

OBAMACARE IMPLEMENTATION: WHO ARE THE NAVIGATORS?

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

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OBAMACARE IMPLEMENTATION: WHO ARE THE NAVIGATORS?

Monday, December 16, 2013

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
WASHINGTON, D.C.

The committee met, pursuant to call, at 1:30 p.m., in the Eisemann Center/Hill Performance Hall, 2351 Performance Drive, Richardson, Texas, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa and Farenthold.

Also Present: Representatives Sessions, Burgess, Neugebauer, and Veasey.

Staff Present: Brian Blase, Senior Professional Staff Member; Will L. Boyington, Press Assistant; Adam P. Fromm, Director of Member Services and Committee Operations; Emily Martin, Counsel; Sarah Vance, Assistant Clerk.

Chairman ISSA. Good afternoon. Before I begin, I want everyone to understand this is a hearing of the U.S. Congress. It is not a town hall meeting. And I say that because we are bound by rules of the House of Representatives, and we will adhere to those rules. The only exception that we do during field hearings is anyone who has any letters or other information that they want the committee to consider on this or other issues, our staff will take them back. Additionally, we will give you a card in order to contact us if you want to send additional information. But please understand that we are bound by the rules of the House for this hearing, and we will strictly adhere to them.

With that, the hearing will come to order.

The Oversight Committee's mission statement simply is we exist to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent. And second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

I now ask unanimous consent that the following individuals—the gentleman from Texas, Mr. Sessions; the gentleman from Texas, Mr. Burgess; the gentleman from Texas, Mr. Neugebauer; and the

gentleman from Texas, Mr. Veasey—be allowed to participate in today’s hearing even though they are not members of the committee but are members in good standing of the U.S. House of Representatives.

Without objection, so ordered.

I will now recognize myself for a short opening statement.

We come to Dallas today, or more specifically to Richardson, Texas, to hold a field hearing on the Affordable Care Act, Obamacare Implementation: Who are the Navigators?

Over the past several months, as we have begun to and now rolled out the President’s signature legislation, the law has faced one after another problem. First and most notably publicly, over \$600 million was spent on a website that simply didn’t work. But that is but the tip of the iceberg. We now know there are fundamental unanswered questions, complications and, quite frankly, flaws in the Affordable Care Act that need to be addressed.

The question of administering the website and patching the security holes that existed on launch date and may still threaten the American people’s private information is, of course, paramount. But long after the website is fixed, we will still have the question of millions of people who have lost their health insurance even though the President promised if you like your healthcare, you can keep it; if you like your doctor, you can keep him, period.

We know that that, in fact, is not going to happen. Many times more people have lost their healthcare than have gained an opportunity under the Affordable Care Act. That is not to mean that it isn’t the law of the land. It means we must fix it.

A number of other areas have been explored by this committee, and today we are going to explore a major portion of the Affordable Care Act rollout. Today’s hearing focuses specifically on the administration’s Navigator program. The purpose of Navigators is to explain Obamacare to people and facilitate enrollment into coverage. This was approved in the law and is anticipated in every sense. However, what has not been anticipated is such failures as defined that somebody who has a history of identity fraud, healthcare fraud, or some other felony conviction might very well receive the job of being a Navigator.

This and other areas we will hear about today represent areas in which government must do better. The expectation of the American people is that people who represent the power of a mandated law and a service that the taxpayers pay for will, in fact, receive a trained individual with an acceptably clean record and an expectation of their privacy.

The HHS training program for Navigators will only provide 5 to 20 hours of training, and in some cases online-only training. The Navigators’ exams are conducted online and individuals may attempt to take these exams an unlimited amount of times. As we all know, an online exam also can be taken by somebody else pretending to be the Navigator.

Despite these expected lack of experiences and lack of training, HHS officials testified that it would be logical for Navigators and Assistants to conduct outreach activities prior to completing their training. I repeat, even with the short amount of training, even with the training being online, even with the possibility that the

person taking the test one, two, 10 or 100 times, finally getting someone else to take the test for them, even though that low standard is there, HHS has said that it may be necessary or reasonable for them to go out in the field prior to this testing and training.

One CMS whistleblower warned that because it is not possible to track every computer and hard drive used by Navigators to gather applicants' personal identifiable information, the fact is sensitive information may be vulnerable to, among other things, viruses on their individual computers.

Top HHS officials acknowledge concerns that con artists and identity thieves will pose as Navigators, and testified that the problems will only increase as the Affordable Care Act is fully implemented.

We are now 2-and-a-half months into the rollout. We certainly want to hear about things that were wrong at the launch. We, more importantly, want to know have they been fixed or are they to be fixed.

In Dallas, Navigators have been caught on camera advising individuals to commit tax fraud by under-reporting income in order to gain higher subsidies. Our committee more than two years ago dealt with a similar situation with fraud in the housing market that helped contribute to people having homes they could not afford. We cannot have a repeat of the Acorn-like activities that led to too many people believing that there was something for nothing and ultimately ending up with nothing when they started with something.

Finally, this hearing is titled "Who are the Navigators?" We invited Dr. Beverly Mitchell-Brooks, the CEO of the Dallas Urban League, to testify today. The Dallas Urban League received \$376,800 in Federal taxpayer dollars to fund its Navigator program. Unfortunately, despite repeated requests, Dr. Brooks would not make herself available to testify today.

We are anticipating a Democratic member of the U.S. House being here, and I would like to publicly express that that is a good thing. We need to have a diversity of opinions. We need to have people who are working and believe that this program has sufficient merit to go forward with, and hopefully would contribute positively to the dialogue of those items which can be fixed on a cooperative basis. Notwithstanding that, we will go forward with the hearing and allow additional information, including Dr. Brooks' testimony be placed in the record if she so wishes to submit one.

I now with great pleasure recognize my colleague and fellow member of the committee, Subcommittee Chairman Farenthold. And I will give you the mic.

Mr. FARENTHOLD. Thank you, Chairman Issa. It is an honor and a privilege to be here in Richardson, Texas to be a part of this very important hearing. My wife grew up in Richardson, so it is great to be back.

Unfortunately, this area is also ground zero of some of the problems that are beginning to appear with the Navigators. We have the tape that the chairman referred to, and what we are doing here today as government watchdogs and in partnership with various outside organizations, we are looking to find ways to make the system better. We are looking for ways to protect taxpayers.

Unfortunately, under the Affordable Care Act and the way it is being implemented, it really appears that folks' private information is going to be in jeopardy, be it through problems with the website or be it through Navigators. Even the most conscientious Navigator may not have the tools necessary to keep the data private.

So we have a real problem here that we need to look for a solution for and look for a way to protect folks' information. Unfortunately, we are losing trust in the government. We have had such a plethora of scandals in recent months that the American people are losing confidence in their government, and that is a bad thing. I mean, we can look to Fast and Furious. We can look to Benghazi. We can look to the IRS scandal. We can look to the broken promises of if you like your health insurance, you can keep it, period. And Americans are losing faith with their government.

We have to make efforts to regain that faith, the faith of the American people, and we have to work towards good government and transparency. That is part of what this committee does, and it is my honor and privilege to be a part of it.

And I will yield back the remainder of my time.

Chairman ISSA. The gentleman yields back. Thank you.

And we now go to the chairman of the Rules Committee of the U.S. House, and the reason that we are here today was an invitation to hold this hearing in the Dallas/Fort Worth area, Mr. Sessions.

Mr. SESSIONS. Mr. Chairman, thank you very much, and good afternoon. And I do want to begin by thanking you, Chairman Darrell Issa, the chairman of the Government Reform and Oversight Committee.

This is one of a series of field hearings held across the country that Chairman Issa and other members of Congress have participated in which lead the investigative shortcomings of what is known as the Affordable Care Act or Obamacare. And I appreciate your leadership on this and so many issues that are important to the American people.

I would also like to thank today the City of Richardson, Mayor Laura Maczka, the City Council members, as well as the people here at the Eisemann Center in Richardson who have made this not only a great place to be but their hard work that was included also.

Additionally, I would like to thank my fellow members of Congress who are in attendance today: as you have heard, Congressman Blake Farenthold from Corpus Christi, who is a member of this Government Reform Committee, here to lend his expertise and ideas to this hearing; Congressman Michael Burgess, a member of the Energy and Commerce Committee and the Rules Committee. I also want to thank the gentleman Randy Neugebauer from Lubbock, Texas who is here, who has graciously agreed to be here as part of this panel. We also recognize that Congressman Marc Veasey, a brand new member of Congress who responded that he would be here today, and I fully expect that he will in a few minutes.

I would also like to thank our witnesses who are in attendance today. We have the gentleman, Mr. Kevin Brady, Deputy Chief of Staff of the Department of Insurance for the State of Texas; Dr.

Randy Farris, my friend from Centers for Medicare and Medicaid Services; and Carolyn Goodwin, President-Elect of the Texas Association of Health Underwriters.

Signing up for healthcare is one of the most important and daunting tasks that Americans do today. Unfortunately, over the last few months, what is known as Obamacare has made an already difficult process even more confusing and daunting for America's families.

Initially, President Obama promised that if you liked your healthcare plan, you could keep it. Since then, millions of Americans have received cancellation letters informing them that they can no longer keep their preferred health insurance plan.

President Obama also promised the American people that if they liked their own doctor, they could keep their own doctor. In reality, many people all across America are losing access to their existing and preferred doctor under Obamacare.

But the confusion does not end with the administration's broken promises. As Americans are forced to choose new healthcare plans, they are facing higher premiums, as I do as a member of Congress for my healthcare. Exactly as I had it before is doubling in price, and I have a new \$2,000 deductible, higher out-of-pocket costs, and changing networks. The American people are frustrated with these changes, and it is simply adding to the confusion surrounding their healthcare.

And then we heard this, and I would have you look at the screen.
[Video shown.]

Mr. SESSIONS. Mr. Chairman, after learning that Navigators here in North Texas were actively encouraging applicants to lie on their applications, I asked you to hold a field hearing of the Government Reform and Oversight Committee to help us to better understand who are these Navigators and what is their role.

I look forward to the testimony that we hear today to help us not only to better understand this program but to hold accountable the people who are hired with Federal money and who really represent the American people.

Mr. Chairman, I yield back my time.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Texas, Mr. Burgess.

Mr. BURGESS. I want to thank the chairman of the Oversight and Government Reform Committee, the chairman of the Rules Committee for calling this important hearing and allowing the committee to hear how the Affordable Care Act is specifically affecting Texas.

I have heard from a lot of constituents about how the Affordable Care Act is having employers drop health coverage for their employees, raising premiums and preventing individuals from keeping their doctor and their health plan.

The President promised if you like your plan, you can keep it; if you like your doctor, you can keep your doctor; and that the law would cut annual health insurance costs for a family by \$2,500. We now all know that that was not true.

In the midst of these broken promises, even more concerning is the issue that Federal officials have assigned much of the responsibility for education and outreach to Federally funded Navigators.

Sixty-seven million dollars, \$13 million more than originally budgeted, has been given out to Navigators across the nation, all at taxpayers' expense. So it begs the question: Who are the Navigators?

And as your representative for the people in Denton County, I am responsible to ensure that my constituents are protected and that their money is well spent. I am concerned that the Navigators are not properly vetted or trained. The Federal requirements to become a Navigator are inconsistent, opening individuals up to possible abuse of personal information.

In an effort to address this issue further, several members of the Texas delegation—in fact, I think most of the Republican members of the Texas delegation—wrote a letter to Governor Perry, encouraging that the governor use his authority to ensure that the Navigators that operate in Texas are properly vetted, trained and certified.

So I certainly welcome our witnesses today.

Dr. Farris, it is always good to be with you. We have had an opportunity to visit several times over the past 11 years, and I always enjoy the time that we get to spend together.

But I welcome our witnesses to Richardson, and I will yield back my time.

Chairman ISSA. Thank you.

We now go to Mr. Neugebauer.

By the way, my chief of staff is Neugebauer, and I apologize. I have been doing that to you for a decade. Thanks, Randy.

Mr. NEUGEBAUER. Thank you, Chairman Issa.

It is good to be here in Richardson, Texas, and also in the home district of my good friend, Pete Sessions. I appreciate the Chairman taking these hearings out to the American people. There is probably no greater responsibility that members of Congress have, and that is to do oversight, making sure that the government is doing what it is supposed to be doing, and doing it in a way that is effective, and doing it in a way that is in the benefit of our country.

You know, we have had a lot of hearings, a lot of discussions in a number of our committees about the Affordable Care Act, or Obamacare, as it is referred to. I just recently am on the Science Committee as well, and we had a hearing about the website. As you know, the website has had a number of problems, obviously people still having a difficult time getting into the website.

But I think one of the more troubling things to me was to learn that this website may be vulnerable to attacks, cyber attacks. And why is that important to you and the American people and families all across the country? Because some very sensitive information is being put into this system. So basically, if people can hack into these systems, then they can get access to personal information on families and basically possibly have their identities stolen.

The other thing that is going on and that won't be a part of this hearing today is the discussion that we are hearing from hundreds of letters that I know I am getting in my office and I think other members are, too, and that is that we are learning that all of the promises that were made about Obamacare aren't coming true.

We are hearing stories about families losing access to the health insurance policy, for example, that has been taking care of their little girl that has cancer.

We are learning that the premiums that were affordable to some families in the past now are not going to be affordable in the future.

We are also hearing, unfortunately, about families that are going to lose access to maybe a family physician that has been serving that family for 20 or 30 years and now that physician will no longer be a part of their plan.

These are very unfortunate things, and affecting a very sensitive and a very important part of American families, and that is their healthcare. So I think this is an appropriate hearing today.

One of the things that concerns me about the Navigators—and we want to learn more about this program today—is that basically we have people that aren't being really vetted that are going to be accessing very sensitive information about families, about their Social Security number, about their income. So what happens when they have access to this information? If they wanted to use it in an inappropriate way, they could basically steal someone's identity, basically impacting their credit and their future.

So I think it is important that we know what is going on, what is being done. I want to applaud the governor and the state legislature for the things and the steps that they have taken to make sure that people that are doing this basically have some standard.

What we are also, I think, going to hear today is that, you know, the people as a profession that advise people on healthcare have to have a tremendous—a lot more training than these Navigators are. And why is that important? Because this is a very important decision, and one of the things we want to make sure is that families have the information necessary to make the very best decision on their behalf.

I thought it was interesting when some of the people in my district began to learn that their identity could be stolen, and one of my constituents wrote me a letter and said, "You mean this is going to be another promise, if you like your identity, you can keep it?" Well, let's hope that the President, this is a promise that he can keep, because that is a very important part.

So, Chairman Issa, I want to commend you for the oversight that you and your committee have done, as well as some of the other committees, because the American people deserve this kind of oversight. This is in their best interest.

And with that, I yield back.

Chairman ISSA. I thank you for your kind comments.

The gentleman yields back.

We now go to the gentleman from Texas, Mr. Veasey.

Mr. VEASEY. Thank you, Mr. Chairman, members and witnesses. I also want to extend a warm welcome to the members of the committee, particularly from out of town, for coming all the way to Texas for this very important field hearing.

I am glad to be here today because I would like to tell you a little bit about how the Affordable Care Act is helping constituents in the district that I represent, the 33rd Congressional District of Texas.

I represent the congressional district that has the highest number of uninsured in the entire country, or the highest rate of uninsured in the entire country. Some of the insurance companies have

discriminated against them because they had preexisting conditions. They have been allowed to charge women more than men in many cases, and they have been allowed to sell junk policies that collect premiums up-front but then don't pay for individuals' hospital bills when they get sick.

But now that the Affordable Care Act is the law of the land, it has already begun helping them in many ways, and it will help them even more in the weeks and months and years to come. Here in Texas and all across the country, millions of adults now have health insurance on their parents' plans. They can stay on it until they are 26. Millions of children with preexisting conditions will no longer be denied coverage. Tens of millions of seniors have already received free preventive services, including new annual wellness visits, and consumers have received rebates from their insurance companies which are now required to spend at least 80 percent of premiums on healthcare.

I understand that today's topic is specifically about the Navigator program, and I know that the purpose of this program is simple. It is to educate and enroll citizens in health insurance. Reducing healthcare costs requires that everyone be covered and that everyone be in the insurance pools. So Navigators help people get healthcare coverage, some of them for the very first time in their lives, and that helps them to lower healthcare costs for everyone in the country. The model for this enrollment effort is well established.

A very similar model was used here more than two decades ago to implement the state's Children's Health Insurance Program. The Texas Navigators are trusted. They are community organizations and non-profits such as the United Way and the Council on the Aging. They are also the churches in our neighborhoods and the Chambers of Commerce.

Last month, when CMS was made aware that some employees of the Urban League of Greater Dallas encouraged applicants to provide false information on applications, they immediately decertified the two individuals from participating in the Navigator program. Of course, everyone here agrees that no one should ever tell applicants to lie on their forms, and that is why I was encouraged that the Urban League and CMS took swift action in firing those who engaged in that activity. They give this program a bad name. But make no mistake, they are the exception. They are not the rule.

So while I am happy that the committee came to Texas today to talk about these individuals, now that you are here, I hope that we can talk about a much more significant problem, and that is why our governor, Rick Perry, is refusing to expand the state's Medicaid program.

[Applause.]

Mr. VEASEY. We desperately need Medicaid expansion in this state. The governor is refusing to accept billions of dollars in Federal assistance that we so desperately need, and why he is doing that, I can only imagine that it is for purely political reasons. Governor Perry has denied those constituents that I talked about earlier, where I have the highest rate in the entire country. He has denied them coverage. Under the Affordable Care Act, the Federal

Government would pay states 100 percent of the cost of this expansion the first three years and 90 percent after that, and yet the governor would rather leave \$9 billion on the table for our healthcare that our state desperately needs.

So, Mr. Chairman, thank you for coming all the way to Richardson, Texas to hold this hearing about a handful of people that we agree absolutely have no place in this program, but it is high time we started talking about the millions of people right here in this state who absolutely have no insurance at all and they are being denied coverage under the Affordable Care Act.

Thank you.

[Applause.]

Chairman ISSA. Thank you.

I would caution the audience that neither positive nor negative is encouraged during an official hearing.

Members may have seven days to submit additional opening statements and extraneous material for the record.

We now recognize our first panel of witnesses.

Mr. Kevin Brady is the Deputy Chief of Staff at the Texas Department of Insurance. Welcome.

Dr. Randy Farris is the Regional Administrator for the Centers for Medicare and Medicaid Services. Thank you again for being here.

And Ms. Carolyn Goodwin is the President-Elect of the Texas Association of Health Underwriters. Thank you also.

And if you would all, pursuant to the rules, please rise to take the oath and raise your right hands.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Please be seated.

Let the record reflect that all witnesses answered in the affirmative.

In order to allow time, we have given you the universal red, yellow and green that we all drive by. Green, of course, means go. Yellow means go even faster. And red means you didn't make it through the light. So if you would try to stay within that 5 minutes, we would appreciate it. It would leave more time for answers. I won't cut anyone off mid-sentence, but bear in mind that your entire opening statements will be placed in the record whether you stick to those or not.

So, with that, I will recognize ladies first, Ms. Carolyn Goodwin.

WITNESS STATEMENTS

STATEMENT OF CAROLYN GOODWIN

Ms. GOODWIN. Thank you very much, Mr. Chairman. I appreciate the honor of being ladies first. And I need to correct your record. I am not the President-Elect of the Texas Association. I have already been there, done that. I am the President-Elect of the —

Chairman ISSA. Of the national —

Ms. GOODWIN.—Dallas chapter.

Chairman ISSA. The record is hereby corrected.

Ms. GOODWIN. You have my written testimony, and I don't want to take the time to read it, but I do want to add some additional comments to that testimony for those in the audience.

I have been in the insurance business for slightly over 20 years, and my job is to help small groups and individuals uncover the maladies and the benefits of health insurance, and help them meet their objectives.

There are a couple of things that I would like to talk about with regard to what is the difference between a Navigator and an agent and broker, which is what I am. A Navigator is hired by one of the agencies. They are an employee who has a job. They work with people either on the phone or help guide them through the website.

Agents and brokers do the very same thing. We do it in the private marketplace, except that there are 70,000 agents who are now certified to work on the marketplace itself.

Now, the difference between me and a Navigator, I have to have 40 hours of education. That is to get my license. And then I have to take 30 hours of continuing education every two years, including professional ethics, to keep my license, and I must promise the carriers that I will be forever honest and true. I also have to carry a professional liability policy that is probably \$1 million in face value, and if I do something dishonestly, I don't lose my job, I lose my livelihood. I lose my license. I can't do what I do today.

If I disclose PHI—that is the protected health information—and I do it for profit, I can go to jail. If one of my client employers does the same thing, they too could go to jail. So there is a significant amount of risk to us to act the way we do.

Now, do we just sell insurance? No. Much happens after the sale of the policy, and I am going to give you an example of what happened to me last week. I have a very dear friend who has an individual policy, and for some reason the systems in that policy said she had no prescription coverage. She was on hold with the carrier for over two hours without result. She came to me. I called the company. I got it corrected, and she had her prescriptions within 30 minutes. That is what agents do on a daily basis.

I don't think Navigators have that ability. They can't talk to the carrier. They can't solve the problem that the insured has.

If I could make one political statement, the Affordable Care Act is not the promised healthcare reform. It is health insurance reform. The cost of care and the increasing mandates, both at state and Federal levels, continue to drive the cost of insurance, and until those items are addressed, we are going to have those escalated premiums over and over and over again.

Nothing has been done to control the cost of care. Everything has been done to tell insurance companies how to run their business.

I think I am done.

[Prepared statement of Ms. Goodwin follows:]



Good afternoon, and thank you for the opportunity to speak with you today.

My name is Carolyn Goodwin and I own and operate an independent insurance agency in Dallas. Our agency's primary focus is small group and individual health insurance, together with ancillary products that include dental, vision, life and disability coverage. Most of our group clients have 5 to 25 employees, and depend on us to be their company's benefits department.

I have been a licensed agent in Texas since 1993, and hold equivalent non-resident licenses in other states. In addition to the required licensing, I am also certified through the Texas Department of Insurance as a Continuing Education instructor on several topics, including Professional Ethics.

A complete professional biography is included in your packets.

I have been asked to testify today as to the difference between a licensed agent and a navigator under the Affordable Care Act. I can only speak to the proposed requirements in Texas, and am grateful that our legislature and our governor have recognized that more than three to 20 hours of training is required in order to properly assist the consumer.

Requirements in Texas for a General Lines Life and Health insurance license include

- 40 hours initial training, self study and classroom
- Pass a closed book exam with a grade of 70% or better
- Obtain an insurance carrier endorsement for initial license issuance
- Submit to detailed background investigation and fingerprints
- Maintain sufficient professional liability insurance coverage to protect consumers in the event of error that damages the consumer
- Comply with all privacy requirements, both state and federal, including maintaining security of all client data, physically and electronically
- Continuing Education each 2 year renewal cycle of a minimum 30 hours, 2 of which must include professional ethics

Our professional association and our members operate under a strict Code of Ethics which generally provides for

- Fairness in all transactions
- Put the client's needs first



- Provide facts, not fiction
- Be truthful in all actions
- Treat carriers, clients and competitors with respect and fairness

You might ask, "why is this important". We believe it's important to put the needs of those we serve first, and to do so with professional integrity. There have been times when we cannot sell policies to people who contact us for assistance. In our world, that doesn't stop us from offering information about any one of the several public safety nets, and helping the very people who most need our help. We don't get paid for that advice, except by the knowledge that we have made a difference in the life of someone who perhaps didn't know where else to turn.

The state of Texas has gone a long way to enhance the capability and knowledge of Navigators in our Federally Facilitated Marketplace. In its last legislative session SB 1795 was passed. Rules have been drafted and are awaiting public comment. Essentially, the new law will require significantly more training than is required in other states where a FFM is in place. It will also require background checks and fingerprinting, just as agents are required to provide today.

As of today, however, capability, credibility and knowledge of a Navigator still falls within the requirements issued by the Department of Health and Human Services. That means the very people who need coverage and are doing their best to comply with the new law are possibly being advised by ill-trained individuals who have little to no understanding of how health insurance works in the first place.

Ironically, those same requirements apply only to organizations or individuals who have received Navigator grant funds, meaning that there is the potential that persons acting as Navigators, without a Federal grant are completely unregulated by HHS. That issue is critical to the reasoning that supports the new Texas law.

So, what's the difference? Agent or Navigator, and does one cost more than the other.

First and foremost, cost of coverage to the consumer is the same price, plan to plan, whether an agent sells the policy or the consumer goes directly to the Marketplace. Agents who have certified through CMS can even assist the consumer through subsidy calculation and application process.



Plan designs are essentially identical; provided the carrier offers all plans through the Marketplace (most don't). And, there are some carriers who have elected not to participate in the Marketplace in our state, or to restrict their plan offerings in the Marketplace. Agents have access to those carrier products as well.

Once a policy is issued, to whom does the consumer turn if there are claims or billing problems or questions? Navigators are not a problem resolution source. They cannot advocate on behalf of the insured. Agents are that source. My clients depend on my agency to solve their problems and answer their questions. Sometimes we aren't successful because of rules, regulations or unintentional consumer error, but at least the client has a name and a face that they trust is on their side and who will do everything possible to rectify any issues that arise. Purchase through the Marketplace, without an agent and they have a single choice, and that is to call the carrier.

The National Association of Health Underwriters has been extremely active with the administration in an attempt to help implement the Affordable Care Act. There are pieces and parts of the law that we support, so I am not here to slam the law as a whole. The suggestion however, is that the administration would have been wise to consult with the experts.



December 3, 2013

Dear President Obama,

I am writing on behalf of The National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, consultants and employee benefit specialists nationally. Our members service the health insurance policies of millions of Americans and work on a daily basis to help individuals and employers purchase, administer and utilize health insurance coverage that best fits their needs and budgets.

Since the passage of the Affordable Care Act, health insurance agents and brokers have taken an active interest in the development of the new health insurance marketplaces as a means to provide coverage options to both their individual and small-business clients. Because it is the professional role of our members to provide consumers with accurate information about their health coverage options, exchange participation is a natural fit. Agents and brokers have worked with officials to establish and implement state-based marketplaces and, according to the Department of Health and Human Services, over 70,000 have completed the certification process to help consumers in the federal and partnership marketplaces.

While the agent and broker community appreciates the recent efforts the Administration has undertaken to improve the front-end user experience on healthcare.gov, we want to make it clear that a number of back-end technical obstacles still exist for health insurance agents and brokers trying to actively support the federal marketplace. Agents and brokers would like to help increase marketplace enrollment as much as possible over the next few months, but technical barriers prevent them from doing so. To better leverage the expertise of marketplace-certified health insurance agents and brokers, increase the number of health insurance marketplace enrollments and improve consumer protections moving forward, I urge you to take immediate action on the following items:

1. Include sources of agent and broker contact information on the list of in-person assisters on the search feature on healthcare.gov. Agent search features are common on state-based exchanges and the federal marketplace should replicate their technology. Agent search features help consumers find the resources they need to help them make the final enrollment decisions.
2. Establish an immediate clear path for brokers to submit applications and help their clients directly beyond the website. This could be via a dedicated call-center line, a designated mailing location for paper applications, or both. Agents and brokers need an efficient way to ensure that the hundreds of thousands of applications for coverage they are currently trying to process will be handled in time to ensure that their clients have continuous coverage beginning January 1, 2014. At this point, most certified agents have a significant backlog of clients with whom they have already met, but they and the clients were stymied early on during the open-enrollment process, so their enrollments are not complete. These clients readily want, and have given their permission for, their agent to act on their behalf regarding enrollment moving forward. Certified agents have signed stringent privacy agreements with HHS and are subject to state and federal privacy laws, including HIPAA and the Gramm-Leach-Bliley Act financial privacy requirements. However, these agents cannot enroll their clients via the website



or the call center without the direct involvement of consumer, who needs to be physically present to complete identity-verification procedures. Given the volume of applications that need to be processed at this point, the physical challenges of getting each client to sit down with their agent again to complete the enrollment process together and the desire of many consumers to simply have their agent finish the enrollment process for them, we feel an immediate alternative means for agents to clear their backlog is warranted. Further, as the technological improvements to healthcare.gov move forward, we ask that you create a direct broker portal to facilitate online enrollment by brokers on behalf of their clients. This type of access portal was planned for the federal marketplace, but delayed earlier this year due to technological issues. Such portals are standard in the state-based health insurance exchanges, which have been experiencing greater degrees of enrollment success.

3. Establish a user-friendly means for consumers and issuers to be able to edit their records and designate that the consumer is working with a broker, including adding the broker identifying information (the National Producer Number and marketplace ID) to the record at any point during the enrollment process and policy year, not just before the subsidy determination is complete. Brokers need the ability to help consumers who are already registered on the marketplace and have a subsidy determination but have not yet enrolled in a health insurance policy. Unfortunately, once individuals are already in process with the federal marketplace and have completed the subsidy-determination portion of their application, they cannot add a broker to their case. Often, it is just at the point of subsidy determination that people find the process of enrolling too difficult to do on their own and need a trusted source to help them complete their application. In addition, we know that there are many, many cases of enrollments completed in November and October where the broker's identifying information was not transmitted to an issuer due to call-center errors and 834 file transmission problems, and issuers cannot easily edit their 834 files received from the marketplace to add a broker. Individuals and issuers need to be able to add a broker NPN and marketplace ID to a case at any point during the application process, and even after enrollment. This will help the consumer get the needed assistance to complete the buying process and ensure that the consumer has the customer service support a broker provides throughout the plan year, not just during signup. It will also allow brokers to be adequately compensated for their role and ensure that the broker's errors-and-omissions insurance policy covers the case. This provides a key consumer protection because the marketplace, issuers and state regulators need to know each person who has worked on an insurance case in the event of any errors or issues. State-based exchanges have this capability, and we believe the federal facilitated marketplace needs it as well.
4. Create a dedicated customer-support line for agents and brokers. People often turn to an agent for help when their case turns tricky. As licensed and trained professionals, agents also often spot problems before consumers operating on their own would. If brokers had easy access to enhanced customer-service support, they would be better able to help their clients and help the marketplace and issuers flag and prevent problems from occurring. This type of dedicated customer service is also standard with state-based exchanges and we hope it will soon be added to the federally facilitated marketplace.
5. Routinely include agents and brokers as a local assistance option along with navigators and application counselors in all public communications, including speeches, advertising, the website and other means. This will



be especially important as you attempt to rebrand the marketplace in the coming weeks in an effort to ensure that consumers come back and seek coverage.

