

9-2014

Health Insurance Benefits Advisors: Understanding Responsibilities, Regulations, Restrictions and the Relevance to Implementing the Affordable Care Act

Alexandra M. Stewart
George Washington University

Marisa A. Cox
George Washington University

Leighton Ku
George Washington University

Follow this and additional works at: https://hsrc.himmelfarb.gwu.edu/sphhs_policy_briefs

 Part of the [Health Law and Policy Commons](#), [Health Policy Commons](#), and the [Health Services Administration Commons](#)

Recommended Citation

Stewart, Alexandra M.; Cox, Marisa A.; and Ku, Leighton, "Health Insurance Benefits Advisors: Understanding Responsibilities, Regulations, Restrictions and the Relevance to Implementing the Affordable Care Act" (2014). *Health Policy and Management Issue Briefs*. Paper 50.

https://hsrc.himmelfarb.gwu.edu/sphhs_policy_briefs/50

This Report is brought to you for free and open access by the Health Policy and Management at Health Sciences Research Commons. It has been accepted for inclusion in Health Policy and Management Issue Briefs by an authorized administrator of Health Sciences Research Commons. For more information, please contact hsrc@gwu.edu.

***HEALTH INSURANCE BENEFITS ADVISORS:
Understanding Responsibilities, Regulations, Restrictions and the Relevance to Implementing
the Affordable Care Act***

SEPTEMBER 2014

Alexandra M. Stewart, Marisa A. Cox, Leighton Ku
**Milken Institute, School of Public Health and Health Services,
The George Washington University**

This brief describes the operational differences among six different types of benefits advisors including: 1) Commercial agents and brokers, 2) Medicaid enrollment brokers, 3) navigators, 4) non-navigator assistance personnel (or in-person assisters), 5) certified applications assisters, and 6) health center outreach and enrollment assistance workers. We will address: 1) the role of each benefits advisor 2) the health plans with which benefits advisors are authorized to work 3) training requirements, 4) compensation 5) conflict of interest requirements, and 6) the impact benefits advisors have on consumer enrollment decisions.

This brief was produced under Award No.: EENS91173N, Project: 34757, for Simon and Co.

KEY DEFINITIONS

Certified application counselors: Under the ACA regulations, consumer application counselors help individuals enroll in Health Insurance Marketplaces or Medicaid or provide information about plan choices, without compensation from the Federal government or State. They are generally volunteers.

Commercial agents and brokers (producers): a person or entity licensed and regulated by states as an agent, broker or insurance producer (a collective term referring to both agents and brokers) to sell insurance.¹ Producers are compensated by insurance carriers with compensation amount determined by the specific plans they sell to enrollees.

Conflict of interest: a situation where an individual's personal or financial interests and business relationships could influence their judgments, decisions or ability to objectively assist consumers. Conflict of interest also includes relationships, investments and business activities that give the appearance of influencing judgment.²

Health Center Outreach and Enrollment Assistance Workers: Outreach and assistance workers who demonstrate expertise in eligibility and enrollment rules and procedures, health plan options, and the needs of underserved populations.³

Medicaid enrollment broker: an individual or entity that provides independent counseling to Medicaid enrollees about Medicaid managed care plan choices and typically helps the person enroll in a plan of the enrollee's choice. They are required by law to provide unbiased advice at no charge to the enrollee.⁴ Enrollment brokers may not have a direct or indirect financial relationship with a health plan or provider. Enrollment brokers are compensated by state governments using federal and state funds.

Exchange (Marketplace): a governmental agency or non-profit entity created under Title I of the Affordable Care Act (ACA)⁵ that offers Qualified Health Plans (QHPs) to small businesses, employers, individuals, and families who can obtain information regarding their QHP eligibility and premium assistance eligibility, health care options, compare plans based on cost and benefits, select a plan, and enroll in coverage through the Exchange. Unless otherwise identified, the term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.^{1,6}

Federally-facilitated Marketplace: an Exchange established and operated on behalf of a state by the Secretary of Health and Human Services in accordance with the Affordable Care Act. (See Exchange)⁵

Federally qualified health center (FQHC): serves an underserved area or population, offers a sliding fee scale, provides comprehensive services, has an ongoing quality assurance program, and a governing board of directors.

Navigator: an organization or individual established under Title I of the Affordable Care Act (ACA)⁵ who is trained to assist consumers, small businesses, and their employees explore health insurance options through exchange Marketplaces. They are paid under Federal grants, contracts or other funding associated with a State Exchange. These individuals and organizations are required to be unbiased and their services are provided without charge to consumers.⁶ Similar to an enrollment broker, navigators can receive no compensation from insurance carriers.

Non-navigator assistance personnel (in-person assisters): perform the same functions as navigators in either a state-based marketplace or state partnership marketplace, but are funded through separate grants or contracts administered by a state. They are a component of an optional federally funded program that states can establish before its Marketplace is economically self-sustaining and before its navigator program is fully operational.^{7, 8} This category of benefits advisor was created by federal regulators to make additional funding and personnel resources available to states that do not have fully operational Navigator programs.

Qualified Health Plan (QHP): an insurance plan that is certified by the Health Insurance Marketplace, provides essential health benefits, follows established limits on cost-sharing (deductibles, copayments, and out-of-pocket maximum amounts), and meets other requirements. A qualified health plan will have a certification by each Marketplace in which it is sold.⁶

State-based Marketplace: state operates all Exchange activities in accordance with the Affordable Care Act. **(See Exchange)**⁹

State Partnership Marketplace: provides in-person assistance and/or certification of QHPs and operates through a partnership between the Secretary of Health and Human Services and a state in accordance with the Affordable Care Act. **(See Exchange)**¹⁰

SUMMARY OF FINDINGS

Benefits advisors operate under a variety of titles and in diverse settings to provide advice to consumers (or clients) about available health insurance choices. However, their roles may differ in many other respects. Commercial agents and brokers are the oldest and most traditional form of benefit advisors; they not only provide advice, but are directly involved in sales and support of insurance products and are compensated by insurance companies and regulated by states. In contrast, beginning in 1997, Medicaid enrollment brokers and, more recently, navigators, in-person assisters, certified application counselors, and health center outreach and enrollment assistance workers, provide independent advice regarding government-financed insurance. Navigators, in-person assisters and certified application counselors may also help individuals or organizations apply for insurance coverage in Health Insurance Marketplaces or state Medicaid programs, while Medicaid enrollment brokers generally participate in assisting Medicaid beneficiaries to choose a health plan after enrolling in the Medicaid program.

