

## The Comparative Roles of Navigators and Producers in an Exchange What are the Issues?

*The purpose of this document is to assist state policymakers with the implementation of health insurance exchanges and to identify and discuss issues concerning the roles surrounding the traditional role of producers and in the solicitation, sale, negotiation and servicing of health insurance in the individual and small group markets as compared to the expected role of Navigators<sup>2</sup> navigators<sup>2</sup> established by the Affordable Care Act (ACA)<sup>3</sup> to perform certain duties within these markets for Qualified Health Plans<sup>4</sup> offered through an Exchange<sup>5</sup>.*

### Introduction and Background Regarding Navigators and Producers

In order to appreciate the comparative roles of these distinct entities and how they must cooperate in the successful implementation of the Exchange, ~~the following some independent~~ background information ~~will be presented~~ is provided describing the current role of producers in the health insurance marketplace and the expected role of navigators. While the Affordable Care Act (ACA)<sup>2</sup> provides some information about navigators, additional insight is expected from regulations to be promulgated by the Secretary of the U.S. Department of Health and Human Services (“Secretary”<sup>2</sup>).

~~Note the following regarding Navigators and Producers and the important role each must play in the success of the Exchange:~~

### Navigators

In accordance with the ACA, an Exchange must establish a program under which it awards grants to entities called ~~Navigators~~ navigators to perform the following duties:

- Conduct public education activities to raise awareness of the availability of qualified health plans<sup>6</sup>;
- Distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits and cost-sharing reductions in accordance with federal tax laws;
- Facilitate enrollment in qualified health plans;
- Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman, 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; and
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange.

Navigators may include trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration (SBA)<sup>6</sup>, other licensed insurance agents and brokers, and other entities that are capable of carrying out the required duties<sup>7</sup>, meet the standards established by the Secretary and provide information that is fair, accurate, and impartial.

To be eligible to receive a grant from the Exchange, an entity must demonstrate to the Exchange involved that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan. Grants must be made from the operational funds of the Exchange and not federal funds received by the state to establish the Exchange.

The Secretary must establish standards for navigators including provisions to ensure that any private or public entity that is selected as a navigator is qualified, and licensed, if appropriate, to engage in the navigator activities described and to avoid conflicts of interest. Under these standards, a navigator shall not be a health insurance issuer or receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.

The Secretary, in collaboration with states, must also develop standards to ensure that information made available by navigators is fair, accurate, and impartial. (See ACA §1311(i)(5), 42 USC§ §18031(i)(5)).

Furthermore, in accordance with the ACA, a qualified health plan means, among other things, a plan offered by a health insurance issuer that agrees to charge the same premium rate for each qualified health plan it offers without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent. (See ACA § 1301(a)(1)(C)(iii), 42 USC §18021(a)(1)(C)(iii))

## **Producers**

States have been regulating the activities of producers for decades. Thus, substantial background information is available to describe the importance of the role producers play in the procurement of health insurance. However, a full discussion is beyond the scope of this document. In summary, producers are universally regulated by the various states and territories. Typically, a producer is an individual or business entity appointed by a health insurance issuer to sell, solicit, or negotiate insurance contracts on its behalf. The term “producer” is used in many states to include both agents and brokers. A broker negotiates the purchase of insurance on behalf of the consumer (individual or business entity) rather than the health insurance issuer.

Producers are representatives of the health insurance issuer and are subject to terms of the contract or written agreement between themselves and the health insurance issuers they represent. In the conduct of their business as an agent, the producer essentially stands in the shoes of the health insurance issuer and regulators may hold their health insurance issuer liable for the errors or misconduct of the appointed producer. Producers are subject to strict rules in the state in which they operate. Producers must be licensed, must meet various educational requirements, including continuing education requirements, are accountable for their actions, and must demonstrate financial responsibility. These state requirements function to assure competency and professionalism, and also serve to provide a mechanism protecting consumers by license suspensions and revocations where violations of the law are found.