6. Give enhanced priority to technology efforts that will allow both agents and individual consumers access to direct enrollment portals, both through health insurance issuers and through web-based brokers in all states. Independent agents and brokers are eagerly anticipating the widespread availability of this enrollment technology, as it will be much easier for them to navigate with their clients than healthcare.gov is at the present time. In addition to making the necessary repairs to healthcare.gov to ensure that these enrollment avenues are available, resources need to be dedicated to ensure that these portals are glitch-free and will be a consistent point of enrollment access for consumers and their licensed professional health insurance advisors.
7. To build better cooperation with brokers, call-center operators, navigators and other assisters, commence a communication campaign to encourage all CMS-approved and trained enrollment groups to work together to bring people to the marketplace. No one group should feel like it needs to claim credit for bringing a consumer into the coverage system. In the spirit of the "no wrong door" approach to coverage, we should be encouraging consumers to seek help through as many assisters as needed, and we should be fostering a spirit of cooperation among all of those who may facilitate enrollment.
8. As technology changes are made to the website and back-end marketplace operations, we ask that you amend the marketplace coverage applications to allow for navigator/non-navigator assister, call-center support and agent interactions with consumers to both be recorded on a single application. This will provide better consumer protection and inspire greater cooperation.

The agent and broker community stands at the ready to assist marketplace consumers and bring new people into the health coverage system. I appreciate your Administration's ongoing efforts to ensure that they are able, and thank you for your attention to these matters.

Sincerely,

Janet Trautwein
CEO, National Association of Health Underwriters

CC: Secretary Kathleen Sebelius
Mr. Jeffrey Zients
Mr. Gary Cohen

JEANNE SHAHEEN
NEW HAMPSHIRE

SUITE 5H-528
HART BUILDING
WASHINGTON, DC 20510
(202) 224-2841

United States Senate

WASHINGTON, DC 20510

November 22, 2013

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

We are fast approaching the deadline when consumers must enroll in health insurance plans to be covered on January 1, 2014. While improvements to healthcare.gov are being made, I am concerned that website delays have resulted in missed opportunities for health insurance agents and brokers to educate and enroll Americans in quality health insurance coverage. As you know, a successful implementation of the Affordable Care Act depends on encouraging as many people as possible to sign up for insurance coverage through healthcare.gov. It is essential that we utilize all the tools at our disposal to make that happen.

Given the setbacks to healthcare.gov, consumers in New Hampshire and across the country are confused and uncertain about their options. For some, this may be the first opportunity they have ever had to acquire health insurance, and for others the marketplace represents a new way of selecting and purchasing their plans. Navigators, in-person assistors, certified application counsellors and health insurance agents and brokers across the country are providing valuable assistance to consumers each day. They are working diligently to educate and help people who need it most, ensuring that consumers are able to make a decision about the plan best for them after taking into account all options and carriers available in the market.

Unfortunately, insurance agents and brokers are experiencing barriers that prohibit them from successfully helping consumers sign up for health insurance online, by mail or through call centers. Making meaningful progress in addressing their concerns is critically important to ensuring robust enrollment in healthcare.gov, and I encourage the Administration to address the issues facing agents and brokers.

First, contact information for local agent and broker resources should be easily accessible for those shopping on the website. Second, both consumers and issuers need a user-friendly way to edit application records and designate that the consumer is working with a broker during the enrollment process. Without this change, many applicants, including the 975,000 Americans who have started the application process but have not yet selected an insurance plan will be unable to seek the advice of a broker to make an enrollment decision. Finally, the Administration should establish a clear path for brokers to submit applications beyond the website, such as through a dedicated call-center line or a designated mailing location for paper applications.

Health insurance brokers and agents are assisting consumers and working toward our shared goal of enrolling people in health insurance. We must ensure they are able to effectively bring new people to the health insurance marketplace, which will help make the Affordable Care Act work as intended.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Jeanne Shaheen". The signature is written in a cursive style with a prominent initial "J".

Jeanne Shaheen
United States Senator

Cc: Mr. Jeffrey Zients

Chairman ISSA. I thank you.
We now go to Dr. Farris.

STATEMENT OF RANDY FARRIS, M.D.

Dr. FARRIS. Thank you, Mr. Chairman, and good afternoon, Mr. Chairman and members of the Texas delegation. Thank you for the opportunity to discuss CMS Affordable Care Act outreach efforts, including the Navigator program. The Dallas Regional Office plays an important role in working with community and consumer groups, providers and other stakeholders throughout the region to ensure that people understand the Affordable Care Act and their new coverage options.

Over my 15 years at CMS, I have very much appreciated the opportunities to work closely with many of you, as well as your staff, on critical public health issues like emergency preparedness, nursing home safety, quality improvement and Part D enrollment and outreach efforts. During the Medicare Part D rollout, we worked extensively with bipartisan congressional offices to help seniors understand their new options and sign up for prescription drug coverage. These efforts included participating in congressional town halls, meeting with medical societies and editorial boards, and helping with constituent casework issues.

The Affordable Care Act requires similar types of outreach. CMS is pursuing a variety of ways to provide outreach, education, and enrollment assistance to the uninsured and others seeking coverage through the marketplace. The Navigator program enables qualified and well-trained individuals and organizations to help consumers find and enroll in healthcare coverage while adhering to standards and requirements designed to ensure that taxpayer money is used appropriately on these programs.

Navigators are helping consumers prepare electronic and paper applications to establish eligibility, to find out if they are eligible for affordability programs like premium tax credits, cost-sharing reductions and Medicaid, and enroll in coverage through the marketplace. Navigators also provide outreach and education to consumers to raise awareness about the marketplace.

As Texas has one of the highest numbers of eligible uninsured residents in the country, eight grantees received nearly \$10.9 million in Federal Navigator grants for work in the state. These grantees are groups and organizations with a proven ability to reach out to likely marketplace consumers in their local communities, many of which are located in the Dallas-Fort Worth area.

For example, the United Way of Metropolitan Tarrant County has served the people in the Fort Worth and Arlington areas of Texas for over 90 years and is working across the state to promote enrollment in the marketplace. The Navigator grant program, its application process, its terms and conditions and program oversight are informed by the Department of Health and Human Services experience with grants management.

Navigators are trained on providing consumers with fair, accurate, and impartial information, along with training on standards to keep consumers' personal information private and secure. Marketplace Navigators have regular refresher opportunities where

they can share updates, receive information, and address issues as they are in the process of helping people in their communities.

CMS takes allegations of suspicious activity and fraud seriously and actively monitors complaints about potential wrongdoing. Last month, CMS was made aware of incidents in which employees of one Navigator grantee, the Urban League of Greater Dallas, instructed consumers to falsify information on their marketplace applications. CMS took immediate action to officially decertify the Navigators identified in the videos and to inform the National Urban League and its sub-grantee in Dallas that they were non-compliant with Navigator regulations. CMS issued a detailed corrective action plan outlining the remedial actions that the National Urban League must take to continue as a Federal Navigator grantee.

The National Urban League responded by suspending the employees involved and has fully complied with the new requirements. CMS also quickly issued a corrective action plan to Houston-based Navigator Change Happens when a second incident of improper conduct by an individual Navigator was brought to our attention. CMS has alerted all Navigators operating in the Federally-facilitated marketplace to emphasize that encouraging consumers to provide inaccurate information is against the rules of their agreements and could potentially subject the Navigator and consumer to prosecution.

CMS will continue to vigorously monitor Navigator grantees and the Federally-facilitated marketplace to ensure that funding goes to the applicants who are most qualified to serve their communities in this capacity and to ensure that they are well-trained in meeting objectives and using grant funding appropriately.

Thank you for the opportunity to speak today on this important topic, and I will be happy to answer any questions that you have.

[Prepared statement of Dr. Farris follows:]

STATEMENT OF
JAMES R. FARRIS, M.D.
CONSORTIUM ADMINISTRATOR
CONSORTIUM FOR QUALITY IMPROVEMENT AND SURVEY & CERTIFICATION
OPERATIONS
CENTERS FOR MEDICARE & MEDICAID SERVICES

ON

OBAMACARE IMPLEMENTATION: WHO ARE THE NAVIGATORS?

BEFORE THE

U.S. HOUSE COMMITTEE ON
OVERSIGHT & GOVERNMENT REFORM

DECEMBER 16, 2013

U. S. House Committee on Oversight and Government Reform
Obamacare Implementation: Who are the Navigators?
December 16, 2013

Good morning, Chairman Issa, Ranking Member Cummings, and members of the committee. Thank you for the opportunity to discuss the Affordable Care Act Navigator program. Navigators and other in-person assisters are playing a critical role in helping Americans find and enroll in coverage in the new Health Insurance Marketplace. As a career civil servant with 15 years of experience at CMS, my responsibilities as Consortium Administrator for Quality Improvement and Survey & Certification Operations include management of Regional Office staff who provide oversight of Quality Improvement Organizations and End-Stage Renal Disease Networks; management of Regional Office staff who provide oversight of state survey agencies to ensure that providers such as hospitals, long-term care facilities home health agencies and hospice organizations adhere to Medicare's Conditions of Participation; provision of executive leadership and direction to the Regional Administrator in the Atlanta Regional Office and to the Chief Medical Officers in the 10 CMS Regional Offices; management of Emergency Preparedness and Response Operations for CMS; provision of leadership oversight to the new CMS Regional Innovation Network, which will assist the Agency in leveraging and aligning its internal resources in the development, testing and expansion of innovative models that will strengthen and modernize the nation's health care system to provide access to high-quality care at lower cost; and helping to coordinate Affordable Care Act outreach and education efforts throughout Region VI, which includes Arkansas, Louisiana, New Mexico, Oklahoma and Texas. The Dallas Regional Office plays an important role in working with community and consumer groups, providers and other stakeholders throughout the region to ensure people understand the Affordable Care Act and their new coverage options.

Prior to assuming the Consortium Administrator role, I served as Regional Administrator of the Dallas Regional Office of CMS. In that capacity, I directed the Region VI effort to educate and enroll Medicare beneficiaries in Medicare Part D. I also led the national CMS effort to increase influenza and pneumococcal immunization rates among Medicare beneficiaries and served as a member of the Secretary's National Vaccine Advisory Committee.

Over 41 million Americans, including 4.9 million Texans, under the age of 65 do not currently have health insurance, sometimes because the cost of insurance is too high or because they have been locked out of the private insurance market because of pre-existing conditions. The percentage of non-elderly uninsured is over 20 percent of the population in many states. Those millions of our fellow citizens and neighbors live daily with the insecurity of not knowing how they will pay for the medical care they and their families need. The new Health Insurance Marketplace is fundamentally changing that reality for these Americans. The Marketplace is precisely what the name describes: a place where consumers and small businesses can find affordable health coverage options they can rely on.

The Marketplace allows consumers to compare costs, benefits, and cost-sharing in order to choose a plan that is right for them and their families. If eligible, consumers can receive help with the cost of coverage through premium tax credits that can be used to lower the cost of monthly premiums right away or cost-sharing reductions that reduce out-of-pocket costs like deductibles, coinsurance and copayments. Consumers have four ways to access the Marketplace for individual market coverage – online using HealthCare.gov, by phone, using our dedicated call center where customer service representatives are available to help complete the application process 24 hours a day and 7 days a week, mailing in a paper application, or with the help of in-person assisters in their communities, such as Navigators or other in-person assistance personnel trained and certified to help them understand their health coverage options.

Ensuring that consumers and small businesses participate in the Marketplaces requires that they learn about the benefits that these Marketplaces have to offer and that they get the help they need in order to take advantage of those benefits. This is a significant undertaking. We know quite a bit about the uninsured Americans we need to reach — many have never had health insurance, so the transaction of selecting, applying, and enrolling in health coverage will be unfamiliar to them.

To effectively reach these populations about their new health insurance options, CMS implemented a variety of ways to provide outreach, education, and enrollment assistance to the

uninsured and others seeking coverage through the Marketplace. We are leveraging forms of assistance that exist in the insurance market today, like agents and brokers, as well as new forms of assistance, like Navigators, authorized by the Affordable Care Act. CMS's implementation of the Navigator and other in-person assistance programs in states that, like Texas, are relying on CMS to operate their Health Insurance Marketplace builds on our experience in providing outreach and enrollment assistance in Medicaid, the Children's Health Insurance Program (CHIP), and Medicare, including Medicare Parts C and D. As a result, CMS designed Navigator and other in-person assistance programs for the Federally-facilitated Marketplace that enable qualified and well-trained individuals and organizations to help consumers find and enroll in health care coverage, while adhering to standards and requirements designed to ensure that taxpayer money is used appropriately on these programs.

In August, CMS awarded \$67 million in Navigator Cooperative Agreements to entities in all of the 34 states with Federally-facilitated and State Partnership Marketplaces. Those states that have chosen to administer their own Marketplaces fund their own Navigators through separate state grants. No matter what state they live in, consumers will be able to get in-person help as they go through the process of applying for and choosing new coverage options in the Marketplace. Navigators are already playing a vital role in helping consumers with the application and enrollment process. They are helping consumers prepare electronic and paper applications to establish eligibility, find out if they are eligible for affordability programs like premium tax credits, cost-sharing reductions, and Medicaid, and enroll in coverage through the Marketplace. Navigators also provide outreach and education to consumers to raise awareness about the Marketplace. The Federally-facilitated Marketplace also designates organizations to certify application counselors who perform some of the same functions as Navigators - including educating consumers and helping them complete an application for coverage - but will not receive funding from the Marketplace. These groups might include community health centers or other health care providers, hospitals, or social service agencies.

The Navigator Program in Texas

Texas has one of the highest numbers of eligible uninsured residents in the country. Across the state, eight grantees received nearly \$10.9 million in Federal Navigator grants for work in the

state. These grantees are groups and organizations with a proven ability to reach out to likely Marketplace consumers in their local communities, many located in the Dallas-Fort Worth community. For example, the United Way of Metropolitan Tarrant County has served the people in the Fort Worth and Arlington area of Texas for over 90 years, and is working across the state to promote enrollment in the Marketplace. Southern United Neighborhoods oversees efforts in the Dallas and Houston areas to pass out flyers at libraries, community colleges, and local businesses and to participate in outreach events. In early October, they joined the CMS Region 6 staff at the Texas state fair in Dallas to work at the health booth.

To complement the work performed by its Navigator grantees, CMS created an Enrollment Assistance Program to target specific populations in the 14 states in the Federally-facilitated Marketplace with the highest number of eligible uninsured residents, including in Texas. The program primarily targets 18 to 35 year olds in 19 metropolitan areas with high numbers of eligible residents. The Enrollment Assistance Program offers fixed locations at which consumers in need of in-person assistance with enrollment in coverage through the Marketplace can obtain such help and provides non-English speakers with access to translation services and bilingual staff. Additionally, the program provides enrollment support for Navigator grantees or other local organizations that may be conducting outreach and education in addition to enrollment assistance.

Navigator Oversight

The Navigator grant program for the Federally-facilitated Marketplace, its application process, its terms and conditions, and program oversight are informed by the Department of Health and Human Services' (HHS) extensive experience with grants management. HHS awards grants for more than 300 programs, including consumer outreach and education programs, such as the State Health Insurance Assistance Program for Medicare Part D, the nationwide Senior Medicare Patrols program, and the Connecting Kids to Coverage program. The Navigator program for the Federally-facilitated Marketplace follows this tradition of responsible grant-making for consumer education.

Navigators for the Federally-facilitated Marketplace are trained on providing consumers with fair, accurate, and impartial information, along with training on standards to keep consumers' personal information private and secure. Training is not intended to be a one-time-only process. Navigators in the Federally-facilitated Marketplace have regular refresher opportunities where they can share updates, receive information and address issues as they are in the process of helping people in their communities. CMS conducts weekly webinars for Navigators in the Federally-facilitated Marketplace to provide tips to help them facilitate enrollment and to enable them to ask questions and share successful outreach approaches. As open enrollment proceeds and we learn more about consumers' needs, we intend to continue to provide this additional guidance to Navigators in the Federally-facilitated Marketplace.

CMS takes allegations of suspicious activity and fraud seriously and actively monitors complaints about potential wrongdoing. Last month, CMS was made aware of an incident in which employees of one of our Navigator grantees, the Urban League of Greater Dallas, encouraged consumers to provide inaccurate information on their Marketplace applications. CMS took immediate action to officially decertify the two individual Navigators identified in the video and to inform the National Urban League that they and their sub-grantee in Dallas were non-compliant with Navigator regulations. The National Urban League immediately responded by suspending all individuals involved. CMS then sent a detailed corrective action plan to the National Urban League outlining the remedial actions they must take to continue as a Federal Navigator grantee, including:

- A written report detailing steps taken to ensure those involved in wrongdoing have been barred from all functions performed by Navigators and to ensure enhanced supervision of all employees by senior staff;
- A written plan detailing additional training to be provided to all employees, including the importance of providing fair, accurate and impartial assistance to consumers and advising consumers that they must honestly answer questions on the applications; and
- Daily phone calls with CMS Project Officers and weekly written progress reports on personnel actions, quality control enhancements, and all consumer assistance activities.

We also quickly alerted all Navigators and Certified Application Counselors operating in the Federally-facilitated Marketplace to emphasize that encouraging consumers to provide inaccurate information is against the rules of their agreements, and could potentially subject the Navigator and consumer to prosecution.

Conclusion

As an important part of our comprehensive Marketplace outreach plan, we are confident that the Navigator and other in-person assistance programs in the Federally-facilitated Marketplace will help provide consumers with the high quality help they need as they consider their health coverage options. Together, these important resources will help millions of uninsured Americans gain the security of being enrolled in health coverage. CMS will continue to vigorously monitor Navigator grantees in the Federally-facilitated Marketplace to ensure that funding goes to the top applicants, who are most qualified to serve their communities in this capacity, and to ensure that they are well-trained, meeting objectives and using grant funding appropriately.

Chairman ISSA. Thank you, Dr. Farris.
We now to go to Mr. Kevin Brady.

STATEMENT OF KEVIN BRADY

Mr. BRADY. Chairman Issa, members of the Committee and members of the Texas Delegation, my name is Kevin Brady and I am here today on behalf of the Texas Department of Insurance. Commissioner Julia Rathgeber wanted to be here today but unfortunately she had a prior engagement. She sends her apologies and included a letter to each of you, which is included in the packet of information that we provided.

I would like to thank you for this opportunity to be here today to talk about some proposed rules that my agency has published for public comment on Navigators.

I would like to take just a moment to talk about TDI by way of background. The Texas Department of Insurance is known as the acronym TDI. We are charged with being the primary regulator of the Texas insurance market. We are charged with insuring fair competition, and we are charged by law with protecting consumers.

In 2012, Texas consumers and businesses bought over \$121 billion in insurance premiums. We believe that makes Texas the 12th largest insurance market in the world. To help put that into context, it is about the same size as the entire Canadian market.

We have over 1,900 insurance companies licensed in Texas. That number increases to over 2,200 when all insurers with any type of eligibility are included. The market also includes over 400,000 agents and other licensed entities.

During the 83rd Texas legislative session, lawmakers passed and Governor Perry signed Senate Bill 1795, which requires the Commissioner of Insurance to set standards ensuring that Navigators can perform their required duties if the Federal standards are deemed to be insufficient.

TDI has worked diligently to ensure a deliberate and transparent process throughout the implementation of this bill. We held an initial stakeholders meeting in September. We followed that with numerous teleconferences with Navigator groups, consumer groups, healthcare providers, and also the Department of Health and Human Services. We also posted a proposed outline of potential solutions on our website for potential insufficiencies that were identified by agency staff. The resulting rule proposal was published in the Texas Register on December 6th.

The proposed TDI rules are necessary to provide a state solution to help and protect Texas consumers by ensuring the security of their private information and ensuring that they are able to find health coverage from the Federally-facilitated exchanges with the assistance of qualified Navigators. Under the proposed rules, entities and individuals providing enrollment services in the exchange would be required to register with TDI.

The requirement for registration would include proof of U.S. citizenship or other legal status to gain employment in the U.S.; documentation of compliance with educational requirements, including privacy and ethics training; fingerprinting and background checks; and evidence of financial responsibility to protect individuals from wrongful acts.

Navigators would be prohibited from certain functions, including charging consumers for providing information about health coverage; selling, soliciting, or negotiating health insurance coverage; or recommending a specific health benefit plan.

While in the course of performing Navigator duties, they would be prohibited from electioneering activities or otherwise supporting the candidacy of an individual for government office.

Additionally, Texas insurance code provisions related to privacy and the protection of personal information would apply to Navigators.

TDI is going to hold two public hearings to receive public comment. The first public hearing will be Friday of this week, December 20th at 9:00 a.m. in Austin. A second public hearing will be on January 6th. That coincides with the closing of the public comment period. We would invite all parties to submit comment either at the hearing or in writing to TDI, and the proposals can change as a result of the comment received.

Mr. Chairman, I am going to close with that but would note that we have additional information in the packages of information that we have provided, including instructions for providing public comment and the actual substantive requirements of our proposed rules.

Mr. Chairman, thank you again for this opportunity to testify on our efforts of both the state and the Texas Department of Insurance that we are taking to protect consumers. I would be happy to answer any questions.

[Prepared statement of Mr. Brady follows:]

**WRITTEN TESTIMONY
OF
KEVIN BRADY
DEPUTY CHIEF OF STAFF
TEXAS DEPARTMENT OF INSURANCE
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
HEARING ON NAVIGATORS
DECEMBER 16, 2013**

INTRODUCTION

Chairman Issa, members of the Committee and members of the Texas Delegation, my name is Kevin Brady and I am here today on behalf of the Texas Department of Insurance.

Commissioner Julia Rathgeber wanted to be here today but unfortunately had a prior obligation. She sends her apologies and included a letter to each of you in the packet of information we provided.

Thank you for the opportunity to be here today to talk about proposed rules for Navigators that would function as part of the federally-facilitated exchanges.

I would first like to provide you with a quick overview of the Texas Department of Insurance, also commonly referred to as TDI. As the primary regulator of the Texas insurance market, TDI is charged with:

- regulating the Texas insurance market,
- fostering fair competition within the insurance industry, and
- protecting consumers

In 2012, Texas consumers and businesses bought over \$121 billion in insurance premiums. We believe that makes the Texas insurance market the 12th largest market in the world. Just to help put that in context, the Texas insurance market is about the size of the entire Canadian market.

More than 1,900 insurance companies and other carriers are licensed to operate in Texas and that number increases to more than 2,200 when all insurers with any form of registration or eligibility are included. The market also includes approximately 400,000 licensed insurance agents and other types of licensed entities.

PROTECTING CONSUMERS – NAVIGATOR RULES

During the 83rd Texas Legislative session, lawmakers passed and Gov. Perry signed Senate Bill (SB) 1795, which requires the Commissioner of Insurance to set standards ensuring that navigators can perform their required duties if federal standards are determined to be insufficient.

TDI has worked diligently to ensure a deliberate and transparent dialogue throughout the process to implement this legislation. We held an initial stakeholder meeting in September to gather information, followed by numerous teleconferences with navigator entities, consumer advocates and representatives of health care provider groups, as well as the Department of Health and Human Services. We also posted and received comments on a proposed outline of solutions for potential insufficiencies identified by agency staff. The resulting formal rule proposal was posted on our website on December 3, and published in the Texas Register on December 6.

The proposed TDI rules are necessary to provide a state solution to help and protect Texas consumers by ensuring the security of their private information and ensuring that they are able to find and apply for health coverage under the federally-run health benefit exchange with the assistance of qualified navigators.

Under the proposed rules, entities and individuals providing enrollment assistance in the federal health exchange would be required to register with TDI.

Requirements for navigator registrations would include:

- Proof of U.S. citizenship or immigration status to obtain employment in U.S.
- Documentation of compliance with education requirements, including privacy and ethics training
- Fingerprinting and background check, and
- Evidence of financial responsibility to protect individuals against wrongful acts

Navigators would be prohibited from the following:

- Charging consumers for providing information about health coverage
- Selling, soliciting, or negotiating health insurance coverage
- Recommending a specific health benefit plan
- Providing advice regarding substantive benefits or comparative benefits of different health plans, and
- In the course of providing navigator services, engaging in electioneering activities or financing or otherwise supporting the candidacy of an individual for government positions

Additionally, under the proposed rules, Texas Insurance Code provisions related to privacy and protection of personal information would also apply to navigators.

TDI will hold two public hearings in Austin to allow the public to comment on the proposed rules. The first public hearing will be this Friday, December 20 at 9:00 a.m. A second public hearing will take place at 9:00 a.m. on January 6, coinciding with the closing day of the open comment period. Both opportunities for public comment will be audio streamed on the TDI website as well as archived at www.tdi.texas.gov.

We would invite all parties to contribute comments as part of this rule-adoption process either in person at the scheduled hearings or by submitting written comments to TDI.

The proposed rules can change as a result of comments received from the public.

CONCLUSION

Mr. Chairman, thank you again for this opportunity to testify on the efforts the state of Texas and the Texas Department of Insurance are taking to protect consumers.

In the words of Commissioner Rathgeber, "In Texas, we are being vigilant about safeguarding privacy and keeping personal information out of the wrong hands. These proposed rules address insufficiencies in federal regulations and make the training and qualifications of navigators in our state more readily apparent to consumers and service providers."

I would be happy to answer any questions you or members of the committee may have.

SUPPLEMENTAL INFORMATION**BACKGROUND: ACA §1311**

- The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, which made amendments to the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. Collectively, these laws are referred to as the Affordable Care Act (ACA).
- The ACA requires creation of “American health benefit exchanges” (exchanges), which are marketplaces through which consumers can purchase health benefit plans that meet minimum requirements of the ACA and the regulations adopted under it. ACA §1311(b) and §1321(b) call for each state to establish its own exchange no later than January 1, 2014. ACA §1321(c)(1) requires the U.S. Department of Health and Human Services (HHS) to establish and operate such exchanges within states that elect to not establish an exchange or that do not have an exchange operable by January 1, 2014.
- In a letter dated July 9, 2012, Governor Rick Perry informed the secretary of HHS that Texas would not establish an exchange. Governor Perry reiterated this message in a letter dated November 15, 2012.
- ACA §1311 requires each exchange to establish a program under which awards are granted to navigators that carry out consumer assistance functions. The duties of navigators are set out in ACA §1311(i)(3) and include assisting consumers in completing the application for health coverage affordability programs available through a health benefit exchange; explaining how health coverage affordability programs work and interact, including Medicaid, the Children’s Health Insurance Program, or advance premium tax credits and cost-sharing assistance; explaining health insurance concepts related to qualified health plans, including premiums, cost sharing, networks, or essential health benefits; providing culturally and linguistically appropriate information; avoiding conflicts of interest; and establishing standards and processes relating to privacy and data security.
- In addition, ACA §1311(i)(4) requires HHS to establish standards for navigators, including provisions to ensure that any private or public entity selected as a navigator is qualified, and licensed if appropriate, to engage in the navigator activities described in ACA §1311(i) and to avoid conflicts of interest.

BACKGROUND: SB 1795

- The 83rd Texas Legislature’s regular session convened on January 8, 2013, and it adjourned on May 27, 2013. The deadline for filing bills during the regular session was March 8, 2013, and as of that date, HHS had proposed no federal standards for navigators. Federal standards for navigators were not proposed prior to the Legislature’s deadline for filing bills, so the members of the Legislature did not know what standards would be in place to regulate navigators and provide protection for the citizens of Texas under the new system of exchanges that would begin operation on October 1, 2013.
- To address the uncertainty and the lack of federal standards for navigators, and to ensure that the authority to set standards for navigators in Texas had been established, State Senator Kirk Watson authored SB 1795 and filed it on the filing deadline, March 8, 2013.
- The intent of SB 1795, as recorded in the author’s statement of intent in the Senate Research Center’s analysis of the filed bill, is to “provide consumer protection by requiring that navigators, as established by the Patient Protection and Affordable Care Act (Act), have the training necessary to advise and guide the public through the process of finding the most appropriate health insurance options available to them.”
- Additionally, the purpose of the law as stated in Insurance Code §4154.001 is to “provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state.”
- HHS proposed standards for navigators nearly one month after Senator Watson filed SB 1795. On April 5, 2013, the *Federal Register* included a proposed regulation addressing “Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel” at 78 Fed. Reg. 20581. But HHS did not adopt the proposed federal regulation during the regular session of the 83rd Texas Legislature, and it was not clear what standards the federal government would ultimately apply to navigators.
- SB 1795 proceeded through the legislative process with much support in both the Senate and the House and was passed on May 26, 2013. Governor Rick Perry signed SB 1795 into law on June 14, 2013. The effective date for SB 1795 was September 1, 2013.
- Over a month after SB 1795 was signed into law HHS adopted standards for navigators. HHS published its adoption order titled “Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors” in the *Federal Register* at 78 Fed. Reg. 42824 on July 17, 2013.

BACKGROUND: KEY PROVISIONS OF SB 1795

- SB 1795 added new Chapter 4154 to Insurance Code Title 13, Subtitle D. SB 1795 requires the commissioner to adopt rules necessary to implement the bill's provisions and to meet the minimum requirements of applicable federal law. The commissioner must determine whether standards and qualifications for navigators provided under Title 42 United States Code (USC) §18031, which is the codified version of ACA §1311, and any regulations enacted under that section are sufficient to ensure that navigators can perform their required duties. If the commissioner determines that the standards are insufficient, the commissioner must make a good faith effort to work in cooperation with HHS and to propose improvements to the federal standards. If after a reasonable interval the federal standards remain insufficient, the commissioner may adopt rules to establish standards and qualifications to ensure that navigators in Texas can perform their required duties.
- SB 1795 specifies minimum standards that must be included in the navigator rules the commissioner adopts. It also requires the commissioner to obtain from the exchange a list of all navigators providing assistance in Texas and, with respect to an individual, the name of the individual's employer or organization. The bill also allows the commissioner to establish, by rule, a state registration for navigators sufficient to ensure that the minimum standards in SB 1795 are satisfied and the information is collected.
- SB 1795 includes restrictions on navigator advertising and prohibits a navigator from receiving compensation for services or duties as a navigator that are prohibited by federal law.
- SB 1795 requires the commissioner to adopt rules authorizing additional training for navigators as necessary to ensure compliance with changes in state or federal law. In addition, the bill prohibits a navigator from performing certain acts unless the navigator is licensed to act as a life, accident, and health insurance agent.

BACKGROUND: FEDERAL STANDARDS FOR NAVIGATORS

- Two sections in Title 45 of the Code of Federal Regulations (CFR) address federal standards for navigators, and a third section in the title addresses privacy requirements, including some provisions applicable to navigators. Title 45 CFR §155.210 addresses "Navigator program standards." This section addresses the navigator standards a state-operated exchange must implement. It also addresses requirements for an entity eligible to receive a navigator grant, prohibitions on navigator conduct, and duties of a navigator. Title 45 CFR §155.215 addresses "Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §155.205(d) and (e) in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant." Because Texas has a federally-facilitated exchange, this section provides the standards applicable to navigators in Texas. Finally, 45 CFR §155.260 addresses "Privacy and security of personally

identifiable information.” This section primarily addresses requirements for exchanges, but it also includes a subsection concerning non-exchange entities, including navigators.

