

§ 155.215

(9) The Exchange may require or authorize Navigators to provide information and assistance with any of the following topics. In federally-facilitated Exchanges, FY 2021 Navigator grantees will be required to perform these duties beginning with the Navigator grant funding awarded in FY 2022 for the second 12-month budget period of the 36-month period of performance. Beginning with Navigator grants awarded in 2022, including non-competing continuation awards, Navigators are required to provide information and assistance with all of the following topics:

(i) Understanding the process of filing Exchange eligibility appeals;

(ii) Understanding and applying for exemptions from the requirement to maintain minimum essential coverage granted through the Exchange;

(iii) The Exchange-related components of the premium tax credit reconciliation process, and understanding the availability of IRS resources on this process;

(iv) Understanding basic concepts and rights related to health coverage and how to use it; and

(v) Referrals to licensed tax advisers, tax preparers, or other resources for assistance with tax preparation and tax advice related to consumer questions about the Exchange application and enrollment process, and premium tax credit reconciliations.

(f) *Funding for Navigator grants.* Funding for Navigator grants may not be from Federal funds received by the State to establish the Exchange.

[77 FR 18444, Mar. 27, 2012, as amended at 78 FR 42859, July 17, 2013; 79 FR 30344, May 27, 2014; 79 FR 42986, July 24, 2014; 81 FR 12337, Mar. 8, 2016; 83 FR 17061, Apr. 17, 2018; 84 FR 17563, Apr. 25, 2019; 86 FR 53503, Sept. 27, 2021; 88 FR 25917, Apr. 27, 2023]

§ 155.215 Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210 in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant.

(a) *Conflict-of-interest standards.* The following conflict-of-interest standards apply in an Exchange operated by HHS during the exercise of its authority

45 CFR Subtitle A (10–1–23 Edition)

under § 155.105(f) and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act:

(1) *Conflict-of-interest standards for Navigators.* (i) All Navigator entities, including Navigator grant applicants, must submit to the Exchange a written attestation that the Navigator, including the Navigator's staff:

(A) Is not a health insurance issuer or issuer of stop loss insurance;

(B) Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;

(C) Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and

(D) Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

(ii) All Navigator entities must submit to the Exchange a written plan to remain free of conflicts of interest during the term as a Navigator.

(iii) All Navigator entities, including the Navigator's staff, must provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.

(iv) All Navigator entities, including the Navigator's staff, must disclose to the Exchange and, in plain language, to each consumer who receives application assistance from the Navigator:

(A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in § 155.210(d), which the Navigator intends to sell while carrying out the consumer assistance functions;

(B) Any existing employment relationships, or any former employment relationships within the last 5 years, with any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and

Dept. of Health and Human Services

§ 155.215

(C) Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

(2) *Conflict-of-interest standards for Non-Navigator assistance personnel carrying out consumer assistance functions under §155.205(d) and (e).* All Non-Navigator entities or individuals authorized to carry out consumer assistance functions under §155.205(d) and (e) must—

(i) Comply with the prohibitions on Navigator conduct set forth at §155.210(d) and the duties of a Navigator set forth at §155.210(e)(2).

(ii) Submit to the Exchange a written attestation that the entity or individual—

(A) Is not a health insurance issuer or issuer of stop loss insurance;

(B) Is not a subsidiary of a health insurance issuer or issuer of stop loss insurance;

(C) Is not an association that includes members of, or lobbies on behalf of, the insurance industry; and

(D) Will not receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a QHP or non-QHP.

(iii) Submit to the Exchange a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under §155.205(d) and (e).

(iv) Provide information to consumers about the full range of QHP options and insurance affordability programs for which they are eligible.

(v) Submit to the Exchange, and, in plain language, to each consumer who receives application assistance from the entity or individual:

(A) Any lines of insurance business, not covered by the restrictions on participation and prohibitions on conduct in §155.210(d), which the entity or individual intends to sell while carrying out the consumer assistance functions;

(B) Any existing employment relationships, or any former employment relationships within the last five years, with any health insurance issuers or issuers of stop loss insurance, or sub-

sidaries of health insurance issuers or issuers of stop loss insurance, including any existing employment relationships between a spouse or domestic partner and any health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance; and

(C) Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or issuers of stop loss insurance, or subsidiaries of health insurance issuers or issuers of stop loss insurance.