### **Producers Will Play a Crucial Role in the Success or Failure of an Exchange**

In looking at the historical background of producers in the health insurance marketplace and issues surrounding the establishment of a navigator program under the ACA, it is clear that determining the future role of producers is a vital part of the implementation process for the Exchanges. States must consider not only what role producers will play in the start-up and day to day operations of an Exchange but how producers will interact with the navigators. There are many issues in this regard, but experience has shown that all issues must be considered with the firm belief that producers are crucial players in the success or failure of an Exchange. Producers have a significant relationship of trust with the individuals covered by both the individual market and the small employer insurance market. There are also segments of the individual market that are better reached and represented by producers rather than consumer and industry groups. Producers who are accountable and trained on the functions of the Exchange and the products and services available can increase public awareness of the Exchange and increase consumer traffic to the Exchange websites. Also, consumers who are directed to the Exchanges will need education and assistance to determine which products best suit their needs and affordability standards. Producers will need to expand their knowledge base to include helping consumers understand plan quality rates, plan selection, satisfaction surveys, and the value of different “metal” tiers created by the ACA. Producers can assist with these matters. Lastly, an Exchange that uses the already established system of producers to market, advertise and assist with the Exchanges can save on costly overhead and administrative expenses.

## **Issues**

~~Having presented independent information about Producers and Navigators and the crucial role they will play in the success of an Exchange, a~~ number of substantial issues have been identified concerning how producers and navigators these entities will interact in an Exchange. Again, this interaction will be further fleshed out in regulations promulgated by the Secretary. As policymakers consider the following issues, two overarching guiding principles should be: (1) preserving state flexibility to design an exchange that best services the unique market needs in a particular state; –and (2) ensuring the protection of consumers participating in the Exchange.

The ACA does not clearly distinguish between the roles that navigators and producers will play in facilitating exchange enrollment. The law provides that navigators will conduct public education activities and to distribute information about enrollment in qualified health plans, but the requirement to “facilitate enrollment” is left undefined, leaving open the question of whether navigators will or should stop short of assisting with enrollment in a particular product selling insurance coverage (and providing related services, such as advising consumers on specific plan options and actually helping them enroll in the

option of their choice). Absent any federal standards, states will need to evaluate the roles that navigators will play to determine the appropriate certification or licensure requirements.

**1. Will the regulations promulgated by the Secretary establish a ceiling of standards or will states ~~have flexibility~~ have flexibility with regard to the oversight and role of producers and navigators in their Exchange?**

While most states have adopted uniform laws concerning the regulation of producers, the states currently retain flexibility to adapt to the specifics of their markets. The ACA requires that an Exchange “shall establish a program under which it awards grants to [navigator entities].” Further, the ACA states that an entity seeking to receive a navigator grant “shall demonstrate to the Exchange” its relationships or ability to establish relationships needed to perform the duties of a navigator. Both of these provisions suggest that the states, through their Exchanges, will also have flexibility vis-à-vis navigators.

The ACA also directs that the Secretary “shall establish standards for navigators,” and contemplates that those standards will address such factors as qualifications, licensure, and the avoidance of conflicts of interest. How the Secretary presents these standards may dictate whether they are a floor or a ceiling. However, the nature of the eligibility criteria in ACA §1311(i)(2), 42 USC §18031(i)(2), suggest that eligibility will depend on factors that require qualitative evaluation of “existing relationships.” In addition, the ACA suggests a wide range of entities that might qualify as navigators. Those entities may differ substantially from state to state, and even within a state. For example, a commercial fishing industry organization in Massachusetts may be far more equipped to perform navigator activities than one in Kansas, and a professional counseling association may be far more equipped to serve as navigators than a professional hairdressers’ association. Therefore, it is suggested that the Secretary’s standards should substantially defer to a state’s Exchange to make qualitative evaluations.