Traditionally, commercial agents, brokers, and Medicaid enrollment brokers have served as benefits advisors. However, the Patient Protection and Affordable Care Act (ACA) and its implementing regulations have introduced a consumer assistance program and new types of benefits advisors including: certified applications assisters, navigators, non-navigator assistance personnel and health center outreach and enrollment assistance workers.¹¹ These benefits advisors operate in new marketplaces, comply with new training requirements, under different compensation and conflict of interest policies than commercial agents and brokers.

This brief describes the operational differences among six different categories of benefits advisors: 1) commercial agents and brokers, 2) Medicaid enrollment brokers, 3) certified applications assisters, 4) navigators, 5) non-navigator (in-person) assistance personnel, and 6) health center outreach and enrollment assistance workers. This brief focuses on the individual market and does not address the role of benefits advisors in the small or large group markets.

We will address: 1) the role of each benefits advisor 2) the health plans that benefits advisors are authorized to work with 3) training requirements, 4) compensation and 5) conflict of interest. Finally, we will describe the potential impact benefits advisors have on consumer enrollment decisions.

All benefits advisors operate under federal and/or state laws and regulations that govern the role of the advisor, training rules, and compensation and conflict of interest policies.

Role: Commercial agents and brokers sell health insurance products while other types of benefits advisors assist consumers to obtain independent information to help them compare and select plans.

Enrollment: Agents, brokers, navigators, in-person assisters, certified application counselors, and health center outreach and enrollment assistance workers may help clients obtain insurance coverage as well as help clients obtain insurance coverage and select plans. Medicaid enrollment brokers provide plan selection advice to those who have already been enrolled in Medicaid.

Health Plans: Benefits advisors work in a variety of settings including commercial markets, Medicaid managed care programs, and Marketplaces established by the ACA.

Training Policy: Benefits advisors receive federal and/or state training depending upon the market where they are working.

Compensation: Agents and brokers are compensated by health insurers or employers and have a financial interest in the customer's decision among health plans. Other types of benefits advisors are paid by a Federal or State agency and are precluded from receiving compensation from insurers, in order to help assure their independence.

Conflict of Interest: Some benefits advisors are required to disclose that they are being compensated by insurers while others are prohibited from relationships with health insurance plans or health providers in their networks where they would benefit from either direct or indirect financial interest.

Consumers, Benefits Advisors and Impact on Enrollment Decisions: The first cycle of Marketplace enrollment shows that consumers used a variety of assistance resources as they identified appropriate plans and enrolled in QHPs including websites, contact centers, direct assistance, and indirect or informal assistance.

Recent research shows that 3 out of 4 consumers prefer in-person assistance when applying for health insurance.¹²

In the context of Medicaid,¹³ enrollment brokers are beneficial to individuals who require assistance to understand coverage options or who are more comfortable with personal assistance as they select a managed care plan. In the context of commercial health insurance, traditional agents and brokers are recognized as important partners who assist consumers to identify and enroll in health insurance plans. In the post-ACA environment, there is a blending of roles and responsibilities. In order to furnish comprehensive enrollment assistance to consumers in the Marketplaces, agents and brokers are required to adapt to significant changes in training requirements, compensation rules, and conflict of interest policies.

Consumer Assistance Counselors (CACs) supported consumers during the enrollment process. Those consumers who started an application with an in-person assister were more likely to complete the application and enroll in a plan when compared to those who began the application at home or called for assistance.¹⁴

Health Center Outreach and Enrollment Assistance Workers often worked with community resources to identify communities in need of health insurance coverage as well as resources that were available to provide enrollment assistance.¹⁵

INTRODUCTION

Benefits advisors operate under a variety of titles and in diverse settings to assist consumers to apply for and select from a wide variety of health plans. Traditionally, commercial agents, brokers, and Medicaid enrollment brokers have fulfilled the role of benefits advisors. However, the Patient Protection and Affordable Care Act (ACA), has introduced several new categories of benefits advisors including: certified applications assisters, navigators, non-navigator assistance personnel, and health center outreach and enrollment assistance workers. Because the regulatory environment can often be complex, an understanding is required of how each type of benefits advisor is intended to assist consumers.

This brief describes the operational differences among six different types of benefits advisors. For the purpose of this brief, benefits advisors is a general term describing different types of entities that provide consumer assistance functions including: 1) commercial agents and brokers, 2) Medicaid enrollment brokers, 3) certified application assisters, 4) navigators, 5) non-navigator assistance personnel, and 6) health center outreach and enrollment assistance workers. We will address: 1) the role of each benefits advisor, 2) the health plans that benefits advisors are authorized to work with, 3) training requirements, 4) compensation, and 5) conflict of interest. Finally, we will describe the potential impact benefits advisors have on consumer enrollment decisions.

BENEFITS ADVISORS

Federal and state laws and regulations govern the practice of health benefits advisors in several areas including: the health plans they are authorized to work with, required training, rules regarding compensation and conflict of interest, and the role they play in assisting consumers to apply for and select appropriate plans.

Table 1 summarizes the characteristics of each benefits advisor under review.