- 45 CFR §155.215 includes conflict of interest standards for navigators that, in part, echo certain prohibitions in 45 CFR §144.210.
- However, the conflict of interest standards under 45 CFR §155.215 do not address conflicts of interest due to criminal history of navigators or electioneering by navigators. In addition, they do not state what occurs if a navigator entity or its staff fails to comply with the standards, and they do not require that a navigator entity have in place any form of financial responsibility if a consumer is harmed due to a navigator entity or its staff failing to avoid a conflict of interest. The conflict of interest standards also do not address a state’s role in taking action if a consumer is harmed due to a navigator’s conflict of interest.
- 45 CFR §155.215 includes training standards, including certification and recertification standards, and they list training module standards in which navigators must receive training.
- However, the training standards stated in 45 CFR §155.215 do not address Texas-specific Medicaid; privacy beyond the standards under 45 CFR §155.260; or navigator ethics. The listed contents of the training modules do not include such necessary areas as: Texas Medicaid eligibility, enrollment processes, or benefits; Texas statutes and rules protecting nonpublic information; insurance fraud; ethical behavior of navigators; duty of navigator to a consumer; or the difference between ethics and laws.
- 45 CFR §155.260 addresses privacy requirements and states that an exchange must require that navigators who gain access to personally identifiable information submitted to an exchange, and navigators who collect, use, or disclose personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while performing functions under an agreement with an exchange, must agree to the same or more stringent privacy and security standards as apply to the exchange.
- However, Title 45 CFR §155.260 does not address what privacy requirements apply to a navigator who has not entered into an agreement with an exchange.

TDI’s CONSIDERATION OF FEDERAL STANDARDS FOR NAVIGATORS

- After HHS adopted standards for navigators on July 17, 2013, TDI staff began reviewing them. Additionally, other agencies in Texas concerned with consumer protection reviewed the standards HHS adopted.
- In a letter dated August 14, 2013, Texas Attorney General Greg Abbott joined 12 other attorneys general in a letter addressing concerns with the federal regulations. The letter

set out issues the attorneys general identified in the federal standards, including inadequate training requirements and less consumer protection than in other contexts. The letter urged further work on the federal standards. It also raised questions about shortcomings in the standards, such as: limited requirements for screening navigator personnel, and lack of required background checks; unclear guidance on protection of consumer privacy, applicability of privacy laws, HHS monitoring of navigator compliance with privacy requirements, and outreach to consumers regarding privacy rights; liability of navigators who cause harm; fraud prevention and penalties for navigators who cause harm or commit fraud; and the role states have in regulating navigators.

- In a letter to TDI dated September 17, 2013, Governor Rick Perry also addressed concerns with the standards for navigators set out in federal regulations. Governor Perry noted that the nature of a navigator's work and access to confidential information such as birth dates, social security numbers, and financial information make it imperative that navigators have training on the collection and security of data.
- On September 30, 2013, TDI conducted a stakeholder meeting to gather information from the public regarding registration of navigators, training of navigators, safeguards to protect consumer privacy, and continuing education requirements for navigators. During the meeting 16 people spoke, including two members of the Legislature, representatives of navigator entities, individual navigators, and representatives of consumer and health care provider groups.
- TDI invited HHS to participate in the stakeholder meeting in order to hear and respond to Texas stakeholders' concerns regarding navigators. In response Gary Cohen, deputy administrator and director of the Center for Consumer Information and Insurance Oversight, replied to the invitation on November 1, 2013, with a request to discuss any issues that arose during the stakeholder meeting.
- TDI received correspondence from other entities and individuals following the stakeholder meeting, with questions about how they could become navigators and how navigators should operate in Texas. In particular, one group that is not operating with the benefit of a federal navigator grant asked for guidance on how it could proceed as a navigator.
- TDI conducted additional investigation into the federal standards for navigators in follow up to the stakeholder meeting. TDI met or conducted teleconferences with navigator entities, consumer advocates, and representatives of health care provider groups.
- TDI also conducted multiple conference calls with HHS regarding the federal standards.
- Most notably, TDI learned that the HHS navigator regulations only apply to entities who receive navigator grants and the individuals who represent those entities as navigators. Moreover, TDI learned that HHS does not believe it has jurisdiction over any other entity

or individual who offers or provides navigator services, and it is up to states to regulate or oversee any entity or individual offering to provide navigator services who is not a federal grant recipient.

- Also notable is the fact that many of the standards navigators are held to are not contained in regulation, but rather in contracts between HHS and navigator grant recipients. TDI requested a navigator contract in order to view what standards exist, but HHS declined to provide one. TDI also requested that HHS provide a contract template, if it determined that it could not release an executed contract, but HHS also declined that request. Finally, TDI requested just the portion of a contract addressing navigator privacy standards. HHS declined to provide an example from a navigator contract, and instead provided a portion from a certified application counselor agreement. The email that included the portion of the certified application counselor agreement included assurance that the “terms of this document are very similar to the ones applicable to navigators.”
- Though TDI was unable to review the actual standards that HHS holds navigators to in its contracts with them, TDI did glean from the calls with HHS a picture of what those standards include.
- The contracted standards apparently do not include requirements for qualifications of individuals acting as navigators for navigator grant recipients. Instead, HHS evaluated the entities themselves during the grant review process to determine if the organizations met standards that would show they could provide professional and appropriate staff. HHS does not conduct or require a background check on navigators or individuals who represent navigator grant recipients.
- Navigators have access to a consumer’s name, phone number, and, in some instances, other personal information, and HHS staff said that there are limited circumstances where a navigator may retain personal information for a period of time. However, HHS staff said that navigators cannot access information contained in a consumer’s application once the application is submitted. Additionally, HHS encourages navigators to have consumers enter their own information into the online application, to limit navigator access to personal information.
- TDI also learned that any person can access the federal training modules available to navigator grant recipients. An individual who takes and passes the training will receive a certificate saying the individual passed the training, but the individual will not actually be certified by HHS unless the individual is verified by a navigator grant recipient. HHS has not finalized the training requirements for navigators who receive grants in 2014.
- Following the TDI’s review of the federal regulations setting standards for navigators, meetings with stakeholders, and discussions with HHS, TDI posted an outline of solutions for potential insufficiencies identified by TDI staff. The outline presented steps that could be taken in either federal regulations or state rules to address issues with the

standards set by the federal regulations. TDI invited the public to comment on the outline, and has taken into consideration the comments it received in preparation of the proposed rules.

COMMISSIONER DETERMINATION REGARDING SUFFICIENCY OF FEDERAL STANDARDS

- Texas Insurance Code §4154.051(a) charges the commissioner with reviewing and determining the sufficiency of standards for navigators set under 42 USC §18031 and regulations enacted under that section. Additionally, Insurance Code §4154.051(b) requires the commissioner to establish standards and qualifications to ensure that navigators can perform their required duties.
- Based on the reasons summarized on pages 8 – 11 of this testimony, the commissioner has determined there are insufficiencies in the navigator standards set by federal regulation that should be corrected, and in compliance with Insurance Code §4154.051(b) the commissioner proposed standards and qualifications to ensure navigators can perform their required duties.
- A fundamental flaw in the HHS standards for navigators is that many of the standards are apparently included in confidential contracts, rather than regulations available for public review. Standards set by contract in this way cannot be enforced by or against entities or individuals who are not party to the contract. Because HHS will not disclose to TDI the contents of its contracts with navigators, it is not clear what specific standards are in place and whether standards are uniformly applied to all navigators. In addition, because HHS can change its contracts with navigators, it is not clear if the standards contained in current contracts will be included in future contracts or be applied in the same way over time.
- The commissioner also found that insufficiencies exist in the standards set by federal regulations in the following areas: applicability of federal regulations to navigators, qualifications of individuals who serve as navigators, education requirements for navigators, privacy requirements, and accountability of navigators.
- **Applicability of federal regulations:** The standards set by federal navigator regulations under 42 USC §18031 are not applicable to all entities or individuals who purport to be navigators or who provide navigator services. They are only applicable to navigator grant recipients. Entities or individuals who provide navigator services but who are not grant recipients and do not work with a grant recipient are currently unregulated, and HHS said that it is up to states to regulate such entities and individuals.
- To address this insufficiency, the proposed rules are generally applicable to all entities and individuals performing the navigator function through a health benefit exchange

including: federal navigator grant recipients; individuals employed by, associated with, or partnered with a federal navigator grant recipient; and entities or individuals who are neither federal navigator grant recipients, nor employed by, associated with, or partnered with a federal navigator grant recipient. (Reference proposed §19.4003.)

- ***Qualifications of individuals who serve as navigators:*** The standards set by federal navigator regulations under 42 USC §18031 do not establish standards for or require background checks of individuals a navigator entity selects to serve as navigators. As acknowledged by HHS Secretary Kathleen Sebelius in a congressional hearing on October 30, 2013, under current federal standards the lack of a required background check means that a convicted felon could be hired as a navigator. During the hearing, Secretary Sebelius repeated a response HHS had included in the adoption order for the regulation setting federal navigator standards. She said states could create requirements for background checks. If a background check requirement were in place, it would satisfy one of the minimum standards for navigators set by Chapter 4154, the prohibition on convicted felons being navigators in Texas.
- To address this insufficiency and implement the requirement in Chapter 4154, the proposed rules require navigators to: be 18 years of age; provide proof of U.S. citizenship or compliance with all federal laws pertaining to employment or to the transaction of business in the United States; provide proof of compliance with education requirements; submit to fingerprinting and a background check; and be an individual eligible for an authorization issued by TDI under the guidelines in 28 TAC §1.502, which relates to Licensing Persons with Criminal Backgrounds. (Reference proposed §19.4005.)
- ***Education requirements for navigators:*** The standards set by federal navigator regulations under 42 USC §18031 do not require navigators to receive education related to Texas Medicaid, Texas statutes and rules protecting nonpublic information, or ethics.
- To address this insufficiency, the proposed rules require that, in addition to meeting federal education requirements, individuals who would provide navigator services receive an additional 40 hours of education on Texas-specific Medicaid, applicable privacy requirements, and ethics. The rules also provide that, in addition to federal continuing education requirements, navigators receive an additional six hours of education on Texas-specific Medicaid, applicable privacy requirements, and ethics each year. (Reference proposed §19.4009.)
- ***Privacy requirements:*** The standards set by federal navigator regulations under 42 USC §18031 do not establish privacy requirements. Privacy requirements may exist in contracts HHS has with navigators, but the standards are not available for the public to review and may change year-to-year without notice to the public. (Reference proposed §19.4013.)

- To address this insufficiency, the proposed rules require that navigators in Texas comply with the privacy requirements under the Insurance Code and TDI rules. The privacy requirements in the Insurance Code and TDI rules work in conjunction with federal privacy requirements to ensure the safety of consumers' nonpublic information. (Reference proposed §§19.4004, 19.4011, 19.4012, 19.4014, and 19.4016.)
- **Accountability of navigators:** The standards set by federal navigator regulations under 42 USC §18031 do not address liability of or penalties applicable to navigators who cause harm to consumers.
- To address this insufficiency, the proposed rules require individual navigators to identify a registered navigator entity the individual will be employed by or associated with as an individual navigator. In addition, the proposed rules requires navigator entities to secure and maintain evidence of financial responsibility to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, employees of the navigator entity, or navigators associated with or employed by the navigator entity. The proposed rules also require that individual navigators provide identification prior to assisting a consumer with enrollment services. Finally, the proposed rules set prohibitions on certain activities while an entity or individual is providing navigator services, and provide for administrative action against entities or individuals who violate Insurance Code Chapter 4154 or TDI rules.

ADDITIONAL RULE PROPOSALS TO IMPLEMENT SB 1795

- SB 1795 set minimum requirements for rules adopted under Chapter 4154. It allows the commissioner to establish a state registration for navigators to ensure that navigators satisfy minimum standards, requires the commissioner to adopt rules authorizing additional training for navigators, as necessary to ensure compliance with changes in state or federal law, and allows the commissioner to adopt necessary rules.
- Insurance Code §4154.051(c) provides that rules adopted by the commissioner must ensure that navigators in Texas have not had a professional license suspended or revoked, have not been the subject of other disciplinary action by a state or federal financial or insurance regulator, and have not been convicted of a felony. The proposed rules include fingerprinting and background requirements that are necessary to ensure that TDI can satisfy these requirements.
- TDI's proposed rules would also implement the state registration for navigators as permitted by Insurance Code §4154.051(d). The proposed rules establish the requirement for registration, address eligibility to register, list information TDI requires with an application for registration, address renewal of registration, and place limits on use of the term "navigator" by entities and individuals subject to the rules who do not register with TDI. TDI attempts to limit the impact of the section to entities and individuals with the most direct access to consumer information. To this end, the

proposed rules state that only entities and individuals who provide enrollment assistance in a health benefit exchange must register with TDI.

RECAP

- For the reasons summarized above, TDI proposed its Navigators rules to protect Texas consumers who seek assistance from federal health exchange navigators.
- The proposed TDI rules are necessary to provide a state solution to help and protect Texas consumers by ensuring the security of their private information and ensuring that they are able to find and apply for health coverage under the federally-run health benefit exchange with the assistance of qualified navigators.
- As previously noted, TDI is in the process of soliciting comments from the public on these proposed rules. Two public hearings have been scheduled. Details for providing comments and the public hearings is attached Exhibit 2.
- The substantive requirements of TDI's proposed rules are attached as Exhibit 3. Readers are strongly encouraged to read the total rule proposal in its entirety, which can be found at: <http://www.tdi.texas.gov/rules/2013/documents/navproposal.pdf>.
- TDI wishes to reiterate that the proposed rules can change as a result of comments received from the public.

Exhibit I



Texas Department of Insurance

Commissioner of Insurance, Mail Code 113-1C
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104
512-463-6464 telephone • 512-475-2005 fax • www.tdi.texas.gov

December 13, 2013

The Honorable Darrell Issa
Chairman, Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa, Honorable Members of the Committee and Texas Congressional Delegation:

Thank you for the invitation to testify before the House Oversight and Government Reform Committee regarding proposed rules to protect consumers seeking assistance from federal health benefit exchange navigators. I apologize that I could not be there in person due to a prior obligation and have asked Kevin Brady, Deputy Chief of Staff for the Texas Department of Insurance (TDI), to testify in my place on behalf of our agency.

Senate Bill 1795 passed in 2013 by the Texas Legislature and signed by Governor Perry, charged me with setting standards to ensure navigators can perform their duties if federal standards are insufficient. The proposed rules address insufficiencies in federal regulations and make the training and qualifications of navigators in our state more readily apparent to consumers and service providers.

TDI is charged with protecting consumers and the proposed rules seek to do just that. In Texas, we are being vigilant about safeguarding privacy and keeping personal information out of the wrong hands.

We have reviewed the committee's preliminary staff report, *Risks of Fraud and Misinformation with ObamaCare Outreach Campaign*, and determined that several issues it raises would be addressed by our proposed rules, such as requiring background checks in order to be able to enforce a Texas-statutory prohibition on convicted felons from being navigators. We hope our rules will be a model for HHS and other states who are seeking to protect their consumers as well.

Thank you again for allowing our agency an opportunity to testify. Please let me know if I or my staff can be of any assistance.

Sincerely,

Handwritten signature of Julia Rathgeber in cursive script.

Julia Rathgeber
Commissioner of Insurance

Exhibit 2

Details for Providing Public Comments on TDI's Proposed Navigator Rules

The Texas Department of Insurance (TDI) has proposed rules to implement Senate Bill (SB) 1795, 83rd Texas Legislature, to better protect the private information of consumers who seek assistance from federal benefit exchange navigators.

TDI will hold two public hearings to allow for comment on the proposed rules. The first public hearing will be at 9:00 a.m. on December 20. A second public hearing will take place at 9:00 a.m. on January 6. Both opportunities for public comment will be audio streamed online and archived on the agency website.

Comments can be submitted to TDI via e-mail and by hard copy until 5:00 p.m. on January 6. Comments by E-mail should be sent to chiefclerk@tdi.texas.gov and to NavigatorRegistration@tdi.texas.gov.

Written comments should be sent to:

- Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104, and
- Jamie Walker, Associate Commissioner, Licensing Services Section, Mail Code 305-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 7871

The public hearings will take place at the Hobby Building, 333 Guadalupe St., Austin, TX 78701.

The proposed rules were published in the *Texas Register* on December 6, and are posted on the agency website at: <http://www.tdi.texas.gov/rules/2013/documents/navproposal.pdf>.

Exhibit 3

Substantive Requirements of TDI's Proposed Rules.

Note: Readers are strongly encouraged to read the total rule proposal in its entirety, which can be found at: <http://www.tdi.texas.gov/rules/2013/documents/navproposal.pdf> .

SUBCHAPTER W. Regulation of Navigators for Health Benefit Exchanges

28 TAC §19.4001 – 19.4019

§19.4001. Purpose. The purpose of this subchapter is to implement Texas Insurance Code Chapter 4154, which is intended to provide a state solution to help Texas consumers and ensure that they are able to find and apply for affordable health coverage under the federal health benefit exchange.

§19.4002. Definitions. The following words and terms when used in this subchapter have the following meanings unless the context clearly indicates otherwise.

(1) Enrollment assistance in a health benefit exchange--The provision of assistance to a consumer in completing the application for health coverage affordability programs available through a health benefit exchange. This includes providing assistance in completing an electronic application, a paper application, or providing assistance in applying for an affordability program available through a health benefit exchange by phone or through email.

(2) Individual navigator--An individual performing navigator services.

(3) Navigator entity--An entity performing or overseeing an individual's performance of navigator services.

(4) Navigator services--Services performed under Insurance Code Chapter 4154, this subchapter, 42 USC §18031, or any regulation enacted under 42 USC §18031, including:

(A) assisting consumers in completing the application for health coverage affordability programs available through a health benefit exchange;

(B) explaining how health coverage affordability programs work and interact, including Medicaid, the Children's Health Insurance Program, or advance premium tax credits and cost-sharing assistance;

(C) explaining health insurance concepts related to qualified health plans, including premiums, cost sharing, networks, or essential health benefits;

(D) providing culturally and linguistically appropriate information;

(E) avoiding conflicts of interest; or

(F) establishing standards and processes relating to privacy and data security.

(5) Nonpublic information--Information protected under Insurance Code Chapter 601 or 602, and Chapter 22 of this title (relating to Privacy), including nonpublic personal financial information and nonpublic personal health information as those terms are defined under Chapter 22 of this title.

§19.4003. Applicability.

(a) Except as provided by subsections (b) - (d) of this section, this subchapter applies to any individual or entity that provides navigator services in Texas on or after March 1, 2014.

(b) In accord with Insurance Code §4154.004, this subchapter does not apply to:

(1) a licensed life, accident, and health insurance agent;

(2) a licensed life and health insurance counselor; or

(3) a licensed life and health insurance company.

(c) This subchapter does not apply to an individual or entity that provides assistance to consumers under and in compliance with state or federal authority other than 42 USC §18031, to the extent that the individual or entity is providing assistance consistent with that state or federal authority.

(d) This subchapter does not apply to a certified application counselor holding a certification issued under 45 CFR §155.225.

§19.4004. Registration Required.

(a) An individual who provides navigator services in Texas may not provide enrollment assistance in a health benefit exchange unless the individual or entity is registered with the department under this subchapter.

(b) An entity that provides or facilitates the provision of navigator services in Texas may not provide or facilitate the provision of enrollment assistance in a health benefit exchange unless the entity is registered with the department under this subchapter.

(c) Any employee of a navigator entity who provides enrollment assistance in a health benefit exchange on behalf of the navigator entity in Texas must be registered with the department as an individual navigator under this subchapter.

§19.4005. Registration Eligibility.

(a) Registration as a navigator entity. To register as a navigator entity, an entity must:

(1) establish procedures for the handling of nonpublic information;

(2) demonstrate financial responsibility as required under §19.4011 of this title (relating to Financial Responsibility);

(3) provide to the department the procedures and evidence of financial responsibility required by this subsection;

(4) designate an officer, manager, or other individual in a leadership position in the entity to act as a responsible party on behalf of the entity and submit to fingerprinting and a background check under Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct), to the same extent as that subchapter applies to

any other applicant for a license, registration, certification, permit, or authorization under the Insurance Code;

(5) provide a list of individuals performing navigator services on behalf of or under the supervision of the entity; and

(6) complete and provide to the department an application for registration under §19.4006 of this title (relating to Application for Registration).

(b) Registration as an individual navigator. To register as an individual navigator an individual must:

(1) be at least 18 years of age;

(2) provide proof that the registrant is a citizen of the United States or has complied with all federal laws pertaining to employment or to the transaction of business in the United States;

(3) provide proof that the individual has complied with the applicable education and examination requirements of §19.4009 of this title (relating to Navigator Education and Examination Requirements);

(4) submit to fingerprinting and a background check under Chapter 1, Subchapter D of this title, to the same extent as that subchapter applies to any other applicant for a license, registration, certification, permit, or authorization under the Insurance Code;

(5) identify a registered navigator entity the individual will be employed by or associated with as an individual navigator;

(6) be an individual eligible for an authorization issued by the department under the guidelines in §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds); and

(7) complete and provide to the department an application for registration under §19.4006 of this title.

(c) An individual an entity designates as a responsible party under subsection (a) of this section must be an individual eligible for an authorization issued by the department under the guidelines in §1.502 of this title.

§19.4006. Application for Registration.

(a) An entity or individual must submit an application for registration as a navigator entity or individual navigator on a form specified by the department.

(b) The application for registration as a navigator entity must include:

(1) the name of the entity;

(2) the entity's federal employer identification number;

(3) information regarding the location and means of contacting the entity;

(4) disclosures regarding regulatory actions, criminal actions, and litigation history;

(5) the date range for which the entity seeks registration;

(6) the form of the financial responsibility the entity elects;

(7) the name and biographical information of a designated responsible party who will be the primary contact for the entity;

(8) the designated responsible party's:

(A) current name and any different names used by the designated responsible party in the past;

(B) social security number;

(C) date of birth;

(D) current mailing address, phone number, and email address;

(E) professional background and criminal history information; and

(9) a complete set of the designated responsible party's fingerprints, using the procedures under §1.509 of this title (relating to Fingerprint Format and Complete Application), unless the individual meets the exemption in §1.504(b)(1) of this title (relating to Fingerprint Requirement).

(c) The application for registration as an individual navigator must include:

(1) the individual's:

(A) name;

(B) social security number;

(C) mailing address, physical address, and email address;

(D) phone number; and

(E) professional background and criminal history information;

(2) the date range for which registration is sought;

(3) certificates showing completion of applicable initial education or continuing education; and

(4) a complete set of the individual's fingerprints, using the procedures under §1.509 of this title, unless the individual meets the exemption in §1.504(b)(1) of this title.

§19.4007. Renewal of Registration as a Navigator Entity or Individual Navigator.

(a) A navigator entity or individual navigator registered with the department under this subchapter must submit an application for renewal of registration on a form specified by the department no later than August 31 of each year. The application for renewal of registration must contain the same information required by §19.4006 of this title (relating to Application for Registration).

(b) The registration of a navigator entity or individual navigator under this subchapter will expire the next September 30 following the effective date of the registration or renewal of registration, unless the navigator entity or individual navigator submits an application for renewal under subsection (a) of this section.

§19.4008. Registration and Registration Renewal Fees. Fees to register or renew registration are:

(1) for an entity registering or renewing registration as a navigator entity: \$50;

and

(2) for an individual registering or renewing registration as an individual navigator: \$50.

§19.4009. Navigator Education and Examination Requirements.

(a) Initial education requirements. To be eligible to register as an individual navigator, an individual must:

(1) complete all training required for navigators under any regulation enacted under 42 USC §18031 and pass all examinations associated with the training requirements; and

(2) complete a preregistration education course that consists of a minimum of 40 hours of department-certified training. The education course must include:

(A) a minimum of 13 hours on Texas-specific Medicaid provisions;

(B) a minimum of 13 hours on applicable privacy requirements;

and

(C) a minimum of 14 hours on ethics.

(b) Ongoing education requirements. To be eligible for renewal of registration as an individual navigator, an individual navigator must:

(1) complete all continuing education requirements for navigators under any regulation enacted under 42 USC §18031 and pass all examinations associated with the training requirements; and

(2) complete a continuing education course that consists of a minimum of six hours of department-certified continuing education. The continuing education course must include:

(A) a minimum of two hours on Texas-specific Medicaid provisions;

(B) a minimum of two hours on applicable privacy requirements;

and

(C) a minimum of two hours on ethics.

(c) Education course final examination requirements. The department-certified education courses under subsections (a)(2) and (b)(2) of this section must include a final examination and must provide students with instruction sufficient to take and pass the final examination, and are not considered complete unless a student receives at least a 70 percent score on the examination.

(1) Final examinations may be written or computer-based, must be designed to test applicants on the materials as specified in this section, and must meet the criteria in subparagraphs (A) – (G) of this paragraph.

(A) A student must complete a 50-question examination in less than 60 minutes over subjects specified in subsection (d) of this section with question percentages specified in subsection (d) of this section.

(B) Examination questions must not be the same or substantially similar to questions a student encounters in the course materials or review examinations, and must not be designed to make the correct answer obvious by its content.

(C) Examination questions must be multiple choice questions stemming from an inquiry with at least four appropriate potential responses and must not include "all of the above" or "none of the above" as an option.

(D) Specific examination questions must not be made available to a student until the test is administered. Security measures must be in place to maintain the integrity of the examination and ensure the people who take the examination are the students who registered for and attended the course.

(E) Course providers must maintain records of students' examination results for a minimum of four years.

(F) Course providers and instructors may not give any person answers to examination questions at any time before, during, or after a course, except as necessary to allow an authorized staff member to grade the examination.

(G) The instructor, an authorized staff member of the course provider, or a computer program must grade examinations.

(2) A student may be allowed to retake an examination for a department-certified examination course one time without being required to retake the course if the student does not achieve a score of 70 percent or higher on the examination. A retest must consist of an alternate examination consisting of questions that are different from the questions that were on the examination the student has previously taken.

(3) The final examination for an education course must include at least three separate complete examinations which are distributed alternately to students and which are revised or updated consistent with applicable course updates or revisions. An instructor or course provider may distribute only one examination to any one student at the time examinations are conducted.

(4) A disinterested third party must monitor the final examination. During the examination, students may not use course material, personal notes, or any other written or electronic material or media that is not part of the examination, nor engage in communication of any kind with any other person except to receive instructions from the examination monitor. On completion of the examination, the person monitoring the examination must mail or deliver the completed examination directly to the course provider.

(5) Education providers must issue certificates of completion to course participants who successfully pass the examination by correctly answering at least 70 percent of the examination questions. The course provider must:

(A) issue the certificate in a manner that ensures that the person receiving the certificate is the student who took the course;

(B) issue the certificate within 30 days of the student passing the examination; and

(C) complete the certificate to reflect the dates the student took the course and examination.

(6) Course providers must not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.

(d) Examination topics. The subjects and question percentages required for navigator course examinations are:

(1) eligibility for Texas Medicaid: 14 percent;

(2) enrollment processes for Texas Medicaid: 10 percent;

(3) benefits provided under Texas Medicaid: 8 percent;

(4) Texas statutes and rules pertinent to the protection of nonpublic information: 34 percent;

(5) insurance fraud (Penal Code Chapter 35): 10 percent;

(6) ethical behavior of a navigator: 10 percent;

(7) duty of the navigator to the consumer being assisted: 8 percent; and

(8) the difference between ethics and laws: 6 percent.

(e) Proof of course completion. An individual navigator must maintain proof of completion of education courses for four years from the date of completion of the course. As required by §19.4006 of this title (relating to Application for Registration) or on request by the department, the individual navigator must provide proof of completion of all training and continuing education courses. An individual navigator must immediately report to the department any discrepancy the individual navigator discovers between a course taken by the individual navigator and the credit hours certified to the individual navigator by a course provider.

(f) The requirements of subsection (a)(2) of this section are not applicable until May 1, 2014.

§19.4010. Course Providers.

(a) A course provider for navigator initial education or continuing education must comply with:

(1) Sections 19.1005, 19.1007, and 19.1008 of this title (relating to Provider Registration, Instructor, and Speaker Criteria; Course Certification Submission Applications, Course Expirations, and Resubmissions; and Certified Course Advertising, Modification, and Assignment, respectively);

(2) Section 19.1009 of this title (relating to Types of Courses);

(3) Section 19.1010 of this title (relating to Hours of Credit);

(4) Section 19.1011 of this title (relating to Requirements for Successful Completion of Continuing Education Courses); and

(5) Section 19.1014 of this title (relating to Provider Compliance Records).

(b) A course provider that fails to comply with the requirements of this section is subject to:

(1) Section 19.1015 of this title (relating to Failure to Comply); and

(2) Section 19.1016 of this title (relating to Automatic Fines).

§19.4011. Financial Responsibility.

(a) A navigator entity operating in Texas must secure and maintain evidence of financial responsibility to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, employees of the navigator entity, or navigators associated with or employed by the navigator entity. Evidence of financial responsibility may be shown by:

(1) obtaining a surety bond in the amount of \$50,000;

(2) obtaining a professional liability policy insuring the navigator entity against errors and omissions in at least the amount of \$100,000, with a deductible of not more than 10 percent of the full amount of the policy; or

(3) the deposit of \$25,000 in securities backed by the full faith and credit of the United States government with the comptroller.

(b) A surety bond used to maintain and demonstrate proof of financial responsibility under this section must:

(1) be in the form specified by the department;

(2) be executed by the navigator entity, as principal, and a surety company authorized to do business in this state as a surety;

(3) be payable to the Texas Department of Insurance for the use and benefit of a consumer, conditioned that the navigator entity must pay any final judgment recovered against it by a consumer;

(4) provide that the surety will give no less than 30 days written notice of bond termination to the navigator entity and the department;

(5) be separate from any other financial responsibility obligation; and

(6) not be used to demonstrate professional responsibility for any other license, certification, or person.

(c) A professional liability policy used to maintain and demonstrate proof of financial responsibility under this section must:

(1) be issued by an insurer authorized to engage in the business of insurance in this state; or

(2) if a policy cannot be obtained from an insurer authorized to engage in the business of insurance in this state, be issued by a surplus lines insurer under Insurance Code Chapter 981.

§19.4012. Navigator Identification.

(a) This section applies only to individuals registered with the department under this subchapter.

(b) Before providing or facilitating the provision of enrollment assistance in a health benefit exchange to a consumer, an individual navigator must provide identification to the consumer.

(c) The identification an individual navigator provides to a consumer under this section must include a valid state-issued identification and a notice that identifies the navigator entity the individual navigator is employed by or associated with.

§19.4013. Privacy of Nonpublic Information. A navigator entity or an individual navigator registered with the department under this subchapter must comply with Insurance Code Chapters 601 and 602, and Chapter 22 of this title (relating to Privacy).

§19.4014. Prohibitions. In the course of providing navigator services, an entity or an individual may not:

(1) engage in electioneering activities or finance or otherwise support the candidacy of an individual for government positions (including campaigning, persuading, promoting, advertising, or coordinating with any political party, committee, or candidate);

(2) charge consumers for providing information about health coverage affordability programs or health insurance concepts related to qualified health plans;

(3) sell, solicit, or negotiate health insurance coverage;

(4) recommend a specific health benefit plan; or

(5) provide advice regarding substantive benefits or comparative benefits of different health benefit plans.