Finally, the standard preemption provision of the Public Health Service Act (PHSA) is adopted into the Exchange provisions of the ACA. Accordingly, the state Exchange may not have rules that “prevent the application” of the federal law or regulations, see ACA §1311(k), 42 USC § 18031(k). In the context of the PHSA, this standard approach has been interpreted to mean that the federal law is a floor. In sum, the language of the ACA suggests that the Secretary’s regulations, when drafted, will operate as a floor, rather than a ceiling.

**2. Should the states license or certify navigators?**

The navigator provision in the ACA does not negate or preempt state laws requiring producers to be licensed to sell, solicit, or negotiate insurance. On the other hand, the ACA does state that the “Secretary shall establish standards for Navigators ... including provisions to ensure [that a navigator] is licensed if appropriate.” Again, how prescriptive the proposed regulations will be shall significantly impact this question. However, since states each have licensing and certification provisions which depend on the particular characterizations of the states, ~~states~~ flexibility is essential so that states may enforce their existing licensure laws.

States also may ~~also~~ have a variety of certification or licensure arrangements for community partners or others with a consumer assistance orientation<sup>9</sup>. To assure consistency with those already existing state laws, the states should be permitted to require parallel competency requirements for navigators that include educational and continuing education requirements. States may also want to consider a system of reciprocity to allow licensure in multiple states if certain standards have been met.

This may be similar to the flexibility shown in the Long Term Care Partnership provisions of the Deficit Reduction Act of 2005, where the state insurance department is tasked with assuring sufficient training and understanding on the part of individuals selling partnership policies so that the state Medicaid agency may be satisfied of the seller’s competence. In the same way, the Secretary will be looking for a certain level of competency in navigators, and may be anticipated to rely on the state or the state’s Exchange to assure that competency.

Finally, should it be determined that licensure or certification of navigators is appropriate, the following should be considered in the development of the standards in addition to educational requirements:

- A clear definition of the actions and responsibilities requiring a license or certification;
- The services that can be provided under the license or certification;
- Whether applicants should be subject to criminal background checks;
- Accountability standards that should be adhered to by licensees; and
- Privacy protections for information received and provided by licensees.

The extent to which states will need to regulate navigators will depend on the scope of services they provide. If navigators’ services are defined to include services/activities that require licensure for producers, then navigators should be subject to the

same state regulations as producers (e.g., licensure, requirements to hold errors and omission coverage, compliance with privacy regulations).

To ensure that consumers have clarity about the role that navigators can play, states should consider requiring navigators to provide to all consumers with whom they interact a clear and concise description both of the services they can perform for consumers and how they will be paid for those services.

### **3. Who will establish educational and continuing education requirements for navigators?**

As noted above, to the extent ~~Navigators~~ navigators are selling, soliciting, or negotiating insurance, they should be subject to the laws of the jurisdiction in which they are operating. To do otherwise would be to allow persons or entities to avoid licensure requirements by using the term “navigator,” thus undercutting the states’ regulation of the insurance marketplace for the protection of the consumer.

Moreover, because the Exchanges in the various states will operate differently, and will operate in jurisdictions with different producer and navigator roles, it is expected that there will need to be some variation in the education requirements, though perhaps with a set floor (as in the Long Term Care Partnership provisions of the Deficit Reduction Act of 2005).

### **4. How will navigators be held accountable for errors? Will they be required to have errors and omissions coverage as do producers?**

~~Producers are required, as licensed professionals, to carry errors and omissions insurance coverage. Some states have a statutory requirement making it mandatory for a producer to carry errors and omissions insurance or other forms of coverage to demonstrate financial responsibility. To provide a safety net for the consumers, the same should hold true for Navigators.~~ If navigators are not required to be licensed or certified, there will be no mechanism for an errors and omissions coverage requirement. Yet, depending on the scope of a navigator’s role in assisting consumers in getting the coverage that is most appropriate for them, and then assisting them further in claims resolution matters, a consumer who is harmed by a navigator’s error or omission should have some recourse. Navigators should be encouraged to carry professional liability insurance that would protect them and the consumer in the event of an error.