TABLE 1: CHARACTERISTICS OF BENEFITS ADVISORS

BENEFITS ADVISORS	ROLE	HEALTH PLANS	TRAINING	COMPENSATION	CONFLICT OF INTEREST
<p>COMMERCIAL AGENTS/ BROKERS (PRODUCERS)</p>	<p>PRIMARY ROLE: Sell health insurance. Agents work for an insurer. Brokers work with multiple insurers.¹⁶</p> <p>CONSUMER ASSISTANCE: Assist clients to select & enroll in private insurance plans¹⁷ Educate and market to consumers & assist with eligibility determinations (Post-ACA), plan comparisons and enrollment in-person, online and/or telephone^{17, 18}</p> <p>POST-ENROLLMENT ASSISTANCE: May continue to help clients with subsequent insurance problems.</p>	<p>Commercial plans</p> <p>Marketplace Qualified Health Plans (QHPs) in accordance with state law¹⁸</p>	<p>GENERAL: Must be licensed or certified as agents or brokers based on state law</p> <p>FEDERAL TRAINING: Applies to the federally-facilitated marketplace, State-Based Marketplace (option), and State-Partnership Marketplaces</p> <p>STATE TRAINING: Applies to State-Based Marketplace (option to use Federal)^{7, 17}</p>	<p>COMPENSATED BY: Commercial insurance companies, ACA Marketplaces as navigator (see below)</p> <p>COMPENSATION RULES: Federal Marketplace does not set a commission schedule or pay commissions directly to agents & brokers^{7,19}</p> <p>Qualified Health Plan (QHP) issuers required to compensate for enrollment in QHPs same as for similar plans offered outside the Marketplace^{7,17}</p>	<p>DISCLOSURES: States may require agents & brokers to disclose that they are compensated by an issuer.¹⁷</p>
<p>MEDICAID ENROLLMENT BROKERS</p>	<p>PRIMARY ROLE: Provide independent advice on selection of Medicaid managed care plans & providers within the plans</p> <p>Responsibilities vary by state</p> <p>CONSUMER ASSISTANCE: Choice counseling & enrollment activities²⁰</p>	<p>Medicaid Managed Care Plans²⁰ & Primary Care Providers in some states</p>	<p>No federal requirement.²⁰</p>	<p>COMPENSATED BY: State Medicaid agency</p> <p>COMPENSATION RULES: May not be compensated by insurers²⁰</p>	<p>DIRECT OR INDIRECT FINANCIAL INTEREST: May not have direct or indirect financial interest in managed care entities or health care providers.²⁰</p>
<p>NAVIGATOR</p>	<p>PRIMARY ROLE: Educate the public, provide information related to eligibility & enrollment</p> <p>CONSUMER ASSISTANCE: Facilitate Qualified Health Plan (QHP) selection</p> <p>Make referrals to other agencies</p> <p>Provide QHP application assistance & help determine premium assistance eligibility¹⁷</p>	<p>Marketplace QHPs²¹</p>	<p>FEDERAL TRAINING: Applies to Federal, State-Based, & State Partnership Marketplaces (state may supplement)</p> <p>STATE TRAINING: Applies to State-Based Marketplace (option to use Federal)^{6,21}</p>	<p>COMPENSATED BY: Federally-Facilitated or State-Partnership Marketplace - funded through a Federal grant program. Use of Section 1311(a) grant funds is prohibited¹⁷</p> <p>State-Based Marketplace - funded through state grant programs²¹</p> <p>COMPENSATION RULES: May not receive compensation from insurers for enrolling individuals in QHPs¹⁷</p>	<p>DIRECT OR INDIRECT FINANCIAL INTEREST: May not have a private or personal interest in the choice of plans</p> <p>DISCLOSURES: RULES: May not be health insurers, an issuer subsidiary, or an associate that lobbies on behalf of the insurance industry^{17, 22}</p>

TABLE 1: CHARACTERISTICS OF BENEFITS ADVISORS

BENEFITS ADVISORS	ROLE	HEALTH PLANS	TRAINING	COMPENSATION	CONFLICT OF INTEREST
NON-NAVIGATOR ASSISTANCE PERSONNEL (in-person assisters)	Perform similar functions as Navigators including consumer education & enrollment assistance ²¹	State based Marketplace QHPs = Optional ²¹ State Partnership Marketplace (QHP) assuming consumer assistance functions ¹⁷	FEDERAL TRAINING: Applies to State-Based & State-Partnership Marketplaces STATE TRAINING: Federal training may be supplemented in the State-Partnership Marketplace ^{17,21}	COMPENSATED BY: May use Section 1311(a) grant funds ¹⁷	DIRECT OR INDIRECT FINANCIAL INTEREST: Comply with state law ²³ DISCLOSURES: Comply with state law ²³ RULES: Comply with state law ²³
CERTIFIED APPLICATION COUNSELORS	Volunteers, existing community based, health care & advocacy organizations Assist consumers to understand & apply for coverage ¹⁷	Marketplace QHPs ¹⁷	FEDERAL TRAINING: Applies to Federally-Facilitated & State-Partnership Marketplaces, option for State-Based Marketplace STATE TRAINING: Applies to State-Based Marketplace ²¹	COMPENSATED BY: Funding may be available through other federal, state or private funds COMPENSATION RULES: May not be compensated through the Marketplaces ^{17, 21, 24}	DISCLOSURES: Required to disclose conflicts of interest by federal law ^{17,21}
HEALTH CENTER OUTREACH AND ENROLLMENT ASSISTANCE WORKERS	PRIMARY ROLE: Outreach and enrollment activities CONSUMER ASSISTANCE: outreach to current health center patients or members of the community served by the health center, assist individuals to complete applications, file appeals & exemptions, & understand health insurance plans ²⁵	Marketplace & Medicaid ²⁵	FEDERAL TRAINING: Federally-Facilitated or State-Partnership Marketplaces STATE TRAINING: Federally-Facilitated, State-Partnership, State-Based Marketplaces ²⁵	COMPENSATED BY: Health Resources and Services Administration (HRSA) funds ²⁵ COMPENSATION RULES: Health Centers may not receive compensation for enrolling consumers in any type of health plan ²⁶	RULES: Comply with state law ²⁵

