

Virginia

Regulatory Hot Tip 2014 – 03

Professional Insurance Agents Association of Virginia and DC, Inc.

Health Insurance Navigation for Insurance Agents

Perhaps you have seen the video clip from the webseries, “Between Two Ferns” featuring President Obama being interviewed by Zach Galifianakis. “Have you heard of the Affordable Care Act?” Obama deadpanned to Galifianakis during the 6 ½-minute video, the latest installment, “Oh, yeah, I heard about that. That’s the thing that doesn’t work,” said the self-deprecating actor. In the clip, Galifianakis peppered Obama with awkward questions, including whether he’d locate his presidential library in Hawaii or Kenya. “What’s it like to be the last black President?” the comedian asked. “Seriously?” Obama said with a straight face. “What’s it like for this to be the last time you ever talk to a president?”¹

The Patient Protection and Affordable Care Act (PPACA, aka ACA) is legislation that you either love or hate; but it is the law of the land having the stated goals of increasing the quality and affordability of health insurance, reducing the cost of healthcare for the individual, reducing the cost of health care for the government, improving healthcare outcomes and lowering the uninsured rate through the expansion of public and private insurance coverage. With the aim of getting to a high level of participation, the government has developed several new categories of “professionals” to provide assistance in health care enrollment and to educate the public. It is the purpose of this “Hot Tip” to contrast the difference in the roles and responsibilities between

¹ <http://www.nydailynews.com/news/politics/president-obama-zach-galifianakis-funny-die-show-ferns-article-1.1717450>

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traditional, professional insurance agents selling health care and that of the consumer assistance provided under the PPACA.

To reach these goals of the PPACA, it will be necessary to have close to full participation of our citizens (both natural born and legal residents) in health care programs to bring costs down. Participation by the “invincible” youth is paramount in reaching participation goals. No doubt, you have seen the endorsements by athletes during the 2014 Olympic coverage and March Madness as well as special appearances by the President and his wife on both daytime and late night talk shows. The White House’s publicity campaign to address the younger generation have the President’s critics complaining that these tactics are beneath the dignity of the Office of the President.

Under the PPACA, the Department of Health and Human Services (HHS), has defined new roles to assist consumers in the healthcare marketplace. Role classifications include Navigators, Assistants, Certified Application Counselors, and Web brokers. All of these designations should reference trained resources that provide:

- a) Unbiased information to consumers about health insurance
- b) Information on the use and navigation of the Health Insurance Marketplaces
- c) Information on all available qualified health plans
- d) Information on public programs including Medicaid and the Children’s Health Insurance Program (CHIP).

Navigators cannot receive compensation or any consideration from insurance companies for performing their duties, compensation from their clients nor can they have any affiliation with a particular insurance company. Section 1311(i) of the PPACA requires that an Exchange establish a Navigator Program under which it awards grants to individuals or entities who satisfy the requirements to be Exchange Navigators. Wage per hour data for Navigator caseworkers, project leads, and senior level executives are currently reported as follows:

Caseworker	GS-9 equivalent \$20
Mid-Level Project Lead	GS-12 equivalent \$29
Senior Level Executive	GS-15 equivalent \$48 ²

Before you run out to become a certified Navigator, please note that some of the health care call centers are already shutting down, most notably, the General Dynamics Information Technology Inc. will lay off 344 people at its call center in Chester, Va. effective May 9, 2014, as open enrollment to obtain health care coverage under the Affordable Care Act expires March 31, 2014.³

A Navigator is not licensed by the Commonwealth of Virginia to sell insurance but trained only to help consumers find health coverage. This contrasts with a professional insurance agent with a health insurance license from the Commonwealth of Virginia Bureau of Insurance which enables him to sell, solicit, or negotiate insurance for compensation.

² <http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-10463.html?DLPage=1&DLSort=1&DLSortDir=descending>

³ http://www.timesdispatch.com/business/local/chester-call-center-will-lay-off-people-union-first-market/article_b688d77d-dab9-5d46-a1c3-b77b27727f44.html

In contrast to Navigators, a state health insurance license allows an agent access to market the following classes of insurance: Accident and Sickness, Health Services Plan, Health Maintenance Organizations, Credit Accident and Sickness, Long-Term Care, Dental Benefit Contracts, Dental Services Plans, Mortgage Accident and Sickness, Mutual Assessment Health, and Optometric Services Plans.⁴ The following table attempts in a very general manner to organize tasks for different levels of health care professionals. As with any concern on a questionable activity, duty or responsibility, the Bureau of Insurance should be contacted for clarification.

