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NATIONAL ASSOCIATION
OF INSURANCE AND
FINANCIAL ADVISORS



July 20, 2018

Alex M. Azar II
Secretary
The U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Re: Cooperative Agreement to Support Navigators in Federally Facilitated Exchanges, Funding Opportunity Number: CA-NAV-18-001

Dear Secretary Azar and Administrator Verma,

The Agent Alliance represents America's premier agent and broker trade associations, whose members serve consumers and businesses with a canopy of insurance options. Our organizations represent licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists nationally. Our members work on a daily basis to help millions of individuals and employers purchase, administer and utilize health insurance coverage. Consequently, we have a profound interest in the development of the health insurance market and feel that the decisions currently being made by CMS relative to the navigator program are critical.

We would like to provide comments to the recently released Cooperative Agreement to Support Navigators in Federally Facilitated Exchanges, Funding Opportunity Number: CA-NAV-18-001, which was made public on July 10, 2018. We are specifically concerned about the language in Section A4, Program Requirements, which provides that entities applying for navigator funds will be expected to be able to "Provide targeted assistance to serve underserved or vulnerable populations, as identified by the Exchange, within the Exchange service area," also referred to as "left behind" populations, and to provide these populations with information on how to enroll in coverage options in addition to qualified health plans (QHPs), such as Association Health Plans (AHPs) and short-term, limited-duration insurance (STLDI).

As you know, the federal rules¹ outline the navigator-program standards and Section 1311(i)(3) of the ACA provides for the duties of navigators. Under these rules, navigators may: conduct public-education activities to raise awareness of the availability of QHPs; distribute fair and impartial information concerning enrollment in QHPs and the availability of premium tax credits and cost-sharing reductions; facilitate enrollment in QHPs; provide referrals to any applicable office 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. As such, navigators are restricted from providing information about health insurance plans other than those QHPs available in the exchanges.

The language used in the recent funding opportunity announcement for navigator grants is not clear as to what will be expected of navigators working with "left behind" populations. Under current rules, navigators cannot discuss non-QHP plans. The opportunities provided under the AHP final rule, and the STLDI proposed

¹ 77 Fed. Reg. 18309, 18448 (Mar. 27, 2012)



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rule, will allow for the majority of these types of plans to be non-QHP-compliant. As a result, navigators would be restricted from discussing or assisting in the enrollment of these plans.

Health insurance agents and brokers are licensed by the states, maintain errors-and-omissions insurance and are educated in providing assistance across different markets, including QHP- and non-QHP-compliant plans. Agents and brokers service the health insurance needs of large and small employers as well as people seeking individual health insurance coverage. Every day, our members work to obtain insurance for clients who are struggling to balance their desire to purchase high-quality and comprehensive health coverage with the reality of rapidly escalating medical care costs. As such, agents and brokers are currently equipped to be able to guide “left behind” populations through the complexities of health insurance purchasing and enrollment while ensuring they get the best policy at the most affordable price, whether that plan is an exchange plan, in the individual or group market, or a non-QHP-compliant plan such as an AHP or STLDI. Agents and brokers seek to understand each personal situation to create recommendations that complement a client's financial and medical security needs, and their job does not end with the sale. Our licensed producers help their clients with claims issues, service questions and compliance matters throughout the life of each policy they sell.

On July 2, CMS released The Exchanges Trend Report, which showed that agents and brokers were responsible for 42% of overall enrollment in federal exchanges while navigators assisted less than one percent in enrolling in the federal exchanges. Agents and brokers stand at the ready to assist “left behind” populations and populations of all kinds to enroll in the most appropriate plan for the consumer. Under the current rules, and in light of the language in the recent FOA, we would like clarification on the intent of CMS in using navigators to educate consumers on the availability of AHPs and STLDI. Is it the intent of CMS to preempt state licensing laws by allowing navigators to promote and enroll consumers in non-QHP-compliant plans without the requirement of obtaining an insurance license?

The introduction of the new pathway to form AHPs into the market this fall as well as the implementation of the final rule for STLDI will provide consumers with many choices for enrollment for the coming year. As the Administration has noted, the intent behind opening up AHPs and STLDI to more consumers is that health insurance is complicated and the current market does not cater to every consumer. Consumers who will be entering into AHPs and STLDI are expected to have a varied history with health insurance and will need more experienced professionals enrolling them in these plans. Consumers considering these plans have been a “left behind” population when it came to choices in the marketplace; we shouldn’t create a population that is further “left behind” because of inadequate access to the skilled enrollment capabilities and consumer protections of working with an agent or broker.

The Agent Alliance appreciates being able to share our concerns with you, and we look forward to serving as a resource for you as you consider this matter. If you have any questions about our comments or need more information, please contact Janet Trautwein, Executive Vice President and CEO of the National Association of Health Underwriters at either (202) 595-0787 or jtrautwein@nahu.org.

Regards,

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National Association of Professional Insurance Agents