COMMERCIAL AGENTS AND BROKERS / PRODUCERS

Role: All states have laws permitting licensed agents or brokers to sell health insurance.¹⁶ Agents and brokers have long assisted consumers to select and enroll in private insurance plans.¹⁷ Sometimes agents and brokers are collectively called producers. The ACA creates new opportunities for agents and brokers to participate in health insurance Marketplaces. Agents and brokers may also serve as Navigators, but are required to comply with new compensation rules.¹²

The state Marketplaces are governed by states which may choose whether to authorize agents and broker participation. States may authorize agents and brokers to educate consumers about the Marketplaces and the insurance affordability programs that are available, assist with eligibility determinations,¹⁸ and help consumers to compare plans and enroll in coverage.^{17, 18} Agents and brokers may be authorized to provide services to consumers in-person, online, and/or over the telephone.¹⁸ Agents and brokers may continue to provide service to clients after enrollment. For example, if a client has an insurance problem, the agent or broker may contact the insurance plan to try to help resolve the problem.

Health Plans: Agents and brokers assist consumers to purchase commercial plans as well as Qualified Health Plans (QHPs) available through the ACA-created Marketplaces in accordance with state law.²⁷

Training Policy: Agents and brokers who participate in commercial plan enrollment must pass licensing examinations. Those participating in the Marketplaces must receive federal or state training. Agents and brokers working within the Federally-Facilitated and State-Partnership Marketplaces must participate in the federal training program, while those working in a State-Based Marketplace may receive state training unless the state elects to use the federal training materials.^{7, 17}

Compensation: Agents are typically employed by a single commercial insurer and represent only that company; they may be paid by a combination of salary and commission. Brokers are usually in independent firms and may be affiliated with multiple insurers and are paid by commissions or fees. Under the ACA, agents may perform as Navigators in the Marketplaces, but are also permitted to work as commercial brokers. The Federal Marketplace does not set a commission schedule or pay commissions directly to agents and brokers.^{7, 19} The issuers of QHPs are required to compensate agents and brokers when they enroll consumers in marketplace QHPs. The compensation must be comparable to that provided for similar non-marketplace plans.^{7, 17, 19} However, when agents and brokers are acting as Navigators, they may not receive compensation from insurers.¹²

Conflict of Interest: States may establish rules that require commercial agents and brokers to disclose that they are being compensated by an issuer.¹⁶ When they serve as Navigators and are employed by a Marketplace, they may not receive compensation from an issuer.

CERTIFIED APPLICATION COUNSELORS

Role: Certified Application Counselors (CACs) are a category of benefits advisor created by the implementing regulations of the ACA that govern the establishment and operation of Marketplaces.²⁸ The certified application counselor program was established by the Secretary of Health and Human Services as a consumer assistance function of the Marketplaces. CACs are volunteers or members of organizations that have established relationships with consumers, including community based organizations, hospitals and health clinics, and consumer advocacy organizations. They assist consumers in understanding their health insurance coverage options and to apply for coverage.¹⁷ CACs are not required to perform outreach activities or to comply with the cultural and linguistic requirements that apply to Navigators and Non-Navigator Assistance Personnel.¹⁷

Health Plans: CACs assist consumers within Federal, State, and Partnership Marketplaces. However, within the Federal Marketplace, CACs are limited to individual providers, community health centers, hospitals and social services agencies that have been certified by CMS to be CACs.¹⁷

Training Policy: Training for CACs is less extensive than requirements for Navigators.³⁰ State-Partnership Marketplaces must use Federal training materials that may be supplemented by the state. However, State-Based Marketplaces use state training, unless the state elects to use the Federal materials.²¹ Training topics in the Federal Marketplace are the most basic and include information related to: individual mandate, assistance available through the Marketplace, application processes, and rules regarding protecting personal information.²⁹

Compensation: CACs may not be compensated through the Marketplaces, so in that regard they are volunteers. However, they may be employed by another health care or social services agency, such as a hospital, community health center or legal services agency. They may not charge for their services.²⁴

Conflict of Interest: CACs are required to disclose conflicts of interest.^{17,21} CACs must work in the best interests of individuals and employees.¹¹

MEDICAID ENROLLMENT BROKERS

Role: Twenty-nine states authorized Medicaid enrollment brokers to promote impartial and systematic enrollment or assignment of Medicaid beneficiaries and/or primary care providers.³⁰ Enrollment into the Medicaid program may be conducted by State or Local government employees, while non-government agencies may assist in the application processing and eligibility determination.³¹ While Medicaid Enrollment Broker responsibilities vary by state, they typically perform outreach, education, choice counseling and plan/provider enrollment activities. Choice counseling includes answering questions related to Medicaid managed care plans, benefits and provider networks, providing unbiased information regarding delivery system options including Managed Care Organizations (MCOs), Prepaid Inpatient Health Plan (PIHP), Prepaid Ambulatory Health Plan (PAHP), or Primary Care Case Management (PCCM), and advising consumers of the factors to consider when selecting plans and primary care providers.²⁰

Health Plans: Medicaid Enrollment Brokers assist consumers to choose the Medicaid managed care plans and providers as permitted by the state plan.

Training Policy: Qualified Medicaid Enrollment Brokers are trained in accordance with state policy.