§19.4015. Limits on Use of Term “Navigator.” Unless registered with the department as a navigator entity or an individual navigator under this subchapter, an entity or individual may not:

(1) use the term “navigator” as part of an entity’s name or website address or in an individual’s title;

(2) imply or represent that the entity or individual is a navigator in advertising or outreach material.

§19.4016. Administrative Violations.

(a) If the commissioner or the commissioner’s designee believes that an entity or individual has violated or is violating any provision of Insurance Code Chapter 4154 or this subchapter, the commissioner or the commissioner’s designee must notify the individual or entity of the alleged violation and may compel the production of any and all

documents or other information necessary to determine whether such violation has taken place.

(b) The commissioner or commissioner's designee may initiate proceedings under this section.

(c) Proceedings under this section are contested cases for the purpose of Government Code Chapter 2001.

(d) If the commissioner or the commissioner's designee determines that an entity or individual has violated or is violating any provision of Insurance Code Chapter 4154 or this subchapter, the commissioner or the commissioner's designee may:

(1) impose sanctions under Insurance Code Chapter 82;

(2) issue a cease and desist order under Insurance Code Chapter 83;

(3) assess administrative penalties under Insurance Code Chapter 84;

(4) terminate the entity or individual's registration as a navigator entity; or

(5) any combination of these actions.

§19.4017. Severability Clause. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

§19.4018. Expiration. In accord with Texas Insurance Code §4154.006, this subchapter expires September 1, 2017.

Chairman ISSA. Thank you.

On September 18th, this committee issued a preliminary staff report entitled "Risk of Fraud and Misinformation with Obamacare Outreach Campaign: How Navigators and Assistants Program Mismanagement Endangers Consumers." I now ask unanimous consent that the update of the staff report released today be included in the record and used for comment during this hearing.

Without objection, so ordered.

Chairman ISSA. Mr. Brady, I am a Californian and an Ohioan by birth, so if I miss one of these in the insurance questions, feel free to shame me as much as you want. But you oversee car insurance in this state?

Mr. BRADY. Yes, sir.

Chairman ISSA. The Federal Government tell you that you have to have unlimited coverage on car insurance?

Mr. BRADY. No, sir.

Chairman ISSA. Do they provide people to sign up car insurance at Federal expense?

Mr. BRADY. No, sir.

Chairman ISSA. Do you have worker's comp insurance in this state?

Mr. BRADY. Yes, sir.

Chairman ISSA. Does it provide healthcare benefits for people injured at work, in addition to lost wages?

Mr. BRADY. Yes, sir.

Chairman ISSA. Do they have Federal Navigators to make sure that people know about this and get all the benefits?

Mr. BRADY. No, sir.

Chairman ISSA. Do you have title insurance, renters insurance, home insurance? As a matter of fact, do you have D&O insurance for public companies doing business in the State of Texas?

Mr. BRADY. Yes to all those questions.

Chairman ISSA. Are there Navigators for any of these? Is there Federal funding for any of these, or are there mandates as to what these all have to be under Federal law?

Mr. BRADY. Not to my knowledge.

Chairman ISSA. So Obamacare is the only time, to your knowledge, that the Federal Government has come in and mandated with incredible detail what you must have and how you must have it for insurance in this state. Is that correct?

Mr. BRADY. Certainly on that scale. Yes, sir.

Chairman ISSA. But you still get to be responsible for any failures of your insurance companies. They are still state insurance company licenses, right?

Mr. BRADY. Yes, sir. If a company fails, we are charged with basically taking it over.

Chairman ISSA. This does kind of get me sometimes.

Dr. Farris, we wrote to Secretary Sebelius asking her why there were no background checks for individuals who are Navigators and assistants and suggesting strongly that there needed to be. Do you know why to this day there is still no background checks here in Texas and around the country for Navigators?

Dr. FARRIS. Well, as we mentioned, there are a number of different agencies with which we work, agencies like the Community Council of Greater Dallas —

Chairman ISSA. No, I understand who you work with. What I want to know is when people are taking individual information, information that could be directly used to do identity theft, why is there no background check for these individuals as part of it?

Dr. FARRIS. These individuals that work for these umbrella organizations like the Urban League or like the Community Council of Greater Dallas, these are institutions that traditionally provide help to people in the community who need it. It would not be in their best interest to hire people who would be felons or people who would participate in the sorts of activities you describe.

Chairman ISSA. Well, Dr. Farris, let me follow up on that quickly. You say it wouldn't be in their interest, but in that one video, it is in the individual's best interest to pay less, and if they simply lie and say they don't smoke when they do, that is in their best interest. If you have individuals who only care about getting the highest subsidy for people and the lowest cost, and you don't check them for whether or not they are con men, how is it that the interest of protecting the interest of the taxpayer is going to align with their best interest?

And with all due respect to charity organizations, non-profits, if they bring people in, brand new people to do this—this is a new job—and they don't do background checks and you don't require background checks, how do we know that the taxpayer dollars are being well spent?

Dr. FARRIS. Well, we acknowledge that what happened with regard to the Navigators in the film that you played was absolutely wrong. There is absolutely no reason for people to be encouraged to lie. That is not in anyone's best interest.

Chairman ISSA. It is in the best interest of the person who pays less because he lies about smoking.

Dr. FARRIS. But it is not in their best interest to lie about a program like this. It is totally wrong, and we acknowledge that.

Chairman ISSA. You said in your opening statement that, in fact, you had gone into detail and had all these things. What is it that you have insisted on these organizations doing that will prevent this in the future?

Dr. FARRIS. We work very closely with all of the Navigators to make certain that they receive training on the protection of personally identifiable information. We make certain that —

Chairman ISSA. You work closely. You just said that you shop this out to other individuals and they get to do it online.

Dr. FARRIS. CMS provides training that is —

Chairman ISSA. In-person training?

Dr. FARRIS. Weekly training that we do online and that we do with webinars to train the Navigators on what their responsibilities are with regard to protecting information with regard to what they need to impart to people who would like to sign up. These take place weekly.

Chairman ISSA. Doctor, I said in my opening statement that anybody could sit at the computer screen and take the test for somebody else. Anybody could be at the webinar or, quite frankly, be in

the kitchen making breakfast. How is it you know that you are working closely when, in fact, they are not in the room is actually occurring?

Dr. FARRIS. We know because of the organizations that serve as the umbrella organizations for the Navigators, which are institutions which have great reputations and work with the community and have traditionally provided good help and good care. As I said, it would not be in their best interest to hire people who would not represent them well.

Chairman ISSA. Well, you know, I am in the "trust but verify" business, and so far the trust has not been verified.

[Applause.]

Chairman ISSA. Ms. Goodwin, I am just going to close with a quick question to you. You mentioned it, but I think it is worth asking one more time.

Ms. GOODWIN. Yes, sir.

Chairman ISSA. Anyone in your state, in the State of Texas, who sells insurance or, in fact, even participates in that process —

Ms. GOODWIN. Correct.

Chairman ISSA. The assistant that takes phone calls and provides follow-up information, if you will, your assistants, aren't they all in this state covered by the requirement that you know who they are and that they have tangible training and, in fact, they be bonded?

Ms. GOODWIN. Yes, sir. They are, and in our state, to perform any duties described as the business of insurance, you must have a license through TDI, go through the training and go through the continuing education. If you are going to conduct the business of insurance, you must be licensed.

Chairman ISSA. Well, that would have served us well, I am sure, here in Texas.

Mr. Farenthold?

Oh. Oh, I am sorry. I apologize.

Mr. Veasey, it is tradition to go to the members of the committee and then the non-members of the committee. So I don't want it to be a slight, but we will go to you right after Mr. Farenthold.

Mr. VEASEY. Absolutely.

Chairman ISSA. Mr. Farenthold?

Mr. FARENTHOLD. Thank you, Chairman Issa.

I will start with a question for Mr. Brady.

You listed out a number of requirements that Texas is trying to put on Navigators, and they all seem like commonsense requirements that would make a lot of sense, including some background checks and such.

But do you think knowledge of all the information and rules within the Texas law is something that can be imparted in a 20-hour-or-less training session for a Navigator, along with all the information necessary to be a Navigator?

Mr. BRADY. I guess the best benchmark that I have is the requirements that we have for insurance agents. They vary somewhat. We have a lot of different types of agent licenses, and the requirements are a little different from license to license. But one thing that is required is a pre-licensing examination, and the applicant has to pass the exam with a test —

Mr. FARENTHOLD. Do you have to appear in person to do that?

Mr. BRADY. Yes, sir. It is a proctored examination.

Mr. FARENTHOLD. So unlike a Navigator who can sit anonymously behind a computer and do it, you show up and prove who you are to take the test.

Mr. BRADY. Yes, sir.

Mr. FARENTHOLD. All right. Let me ask you another question. If I were to go to a private insurance agent in Texas, is there a way for me to verify that that person is properly licensed with the State of Texas and has passed these exams?

Mr. BRADY. The Department licenses agents. They issue licenses that agents can show the license.

Mr. FARENTHOLD. All right. Great. Now, let me ask Mr. Farris, is there a way for somebody to tell whether someone is a certified Navigator or is just posing as a Navigator? I read some reports of some scam artists offering to get people Obamacare cards and things like that. What mechanism is in place that I can ensure that someone I am talking to or one of my constituents is talking to for help with Obamacare has actually gone through this extensive 20-hour training course?

Dr. FARRIS. Yes. The Navigators who complete the training, pass the test, do receive certification that they are certified Navigators. If you would like to know if the Navigator that you would like to deal with has achieved that certification, they do have the certification with them.

However, you can look on the "Finding Local Help" on the website and they can tell you where the umbrella organizations are in your community that are responsible for the Navigators, and then working through that way, you can find out a particular Navigator and be assured that that Navigator has received a certification.

Mr. FARENTHOLD. Okay. Does that part of the website work?

Dr. FARRIS. That part of the website works.

Mr. FARENTHOLD. All right. Let me go now to Ms. Goodwin.

We have this extensive Navigator system that we have created. Was this even necessary, or is this something that could have fallen within the purview of normal insurance agents? Could you guys have taken this on, and would it have been economical for you all to take it on, or were we forced to go to this more community organization type of system?

Ms. GOODWIN. In my personal opinion, I think agents could have taken care of it much better than it has been taken care of so far.

[Applause.]

Mr. FARENTHOLD. All right. Well, those were the bulk of my questions. I don't know if we are going to have a second round of questions or not. I know we are tight on time, so I want to go ahead and let the other members get their questions in. As a member of the Oversight Committee, we have had, and I am sure will continue to have, numerous hearings on this topic, and I will have plenty of opportunity to do questions, while some of the members that we have brought in under unanimous consent don't necessarily have the privilege of participating in this committee's hearings. So I will yield back.

Chairman ISSA. I thank the gentleman.

We now go over to the gentleman from Texas, Mr. Veasey.

Mr. VEASEY. Thank you, Mr. Chairman.

Before I begin, I wanted to ask if I could request unanimous consent to enter the letters from the following elected officials on Navigators and the critical need for the Affordable Care Act.

Chairman ISSA. Without objection, so ordered.

Mr. VEASEY. And also, Mr. Chairman, I request unanimous consent to submit the following statements, letters from seven community healthcare centers, clinic Navigators and other groups, into the record.

Chairman ISSA. Without objection, so ordered.

[The information follows:]

Mr. VEASEY. Thank you, Mr. Chairman.

I wanted to talk specifically and ask questions about expanding Medicaid. As most of us know, one of the most critical features of the Affordable Care Act is its expansion of Medicaid eligibility to millions of low-income adults. Prior to the ACA, Medicaid eligibility was restricted primarily to low-income children, their parents, people with disabilities, and seniors. In most states, adults without dependent children are not eligible.

Under the ACA, Medicaid eligibility can be expanded to cover all non-elderly adults with incomes below 138 percent of the Federal poverty level. The Federal Government would pay states 100 percent of the cost for the first three years, and then phase that down to about 90 percent in 2020, like I stated earlier in my opening comments. Are those numbers correct, Dr. Farris?

Dr. FARRIS. Those numbers are correct, to my knowledge.

Mr. VEASEY. Okay. Dr. Farris, by not participating, the governor is leaving significant resources on the table that could be used for citizens here in the Dallas-Fort Worth metroplex and across the state. Is that correct?

Dr. FARRIS. I can only state that every state has the ability to either accept or reject the Medicaid expansion. In the case of the State of Texas, the decision was made not to.

Mr. VEASEY. And we talk a lot about this, obviously, the expansion of Medicaid, but can you tell us why the expansion of Medicaid specifically is a very important component of the Affordable Care Act?

Dr. FARRIS. Well, part of the reasoning behind the Affordable Care Act is to make certain that people who have traditionally been uninsured are able to have insurance coverage such that they can receive things like preventive care, such that they can get care from physicians rather than going to an emergency room when they are in extremis.

When you have some sort of insurance, regardless of the type of insurance, you do have the ability to seek ongoing care as opposed to care that is rendered once a person becomes ill, which will make the cost of care, as we have heard earlier today, much lower if people have the ability to stay healthy, as opposed to try to get diseases treated. That was part of the premise of the whole Affordable Care Act, and also the premise of ensuring that people get health insurance.

Mr. VEASEY. One of the things that we have talked a lot about is the Medicaid expansion and individuals that are being covered

or are not being covered. But I think one of the myths, or maybe even illusions out there, is that people are not being covered, and I wanted to ask Mr. Brady a question.

As you know, Mr. Brady, under the Emergency Medical Treatment and Labor Act, people cannot be denied treatment when they arrive at emergency rooms. Is that correct?

Mr. BRADY. Sir, I am not familiar with the Act. I have a general impression that people that go to hospital districts with taxing authority generally will have their emergency needs met. But it is a very rough impression.

Mr. VEASEY. Dr. Farris, when people go to the medical emergency room and they are treated, these uncompensated costs, are they passed along to taxpayers? Where do these uncompensated costs go?

Dr. FARRIS. They are passed along. And with regard to EMTALA, that is part of my responsibility at CMS, and my role as Consortium Administrator for Quality Improvement and Survey and Certification Operations, we ensure that people who do show up in emergency rooms receive a screening exam and stabilization through EMTALA, as you have said, and that is something that we are concerned about, to make certain that people have those screening exams.

But part of what we hope to do is to make certain that people don't have to wind up in emergency rooms as a result of things like pneumonia or diabetes or situations that could be prevented by proper ongoing care.

Mr. VEASEY. Mr. Brady, I don't know if you saw this study. I know that you obviously see a lot of different studies come across your desk, but one that our staff found was that the Texas Health and Human Services Commission said that uncompensated claims for the State of Texas in 2006 were more than \$11 billion.

Doesn't it make fiscal sense to expand Medicaid in our state, which would not only provide needed care for millions who don't have it, but likely keep the same population from seeking emergency visits where they cannot pay their bills?

Mr. BRADY. Sir, I work for the Texas Department of Insurance in the State of Texas. The administration of that program is done by a completely different state agency. I am not familiar with the policy of that agency.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Texas, Mr. Burgess.

Mr. BURGESS. Thank you, Chairman.

Dr. Farris, let me just ask you for a moment about the issue of preexisting conditions. Texas has had a risk pool for some time, has it not?

Dr. FARRIS. It has.

Mr. BURGESS. How does that work?

Dr. FARRIS. Well, the risk pool provides monies for the treatment of people who have some preexisting condition to be able to be seen. It is not as comprehensive as what we have tried to achieve with doing away with the preexisting conditions clauses.

Mr. BURGESS. Let me ask you a question. I don't mean to interrupt, but my time is limited.

Dr. FARRIS. Yes.

Mr. BURGESS. Is that risk pool coming to an end?

Dr. FARRIS. I am not certain.

Mr. BURGESS. Well, I talked to Ms. Rathgeber at the Texas Department of Insurance a little earlier this fall and I suggested that, I think from a statutory standpoint, yes, the risk pool was sunsetted on December 31st, the concept being that the Affordable Care Act will now pick up that slack, except that there is now a growing concern the Affordable Care Act is not ready. So Commissioner Rathgeber, I think quite wisely, found a way to extend that for a period of time for those people who are in the Texas risk pool. Is that correct, Mr. Brady?

Mr. BRADY. Was that question directed at me?

Mr. BURGESS. Yes. The extension of the Texas risk pool?

Mr. BRADY. Yes, sir. There were emergency rules that were adopted to extend the Texas risk pool, I believe for three months, to the end of March.

Mr. BURGESS. So I would just submit here, we labor under this illusion that the Affordable Care Act is going to save us from the conundrum of preexisting conditions. But look what has happened to the Federal preexisting program. Since February of 2013, no new patient has been able to enroll in the preexisting program.

Now, for whatever reason, the press has chosen to ignore that, but we heard testimony in our committee in Washington last April from a woman with lymphoma who had been trying to wait out the waiting period to get into the Federal preexisting program, had waited her required six months. When she showed up on February 1st she was told sorry, sister, this window is closed, you can't get into this program, we are full up. And this is the notion there that we sell stuff, but we never intend to do the follow-through. I am truly bothered by that.

Every time I hear someone bring up the issue that, oh, the Affordable Care Act is great, we are covering people with preexisting conditions—no, we are not. No, we are not. And we are not going to. I don't know when that coverage will kick in.

Now, look, I will just tell you, I have had my own experience with healthcare.gov. I chose, for whatever reason, not to go through the congressional insurance. I am just going to the website. It is tough.

Have you done it, Dr. Farris? Have you gone to healthcare.gov and tried to buy insurance for yourself, for your family?

Dr. FARRIS. I have.

Mr. BURGESS. And what has been your result?

Dr. FARRIS. Well, I have been able to get through.

Mr. BURGESS. Did you pay the money?

Dr. FARRIS. I haven't yet because my son is graduating from law school. I am hoping he will get a job and I won't have to do that for him.

Mr. BURGESS. Here is the problem. The fundamental unit of a business transaction is when a man pulls out his billfold and pays the money.

Dr. FARRIS. Right.

Mr. BURGESS. I have not been able to pay my money. Now here we are, a week away from December 23rd, and I am wondering if I am going to get in under the wire.

Oh, by the way, we just extended that wire to January 31st. If the insurance companies happen to agree, and even if I don't get signed up by January 31st, maybe we can coerce the insurance companies to cover me retroactively. I am sorry, that doesn't give me a feeling of confidence in the way this program is going to work.

Dr. FARRIS, you and I are both physicians. You and I know how difficult it is to run a practice, how your accounts payable every month is something you sweat because you don't know whether you are going to get the cash in to keep your business open. What is going to happen to doctors' offices, hospitals, nurse practitioners after the first of the year if there cannot be assurance that this enrollment has, in fact, occurred because someone has paid the man the money and the coverage is in effect? Who covers that? Is HHS going to cover that?

Now, you remember when Part D came online. The pharmacists kind of got—they were worried. They were filling prescriptions they didn't know if they were going to get paid or not. Secretary Levitt, to his credit, Dr. Martin Cullen, to his credit, said we will make good on all of those prescriptions that are filled.

Is the Secretary going to make good on all the care that is delivered after January 1st for which someone, it turns out, in fact, was not covered when they thought they were covered?

Dr. FARRIS. Well, Congressman, I can't answer that. I am not involved in those policy decisions at my regional level.

Mr. BURGESS. Well, let me just address one other issue. You talk about people winding up in the emergency room, expansion of Medicaid. I would stress that expansion of Medicaid was not statutory the way Medicaid is now structured. That was a court opinion, not statutory. The statutory was the states had to do it. The court said you can't coerce the states, so now it is voluntary.

So a state like Texas, there is no time limit on it, like there was with the exchanges. The exchanges said you have to tell us by whatever it was, January 7th of this year, that you are going to be in the exchange. But with Medicaid, there is no time limit because it was a court opinion.

So another session of the state legislature, it is quite possible they could look around the country and say, you know what, we like what they did in Arkansas, we like what they did in Iowa, we would like to modify that for Texas. So that is still a possibility, is it not?

Dr. FARRIS. It is.

Mr. BURGESS. Now, let me just stress there is also the possibility, we have another debt limit coming up. I don't know whether it is May or August or October, but there will be a point where another debt limit breach is threatened in the United States Congress, and if Congress doesn't raise the statutory debt limit, there could be big trouble. Sometimes there are things that are bargained away, as you saw with the White House and with Congress during the sequester in August of 2011.

What if there is a sequester that affects entitlement spending? Who protects those states that have expanded their Medicaid? What protection do they have that those Federal dollars, in fact, don't flow? Because you and I both know they don't exist.

Dr. FARRIS. Again, that is not a policy question that I can answer. That is something that is done in Washington and Baltimore, not at my level.

Mr. BURGESS. And let me just stress, Dr. Farris, because you and I have known each other for a while, and we have worked together in both Republican and Democratic administrations, and you are a dedicated career civil servant, and I appreciate what you have done to further the issues that you are tasked with furthering. I will just tell you, there are so many open questions about this, so many things, so many questions are unanswered, and it really wasn't necessary. The Department, HHS, has had three-and-a-half years, longer than three-and-a-half years now, billions of dollars, and to be no further along than we are today on December 16th is truly discouraging to me.

I yield back, Chairman.

Chairman ISSA. I thank you.

Mr. Neugebauer?

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Ms. Goodwin, I think in your testimony you mentioned that you are required to carry liability insurance?

Ms. GOODWIN. Errors and omissions. Yes, sir.

Mr. NEUGEBAUER. And why is that?

Ms. GOODWIN. To protect my clients if I should do something that causes them financial harm.

Mr. NEUGEBAUER. Would you classify advising someone on their health insurance is a fairly complex transaction?

Ms. GOODWIN. Absolutely, it is.

Mr. NEUGEBAUER. Is it an important one?

Ms. GOODWIN. It is a very important one.

Mr. NEUGEBAUER. So what protections do the people that are using Navigators to basically navigate through this process, if they cause that person to make a decision that is not in their best interest?

Ms. GOODWIN. I am not certain of the existing regulations with regard to that coverage. I do know that the Texas rules call for a minimum of, I think, \$100,000 in liability. Maybe it is \$50,000. I can't remember, but a much lower amount than agents are generally required to cover.

Mr. NEUGEBAUER. But the real damage is if someone makes a healthcare decision that causes them to have some kind of a catastrophic loss because they didn't have the coverage that they thought they had. That is the bigger issue, is it not?

Ms. GOODWIN. That is.

Mr. NEUGEBAUER. Mr. Brady, I think you mentioned that Texas requires 40 hours of education, background checks, fingerprints. You listed a litany there. Why does Texas require that?

Mr. BRADY. Sir, if I could ask for a clarification. Are you asking about our proposed rules, or are you asking about the requirements that apply to licensed insurance agents?

Mr. NEUGEBAUER. Just licensed and brokers, yes.

Mr. BRADY. Two primary thoughts come to mind. One is there is a desire to make sure that the applicant for the license has the minimal educational requirement necessary to know about the business of insurance. But also there are requirements to know

about the Texas regulatory environment. So that is one broad category.

The other important pre-licensing function that we perform is the background check, and we obtain fingerprints, we do the criminal background checks, tapping into databases with the Texas Department of Public Safety, and also the Federal FBI to see if there are bad apples out there.

Mr. NEUGEBAUER. When someone takes an insurance application, I guess they give their name, their address, their date of birth. They give a lot of very personal information, and that is very sensitive information, is it not?

Mr. BRADY. Yes, sir. I will note that there are a number of laws in the Texas insurance code regarding the privacy of personal information, all designed to protect that information.

Mr. NEUGEBAUER. Thank you.

Dr. FARRIS, one of the things that I think I mentioned in my opening testimony that you may have heard is that we had a hearing in the Science Committee, and one of the things that we learned is that the website has got a lot of vulnerabilities to potential people hacking into that system. So the system itself is somewhat suspect as to whether people's personal information is, in fact, safe with the website.

But even with the Navigator, is the preference still for people to sign up for Obamacare through the website?

Dr. FARRIS. Well, there are actually four ways that a person can sign up. One would be through the website. One would be through a 1-800 number that we have that operates 24 hours a day, seven days a week, and operates in over 150 different languages. Then people can also sign up using Navigators or other application assistants, as you have heard.

We have trained about 70,000 agents and brokers to help people to sign up for care, for insurance. And then the fourth way would be through a paper application. There are some people who are comfortable with paper. There are some people who are comfortable with computers. There are some people who would rather deal with a live person such as a Navigator or an insurance agent or broker, or some certified application counselor. We have trained about 19,000 of those.

Mr. NEUGEBAUER. I want to go back to something you said earlier. I want a clarification. You said that you give Navigators a certificate once they have completed the course. So do you send them an identification card that says I am a Navigator?

Dr. FARRIS. Well, the certification that they receive states that they have completed the Navigator training and have successfully passed the examination.

Mr. NEUGEBAUER. So if I wanted to go online and see, for example, Dr. Burgess, if he is a certified Navigator, could I ascertain that?

Dr. FARRIS. Could you do what?

Mr. NEUGEBAUER. In other words, is there a website where somebody identifies themselves as a Navigator and I wanted to verify that, is there a place where I could go say —

Dr. FARRIS. In order for a person to actually sign up with a Navigator, they have to do it in-person. They don't actually do that over

the phone. When you deal with a Navigator, you sit and you deal with them face to face. So that way, the person can show you their certification that says that they have actually—and you can set up an appointment to go in and see them so you can be certain that you are dealing with who you think you are.

Mr. NEUGEBAUER. But I couldn't verify that. In other words, unfortunately, there are people in this country who know how to counterfeit things. So there is not a way for me to go and ascertain whether someone is actually who they say they are?

Dr. FARRIS. I will have to check on that. I can get back with you on it just to make certain that there is a way to verify.

Mr. NEUGEBAUER. So is there a way for me to go to someplace on a Texas website and determine whether someone is a licensed broker or agent in the State of Texas?

Mr. BRADY. As I commented earlier, one of our jobs is to protect consumers, and one of the services that we provide is an opportunity for members of the public to access our website to see if insurance companies are licensed, if insurance agents are licensed. We try to put that out as a check to make sure that the public knows that they are dealing with trustworthy individuals.

Mr. NEUGEBAUER. And so what we are learning is that that same protection is not afforded to people that are dealing with Navigators, I guess, because there is really not a way to verify those folks.

Thank you, Mr. Chairman. Appreciate that.

Chairman ISSA. Thank you.

Dr. FARRIS, do you have pictures of all the Navigators?

Dr. FARRIS. I do not.

Chairman ISSA. Do you have fingerprints of all the Navigators?

Dr. FARRIS. Not that —

Chairman ISSA. Do you have Xeroxed copies of their driver's licenses?

Dr. FARRIS. I would have to check on that. I don't know.

Chairman ISSA. So my understanding is if somebody is just a plain fraud and they walk in and say, "I am Joe Smith," but, in fact, they are Sam Jones, and Sam Jones is a felon, and they just come in with a false name, they can go through this process, and they can take the test and get certified. Now they have a certificate.

Is that certificate something that I can go online and see what it looks like to verify that the one they are showing me is the same, or do they just print it out when they graduate?

Dr. FARRIS. I would need to check on that, as well.

Chairman ISSA. I am pretty sure they just print it out when they graduate.

Let me go through a couple of questions. You are a long-time career Federal employee. Are you CSRS or FIRS?

Dr. FARRIS. FIRS.

Chairman ISSA. So you are FIRS. So you are covered by FEHBP?

Dr. FARRIS. Yes.

Chairman ISSA. So why would you go on the website when you are covered by the Federal Employee Healthcare Benefit Plan, and how would you buy under Obamacare when the only healthcare plan you have is the FEHBP?

Dr. FARRIS. I wouldn't buy it for me. I was looking at it for my son, who is —

Chairman ISSA. Okay. So you went on the website pretending you were your son.

Dr. FARRIS. No. I did not go on the website —

Chairman ISSA. You went on the website, and you had to put a name in. You didn't put your name in, did you?

Dr. FARRIS. I did. We have the same name.

Chairman ISSA. Okay. So you are a person covered by the Federal Employee Healthcare Benefit, and you went on the site and said I am checking this out. What did you put in for your salary?

Dr. FARRIS. My son has no salary. He is a law student.

Chairman ISSA. Okay. So you put in your name but no salary.

Dr. FARRIS. Right.

Chairman ISSA. Okay, and I appreciate your candor. These are some of the things we have been looking at. Apparently you had no trouble getting into something. I notably tweeted out the error I got trying to go on. But you can go on, you can say you have no salary, you can say you are somebody, and had you gone through and completed it, you would have had healthcare. At least you would have had the coverage.

Dr. FARRIS. No. But I didn't.

Chairman ISSA. Okay. Well, thank you for your honesty of not doing it.

Sometimes you just can't make these things up.

[Laughter.]

[Applause.]

Chairman ISSA. Now, we do a Census every year, every 10 years, but we don't use subcontractors to ask people about where they live and so on. We actually hire you through the Census system. Isn't that right?

Dr. FARRIS. Yes.

Chairman ISSA. And because my committee oversees that, we are well aware that we do take that identifiable information, we do have specific records, and we do attempt to run background on people who work for the Census, even though all they are really doing is going to a door and asking Census information.

Does it concern you that today anybody can, in fact, become a Navigator, and they could be somebody with a felony, somebody who is in the business of identity theft, and you don't have a picture of them, you don't have their fingerprints? So if later on, sort of like that video they showed us, if later on you discover that, in fact, they are crooks, and then they simply disappear, you are not going to be able to go fire them or ask that they be suspended. Is that right?

Dr. FARRIS. Well, I go back to what we originally said in terms of the organizations that we work with who hire these people, that they would do the necessary checks to make certain that they are not hiring felons, which they usually don't.

Chairman ISSA. Okay. Right. And I have one last question, doctor. You used the word "suspend" for these individuals. I am kind of a funny guy. The people that screwed up Benghazi, they got suspended, except they didn't lose a day's pay and they are back on the job today because their suspension ended.

When you say “suspend,” do you mean they were fired, or do you mean that they were suspended, that nebulous state in which they are not currently out there advising people to do crooked things?

Dr. FARRIS. I am aware that one of the persons in training was fired, and I know that they were all decertified so that they can never be Navigators or any type of in-person assisters. But I think the term “suspend” was correct, except for the one that I know was fired.

Chairman ISSA. Okay. So one was fired. The other may still be being paid to do something, including they could be administering this information, and I will be brief.

There are four ways to get to your insurance, but they all go to the website, right? Ultimately, if you call up, the person you talk to is on the website. If you work with a Navigator, they turn the paper in to the website. Ultimately, everything goes through the website. So if there is a security vulnerability or corrupt information in any way, shape or form, it is all the website, right? I just want people to understand that.

Dr. FARRIS. Except that the website does not store any information. It certainly does not store any personally identifiable information. The data services hub is used to test information that a person puts in, but it does not store it. So it doesn't leave it vulnerable.

Chairman ISSA. You are aware that people have received other people's information. One person signs up in one state, and somebody else gets a confirmation in another state.

Dr. FARRIS. No, I was not aware of that.

Chairman ISSA. You need to watch a little more Fox, I am afraid. [Laughter.]

Chairman ISSA. With that, we now go to Mr. Sessions.

