

# Assister Do's and Don'ts



*October 2020*

*The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance upon which it is based. This document summarizes current policy and operations as of the date it was presented. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information. This communication was produced and disseminated at U.S. taxpayer expense.*

# Agenda

- Application and Enrollment Assistance
- Outreach and Education
- Avoiding Conflicts of Interest
- Culturally and Linguistically Appropriate Services and Services Accessible for People With Disabilities

# A Note About This Presentation

This presentation addresses specific requirements for Navigators and certified application counselors (CACs) (collectively referred to as “assisters” or “you” in this presentation) in Federally-facilitated Marketplaces (FFMs, also known as Federally-facilitated Exchanges or FFEs).



# Application and Enrollment Assistance

# Fair, Accurate, and Impartial

Assisters must provide information in a fair, accurate, and impartial manner to everyone who seeks your help.



# To Provide Fair, Accurate, and Impartial Information, You Must:

- Provide information on all qualified health plans (QHPs) and help consumers submit a Marketplace eligibility application for coverage and financial assistance.
- Provide comprehensive information about the substantive benefits and features of each plan, including any specific consumer needs such as the availability of and distance to a preferred provider, prescription drug coverage, proximity to an in-network hospital, etc.
- Help consumers find plans with cost-sharing reductions or other federal financial assistance, if they are eligible.
- Clarify distinctions among coverage types, including QHPs, Medicaid, and the Children's Health Insurance Program (CHIP).



# Providing Fair, Accurate, and Impartial Information, You Should:

- Make sure consumers make their own informed choices about which coverage option best meets their needs and budget.
- Make sure consumers perform the acts of selecting, applying for, and enrolling in a plan.



# To Provide, Accurate, and Impartial Information, You Should Not:



- Log into the consumer's online Marketplace account, fill out the Marketplace application, or select a plan on your own.
- Recommend that a consumer select a specific plan or set of plans.
- Refer a consumer to a specific agent or broker or any specific set of agents or brokers.

# Ensuring Financial Integrity and High-Quality Assistance

When providing assistance related to your duties as an assister, you **must not**:

- Charge consumers or receive any compensation from consumers for your assistance.
- Receive compensation from your organization on a per-application, per-individual-assisted, or per-enrollment basis.
- Receive consideration directly or indirectly from a health insurance issuer (or issuer of stop loss insurance) in connection with enrolling a consumer in a QHP or non-QHP.



# Consumer Outreach

# Gifts

- “Gifts” are defined in 45 C.F.R. §155.201(d)(6) as:
  - Gift items, gift cards, cash cards, cash; and
  - Promotional items that market or promote the products or services of a third party.
- However, gifts ***do not*** include the reimbursement of legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as travel or postage expenses.



# Prohibitions Regarding the Use of Gifts

- You **must not use Marketplace funds** to purchase gifts of any value.
- You must not use funds from any source to provide gifts of any value to an applicant or potential enrollee **as an inducement for enrollment.**
- By “inducing enrollment,” we mean conditioning receipt of the gift(s) on a consumer actually enrolling in coverage as opposed to encouraging consumers to seek or receive information, application assistance, or other authorized assistance.



# Prohibitions Regarding the Use of Gifts (Cont.)

As long as Marketplace funds aren't used:

- You may provide gifts that **do not exceed a \$15 value** to encourage consumers to seek or receive information, application assistance, or other authorized assistance as long as receiving the gift is not conditioned on actual enrollment and Marketplace funds are not used to acquire the gift.
- You may reimburse **legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance**, such as travel or postage expenses. These types of expenses are not considered gifts.
- You may provide food and beverages at an outreach, education, and/or enrollment event as long as they are donated or you use non-federal funds.

# Door-to-Door and Other Direct-Contact Activities

- You **may** conduct **outreach and education activities** by going door to door or through other unsolicited means of direct contact, such as a direct phone call to consumers' homes.
- You **must not** go door to door or use other unsolicited means of direct contact, such as a phone call, for the purpose of soliciting consumers for **application or enrollment assistance** if they haven't requested or initiated the contact or if you or your organization doesn't already have a relationship with the consumer. If while providing outreach and education a consumer requests help with application and enrollment assistance, you may provide it.
  - A best practice is to schedule a follow-up appointment with the consumer to provide that assistance at a later time.



# Robo-Calls



- You **must not** call consumers using an automatic telephone dialing system or an artificial or prerecorded voice (frequently referred to as robo-calls) **unless the consumer already has a relationship with you or your organization and other applicable state and federal laws are otherwise complied with.**
- If you or your organization **already has a relationship with a consumer**, you **may** use this type of tool to reach out to those consumers for things like reminding these consumers of upcoming events.