Compensation: Under federal law Medicaid Enrollment Brokers are required to remain autonomous and cannot be compensated by insurers.²⁰ The federal Medicaid regulations define independence for brokers and their subcontractors as “independent of any MCO, PIHP, PAHP, PCCM, and other health care provider in the State in which they provide enrollment services.”²⁰

Conflict of Interest: Federal law prohibits Medicaid Enrollment Brokers from having any direct or indirect financial interest in any managed care entity or health care provider that provides services in a State where the enrollment broker provides enrollment services.²⁰ An Enrollment Broker is not independent if the Broker 1) is or is controlled by an MCO, PIHP, PAHP, PCCM, or other health care provider in the state, 2) is owned or controlled by an MCO, PIHP, PCCM, or other health care provider, or 3) owns or controls an MCO, PIHP, PAHP, PCCM, or other health care provider in the state.²⁰

NAVIGATORS

Role: Navigators were created under Title I of the ACA and are a required element of all Marketplaces.⁵ Navigators are responsible for educating the public about eligibility and enrollment, helping consumers apply for QHP and premium assistance eligibility, facilitating QHP selection, and making referrals to other agencies as appropriate. Navigators must assist consumers in a fair, impartial, and culturally and linguistically appropriate manner.¹⁷ While Navigators (as well as in-person assisters and certified application counselors) help consumers enroll in QHPs, they also generally support individuals who were applying for Medicaid, since Marketplace portals are used both for enrollment in QHPs as well as in Medicaid. The federal government promoted a “No Wrong Door” policy to enable applicants to apply for Marketplaces or Medicaid and to be determined eligible for the appropriate program based on their incomes or other eligibility factors.

Health Plans: Navigators work to enroll consumers in the federal and state Marketplace QHPs established under the ACA.²¹ Although Navigators assist with applying for Medicaid, they are typically not responsible for providing help in choosing Medicaid managed care plans, if offered by the state Medicaid program. Those duties are the responsibility of the Medicaid agency or its Medicaid enrollment broker.

Training Policy: Navigators are required to participate in federal training when working within the Federally Facilitated Exchange. States operating a State-Based Marketplace may, but are not required, to use the federal training. States may also choose to require additional training before certifying Navigators to work with the Marketplaces.^{17,21} Training topics include: expertise in the needs of underserved and vulnerable populations, eligibility and enrollment rules and procedures, the range of QHP options, and privacy and security standards.³²

Compensation: Navigators may not receive compensation from insurers for enrolling individuals in QHPs.¹⁷ Navigators who assist consumers through the Federally Facilitated Marketplace are funded through a Federal grant program.¹⁷ Navigators working in State-Based Marketplaces are funded through state grant programs but may not be paid out of federal exchange grants.²¹

Conflict of Interest: Navigators may not have a private or “personal interest that influences or appears to influence” the exercise of their official duties. Certain entities may not serve as Navigators including: health insurers, an issuer subsidiary, or an associate that lobbies on behalf of the insurance industry.^{17, 22}

NON-NAVIGATOR ASSISTANCE PERSONNEL (In-Person Assisters)

Role: Non-Navigator Assistance Programs assist consumers during the first year of enrollment. Federal guidance permits states that are not prepared to launch fully operational Navigator programs to develop Non-Navigator Assistance Personnel Programs within the context of a State Partnership Marketplace. The personnel who work within these programs are frequently referred to as in-person assisters. State-based Marketplaces may also develop in-person assister programs. In general, Non-Navigator Assistance personnel perform the same functions as Navigators including consumer education and enrollment assistance.²¹

Health Plans: Non-Navigator Assistance Personnel operate in State Partnership Marketplaces that assume consumer assistance functions including education and enrollment assistance¹⁷ and are optional in the State-based Marketplaces, as a means of supplementing the Navigators.²¹

Training Policy: Non-Navigator assistance personnel must receive Federal training in the State Partnership Marketplaces with an option for the state to supplement the training. In the State-Based Marketplaces, Non-Navigator Assistance Personnel receive state training unless the state exercises the option to use Federal training.^{17,21}

Compensation: State-Based Marketplaces may not use grant funds for Navigators, but may use exchange establishment grants to compensate Non-Navigator assistance personnel. This category of benefits advisor may assist states in accessing additional funding and personnel to address gaps in their Navigator programs.^{17,33} State Partnership Marketplaces may fund Non-Navigator Assistance Personnel through Exchange Establishment grants.²¹

Conflict of Interest: Non-Navigator entities must comply with state law with several exceptions. A recent federal rule identified examples of state laws that prevent the implementation of Title I. Impermissible state laws include those that: 1) require non-navigators to refer consumers to other entities that are not required to provide fair, accurate, and impartial information, 2) prevent Non-Navigators from providing services to all persons to whom they are required to assist, 3) prevent Non-Navigators from providing advice regarding substantive benefits or comparative benefits of different health plans, and 4) impose standards that would prevent Federal requirements to apply to Non-Navigator entities, individuals, or the Non-Navigator assistance personnel program.²³

HEALTH CENTER OUTREACH AND ENROLLMENT ASSISTANCE WORKERS

Role: The Health Resources and Services Administration (HRSA) provided funding to Federally Qualified Health Centers (FQHCs) to support outreach and enrollment activities. FQHCs will use the funding throughout the year and will be expected to increase their resources to meet the needs of individuals during open enrollment periods. Enrollment activities may include: outreach to current health center patients or members of the community served by the health center, assisting individuals to complete applications, file appeals and exemptions, and understand health insurance plans.²⁵

Health Plans: Health Center Outreach and Enrollment Assistance Workers may assist consumers in selecting Medicaid or Marketplace plans.²⁵

Training Policy: Health Centers participating in the Federally-Facilitated Marketplace will be required to complete all federal Certified Application Counselor (CAC) training and any additional training required by the state. In a State-Partnership Marketplace, state training may be required in addition to or in place of federal training. Those working in State-Based Marketplaces must complete all state required training.²⁵

Compensation: In July 2013, HRSA awarded Health Centers \$150 million to support outreach and enrollment assistance activities for a twelve month period (July 1, 2013 through June 30, 2014), including a one-time \$5,000 grant. In December 2013, an additional \$58 million in one-time, supplemental funding was awarded.