Mr. SESSIONS. Mr. Chairman, thank you very much.

Ms. Goodwin, you and other of your Texas certified agents, as they perform their duties, are they asked specific information before there is an offer or a sell, things like whether a policy has specific coverage, a specific doctor, or a specific hospital for coverage?

Ms. GOODWIN. Part of our process as an agent or broker is to evaluate all of the carriers that we represent to our clients, to gather the information about the contract coverage, how it is covered, how prescription drugs are covered and what those levels are, and a particular doctor or series of physicians, are those physicians and hospitals in the network for that carrier. That is part of our job.

Mr. SESSIONS. Are you aware of something that might be known as a deceptive trade or sales practice?

Ms. GOODWIN. Uh-huh.

Mr. SESSIONS. Thank you very much.

Dr. Farris, thank you for being here today. I have worked with you in my years of service as a member of Congress and I found every time that you have not only been available to me but you have promptly tried to assist me or explain to me any impediment that was placed in its way, and I want to thank you very much for being here today.

Dr. Farris, how long have you worked for the Federal Government?

Dr. FARRIS. Seventeen years.

Mr. SESSIONS. Some 17 years. And during that time, you have been a valuable asset, I know, to your organization. Did they in any way approach you as they were putting together the Navigator program and ask your feedback, or were you pre-trained in any way?

Dr. FARRIS. No.

Mr. SESSIONS. No. Did anyone from Washington, D.C. ever tell you this is part of the plan about how we are going to go and roll this plan out?

Dr. FARRIS. No.

Mr. SESSIONS. Have you taken part in the training or seen the specific training that the Navigators were given?

Dr. FARRIS. I have, yes. I have not taken it myself, but I have seen it.

Mr. SESSIONS. You are aware of that training?

Dr. FARRIS. Yes.

Mr. SESSIONS. And do you consider it leading-edge and, in your professional opinion, on par with the ability for people to offer insurance plans and to be able to discuss this that was part of what is known as Obamacare? Do you believe that they were well trained?

Dr. FARRIS. Well, what we want people to be able to do through the Navigator program, number one, is explain health care insurance to people who may have never been insured and who may not understand what health insurance is all about; to explain what could be available to them in terms of various affordability options, the various tax credits, as well as just general information about insurance, health insurance in general, and to get them signed up.

So there are a number of different facets that are involved in the Navigator training that involve not just enrollment but also education and outreach to people such that they are aware of the existence, of the ability to have some health insurance.

Mr. SESSIONS. Yes, sir. You used the word "general," and I used the word "specific" when addressing the questions to Mrs. Goodwin. Can you tell me that the Navigators, then, as opposed to the term "general," were they specific in their ability to provide information about doctors, about coverage, about hospitals, about how things would happen?

Dr. FARRIS. No. The answer to that would be no.

Mr. SESSIONS. No. So, in other words, we have Navigators who are out and, in essence, selling, offering a product or service in the State of Texas, and they cannot offer a specific but rather a general idea about what this insurance might include. Is that your testimony?

Dr. FARRIS. It is designed to be an impartial program where they are not directing anyone to a specific product, but to help them to make choices and to understand that there are choices that are available to them, and to understand the whole insurance market, not to put them into a specific plan. The Navigators cannot make that choice for them.

Mr. SESSIONS. As a professional for 17 years, are you aware of and would you consider yourself as the Federal representative on behalf of CMS that you have a specific understanding of how coverage would work here in Texas specifically?

Dr. FARRIS. I don't think I—well, clarify the question a little bit better for me.

Mr. SESSIONS. Well, the word “specific” is the word that I used for Mrs. Goodwin, and it is specific coverage, specific doctors, specific hospitals, not that you would know them off your head but that you could accurately go and look these items up and issues up as the professional on behalf of CMS in the State of Texas.

Dr. FARRIS. No, I don't believe I could.

Mr. SESSIONS. So, in other words, your testimony is here today, as the professional on behalf of CMS, you could not provide that information, yet Mrs. Goodwin would be required by the law to offer very specific information.

Dr. FARRIS. I think that would be true.

Mr. SESSIONS. That would be a fair statement. Do you believe that we provided you ample opportunity as we announced this hearing today, that we properly and professionally approached you?

Dr. FARRIS. Yes.

Mr. SESSIONS. Okay.

I would like to ask, if I can, Mr. Brady a question.

Chairman ISSA. Without objection.

Mr. SESSIONS. And that is, Mr. Brady, as you find people who are selling products and services that are within your area that might be health and other insurance matters, does it disturb you that here we are, even at the backside of this process, that professionals in the State of Texas that represent the Federal Government are incapable in testimony today of providing specific information about products and services that would be offered in the State of Texas that is within your purview?

Mr. BRADY. Sir, I think it would be best to answer that by saying that if someone wants to act like an insurance agent, there is a rigorous pre-licensing examination process and pre-educational process that they have to go through. The Navigators are actually, pursuant to our proposed rules, prohibited from acting like an insurance agent unless they obtain a license. And then if they obtain a license, then these proposed Navigator rules would not apply.

The reason I note that is that I think it hits to the heart of the issue that I believe you are raising, the differences between specific knowledge and more general knowledge. If we want someone to be giving specific advice, we under the proposed rules would say they are going to be held to a higher standard and are going to be licensed as an agent.

Mr. SESSIONS. Mr. Brady, are you aware of a letter that was sent by some 13 attorneys general to Secretary Sebelius on or about August the 4th that related to questions about Navigators?

Mr. BRADY. Yes, sir. I was provided a copy of the letter.

Mr. SESSIONS. Would you be surprised if I told you that three months later these attorneys general have not been replied to by the Secretary?

Mr. BRADY. It is difficult to respond to, sir.

Mr. SESSIONS. Mr. Brady, if you were asked by an attorney general to provide information back by 13 attorneys general, would you believe you would have a diligence placed upon you to respond back to legal authorities in their own states?

Mr. BRADY. Yes, sir.

Mr. SESSIONS. Mr. Brady, I have one last question, and that is for you and Dr. Farris, and perhaps it relates to me and perhaps it does not. But there are many, many families who have disabled children who count on specialty hospitals, children's hospitals that have special tools, special doctors, special beds, special equipment.

Would it surprise you if I told you that many of these children's hospitals are not covered, nor will they be included in the proposals for the Affordable Care Act, that they were intentionally excluded? Would that surprise you?

Mr. BRADY. Sir, was that directed to me?

Mr. SESSIONS. Mr. Brady, would that surprise you?

Mr. BRADY. I think the best way for me to answer that is we are hopeful that the public can get their healthcare needs met and would be concerned if there are gaps in network coverage.

Mr. SESSIONS. Mr. Brady, would that surprise you—yes or no?—if a children's hospital to a large measure was not included?

Mr. BRADY. It would tend to surprise me, sir.

Mr. SESSIONS. Thank you, sir.

Dr. Farris, would it also surprise you?

Dr. FARRIS. It would surprise me, yes.

Mr. SESSIONS. It would surprise you. Thank you very much.

Mr. Chairman, thank you very much.

Chairman ISSA. I thank the gentleman.

I would note that we had a previous hearing in which doctors, including a major facility in Florida and another one in New York, testified to exactly that, that they were excluded, specialties were excluded by the exchange insurance quotes in order to drive down the price, and we will send you a copy for the record.

Mr. VEASEY, do you have additional questions?

Mr. VEASEY. Yes, yes. Thank you, Mr. Chairman. I did want to ask some Navigator questions.

Dr. Farris, I know that it has been suggested that the Navigator program is somehow unprecedented and that a parade of horrors could result from community organizations and non-profits from providing consumers with information on how they can get enrolled. But, Dr. Farris, I wanted to ask you specifically what types of Texas organizations applied for Navigator grants under the funding announcement that CMS has released.

Dr. FARRIS. Well, a number of organizations like the United Way of Tarrant County, the Community Council of Greater Dallas, the United Way of Central Texas, the Brazos Valley Council of Governments, the City of Houston Department of Health and Human Services. I can tell you that in Arkansas, the University of Arkansas.

Mr. VEASEY. All large, national, reputable organizations —

Dr. FARRIS. Yes.

Mr. VEASEY.—that have a very broad experience in helping individuals —

Dr. FARRIS. Yes.

Mr. VEASEY.—in a bipartisan, non-profit type manner that has a very good reputation, particularly the United Way in the metroplex here. Did these organizations have to submit information regarding their experience and history?

Dr. FARRIS. They did, and they were all vetted by a panel of experts. Their applications were screened. The proposals that they submitted were evaluated to make certain that they could provide these services in a cost-effective manner, and their track records in terms of being able to deal with the community and all facets of the community were looked at to make certain that they had that ability as well.

Mr. VEASEY. I know that one of the things, again, that has been suggested is that this is unprecedented for the Federal Government to use Navigators and what-have-you to help people sign up for insurance, but let me ask you a question. Didn't the Federal Government use assisters in the enrollment of the Children's Health Insurance Program, or CHIP, back in the late 1990s in the state?

Dr. FARRIS. It is my understanding that they did.

Mr. VEASEY. Okay. I think that we all can agree that the Affordable Care Act is a heavy lift as far as getting people enrolled and what-have-you, because you are talking about enrolling millions of people at once, many of whom have never had insurance in their lives. We should obviously encourage data security, Navigator training, but we should also not attempt to impede implementation.

Dr. FARRIS, are the recent actions of the state unprecedented in seeking to limit public access to the Federal program?

Dr. FARRIS. Well, all states have the ability to look at the program and to make a determination as to whether or not they think that the procedures and the parameters should be more stringent than the ones that have been proposed, and I know the State of Texas has taken a look. They have reached out to CMS, as well as to CQISCO, for some discussions, and it is actually probable that as we are speaking today, the State of Texas is sitting down with people at CQISCO looking at ways that they can work together with regard to the Texas proposals.

Mr. VEASEY. I know that many state elected officials have expressed concern about the recent actions of Texas Insurance Commissioner Julia Rathgeber, and I would like to submit into the hearing record a letter signed by 54 members of the Texas House of Representatives requesting an extension of a December the 20th deadline for public comment on Navigators.

Chairman ISSA. Without objection, so ordered.

Mr. VEASEY. Mr. Brady, have you seen that letter signed by the 54 Texas legislators?

Mr. BRADY. Very briefly, sir.

Mr. VEASEY. Okay.

That is all I have, Mr. Chairman. Thank you.

Chairman ISSA. I thank you.

We now go to the gentleman, Mr. Farenthold.

Mr. FARENTHOLD. I just have a couple of quick follow-ups.

Mr. FARRIS, you have testified that you can become a Navigator by taking an online webinar with no fingerprints, you all don't even keep a copy of the driver's license, there is no photo. Is there even a description of the person on the Navigator certificates?

Dr. FARRIS. I am not aware. I will be happy to check to find out exactly what we do keep.

Mr. FARENTHOLD. Okay. And it is my understanding that a member of our staff with the Oversight and Government Reform Committee, in under three hours, was able to complete the Navigator course, and his certificate was simply printed out on a laser printer. Now, I am no expert forger, but I know how to use Photoshop. This one sounds like you might be able to do it with a pair of scissors, scotch tape, and a photo copier. Don't you think we need to know who the Navigator is that we are trusting with our personal information and discussions about our healthcare needs?

Dr. FARRIS. I am really intrigued by the fact that you say they were able to do that in three hours and print it out themselves. I would like to get some more information on that, if I could, and share that with our folks in CQISCO.

Mr. FARENTHOLD. I will have the committee get in touch with your office and share that information with you.

Dr. FARRIS. Yes. Thank you.

Mr. FARENTHOLD. Now, are you familiar with the Office of Personnel Management within the government?

Dr. FARRIS. I am.

Mr. FARENTHOLD. You know, they have a nice little side business where they run background checks. Now, we have had some issues with how well they do it, but there is a pretty sophisticated procedure that runs background checks very frequently. Is there any reason HHS didn't decide to avail themselves of that for checking out folks? Again, it would be required to have access to your personally identifiable information.

Dr. FARRIS. Those sorts of policy decisions are made at CQISCO and they don't —

Mr. FARENTHOLD. I understand. Not all good decisions—okay, most decisions that come out of Washington may not be—anyway, we won't go into that.

Let me ask one other quick question, and I will ask this one to Mr. Brady. What are the remedies now that you are aware of that a consumer has against a Navigator who either gives him bad advice or appropriates information? I notice Ms. Goodwin has to carry insurance. I think she says she has tens of thousands of dollars, or more, worth of insurance. What are our remedies against Navigators, and what is the guarantee that they have the resources to pay those damages should someone prevail in pursuing them?

Mr. BRADY. Sir, earlier I mentioned that Senate bill 1795 from the last Texas legislative session charged us with looking at the Federal requirements.

Mr. FARENTHOLD. But that hasn't been enacted yet. So if you go to a Navigator now, you don't have that protection.

Mr. BRADY. Yes, sir. What I am leading to is that one of the insufficiencies that we identified was what I am going to call a lack of recourse. Because of that, the proposed rules that I briefed earlier would require financial responsibility. It could be in the form of a \$100,000 errors and omissions policy—I am sorry, a professional liability policy that includes errors and omissions coverage. There are a couple of other options. But it was because of this gap, if you would, that we have decided that we would propose a rule that would put some financial safety net programs in place.

Mr. FARENTHOLD. Unfortunately, under the law, I have to go into the D.C. exchange or I think I would probably be availing myself of a professional agent instead. But, of course, I am complying with the law.

And I will yield back.

Chairman ISSA. I thank the gentleman.

Mr. Sessions, you had one more, quickly?

Mr. SESSIONS. I did, Mr. Chairman, and they are really more comments related to some feedback that I have heard today.

Chairman ISSA. Could I —

Mr. SESSIONS. Yes.

Chairman ISSA. I will finish with the questions and I will let you close, because this is really something you helped put together.

Dr. Burgess?

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. Farenthold brought up the concept that, through the Office of Personnel Management, that background checks are done and could be done. Gary Cohen, who is the head of the Center for Consumer Information and Insurance Oversight, earlier this year testified that he didn't think that they had the authority to require Navigator organizations to conduct background checks of individuals, and they didn't know whether they had the funds to do this.

Now, this is interesting because on July 4th of this year, Robert Pear, writing in the New York Times, talked about a British company called Serco. Serco we had into our committee, the Committee on Energy and Commerce, that was talking to the contractors who were involved in the rollout of the Affordable Care Act, and Serco, their only job is to take paper applications and put them in for people.

It turns out that is a pretty expensive process because we are paying Serco a lot of money to do that. On a per-application basis, it is in the thousands of dollars. But nevertheless, every Serco employee has to have a background check. They have to be fingerprinted, and they have to have a background check.

So I would just submit that although Mr. Cohen didn't think it was reasonable or feasible to do that with Navigators, certainly the Department of Health and Human Services required that of Serco.

Ms. Goodwin, let me just ask you a question, because Dr. Farris mentioned dealing with people who have not had a lot of experience with insurance policies, so I guess we might use the term "insurance literacy." Part of the job of the Navigator is to explain what the policy contains and what it covers. This is what a broker does as well, the concept of being able to explain, oh, say, what a 60 percent actuarial value policy really means to the person who is buying it. Would that be your experience?

Dr. FARRIS. To whom are you addressing that?

Mr. BURGESS. I was addressing it to Ms. Goodwin, but anyone is free to answer it.

If you have a policy that is 60 percent actuarial value, and that is what you are buying because it is the cheapest one on the block, somebody needs to tell that purchaser what that 60 percent actuarial value means, correct?

Ms. GOODWIN. Yes.

Mr. BURGESS. And what it means is that that person may have a significant deductible, I mean more than significant, I mean astonishingly high as far as a deductible, \$6,800 on an individual policy, and they also may be required to spend a significant amount of money on co-insurance in addition to their deductible. Is that not correct? The answer to the question is yes.

Ms. GOODWIN. That is correct.

Mr. BURGESS. Now, the President, because he loves us, said he was going to put a cap on out-of-pocket expenses, except that the President suspended the cap on out-of-pocket expenses for the first year. So those people buying a 60 percent actuarial value policy in the Bronze metal level may be in for a significant amount of sticker shock when they actually go to the doctor. They have been making their premiums or they get their subsidy for their premiums, and then they get a kidney stone at 2 o'clock in the morning, they show up in the ER, and they get a bill for \$3,500 or \$4,500 that they have to pay. They may have difficulty understanding that concept, may they not? Are the Navigators going to explain to them that this is a possibility? Would a broker explain that, Ms. Goodwin?

Ms. GOODWIN. Absolutely.

Mr. BURGESS. Dr. Farris, would a Navigator explain that?

Dr. FARRIS. I am not certain that a Navigator would.

Mr. BURGESS. So what is likely to happen to that \$4,500 bill from the doctor or the hospital that comes to that patient if they don't know that it is coming?

I will tell you what. They are going to walk the check. It happens all the time. So the uncompensated care that was talked about earlier in this discussion, there is nothing in the Affordable Care Act that is going to make that go away. In many ways, it may get worse if we are not doing an adequate job of explaining. The brokers and agents I feel comfortable will. I am not sure that the Navigators themselves understand that or are given enough instruction to be able to impart that to their customers.

Thank you, Mr. Chairman, for the additional time. I will yield back.

Chairman ISSA. Thank you.

Mr. Neugebauer?

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Dr. Farris, when did you first hear about the news where people at this Dallas Navigators were telling people to lie on their applications? How did you come to have that knowledge?

Dr. FARRIS. I actually saw it on the news.

Mr. NEUGEBAUER. You saw it on the news.

Dr. FARRIS. Yes.

Mr. NEUGEBAUER. So I think you issued a letter asking them to take corrective actions. Have you followed up to see if they have taken those actions?

Dr. FARRIS. Yes. They have taken those actions. Again, they have decertified the people who were involved. There are weekly reports that they have to submit to us to let us know about the specific training that they are providing now on an ongoing basis to make certain that they understand what their responsibilities are with regard to personally identifiable information. We also have pretty

much weekly check-ins with them, and we reserve the right to do site visits.

Mr. NEUGEBAUER. That was my next question. Are you doing audits to follow up and make sure that these actions are actually being taken?

Dr. FARRIS. Yes.

Mr. NEUGEBAUER. Just with this agency, or with all of the —

Dr. FARRIS. With all of the Navigators. In fact, there was a program on Friday that was a webinar where we talked about, with all of the Navigators in the country, what had happened at the National Urban League to make certain that this is never repeated again. So they understand that —

Mr. NEUGEBAUER. So are those site visits of people from CMS traveling around the country doing that, or how does that work?

Dr. FARRIS. That will actually be managed out of CQISCO, and they will determine who goes and when. But the site visits will need to be unannounced visits in order for them to have any validity at all.

Mr. NEUGEBAUER. So when you find those actions, then what is the step? I mean, is there a process to revoke if you find an agency is not properly following those? Can they revoke those?

Dr. FARRIS. There are a number of different remedies that are in place, starting with the corrective action plan. But if we find really egregious problems, we can certainly revoke the licenses that they have in order to provide these services.

Mr. NEUGEBAUER. Off the top of your head, can you tell me approximately how many site visits have been done?

Dr. FARRIS. I can't. I would have to get that information from CQISCO. I don't know.

Mr. NEUGEBAUER. Could you get that for me?

Dr. FARRIS. We will be happy to get back with you on that.

Mr. NEUGEBAUER. I thank you.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

Mr. Sessions?

Mr. SESSIONS. Mr. Chairman, thank you very much.

I want to thank all three of you for being here today. I would like to say that there have been a couple of things said here that I would take issue with, and one of them is statements that were made that critics—perhaps they were in reference to members of Congress—are attempting to make it more difficult for the American people to sign up for Obamacare.

And I would like to plainly state that as a result of the testimony, Mr. Chairman, that we have had here today, I find that the Navigators, which is why we are here today, are incapable of properly and professionally selling a product that people can count on, that they can understand, and I find it is non-specific. It cannot provide a person information about a physician, about coverage, or about a hospital.

And I am deeply disappointed and want to make sure that no one would draw the conclusion that it is someone else other than the Federal Government and the President and the Secretary themselves who are making things far more difficult and who I believe are impeding progress. They are selling a product, and in the

State of Texas I believe it would be deceptive for them to do this. A deceptive trade practice would be against the law, and that is what is happening.

Secondly, a viewpoint that these Navigators are non-partisan and simply representative of just regular, everyday groups in America that are non-partisan and non-political. But, in fact, Planned Parenthood is receiving millions of dollars across the country, and for us to try and sell the idea that all this is just a good neighbor type of reaching out and talking with people I find is not only deceptive, it is not true.

I yield back my time.

Chairman ISSA. I thank the gentleman.

I would like to thank our witnesses today. You have been asked tough questions. We have stretched your roles in many of those questions, and I appreciate your attempting to answer.

There are many problems with the Affordable Care Act. We knew it would be hard. I don't think any of us knew it would be this hard.

We are less informed than we would like to be on a lot of areas, but we are more informed because of your testimony here today.

As we continue to look at the Navigators, as the State of Texas and other responsible insurance commissioners and agents begin to look at what the proper role is for a Navigator, I don't envy you your job. To the extent that they are simply taking information and having it forwarded to a computer to see if you can get cheap or free insurance subsidized, or Medicaid, I think it is not insurance.

To the extent that they have any level of competency in advising people on whether to go with the Bronze plan or Gold plan, whether or not something would be covered, whether or not a particular hospital or specialty would be covered, whether it is right for you and your family, I do share with the State of Texas and the insurance commission that this is a serious question that falls under the state's responsibility and historic knowledge, and I would hope that Texas would find a way to make sure that what they can do they are allowed to do, and what they cannot do without further training, identification, bonding and the like, that Texas asserts its full authority.

Dr. Farris, I want to particularly thank you. This was not easy. You came here to answer tough questions at a time in which a program is new, but it is a program that I think we all understand affects countless millions of people, and although it has promise for some, it has peril for many.

And with that, I would also like to thank the Texas delegation. I found myself saying "the gentleman from Texas, the gentleman from Texas, the gentleman from Texas," and I think back to when I interviewed with Johnson & Johnson in Sherman, Texas, and I am saying there but for getting hired by Johnson & Johnson, one of you could be my congressman.

[Laughter.]

Chairman ISSA. I thank you.

We stand adjourned.

[Applause.]

[Whereupon, at 3:24 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman



**Risks of Fraud and Misinformation with ObamaCare Outreach Campaign:
How Navigator and Assister Program Mismanagement Endangers Consumers**

ObamaCare Navigator and Assister Staff Report No. 2

STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
113th CONGRESS
DECEMBER 16, 2013

Overview

The Committee first wrote to HHS Secretary Sebelius regarding the outreach campaign that has accompanied the implementation of ObamaCare on May 6, 2013. Given the importance of this issue, the continuing oversight of the Navigator and Assister programs since the rollout of Healthcare.gov remains a high priority for the Committee. The preliminary staff report the Committee released on September 18, 2013 outlined concerns that lax Navigator and Assister training requirements and vague marketing standards increased the likelihood of identity theft for consumers.¹ Despite several letters, hearings, staff briefings, and transcribed interviews with U.S. Department of Health and Human Services officials responsible for the program, HHS failed to heed the Committee's warnings. And, as predicted, after open enrollment began, news reports revealed poorly-trained Navigators gave consumers incorrect information about the health care exchanges, violated HHS rules and procedures, and even encouraged applicants to commit tax fraud in some instances.

In response to these serious reports, HHS officials responsible for the Navigators and Assisters programs briefed Committee staff on November 21, 2013. HHS officials in attendance included Gary Cohen, Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight (CCIIO); Mandy Cohen, Director of the Consumer Support Group at CCIIO as of November 2013; and Vicki Gottlich, former Director of the Consumer Support Group at CCIIO and current Senior Policy Advisor to Mr. Gary Cohen.² Information obtained from the November 21, 2013 briefing and internal HHS documents call into question the effectiveness of these outreach programs, and, more importantly, the Administration's ability to safeguard consumer information. This update to the Committee's preliminary staff report shows that HHS's mismanagement of the Navigator and Assister programs induces fraudulent behavior and poses real threats to the safety of consumers' personally identifiable information, such as ones social security number, yearly income and other sensitive tax information .

¹ *Risks of Fraud and Misinformation with ObamaCare Outreach Campaign: How Navigator and Assister Program Mismanagement Endangers Consumers*, Majority Staff Report, H. Comm. on Oversight & Gov't Reform (Sept. 18, 2013).

² Briefing by U.S. Dep't of Health & Human Servs. Staff to Committee Staff regarding Navigators and Assisters Programs (Nov. 21, 2013) [hereinafter Nov. 21 HHS Briefing].

Introduction

Major problems have plagued the Navigator and Assister programs in the first ten weeks of open enrollment. The Committee's preliminary staff report predicted many of these problems. Documents obtained by the Committee show that Navigators and Assisters were caught unprepared when HealthCare.gov became inoperative, and they lacked direction from HHS about how to enroll consumers in the early days of the rollout.³ News reports indicate that Navigators gave consumers incorrect information about the enrollment process; some Navigators went so far as to encourage consumers to commit tax fraud by underreporting income in order to qualify for ObamaCare's health insurance subsidies.⁴ Some Navigators assisted applicants before completing their 5 to 20 hour online training course, and others took custody of paper applications and mailed them for the applicant, violating the rule that applicants must mail in the application themselves.⁵ The following updates highlight the Committee's primary findings about the implementation of the Navigator and Assister programs to date.

I. Lax Oversight at HHS Fails to Ensure Organizations Report Navigator Misconduct

Throughout October and November, news outlets routinely reported Navigator misconduct. Navigators and Assisters and those associated with Navigator and Assister organizations propagated misinformation about the health insurance marketplace and the enrollment process, encouraged fraud, and violated Navigator rules and procedures. Although the vast majority of Navigator and Assister misconduct and misinformation will go unreported, below are a few examples of publicized Navigator misconduct and misinformation:

- **Navigators from the Urban League of Dallas were captured on video, encouraging applicants to lie on their health insurance application so the applicants could qualify for tax subsidies.**⁶ Navigators were also recorded advising an applicant to lie about her smoking habits to obtain a lower monthly premium. It was later discovered that two of the so-called Navigators involved in the incident were assisting consumers with their applications even though they had not completed their training and certification requirements. The Navigator organization in question fired one Navigator, and suspended two others. The Centers for Medicare and Medicaid Services (CMS) officials referred this incident to the Department of Justice and put the organization on a "corrective action plan."⁷

³ CCEO-Wide War Room (Oct. 3, 2013), available at <http://oversight.house.gov/wp-content/uploads/2013/11/2013-11-01-War-Room-Notes-10-3-to-10-21.pdf> [hereinafter War Room Notes].

⁴ Greg Janda, Undercover Cameras Claim to Catch Obamacare Navigators in Fraud, NBCDFW, Dec. 11, 2013, available at <http://www.nbcdfw.com/news/local/Undercover-Cameras-Claim-to-Catch-Obamacare-Navigators-in-Fraud-231724611.html>.

⁵ Jenny Gold, Navigators Tread Water As Website Problems Continue, KAISER HEALTH NEWS, Oct. 24, 2013, available at <http://capsules.kaiserhealthnews.org/index.php/2013/10/navigators-tread-water-as-website-problems-continue/>.

⁶ Janda, *supra* note 4.

⁷ Nov. 21 HHS Briefing.

- **One self-identified Navigator gave a television interview in which she told viewers blatantly incorrect information: that applicants' credit scores could impact their eligibility for certain plans.**⁸ It later came to light that the woman was not a certified Navigator, but rather a volunteer with a Navigator organization. Ms. Gottlich – the Director of the Consumer Support Group at the time of the incident – was unsure as to whether the woman has been banned from participation with the Navigator group moving forward, saying “who know what she’s doing on her own.”⁹ Although HHS took no corrective action with the Navigator organization itself, there were “conversations with the grantee immediately that only people who were certified could be Navigators.”¹⁰
- **Mountain Project, Inc., a Navigator grantee organization in North Carolina, has been collecting and mailing paper applications on behalf of applicants, in violation of Navigator rules and procedures.**¹¹ According to the Navigator Standard Operating Procedures Manual, “[navigators] may not mail applications for consumers.”¹² Neither Mr. Gary Cohen, nor Ms. Cohen, nor Ms. Gottlich – the three HHS briefers – were aware of the report, despite the fact that Chairman Issa’s November 7, 2013 letter to Secretary Sebelius regarding problems with the Navigator and Assister programs discussed it at length.¹³

HHS officials responsible for the Navigator program did not learn of the aforementioned incidents from internal oversight procedures, but rather from news reports. In the case of the North Carolina organization mailing applications for applicants, HHS officials told Committee staff they were unaware of the incident as of November 21, 2013, despite the fact that the Chairman informed Secretary Sebelius of the incident in a November 7, 2013 letter outlining concerns about the Navigator program.¹⁴ According to Ms. Cohen, CCIO relies on the Navigator grantees and consumers to report Navigator fraud to an HHS call center. During the staff briefing, Ms. Cohen stated that due to budget restrictions, CMS has conducted only one site visit to a Navigator organization. Furthermore, CMS has no plans to implement a “secret shopper” program to monitor whether Navigators and Assisters are following proper guidelines and procedures. While Ms. Cohen did acknowledge it was possible for regional CMS offices to perform unannounced site visits, she was unaware if any had taken place thus far.¹⁵

Additionally, according to HHS officials, voluntary webinars are in place for continuing education purposes.¹⁶ The topics of these webinars, however, show that they simply cover broad

⁸ *Health Care Reform: Credit Scores Impacting Insurance Plans*, WKMG, Oct. 9, 2013, available at <http://www.youtube.com/watch?v=VUst0rbHQf0#t=57> (last accessed Dec. 12, 2013).

⁹ Nov. 21 HHS Briefing.

¹⁰ *Id.*

¹¹ Gold, *supra* note 5.

¹² Health Insurance Marketplace Navigator Standard Operating Procedures Manual, Centers for Medicaid and Medicare Services, U.S. Dep’t of Health & Human Servs. (Aug. 2013).

¹³ Nov. 21 HHS Briefing.

¹⁴ See Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. Kathleen Sebelius, Sec’y, U.S. Dep’t of Health & Human Servs. (Nov. 7, 2013).

¹⁵ Nov. 21 HHS Briefing.

¹⁶ *Id.*

topics largely in reaction to recently identified large-scale problems. For example, after the tax fraud scandal involving Navigators hired by the Urban League, HHS conducted a webinar on reporting income. After the HealthCare.gov website crashed, the webinars focused on the call center and paper applications. Thus, it is apparent that the program suffers from mismanagement, and leadership fails to anticipate problems before they occur.

II. Navigators Were Unprepared for Website Crash and Lacked a Contingency Plan

As the HealthCare.gov website remained virtually inoperable during the first few weeks of the rollout, Navigators were essentially useless during this time period. According to Mr. Cohen, no one informed Navigators of the possibility that the website would not be functional. Mr. Cohen stated that even he had no indication that the website would not work on October 1, 2013. Because HHS emphasized that the website should be the default method of enrollment, the majority of the Navigator training focused on online applications. In fact, Ms. Gottlich stated that “99.99 percent of the time there's going to be no paper applications.... Navigators are not going to be completing paper applications. Navigators are going to be doing all the applications online.”¹⁷ Unable to use the website because of widespread glitches, Navigators lacked direction from HHS on how to sign up consumers.

