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calling a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual has a pre-existing relationship with the individual Navigator or Navigator entity and other applicable State and Federal laws are otherwise complied with. Outreach and education activities may be conducted by going door-to-door or through other unsolicited means of direct contact, including calling a consumer; or

(9) Initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual Navigator or Navigator entity has a relationship with the consumer and so long as other applicable State and Federal laws are otherwise complied with.

(e) *Duties of a Navigator.* An entity that serves as a Navigator must carry out at least the following duties:

(1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;

(2) Provide information and services in a fair, accurate, and impartial manner, which includes: providing information that assists consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping consumers make informed decisions during the health coverage selection process. Such information must acknowledge other health programs;

(3) Facilitate selection of a QHP;

(4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage;

(5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with

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disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act;

(6) Ensure that applicants—

(i) Are informed of the functions and responsibilities of Navigators;

(ii) Provide authorization in a form and manner as determined by the Exchange prior to a Navigator's obtaining access to an applicant's personally identifiable information, and that the Navigator maintains a record of the authorization provided in a form and manner as determined by the Exchange. The Exchange must establish a reasonable retention period for maintaining these records. In Federally-facilitated Exchanges, this period is no less than six years, unless a different and longer retention period has already been provided under other applicable Federal law; and

(iii) May revoke at any time the authorization provided the Navigator pursuant to paragraph (e)(6)(ii) of this section; and

(7) Maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees. In a Federally-facilitated Exchange, no individual or entity shall be ineligible to operate as a Navigator solely because its principal place of business is outside of the Exchange service area.

(f) *Funding for Navigator grants.* Funding for Navigator grants may not be from Federal funds received by the State to establish the Exchange.

[77 FR 11718, Feb. 27, 2012, as amended at 78 FR 42859, July 17, 2013; 79 FR 30344, May 27, 2014; 79 FR 42986, July 24, 2014]

### **§ 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.**

(a) *Conflict-of-interest standards.* The following conflict-of-interest standards apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under

section 1311(a) of the Affordable Care Act:

(1) *Conflict-of-interest standards for Navigators.* (i) All Navigator entities, including Navigator grant applicants, must submit to the Exchange a written attestation that the Navigator, including the Navigator's staff:

(A) Is not a health insurance issuer or issuer of stop loss insurance;

(B) Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;

(C) Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and

(D) Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

(ii) All Navigator entities must submit to the Exchange a written plan to remain free of conflicts of interest during the term as a Navigator.

(iii) All Navigator entities, including the Navigator's staff, must provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.

(iv) All Navigator entities, including the Navigator's staff, must disclose to the Exchange and, in plain language, to each consumer who receives application assistance from the Navigator:

(A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in §155.210(d), which the Navigator intends to sell while carrying out the consumer assistance functions;

(B) Any existing employment relationships, or any former employment relationships within the last 5 years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and

(C) Any existing or anticipated financial, business, or contractual relationships with one or more health insur-

ance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

(2) *Conflict-of-interest standards for Non-Navigator assistance personnel carrying out consumer assistance functions under §155.205(d) and (e).* All Non-Navigator entities or individuals authorized to carry out consumer assistance functions under §155.205(d) and (e) must—

(i) Comply with the prohibitions on Navigator conduct set forth at §155.210(d) and the duties of a Navigator set forth at §155.210(e)(2).

(ii) Submit to the Exchange a written attestation that the entity or individual—

(A) Is not a health insurance issuer or issuer of stop loss insurance;

(B) Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;

(C) Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and

(D) Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

(iii) Submit to the Exchange a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under §155.205(d) and (e).

(iv) Provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.

(v) Submit to the Exchange, and, in plain language, to each consumer who receives application assistance from the entity or individual:

(A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in §155.210(d), which the entity or individual intends to sell while carrying out the consumer assistance functions;

(B) Any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships

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between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and

(C) Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

(b) *Training standards for Navigators and Non-Navigator assistance personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210.* The following training standards apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f), and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act.

(1) Certification and recertification standards. All individuals or entities who carry out consumer assistance functions under §§ 155.205(d) and (e) and 155.210, including Navigators, must meet the following certification and recertification requirements.

(i) Obtain certification by the Exchange prior to carrying out any consumer assistance functions under § 155.205(d) and (e) or § 155.210;

(ii) Register for and complete a HHS-approved training;

(iii) Following completion of the HHS-approved training described in paragraph (b)(1)(ii) of this section, complete and achieve a passing score on all approved certification examinations prior to carrying out any consumer assistance functions under § 155.205(d) and (e) or § 155.210;

(iv) Obtain continuing education and be certified and/or recertified on at least an annual basis; and

(v) Be prepared to serve both the individual Exchange and SHOP.

