



Overview for Assisters of Exchange and Insurance Market Standards for 2015 and Beyond -- Final Rule



May 30, 2014

Market Standards Final Rule: Physical Presence and Principal Place of Business

- ***Navigators***: Must maintain a physical presence in the Marketplace service area. In FFMs, need **not** have principal place of business in the Marketplace service area. (45 CFR 155.210(e)(7))
- ***Non-Navigator assistance personnel in FFMs, SPMs, and funded with Marketplace Establishment grant funds***: Must maintain a physical presence in the Marketplace service area. In FFMs, need **not** have principal place of business in the Marketplace service area. (45 CFR 155.215(h))
- ***Certified application counselors (CACs) and CAC organizations***: **Not** required to maintain a physical place of business in the Marketplace service area. In FFMs, need **not** have principal place of business in Marketplace service area. (155.225(b)(3))

Market Standards Final Rule: Consideration from Health Insurance and Stop Loss Issuers

- ***Navigators***: Already were prohibited from receiving any direct or indirect consideration from health insurance or stop loss issuers in connection with the enrollment of any individuals in a QHP or non-QHP. The final rule clarified existing CMS policy that notwithstanding this prohibition, no health care provider (such as a hospital or health clinic) shall be ineligible solely because it receives consideration from a health insurance issuer for health care services provided. (45 CFR 155.210(d)(4))
- ***Non-Navigator assistance personnel in FFMs, SPMs, and funded with Marketplace Establishment grant funds***: Subject to same prohibition and clarification as for Navigators, through an existing cross reference to 45 CFR 155.210(d) in 155.215(a)(2)(i).
- ***Certified application counselors and CAC organizations***: Newly subject to the same prohibition and clarification as for Navigators. (45 CFR 155.225(g)(2))

Market Standards Final Rule: Non-discrimination

45 CFR 155.120(c)

- In carrying out Marketplace activities, assisters in every Marketplace must not discriminate based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation.
- Exception: An organization that receives Federal funds to provide services to a defined population under the terms of Federal legal authorities, and that participates in the CAC program, may limit its CAC services to that same defined population, but may not discriminate on any of the bases listed above when delivering services to that defined population.
- All assisters must comply with any other applicable State or Federal non-discrimination laws.

Market Standards Final Rule: Gifts and Promotional Items

- *Navigators, non-Navigator assistance personnel in FFMs, SPMs, and funded with Marketplace Establishment grant funds, and CACs may not provide gifts, gift cards, or cash of more than nominal value (\$15) or items (of any value) that market or promote the products or services of a third party to induce enrollment. (45 CFR 155.210(d)(6), 155.215(a)(2)(i), and 155.225(g)(4))*
 - Gifts, gift cards, or cash may exceed nominal value if they reimburse a consumer for legitimate expenses incurred in their effort to receive Marketplace application assistance. (45 CFR 155.210(d)(6), 155.215(a)(2)(i), and 155.225(g)(4))
 - Examples: travel or postage expenses.
- These assisters may not use Marketplace funds to purchase gifts, gift cards, or third-party promotional items that would be provided to any consumer. (45 CFR 155.210(d)(7))

Market Standards Final Rule: Unsolicited Consumer Contact

- *Navigators, non-Navigator assistance personnel in FFM, SPMs and funded with Marketplace Establishment grant funds, and CACs* may not solicit consumers for application or enrollment assistance by going door-to-door, or through other unsolicited means of direct contact, including calling a consumer, unless:
 - The consumer initiates contact; or
 - The consumer has a pre-existing relationship with the assister organization and other applicable State and Federal laws are complied with. (45 CFR 155.210(d)(8), 155.215(a)(2)(i), and 155.225(g)(5))
- These assisters may conduct outreach and education activities by going door-to-door and through other unsolicited means, including calling a consumer.
 - In-home application or enrollment assistance can occur if the consumer asks for it and provides consent. In such cases, CMS recommends that two people go to the home, not one.