In addition to errors and omissions insurance, the following can also be considered to further ensure that consumers are properly protected:

- Subjecting navigators to the oversight and regulation of state insurance regulators, including state unfair trade practices acts;
- Developing a process for handling navigator-related complaints from consumers, with the ability to take appropriation action against individual navigators and entities that receive navigator grants when fraud or other improper conduct occurs; and
- Developing a process for reviewing entities that receive navigator grants in order to detect and protect against waste, fraud and abuse.

### **5. What is meant by “facilitate enrollment”? How will the navigator be involved with Medicaid and other public programs? What will navigators need to know?**

Navigators and producers must have a thorough knowledge of the Exchange marketplace. They should understand the private insurance market and public programs. Similar to the health insurance advisory service program established in 42 USCS 1395b-3 (for Medicare-eligible individuals), navigators may facilitate enrollment by providing information, counseling, and assistance to individuals with respect to:

- ~~t~~The private insurance market;
  - eligibility;
  - benefits (both covered and non covered);
  - the process of payment for services;
  - rights and process for appeals of determinations; and
- ~~p~~Public programs:
  - eligibility, benefits, and the application process;
  - linkages between the Exchange, tax credits and Medicaid programs; and
  - ~~s~~State and local agencies involved in the Medicaid program.

Navigators can be especially helpful in underserved populations by partnering with community-based organizations that have experience working with the uninsured, populations with language barriers and other under-served communities.

On the other hand, the ACA, in describing the duties of a navigator, consistently makes reference to qualified health plans to the exclusion of public plans or programs. Therefore, it is unclear whether navigators are expected to facilitate enrollment in public plans or programs. However, if navigators are expected to serve Medicaid or Children's Health Insurance Program (CHIP) populations, then funding for navigators should also come from these programs in order to assure that consumers purchasing private insurance coverage through exchanges are not assessed for these costs. Such funding could come from ACA Section 5313, which provides for grants for community health workers requiring such workers to educate and provide outreach regarding enrollment in health insurance, including Medicaid and CHIP.

Some may consider the role of a navigator to be analogous to the role that State Health Insurance and Assistance Programs (SHIPs) play with respect to Medicare consumers and the role that facilitated enrollers in some states play in the Medicaid and CHIP programs. States may want to consider reviewing these programs for guidance in developing the role that a navigator will play in the Exchange.

## **6. Will HIPAA and GLBA apply to navigators? If so, how?**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the various privacy regulations promulgated there under generally apply to three "covered entities": (1) health care providers, (2) health care clearinghouses, and (3) health plans. Since producers act on behalf of health insurance issuers and health plans, some health insurance issuers consider producers to be "business associates" and require them to sign confidentially agreements to safeguard protected health information (PHI) and specify how the producer may use or disclose PHI.

The Gramm-Leach-Bliley Act (GLBA) requires financial institutions, which includes health insurance issuers, to safeguard a customer's personal information, provide notice to consumers regarding the company's information-sharing practices, and provide an opportunity for the customer to "opt-out" if the customer does not want personal information to be shared outside of the company (or its affiliates). Additionally, GLBA created a mechanism for federal oversight, the National Association of Registered Agents and Brokers (NARAB), ~~that~~ which preempts state law and will regulate producer licensing unless a majority of the states implement and maintain uniformity and reciprocity standards for producer licensing.

In response to these federal laws, the NAIC adopted model laws and regulations related to producer licensing, the privacy of consumer financial and health information, and safeguarding consumer information. The majority of states have enacted these models. Therefore, if navigators become licensees of the various departments of insurance, navigators will be required to comply with state laws and regulations designed to implement the various provisions of GLBA and HIPAA. If navigators are not regulated by state departments of insurance, then these entities may not have the knowledge or tools to safeguard consumer information to the same extent as producers. The Secretary and the states should consider the information that navigators may have in their possession and how personal information (including PHI) will be safeguarded. Consideration could include standards in any licensure, certification or other regulatory oversight requirements for navigators, or a provision to comply with privacy laws in any contractual agreement entered into between the Exchange and navigators regardless of whether navigators are licensed.