(b) *Training standards for Navigators and Non-Navigator assistance personnel carrying out consumer assistance functions under §§155.205(d) and (e) and 155.210.* The following training standards apply in an Exchange operated by HHS during the exercise of its authority under §155.105(f), and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act.

(1) *Certification and recertification standards.* All individuals or entities who carry out consumer assistance functions under §§155.205(d) and (e) and 155.210, including Navigators, must meet the following certification and recertification requirements.

(i) Obtain certification by the Exchange prior to carrying out any consumer assistance functions or outreach and education activities under §155.205(d) and (e) or §155.210;

(ii) Register for and complete a HHS-approved training;

(iii) Following completion of the HHS-approved training described in paragraph (b)(1)(ii) of this section, complete and achieve a passing score on all approved certification examinations prior to carrying out any consumer assistance functions under §155.205(d) and (e) or §155.210;

(iv) Obtain continuing education and be certified and/or recertified on at least an annual basis; and

(v) Be prepared to serve both the individual Exchange and SHOP.

(2) *Training module content standards.* All individuals who carry out the consumer assistance functions under

§ 155.215

§§ 155.205(d) and (e) and 155.210 must receive training consistent with standards established by the Exchange consistent with § 155.210(b)(2).

(c) *Providing Culturally and Linguistically Appropriate Services (CLAS Standards)*. The following standards will apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act. To ensure that information provided as part of any consumer assistance functions under § 155.205(d) and (e) or § 155.210 is culturally and linguistically appropriate to the needs of the population being served, including individuals with limited English proficiency as required by §§ 155.205(c)(2) and 155.210(e)(5), any entity or individual carrying out these functions must:

(1) Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs;

(2) Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken;

(3) Provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services;

(4) Provide oral and written notice to consumers with limited English proficiency, in their preferred language, informing them of their right to receive language assistance services and how to obtain them;

45 CFR Subtitle A (10–1–23 Edition)

(5) Receive ongoing education and training in culturally and linguistically appropriate service delivery; and

(6) Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

(d) *Standards ensuring access by persons with disabilities*. The following standards related to ensuring access by people with disabilities will apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f), and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act. Any entity or individual carrying out any consumer assistance functions under § 155.205(d) and (e) or § 155.210, and in accordance with § 155.205(c), must—

(1) Ensure that any consumer education materials, Web sites, or other tools utilized for consumer assistance purposes, are accessible to people with disabilities, including those with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities;

(2) Provide auxiliary aids and services for individuals with disabilities, at no cost, when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as interpreters can satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services;

(3) Provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities;

(4) Ensure that authorized representatives are permitted to assist an individual with a disability to make informed decisions;

(5) Acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and supports programs when appropriate; and

Dept. of Health and Human Services

§ 155.215

(6) Be able to work with all individuals regardless of age, disability, or culture, and seek advice or experts when needed.

(e) *Monitoring.* Any Exchange operated by HHS during the exercise of its authority under §155.105(f) will monitor compliance with the standards in this section and the requirements of §§155.205(d) and (e) and 155.210.

(f) *State or Exchange standards.* All non-Navigator entities or individuals carrying out consumer assistance functions under §155.205(d) and (e) in an Exchange operated by HHS during the exercise of its authority under §155.105(f) and all non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must meet any licensing, certification, or other standards prescribed by the State or Exchange, if applicable, so long as such standards do not prevent the application of the provisions of title I of the Affordable Care Act. Standards that would prevent the application of the provisions of title I of the Affordable Care Act include but are not limited to the following:

(1) Requirements that non-Navigator entities or individuals refer consumers to other entities not required to provide fair, accurate, and impartial information.

(2) Requirements that would prevent non-Navigator entities or individuals from providing services to all persons to whom they are required to provide assistance.

(3) Requirements that would prevent non-Navigator entities or individuals from providing advice regarding substantive benefits or comparative benefits of different health plans.

(4) Imposing standards that would, as applied or as implemented in a State, prevent the application of Federal requirements applicable to non-Navigator entities or individuals or applicable to the Exchange's implementation of the non-Navigator assistance personnel program.