Funding for 2014 included ongoing and supplemental funding from the previous year. Beginning in 2015, HRSA anticipates awards will equal 2013 levels, excluding the one-time grants.²⁵ Health Centers may not receive compensation for enrolling consumers in any type of health plan.³⁴

Conflict of Interest: Health Center outreach and enrollment assistance workers must comply with all conflict of interest requirements pursuant to state regulation.²⁵

CONSUMERS, BENEFITS ADVISORS AND IMPACT ON ENROLLMENT DECISIONS

The first Marketplace enrollment cycle (October 1, 2013-March 31, 2014, extended in some marketplaces) revealed that consumers face several obstacles when obtaining health insurance coverage. Consumers used a variety of assistance resources to help them identify appropriate plans and enroll in QHPs including: websites, contact centers, direct assistance, indirect or informal assistance, and media.³⁵ Consumers required assistance because they lacked an understanding of the ACA and health insurance in general, had difficulty understanding the eligibility requirements for premium tax credits and reduced cost sharing, were confused when comparing plans, and were not able to choose an appropriate plan when several choices were presented. Assistance was also required because consumers experienced web site outages and were often confused by subsidy eligibility rules.³⁰ These factors make outreach and consumer assistance activities an important component for a successful enrollment experience.^{29,36,37}

Websites were the most common source of information. Consumers rated direct assistance from commercial insurance agents and brokers, navigators and other non-navigator assistance personnel highest in one study.³⁵ Medicaid enrollment brokers were not available in Marketplaces except in the Massachusetts Marketplace which uses them for subsidy eligible consumers.³⁸ Although the data collected in this study does not capture the full enrollment period, the results provide a preliminary view of how consumers approached enrolling in Marketplace plans. Further studies are necessary to determine whether consumers continue to favor the same plan selection and enrollment tools in subsequent enrollment periods.

Consumers prefer in-person assistance. One study indicates that 3 out of 4 consumers would like in-person assistance when applying for health insurance. This type of help is particularly important for those with limited English proficiency, limited access to and experience with technology, and low literacy levels.¹²

Studies of beneficiary enrollment in Medicaid Managed Care also provide insight into the advantages of benefits advisors. In the Medicaid context, Enrollment Brokers are beneficial to individuals who require assistance to understand coverage options³⁹ or who are more comfortable with personal assistance as they select a managed care plan.⁴⁰ Providing one-on-one enrollment assistance by phone or in-person encourages the assessment of beneficiary needs and supports the selection of an appropriate plan that is more likely to be suitable for the individual.⁴¹

The literature also suggests that enrollment assistance programs that provide a diverse population with several options to obtain assistance are essential to overcoming challenges and meeting enrollment goals.⁴² In the Medicaid context, early assistance can reduce the number of beneficiaries who change plans and results in low automatic assignment rates.^{43,44}

GENERAL OBSERVATIONS AND LESSONS LEARNED

More than ten million people received assistance from navigators and other benefits advisors during the first enrollment period. Approximately \$350 million in federal funding was available to establish assistance programs. A majority of the assister programs were sponsored by healthcare providers, including Federally Qualified Health Centers, hospitals, and non-profit community based organizations.¹⁵

While consumer assistance was identified as important to the success of the newly established Marketplaces, several factors impacted the ability of consumers to access services. For example, due to funding constraints, states operating State-Based and State-Partnership Marketplaces had twice as many assisters available to help consumers than states that participated in the Federally-Facilitated Marketplaces. Other consumers encountered extensive wait times to obtain appointments or speak with an advisor.¹⁵

While consumers, states, and the federal government have only experienced one enrollment period, preliminary research reveals that the majority of consumers require some form of assistance, and prefer in person information and enrollment assistance. Assessment of future enrollment periods can show consumer preferences related to the type of benefits advisor that is most beneficial to consumers and the tools they are most likely to use during the enrollment process.

In the post-ACA environment, commercial agents and brokers are recognized as important partners who assist consumers to identify and enroll in qualified health insurance plans. For example, consumers transferring from high risk pools to Marketplace plans have indicated that brokers play an important role in ensuring that individuals choose plans that include benefits that are most important to them.⁴⁵ In some states, assisters partnered with agents and brokers to facilitate consumer enrollment and plan choices. Additionally, the federal agency administering the Marketplaces, the Centers for Medicare and Medicaid Services (CMS) at the Department of Health and Human Services (HHS), anticipates that brokers and agents will continue to play a significant role in assisting employers to obtain commercial coverage for their employees through the SHOP Marketplaces.⁴⁶ In order to furnish comprehensive enrollment assistance to consumers in the Marketplaces, commercial agents and brokers must adapt to significant changes in training requirements, compensation rules, and conflict of interest policies.

Consumer Assistance Counselors (CACs) were also a valuable component of the enrollment process during the first enrollment period. One post-enrollment period study showed that those who started an application with an in-person assister were more likely to complete the application and enroll in a plan when compared to those who began the application at home or called for assistance. This finding underscores the need for additional CACs during the 2015 enrollment period.¹⁴

Early evidence also indicates that Health Center Outreach and Enrollment Assistance Workers are important members of outreach and enrollment efforts. Assistance programs often worked with community resources to identify communities in need of health insurance coverage as well as resources that were available to provide enrollment assistance. The partnerships were effective in coordinating outreach efforts and connecting individuals with information and enrollment assistance.¹⁵

As states finalize their plans for the next enrollment period, they will need to review the lessons learned as they consider the most effective approach to manage benefits advisors programs. Topics for consideration include: 1) how different Marketplaces are funded, 2) how benefits advisors function within their Marketplaces, and 3) the benefits and challenges of integrating Medicaid enrollment brokers into the assistance models. States will also need to ensure that operating policies are consistent with federal interpretations of the ACA.