Market Standards Final Rule: Robo-calls

- *Navigators, non-Navigator assistance personnel in FFMs, SPMs, and funded with Marketplace Establishment grant funds, and CACs* may not initiate any telephone call to a consumer using an automatic dialing system or an artificial or prerecorded voice, unless the assister or assister organization has a preexisting relationship with the consumer and other applicable State and Federal laws are complied with. (45 CFR 155.210(d)(9), 155.215(a)(2)(i), and 155.225(g)(6))

Market Standards Final Rule: Consumer Authorization

45 CFR 155.210(e)(6), 155.215(g), and 155.225(f)

- *Navigators, non-Navigator assistance personnel in FFM, SPMs, and funded with Marketplace Establishment grant funds, and CACs* must ensure that applicants are informed of the functions and responsibilities of the assister.
- These assisters must obtain and maintain a record of an authorization from the consumer prior to accessing their personally identifiable information and must maintain a record of that authorization.
 - The Marketplace will determine the form and manner for obtaining and maintaining the authorization.
 - In the FFM, a record of the authorization must be retained for a minimum of 6 years, unless a longer retention period has already been provided under other applicable Federal law.
- A consumer may revoke this authorization at any time.

Market Standards Final Rule: Assister Compensation

- Beginning November 15, 2014, *individual Navigators, non-Navigator assistance personnel in FFMs including SPMs, and CACs operating in an FFM* may not be compensated by their organizations on a per-application, per individual-assisted, or per-enrollment basis. (45 CFR 155.215(i) and 155.225(g)(3))
 - Assisters operating in SBMs are not subject to this limitation; however CMS will continue to evaluate and monitor the use of these compensation models in SBMs.
- *Navigators, non-Navigator assistance personnel in FFMs including SPMs or those funded with Marketplace Establishment grant funds, and CACs* may not charge any applicant or enrollee, or request or receive any form of remuneration from or on behalf of an individual applicant or enrollee, for assistance related to assister duties. (45 CFR 155.210(d)(5), 155.215(a)(2)(i), and 155.225(g)(1))

Market Standards Final Rule: State Assister Requirements

- CMS finalized a non-exhaustive list of State requirements that would, in its view, prevent the application of Federal standards applicable to assisters and Marketplace assister programs, within the meaning of section 1321(d) of the Affordable Care Act.
- This list was developed after consultation with stakeholders and our ongoing monitoring of State laws and their effects on assister programs.

Market Standards Final Rule: State Assister Requirements, Cont'd

- Provisions related to state requirements apply to the following types of assister programs:
 - Navigators in all Marketplaces;
 - Non-Navigator assistance personnel in an FFM or SPM or when funded through an Exchange Establishment Grant; and
 - CACs (and their designated organizations) in all Marketplaces.

Market Standards Final Rule: State Assister Requirements, Cont'd

45 CFR 155.210(c)(1)(iii)(A) and (B); 45 CFR 155.215(f)(1) and (2); and 45 CFR 155.225(d)(8)(i) and (ii)

Types of non-Federal requirements that would prevent the application of Federal requirements for assisters and assister programs:

(1) Requirements that assisters must refer consumers to other entities not required to provide fair, accurate, and impartial information.

(2) Requirements that would prevent assisters from providing services to all persons to whom they are required to provide assistance.

- For (1) and (2) above, there is a limited exception for Navigators in State SHOP-only Marketplaces who are permitted under Federal law to fulfill some of their duties through referrals to agents and brokers, if State law allows.

Market Standards Final Rule: State Assister Requirements, Cont'd

45 CFR 155.210(c)(1)(iii)(C), 155.215(f)(3), and 45 CFR 155.225(d)(8)(iii)

(3) Requirements that would prevent assisters from providing advice regarding the substantive benefits or comparative features of different health plans.

