

# Assister Conflict of Interest Requirements

This job aid provides information and guidance Navigators and certified application counselors (collectively, assisters) need to know about conflict of interest requirements under the Affordable Care Act (ACA) and Centers for Medicare & Medicaid Services (CMS) regulations.

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## Overview

Consumer assistance programs are designed to ensure that assisters and assister organizations do not have relationships that could interfere with their ability to provide unbiased outreach and enrollment assistance to consumers. Specifically, certain relationships with health insurance issuers or stop loss insurance issuers could affect, or appear to affect, the impartiality of the help these assisters provide to consumers. Avoiding these conflicts of interest helps assisters satisfy their requirement to provide fair, accurate, and impartial information and avoid steering a consumer toward a certain plan. Navigators and Navigator organizations and certified application counselors (CACs) and CAC organizations each have specific requirements.

Version 2.0 April 2023. This information is intended only for the use of entities and individuals certified to serve as Navigators, certified application counselors, or non-Navigator personnel in a Federally-facilitated Marketplace. The terms “Federally-facilitated Marketplace” and “FFM,” as used in this document, include FFM where the state performs plan management functions. Some information in this manual may also be of interest to individuals helping consumers in State-based Marketplaces and State-based Marketplaces using the Federal Platform. This material was produced and disseminated at U.S. taxpayer expense.

## Navigator and Navigator Organization Requirements

Unless otherwise specified below, the following duties, prohibitions, and disclosure requirements apply to individual Navigators and Navigator organizations in a Federally-facilitated Marketplace (FFM), including:

- Both staff and volunteers of a Navigator organization who perform work related to Navigator program activities or who perform Navigator services.
- A subgrantee or subcontractor of a Navigator organization that performs work related to Navigator program activities or that performs Navigator services, and anyone who performs work related to the subgrantee's or subcontractor's Navigator program activities or who performs Navigator services for a subgrantee or subcontractor of a Navigator grantee organization.
- Anyone working for a Navigator organization in roles supervising Navigator program activities, even if they are not performing on-the-ground application and enrollment assistance.
- Anyone working for a Navigator organization who is engaged in Navigator outreach and education activities.

These duties, prohibitions, and disclosure requirements do not apply to persons working for a Navigator organization, including the organization's subgrantee(s) or subcontractor(s) and persons working for the organization's subgrantee(s) or subcontractor(s), who are in no way involved with the organization's Navigator programs. Those individuals aren't required to comply with Navigator conflict of interest requirements.<sup>i</sup>

For example:

- John has several marketing and outreach responsibilities at a Navigator grantee organization, one of which is to help oversee the marketing and outreach activities related to the Navigator program. Even though he is not involved in day-to-day decision-making related to that program, because John helps oversee the marketing and outreach activities related to the Navigator program, he is considered to be working on that program. Therefore, he must comply with all the Navigator conflict of interest requirements.

- Sue serves on the advisory board of a Navigator grantee organization, but she recuses herself from board discussions of the organization's work on the Navigator grant and therefore has no oversight or decision-making authority over, or other connection with, the organization's Navigator program. Sue isn't required to comply with the Navigator conflict of interest requirements.

## **Providing Information in a Fair, Accurate, and Impartial Manner**

Individuals or entities subject to the conflict of interest requirements for Navigators in FFMs must provide information and services to consumers in a fair, accurate, and impartial manner.<sup>ii</sup> This includes:

- Providing information that helps consumers submit their eligibility applications;
- Clarifying the distinctions among health coverage options, including qualified health plans (QHPs); and
- Helping consumers make informed decisions during the health coverage selection process.

Navigators also have a duty to provide information to consumers about the full range of QHP options and financial assistance for which they are eligible, as well as about Medicaid and the Children's Health Insurance Program (CHIP), if they are eligible for those programs.<sup>iii</sup>

For more information about providing fair, accurate, and impartial application and enrollment assistance, please refer to the Assister Do's and Don'ts webinar at [Marketplace.cms.gov/technical-assistance-resources/assister-dos-and-donts.pdf](https://marketplace.cms.gov/technical-assistance-resources/assister-dos-and-donts.pdf).

## **Navigator and Navigator Organization Conflict of Interest Prohibitions**

Individuals or entities that perform Navigator services, and individuals or entities that perform work related to Navigator program activities on behalf of a Navigator organization, must not:

- Be a health insurance issuer or issuer of stop loss insurance. For example, a company that sells QHPs isn't eligible to receive a Navigator grant.
- Be a subsidiary of a health insurance issuer or issuer of stop loss insurance. For example, a company that is owned or controlled (even partially) by a company selling QHPs isn't eligible to be a Navigator organization.