Because HHS lacked a backup plan for Navigators in the event that the website crashed, there was widespread confusion among the Navigator organizations in the first month of enrollment. In a Committee briefing, Mr. Cohen admitted that Navigators lacked direction in the early days because “it took a while to know what was happening.”¹⁸ He stated that “[We] tried to stay with the website as long as possible out of caution, but at some point it was clear that [we] had to go with the paper and call center.”¹⁹ Also during the briefing, Ms. Cohen stated that “it seems like in hindsight,” there should have been contingency plans for the website’s failure.²⁰ After October 1, 2013, HHS began to conduct weekly webinars for Navigators and other outreach assistance personnel. As discussed above, the first two webinars covered the call center and paper applications.

HealthCare.gov “War Room” meeting notes, obtained by the Committee, show confused HHS officials struggling to advise Navigators about how to respond to the inoperable website. The notes from October 11, 2013 state, “[t]he paper applications allow people to feel like they are moving forward in the process and provides another option; at the end of the day, we are all stuck in the same queue.”²¹ Four days later, at an October 15 meeting, the notes state, “Navigators are seeing people very frustrated and walking away, so they are turning to paper applications to protect their reputations as people in the communities who can help, even though paper applications will not have a quicker result necessarily.”²² By October 21, 2013, according

¹⁷ Briefing by U.S. Dep’t of Health & Human Servs. Staff to Committee Staff regarding Navigators and Assisters Programs (Apr. 18, 2013).

¹⁸ Nov. 21 HHS Briefing.

¹⁹ *Id.*

²⁰ *Id.*

²¹ War Room Notes.

²² *Id.*

to the notes, “[W]e are to instruct Navigators to use paper applications rather than go through the call center.”²³ Because of its failure to anticipate and prepare adequately for website problems, it took HHS three full weeks to comprehend the vast scale of the technical problems and direct Navigators away from the website and toward paper applications. The push towards the use of paper applications further increases security risks, since health insurance exchange applications contain personally identifiable information such as the applicants’ full name, social security number, the names and social security numbers of everyone in the applicant’s household, and income for every member of the household.

III. Insufficient Consumer Protections and Lax Navigator Training Requirements Result in Misinformation and Fraud

The Administration decided not to require Navigators to undergo background checks or fingerprinting, even though Navigators will have access to highly sensitive and personal information, such as social security numbers and tax returns. In fact, the Administration failed to place any restrictions on who can become a Navigator or Assister. In response to questioning from Senator Cornyn, Secretary Sebelius recently replied that it is “possible” a convicted felon could become a Navigator.²⁴

In a May 21, 2013 full Committee hearing, Members asked Mr. Cohen how Navigators should respond if an individual, out of desire for a larger health insurance tax subsidy, reported being paid under the table and failing to report that income. Mr. Cohen responded that he would “have to think about that and talk to folks.”²⁵ Months later, during a transcribed interview with the Committee, Mr. Cohen stated, “the idea that someone who is coming for a Federal benefit is going to say ‘but I am a tax cheat’ seems maybe not the most likely scenario.”²⁶ When pressed by Committee staff to answer whether Navigators and Assisters would get training to deal with situations in which consumers mention unreported income, Mr. Cohen stated “I don’t know the answer to the question, and this could be one of the areas where it is a little beyond the ability of your average Navigator.... I just don’t know what the training provides with respect to that particular question, but I hear you.”²⁷

During the November 21, 2013 committee staff briefing, Mr. Cohen stated that he did not anticipate tax fraud to be an issue, despite numerous questions from the Committee in letters to Secretary Sebelius, at a congressional hearing, and in a transcribed interview.²⁸ After Dallas Urban League Navigators had encouraged applicants to under-report income, Mr.

²³ *Id.*

²⁴ Barnini Chakraborty, Felons could have been hired as ObamaCare 'navigators,' Sebelius tells Senate panel, Fox News, Nov. 6, 2013, available at <http://www.foxnews.com/politics/2013/11/06/sebelius-back-in-hot-seat-on-capitol-hill-over-rocky-rollout-obamacare/>.

²⁵ *Examining The Concerns About the ObamaCare Outreach Campaign: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Energy Policy, Health Care, and Entitlements, and Subcomm. on Economic Growth, Job Creation And Regulatory Affairs*, 113th Cong. 20-21 (2013) (Statement of Gary Cohen, Director, Center for Consumer Information and Insurance Oversight).

²⁶ Transcribed Interview of Gary Cohen, U.S. Dep’t of Health & Human Servs. (Aug. 7, 2013).

²⁷ *Id.*

²⁸ Nov. 21 HHS Briefing.

Cohen was still unable to answer whether or not HHS had prepared written guidance for Navigators if an applicant states the intention to under-report income. Mr. Cohen admitted there is a need for better training on the issue through the ongoing education process, and he did not ruling out requiring Navigators to report tax fraud in the future. To date, however, the Administration has not taken the necessary steps to prevent this type of tax fraud.

Navigators also lack guidance about how to comply with the Voting Rights Act, which requires that federal government applications provide the opportunity for applicants to indicate their interest in registering to vote.²⁹ Although online and paper applications for health insurance exchanges include a box asking applicants if they would like to register, there is no guidance explaining how Navigators should respond if an individual indicates that they want voter registration information. According to Ms. Cohen, Navigator organizations cannot use grant funding for voter registration activities. Navigators are not supposed to help applicants register to vote, and Navigators should refer applicants interested in registering to vote to other agencies for assistance. In spite of these restrictions, no one has communicated this information to Navigators through training or guidance. Ms. Cohen was unable to explain how Navigators should respond to requests for assistance with voter registration.

Ms. Cohen told Committee staff that CMS keeps a list of certified Navigators, which, as of mid-November, numbered 2,500 individuals.³⁰ This list is not available to the public. Committee staff asked Ms. Cohen if an individual could contact CMS to verify whether or not a Navigator was certified as a check against individuals posing as Navigators to steal personally identifiable information. She responded that CMS would not give out that information, and instead, the individual should ask the Navigator's affiliated organization directly.³¹ Her response failed to take into account the fact that would-be identity thieves could easily claim to be working for a fake organization and have one of their associates answer phone calls on behalf of that organization. A Navigator organization could also easily misrepresent the qualifications of an individual who is associated with that organization but is not a certified Navigator. Moreover, despite informing Committee staff that certified Navigators are not permitted to solicit door-to-door, CMS has done little to inform consumers of this policy. As a result, other groups that are not certified to facilitate enrollment but engage in door-to-door solicitation create confusion among consumers.

Conclusion

The Committee is committed to continuing this important oversight of the Navigator program in an effort to curb fraud and mismanagement and ensure the Administration does not waste additional taxpayer dollars on a program that puts consumers at risk. The Committee will continue to seek to identify potential problems with the programs, and applauds the consumer protection efforts of states seeking to create meaningful training standards and background checks requirements.

²⁹ 42 U.S.C. §§ 1973 - 1973aa-6.

³⁰ This number does not include Assisters in the 17 states with state-based exchanges or the additional certified application counselors.

³¹ See Nov. 21 HHS Briefing.



TEXAS HOUSE OF REPRESENTATIVES

RUTH JONES McCLENDON

State Representative, District 120

COMMITTEES:

Rules and Resolutions - Chair
 Appropriations
 Transportation

TEXAS LEGISLATIVE ORGANIZATIONS:

Mexican American Legislative Caucus
 Texas Legislative Sportsman's Caucus
 Texas Tourism Caucus
 Texas Legislative Black Caucus

December 13, 2013

The Honorable Darrel Issa, Chairman
 House Committee on Oversight and Government Reform
 2157 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Elijah E. Cummings, Ranking Member
 House Committee on Oversight and Government Reform
 2471 Rayburn House Office Building
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Attention:

Ms. Leah Perry; leah.perry@mail.house.gov, 202-225-9852

Ms. Linda Good; linda.good@mail.house.gov, 202-225-3974

Dear Chairman Issa and Representative Cummings,

I wish to offer the following comments in regard to the Oversight Committee's public hearing scheduled for Monday, December 16th in Richardson, Texas, and request that this be made part of the official record. In Texas, the navigators need to proceed promptly with Affordable Care Act (ACA) enrollment assistance, because Texas is the state with the worst need for affordable healthcare insurance. Texas ranks last in the nation, having 24.6% or 6.4 million persons with no health insurance. It would be unconscionable to create obstacles in Texas that are politically motivated and clearly intended to intimidate non-profit and charitable groups that seek to perform critical outreach and enrollment functions. The navigators' only mission is to help low income and middle class citizens obtain affordable health care coverage.

I am aware that some navigators for the ACA have come under attack in other states as well as Texas. The attacks have been transparently political in nature, intended to prevent low-income and some middle class citizens from exercising their rights under the law to obtain affordable health insurance. The organizational navigators designated in Texas have been authorized through a grant selection process to assist consumers apply for affordable healthcare insurance in the Marketplace. Those grant applications have been thoroughly screened, and training is currently required for them and the individual navigators. Some of these navigators are charitable and non-profit organizations, such as United Way of Tarrant County and Alamo Area Council of Governments, among others. They have selected individual navigators who are willing and able to assist in the implementation of the ACA.

Clearly, it is important to protect consumers and their personal privacy, and there are mechanisms in place to do that. If any individual navigators give consumers reason for a valid complaint, the organizational navigators can take appropriate action, including

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Letter to Chair Issa and Representative Cummings
Page 2 of 2, December 13, 2013

replacing them. Many of the individual navigators have previous experience working at Federally Qualified Health Centers (FQHC's), and are accustomed to working with Medicaid applications. So, they are quite familiar with HIPAA and other privacy requirements that protect personally identifiable information in regard to medical and financial matters. Federal penalties apply for someone serving as a navigator who asks a consumer to pay a fee for assisting them. Other state and federal laws are in place concerning unauthorized use of personally identifying information of another person for an improper purpose. Avenues of complaint currently exist for anyone falsely representing themselves to be a navigator.

Uninsured children and low income workers and middle class working families of Texas are finally within reach of health security, if those of us who care will simply implement the law of the land. As a fellow public servant, I ask that you help Texas families and individuals purchase an affordable health insurance plan that is right for their needs, and not make it any more difficult for them.

Please do not hesitate to contact me if you have questions or wish to discuss this issue.

Respectfully submitted,



Ruth Jones McClendon
Texas State Representative, House District 120



The Senate of The State of Texas

SENATE COMMITTEES:

CHAIRMAN
Jurisprudence

MEMBER
Education
Finance
Health and Human Services
Higher Education

December 13, 2013

Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Senator Royce West
District 23
President Pro Tempore
2006

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Dear Representative Cummings:

Welcome to Texas. It is appropriate that your committee hold this hearing here, as perhaps no state stands to benefit more from the Affordable Care Act (ACA) than Texas. Regrettably, here in the Lone Star State in 2012 we again had the dubious distinction of having the highest rate of people without health insurance, at 24.6 percent, or more than 6 million residents, according to the Current Population Survey estimates released by the U.S. Census Bureau this past September. Dallas County, where my state senate district is located, ranked **ninth in the nation** with 26.7 percent of its residents lacking health insurance. During the last regular session of the Texas Legislature, the Texas Health and Human Services Commission estimated that under the ACA the uninsured population in Texas would be reduced to 16 percent, meaning almost 2 million Texans who lacked health insurance will be insured. This will have a variety of benefits for Texas. Because people without insurance still receive care - often at emergency rooms where it is most expensive - covering the uninsured should reduce the pressure on local property taxes that currently fund public hospitals. Also, because people who are insured are better able to access primary care on a regular basis, the development over time of expensive chronic conditions like diabetes can be prevented, thus producing overall savings in state and federal health care expenditures. In addition to the generally beneficial impacts of the ACA, individual lives will be improved by aspects of the law like the prohibitions against denying coverage based on pre-existing conditions and lifetime caps on coverage. Small businesses will benefit by receiving tax credits to make employee coverage more affordable. Employees with insurance will be healthier, meaning fewer sick days and increased productivity.

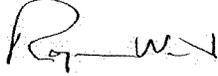
Finally, as this hearing is specifically focused on the role of navigators in the ACA, I hope that the committee will consider the good and largely selfless work being done by navigators all over the country at this time. Health insurance was complicated before passage and implementation of the ACA, and it remains so. Despite the ill-informed advice apparently offered by a few individuals training to be navigators in Dallas, navigators are civic-minded people attempting to assist their fellow citizens in negotiating the changing health care landscape. I trust that the committee's inquiry will focus on how to allow this work to continue, while ensuring that appropriate training



and consumer protections are in place.

Thank you for your interest in this important issue and for your service to our country.

Sincerely,

A handwritten signature in black ink, appearing to read "Royce West". The signature is stylized with a large, looped "R" and a long horizontal stroke.

Royce West
State Senator
District 23



DONNA HOWARD
STATE REPRESENTATIVE
DISTRICT 48

December 15, 2013

Chairman Darrel Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Dear Congressmen:

It was a pleasure meeting you, Chairman Issa, earlier this year at the SXSW Texas Tribune event in Austin where we both spoke in support of open and transparent government as a part of the Knight Foundation's Open Government Challenge. One of the comments you made that most impressed me was that open government was not about whether the right or left will win but about having an open and honest debate with actual facts rather than what we, as government, present as facts.

It is with that in mind that I want to thank you for your efforts in recent weeks to conduct field hearings on the Affordable Care Act (ACA) in various areas throughout the country. I am appreciative of the opportunity that you are providing for stakeholder and citizen feedback on the implementation of this very important law. However, based on my understanding of the hearings, it appears that your committee is choosing to devote the majority of its focus to the rollout hiccups of the ACA, and paying very little attention to the numerous benefits of the act. While the rollout itself is certainly relevant, I want to focus on what I believe to be even more significant and am, therefore, writing to offer comments on some of the positive aspects of the law, which are currently reducing costs and increasing access to health care for millions of Texans.

Shortly after its passage in 2010, the ACA mandated a number of changes which have kept people covered and allowed them to keep more of their hard-earned dollars. These included eliminating lifetime caps on health insurance benefits and a gradual phase out of annual caps, better ensuring that our health coverage will not get dropped when we need it most. The law specifies that children up to 18 cannot be denied coverage due to pre-existing conditions, and allows young adults to remain on their parents' health care plans until the age of 26. It made prescription drugs more affordable for seniors by beginning to close the so-called "donut hole" in

Chairman Darrel Issa
Ranking Member Elijah E. Cummings
December 15, 2013
Page 2

Medicare Part D; in 2011, the average savings was \$639 for each Texan who fell into the donut hole. The act recently set into motion a provision allowing women to get preventive care — such as contraception and well woman care — with no co-pay; this common sense measure should save women money and help to prevent unplanned pregnancies. And based on the implementation of the ACA's 80/20 rule, millions of Texans have already received rebates on their health care premiums; in 2012, our state saw \$167 million in rebates, with an average check of \$187.

Soon the law will provide even greater benefits. For instance, beginning in 2014, *no one* can be denied health coverage or charged more due to pre-existing conditions; higher premiums will only be allowed based on age, geography, or tobacco use. Subsidies are being offered to qualifying citizens to help pay for coverage when they sign up through the health insurance marketplace, and the requirement for essential health benefits will guarantee that the coverage they buy is comprehensive. Behavioral health treatment will be considered an essential benefit, allowing individuals with mental illness to receive the services they need. Additionally, the ACA provides for a temporary increase in Medicaid reimbursement rates for certain primary care services; this increase, which just went into full effect in Texas, should help address the provider shortages that have plagued the state's Medicaid clients for years.

Since taking office in 2006, I have been frustrated by the Texas Legislature's frequent attacks on women's health, its steadfast refusal to allow for greater enrollment in the Children's Health Insurance Program through the use of a "buy-in" provision, and its repeated failure to address the state's rate of uninsured, which ranks as the highest in the nation. It was particularly frustrating that the so-called "Texas Solution" — in which federal dollars earmarked for Medicaid expansion could be used to provide subsidies for the newly eligible to purchase insurance on the private market — was unable to even get a vote, despite widespread bipartisan support. Keeping these obstacles in mind, I am grateful for the federal Affordable Care Act's many provisions that will meaningfully and positively impact the lives of women, children, and adults throughout Texas and across America. I hope that, following the completion of your field hearings, you will work to promote the law and ensure that all of our citizens are taking advantage of its benefits.

Sincerely,



Donna Howard
State Representative, Texas House District 48



KIRK WATSON
STATE SENATOR
DISTRICT 14

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December 15, 2013

Chairman Darrell E. Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member Elijah Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Honorable Chairman Issa and Ranking Member Cummings:

I am writing regarding the hearing of the House Committee on Oversight and Government Reform scheduled for Monday in Richardson, and I request that this statement be included in the record as part of this hearing.

The subject of the hearing, per the agenda, is "Who are the Navigators?" In the vast majority of cases here in Texas, they are hard-working, honorable people who are helping Texans find health insurance – and helping address our state's unfortunate status as having the nation's highest percentage of uninsured residents.

In many communities, highly respected groups such as the United Way have taken the lead in providing navigator services. These organizations have hired responsible people to help connect Texans with the insurance policy that works best for them. They've played a critical role, especially given the problematic introduction of the federal health insurance exchange that was created to help people in Texas and other states shop for insurance. (It should be noted that our Governor has

December 15, 2013

Page 2 of 2

steadfastly resisted efforts to create a health insurance exchange unique to Texas, or to accept tens of billions of federal dollars that would help keep Texans healthy through the Medicaid program.)

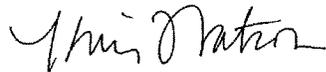
During the last legislative session, I carried a successful bill that allowed Texas both to create sensible navigator regulations addressing our state's specific needs, and to hopefully resolve potential legal or regulatory conflicts with the federal government. That bill should not be used as a mechanism to prevent navigators from doing their work or to make it harder for Texans to find health insurance. Unfortunately, the Texas Department of Insurance has proposed draft rules that, in many cases and without proper justification, appear likely to do more to impede navigators than protect consumers.

I hope your hearing represents a good-faith effort to look at what responsible navigators (and the responsible organizations employing them) are really doing; how they can be most effective in helping people find health insurance; how people with similar job responsibilities have been effective in helping the public navigate other federal healthcare programs; and how government can protect the public from the occasional bad actor.

It would be a shame if your hearing became an occasion to impugn the good work of honest people, or to try to score political points at the expense of those who need health coverage. I noticed with some regret that no navigators or navigator organizations were included on the list of intended witnesses for today's meeting (at least based on the agenda I saw online). I hope these groups are given an opportunity to testify – it's important that you hear first-hand about the work they're doing.

Frankly, the excessive politics surrounding what should be a basic and widely shared goal – finding health coverage for the uninsured – has made it too easy to be skeptical of some government proceedings. With such public skepticism in mind, I hope you will seek and stake out the considerable common ground around these widely shared priorities of keeping people healthy and protecting consumers. This can and should be an area where people come together and make things genuinely better for Texans and all Americans.

Sincerely,

A handwritten signature in cursive script that reads "Kirk Watson".

Kirk Watson

TEXAS HOUSE OF REPRESENTATIVES

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HOUSE ENERGY CAUCUS, VICE CHAIR
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District90.Burnam@house.state.tx.us

Lon Burnam
DISTRICT 90 • FORT WORTH

December 16, 2013

Chairman Darrel Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Dear Congressman,

I was extremely disappointed to hear that the Chairman is planning to hold a field hearing today in Richardson that seems more like political theater. The Chairman seems to be relying on, and accepting at face value, the video reports of a known charlatan, fraud and criminal, James O'Keefe. Considering that he pled guilty to charges relating to an attempted sabotaging or tapping of the official phones of a member of Congress, I would think that all members of Congress would avoid becoming entangled with such a disreputable character.

Back here in Texas, we are struggling to find help for the one-quarter of our people who lack health insurance. This is too great a crisis to be spending taxpayer dollars on sham hearings instead of *helping Texans obtain health insurance*. Shouldn't our duty as elected officials be attempting to help our constituents with a severe problem, rather than stoking fear seemingly designed to prevent people from enrolling in health insurance plans through the Affordable Care Act? Is this an attempt to keep enrollment numbers low and thus be able to point to the Act as a failure? Surely we have not fallen to those lows in our political discourse.

I oppose all efforts to impose unnecessary hurdles in front of the people of Texas in obtaining health insurance, including the needlessly burdensome proposed state rules for navigators. Please see attached an op-ed I wrote on this issue.

Best regards,

A handwritten signature in cursive script that reads "Lon Burnam".

State Representative Lon Burnam



TEXAS HOUSE *of* REPRESENTATIVES

Chris Turner

State Representative, District 101

December 16, 2013

Chairman Darrel Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings:

With one in four Texans -- a staggering 6.4 million people -- lacking health insurance coverage, our state leads the nation in the rate of uninsured. As a result, the need for successful implementation of the Affordable Care Act in Texas could not be greater. Yet, our state Republican leaders and those on Capitol Hill are doing everything in their power to create barriers for those most in need of health insurance.

Today's hearing is no different. It is my understanding that the purpose of the hearing is not to find ways to increase participation in the Health Insurance Marketplace, but is aimed at vilifying those on the frontlines helping Texans sign up for affordable, comprehensive coverage. It is also my understanding that the hearing will be based on heavily-edited and misleading videos made by a man who has been convicted in federal court for his questionable practices.

Instead of wasting time and taxpayer money on this type of witch hunt, I ask that you focus your efforts on increasing access to health insurance coverage for our neighbors in need, and listen to the stories of those who have and will benefit from the passage of this law.

Thank you for allowing me the ability to comment. If you would like to work in partnership to help the millions of Texans in need of coverage, please do not hesitate to contact me at the number listed below.

Sincerely,

A handwritten signature in black ink that reads "Chris Turner".

Chris Turner
State Representative, Texas House District 101
512-463-0574

Chris.Turner@house.state.tx.us

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TEXAS HOUSE OF REPRESENTATIVES

GENE WU
DISTRICT 137

December 16, 2013

Chairman Darrel Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings,

As representatives of our respective constituencies, we have a responsibility to assure that our constituents have access to adequate health care. As you know, Texas has the highest rate of uninsured in the nation with more than six million Texans lacking health insurance coverage. This has created significant problems in how we finance and deliver health care to all Texans, not just the uninsured families. Without comprehensive medical coverage, people seek care in emergency rooms. This drives up the cost for everyone.

The Affordable Care Act provides new benefits, rights and protections to ensure affordable and quality health care. This is especially important for the low-to-middle income families who make up the majority of my own district and face a critical challenge of affording healthcare for their families. I speak on their behalf to advocate for their health and wellbeing.

Since the rollout of healthcare.gov, there has been a surge in enrollment numbers. In a recent report, over 14,000 Texans have signed up for plans. Navigators and assisters are charged with the important task of helping people obtain the health coverage they need. These people are working at hospitals, community health centers, and social service agencies to educate people about the new options previously unavailable to them.

It is unfortunate that today's hearing will focus on challenging the law instead of discussing the critical need for the Affordable Care Act. Creating more barriers for those most in need of health coverage is counterintuitive and unproductive. Our ultimate goal must be to support constructive efforts to help assist families to find health coverage, and it is essential that we work together, at the Federal and State level, to effectively implement this law.

Thank you for the opportunity to share my comments with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene Wu", written over a circular official seal of the Texas House of Representatives.

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ObamaCare Navigators: Who's Handling Your Private Information?

In order to help the American people navigate the onerous and confusing requirements of signing up for ObamaCare exchanges, the Administration spent millions of taxpayer dollars to create the "Navigator" program. Disturbingly, news reports from the last four weeks have highlighted numerous examples of fraudulent activity related to health navigators in Texas. So –who are these navigators and what is their role in ObamaCare?

To help answer that question, the House Committee on Oversight and Government Reform is holding a field hearing on Monday, December 16, at the Charles Eisemann Center in Richardson. Implementation of the program – much like the rest of the law – is off to a rocky start. This hearing follows eight months of Oversight Committee investigation into the issue and will address concerns that ObamaCare's navigator program lacks basic federal guidelines to protect Americans' private information, reports of fraud, and what officials in Texas are doing about it.

Funded by grants of taxpayer dollars to non-government groups, navigators are allowed to ask Americans for confidential financial and other personally identifiable information. This is concerning for a number of reasons.

First, the law does not bar – or even require screening for – convicted felons, including individuals convicted of identity theft or fraud. This is particularly dangerous because navigators may have access to applicants' personally identifiable information, including social security numbers, date of birth, address, phone number, and annual income. This poorly conceived program endangers families and individuals across the country by heightening the risk of identity theft or financial loss.

In letters, interviews with Administration officials, hearings, and reports, Congress has repeatedly asked the Administration: Why has the federal government failed to issue proper consumer protection guidelines for ObamaCare's navigators? Even as U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius admitted before Congress that the lack of federal requirements raises a "possible" problem, the Administration has continued to call commonsense safeguards "cumbersome."

Second, navigators are only required to take a five to twenty hour online training course and pass a quiz that they can take as many times as needed. The lack of sufficient training for navigators stands in stark contrast to the requirements placed upon health care underwriters whose job it is to help people enroll in health insurance plans. The American people deserve to know why the Administration believes that inadequately trained navigators are qualified to help guide them through such an important process as signing up for health care.

Finally, the lack of federal oversight of the navigator program has already led to reports of improper and illegal behavior, including two instances in North Texas. In Dallas, a navigator recommended that an applicant lie about his income in order to qualify for additional subsidies to

lessen the costs of his health care plan. In Irving, a part-time receptionist who worked at a navigator center encouraged an individual to lie about his tobacco use to keep his premiums down.

Despite concerns of inadequate training, navigators have been educating Americans about the health exchanges and facilitating enrollment since October 1. Fortunately, states like Texas have proposed rules that will protect Americans' private information by requiring health navigators to pass background checks and complete additional privacy training. Proper consumer privacy protection guidelines should be a priority for this Administration, particularly in a program like ObamaCare that requires Americans to purchase insurance or pay a fine for non-compliance.

While President Obama and other allies of ObamaCare continue to publicly tout the law, they have done too little to address serious problems that come with it. This hearing, one of a series of hearings investigating the flawed implementation of ObamaCare, strives to get the answers that the American people deserve about ObamaCare's navigator program.

Republican U.S. Rep. Pete Sessions represents Texas' 32nd Congressional District. Republican U.S. Rep. Darrell Issa represents California's 49th Congressional District.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2013

Ms. Julia Rathgeber
Commissioner
Texas Department of Insurance
Post Office Box 149104
Austin, Texas 78714-9104

Dear Commissioner Rathgeber:

I write regarding the Texas Department of Insurance's implementation of SB 1795 and proposed state regulations of federal health insurance navigators. It is my understanding that your office has discovered potential insufficiencies with federal regulations governing navigators and is therefore exploring the adoption of state rules that increase protections for Texas health insurance consumers.

Last summer, I identified a number of problems with the federal navigator regulations in a letter to Secretary Sebelius. The concerns that I—along with twelve other state attorneys general—identified in our letter still have not been adequately addressed by the Obama Administration, so I am hopeful that the Texas Department of Insurance will move quickly to establish state regulations that will protect Texans' medical privacy.

It is my understanding that your office has identified specific insufficiencies with the federal navigator rules that may need to be addressed via state regulations enacted pursuant to SB 1795. Based upon stakeholder meetings and discussions with interested parties, your office has identified the following notable insufficiencies with federal regulations:

- Inadequate attention to federal privacy requirements under HIPAA.
- No criminal background checks for navigators who will have access to Texans' most sensitive private information.
- The absence of confidentiality requirements to govern how navigators handle consumers' personal information.

As you know, the above are just three of the insufficiencies that the Texas Department of Insurance has already identified thus far. We understand that your office is now studying how to address these and other problems and will prepare an outline of insufficiencies that the State will endeavor to address with its own regulations in the absence of improved standards promulgated by the federal government. With that in mind, I wanted to offer concerns identified by the Office of the Attorney General so that you can incorporate them into your review process.

Ms. Julia Rathgeber
November 5, 2013
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First, as you know, navigators will gain access to Texans' most intimate personal information. According to the Health Insurance Marketplace Navigator Standard Operating Procedures Manual (SOP Manual) published by the Centers for Medicare & Medicaid Services, this personal information includes an "individual's past, present, or future physical or mental health or condition," tax and financial information, including "[i]nformation about consumers' incomes, personal finances, debts, deductions and exemptions," and private employment and family information and histories. Yet, the 200-page federal SOP manual devotes just a handful of pages to instructing navigators how to protect consumers' personal information from improper disclosures and fraud.

The Texas Department of Insurance should consider establishing comprehensive requirements that govern how consumers' personal information is collected, stored, transferred, and secured. Further, the Department should consider publishing a Texas Navigator Operating Manual that incorporates all applicable state and federal privacy requirements—including whatever requirements are established by the Department pursuant to its authority under SB 1795.

Second, other than a requirement to report security breaches to the U.S. Department of Health & Human Services and provide "Quarterly Progress Reports" revealing security breaches, the SOP manual provides *no* detailed "standard operating procedure" for what a navigator is required to do in the event an individual's private medical, financial, or other personal information is inappropriately disclosed. The Texas Department of Insurance should establish regulations that—consistent with Chapter 521 of the Deceptive Trade Practices Act—require navigators to immediately notify any consumer whose sensitive personal information has been compromised, stolen, or otherwise released to an unauthorized source. Navigators should also be required to notify TDI and the Attorney General's Office immediately after an unauthorized disclosure of sensitive personal information.

Further, the Department should require that navigators receive training on the steps that an individual should take to protect themselves from identify theft in the event their sensitive personal information is compromised. For example, by informing navigators about the Identity Theft Victim's Kit published by this office, navigators will know to immediately provide that critical resource to individuals whose sensitive personal information is compromised. Anytime there is an unauthorized disclosure of personal information, it is critical that the victim take immediate action to protect their identity from theft. The Department could facilitate an immediate response by incorporating forms and checklists into a Texas Navigator Operating Manual—and thereby delineate the steps that navigators should follow in the event of an unauthorized disclosure of consumers' sensitive personal information.

Third, the SOP manual includes little information about federal or state laws that are violated when an individual's personal information is disclosed or improperly utilized. The Texas Department of Insurance should require that navigators receive training on the myriad of state and federal laws that were enacted to protect personal privacy and prevent identity theft. Such a

Ms. Julia Rathgeber
November 5, 2013
Page 3

requirement would help protect both consumers—and navigators, who may not be aware that the Texas Identity Theft Enforcement and Protection Act imposes civil penalties of up to \$50,000 on any individual or entity who fails to properly and securely protect a consumer's sensitive personal information. By incorporating the steps that navigators are required to follow into a Texas Navigator Operating Manual, the Department could ensure that navigators have all relevant statutory requirements at their immediate disposal so that consumers are notified on how to prevent identity theft as soon as possible after an unauthorized disclosure.