## **7. How do you identify, reach out, and oversee non-insurance industry partners acting as navigators?**

The ACA requires that an entity serving as a navigator demonstrate to the Exchange that they have existing relationships or could readily establish relationships with employees, employers, and consumers that are qualified to enroll in a qualified health plan. Further guidance is needed to determine what will constitute sufficient representation of the various areas in the community needing representation within an Exchange. Will Exchanges require a certain level of need for representation in specific areas to merit a grant to specialized entities (i.e. fishing industry, ranching industry, etc)? For example, a commercial fishing industry organization in Massachusetts may be far more equipped to perform navigator activities than one in Kansas, and a professional counseling association may be far more equipped to serve as navigators than a professional hairdressers association. Also, what type of documentation will be required to demonstrate relationships or ability to form relationships with individuals in the community in order to be qualified as a navigator?

Exchanges will need to establish a certification program for all navigators (that does not vary by industry) to assure that each navigator has sufficient basic knowledge of the Exchange to assist and educate their consumers.

As state departments of insurance will not necessarily have regulatory authority over navigators, Exchanges should also consider a complaint process for consumers who are dissatisfied with the performance of a navigator. This process should

take into account the varied types of “community partners” that could serve as a navigator. The process should include consideration whether certification may be withdrawn as needed.

It would appear that, in the absence of oversight by the commissioner of insurance, the Exchange governing board must be given authority under the enabling legislation to promulgate regulations to oversee the functions of navigators.

#### **8. What funding source may Exchanges use for navigator programs?**

The ACA requires an Exchange to contract with, and finance, navigators. Additionally, a navigator may not receive any direct or indirect compensation from a health insurance issuer. An Exchange may charge a separate fee to compensate the navigator. Regardless of the group size, plan design or health insurance issuer chosen by the consumer, compensation should not vary. A transparent compensation model that provides a market competitive payment to a producer or navigator will best serve consumers.

Proper disclosure also will also be necessary to address the inherent conflict in the funding of navigators that exists in the ACA. Specifically, while navigators are to be funded “out of the operational funds of the Exchange,” ACA §1311(i)(6), 42 U.S.C. §13031(i)(6), the ACA also contemplates that the Exchange will “charge assessments or user fees to participating health insurance issuers, or ... otherwise generate funding, to support its operations.” ACA §1311((d)(5)(A), 42 U.S.C. §13031(d)(5)(A). Thus, it is quite likely that health insurance issuers will be funding the operations of the Exchange, including the operational funds used for funding navigators. It is therefore important to keep funding for navigators reasonable, to keep overall Exchange administrative costs low, since such funding will directly impact affordability of premiums for Exchange enrollees. That said, this must be accomplished without violating §1311(i)(4)(ii), 42 U.S.C. §13031(i)(4)(ii), which prohibits navigators from receiving “any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.”

As noted earlier, if navigators are expected to service Medicaid or CHIP populations, then funding for these new entities should also come from these programs.

The role of -navigators may change over time. States should consider that the role will evolve as consumers become familiar with the steps needed to access coverage through Exchanges. Thus the funding levels may need to be adjusted as the exchange marketplace develops.

#### **9. May producers serve as navigators? How will commissions be paid?**

The ACA provisions relating to medical loss ratio requirements and relating to the role of navigators in the Exchange demonstrate that one concern behind this legislation is the question of who producers truly work for and the value that they bring for the consumer. There are some indications that the marketplace is moving towards a structure that would allow compensation of producers by employers in lieu of carriers, however this may not be true of all market segments, such as small groups under 50 members that may not have the resources to pay direct fees in addition to premiums. Discussions with the Secretary would indicate that this is a route with which the Secretary would concur. States should anticipate that producers will continue to serve a vital role in the industry, although it is expected that the nature of their services will evolve.

