including lack of access to fingerprinting appointments in some areas of the state. TDI uses a DPS vendor for electronic fingerprinting. The vendor has locations across the state, but with long wait times for appointments in some cities. CPPP reviewed available fingerprinting appointments through the vendor's online appointment system at the end of January and again in mid-February. In several locations across the state, including Austin, El Paso, Houston, the Lower Rio Grande Valley, and San Antonio, the first available appointments were 7-10 days away.

TDI cannot process applications without fingerprints. TDI offers a non-electronic fingerprinting option, but it seems unlikely to be a faster option and has a higher error rate (it requires people to mail fingerprints taken by a law enforcement agency to a vendor to be digitized). Navigators who must wait a week or more for fingerprints will have a much harder time completing registration according to TDI's aggressive timeline.

Another barrier for navigators is simply understanding the new rules and requirements. As we neared mid-February, navigators were still asking TDI fundamental questions about the information requested on the application. TDI has been very responsive to questions from navigators.

Even with the agency's firm commitment to helping navigators come into compliance, this initial round of registration will contain some bumps, as is the case with the rollout of any new program. For example, TDI reports that the first 6 applications received all lacked needed information (subsequently requested by TDI and submitted by navigators), and the agency has already released one update to the navigator entity registration application.

We won't know the extent to which navigators and TDI are successful with registration until after March 1, and even then, success will not be easy to measure. The number and share of navigator applications still pending with TDI on March 1 will provide a clue, but complete information on whether navigator services—available statewide in Texas today—will remain available across the state after March 1 will be hard to come by. Any reduction in access to navigators in March would hurt the uninsured low-income and hard-to-reach populations they serve at an especially bad time—just as demand for navigators increases ahead of the March 31 deadline for Marketplace open enrollment.

The May 1 training requirement will present another set of challenges for the agency and navigators. It adds a significant expense for navigators, who cannot charge for their services. TDI estimates that training will cost \$100-\$400 per navigator.

It also requires action on a very tight timeline. TDI did not create the content for the 20-hour, state-specific training, leaving private vendors and perhaps navigators themselves to do so. Entities attempting to create navigator training face an uphill climb to create 20 hours of new content, get courses and exams certified through TDI, and deliver the training statewide in April. TDI will have to move quickly to review and certify courses and exams before they are marketed

to navigators and again to process navigators' proof of training completion ahead of the May 1 deadline.

Conclusion

Overall, the final navigator rule from TDI is much improved. But the aggressive deadlines within the rule pose challenges to all parties involved and leave the statewide availability of navigator services as of March 1 uncertain.

For more information or to request an interview, please contact Alexa Garcia-Ditta at garciaditta@cphp.org or 512.823.2871.

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Are You Subject To Texas' Proposed Rules on "Navigators?"

A new state rule requires grant-funded ACA Navigators and certain other application assisters to [register](#) with the Texas Department of Insurance (TDI) by March 1, 2014* and complete state-required training by May 1, 2014. Organizations and individuals who perform application assistance and/or conduct outreach on health coverage should evaluate whether they are subject to the rule.

Step 1. Are you exempt?

TDI's rules do NOT apply to:

- A licensed insurance counselor or agent, or insurance company
- Individuals/organizations that provide assistance under state or federal authority other than the ACA. (e.g. the HHSC Community Partner Program and HICAP Medicare counseling.)
- Certified Application Counselors
- People assisting close relatives
- HR staff of small employers using the SHOP Marketplace

Step 2. Do you provide a "navigator service?"

"Navigator services" are those performed under [Senate Bill 1795](#) or the ACA, including:

- Helping consumers apply to the Marketplace,
- Explaining how Medicaid, CHIP, and Marketplace subsidies work, or
- Explaining health insurance concepts, like premiums, deductibles, and networks.

If you provide a "navigator service":

You CANNOT represent yourself as a navigator for a health benefit exchange or use the term "navigator" in a deceptive manner unless registered with TDI (see Step 3).

While providing navigator services, you CANNOT:

- Recommend a specific health insurance plan,
- Offer advice on which Marketplace plan is preferable,
- Charge consumers for providing information on health coverage,
- Sell, solicit, or negotiate health insurance, or
- Electioneer.

Step 3. Do you provide "enrollment assistance?"

Individuals and organizations must be registered with TDI by March 1, 2014* if they provide "assistance to a consumer in applying for or enrolling in a health coverage affordability program available through a health benefit exchange. This includes providing assistance in completing an electronic or paper application or...by phone or through email; providing assistance in notifying a health insurance carrier of the consumer's selection of a health benefit plan; or facilitating the consumer's initial premium payment to the health insurance carrier."

Organizational registration**

requires proof of financial responsibility and finger printing and background check for a designated responsible party.

Individual registration** requires:

- 20 hours of state training (on top of 20+ hours of federal training), that could cost up to \$400/person according to TDI. Training must be completed by May 1, 2014.
- 6 hours of annual continuing education (on top of federal requirements) at a cost up to \$120
- Fingerprinting and a background check with registration, with a \$40/person fee.