Fourth, as your office has already recognized, the federal rules do not require that navigators be subjected to criminal background checks before they are allowed to obtain and access Texans' sensitive personal information. The Texas Department of Insurance should establish a state regulation that requires criminal background checks and prohibits individuals convicted of felonies—or theft-related criminal offenses—from serving as navigators in the State of Texas. Further, to promote compliance, the rules should establish a criteria or definition of what constitutes a "criminal background check." The requirements contained in Texas Department of Insurance Rule § 1.502(e) under Title 28, Part 1, Chapter 1, Subchapter D of the Texas Administrative Code are illustrative of the types of criminal conduct that could be screened and prohibited under the Department's state navigator rules.

Obviously, the above referenced issues represent just a handful of insufficiencies that pose a serious threat to the privacy of Texas consumers. Given the severity of the risks posed by inadequate federal navigator regulations, I want to make our Consumer Protection Division and its staff available to provide legal advice and counsel to your office as you contemplate what additional rules and regulations are necessary to protect Texas consumers.

Thank you for your attention and swift action on this very important matter. Please do not hesitate to contact me if we can be of assistance throughout this process.

Sincerely,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

Greg Abbott
Attorney General of Texas



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

(304) 558-2021
Fax (304) 558-0140

August 14, 2013

Via Certified Mail & Email

The Honorable Kathleen Sebelius
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Kathleen.Sebelius@hhs.gov

Re: A communication from the States of West Virginia, Alabama, Florida, Georgia, Kansas, Louisiana, Michigan, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, and Texas regarding data privacy risks posed by programs assisting consumers with enrollment in health insurance through the new exchanges

Dear Secretary Sebelius:

As the chief legal officers of our states, we are concerned that the U.S. Department of Health and Human Services ("HHS") has failed to adequately protect the privacy of those who will use the assistance programs connected with the new health insurance exchanges. The Patient Protection and Affordable Care Act provides funding for groups to assist consumers in understanding their health insurance options on the new exchanges. When the exchanges begin enrollment, various "navigator," assister, application counselor, and other consumer outreach programs will begin inputting consumers' private data into insurance applications to help consumers enroll in health insurance plans. We take very seriously the privacy of our states' consumers and believe that your agency's current guidance regarding these groups suffers numerous deficiencies.

Honorable Kathleen Sebelius
August 14, 2013
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A Risk of Inadequate Training

Personnel in many of the new programs will have significant access to consumers' personal information, yet HHS's relevant guidance lacks clarity regarding privacy protection. In the July 17, 2013 Final Rule relating to the Standards for Navigators and Non-Navigator Assistance Personnel, HHS stated that personnel will "receive training on the privacy and security standards applicable" to their work. It promises that the training will be "extensive." But the Rule did not set forth any of the applicable standards beyond citing 45 C.F.R. § 155.260, which merely sets forth broad principles for data protection: "individual access," "correction," "openness and transparency," "individual choice," "collection use and disclosure limitations," "data quality and integrity," "safeguards," and "accountability." As to what these principles mean in practice, the Rule provides platitudes with little concrete guidance, requiring: "reasonable operational, administrative, technical, and physical safeguards to ensure [data] confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure"; protections "against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information"; and "openness and transparency about policies, procedures, and technologies that directly affect individuals and/or their personally identifiable information." The Rule does not even require uniform criminal background or fingerprint checks before hiring personnel; indeed, it does not state that *any* prior criminal acts are *per se* disqualifying.

Likewise, in the related June 19, 2013 Proposed Rule on Program Integrity, HHS proposed monitoring grantees for adherence to applicable privacy and security requirements, but did not articulate what those requirements would be. For example, while HHS proposed adopting abstract regulations forbidding unauthorized security "breaches" and "incidents," the proposed regulations did not identify what exactly would constitute such events. Moreover, although HHS proposed requiring grantees and exchanges to have accountability standards and procedures in the event of a breach of private information, the agency suggested nothing specific beyond a requirement that HHS be notified of such breaches.

The short time remaining before exchange enrollment begins will only exacerbate these unclear standards. Enrollment is currently set to begin October 1, 2013, and yet many programs have not received their grants and thus have not started preparations. HHS is scheduled to finish awarding grants to applicants no later than August 15, which will leave participating programs only thirty-two business days to screen, hire, and train thousands of new personnel nationwide. In that window, inexperienced new grantees will have to read these "principles" and guess what they should do, and HHS will not have sufficient time to consult with or audit each program prior to enrollment. Consumer privacy will be catch-as-catch-can in each program. As it now stands, it is inevitable that HHS's vague "standards" will result in improperly screened or

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inadequately trained personnel. These individuals will be more prone to misappropriate—accidentally or intentionally—the private data of consumers.

To make matters worse, HHS recently announced that it may cut back on its previously announced and already scant training requirements due to time constraints. As reported in the Wall Street Journal on August 5, 2013: “With time running short before enrollment kicks off Oct. 1, the Obama Administration last week cut back on training requirements for these ‘navigators.’ Officials were concerned there might not be enough time to do more-extensive training before the health-insurance exchanges open.” Previously, the Rule stated that navigators would need up to 30 hours of online training before they start, but, as reported in the same article, HHS has since said in an interview with an official spokesperson that an initial “20 hours would be sufficient.” Setting aside the absurdity of simply changing the rules to paper over the Administration’s abject failure at implementing the statute, *reduced* training requirements are only going to lead to more problems.

This is exactly the wrong response. HHS must take action to ensure that thorough and specific safeguards are put in place to protect the confidentiality of consumers’ data before enrollment begins. Rigorous programmatic safeguards are needed to prevent security breaches by new personnel, as well as to ensure clear lines of accountability for any harm caused by confidentiality breaches. As of right now, your agency has no realistic plan to prevent identity theft or to provide recourse to consumers when it inevitably occurs.

Less Consumer Protection Than In Other Contexts

The risk of inadequate training is only one problem. The proposed consumer safeguards are also woefully substandard. When compared to other privacy protections at the state and federal levels, the vague requirements in your agency’s guidance come up well short.

For example, the guidelines appear to provide significantly less protection to consumers with respect to navigators than the states have provided with respect to insurance agents and brokers. For decades, health insurance agents and brokers have been subject to strict state-level exam-based licensing laws and annual continuing education requirements, as well as significant federal and state privacy, security, and market conduct requirements. Furthermore, licensed agents and brokers are personally liable if they fail to comply with these laws and requirements, and are obligated to maintain professional liability insurance to protect consumers. Your guidance does not include comparably rigorous training or educational requirements for navigators. Nor does your guidance impose specific liability for disclosing the many forms of private information that will be given to counselors. Existing laws criminally prohibit sharing certain forms of consumer information, such as tax returns, but those laws do not cover all the information consumers will provide to these HHS-sponsored programs.

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What is more, your agency's guidance could be construed to limit state efforts to impose such licensing requirements on the numerous non-profit groups expected to do most of the work of assisting consumers. The Rule provides that state licensure or certification rules must not prevent the application of ACA navigator requirements, and the regulations require at least one navigator entity *not* to be a licensed agent or broker. 45 C.F.R. § 155.210(c)(1); *id.* § 155.210(c)(2) (directing the Exchange to select at least two different types of entities as navigators, one of which must be a community and consumer-focused non-profit group). In practice, non-profit groups are anticipated to take a much greater role, and may be the main source for enrollment assistance. Yet your agency's requirements might bar states from imposing any comparable certification and licensing requirements, such as surety bonds and acts and omissions insurance, on non-profit navigator groups who are not licensed agents or brokers. 78 Fed. Reg. 42831 (stating that the "requirement by a state or an Exchange that Navigators be agents and brokers or obtain errors and omissions coverage would prevent the application of the requirement at § 155.210(c)(2) that at least two types of entities must serve as Navigators, because it would mean that only agents or brokers could be Navigators").

Your guidelines are also less demanding than many federal privacy requirements, such as those applicable to federal census workers and those that the Department of Treasury would like to apply to professional tax preparers. Census Bureau employees take an oath for life to protect identifiable information and information about businesses gathered by the agency. By law, the Census Bureau cannot share respondents' answers with the IRS, FBI, CIA, or any other government agency. The penalty for unlawful disclosure is a fine of up to \$250,000 or imprisonment of up to 5 years, or both. Separately, since 2009, the Department of Treasury has aggressively pursued reforms to ensure comprehensive oversight of tax professionals including registration of individual preparers, background checks, certification, competency examinations, and continuing education requirements. Your agency's guidance regarding navigators and other assisters is not remotely comparable.

Finally, the lack of standardized background checks in the Rule pales in comparison to what is usually required for employees in programs receiving federal healthcare funds, particularly with respect to high-risk employees with direct access to consumers. For example, the Centers for Medicare & Medicaid Services has worked with twenty-four states to design comprehensive national background check programs for employees in long-term care facilities with direct patient access. Likewise, in other rules promulgated by your agency, heightened screening, fingerprinting, and background check requirements apply to high-risk providers seeking to participate in Medicare, Medicaid, and the Children's Health Insurance Program. *See* 76 Fed. Reg. 5862.

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Further Work Is Required

It is not enough simply to adopt vague policies against fraud. HHS will be giving its stamp of approval to every counselor who interacts with a consumer. This position of trust will allow counselors to gain access to a wide variety of personal information from unsuspecting consumers. Unscrupulous counselors, who are not properly screened out or supervised, will have easy means to commit identity theft on consumers seeking enrollment assistance. According to the Bureau of Justice Statistics, more than five percent of adults already fall victim to identity theft each year, and that is before they hand over all their individual data to a minimally screened and virtually unaccountable "counselor." HHS needs on-the-ground plans to secure consumer information, to follow up on complaints, and to work with law enforcement officials to prosecute bad counselors. Without more protections, this is a privacy disaster waiting to happen.

In the questions below, we have identified a number of areas that we believe are critical to ensuring effective safeguards for the protection of consumers' private data through the navigator, assister, application counselor, or other consumer outreach programs. We ask that you please provide answers to the following questions in writing. Our hope is to work with you to better assess the state of health insurance consumers' data protection and to evaluate the role, if any, for state regulatory action.

1. **Screening Personnel.** Beyond the general grant screening process, does the process for hiring personnel include any screening for staff that may pose risks to consumer data privacy? For example:
 - a. Will HHS or others require that all navigators or similar personnel have an educational degree or have any past experience or expertise in the health insurance field or data privacy?
 - b. Will HHS or others require uniform criminal background checks or credit reports?
 - c. Will certain individuals, such as those who have committed identity theft, be prohibited from becoming a navigator or other program personnel?
2. **Guidance to Program Personnel.** What forms of guidance will HHS provide to program personnel about consumer data privacy protections?
 - a. For example, will navigators that receive taxpayer return information be advised of their potential criminal liability, under section 7213(a) of the Internal Revenue Code, for unauthorized disclosure of such information?
 - b. Please identify the specific existing laws and standards that HHS believes govern the use of consumers' information and which HHS will expect navigator, assister, application counselor, or other consumer outreach programs to follow.

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3. **Monitoring Program Personnel.** How will HHS or others oversee the activities of navigators and non-navigator assistance personnel and ensure that employees do not retain personal information?
4. **Notice to Consumers.** Will consumer outreach programs inform consumers of their data privacy rights and the programs' liability before they decide to receive assistance?
5. **Liability.** Where does liability rest when a consumer outreach program causes harm to a consumer, either purposefully or unintentionally, through the misuse of personal information?
 - a. Specifically, does liability rest with the individual who had direct consumer contact, the entity that received funds for consumer outreach, or the exchanges?
 - b. Does HHS plan to require that entities that receive federal or exchange-generated funds for consumer outreach activities carry any sort of professional liability insurance?
6. **Fraud Prevention and Remedies.** Does HHS have any plans to provide assistance and relief to defrauded consumers?
 - a. Will programs be required to aid consumers who believe information provided to a program has been misused?
 - b. How does HHS plan to prevent potential fraud by entities and individuals that may disingenuously represent themselves as navigators or other assisters to unsuspecting consumers?
7. **Penalties.** HHS has promised to take "appropriate action if complaints of fraud and abuse arise."
 - a. Beyond civil monetary penalties, what other "appropriate action" will your agency take?
 - b. Beyond the False Claims Act, what other existing statutes providing for penalties will apply?
8. **Supplemental State Regulation.** How do you view the role of states with regard to supplementing federal data privacy requirements in all three types of exchanges? Many states have enacted or are considering legislation that further regulates navigators.
 - a. Has HHS informed any state that a proposed or adopted state requirement is inconsistent with federal rules? If yes, please provide an exhaustive list of such requirements.
 - b. To what extent will states be able to impose additional certification requirements and safeguards relating to a program's data privacy operations, at levels comparable to the licensing of agents and brokers, without being in conflict with the Act?
 - c. What is your understanding of the minimum insurance and bonding requirements that states could impose on non-profit programs?

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- d. How does HHS plan to inform state regulators about which entities and individuals may be performing federally-funded, out-of-state consumer outreach activities in their states, so that they will be aware of who may be interacting with their constituents and may enforce state-based consumer protection requirements?

We appreciate your prompt attention to these critical questions and request a response by August 28, 2013.

Sincerely,



Patrick Morrissey
West Virginia Attorney General



James D. "Buddy" Caldwell
Louisiana Attorney General



Luther Strange
Alabama Attorney General



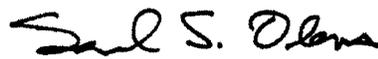
Bill Schuette
Michigan Attorney General



Pamela Jo Bondi
Florida Attorney General



Tim Fox
Montana Attorney General



Samuel S. Olens
Georgia Attorney General



Jon Bruning
Nebraska Attorney General



Derek Schmidt
Kansas Attorney General



Wayne Stenehjem
North Dakota Attorney General

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Handwritten signature of E. Scott Pruitt in black ink.

E. Scott Pruitt
Oklahoma Attorney General

Handwritten signature of Greg Abbott in black ink.

Greg Abbott
Texas Attorney General

Handwritten signature of Alan Wilson in black ink.

Alan Wilson
South Carolina Attorney General

December 13, 2013

The Honorable Darrell Issa
Chairman, Committee on Oversight and Government Reform U.S. House of
Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa, Honorable Members of the Committee and Texas Congressional
Delegation:

Thank you for the invitation to testify before the House Oversight and Government
Reform Committee regarding proposed rules to protect consumers seeking assistance
from federal health benefit exchange navigators. I apologize that I could not to
be there today due to a prior obligation and have asked Kevin Brady, Deputy Chief
of Staff for the Texas Department of Insurance (TDI) to testify in my place on
behalf of our agency.

Senate Bill 1795 passed in 2013 by the Texas Legislature and signed by Gov.
Perry, charged me with setting standards to ensure navigators can perform their
duties if federal standards are insufficient. The proposed rules address
insufficiencies in federal regulations and make the training and qualifications
of navigators in our state more readily apparent to consumers and service
providers.

TDI is charged with protecting consumers and the proposed rules seek to do just
that. In Texas, we are being vigilant about safeguarding privacy and keeping
personal information out of the wrong hands.

We have reviewed your staff report on the risks of Fraud and Misinformation with
Obamacare Outreach Campaign and several issues it raises would be addressed by
our proposed rules, such as requiring background checks in order to be able to
enforce a Texas-statutory prohibition on convicted felons from being navigators.
We hope our rules will be a model for HHS and other states who are seeking to
protect their consumers as well.

Thank you again for allowing our agency an opportunity to testify. Please let me
know if I or my staff can be of any assistance.

Sincerely,

Julia Rathgeber
Commissioner of Insurance



December 16, 2013

The Honorable Darrell Issa
Chairman, House Oversight and Government Reform Committee
United States House of Representatives
2347 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa,

My name is Gene Lantz, and I am the President of the Texas Alliance for Retired Americans. We are a non-profit, grassroots organization representing over 121,500 retired Texans. I write to the House Oversight and Government Reform Committee today to provide an official statement on behalf of my organization for the December 16, 2013 field hearing in Richardson, Texas entitled, "Obamacare Implementation: Who are the Navigators."

We take exception to this hearing that attempts to discredit the law by focusing on a few snafus of the implementation process rather than focusing on Texas' decision to not participate in the Medicaid expansion. This decision will deny coverage to between 1.4 and 1.7 million eligible uninsured Texans and harm rural hospitals and inner-city health care facilities that heavily depend on Medicaid dollars.

While the initial implementation of the Affordable Care Act may have gotten off to a rocky start, it does not take away from the essence of the law. The Affordable Care Act was designed to provide insurance coverage for 34 million uninsured Americans, including 4,888,642 million uninsured Texans; to ensure adequate coverage for the underinsured and curb insurance company abuses. The new health care law significantly improves conditions for millions of Texans who had chronic illnesses or preexisting conditions that made them ineligible for medical insurance and for others with inadequate or limited insurance coverage that did not cover their basic needs. The measure also provides protections to seniors under the Medicare program by providing coverage for preventive services free of copayments or deductibles and drug assistance for those who fall in the doughnut hole.

Since inception of the Affordable Care Act in 2010, Texas seniors have already saved \$421M on their prescriptions. In 2012 alone, 1,795,711 Texas seniors received free, life-saving tests for chronic diseases.

The law is also responsible for instituting delivery system reforms that not only helped reduce health costs but also improve care. These reforms are in large part responsible for reducing the rate of growth in beneficiary spending, which has helped strengthen the Medicare program and extend its solvency by 10 years.

Retirees worry about their children and grandchildren and are happy that the law allows young adults under 26 to stay on their parents' health insurance. Seniors are glad to see working families finally protected from the greed and outrageous business practices of insurance companies through the Affordable Care Act.

Repealing the Affordable Care Act, as some have called for, is not the answer. Repealing the law would not only deny individuals health insurance, but it would increase premiums; result in more medical bankruptcies; and raise costs to local, state and the federal government for uncompensated care.

The Affordable Care Act is not only good for the health of our communities, but also stimulates our economy. We stand behind this law and oppose all efforts to dismantle the program.

Sincerely,

A handwritten signature in cursive script that reads "Gene Lantz". The signature is written in black ink and is positioned above the typed name and title.

Gene Lantz
President



Urban League of
Greater Dallas & North Central Texas
An Affiliate of the National Urban League, Incorporated

*Empowering Communities,
Changing Lives*

December 2, 2013

Senator Charles Grassley
Ranking Member
Committee on the Judiciary

Senator Orrin Hatch
Ranking Member
Committee on Finance

Dear Honorable Senators Grassley and Hatch,

In response to your letter transmitted via electronic message sent to me on November 22, 2013, please find below my responses to the information you requested:

1. Please provide all material from the Department of Health and Human Services, including the Centers for Medicare and Medicaid Services, which ULGDNCT used in training its employees to perform the responsibilities of a navigator.

The principal training that our staff received in preparation to perform Navigator duties was through the official Centers for Medicare and Medicaid Services (CMS) training and certification website hosted by Medicare Learning Network and available at <http://Marketplace.MedicareLearningNetworkLMS.com> on the Health Insurance Marketplace Learning Management System.

We also received the Centers for Medicare and Medicaid Services, Office of Information Services' "Health Insurance Marketplace Navigator Standard Operating Procedures Manual" which is also accessible at the training website.

In addition, staff was offered access to additional supporting educational information on healthcare.gov and marketplace.cms.gov, to reinforce the official CMS online training and included the following:

- Training: Understanding the Health Insurance Marketplace, official CMS video training (available at: http://www.youtube.com/watch?v=zsqu_Ce8qec&feature=youtu.be)
- Individual Paper Application Short Form (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/individual-short-form.pdf>)
- Individual Paper Application Short Form Instructions (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/individual-short-form-instructions.pdf>)
- Marketplace Paper Application for Families (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/marketplace-application-for-family.pdf>)
- Marketplace Paper Application for Families Instructions (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/marketplace-application-for-family-instructions.pdf>)
- Application without Financial Assistance (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/marketplace-application-without-financial-assistance.pdf>)

- Application without Financial Assistance Instructions (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/marketplace-application-without-financial-assistance-instructions.pdf>)
- Tips for Assisters to Help Consumers Navigate the Marketplace (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/tips-for-assisters-to-help-consumers-navigate-the-marketplace.pdf>)
- Marketplace Application Checklist (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/marketplace-application-checklist.pdf>)
- Things to Think About When Choosing a Health Plan (available at: <http://marketplace.cms.gov/getofficialresources/publications-and-articles/things-to-think-about-when-choosing-a-plan.pdf>)
- Getting Lower Costs on Coverage (available at: <https://www.healthcare.gov/how-can-i-get-an-estimate-of-costs-and-savings-on-marketplace-health-insurance/>)
- Enrolling Minority Communities in the Healthcare Marketplace, series of emails from Centers for Medicare and Medicaid Services Office of Minority Health (CMS OMH).
- Health Insurance Marketplace 101, official CMS PowerPoint presentation slides with speaker notes (available at: <http://marketplace.cms.gov/getofficialresources/training-materials/training-materials-links.html>)

2. Please provide all other materials which ULGDNCT used in training its employees to perform the responsibilities of a navigator.

- AARP Health Law Guide (available at: http://www.aarp.org/health/health-care-reform/health_reform_factsheets/)
- Kaiser Family Foundation, health insurance Marketplace subsidy calculator (available at: <http://kff.org/interactive/subsidy-calculator/>)
- Our National office provided us with an HHS issued grantee-specific ID code that can be used to access the special assister phone line at the Marketplace call center. This line provides quicker access to Marketplace call center representatives if we have questions while working with consumers.

3. Please provide all procedures in place at ULGDNCT which ensure that its employees are properly guiding individuals through the enrollment process.

The ULGDNCTX has developed the attached Policies and Procedure for the Navigator program. In addition, the Urban League's standard New Hire orientation provides mandatory information on Conflict of Interest, Client Confidentiality, Code of Conduct etc. This applies to all new hires, including potential Navigators. The National Urban League also provided a detailed Letter of Agreement covering the terms and conditions of the sub-grantee award, which included federal requirements for assisting consumers with education and enrollment. The ULGDNCTX signed and approved the Letter of Agreement.

Pertinent Provisions in the signed Letter of Agreement:

p.1: The Affiliate will be responsible for identifying and hiring trusted individuals to successfully undergo all federally and state required Navigator training, including all training that results in the official certification required of all Navigators.

p.2: The Affiliate shall ensure that all the selected individuals understand the absolute requirement of highest integrity standards and the importance of remaining free of conflict of interest.

p.2: The Affiliate shall immediately report to NUL any of the selected individuals who are suspected or found to be in violation of integrity standards or conflict of interest expectations. Reporting shall be in writing and by voice/telephonic notification.

p.2: Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange

p.2: Provide information and services in a fair, accurate, and impartial manner.

p.3: Affiliate is required to immediately report to NUL any instance of suspected fraud, misconduct or noncompliance with statutory, regulatory or grant requirements on the part of staff, or the organization as a whole. Reporting shall be in writing and by voice/telephonic notification.

p.4: NUL and Affiliates must ensure that they avoid conflicts of interest in the award and administration of sub-award contracts. As a result of award, recipients must adhere to the requirements outlined in the uniform administrative requirements.

4. What is ULGDNCT's position as to the practice of enrollees lying about their health status to receive a lower premium?

The Urban League of Greater Dallas does not condone enrollees or any other persons, lying about their health status to receive a lower premium, nor would it ever sanction, misleading the public or any individual who seeks our assistance about any issue. This is in violation of the ULGDNCTX's organizational high standards and practice of integrity.

5. What is ULGDNCT's position as to the practice of enrollees lying about their total income amount to avoid higher premiums?

The ULGDNCTX is against enrollees or any other persons lying about their total income to avoid higher premiums. Our Navigator Policies and Procedures clearly indicate that enrollees have to be informed that it is their responsibility to provide accurate and honest information. This is in violation of the ULGDNCTX's organizational high standards and practice of integrity.

6. Before becoming a navigator and discussing health insurance options with prospective enrollees, must all ULGDNCT employees participate in a training program? If not, why not?

All ULGDNCTX Navigators are required to receive and complete the online CMS training, pass all required examinations and become officially certified by CMS before becoming a Navigator and qualified to discuss health insurance options with prospective enrollees. In addition, they must complete the League's New Hire orientation mentioned above.

Moreover, ULGDNCTX is in agreement and compliance with all the required Navigator duties as described in 45 C.F.R. § 155.210(e), including:

- a. Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;**
- b. Provide information and services in a fair, accurate, and impartial manner. Such information must acknowledge other health programs such as Medicaid and CHIP;**
- c. Facilitate selection of a Qualified Health Plan (QHP);**
- d. Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under Section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and**
- e. Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and**

ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Other ULGDNCTX staff members received general program information in order to facilitate appropriate referral of prospective enrollees to the Certified Navigators, but are not permitted to assist consumers themselves.

7. What is the status of the employees in the video made public? Are they still employed by ULGDNCTX? Have they gone through more training?

The part-time AARP receptionist trainee shown in our Irving office has been fired. Although two of the staff had not finished the training and were not certified, all three staff in the video have been permanently barred from participating in any and all Navigator functions/activities and suspended and sanctioned. They are, however, still employed by the ULGDNCTX under close monitoring, to perform other duties unrelated to the Affordable Care Act (ACA). The one staff who had completed training and been certified by CMS, has since been decertified, has had her certificate destroyed and is also barred from participating in any Navigator activities, including serving as any type of assister in the Federal Marketplace, including service as Certified Application Counselors (CAC), both now and in the future.

We have chosen to use this challenge as an opportunity to enhance our overall agency training and staff development for present and future employees. It will also allow us to strengthen our organization's policies and procedures.

Sincerely,

Beverly Mitchell-Brooks, Ph.D.
President/CEO



**Urban League of
Greater Dallas & North Central Texas**
An Affiliate of the National Urban League, Incorporated

*Empowering Communities,
Changing Lives*

From the Desk of the President and CEO

Beverly Mitchell-Brooks, PhD.

Following the video event of last week, I wanted to personally give you, our valued stakeholders, an update on our actions. We responded quickly to the questions raised and I have attached a full copy of our press release for your review.

As with any business and regardless of the strength of your policies/training, human errors occur from overzealous staff anxious to assist clients. We have taken prompt and decisive action with the staff involved.

Although it would be easy to try and forget the incident, or defend staff actions or blame the undercover organization, I have decided to take this "challenge" as an "opportunity" to enhance our present agency policies and procedures. In addition the clip will be used to strengthen the staff development process.

For the last 23 years, I have had the privilege of serving as CEO of the Urban League Greater Dallas. Our unwavering focus has been to build an organization based on service, professionalism and integrity. Each year we continue to serve tens of thousands of people, providing free of charge, the critical programs that enable participants to become productive citizens where they live and work.

Throughout our 47 year history, the Urban League has remained non-partisan, non-denominational and committed to serving all of our region's citizens. Today, our mission remains unchanged.

Guided by that mission, we remain focused and committed to continuing to provide solutions to the challenges that face the community, our City and eventually impact us all. Our vision of the first Industry Trade Technical Center in the Southern sector will continue to move forward.

As CEO of our organization, I cannot thank you enough for your past support and look forward to building an even stronger relationship. If there are any questions that you have about the recent incidents or about our ongoing programs and plans, always feel free to contact me directly at bmb@ulgdncx.com or call me at 214-915-4650. I'd welcome a personal conversation at any time.

My Best Regards,

Beverly Mitchell-Brooks, PhD.
President/CEO

**Statement from The Urban League of Greater Dallas Regarding the Video
Released by Project Veritas Concerning Affordable Care Act Navigators**

We would like to directly address the video footage released by Project Veritas featuring footage from our Dallas and Irving offices and clarify the edited video that has been placed online and distributed to a number of media outlets. The Urban League of Greater Dallas does not condone, nor would we ever sanction, misleading the public or any individual who seeks our assistance about any issue, and particularly in this case, an issue as critical as health care. Our organization has taken immediate steps to address the actions of the identified employees and investigate the full context of what occurred in our Dallas and Irving offices. We are also requesting a copy of the unedited footage of the entire videotaped encounters.

The part-time receptionist trainee shown in the Irving office was not, nor had ever been, authorized to speak on behalf of The Urban League of Greater Dallas, or as a Navigator, and represented her personal opinion, not that of our organization. As such and as a result of our investigation thus far, her employment with The Urban League of Greater Dallas has been terminated. In addition, we support actions by the Department of Health & Human Services to decertify the three Navigators-in-training featured in the video, and The Urban League of Greater Dallas has suspended these employees until further notice.

It is our policy to provide correct and factual information about all programs in which we participate, or in the absence of information, to provide referrals to the agencies or organizations that are adequately prepared to address or answer those questions. As a recent recipient of the Affordable Health Care Navigation Grant, our staff who will serve as Navigators are currently undergoing extensive training that will not be complete for another 10 days. We take our responsibility as an organization training and deploying Navigators seriously, and as such, our organization has not authorized any of our employees to operate as Navigators at this point. While this information was conveyed to the undercover applicant and corrective comments were made – in the presence of the undercover applicant – regarding some of the instructions provided by these individuals, unfortunately the full context of these comments is not reflected in the video.

We have made Navigator training a high priority to ensure that all staff working at the Navigator sites are trained and qualified to assist the many people who seek health care. We will not sit idly or silently as agenda-driven individuals operating under false pretenses attempt to undermine our efforts to serve those who need it most. We are proud of our work on behalf of the Greater Dallas community and remain committed to the thousands of underserved individuals and families that the Urban League of Great Dallas serves each year.



Community Council
OF GREATER DALLAS

Leading Through Collaboration and Communication

1349 Empire Central Drive, Suite 400
Dallas, Texas 75247-4033
[P] 214.871.5065 • [F] 214.871.7442
www.ccgd.org

December 13, 2013

As a sub-recipient of a navigator grant under the Consumer Health Insurance Marketplace Enrollment Services (CHIMES) Consortium, we respectfully offer our comments about the Affordable Care Act Navigators under our employ.

The Community Council of Greater Dallas is a non-profit social planning agency incorporated in 1940. The Council leads the planning and implementation of health and human services for the residents of the Greater Dallas metropolitan area.

The Community Council employs Navigators through a contract with United Way Tarrant County. We have twelve Navigators who assist people in an 18-county region to enroll in the Affordable Care Act Marketplace. All Navigators are employees of the Community Council of Greater Dallas. As such, they meet all employment qualifications, and are subject to the rules, policies and procedures of our non-profit agency, including background checks, professional liability insurance, confidentiality training, and extensive training in the provisions of Sarbanes-Oxley.

The Affordable Care Act defines a Navigator as an individual, working under an affiliated navigator entity, who is trained and able to help consumers, small businesses, and their employees as they look for health coverage options through the Marketplace, including completing eligibility and enrollment forms. These Navigators are required to be unbiased and their services are free to consumers.

The Community Council is not new to the field of helping people get the health insurance coverage that they need. More than sixteen years ago we helped establish the Children's Health Insurance Program (CHIP) coverage in our state. Our CHIPRA outreach specialists (funded by a federal grant) help families with children enroll in CHIP and children's Medicaid (operating under a federal grant). Some of our CHIPRA outreach workers have more than ten years of experience, and all are cross-trained as Affordable Care Act Certified Application Counselors.