States will want to look closely at the ways to make allowances for producers in the future marketplace. Some states have statutory schemes in place that would prevent a producer from being compensated by an employer. Statutory analysis may be needed to determine if legislation should be pursued to allow new compensation schemes. This may include setting parameters for producers to place business within an Exchange and receive some kind of compensation for that service. Or it may include allowing producers that are not receiving compensation from health insurance issuers to function as navigators.

There are special considerations for producers in the small group market. Producers form a working relationship with client employer groups, with the employer often utilizing the producer as an expert. If a producer is working with a small employer group that decides to send their employees to the Exchange to purchase coverage, how can the producer continue to assist the employer and their employees obtain coverage? In this instance, the producer (as opposed to a navigator) may be the individual with the best relationship and tie to these individuals.

States should examine the goals of the navigator program and determine if producers are suited to this function or if it would be more advisable to limit producers interaction with individuals to simply to a role in enrolling individuals them in qualified

health plans. Exchanges would have to consider how a producer might interface with Medicaid or CHIP programs. Also, producers may not have the necessary knowledge to assist with subsidy issues.

If a state determines that navigators should “facilitate” enrollment in the Exchange and producers may be used to complete enrollment within qualified health plans, how will the Exchange ensure that navigators aren’t using preferential treatment in ~~which producer they refer people to?~~ What if producers are paying “commission” to navigators?

Regardless of the exact role of the producer within the Exchange (navigator or producer), producers will not have the necessary knowledge to fully utilize the system without additional training. States may want to look to the educational requirements of the Long Term Care Partnership provisions of the Deficit Reduction Act of 2005 for ideas about the design of the required education for producers with regard to Exchanges. Under the Deficit Reduction Act of 2005, the state insurance department is tasked with assuring sufficient training and understanding on the part of individuals selling partnership policies so that the state Medicaid agency may be satisfied of the seller’s competence. In the same way, the Secretary will be looking for a certain level of competency in navigators, and it may be anticipated that the Secretary will rely on the state or the state’s Exchange to assure that competency. It is advisable to set a “floor” of core competencies required by producers who are involved with the Exchange and allow individual states to determine further educational requirements as needed based on the individual needs of their consumers. Notwithstanding the roles to be played by navigators or producers, state Medicaid departments and the state agency that oversees public programs will ultimately be responsible to make enrollment/entitlement determinations.

#### **10. Ethical issues for producers who wish to serve as navigators**

The ACA requires that navigators avoid conflicts of interest and provide fair and impartial information concerning enrollment in qualified health plans. An Exchange must consider if there is an inherent conflict of interest if producers desire to function as navigators for the Exchange. These conflict-of-interest considerations will give rise to numerous issues requiring resolution. For example, does a conflict exist (1) if a producer is currently receiving commissions on unrelated blocks of business and is acting as a navigator, (2) if a producer is receiving commissions with regard to large group products that cannot be offered through the Exchange and is acting as a navigator or (3) if a producer is receiving trailer commissions from an insurer and is acting as a navigator. Exchanges will need to set criteria or must seek guidance from the Secretary as to what level of health insurance issuer related activity constitutes a conflict of interest. For example, does a conflict exist if a producer: Is currently receiving commissions on unrelated blocks of business? (Is this indirect compensation?) Receiving commission with regard to large group products that cannot be offered through the Exchange? Would producers that had a prior relationship with a carrier but are no longer functioning as a producer in the fully insured market be considered to have a conflict of interest? The states should also consider whether a conflict exists if a producer that works solely in the self-funded marketplace wishes to serve as a navigator. What about producers that work in the self funded marketplace and therefore are not receiving any commission from a carrier?

Exchanges will need to set criteria or must seek guidance from the Secretary as to what level of health insurance issuer related activity constitutes a conflict of interest.

