

Health Policy Brief

SEPTEMBER 28, 2015

Navigators and Assisters in the Third Open Enrollment Period. Navigators and in-person assisters continue to play a key role in helping consumers get coverage through the insurance Marketplaces.

WHAT'S THE ISSUE?

The Affordable Care Act (ACA), also known as Obamacare, has been fully implemented for more than a year. The combination of Medicaid expansion in almost thirty states, enrollment in Marketplace plans, and allowance of adult children to remain on their parents' health plans until age twenty-six has resulted in the lowest uninsurance rate in more than a decade. Yet as we enter the third open enrollment period for Marketplace plans, there is still work to be done in educating the public on the requirement to have insurance, assisting with enrollment, answering difficult eligibility questions, engaging hard-to-reach populations, and helping people understand how to use their insurance once they purchase a policy.

The role of navigators and in-person assisters (IPAs) in performing these functions is as important as ever. People who have trouble with the online Marketplace or need more assistance with their individual situation can turn to navigators and IPAs to walk them through the eligibility and enrollment process. Navigators are individuals or community-based organizations funded by federal or state grants to help guide consumers in the Marketplace, assist with subsidy applications, and enroll in

a health plan. IPAs perform many of the same functions as navigators, but they are funded through separate grants or contracts.

A third category of enrollment assisters, certified application counselors, help people fill out applications and compare health plans but perform more limited functions than navigators and IPAs. Since the first open enrollment period, navigators' and IPAs' roles have evolved to include reenrollment efforts, educating consumers on how to use their insurance, and addressing postenrollment questions and problems. Not only is the consumer-assistance process time- and resource-intensive, but navigators and assisters do not necessarily have the expertise to address some of the new issues they are facing.

WHAT'S THE BACKGROUND?

According to a July 2014 [Kaiser Family Foundation](#) (KFF) survey, consumer assistance was in high demand during the first open enrollment period. Navigators, IPAs, and certified application counselors (referred to broadly as assisters) helped more than 10.6 million people apply for and obtain financial assistance, enroll in Medicaid or a Children's Health Insurance Program, compare private health plan options, and provide outreach and education.

10.6

million

Navigators, IPAs, and certified application counselors helped 10.6 million people apply for insurance in the first open enrollment period.

The availability of consumer assistance was uneven across states, depending on whether a state ran its own exchange or relied on the federal Marketplace. States that operate their own Marketplaces had more money available for consumer assistance because they could tap into the Marketplace establishment grants to fund IPAs. For example, Maryland, which had about 700,000 uninsured residents, reportedly spent \$24 million on consumer assistance in the first year, compared with \$8 million in federal grant money for Texas and its estimated 6.4 million uninsured residents. According to the KFF report, states that either ran their own Marketplaces or partnered with the federal government had about twice as many consumer assisters per uninsured residents as states that relied on the federal Marketplace.

Although the first open enrollment period was fraught with technical issues, the top reasons people cited for using assisters had nothing to do with the online problems. The KFF survey found that people enlisted the help of assisters because they had limited understanding of the ACA (87 percent), they needed help understanding plan choices (83 percent), or they lacked the confidence to apply on their own (80 percent). An additional 65 percent did experience problems online, and almost half reported that their problems were not resolved after contacting the Marketplace call center. And while online problems were not the top reason people sought help, assister organizations reported that they were the most difficult problems to resolve.

In addition to helping people get through the online enrollment process, assisters helped people resolve complicated issues related to eligibility and enrollment. Policy experts from Georgetown University, funded by the Robert Wood Johnson Foundation, provided technical assistance to navigators and assisters in five states: Arkansas, Arizona, Florida, Georgia, and Ohio. The [report](#) from the first year of the Navigator Technical Assistance Project summarized some of the complex policy issues the assisters faced. Many of the questions received related to determining household size, calculating income, immigration (especially in mixed-status families), how and whether someone could change plans, and how access to other types of coverage affected eligibility for premium assistance. Many questions also required assisters to spend significant time with each consumer. According to the KFF survey, most assisters reported

spending one to two hours, on average, with each person who sought assistance.

WHAT'S THE LAW?

The ACA lists five duties for navigators: perform public education and outreach activities; distribute fair and impartial enrollment information on health plans and the availability of federal subsidies; facilitate enrollment in qualified health plans; provide referrals to appropriate agencies for grievances or complaints; and provide all information in a manner that is linguistically and culturally appropriate for the consumer.

