



TO: Board of Directors, Colorado Health Benefit Exchange

FROM: COHBE Staff

DATE: April 24, 2013

RE: **Comments on Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Personnel**

The Colorado Health Benefit Exchange (COHBE) appreciates the Centers for Medicare & Medicaid Services (CMS) guidance on implementing key provisions of the Affordable Care Act (ACA) and the opportunity to comment. Below are our specific comments and recommendations on the proposed rule.

Applying conflict of interest, training and meaningful access standards to Certified Application Counselors

HHS should allow state Exchanges maximum flexibility in the design and development of Certified Application Counselors and corresponding standards to ensure that state Exchanges can maximize value in the various consumer assistance programs while minimizing overlap.

In the preamble to the proposed regulations, HHS solicits comments on whether the proposed conflict of interest, training and meaningful access standards should be applied to Certified Application Counselors, a source of consumer assistance that were the subject of proposed regulations issued on January 22, 2013. The preamble to the January 22 proposed regulations acknowledges the overlap in the services that can be provided through Certified Application Counselors, Navigators and licensed agents and brokers, and further states that the “distinction between these entities is that application counselors are not funded through the Exchange.” (Fed. Reg. Vol. 78, No. 14, 4633). We have identified other distinctions including: 1) the absence of outreach and education duties for application counselors as compared to Navigators; and, 2) the difference in the conflict of interest provisions such that insurance issuers or those who receive compensation directly or indirectly from insurance issuers are not barred from serving as application counselors.

If HHS requires application of the same standards to Application Counselors as are required for Navigators and Non-Navigators (Assisters), then the differentiation between the various consumer assistance functions is virtually indistinguishable.

Conflict of Interest standards

HHS should provide state Exchanges the flexibility to tailor conflict of interest provisions in a way that protects customers and reduces administrative burden.

At section 155.215(a)(1)(iv)(B) and (2)(iv)(B) HHS proposes requiring Navigators and Non-Navigator Assisters to provide a number of disclosures to the Exchange and each customer including, “Any existing employment relationships, or any former relationships within the last 5 years, with any health insurance issuers or issuers of stop loss insurance or [their] subsidiaries...including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss...or [their] subsidiaries....” We believe the extent of this disclosure is overly burdensome and it should not be required.

Training standards for Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under sections 155.205(d) and (e) and 155.210.

Serving both Individual and SHOP marketplaces: COHBE strongly believes that it is inappropriate to require all Navigator and Assister entities to serve both the Individual and Small Group marketplaces and asks that HHS reconsider this requirement.

As a matter of certification, at section 155.215(b)(1)(v) HHS proposes requiring Navigators and Non-Navigator Assistance Personnel to “Be prepared to serve both the Individual Exchange and SHOP.” COHBE has not constructed its Navigator and In-Person Assister program to require Navigator and Assister entities to serve both the Individual and SHOP markets. Rather, COHBE provided entities with the ability to choose to serve either or both markets. While there are certainly areas of overlap, there are distinct skill sets required for serving small employers versus assisting an individual with an application for insurance affordability programs. Requiring entities to serve both markets easily excludes a number of qualified organizations whose efforts are best directed at one or the other. To help ensure no wrong door access, we plan to support our organizations in networking and making appropriate referrals to ensure the best possible service for our customers.

HHS Approved Training: We recommend that HHS define HHS-approved training to mean that HHS will perform a *timely* review of the Exchange’s training plan, and not that the state Exchanges must wait for HHS to develop an approved training curriculum. COHBE is concerned about the lack of clarity surrounding the provision that requires all “individuals or entities who carry out consumer assistance functions” to register for and complete training that is HHS-approved (section 155.215(b)(1)(ii)). COHBE has a training plan established and is well into the content development process. Because of the timeframes we must all work within to be prepared for open enrollment this fall, COHBE is concerned about the loss of time and productivity associated with waiting for HHS developed training or waiting for a lengthy HHS approval process for the training we develop.