

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Resolution Regarding Health Benefit Exchange Navigator Programs

*Adopted by the NCOIL Executive Committee on March 10, 2013, and by the NCOIL Health, Long-Term Care & Retirement Issues Committee on March 8, 2013. **Co-sponsored by Sen. Carroll Leavell (NM) and Rep. George Keiser (ND)***

WHEREAS, the federal Patient Protection and Affordable Care Act (Affordable Care Act), as amended by the federal Health Care and Education Reconciliation Act of 2010, requires the establishment of a health benefit exchange in every state; and

WHEREAS, the Affordable Care Act directs the federal government to establish and operate exchanges in jurisdictions that do not create state-based exchanges; and

WHEREAS, the Affordable Care Act requires every exchange – whether a state-based, partnership, or federally facilitated exchange – to establish a “navigator” program; and

WHEREAS, navigators will be grant-funded entities that educate the public about the exchange, distribute fair and impartial information, facilitate enrollment in exchange-offered plans, and perform other duties set forth in the Affordable Care Act; and

WHEREAS, the Department of Health and Human Services (HHS) has created other categories of individuals and entities – such as “in-person assisters” and “certified application counselors” – that will carry out many of the same consumer assistance activities required of navigators; and

WHEREAS, states have licensed and regulated individuals and entities who engage in insurance sales, consulting, placement, or enrollment activities for many decades, and these supervisory frameworks help ensure that those who service the insurance needs of consumers are accountable and properly qualified to engage in such activities; and

WHEREAS, state licensing and regulatory frameworks of this nature also constitute the primary mechanism by which regulators can stop unqualified and unscrupulous actors and intervene to protect the public; and

WHEREAS, many potential navigators and other assisters will initially lack meaningful insurance knowledge and relevant experience yet will be charged with performing a series of important and sensitive duties that are, in many cases, similar or analogous to those currently completed by licensees; and

WHEREAS, consideration of veterans for training and certification for the navigator positions could quickly mobilize this effort while leveraging the highly skilled and qualified veterans workforce; and

WHEREAS, no provision of the Affordable Care Act prohibits or restricts the ability of state officials to establish a licensing system and regulatory regime for navigators and assisters; and

WHEREAS, federal officials, including HHS Secretary Sebelius, have acknowledged that states (including those where a federally facilitated exchange will operate) possess the authority and ability to institute a licensing system and regulatory regime for navigators; and

WHEREAS, the federal exchange regulation promulgated in March 2012 requires navigators to “meet any licensing, certification, or other standards prescribed by the state or [e]xchange”; and

WHEREAS, HHS issued guidance in December 2012 once again affirming that states with federally operated exchanges may adopt laws that “impose navigator-specific licensing or certification requirements upon individuals and entities seeking to operate as navigators.”

WHEREAS, the failure of a state to establish an appropriate licensing and oversight structure for navigators and similar assisters will result in a regulatory vacuum that leaves these individuals and entities outside of the jurisdiction of state officials and the state insurance code and makes consumers vulnerable; and

WHEREAS, the fact that navigators will be funded by the exchanges themselves and operate under the cloak of government authority and sponsorship further supports the need for proper scrutiny and oversight of navigators;

NOW, THEREFORE BE IT RESOLVED that the National Conference of Insurance Legislators urges states to enact a licensing framework and regulatory regime for navigators and similar assisters that:

- Defines the permitted scope of a navigator and assister's activities and prohibits them from recommending particular health plans, offering advice about which health plan to choose, and engaging in similar activities;
- Includes appropriate and meaningful training, continuing education, and examination requirements;
- Ensures that navigators are subject to the jurisdiction of state officials and the state insurance code, including privacy, market conduct, and unfair trade practices acts;
- Enables regulators to take enforcement action – such as assessing fines or suspending or revoking a license – when navigators engage in improper conduct, commit fraud, or violate state marketplace and consumer protection requirements;
- Requires prospective navigators and similar assisters to undergo criminal and regulatory background screening;
- Makes navigators and similar assisters responsible and legally liable for their actions and establishes financial responsibility requirements to ensure that consumers are made whole whenever wrongful or negligent acts are committed;
- Establishes any other appropriate and relevant consumer protection and market conduct standards; and
- Ensures that navigators and similar assisters receive the due process protections afforded to other insurance licensees; and
- Encourages the use of veterans for navigator positions

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to state legislative leaders, insurance commissioners, and governors.