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Navigator Proposed Rules Will Impede Insurance Enrollment Modifications Needed to Ensure Consumer Protection and Robust Navigator Program

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

The unprecedented scrutiny of ACA navigators has taken many forms. One example is direction from the Texas Governor in September instructing the Department of Insurance to write rules regulating navigators in Texas. The Texas Department of Insurance (TDI) released its [proposed navigator rules](#) on December 6, 2013, and is accepting public comment on the proposal until 5 p.m. on January 6, 2014. This Policy Page explains key concerns with the proposed rules, and how those concerns can be addressed to increase consumer protections without hindering the vital work of trained and certified navigators.

KEY FINDINGS

- The proposed rule will regulate more than just ACA navigators.
- Navigators must be able to help explain and compare health plans, so consumers can make informed choices.
- Proposed rules contain excessive, unjustified and costly (up to \$800 per person) training requirements.
- Concerns with rule provisions can be addressed to achieve the rule's intent.

Background on ACA Navigators

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

The federal government awarded nearly \$11 million in navigator grants to Texas in August 2013. Groups funded to perform navigator duties include the United Way of Tarrant County, Community Council of Greater Dallas, City of Houston Department of Health and Human Services, Alamo Area Agency on Aging, and MHP (formerly Migrant Health Promotion) in the Lower Rio Grande Valley. Navigator organizations are respected groups with strong community

ties that generally have a long history, sometimes going back decades, of helping people connect to health coverage through Medicaid, CHIP, and Medicare.

Key Concerns with the Proposed Rule

As proposed, the rules could prevent or delay the important work of navigators, impeding insurance enrollment and hindering progress on reducing Texas' worst-in-the nation uninsured rate. But, there are good provisions in the rules as well that could work as intended—to increase consumer protections without hindering the vital work of trained and certified navigators—if the department modifies the proposed rules to address the key concerns listed below.

The rules could prevent a navigator from helping consumers understand and compare the benefits so that consumers can make an informed insurance choice.

Explaining and comparing the features of different health plans (the premium, deductible, provider network, covered medications, etc.) is NOT the same thing as recommending a consumer buy a specific plan. Federal rule (45 CFR 155.210(e)) specifically requires navigators to provide fair, accurate, and impartial information to consumers and to facilitate the selection of a Marketplace health plan. Navigators need to be able to help consumers compare and understand insurance options, without recommending which plan to purchase.

The rules could shut down navigator services as of March 1, when demand will spike in the final month of open enrollment.

As proposed, navigators must comply with the rules by March 1, 2014. Once the rules are final, navigators could have just a month (or less) to jump through many hoops. This timeline is too short for navigators to accomplish at least two time-consuming, bureaucratic necessities that are completely outside of navigators' control: (1) obtaining advance federal permission to deviate from their navigator's grant budget finalized back in August (processing takes 30-60 days), and (2) getting through TDI's registration system (processing could take 2-3 weeks).

Even putting aside the training requirements (which don't kick in until May 1 and require private vendors to first create a 40-hour training curriculum and exams), when you combine the steps above with other hurdles navigators have to clear to come into compliance, ***it appears impossible to ensure navigators can reasonably complete registration in less than three months.*** The rules should ensure that navigators can continue to provide their vital services while they work in good faith toward compliance.

Nonprofit navigators will have to pay excessive and unnecessary fees for the privilege of providing free application assistance to the poor and uninsured.

TDI supplied official estimates for some of the various costs imposed for compliance. In the first year, the rule will add cost between \$320 and \$980 for each *individual* navigator. On top of that, each navigator *organization* will incur costs between \$960 and \$1,460. A navigator organization that oversees 30 navigators could incur about \$30,000 in costs in the first year—about enough

to support a full-time navigator. Every dollar diverted from enrollment assistance leaves fewer resources to serve Texas' 6.4 million uninsured.

TDI's proposed rules do not provide estimates for all costs resulting from the rule. For example, costs related ensuring ongoing compliance, printing, mailing, and obtaining required identification are not included in the estimates above. TDI's estimate also lacked costs for required travel. The rules requires navigators to take exams in proctored testing sites, which may not be available in every community. Using TDI's current testing vendor, which has 19 testing sites in Texas, as an example, a navigator in Laredo would have to travel 260 miles round trip to Corpus Christi, and a navigator in Mission would have to travel 77 miles round trip to Harlingen.

