



Oklahoma Insurance Department
State of Oklahoma

April 13, 2011

Via email to Jolie Matthews, Senior Health & Life Policy Advisor & Counsel
JMatthews@naic.org

Honorable Sandy Praeger, Commissioner
Honorable Michael McRaith, Director
Co-Chairs, NAIC Exchanges (B) Subgroup
c/o National Association of Insurance Commissioners
444 North Capitol Street, N.W.
Suite 701
Washington, D.C. 20001

Re: Comments on *The Comparative Roles of Navigators and Producers in an Exchange:
What are the Issues?*

Dear Commissioner Praeger and Director McRaith:

At the Health Insurance and Managed Care (B) Committee Exchanges (B) Subgroup meeting on March 25, 2011, you advised that I could provide additional commentary on the referenced draft white paper. I want to make sure that my position is clear: the Patient Protection and Affordable Care Act should be changed to delete any reference to navigators. Short of that, any person placing insurance through the exchanges authorized by the Patient Protection and Affordable Care Act must be licensed by the state insurance department as a producer or broker. A navigator is more of an educational resource, more akin to a health insurance ombudsman.

As yet, there has been no federal guidance on the role of navigators, or on the role of agents and producers within an exchange. However, states have a long history of regulating the conduct of persons involved in the sale, solicitation, and negotiation of insurance. State's authority in this area cannot be ignored. Further, each state is empowered by the Act to create state specific exchanges. That means that the states must retain the right to regulate the conduct of the exchange in their, including how insurance is placed with the exchange.

Again, there is very little federal guidance so far, but it does appear that the state based exchanges are to consider an applicant's eligibility for Medicaid or other state based subsidy programs, as well as to consider whether the applicant is eligible for a premium tax subsidy. The Act also calls for a number of risk adjustment mechanisms.

As a practical matter, determining an individual's financial eligibility or their health condition will require access to an applicant's protected financial and individually identifiable health information. The role of agents and brokers in protecting this information is spelled out in the applicable federal and state laws. State licensing laws provide clear enforcement authority against agents and brokers who violate privacy laws; the need for that authority with regard to anyone that touches an application is clear. Navigators" are not addressed in those laws.

Conceptually, the role of a navigator is as an informational source and advocate, similar to the Health Insurance Ombudsman. The duties of a navigator, specified in PPACA Section 1311(i) are to conduct public education activities to raise awareness of the availability of qualified health plans; distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits; *facilitate enrollment* in qualified health plans; provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman; and to provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges.

Facilitating enrollment is not the equivalent of actually enrolling someone in a qualified plan. Actual enrollment will of necessity require the gathering of financial and a review of the potential products available to that applicant in and out of the exchange. While health conditions may not affect an applicant's ability to purchase insurance, their health may affect their choice of product. All of this information is sensitive and must be handled by a professional accountable to a licensing authority.

Agents and producers have long served to navigate individuals and employers through the maze of insurance options and to "facilitate" enrollment into insurance products. They are also specifically authorized, in Section 1312 of the Act, to enroll an individual or an employer through an exchange and to assist individuals in applying for tax credits and cost-sharing reductions for plans sold through an exchange. Not just "facilitate" enrollment, but actually enroll them. The difference in language has to be recognized and applied in the development of any exchange.

Sincerely,

A handwritten signature in cursive script that reads "John D. Doak". The signature is written in dark ink and is positioned below the word "Sincerely,".

John D. "Okie" Doak
Oklahoma Insurance Commissioner