# Avoiding Conflicts of Interest

# Navigators: Avoiding Conflicts of Interest

Navigator organizations and individual Navigators **cannot:**

- Be a health insurance issuer or issuer of stop loss insurance;
- Be a subsidiary of a health insurance issuer or issuer of stop loss insurance;
- Be an association that includes members of or lobbies on behalf of the insurance industry; or
- Receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with enrolling a consumer in a QHP or non-QHP.



# Navigators: Avoiding Conflicts of Interest (Cont.)

Navigators **must disclose** to the Marketplace and, in plain language, to each consumer they assist:

1. Any non-prohibited lines of insurance business (typically non-health-related insurance) that the Navigator or his or her organization intends to sell while serving as a Navigator.



# Navigators: Avoiding Conflicts of Interest (Cont.)

Navigators **must disclose** to the Marketplace and, in plain language, to each consumer they assist (continued):

2. 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 subsidiaries of health insurance issuers or issuers of stop loss insurance.

- This includes 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.



# Navigators: Avoiding Conflicts of Interest (Cont.)

Navigators **must disclose** to the Marketplace and, in plain language, to each consumer they assist (continued):

3. Any existing or anticipated financial, business, or contractual relationships with one or more health insurance issuers or stop loss insurance issuers or their subsidiaries.



# CACs: Avoiding Conflicts of Interest

CACs cannot:

- 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 in a QHP or a non-QHP.



# CACs: Avoiding Conflicts of Interest (Cont.)

CACs **must disclose** to the certified application counselor designated organization (CDO), or to the Marketplace if directly certified by a Marketplace, and to every consumer the CAC assists:

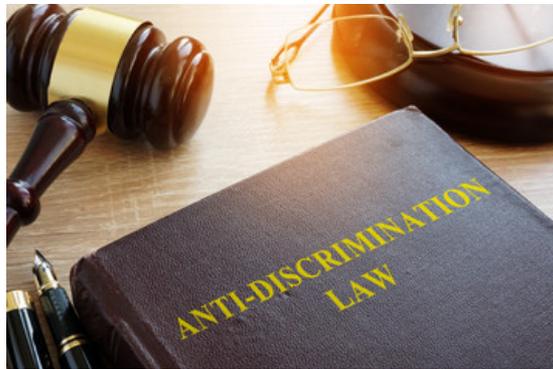
- Any relationships the CAC or sponsoring agency has with QHPs or insurance affordability programs or other potential conflicts of interest.



# **Culturally and Linguistically Appropriate Services and Services Accessible for Consumers With Disabilities**

# Nondiscrimination

All assisters are prohibited from discriminating based on race, color, national origin, disability, age, or sex.



**Disclaimer:** This document reflects the requirements of the Section 1557 Final Rule published on June 19, 2020 (85 FR 37160). Some of these requirements may change pending the outcome of lawsuits brought against HHS seeking declaratory and injunctive relief from the Final Rule and are also affected by previous court orders dating back to December 2016 that continue to be litigated.

# Navigators: Culturally and Linguistically Appropriate Services



To provide services that are culturally and linguistically appropriate to the consumers they are helping, including consumers with limited English proficiency (LEP), Navigators can:

- Develop and maintain general knowledge of the racial, ethnic, and cultural groups in their service area.
- Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken.

# Navigators: Culturally and Linguistically Appropriate Services (Cont.)

This means that Navigators must take reasonable steps to ensure meaningful access to the information and services they provide, which may include:

- Providing LEP consumers with information and assistance in their preferred language at no cost to the consumer. This could also mean assisting the consumer with contacting the Marketplace Call Center for an interpreter.
- Receiving ongoing education and training on how to provide culturally and linguistically appropriate services.
- Taking steps to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities you're serving.



# Helping Consumers with Disabilities

Navigators must take appropriate steps to provide effective communication to consumers with disabilities, which may include:

- Making reasonable modifications where necessary to avoid discrimination on the basis of disability.
- Ensuring that consumer education materials, websites, and other consumer assistance tools are accessible.
- Providing appropriate auxiliary aids and services for consumers with disabilities if necessary or requested, at no cost to the consumer.
- Providing assistance in a location and manner that is physically and otherwise accessible to consumers with disabilities.



# Helping Consumers With Disabilities (Cont.)

Navigators must take appropriate steps to provide effective communication to consumers with disabilities, which may include (continued):

- Allowing authorized representatives to help consumers with disabilities make informed decisions.
- Knowing enough about local, state, and federal long-term services and support programs so that you can refer consumers to these programs when appropriate.
- Being able to work with all individuals regardless of age, disability, or culture and seek advice or experts when needed.