(g) *Consumer authorization.* All non-Navigator entities or individuals carrying out consumer assistance functions under §155.205(d) and (e) in an Exchange operated by HHS during the exercise of its authority under §155.105(f)

and all non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must establish procedures to ensure that applicants—

(1) Are informed, prior to receiving assistance, of the functions and responsibilities of non-Navigator assistance personnel, including that non-Navigator assistance personnel are not acting as tax advisers or attorneys when providing assistance as non-Navigator assistance personnel and cannot provide tax or legal advice within their capacity as non-Navigator assistance personnel;

(2) Provide authorization in a form and manner as determined by the Exchange prior to a non-Navigator assistance personnel's obtaining access to an applicant's personally identifiable information, and that the non-Navigator assistance personnel maintains a record of the authorization provided in a form and manner as determined by the Exchange. The Exchange must establish a reasonable retention period for maintaining these records. In Federally-facilitated Exchanges, this period is no less than six years, unless a different and longer retention period has already been provided under other applicable Federal law; and

(3) May revoke at any time the authorization provided the non-Navigator assistance personnel pursuant to paragraph (g)(2) of this section.

(h) *Physical presence.* In a Federally-facilitated Exchange, no individual or entity shall be ineligible to operate as a non-Navigator entity or as non-Navigator assistance personnel solely because its principal place of business is outside of the Exchange service area.

(i) *Prohibition on compensation per enrollment.* Beginning November 15, 2014, Navigators and Non-Navigator assistance personnel carrying out consumer assistance functions under §§155.205(d) and (e) and 155.210, if operating in an Exchange operated by HHS during the exercise of its authority under §155.105(f), are prohibited from providing compensation to individual Navigators or non-Navigator assistance

§ 155.220

personnel on a per-application, per-individual-assisted, or per-enrollment basis.

[78 FR 42859, July 17, 2013, as amended at 79 FR 30344, May 27, 2014; 81 FR 12338, Mar. 8, 2016; 83 FR 17061, Apr. 17, 2018; 84 FR 17563, Apr. 25, 2019]

§ 155.220 Ability of States to permit agents and brokers and web-brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

(a) *General rule.* A State may permit agents, brokers, and web-brokers to—

(1) Enroll individuals, employers or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State;

(2) Subject to paragraphs (c), (d), and (e) of this section, enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange; and

(3) Subject to paragraphs (d) and (e) of this section, assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.

(b)(1) *Web site disclosure.* The Exchange or SHOP may elect to provide information regarding licensed agents and brokers on its Web site for the convenience of consumers seeking insurance through that Exchange and may elect to limit the information to information regarding licensed agents and brokers who have completed any required Exchange or SHOP registration and training process.

(2) A Federally-facilitated Exchange or SHOP will limit the information provided on its Web site regarding licensed agents and brokers to information regarding licensed agents and brokers who have completed registration and training.

(c) *Enrollment through the Exchange.* A qualified individual may be enrolled in a QHP through the Exchange with the assistance of an agent, broker, or web-broker if—

(1) The agent, broker, or web-broker ensures the applicant's completion of an eligibility verification and enrollment application through the Exchange internet website as described in § 155.405, or ensures that the eligibility

45 CFR Subtitle A (10–1–23 Edition)

application information is submitted for an eligibility determination through the Exchange-approved web service subject to meeting the requirements in paragraphs (c)(3)(ii) and (c)(4)(i)(F) of this section;

(2) The Exchange transmits enrollment information to the QHP issuer as provided in § 155.400(a) to allow the issuer to effectuate enrollment of qualified individuals in the QHP.

(3)(i) When an internet website of a web-broker is used to complete the QHP selection, at a minimum the internet website must:

(A) Disclose and display the following QHP information provided by the Exchange or directly by QHP issuers consistent with the requirements of § 155.205(c), and to the extent that enrollment support for a QHP is not available using the web-broker's website, prominently display a standardized disclaimer provided by HHS stating that enrollment support for the QHP is available on the Exchange website, and provide a Web link to the Exchange website:

(1) Premium and cost-sharing information;

(2) The summary of benefits and coverage established under section 2715 of the PHS Act;

(3) Identification of whether the QHP is a bronze, silver, gold, or platinum level plan as defined by section 1302(d) of the Affordable Care Act, or a catastrophic plan as defined by section 1302(e) of the Affordable Care Act;

(4) The results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act;

(5) Quality ratings assigned in accordance with section 1311(c)(3) of the Affordable Care Act; and

(6) The provider directory made available to the Exchange in accordance with § 156.230 of this subchapter.

(B) Provide consumers the ability to view all QHPs offered through the Exchange;

(C) Not provide financial incentives, such as rebates or giveaways;

(D) Display all QHP data provided by the Exchange;

(E) Maintain audit trails and records in an electronic format for a minimum of ten years and cooperate with any audit under this section;