The 40-hour state training requirement (on top of the 20-30 hour federal training requirement already fulfilled by Texas navigators) is excessive and unjustified.

TDI's rules require 60-70 hours of total training for ACA navigators. The rules identify three areas where navigators should receive extraining training (Texas-specific Medicaid information, privacy, and ethics), but fail to demonstrate that 40 hours of training is truly necessary to cover these subjects. TDI estimates the extra state training will cost navigators \$200-\$800 per person, one of the most significant costs imposed by the rule.

ACA navigators will be held to a much different standard than other community-based enrollment assistors, who perform very similar services. For example, it takes about four hours to complete the free Texas Health and Human Services Commission navigator training that prepares community groups to help people enroll in Medicaid, CHIP and other programs through the Community Partner Program. Community Medicare counselors in HICAP (Health Insurance Counseling and Advocacy Program), who help Texans through Area Agencies on Aging and who are also certified by TDI, receive 25 hours of free training.

The table on page 5 compares training standards and costs under the proposed rule to different community-based enrollment assistors and health insurance agents in Texas and illustrates the stark differences in training standards and costs.

The rule has a broad ban on using the term "navigator" in a title, organization name, or website if you aren't registered with TDI

The rule prohibits organizations and individuals who provide basic information on health coverage programs (including the ACA, Medicaid, or CHIP) from using the term "navigator" as a job title if they do not go through the TDI state registration process. Many health care-related organizations already use the term "navigator" today (like patient navigators and cancer navigators) to describe the individuals who help patients understand and connect with health care and coverage.

The rule applies well beyond navigator grantees under the Affordable Care Act.

The rule contains no exemptions for individuals who help a friend or family member complete an application for CHIP, Medicaid, or the Marketplace, even though they are not promoting navigator services or presenting themselves as a navigator. For example, the proposed rule would require a mother helping her young adult son with an application for insurance to first complete an expensive and time consuming registration with the state. The rule will also require registration of staff in hospitals, clinics, and community organizations who are enrollment professionals, but who are not conducting enrollment through a formal federal or state program.

The flowchart on page 6 will help Texas organizations and individuals figure out if they would be regulated under TDI's proposed rules, and if so, which rule provisions apply.

How to Comment on the Rule Proposal

TDI is accepting public comments on the [proposed rule](#) through January 6, 2014 at 5 p.m. Written comments submitted via email must be sent to both chiefclerk@tdi.texas.gov and NavigatorsRegistration@tdi.texas.gov. Or you can provide written or oral testimony at either of the two [hearings](#) TDI is holding on these rules in Austin on December 20 and January 6. Both hearings are at 9 a.m. in Room 100 in the lobby of the Hobby Building, 333 Guadalupe St.

Comments may also be mailed to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Jamie Walker, Associate Commissioner, Licensing Services Section, Mail Code 305-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104.

Conclusion

The purpose listed in Senate Bill 1795, Texas' navigator law, "is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under [the federal Health Insurance Marketplace], while helping consumers in this state." Navigators perform critical work to help Texan consumers learn about and enroll in affordable insurance options. TDI should work to address concerns with the proposed rule so that Texans benefit from both consumer protections and a robust navigator program.

For more information or to request an interview, please contact Alexa Garcia-Ditta at garciaditta@cphp.org or 512.823.2873.

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Comparison of Training Standards and Fees for In-Person Application Assistants in Texas