METHODS

This brief describes the operational difference between commercial agents and brokers, Medicaid enrollment brokers, certified application assisters, Navigators, Non-Navigator assistance personnel, and health center outreach and enrollment assistance workers in their role as benefits advisors. Researchers identified and compared policies including: 1) role of benefits advisors, 2) health plans that each type of advisor is authorized to assist consumers with, 3) training requirements, and 4) federal and state compensation and conflicts of interest rules. Researchers also reviewed the limited literature regarding the impact that benefits advisors have on the enrollment decisions of consumers in state Medicaid programs and the state and federal Marketplaces.

Researchers used the materials collected during an extensive literature review to develop this brief. Reviewed materials include: 1. peer reviewed journal articles, 2. white papers/issue briefs, 3. presentations, 4. Centers for Medicare and Medicaid Services (CMS) guidance/fact sheets, 5. United States Government Accountability Office (GAO) reports, 6. Medicaid and CHIP Payment and Access Commission (MACPAC) reports, 7. legal resources, 8. data sets, 9. newspaper articles, 10. newsletters, 11. trade journals and newswires, 12. press releases, and 13. blogs.

REFERENCES

1. 45 CFR §155.20 Definitions.
2. Blue Cross, Blue Shield of Tennessee, *Agent/Broker Conflict of Interest Certification and Disclosure Form*, https://www.bcbst.com/brokers/individual/Conflict_of_Interest.pdf.
3. Health Resources and Services Administration (HRSA), *HRSA Health Center Outreach and Enrollment One-Time Supplemental Funding Call*, (2013, Dec. 17), http://www.fachc.org/pdf/oe/materials/12_17_oe_slides.pdf.
4. 42 CFR § 438.810 Expenditures for enrollment broker services.
5. The Patient Protection and Affordable Care Act, Title 1 Quality, Affordable Health Care for All Americans, Part II. Consumer Choices and Insurance Competition Through Health Benefit Exchanges, §1311 Affordable choices of health benefit plans.
6. HealthCare.gov; Health Insurance Marketplace, *Glossary*, <https://www.healthcare.gov/glossary/health-insurance-marketplace-glossary/>.
7. Centers for Medicare and Medicaid Services (CMS) (2013, July) *Assistance Roles to Help Consumers Apply & Enroll in Health Coverage Through the Marketplace*. CMS Product No. 11647-P, (2013, July), <http://www.cms.gov/CCIIO/Resources/Files/Downloads/marketplace-ways-to-help.pdf>.
8. 45 CFR Part 155. *Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors; Final Rule; Part II. Provisions of the Proposed Rule and Analysis and Responses to Public Comments*, (2013, July 17), <http://www.gpo.gov/fdsys/pkg/FR-2013-07-17/pdf/2013-17125.pdf>.
9. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Center For Consumer Information and Insurance Oversight, *Working Together to Implement Exchanges*, (2012, May 21-22), <http://www.cms.gov/CCIIO/Resources/Presentations/Downloads/hie-wtie.pdf>.
10. Bachrach, D. & Boozang, P. *Federally-Facilitated Exchanges and the Continuum of State Options*, *National Academy of Social Insurance*, (2011, Dec. 15), <http://ssrn.com/abstract=2005815>.
11. Kirchhoff, S.M., *Health Insurance Exchanges: Health Insurance “Navigators” and In-Person Assistance*. Congressional Research Service, (2013, Sept. 25), <http://fas.org/sgp/crs/misc/R43243.pdf>.
12. Families USA, *Enrollment Momentum: Accelerating the Affordable Care Act’s Enrollment Momentum: 10 Recommendations for Future Enrollment Periods*, (2014, April), http://familiesusa.org/sites/default/files/product_documents/ENR_Enrollment_report_FINAL_032814_web.pdf.
13. Sinaiko, A.D. *The Experience of Massachusetts Shows That Consumers Will Need Help In Navigating Insurance Exchanges*, Health Affairs, (2013), <http://content.healthaffairs.org/content/32/1/78.full.pdf+html>.

14. Hoag, S. et al., *Evaluation of Enroll America: An Implementation Assessment and Recommendations for Future Outreach Efforts*, Mathematica Policy Research, (2014, July 28).
15. Alliance for Health Reform, *Navigating the Health Insurance Landscape: What's next for Navigators, In-Persons Assistors and Brokers?* The Kaiser Family Foundation, Alliance for Health Reform, (2014, Aug. 5).
16. Families USA, *Brokers and Agents and Health Insurance Exchanges*, (2012, September), <http://connectforhealthco.com/wpfb-file/2-exchanges-brokers-and-agents.pdf>.
17. Dolan, R. et al., *Shared Responsibility in Consumer Assistance : Examples from Federally Facilitated and Partnership Marketplace States*, National Academy for State Health Policy, (2014, Jan.) http://www.nashp.org/sites/default/files/Shared_Responsibility_in_Consumer_Assistance.pdf.
18. Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, *Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces*, (2013, May 1) <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/agent-broker-5-1-2013.pdf>.
19. Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight, *Frequently Asked Questions Regarding Agents and Brokers*, (2014, May 30), <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Agent-Broker-FAQs-5-30-14.pdf>.
20. 42 CFR, Part 438 Managed Care.
21. Centers for Medicare and Medicaid Services (CMS), *Ways to Help Consumers Apply and Enroll in Health Coverage Through the Marketplace*, (2014, June), http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/AssistanceRoles_06-10-14-508.pdf.
22. 45 CFR § 155.210(d) *Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors; Final Rule*.
23. 45 CFR Parts 144, 146, 147, 148, 153, 154, 155, 156, and 158. *Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond §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*.
24. Centers for Medicare and Medicaid Services (CMS) *Common Questions and Answers on Designation of Certified Application Counselor Organizations in Federally Facilitated Marketplaces*, <http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf>.
25. Health Resources and Services Administration (HRSA), *Health Center Ongoing Outreach and Enrollment (O/E) Assistance, Frequently Asked Questions (FAQs)*, (2014, July 24), <http://bphc.hrsa.gov/outreachandenrollment/oefaq07242014.pdf>.
26. National Association of Community Health Centers, *Conflicts of Interest During Application Assistance*, (2013, Nov.), <https://nachc.com/client/Conflict%20Of%20Interest%20Brief1.pdf>.