- CMS would consider such a requirement to prevent the application of the provisions of title I of the Affordable Care Act within the meaning of section 1321(d) of the Affordable Care Act, insofar as it would prohibit assisters from doing any of the following duties, which were added by the final rule:
 - Providing fair, impartial, and accurate information that assists consumers with submitting an eligibility application;
 - Clarifying the distinctions among health coverage options (including QHPs); or
 - Helping consumers make informed decisions during the health coverage selection process. (amendments to 45 CFR 155.210(e)(2) and 155.225 (c)(1)).

Market Standards Final Rule: State Assister Requirements, Cont'd

45 CFR 155.210(c)(1)(iii)(D)

(4) Requiring a Navigator to hold an agent or broker license or imposing any requirement that, in effect, would require all Navigators in the Marketplace to be licensed agents or brokers.

- **Note:** this provision does not apply to State requirements applicable to non-Navigator assistance personnel or certified application counselors.

Market Standards Final Rule: State Assister Requirements, Cont'd

45 CFR 155.210(c)(1)(iii)(E), 155.215(f)(4), and 155.225(d)(8)(iv)

(5) Imposing standards that would, as applied or as implemented in a State, prevent the application of Federal requirements applicable to assister entities or individuals or to the Marketplace's implementation of the assister program.

Market Standards Final Rule: Civil Money Penalties (CMPs)

45 CFR 155.206

- The rule establishes a process for HHS to impose civil money penalties on assisters in FFMs, including SPMs, who violate their Federal regulatory requirements
- It applies to:
 - Navigator entities and individuals in FFMs
 - Non-Navigator assistance entities and personnel in FFMs
 - CAC designated organizations and individual CACs in FFMs

Market Standards Final Rule: Civil Money Penalties (CMPs), Cont'd

45 CFR 155.206(c)

- Requirements whose violation might trigger CMPs are the Federal regulatory requirements applicable to assisters that have been implemented pursuant to section 1321(a)(1) of the Affordable Care Act
- These could include, for example:
 - Regulations specific to Navigators, non-Navigator assistance personnel, and CACs
 - Marketplace nondiscrimination regulations
 - Terms of agreements, contracts, and grant terms and conditions between the assister and HHS, to the extent that they interpret regulations implemented pursuant to section 1321(a)(1) of the Affordable Care Act or establish procedures for compliance with those regulations

Market Standards Final Rule: Civil Money Penalties (CMPs), Cont'd

- Examples:
 - Navigators are required to be certified before assisting consumers, so any Navigator who assists consumers prior to being certified might be subject to CMPs.
 - An assister who encourages a consumer to lie on his or her application for coverage might be subject to CMPs. This is because it would be a violation of a Navigator/non-Navigator's duty to be fair, accurate, and impartial, and a CAC's duty to act in consumers' best interests, to suggest that it is permissible to lie on the application.

Market Standards Final Rule: Civil Money Penalties (CMPs), Cont'd

45 CFR 155.206

- The **maximum CMP** under this provision is \$100 per day, per entity, per individual affected by the noncompliance
- The process requires HHS to conduct an investigation and give assisters notice and an opportunity to provide information, before a finding could be made and a CMP assessed for a violation
- HHS may allow the assister to enter into a **corrective action plan** to correct the violation instead of paying the CMP
- HHS will **continue to work collaboratively** with assisters to prevent noncompliance, and to address any issues that arise before they reach the level where CMPs might be assessed

Market Standards Final Rule: Civil Money Penalties (CMPs), Cont'd

45 CFR 155.206(h), (k)

- In determining whether there has been noncompliance and whether CMPs are appropriate, **HHS must take into account the gravity of the violation and the assister's record of compliance**, and may take into account other factors listed in the rule text
- **HHS cannot assess a CMP under 45 CFR 155.206:**
 - For any time during which the assister didn't know, or exercising reasonable diligence wouldn't have known, about the violation
 - For any time after the assister knew, or exercising reasonable diligence would have known, of the violation, if:
 - The violation was due to reasonable cause and not willful neglect and
 - The violation was corrected within 30 days of the first day that the assister knew, or exercising reasonable diligence would have known, of the violation
 - If a CMP has been assessed for the same conduct under 45 CFR 155.285