# Certified Application Counselors and Language/Disability Access

CACs **are** required to provide assistance that is ***accessible to individuals with disabilities*** but can meet this requirement through appropriate referrals to Navigators or the Marketplace Call Center.

NOTE: CACs **are not** required, but are encouraged, to provide translation and other **language access services** to the extent that not providing language access services might operate as an artificial barrier to full and meaningful participation in the program or activity by LEP individuals.

Many organizations are required by federal, state, or local laws to provide accessible and appropriate services to the consumers they serve. Check with your organization if you are unsure of your responsibilities.



# Scenario 1

**In this section we will work through scenarios related to gifts and personally identifiable information (PII).**

For our first scenario, imagine your assister organization is participating in an outreach or enrollment event, and the organizers want to create a sign-up sheet so that consumers can leave their names and contact info if they want to receive a follow-up contact from one of the assister organizations and receive a gift card worth \$20.

*Is this permissible?*



# Scenario 1 (Cont.)

**No. Assisters cannot provide gifts that exceed a \$15 value to encourage consumers to seek or receive information or application assistance or as an incentive for enrollment.**

As long as receiving the gift is not conditioned on actual enrollment, and Marketplace funds are not used to acquire the gift, assisters may provide gifts that do not exceed a \$15 value.

As an example, you can provide items like coffee-shop gift cards, pens, magnets, or key chains worth \$15 or less each. These items may bear the name or logo of a local business, community organization, or social service program. These items may also be provided to consumers at outreach and education events or at other forums attended by members of the general public as long as they are not being provided as an inducement to enrollment and have not been purchased using Marketplace funds.

# Scenario 1 (Cont.)

Note: FFM Navigators *cannot* use HHS Navigator grant funds to purchase promotional t-shirts, sweatshirts, or other clothing for their staff.

Assisters can reimburse legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as travel or postage expenses. These types of expenses are not considered gifts.



# Scenario 2

**Consider a scenario related to assisters working with consumers.**

Imagine your assister organization is planning to host a large outreach and education event with a community hospital. The hospital's event organizers suggest inviting several local insurance brokers with whom they have worked in the past to provide additional education and enrollment assistance at the event. You're concerned that inviting these brokers to an event that your organization is co-hosting will imply that you endorse them.



***So the question is: Can you and your co-host invite these individuals to the event without violating the legal requirements that apply to you in your assister role? Consider this scenario for a second. What do you think the answer is?***

# Scenario 2 (Cont.)

**YES, you can invite these individuals to an event you are hosting or co-hosting without violating the legal requirements that apply to you in your assister role, as long as you take certain steps:**

- First, you should consider extending invitations to all agents and brokers in a particular area or having agents and brokers in a physically separate area of the event.
- Second, if a select group of agents and brokers attends the event, you should be careful not to express or imply—by words or actions—an endorsement of, or preference for, the services of the group of agents and brokers that attend or for a specific attendee.
- Third, do not substitute an agent or broker to perform any of the services required of you as an assister.
  - For example, you should not help consumers complete an application and then refer the consumer to an agent or broker at the event to complete plan selection (unless the consumer specifically asks to be assisted by an agent or broker). And finally, please note that whether agents and brokers attend Navigator-hosted events does not affect a Navigator's ability to use grant funds for the event for allowable costs. It is the Navigator's duty of impartiality that matters.

# Contact information

- The examples discussed are not exhaustive.
- If you have specific questions, please contact:
  - **Certified Application Counselors:**  
[CACQuestions@CMS.HHS.gov](mailto:CACQuestions@CMS.HHS.gov)
  - **Navigators:** Your Navigator grantee Project Officer or  
[NavigatorGrants@CMS.HHS.gov](mailto:NavigatorGrants@CMS.HHS.gov)



# Resources

## Assister Tip Sheets: Dos and Don'ts in Federally-facilitated and State Partnership Marketplaces:

- [Application and Enrollment Assistance](#)
- [Outreach and Education](#)
- [Conflict of Interest Requirements](#)
- [Serving Special Populations: Consumers with Disabilities](#)
- [Providing Effective Communication and Language Assistance](#)
- [Updated Guidance for Navigator Cooperative Agreement Recipients in FFM's: Carrying out Navigator Duties and Activities through Subrecipients or Contractors](#)
- [Tips for Assisters on Working with Outside Organizations](#)
- [Information and Tips for Assisters: How and when to provide information about agent and broker services to consumers, and other information about engaging with agents and brokers](#)