In addition, the Community Council employs certified Medicare Health Insurance and Advocacy Program (HICAP) counselors. They are trained counselors who answer questions and help people understand Medicare enrollment, rights and benefits, including how to appeal denials of coverage; Medicare supplemental insurance (Medigap policies); Medicare Advantage plans; Medicare Part D plans; employee and retiree coverage; and other long-term care insurance. These HICAP counselors, some with more than twenty years of experience, are cross-trained as CMS certified Navigators.

The Affordable Care Act Navigator's role is important because consumers who have never had health insurance need help understanding insurance terms and provisions, and how to enter

their information into the on-line application system. Enrollment in the Marketplace means citizens get affordable health care coverage, which improves their overall health and reduces the burden on taxpayers to cover the costs of charitable care.

We know our Navigators make a difference. For example, Cynthia N. is a single parent who worked with one of our Navigators, and after an hour, had opened a Marketplace account, chosen insurance, completed her application, and will have health insurance for the first time for her and her children starting January 1, 2014. Another client who had previously been denied health insurance coverage due to a pre-existing condition has completed her application which will provide her treatment in the future, as well as preventive services, thereby greatly improving her health. She will no longer have to miss several days of work due to an untreated chronic health condition.

The Council believes in Navigators, supports their role, and they are positively impacting lives of the uninsured.

Respectfully submitted by
Martha T. Blaine
Executive Director



Dallas Area Interfaith

"Let Justice Roll Down Like Waters . . ." Amos 5:24

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December 15, 2013

Chairman Darrel Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Re: Congressional Field Hearing in Richardson, Texas, December 16, 2013

Dear Chairman Issa and Ranking Member Cummings:

Founded in 1992, Dallas Area Interfaith (DAI) is a non-partisan, multi-ethnic, multi-issue group of religious congregations and schools in the Dallas metropolitan area with aggregate membership in its member institutions totaling in excess of 90,000. DAI has long fought for more adequate and more accessible health care for residents of Dallas County and for all Texans.

We ask that you allow a member of our Health Care Committee testify at the Congressional Field Hearing on Dec. 16 in Richardson, Texas.

We request that this document be submitted into the record of the hearing.

Several years ago DAI conducted hundreds of small group meetings with the leaders in our member congregations and schools. We talked with over 3,000 individuals and they spoke of their inability to access good health care for their families and of their inability to pay for health care.

With the passing of the Affordable Care Act in 2010, DAI was encouraged that most of the over 700,000 people in Dallas and Collin Counties currently without health insurance finally would have access to good, more affordable health coverage. We worked with our elected state officials from both parties to help set up an insurance exchange and to insure the expansion of Medicaid in Texas. However, despite our efforts and those of concerned state officials and many other organizations,

Texas currently has no state exchange and there is a Medicaid Gap for adults earning under 100% of Federal Poverty Level.

We decided to work aggressively to provide information to those who were eligible under the federally-run marketplace so they could have health care. To that end we developed and printed 100,000 informational booklets and have held many events since August of this year to educate the families in our member institutions about how the exchange and financial assistance work for them. We have worked with the recipient of the local Navigator grant, to coordinate our activities and have their Navigators at our events. This organization has worked within our community for many years helping those eligible to enroll in Medicare, Medicaid, CHIP and other programs.

Many of our members now have successfully enrolled in an insurance program through the marketplace and we are including some of their stories. Some are obtaining health insurance for the first time. Some who were in the Texas Health Insurance Risk Pool because of pre-existing conditions are obtaining policies with considerably lower premiums and deductibles. Some have experienced the financial pain of finding an existing policy was woefully inadequate but have now enrolled in very affordable plans with much better coverage and benefits.

Mary Lou Hoffman reports that her daughter, a North Texas resident, chose what she thought was an affordable health insurance plan through her employer, a large company where she works full-time. The PPO plan did not disclose the limits to her employer or herself. The cap was 4 doctor appointments and a total of \$400 paid out for the entire year. This was not even the cheapest plan offered to the company! When Mary Lou's daughter had major surgery in 2013, her healthcare bills, uncompensated by insurance, were over \$10,000 for diagnostics and surgery. In 2014 because of the upfront tax credits allowed by the Affordable Care Act, she will be able to afford a much more complete health insurance plan.

Harry Davis says, "I received notice of cancellation of my current insurance effective January 1, 2014. After some early difficulty with getting on the website and getting my information input, I tried again the first week of November. I found that I could get on and off the site with very little delay. I was able to answer most of my insurance questions through healthcare.gov, and those I couldn't get answered, I was able to find answers by calling the individual insurers directly. Finally, after I had compiled all the information I needed to decide on the best plan for me, I went on the healthcare.gov website and signed up fully on November 10th. The insurance I obtained had better coverage than my previous insurance, is approximately 35 percent cheaper, and I was able to purchase dental insurance for the first time since I worked for a company 9 years ago."

Texas has the highest rate of uninsured in the nation – one in four or 5.5 million people. Every major city in Texas has an uninsured rate higher than the national average. Employer-sponsored health coverage in Texas is lower than the national average. We need this law to work. We need it for the health of our citizens and the welfare of our state.

Yet, instead of working to ensure the law's success and allowing those trained to help people enroll, the state of Texas wants to impose burdensome testing and compliance rules and substantial financial penalties for being Navigators even though there are consumer safeguards built into the law. We wish they had shown this much interest in consumers' welfare at the time we were fighting for Medicaid Expansion and a state-run marketplace.

DAI will continue to educate the families in our communities about their opportunities for affordable, quality health care and to work with our elected officials to ensure the greatest number of Texans possible gets health insurance through the ACA.

Respectfully submitted,

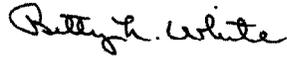
DALLAS AREA INTERFAITH



Gwen Lummus, Leader and Chairperson, DAI Health Care Team



John Knutson, Leader and Member of DAI Steering Committee



Betty White, Leader



Alan Lummus, Leader and Member of DAI Steering Committee



Ada Simmons, Leader and Member of DAI Steering Committee

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December 15, 2013

Chairman Darrel Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Honorable Chairman Issa,

I am writing to the House Oversight and Government Reform Committee today to provide an official statement on behalf of my organization, MHP, Inc., for the December 16, 2013 hearing in Richardson, Texas.

MHP is a national nonprofit organization that is trained, certified, and funded to provide Navigator services in Texas's Rio Grande Valley, which encompasses Cameron, Hidalgo, Starr, and Willacy Counties. There is a critical need for new health insurance options, as well as assistance with securing these options, in our region.

MHP estimates that there were 353,671 eligible uninsured¹ persons in the Rio Grande Valley in 2011 (most recent data available). Combined, the Valley's eligible uninsured population comprises 7.23 percent of that of Texas. The Valley's share of eligible uninsured Texans is disproportionately high, given that in 2007-2011, the total population of the region represented only 5% of the statewide population.

As a Navigator organization, we are working closely with a range of outreach and enrollment partners to help as many people as possible get covered during the current open enrollment period. We have faced challenges, from the massive coverage gap left by Texas's decision not to expand Medicaid to the intense scrutiny of Texas Navigators in general as a result of a few Navigators' inappropriate actions. However, we have also experienced numerous success stories. For example:

Diane (name changed to protect consumer's identity), a 58-year-old widow, came to the McAllen Public Library on a Saturday morning in November to meet with an MHP Navigator. Diane had always had health insurance through her jobs – until three months prior, when she'd lost her job and the insurance that came with it. Ever since, she had been applying for one job after another, but as she put it, "It's hard to get a job when you're 58 and competing with a bunch of 22-year-olds."

¹ Population data for the total number of non-elderly uninsured legal residents is based on tabulations that are adjusted to exclude estimated undocumented persons.

Diane knew that she needed to get health insurance in 2014 or pay a fee, but she'd been reluctant to explore HealthCare.Gov because of all the negative press surrounding the website. In fact, she'd come to the library for assistance because she was concerned that HealthCare.Gov would cause her computer to crash if she accessed it from home.

With the assistance of a Navigator, Diane completed her online application. She received her eligibility determination within minutes. Diane was delighted to learn that she was eligible for a tax credit worth \$354 per month to help make health insurance more affordable. She then used the comparison tool to learn more about plans available to her in the Health Insurance Marketplace. She knew that she wanted a Silver plan with a relatively low deductible; she was also looking for a plan with minimal co-pays for prescription drugs.

Within an hour of starting her application, Diane identified and enrolled in a plan that met these criteria. The monthly premium was \$376, but after choosing to apply the tax credit to her premium, Diane discovered that the premium would cost her just \$22 per month.

"I waited to apply due to the bad press," Diane said, "but I have found HealthCare.Gov simple and easy to use. I am signed up, and I am thrilled. This is the best news I've had in years."

Ultimately, I wish to convey that as Navigators, we have the privilege, responsibility, and challenge of helping as many people as possible in our region get covered in a very tight window of time, and we respectfully request that efforts to ensure oversight of Navigators be grounded in recognition of the importance and urgency of our efforts.

Sincerely,



Rachel Udow
Grant Writer (former Interim Program Director)

CC: Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform



Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

December 16, 2013

Dear Representative Cummings,

My name is Gene Lantz, and I am the President of the Texas Alliance for Retired Americans. We are a non-profit, grassroots organization representing over 121,500 retired Texans. I write to the House Oversight and Government Reform Committee today to provide an official statement on behalf of my organization for the December 16, 2013 field hearing in Richardson, Texas entitled, "Obamacare Implementation: Who are the Navigators."

We take exception to this hearing that attempts to discredit the law by focusing on a few snafus of the implementation process rather than focusing on Texas' decision to not participate in the Medicaid expansion. This decision will deny coverage to between 1.4 and 1.7 million eligible uninsured Texans and harm rural hospitals and inner-city health care facilities that heavily depend on Medicaid dollars.

While the initial implementation of the Affordable Care Act may have gotten off to a rocky start, it does not take away from the essence of the law. The Affordable Care Act was designed to provide insurance coverage for 34 million uninsured Americans, including 4,888,642 million uninsured Texans; to ensure adequate coverage for the underinsured and curb insurance company abuses. The new health care law significantly improves conditions for millions of Texans who had chronic illnesses or preexisting conditions that made them ineligible for medical insurance and for others with inadequate or limited insurance coverage that did not cover their basic needs. The measure also provides protections to seniors under the Medicare program by providing coverage for preventive services free of copayments or deductibles and drug assistance for those who fall in the doughnut hole.

Since inception of the Affordable Care Act in 2010, Texas seniors have already saved \$421M on their prescriptions. In 2012 alone, 1,795,711 Texas seniors received free, life-saving tests for chronic diseases.

The law is also responsible for instituting delivery system reforms that not only helped reduce health costs but also improve care. These reforms are in large part responsible for reducing the

rate of growth in beneficiary spending, which has helped strengthen the Medicare program and extend its solvency by 10 years.

Retirees worry about their children and grandchildren and are happy that the law allows young adults under 26 to stay on their parents' health insurance. Seniors are glad to see working families finally protected from the greed and outrageous business practices of insurance companies through the Affordable Care Act.

Repealing the Affordable Care Act, as some have called for, is not the answer. Repealing the law would not only deny individuals health insurance, but it would increase premiums; result in more medical bankruptcies; and raise costs to local, state and the federal government for uncompensated care.

The Affordable Care Act is not only good for the health of our communities, but also stimulates our economy. We stand behind this law and oppose all efforts to dismantle the program.

Sincerely,

A handwritten signature in cursive script that reads "Gene Lantz". The signature is written in black ink and is positioned above the typed name and title.

Gene Lantz
President



January 16, 2013

Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Dear Representative Cummings:

My daughter, Marissa, has a checkered medical history starting when she was twelve. Under the previous rules about health care coverage for children, she would have been forced off my company policy on December 31, 2011, the end of the year she turned twenty-three, which was actually more generous than most such policies. Thanks to the early ACA provisions, I was able to keep her on. I retired in May, 2012, but thanks to a company benefit that was eliminated for all employees hired after January 1, 2002, fifteen months after I started with the company, I was able to retain the coverage for my wife and daughter after my retirement. My daughter will turn twenty-six in April and therefore the full ACA sign-up comes just in time to enable her to obtain coverage on her own, starting then, with no regard to any preexisting conditions. She signed up with no problems and we are thankful for this program.

Sincerely,

Morris Fried
Member Texas Alliance for Retired Americans

**United Way
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The United Way of Tarrant County as the lead agency of the Consumer Health Insurance Marketplace Enrollment Services (CHIMES) Consortium would like to comment on the work our Consortium is doing in Texas. As you may know, Navigator grantees have to follow standards set by the Department of Health and Human Services for all Navigators. Such requirements include, but are not limited to, extensive online training on Marketplace enrollment application, standards for community outreach, customer service and privacy and security standards. In addition to these requirements, all members of the CHIMES Consortium will conduct a level 1 criminal background check on all Navigators and require them to complete additional one and a half hour online HIPPA overview training and receive certification. Currently we have 145 certified Navigators that have completed all these requirements.

Moreover, a Navigator Standard Operating Procedures Manual, developed by CMS, is available for all Navigators with extensive information reiterating all training standards and additional needed information including how to collect, store, transfer and secure Personally Identifiable Information (PII), and how to file a security breach.

The Marketplace has specific Privacy and Security Standards to guide Navigator organizations in protecting consumers' privacy. United Way of Tarrant County and each of the Consortium Members' organizations have years of experience assisting consumers with enrollment in Medicare, Medicaid and/or Children's Health Insurance Program (CHIP) and in safeguarding personal information. In addition to this experience, most Consortium Members have staff certified by the Texas Department of Insurance as Health Information Counseling and Advocacy Program (HICAP) Counselors who provide information about both public and private health insurance. Some of the internal procedures that are in place to safeguard Personally Identifiable Information (PII) are:

- Avoid keeping hardcopies, electronic copies of consumers' PII
- No files or documents containing PII or tax return information will be left unsecured and unattended on desk, printers and fax machines.
- Use a traceable delivery service and an opaque envelope or container when mailing PII or tax return information.
- Always return originals or copies of PII to consumers.
- Remind consumers that they must keep their PII locked and in a safe place that they will remember.

Our Mission: To improve lives across our diverse communities by prioritizing needs in education, income and health; forming innovative and effective partnerships with other organizations; and strategically raising and investing resources to make lasting change.



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- Do not send or forward e-mails with PII or tax return information and only transmit information in the direct service of consumers' health insurance needs.
- All portable equipment will be used in accordance with 45 C.F.R. § 155.260 by each staff member handling consumer PII while performing Navigator duties. (e.g. locking portable devices, password protect accounts that have access to PII)
- All medical records usage will comply with privacy requirements outlines in Texas Health and Safety Code Chapter 181 and electronic disclosure of information under Section §181.154.
- Consortium will not retain or utilize individual contact information for any other purpose other than the consumers' health insurance needs pertaining to the Marketplace enrollment.

Finally, we wanted to emphasize the Navigators' duties, as set by CMS, which are to provide personal enrollment assistance, either person-to-person or person-to-group, make presentation and provide information in group settings, like health fairs, community or workplace seminars. They will:

- 1) maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;
- 2) provide information and services in a fair, accurate and impartial manner;
- 3) facilitate selection of a Qualified Health Plan;
- 4) provide referrals to any applicable office of health insurance consumer assistance or health Insurance ombudsman for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
- 5) provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange.

Thus far, the Consortium has reached out, educated and informed over 100,000 Texans who are eligible to enroll in the marketplace. Navigators have been present in the community and participated in over 852 events and answered thousands of phone calls directly from consumers. The United Way of Tarrant County stands behind the integrity of CHIMES navigators and the training measures that have been placed at a federal and organizational level.

Our Mission: To improve lives across our diverse communities by prioritizing needs in education, income and health; forming innovative and effective partnerships with other organizations; and strategically raising and investing resources to make lasting change.



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Los Barrios Unidos Community Clinic

www.losbarriosunidos.org

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National Association of
Community Health Centers

Texas Association of
Community Health Centers

December 16, 2013

Congressman Darrell Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa,

I am the CEO of Los Barrios Unidos (Los Barrios Unidos) Community Clinic, the largest federally qualified community health center in Dallas/Fort Worth. This letter regarding the Monday, December 16th Oversight Committee hearing in Dallas, Texas answers the question posed by the Committee: *ObamaCare Implementation: Who Are the Navigators?* I also request that this letter and attachment be submitted into the Congressional Record.

That question, *Who are the Navigators?*, is best answered by providing some background on the stellar work done by America's Community Health Centers. America's Health Centers like Los Barrios Unidos serve as health care homes for more than 22 million Americans, providing comprehensive primary and preventive care services. Health Centers are affordable and cost effective, saving the healthcare system \$24 billion each year. One in every 15 people living in the United States depends on the services of a Health Center. With a proven track record, Health Centers will play a critical role in the implementation of the Affordable Care Act (ACA). Moreover, the ACA will continue to play a critical role to strengthen one of the largest, most effective safety net systems of primary and preventive care in our nation.

Locally, Los Barrios Unidos provides comprehensive primary care to 22,000 low income North Texans through 70,000 visits each year. Sixty-six (66%) percent of our patients are uninsured. This number is substantially less than the 77% uninsured just five years ago, but it is clearly still too high. Thanks to the concerted effort of our well training eligibility and enrollment staff, we are making headway in lessening the numbers of uninsured. Everyone knows Texas leads the nation in the numbers of uninsured (<http://kff.org/other/state-indicator/total-population/>). Healthy people make for healthy communities.

At Los Barrios Unidos, our “navigators” (Certified Application Counselors/CACs), number three. I could extol the virtues of each of our CACs, but I’ll select one for expediency. Our lead CAC has expertly guided our eligibility and enrollment efforts for 10 years. She is sharp as a whip, bilingual, beloved, and trusted by everyone she helps to navigate the insurance marketplace. There are many just like her in the D/FW area, each helping dozens of individuals daily. Learning about these highly capable and dedicated individuals will help the Committee adequately answer the question: “*Who are the Navigators?*”

I, or a designee, would be more than happy to testify as a witness at the Committee hearing. Los Barrios Unidos is in the trenches providing care, and financial counseling, for thousands of Dallas’ uninsured, working poor families. The Committee should consider testimony from those individuals and organizations who represent “where the rubber truly meets the road” as we help to implement the Affordable Care Act.

Proudly, we are one of America’s outstanding Health Centers. We are also one of America’s outstanding ACA navigator assistance sites.

Sincerely,



Leonor Marquez, MBA, LSCW
Chief Executive Officer

December 16, 2013

The Honorable Darrell Issa
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa,

I do not have to tell you that the Affordable Care Act (colloquially known as “Obamacare”) is a law with far-reaching effects. Any law that, despite its passage three years prior, continues to enrapture a lawmaking body with the regular attention span of a house fly surely must. It certainly has had a large impact on my life. I have been asked to share that impact, and my story, with you.

I have been uninsured several times in my life. The first stint was when I was attending college (ultimately graduating Magna Cum Laude from the University of Texas at Dallas). I worked 30 hours per week and took anywhere between 12 and 18 hours of classes per semester. I was a Pell Grant recipient, which means my entire paycheck, rather than being eaten by school expenses, housing, transportation, and food costs, was only eaten by housing, transportation, and food costs. I was young and healthy and could have purchased individual health insurance for between \$200 and \$300 per month, but the premium would have strained an already tight budget and, as an ‘invincible’, I hardly saw it as a worthwhile expense.

After college, I won an internship (unpaid) followed by another internship (paid). These positions combined lasted 2.5 years, and while I received a great deal of work experience, it’s no secret that internships are attractive to employers precisely because young workers are willing to trade the resume fluff gained for low (or no) pay and certainly no benefits.

I was hired full-time by a company in early 2009, and at that point became fully insured. I had life insurance, health insurance, dental insurance, a 401k plan, and a good salary. I used the opportunity to attend night school and earn my Master’s degree. I did this without outside financial assistance (not even a loan), which means that in addition to paying for housing, transportation, and food costs, I also now paid for tuition and books out of my salary. But health insurance was covered...the approximately \$60 per month I owed was automatically taken out of my paycheck and renewed at the beginning of each year with little effort from me. It was great.

Upon receiving my Master’s degree, I felt a different professional calling, one more service- and community-oriented. With the same daily expenses to pay for but prospects for future pay being far lower than what I had grown accustomed to, I readied myself for another stint of being uninsured. And then, on October 1, open enrollment for Obamacare began. I had read the unflattering coverage of the law in the media, had heard friends working in Human Resources and the medical industry complain about the new requirements, and was told by people I

assumed were more knowledgeable than I that the law would only help the poor while hurting the rest of us. I'm sad to say I was actually deterred by these warnings for over a month.

Thankfully, the desperation of living on half my former salary coupled with an unexpected and ridiculously overpriced emergency room visit for stitches caused me to put aside all the warnings and check out Healthcare.gov. To my surprise, not only did I qualify for a subsidy, but I was able to find an insurance plan comparable in coverage and cost with the one I had under my previous employer. I signed up, received an email from the insurer the same day confirming my purchase, and about a week later held an insurance ID card in my hand.

So why should you care about my story? Well, I am America. My race makes me representative of 63% of the population; my gender, 50.8%; my employment status, 61%. And while I am more educated than 89.6% of my fellow Americans, I currently earn half the average American's salary. All because I chose a profession I am passionate about...because I chose to work for a small business (fewer than 10 employees), a category politicians like to call the lifeblood of our country but when only 33.6% can afford to offer health insurance for their employees, what do such platitudes really mean?

And so I write to you today as a beneficiary of a health care law that makes it a little easier for a passionate young person to follow their heart without going broke in the process. I also write to you today firmly aware of the good fortune I have had in my life to go through several periods with no health insurance without experiencing a financially devastating illness or injury. Many have not been so lucky.

I am deeply comforted to know that I now live in a country where the likelihood of a medical emergency bankrupting a family is lower, the chances of an idealistic young person choosing to follow their dreams instead of clinging on to a job they don't care about just so they can keep the benefits a little higher, and the words of our Founding Fathers imploring the government of this great country to use its powers to "promote the general Welfare" are a little more meaningful.

Sincerely,

Misty Dawn Parker

12/18/13

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Star-Telegram

Why encumber 'navigators' for healthcare?

Posted Wednesday, Oct. 02, 2013

BY LON BURNAM

Special to the Star-Telegram

Many of the provisions of the Affordable Care Act (Obamacare) kicked in on Tuesday, including the ability to purchase health insurance in an online marketplace and get financial assistance.

A family of four with an income of \$35,000 can obtain decent health insurance for about \$114 per month, and assistance is available for individuals making up to \$45,960 or family of four making \$94,200.

You would think the leaders of Texas, who serve a state where one in four people have no health insurance — the highest uninsured rate in the nation — would be overjoyed. That's what makes Gov. Rick Perry's recent action to sabotage the whole thing so bizarre.

Purchasing insurance and signing up for financial benefits can be complicated, so the launch of Obamacare included grants to local governments and established charities like Tarrant County United Way to train "navigators" to help people find their way through the process.

But two weeks ago, the governor asked the Texas Department of Insurance to impose regulations on these navigators that would create a tangled web of rules and red tape to make their jobs much harder.

I have tried to figure out why Perry of all people would suddenly develop a love affair with government regulation.

He must have known that his proposals directly violated federal and state laws, so it is difficult to escape the conclusion that he is deliberately trying to prevent people from finding out about their benefits under Obamacare.

People might decide they like Obamacare if they find out about their benefits. That might be a political problem for him, but for Perry to let politics stand in the way of Texans receiving health insurance is unconscionable and a betrayal of the very idea of being a public servant.

Fortunately, the people of Tarrant County have some elected officials who understand their needs. U.S. Rep. Marc Veasy, Tarrant County Commissioner Roy Brooks, Fort Worth school trustee Jacinto Ramos and I will be holding neighborhood-level workshops across Fort Worth to help people get enrolled in Obamacare and find other healthcare services.

We have already scheduled the first four, with more to come.

Healthcare is the critical issue facing Texas right now, for our leaders and our residents.

Earlier this year, Perry turned down as much as \$100 billion from the federal government over the next 10 years to cover more of our working poor under Medicaid health insurance, with a 9-to-1 match for state dollars.

The next governor could accept that funding with the stroke of her pen on her first day in office and bring health insurance to as many as 1.5 million Texans, including 56,000 here in Tarrant County. It would effectively abolish the current, expensive practice of the uninsured delaying medical care until they are so sick they go to hospital emergency rooms.

The people of Fort Worth pay for this inefficient model through higher health insurance premiums and our hospital district taxes, with an average tax bill of \$334 per year. So putting the uninsured on Medicaid would not only save everyone money, but I have been advised that our hospital districts could actually roll back taxes.

That's right. Accepting Obamacare could mean a property tax cut.

It is up to our next governor to decide whether to continue the obstructionism of Rick Perry or to leave Washington-style hot air behind to do the right thing to serve the people of Texas.

It's not about politics or ideology.

It's simple accounting, which is why so many businesses and virtually every large chamber of commerce in Texas support the expansion of Medicaid.

Until then, come down to one of our Obamacare workshops or learn about your benefits at www.HealthCare.gov or by calling 1-800-318-2596. You can also call my Fort Worth office at any time at 817-924-1997.

State Rep. Lon Burnam represents District 90 in Fort Worth. lon.burnam@house.state.tx.us

www.star-telegram.com/2013/10/02/v-print/5215558/why-encumber-navigators-for-healthcare.html

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HOUSE OF REPRESENTATIVES
AUSTIN

December 10, 2013

Ms. Julia Rathgeber
Commissioner
Texas Department of Insurance
PO Box 149104
Austin, TX 78714

Dear Commissioner Rathgeber:

We appreciate your efforts to gain public input on the proposed navigator rules; however, we are concerned that the timeline you have set forth does not adequately allow for members of the public, navigators, and elected officials to meaningfully participate in the process.

Public testimony is an important part of the rulemaking process. It allows time for those who will be regulated to explain how rules will impact the way they do their jobs, whether those rules will needlessly hamper their work, and how the rules may be improved. Members of the Legislature may also give important background information on legislative intent. The process should be designed to ensure sufficient time for this vital input to be both heard and implemented. The timeline you have proposed does neither.

Holding a public hearing on December 20 impedes public participation. First, navigators face an important deadline on December 23 – only three days after the scheduled hearing. That date is the new deadline for consumers to select a health plan in order to be covered by January 1. Navigators should be spending the time leading up to that deadline helping as many consumers as possible sign up for health plans. Under your proposed timeline, they will instead need to divert time and resources towards preparing for and attending a hearing on these proposed rules. Second, December 20 is the Friday before Christmas and the day most schools break for the holidays. This timing will make it difficult for most members of the public and elected officials to travel to Austin and attend the hearing.

We want to work with TDI to finalize rules that will protect Texas consumers while also enabling navigators to help Texans enroll in health plans. To do so, we respectfully request that you extend the proposed deadlines, postponing the hearing date to after the holidays and extending the comment period deadline to January 31, 2014. This will give elected officials and members of the public a greater opportunity to be involved. It also allows navigators to give important testimony without taking away from their duties to help enroll consumers in health plans.

Thank you for considering an extension of the timeline to ensure meaningful and robust public testimony on these rules. We look forward to hearing from you soon.

Sincerely,



Hon. Alma A. Allen
House District 131



Hon. Carol Alvarado
House District 145



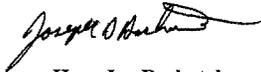
Hon. Lon Burnam
House District 90



Hon. Garnet F. Coleman
House District 147



Hon. Philip Cortez
House District 117



Hon. Joe Deshotel
House District 22



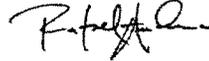
Hon. Harold Dutton, Jr.
House District 142



Hon. Joe Farias
House District 118



Hon. Roberto R. Alonzo
House District 104



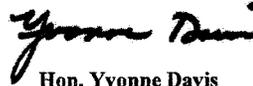
Hon. Rafael Anchia
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Hon. Terry Canales
House District 40



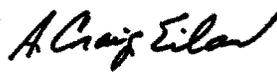
Hon. Nicole Collier
House District 95



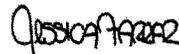
Hon. Yvonne Davis
House District 111



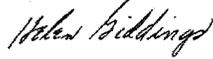
Hon. Dawnna Dukes
House District 46



Hon. Craig Eiland
House District 23



Hon. Jessica Farrar
House District 148



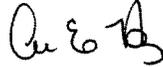
Hon. Helen Giddings
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Hon. Naomi R. Gonzalez
House District 76



Hon. Ryan Guillen
House District 31



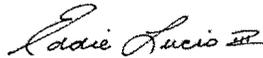
Hon. Ana Hernandez
House District 143



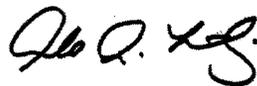
Hon. Donna Howard
House District 48



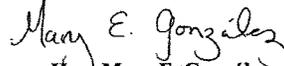
Hon. Tracy O. King
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Hon. Eddie Lucio, III
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Hon. Armando "Mando" Martinez
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Hon. Bobby Guerra
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Hon. Roland Gutierrez
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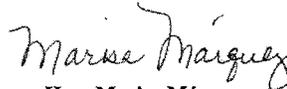
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House District 34



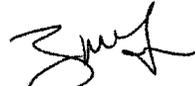
Hon. Eric Johnson
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Hon. Oscar Longoria
House District 35



Hon. Marisa Márquez
House District 77



Hon. Trey Martinez Fischer
House District 116



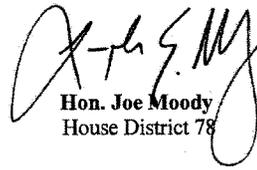
Hon. Ruth Jones McClendon
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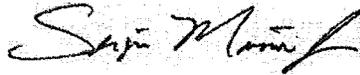
Hon. José Menéndez
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Hon. Borris Miles
House District 146



Hon. Joe Moody
House District 78



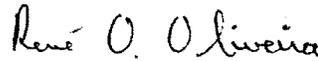
Hon. Sergio Muñoz, Jr.
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Hon. Elliott Naishtat
House District 49



Hon. Poncho Nevárez
House District 74



Hon. René O. Oliveira
House District 37



Hon. Mary Ann Perez
House District 144



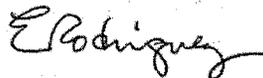
Hon. Joe C. Pickett
House District 79



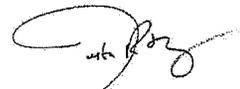
Hon. Richard Peña Raymond
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Hon. Ron Reynolds
House District 27



Hon. Eddie Rodriguez
House District 51



Hon. Justin Rodriguez
House District 125



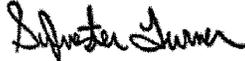
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House District 110



Hon. Senfronia Thompson
House District 141



Hon. Chris Turner
House District 101



Hon. Sylvester Turner
House District 139



Hon. Mike Villarreal
House District 123



Hon. Hubert Vo
House District 149



Hon. Armando Walle
House District 140



Hon. Gene Wu
House District 137