(2) *Training module content standards.* All individuals who carry out the consumer assistance functions under §§ 155.205(d) and (e) and 155.210 must receive training in the following subjects:

(i) QHPs (including the metal levels described at § 156.140(b) of this subchapter), and how they operate, includ-

ing benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;

(ii) The range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program (CHIP), and other public programs;

(iii) The tax implications of enrollment decisions;

(iv) Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;

(v) Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Exchange;

(vi) Basic concepts about health insurance and the Exchange; the benefits of having health insurance and enrolling through an Exchange; and the individual responsibility to have health insurance;

(vii) Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;

(viii) Providing culturally and linguistically appropriate services;

(ix) Ensuring physical and other accessibility for people with a full range of disabilities;

(x) Understanding differences among health plans;

(xi) Privacy and security standards applicable under § 155.260 for handling and safeguarding consumers' personally identifiable information;

(xii) Working effectively with individuals with limited English proficiency, people with a full range of disabilities, and vulnerable, rural, and underserved populations;

(xiii) Customer service standards;

(xiv) Outreach and education methods and strategies; and

(xv) Applicable administrative rules, processes and systems related to Exchanges and QHPs.

(c) *Providing Culturally and Linguistically Appropriate Services (CLAS Standards).* The following standards will apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under

section 1311(a) of the Affordable Care Act. To ensure that information provided as part of any consumer assistance functions under § 155.205(d) and (e) or § 155.210 is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency as required by §§ 155.205(c)(2) and 155.210(e)(5), any entity or individual carrying out these functions must:

(1) Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs;

(2) Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken;

(3) Provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services;

(4) Provide oral and written notice to consumers with limited English proficiency, in their preferred language, informing them of their right to receive language assistance services and how to obtain them;

(5) Receive ongoing education and training in culturally and linguistically appropriate service delivery; and

(6) Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

(d) *Standards ensuring access by persons with disabilities.* The following standards related to ensuring access by

people with disabilities will apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f), and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act. Any entity or individual carrying out any consumer assistance functions under § 155.205(d) and (e) or § 155.210, and in accordance with § 155.205(c), must—

(1) Ensure that any consumer education materials, Web sites, or other tools utilized for consumer assistance purposes, are accessible to people with disabilities, including those with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities;

(2) Provide auxiliary aids and services for individuals with disabilities, at no cost, when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as interpreters can satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services;

(3) Provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities;

(4) Ensure that authorized representatives are permitted to assist an individual with a disability to make informed decisions;

(5) Acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and supports programs when appropriate; and

(6) Be able to work with all individuals regardless of age, disability, or culture, and seek advice or experts when needed.

(e) *Monitoring.* Any Exchange operated by HHS during the exercise of its authority under § 155.105(f) will monitor compliance with the standards in this section and the requirements of §§ 155.205(d) and (e) and 155.210.

(f) *State or Exchange standards.* All non-Navigator entities or individuals

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carrying out consumer assistance functions under § 155.205(d) and (e) in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and all non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must meet any licensing, certification, or other standards prescribed by the State or Exchange, if applicable, so long as such standards do not prevent the application of the provisions of title I of the Affordable Care Act. Standards that would prevent the application of the provisions of title I of the Affordable Care Act include but are not limited to the following:

(1) Requirements that non-Navigator entities or individuals refer consumers to other entities not required to provide fair, accurate, and impartial information.

(2) Requirements that would prevent non-Navigator entities or individuals from providing services to all persons to whom they are required to provide assistance.

(3) Requirements that would prevent non-Navigator entities or individuals from providing advice regarding substantive benefits or comparative benefits of different health plans.

(4) Imposing standards that would, as applied or as implemented in a State, prevent the application of Federal requirements applicable to non-Navigator entities or individuals or applicable to the Exchange's implementation of the non-Navigator assistance personnel program.

(g) *Consumer authorization.* All non-Navigator entities or individuals carrying out consumer assistance functions under § 155.205(d) and (e) in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and all non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must establish procedures to ensure that applicants—

(1) Are informed of the functions and responsibilities of non-Navigator assistance personnel;

(2) Provide authorization in a form and manner as determined by the Exchange prior to a non-Navigator assist-

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ance personnel's obtaining access to an applicant's personally identifiable information, and that the non-Navigator assistance personnel maintains a record of the authorization provided in a form and manner as determined by the Exchange. The Exchange must establish a reasonable retention period for maintaining these records. In Federally-facilitated Exchanges, this period is no less than six years, unless a different and longer retention period has already been provided under other applicable Federal law; and

(3) May revoke at any time the authorization provided the non-Navigator assistance personnel pursuant to paragraph (g)(2) of this section.

(h) All non-Navigator entities carrying out consumer assistance functions under § 155.205(d) and (e) in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and all non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees. In a Federally-facilitated Exchange, no individual or entity shall be ineligible to operate as a non-Navigator entity or as non-Navigator assistance personnel solely because its principal place of business is outside of the Exchange service area.

(i) *Prohibition on compensation per enrollment.* Beginning November 15, 2014, Navigators and Non-Navigator assistance personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210, if operating in an Exchange operated by HHS during the exercise of its authority under § 155.105(f), are prohibited from providing compensation to individual Navigators or non-Navigator assistance personnel on a per-application, per-individual-assisted, or per-enrollment basis.

[78 FR 42859, July 17, 2013, as amended at 79 FR 30344, May 27, 2014]