Comparison of Job Related Functions for Health Insurance Personnel			
Description of Service Provided	Licensed Agent	Unlicensed Staff	Health Care Navigator
Assist with completion of application	✓	✓	✓
Counsel or advise what coverage to buy	✓		
Advise insuring with a particular company	✓		
Be compensated on a “unit of time or work” basis	✓	✓	
Be compensated on a commission basis	✓		
Quote rates as general information	✓	✓	
Solicit addition business	✓		✓
Receive payments for coverage	✓	✓	
Indicate that requested coverage is or will be bound or issued	✓		
Receive and implement requests from existing policyholders for changes in existing policies	✓	✓	
Complete Federal Grant reporting requirements			✓
Bureau of Insurance authorization vehicle	License		Registration

Beginning September 1, 2014, Navigators are required to be registered with the Commonwealth of Virginia, Bureau of Insurance and submit proof of their completion of Federal education requirements, a criminal history record report and appropriate fees as set by the Bureau of Insurance. With this information, the Bureau will determine if the applicant meets the general requirement for character and fitness that would warrant the belief that the applicant will act as a navigator fairly, in the public interest, and in accordance with law.⁵

Navigators will be required to adhere to strict security and privacy standards by the Federal guidelines– including how to safeguard a consumer’s personal information. They will be required to complete 20-30 hours of training to be certified, will take additional training

⁴ <http://www.scc.virginia.gov/boi/pro/files/class.pdf>

⁵ <http://leg1.state.va.us/cgi-bin/legp504.exe?141+fuh+SB542ER+701327> and <http://leg1.state.va.us/cgi-bin/legp504.exe?141+sum+HB1043>

throughout the year, and will renew their certification yearly. All types of enrollment assisters – including in-person assistors, Certified Application Counselors, and agents and brokers – are required to complete specific training and are subject to federal criminal penalties for violations of privacy or fraud statutes, on top of any relevant state law penalties.⁶

For clarity, there is little difference between a Navigator, an Assister and a Certified Application Counselor. An Assister is a navigator that provides in-person assistance. In contrast with a Certified Application Counselor, a Navigator is required to conduct outreach to assist underserved individuals/communities. In addition, HHS provides funding for community health centers to help the uninsured gain coverage. Since grants are involved, Navigators are also required to complete federal grant reporting requirements.

Web brokers (AKA Web entity brokers (WBE)) are agents/brokers licensed by the Commonwealth of Virginia to sell insurance and they represent another way by which individuals and families can compare/research, purchase and enroll in health coverage utilizing professional advice. The Center for Medicare and Medicaid Services (CMS) states that it expects agents and web brokers to play a key role in the new Marketplaces. To the extent permitted by states, agents and brokers will play an important role in educating consumers about Marketplaces and insurance affordability programs, and in helping consumers receive eligibility determinations, apply for premium tax credits and cost-sharing reductions, compare plans, and enroll in coverage. In particular, CMS anticipates that agents and brokers will play a critical role in helping qualified employers and employees enroll in coverage through the Small Business Health Options Programs (SHOPs).⁷

Federally-facilitated Marketplaces, including State Partnership Marketplaces, will not establish a commission schedule or pay commissions directly to agents or brokers. As is the case in the market today, we [Department of Health and Human Services] expect that the amount and terms of any commission would be negotiated by the issuer and the agent or broker. However, we note that HHS has established a QHP certification standard for issuers seeking certification in Federally-facilitated Marketplaces and Federally-facilitated SHOPs (FF-SHOPs) that would require QHP issuers to pay the same agent and broker compensation for enrollment in similar health plans offered outside the Federally-facilitated Marketplaces and FF-SHOPs.⁸

A WBE is held to strict standards in dealing impartially with the public.

- Qualified Health Plans (QHP) will not be displayed in a manner that would maneuver a consumer to a particular QHP based upon financial consideration to the web-broker;
- A web-broker will disclose to the consumer the specific source and nature of web-broker compensation and that the compensation does not affect the display of QHP options or the premiums charged;
- Consumers will not be charged a separate transaction or service fee for shopping or enrolling in a QHP through a web-broker's services or website; and

⁶ <http://www.hhs.gov/news/press/2013pres/08/20130815a.html>

⁷ <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/assistance.html>

⁸ <http://www.cms.gov/CCIIO/resources/regulations-and-guidance/downloads/agent-broker-5-1-2013.pdf>

- Web-brokers will offer a QHP plan selection experience that is free from advertisements or information for other health insurance-related products and sponsored links advertising health insurance-related products

As you are aware, the information contained within this “Hot Tip” simply compiles information gathered from various sources and can change at any time. Please refer to documentation and rulings by the Commonwealth of Virginia, Bureau of Insurance of the State Corporation Commission for further guidance.