CPPP, December 2013



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	Navigator under TDI proposed rule	Affordable Care Act navigator	Community Partner Program (Texas Medicaid/CHIP navigator)	Health Insurance Advocacy and Counseling Program (Medicare counselor)	Health Insurance Agent
Overview of assistance/ program	Includes federal ACA navigators and also other individuals and organizations that provide application assistance for Medicaid, CHIP, and the Marketplace, unless exempted.	Provides outreach and application assistance for the Marketplace, Medicaid, CHIP through community-based organizations. Funded by federal grants.	Provides application assistance through YourTexasBenefits.com for Medicaid, CHIP, SNAP, and TANF through community-based organizations.	HICAP staff and volunteers provide information and enrollment assistance on Medicare-related public and private benefits through Area Agency on Aging offices statewide.	Individual licensed by the state to sell, solicit, and negotiate insurance on behalf of insurers.
Authorization	TIC 4154* and TDI proposed rule 28 TAC §§19.4001-19.4018	42 U.S.C. §18031 and 45 C.F.R. 155	Texas Gov't Code, Ch. 531, Subchapter S. (No rules)	42 U.S.C. §1395b-4 and 40 TAC §83.3	TIC § 4054.051 and 28 TAC, Chapter 19
Hours of initial training	Total training 60-70 hours. 40 hours of state training <i>in addition to</i> 20-30 hours of federal training.	20-30 hours	4 hours of required training. 1 hour of optional additional training offered	25 hours	No training required (exam requirement only)
Fees for training	\$200 - \$800 (TDI estimate)	Free	Free	Free	N/A
Exam required for certification	Yes (state exam <i>in addition to</i> federal exam)	Yes	No	Yes	Yes
Continuing education	6 hours of state CE <i>in addition to</i> federal continuing education and recertification	Weekly training calls, continuing education, and annual recertification	Periodic updates and annual retraining	Periodic updates and annual retraining	30 hours every 2 years
Fees for continuing education	\$60 - \$120 (estimate by TDI)	Free	Free	Free	\$150 - \$600 every two years (using TDI estimate of cost/hour for navigator CE)
Fingerprinting and background check requirements and fees	Fingerprinting by DPS vendor or law enforcement agency and background check. \$41 -62 fee for fingerprinting (TDI estimate).	None	None	None	Fingerprinting by DPS vendor or law enforcement agency and a background check. \$41-62 fee for fingerprinting (TDI estimate).
Certification requirement and fees	Registered with TDI <i>in addition to</i> certification by the Marketplace. \$50 fee	Certified by the Marketplace. No fees	Certified by HHSC. No fees	Certified by TDI. No fees	Licensed by TDI. \$50 fee

*Texas Insurance Code 4154 (from SB 1795, 73rd Session) authorizes rules, but does not require (or in some cases even authorize) several proposed rule provisions such as 40 hours of state training through training vendors at a cost of up to \$800 per person and registration fees.

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

The Texas Department of Insurance (TDI) has proposed to regulate more than just navigators receiving grants and assisting with enrollment under the Affordable Care Act (ACA). All organizations and individuals who perform application assistance, conduct public education on health coverage, or use the term "navigator" should evaluate whether they will be subject to [TDI's proposed rules](#).

Step 1. Are you exempt?

TDI's rules do NOT apply to:

- Licensed health insurance agents and counselors
- Health insurance companies
- Individuals and organizations that provide consumers assistance under state authority or federal authority other than the ACA. (This should exclude the HHSC Community Partner Program, DSHS Community Health Workers, and HICAP Medicare counseling.)
- Certified Application Counselors

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

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

- Helping consumers apply for Medicaid, CHIP, or Marketplace subsidies,
- Explaining how Medicaid, CHIP, and Marketplace subsidies work,
- Explaining health insurance concepts, like premiums, deductibles, and networks,
- Providing culturally and linguistically appropriate information,
- Avoiding conflicts of interest, or
- Establishing standards for privacy and data security.

If you provide a "navigator service":

You CANNOT represent yourself as a navigator or use the term "navigator" in a person's title or an organization's name or website unless registered with TDI (see Step 3)

While providing navigator services, you CANNOT:

- Provide advice on the substantive or comparative benefits of different health plans,
- Recommend a specific health insurance plan,
- Charge consumers for providing information on health coverage,
- Sell, solicit, or negotiate health insurance, or
- Electioneer.

Step 3. Do you *also* provide "enrollment assistance?"

If an individual or organization provides "navigator services" (see Step 2) **and also** provides "enrollment assistance" by helping a consumer complete an application for Medicaid, CHIP, or Marketplace subsidies, then you must register with TDI by March 1, 2014.

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

Individual registration* requires:

- 40 hours of pre-registration training (on top of 20-30 hours of federal training), that could cost up to \$800/person according to TDI
- 6 hours of annual continuing education (on top of federal requirements) at a cost up to \$120
- Fingerprinting and a background check with registration, at a cost of around \$100.

Analysis of TDI's [proposed rules on navigators](#) by CPPP, December 2013. *Only partial listing of registration requirements. See rule proposal for full list.