Navigators must have existing relationships or be readily able to establish relationships with likely Marketplace consumers, including the uninsured or underinsured, self-employed people, and small-business employers. They must complete online training designed or approved by the Department of Health and Human Services (HHS), pass a certification test, and be recertified annually. States with state-based Marketplaces can establish their own training and certification requirements in place of HHS's requirements, but states using the federally facilitated Marketplace can only supplement HHS requirements, not replace them. Navigators may not receive benefits directly or indirectly from an insurance company, including a stop-loss insurer (that is, an insurance company that covers claims after a predetermined amount has been paid).

IPAs were not included in the ACA legislation but were established by HHS under its regulatory authority. HHS required all IPAs to meet the same training, certification, and conflict-of-interest standards required for navigators.

Certified application counselors, as the name implies, are people who help consumers with the nuts and bolts of filling out an application and enrolling in a health plan. They work for community-based organizations, such as community health centers and hospitals that have existing relationships with potential applicants. Like navigators, certified application counselors cannot be funded out of Marketplace establishment grants. Application counselors exist in all states and are similar to counselors who have provided application assistance with Medicaid in some states.

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WHAT’S THE DEBATE?

Questions About Future Navigator Funding May Increase The Role For Brokers

Many insurance agents and brokers (collectively referred to as brokers) did not embrace the ACA and had concerns about unlicensed individuals and groups providing advice on private insurance products. (An insurance agent typically works on behalf of one or more insurance companies, while an insurance broker typically works on behalf of the customer seeking insurance.) In some cases, brokers lobbied states to pass laws imposing additional requirements and restrictions on navigators and IPAs (see discussion below). But as funding for navigators decreased for the second open enrollment period, some states began cultivating a closer relationship with brokers to maximize enrollment.

A few states such as California and Kentucky engaged brokers from the beginning. In California, 39 percent of people who enrolled through the state’s exchange used a broker; while in Kentucky, 44 percent did. But other states initially seemed reluctant to embrace brokers. When exchanges experienced problems with their websites, many states began to more aggressively refer customers to brokers for additional help.

For the first two open enrollment periods, Get Covered Illinois received a total of \$125 million in federal funds, but with uncertainty over ongoing federal navigator funding, the state began planning for increased broker engagement to sustain long-term enrollment in qualified health plans. Get Covered Illinois launched its Producer Program in 2014, offering to fund co-branded advertisement with brokers and give them priority listing on the Marketplace website, in exchange for enrollment commitments from them. During the initial round of the program—the second open enrollment period—eleven agencies were selected at the highest level, Producer Ambassador, in addition to more than 140 Producer Partners who completed the online training and were listed as official Get Covered Illinois sponsors.

There are several advantages to using brokers to help fill some consumer assistance needs, especially in states where consumer assistance funding is stretched thin. Many brokers have decades of experience working with insurers and have existing relationships

with small businesses and individuals who are shopping on the Marketplace. In some cases, brokers may have more experience than the call-center staff available to answer consumers’ questions. Brokers are not prohibited from making insurance recommendations, and customers may benefit from brokers’ experience in suggesting what health plans will serve them best.

However, there are some important distinctions between navigators and assisters, which are often nonprofit, community-based organizations, and insurance brokers. Navigators and IPAs are required under the ACA to perform outreach and education activities as well as make information available to non-English speakers. Navigators and IPAs receive funding through federal, state, and private grants as well as through the Marketplaces. The ACA requires navigators and IPAs to offer unbiased information and prohibits them from making health plan recommendations.

Brokers generally receive a commission directly from the insurer whose policy was sold and are not required by law to inform customers about all policies available. Some advocates have argued that Marketplaces should use only independent brokers (as opposed to brokers affiliated with a particular insurance company) and that the commission should be paid through the Marketplace, instead of directly from the plan.

Although brokers are likely to play an integral role in enrollment and reenrollment going forward, prior to the ACA they typically served people looking to purchase private insurance, a population more likely to be white and have a higher income than the hard-to-reach population that Marketplaces are currently trying to enroll.

Likewise, brokers may not be familiar with means-tested programs (programs that require individuals to meet income guidelines) such as Medicaid.

According to a 2015 [Kaiser Family Foundation](#) survey of assister programs and brokers, there were some important differences in the clients served by assisters and brokers. Assistors, as compared with brokers, were more likely to help low-income and previously uninsured clients, Latino customers, and clients needing language translation services. For example, only 8 percent of brokers reported that most or nearly all of their clients had incomes

low enough to qualify for Medicaid, compared with 50 percent of assisters.

In most states, brokers are not compensated for customers found to be eligible for Medicaid, and they generally refer such customers to navigators or other organizations instead of helping them enroll. A long-term strategy that relies on brokers may not bring in the hard-to-reach and low-income populations that must be enrolled in order for the percentage of the uninsured to continue its downward trend.