- Be an association that includes members of or lobbies on behalf of the insurance industry. For example, an association that represents insurance companies cannot operate as a Navigator organization. However, associations that a wide variety of businesses join in connection with civic and community matters unrelated to the nature of their business, such as bona fide Chambers of Commerce, can be Navigator organizations.
- Receive direct or indirect consideration, including any monetary or in-kind compensation, from a health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any consumer in a QHP or non-QHP. For example, an agent or broker who is paid a commission for enrolling consumers into QHPs or non-QHPs can't be a Navigator. For more about prohibition on compensation, refer to [In Depth: Prohibition on Compensation and Other Consideration](#) below.

### **Navigator and Navigator Organization Conflict of Interest Attestation**

Navigators in FFMNs must attest in writing that the organization and anyone who performs work related to the organization's Navigator program activities or who performs Navigator services for the organization does not have any of the above four prohibited relationships.<sup>iv</sup> Before making this attestation, the organization should carefully evaluate the relationships of anyone who performs work related to Navigator program activities or who performs Navigator services for the organization (including a subgrantee or subcontractor). CMS Navigator grant applicants must make this attestation during the grant application process.

### **Navigator and Navigator Organization Conflict of Interest Disclosures**

Navigators must disclose to the Marketplace and, in plain language, to each consumer they assist, whether they, their Navigator organization, or anyone who performs work related to the organization's Navigator program activities or who performs Navigator services for the organization, has any of the following non-prohibited relationships:

- Any non-prohibited lines of insurance business (such as auto, life, and homeowners' policies) that the person or organization intends to sell while performing Navigator services or performing work related to the organization's Navigator program activities. (This disclosure requirement does not apply, of course, if the person or organization is selling a QHP or non-QHP, because that is prohibited conduct.)



- Certain non-prohibited employment relationships<sup>v</sup> that the person or their spouse or domestic partner has with a health insurance issuer or stop loss insurance issuer or its subsidiary. This includes:
  - Current employment relationships and former employment relationships within the last five years between the person and a health insurance issuer or stop loss insurance issuer or its subsidiary.
  - Current employment relationships between the person's spouse or domestic partner and a health insurance issuer or stop loss insurance issuer or its subsidiary.<sup>vi</sup>
  - Any non-prohibited financial, business, or contractual relationships that the person or organization has with a health insurance issuer or stop loss insurance issuer or its subsidiary.<sup>vii</sup> This includes both existing and anticipated financial, business, or contractual relationships.

For example:

- Carolina is a Navigator, and her spouse sells life insurance. Carolina isn't prohibited from serving as a Navigator under the prohibitions above, but she must disclose this information to the Marketplace and to every consumer she assists as a Navigator.
- Peter is a Navigator who worked as an administrative assistant for a health insurance issuer three years ago. Peter isn't prohibited from serving as a Navigator under the prohibitions above. However, he must disclose that he was employed by a health insurance issuer to the Marketplace and to every consumer he assists as a Navigator.

Generally, the disclosure to the Marketplace should be made by the Navigator organization. Additionally, while any subgrantees and subcontractors of Navigator organizations that are subject to this requirement may make these disclosures directly to the consumers they or their staff and volunteers assist, CMS expects subgrantee or subcontractor disclosures to the Marketplace to be made by the parent Navigator organization.



## **Navigator and Navigator Organization Conflict of Interest Plan**

Once awarded a grant, all Navigator organizations must submit to the Marketplace a written plan to remain free of prohibited conflicts of interest while carrying out Navigator duties and to disclose, as operator of the FFM, certain non-disqualifying conflicts of interest as specified in 45 C.F.R. § 155.215(a)(1)(iv), applicable throughout the entire period of performance of the Navigator grant.<sup>viii</sup> Depending on the specific relationships that the organization and persons working for the organization have with health insurance issuers and stop loss insurance issuers and on whether these relationships change over the course of the organization's involvement in the Navigator program, the Marketplace may require organizations to update this plan or to include specific topics and mitigation strategies in it. For example, the Marketplace might require that the organization outline in its plan the specific measures it would take to ensure that persons with prohibited conflicts of interest are fully screened from and do not perform any work related to Navigator program activities for the organization.

## **CAC and CAC Designated Organization Requirements**

Unless otherwise specified below, the following duties, prohibitions, and disclosure requirements apply to CACs and CAC designated organizations (CDOs) in an FFM. This includes:

- All staff and volunteers certified by a CDO to perform CAC services, including certified staff and volunteers of a CDO engaged in outreach and education activities. (Reminder: CACs are permitted, but not required, to perform outreach and education activities.)
- Anyone who performs work related to CAC program activities on a CDO's behalf, even if they aren't performing on-the-ground application and enrollment assistance, including anyone supervising a CDO's CAC program activities on the organization's behalf.