27. Rosenbaum, S. *State Health Insurance Exchange Navigators*, HealthReform GPS., <http://www.healthreformgps.org/wp-content/uploads/2.28.11-Rosenbaum-Exchange-Navigators.pdf>.
28. The Patient Protection and Affordable Care Act, Title 1 Quality, Affordable Health Care for All Americans §1321 (a)(1).
29. Pollitz, K. et al., *Survey of Health Insurance Marketplace Assister Programs: A First Look at Consumer Assistance under the Affordable Care Act*, (2014, July), <http://kaiserfamilyfoundation.files.wordpress.com/2014/07/8611-survey-of-marketplace-assisters2.pdf>.
30. MAXIMUS. Largest Medicaid Managed Care Enrollment Broker.
31. Griffin, E. et al., *Managing a High-Performance Medicaid Program*, The Kaiser Commission on Medicaid and the Uninsured, (2013, Oct.), <http://kaiserfamilyfoundation.files.wordpress.com/2013/10/8476-managing-a-high-performance-medicaid-program.pdf>.
32. The Henry J. Kaiser Family Foundation, *Consumer Assistance in Health Reform*. (2013, April), <http://kaiserfamilyfoundation.files.wordpress.com/2013/04/8434.pdf>.
33. 78 FR 20583-20583, *Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel*, (2013, April 5).
34. National Association of Community Health Centers, *Conflicts of Interest During Application Assistance*, (2013, Nov.) <https://nachc.com/client/Conflict%20Of%20Interest%20Brief1.pdf>.
35. Blavin, F., *Obtaining Information on Marketplace Health Plans: Websites Dominate but Key Groups Also Use Other Sources*, Urban Institute Health Policy Center, (2014, June), <http://hrms.urban.org/briefs/obtaining-information-on-marketplace.pdf>.
36. Barnes, A.J., *Determinants of Coverage Decision in Health Insurance Marketplaces: Consumers' Decision-Making Abilities and the Amount of Information in Their Choice Environment*, Health Services Research, doi: 10.1111/1475-6773.12181, (2014, Apr. 30), <http://onlinelibrary.wiley.com/doi/10.1111/1475-6773.12181/pdf>.
37. Wong, C.A. et al., *The Experience of Young Adults on HealthCare.gov: Suggestions for Improvement: A Case Report*. *Annals of Internal Medicine*, (2014, July 8), <http://annals.org/article.aspx?articleid=1886687>.
38. O'Leary, W. et al., *Commonwealth of Massachusetts Health Insurance Exchange and Integrated Eligibility System Review*, (2014, Feb. 13), https://bettermahealthconnector.org/wp-content/uploads/2014/03/Microsoft_Massachusetts_HIX-IES_System_Review_021314.pdf.
39. Licata, R. et al., *The Uninsured at the Starting Line in California: findings from the 2013 Kaiser Survey of Low-Income Americans and the ACA*, The Henry J. Kaiser Family Foundation, (2014, Feb.), <http://kaiserfamilyfoundation.files.wordpress.com/2014/02/8554-the-uninsured-at-the-starting-line-in-california1.pdf>.
40. The Henry J. Kaiser Family Foundation, Medicaid and the Uninsured (2013, Sept.), *Providing Outreach and Enrollment Assistance: Lessons Learned from Community Health Centers in*

Massachusetts, <http://kaiserfamilyfoundation.files.wordpress.com/2013/09/8479-providing-outreach-and-enrollment-assistance1.pdf>.

41. Kaplan, S., Greene, J., Molnar, C., Bernstein, A., & Ghanbarpour, S., *Educating Medicaid Beneficiaries About Managed Care: Approaches in 13 Cities*, (2000, May), http://www.commonwealthfund.org/usr_doc/kaplan_educat_fr_380.pdf.

42. Hill, I., Wilkinson, M., & Courtol, B., *The Launch of the Affordable Care Act in Selected States: Outreach, Education, and Enrollment Assistance*. The Urban Institute, (2014, March) <http://www.urban.org/UploadedPDF/413039-The-Launch-of-the-Affordable-Care-Act-in-Eight-States-Outreach-Education-and-Enrollment-Assistance.pdf>.

43. Fairbrother, G., Park, H.L., Haidery, A. & Gray, B.H., *Periods of Unmanaged Care in Medicaid Managed Care*. *Journal of Health Care for the Poor and Underserved*, 16, 3, 444-452, (2005, Aug.), doi: 10.1353/hpu.2005.0049.

44. Ferber, J.D., *Auto-Assignment and Enrollment in Medicaid Managed Care Programs*. *Journal of Law, Medicine and Ethics*, 24, 99-107, (1996), <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=8ff56402-eb97-40fa-83c4-49a92ca07a8e%40sessionmgr111&vid=2&hid=121>.

45. Blewett, L.A., Lukanen, E., Call, K.T., & Dahlen, H., *Survey of High-Risk Pool Enrollees Suggests that Targeted Transition Education and Outreach Should Begin Soon*, *Health Affairs*, 32, 9, 1568-1575, (2013), doi: 10.1377/hlthaff.2013.0370.

46. United States Government Accountability Office, *Patient Protection and Affordable Care Act: Status of Federal and State Efforts to Establish Health Insurance Exchanges for Small Businesses*, Report to the Chairman, Committee on Small Business, House of Representatives, (2013, June), <http://www.gao.gov/assets/660/655285.pdf>.