Consistency In Navigators

This year represents the third grant cycle for navigators and assisters. The first two grants were for one year each and were not renewable. Navigator and assister organizations needed to reapply each year for grants, a time-consuming and unpredictable process. In nearly every state using the federal Marketplace, there was some turnover in navigators from year to year. In some areas, such as Kansas City, Missouri, community organizations complained about the change in navigator organization. Advocates in Kansas City were happy with the work of the navigator the first year, a local nonprofit organization working with seniors, and questioned the federal government's awarding the second-year grant to a privately owned company whose background was in helping hospitals increase revenue by exploring possible coverage sources for uninsured patients.

Of the 2014 federal navigator grants, there were more organizations operating across multiple states to provide navigator services compared with 2013. In some cases, the national or regional companies replaced local community-based organizations that received funding the first year. Of the recently awarded 2015 navigator grants, however, there were fewer grants to privately held companies in favor of more community-based organizations.

For the third open enrollment period, HHS is offering three-year grants, funded in twelve-month increments. In addition, after decreasing navigator grants from \$67 million in year one to \$60 million in year two, HHS restored the original \$67 million budget for 2015.

Evolving Role Of Navigators May Be Beyond Their Scope And Capability

Assisters' core mission is focused on enrolling people into a health plan. Once people

obtain insurance, any problems should be directed to the insurer or Medicaid agency, the Department of Insurance, or state organizations created to help them with grievances or appeals. But both the Kaiser Family Foundation and the Robert Wood Johnson Foundation found that assisters were faced with many postenrollment questions.

The 2014 KFF survey found that 90 percent of assisters reported receiving postenrollment questions. Issues included consumers not receiving their insurance card (54 percent) or understanding how to use their insurance (44 percent), complaints about the provider not being in network (37 percent), and claim denials (21 percent).

While some of these issues fall within the scope of assisters, others such as claim denials do not. The KFF survey found that assisters worked to help consumers try to resolve these issues even if they were beyond the assisters' scope and the assisters lacked training to do so. For many people, assisters may be their only face-to-face contact during the enrollment process, so it is natural that they would return to assisters when they experience problems or have questions.

In addition to postenrollment questions, a number of issues encountered by assisters require policy and legal expertise that they may not possess. The report from the Navigator Technical Assistance Project suggests providing different levels of training so that organizations would have some staff capable of handling the most complex issues while the remaining staff work with the easier enrollment issues.

Preemption Of Some State Navigator Laws

Nineteen state legislatures passed laws imposing additional requirements on navigators and IPAs. Most of the states that passed legislation are states that did not establish their own Marketplace. Such requirements deterred some consumer organizations from participating in the navigator program and could undermine the success of Marketplaces.

In the final regulation on navigators and IPAs published before the first open enrollment period, HHS said that states may require additional licensing or certification for navigators but that they cannot prevent navigators from fulfilling their duties outlined in the ACA. With the proliferation of these state laws and the fact that many raised questions

90%

The percentage of assisters that reported receiving postenrollment questions from enrollees.

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on how navigators could do their job while adhering to the state laws, HHS addressed the issue more specifically in a final rule published in May 2014.

In that rule, HHS provided a nonexhaustive list of standards that would prevent the application of the ACA and therefore would be preempted. The list includes laws that prevent assisters from providing advice on the substantive or comparative benefits of different plans and features or laws that required assisters to refer people to brokers if they had originally purchased insurance through one. In an [analysis](#) for the Commonwealth Fund, policy experts at Georgetown University found that eleven states had laws that limited the advice assisters could provide on benefits and plan features, and two states required referrals to brokers for people who had originally purchased a plan through one.

HHS's position on preemption was bolstered by a federal court decision in February 2014 and reaffirmed by an appeals court in April 2015. The original court issued a preliminary injunction preventing Missouri from

enforcing its navigator law. The appeals court largely upheld the lower court ruling that the Missouri law prohibited the application of the ACA and therefore was preempted.

WHAT'S NEXT?

Given the lack of understanding of the ACA by most Americans, it is clear that the work of navigators and assisters is far from complete. Leveraging relationships with brokers can help fill some gaps in consumer assistance and leave time for navigators to focus on the hard-to-reach populations and tough cases. More specific training on the nuances of eligibility determination, immigration, and policy changes would help navigators address some of the hard questions they are facing.

HHS just announced [\\$67 million in grant funding for navigators](#), restoring the level of funding from the first year of open enrollment. Moreover, the possibility of a three-year grant instead of twelve-month, nonrenewable grants should bring peace of mind to navigator entities that worry about the sustainability of their work. ■

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