These duties, prohibitions, and disclosure requirements don't apply to persons working for a CDO who are in no way involved with the CAC program. Those individuals aren't required to comply with CAC conflict of interest requirements. Refer to the discussion above related to Navigators for examples about what it means to be in no way involved with an assister program.

## **Providing Information in a Fair, Accurate, and Impartial Manner**

Like Navigators, individuals or entities subject to the conflict of interest requirements for CACs in FFMs must provide fair, accurate, and impartial information to consumers.<sup>ix</sup> This includes:

- Providing information that assists consumers with submitting their eligibility application.
- Clarifying the distinctions among health coverage options, including QHPs.

- Helping consumers make informed decisions during the health coverage selection process.

CACs also have a duty to provide information to consumers about the full range of QHP options and financial assistance for which they are eligible, as well as about Medicaid and CHIP, if they are eligible for those programs. In addition, CACs must act in the best interests of the applicants they are helping.

For more information about providing fair, accurate, and impartial application and enrollment assistance, please refer to the Assister Do's and Don'ts webinar at [Marketplace.cms.gov/technical-assistance-resources/assister-dos-and-donts.pdf](https://Marketplace.cms.gov/technical-assistance-resources/assister-dos-and-donts.pdf).

### **CAC and CDO Conflict of Interest Prohibitions**

Like Navigators, CACs and CDOs, including anyone who performs CAC services or who performs work related to CAC program activities on a CDO's behalf, must not receive direct or indirect consideration, including any monetary or in-kind compensation, from a health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any consumer in a QHP or non-QHP.<sup>x</sup> For example:

- An agent or broker who earns a commission for enrolling consumers into QHPs or non-QHPs can't be a CAC.
- An agent or broker business organization can't be a CDO if it receives any form of direct or indirect payment in connection with enrolling consumers in QHPs or non-QHPs.
- A health insurance issuer or stop loss insurance issuer is prohibited from serving as a CDO since these entities receive compensation in connection with enrolling consumers in a QHP or non-QHP.

### **CAC and CDO Conflict of Interest Disclosures**

Persons certified as CACs must disclose to the CDO and to every consumer the CAC assists any non-prohibited relationships the CAC has with QHPs, Medicaid, CHIP, or other potential non-prohibited conflicts of interest.<sup>xi</sup> For example:

- All Health is a health care provider that contracts with a Medicaid managed care organization to receive payment for health care services it provides. All Health is not prohibited from being a CDO, but they must disclose this relationship to every consumer assisted.

- Usain, a CAC who works part time as an administrative assistant for a health insurance issuer, isn't prohibited from serving as a CAC because he isn't receiving payments from the health insurance issuer in connection with enrolling consumers in the issuer's QHPs or non-QHPs. However, Usain must disclose this relationship to his CAC organization and to every consumer he assists as a CAC.

## **In Depth: Prohibition on Compensation and Other Consideration**

As discussed above, all individuals in FFM who perform assister services or who perform work related to an assister program's activities on behalf of an assister organization (including supervising those activities), as well as their respective assister organizations, must not receive any consideration, including any form of compensation (monetary or in-kind), directly or indirectly from any health insurance issuer or stop loss insurance issuer in connection with the enrollment of any consumers in a QHP or non-QHP.<sup>xii</sup> We refer to this requirement as the prohibition on compensation.

Prohibited compensation includes grants as well as any other type of influence a health insurance issuer or stop loss insurance issuer could use, including, but not limited to, things like gifts and free travel, which may create incentives for assisters to steer individuals to particular QHPs or non-QHPs.<sup>xiii</sup>

Prohibited compensation doesn't include compensation received from a health insurance issuer or stop loss insurance issuer that isn't connected with the enrollment of any consumer(s) in a QHP or non-QHP. For example:

- Health care providers are not prohibited from operating as assisters in an FFM solely because they receive compensation from a health insurance issuer for health care services they provide.<sup>xiv</sup>
- An assister organization may host an event that is sponsored by a health insurance issuer or stop loss insurance issuer if all insurance issuers are invited so there is no bias and if any funds raised are not allocated towards the assister organization's application and enrollment assistance activities, and application and enrollment activities or issuer marketing activities are not performed during the event. If the event meets these criteria, CMS would not consider the issuer's sponsorship of the event to be compensation connected with enrollment in a QHP or non-QHP.