#### **11. Issues relating to multi-state plans offered by U.S. Office of Personnel Management (OPM) through exchanges.**

ACA § 1334, 42 USC § 18054 authorizes the U.S. Office of Personnel Management (OPM) to enter into multi-state plans with insurers for one-year terms, automatically renewable, to offer individual or small group coverage through the exchange. Plans that have contracts with OPM are deemed to be certified to participate in the exchanges. In order for these plans to be offered through any state exchange, they must be available in 60 percent of the states in the first year, 70 percent in year two, 85 percent in year three, and 100 percent thereafter. At least two plans must be offered in each state and one must be offered by a non-profit and at least one plan cannot cover abortions.

Since these plans will be offered through the Exchange, states will need to address the issue of how navigators and producers will be involved. Hopefully, regulations will address some of these questions. It is also expected that it will be sometime after 2014 before 60 percent of the state exchanges are ready to issue these OPM plans through Exchanges.

#### **Conclusion**

There are many interrelated issues that must be addressed to assure that the professional competencies of producers, as well as the educational assistance function of navigators, may benefit the consumers of the Exchange. By presenting the

background and information above, this paper may assist states in considering how best to structure their Exchanges with regard to producers and navigators.

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- 1 \_\_\_ States differ in licensure terminology. For purposes of this document, unless otherwise stated, “producer” shall include agent, broker, consultant, insurance producer, and any other term or designation currently used to refer to those individuals or entities that are required to be licensed by the state to be engaged in the solicitation, sale, negotiation and servicing of insurance, regardless of whom they represent.
- 2 \_\_\_ For the purposes of this document, “navigators” refers to entities carrying out the program established under ACA §1311(i), 42 USC § 18031(i)
- 3 \_\_\_ On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act. Then, on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 was signed into law. The two laws are collectively referred to in this document as the Affordable Care Act (“ACA”)
- 4 \_\_\_ ~~A “qualified health plan” is defined at ACA §1311(e), 42 USC §18021(a). The Secretary must promulgate regulations to establish the criteria for certification of health plans offered through the Exchange. See 42 USC §18031(e). For the purposes of this document, “Exchange” refers to the American Health Benefit Exchange as described in ACA §1311(b), 42 USC § 18031 (b)~~
- 5 \_\_\_ ~~A “qualified health plan” is defined at ACA §1311(c), 42 USC §18021(a). The Secretary must promulgate regulations to establish the criteria for certification of health plans offered through the Exchange. See 42 USC §18031(c). For the purposes of this document, “Exchange” refers to the American Health Benefit Exchanges as described in ACA §1311(b), 42 USC § 18031 (b)~~
- 6 \_\_\_ The SBA provides small business counseling and training through a variety of programs and resource partners, located strategically around the country. One example is the Office of Small Business Development Centers (SBDC) which provides management assistance to current and prospective small business owners. SBDCs offer one-stop assistance to individuals and small businesses by providing a wide variety of information and guidance in central and easily accessible branch locations. The program is a cooperative effort of the private sector, the educational community, and federal, state, and local governments and is an integral component of Entrepreneurial Development’s network of training and counseling services.
- 7 \_\_\_ Although not specifically mentioned in the ACA, community partners that assist in the SHIP and SCHIP programs of various states have been suggested as performing parallel functions to those duties performed by a navigator.
- 8 \_\_\_ ACA uses the term “health insurance issuer” to describe a health insurer or health insurance company. For purposes of this document, health insurance issuer is an entity licensed by the state or territory that is engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of health insurance.
- 9 \_\_\_ Community partners may be community-based agencies, organizations, coalitions, hospitals, church groups, guidance counselors, school nurses, health care providers, and other groups or individuals that wish to help an interested person learn about or receive some service or benefit. Typically their work focuses on outreach and education, but may also include providing assistance in completing applications for those services or benefits. Community partners are not licensed, and therefore are not permitted to sell, solicit, or negotiate contracts of insurance. While community partners may be subject to some form of state approval, this approval typically functions as a means to access electronic application systems, rather than as regulatory oversight.