## In Depth: Staff Members of Health Insurance Issuers or Stop Loss Insurance Issuers

As discussed above, while health insurance issuers and stop loss insurance issuers cannot serve as assister organizations in FFMs, individuals who are staff members of health insurance issuers or stop loss insurance issuers may be interested in serving as assisters. If they otherwise meet eligibility requirements and don't have a prohibited conflict of interest, these individuals may become Navigators or CACs in an FFM (and thereby perform assister services) or perform work related to those assister programs' activities (including supervising those activities) for a Navigator organization or CDO in an FFM, provided that any direct or indirect compensation they might receive from the issuer isn't in connection with the enrollment of any consumers in a QHP or non-QHP.

- Roles that would not prohibit issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities) include, but are not limited to:
  - Issuer staff members whose activities and compensation aren't connected with the enrollment of consumers into an issuer's QHPs or non-QHPs, which might include administrative assistants, facilities managers, or nurses or social workers who perform case management or care coordination work. As long as these individuals' scope of work doesn't include activities that are connected with enrollment, and their compensation isn't connected with enrollment in QHPs or non-QHPs, they would be considered eligible to serve as assisters, provided they meet all other eligibility requirements.
  - However, if these individuals work as Navigators, their relationship with the issuer must be disclosed to the Marketplace and to all consumers assisted. If these individuals are certified as CACs, they must disclose their relationship with the issuer to their CAC organization and to all consumers to whom they provide assistance.<sup>xv</sup>
- Roles that would prohibit issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities) include, but are not limited to:

- Actively licensed “captive” agents employed by a health insurance issuer or stop loss insurance issuer. These individuals would be ineligible to become assisters if they receive any commissions or salary in connection with the enrollment of any consumers in a QHP or non-QHP.
- An individual who is a marketing or outreach strategy consultant under contract with a health insurance issuer or stop loss insurance issuer. Because there is a strong connection between marketing an issuer’s QHPs or non-QHPs and enrolling consumers into those products, this individual would not be eligible to become an assister if they receive compensation from the issuer for marketing and outreach activities.
- An individual who is employed by a health insurance issuer or stop loss insurance issuer as a customer service representative or member services representative. Because this individual receives a salary or wages from the issuer in part for answering questions from consumers about their enrollment or potential enrollment in QHPs or non-QHPs, this individual would be ineligible to become an assister if they receive compensation from the issuer for customer or member services activities.



## Questions?

Assisters can contact the following with questions:

- **HHS Navigators:** Your Navigator grant Project Officer or [NavigatorGrants@cms.hhs.gov](mailto:NavigatorGrants@cms.hhs.gov)
- **Certified Application Counselors in FFMs:** [CACQuestions@cms.hhs.gov](mailto:CACQuestions@cms.hhs.gov)

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<sup>i</sup> Affordable Care Act; Exchange Functions: Standards for Navigators; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors; Final Rule, 78 FR § 42824, 42833 (July 17, 2013) (hereinafter Navigator Standards Final Rule)

<sup>ii</sup> 45 CFR § 155.210(e)(2)

<sup>iii</sup> 45 CFR § 155.215(a)(1)(iii)

<sup>iv</sup> 45 CFR § 155.215(a)(1)(i)

<sup>v</sup> See Navigator Standards Final Rule, 78 FR § 42834

<sup>vi</sup> 45 CFR § 155.210(d)(3)

<sup>vii</sup> Navigator Standards Final Rule, 78 FR § 42835

<sup>viii</sup> See also Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Final Rule, 79 FR § 30240, 30281 (May 27, 2014)

<sup>ix</sup> 45 CFR §§ 155.225(c)(1) and 155.225(d)(4)

<sup>x</sup> See 45 CFR § 155.225(g)(2). We interpret the prohibition on receiving direct or indirect consideration from a health insurance issuer or stop loss insurance issuer to apply to consideration received for enrolling individuals or employees in health insurance plans or stop loss insurance inside or outside the Marketplaces (see Navigator Standards Final Rule, 78 FR § 42832). A “non-QHP,” for purposes of this prohibition, would not include, for example, auto, life, or homeowners’ policies.

<sup>xi</sup> See 45 CFR § 155.225(d)(2). See definitions of “insurance affordability program” at 42 CFR § 435.4 and 45 CFR § 155.300.

<sup>xii</sup> 45 CFR §§ 155.210(d)(4) and 155.225(g)(2)

<sup>xiii</sup> See discussion of 45 CFR § 155.210(d)(4) at 77 FR § 18333. Please note that although this prohibition originally applied only to Navigators, we later extended it to CACs by finalizing § 155.225(g)(2). We would apply the same interpretation of “consideration” to the rules that apply to CACs.

<sup>xiv</sup> 45 CFR §§ 155.210(d)(4) and 155.225(g)(2)

<sup>xv</sup> 45 CFR §§ 155.215(a)(1)(iv)(B) and 155.225(d)(2)

