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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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June 20, 2013

The Honorable Kathleen Sebelius
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

We write to express concern regarding the recently published *Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel* notice of proposed rulemaking. The guidelines you have proposed for navigators, assisters, application counselors and other consumer outreach personnel provide significantly less protection to patients and consumers than the states have provided through licensed insurance producers for decades.

As you are well aware, health insurance agents and brokers are subject to strict state-level exam-based licensing laws and annual continuing education requirements, as well as significant federal and state privacy, security and market conduct requirements. Furthermore, agents and brokers have a personal legal and financial liability to comply with all of these laws and requirements, as well as a requirement to maintain professional liability insurance to protect consumers.

The leniency the proposed rule takes with regard to consumer protections for individuals and small businesses poised to purchase health insurance in the new exchanges is not only a lower standard than already exists at the state level, but is also inconsistent with the Administration's stance on oversight of professional tax preparers. Since 2009, the Department of Treasury has aggressively pursued reforms to provide comprehensive oversight of tax professionals including registration of individual preparers, background checks, certification, competency examinations and continuing education requirements.

Exchange navigators, assisters, application counselors, and other consumer outreach professionals will have similar access to sensitive consumer financial information, yet the proposed rule has no similar consumer protections. In fact, the standards proposed by your Department could result in a convicted felon receiving federal dollars and gaining access to confidential taxpayer information. The same standards allow any individual who has registered with the exchange and completed two days of training to facilitate enrollment, as if the decision to purchase health insurance is similar to the decision of registering to vote.

The unreasonably low standard for becoming a navigator not only undermines the state's ability to ensure consumers are protected but raises questions about the appropriate use of federal resources and the protection of highly sensitive consumer information. To fully understand the

Department's plans to ensure the appropriate use of federal funds and that all health insurance consumers are fully protected, please provide a response to the following:

1. A list of the minimum requirements for individuals who either directly or indirectly receive federal, and/or exchange-based funds to assist consumers, either through the navigator, assister, application counselor or other consumer outreach programs. For example, is a high school diploma required? Is there a minimum age requirement? Are criminal and other appropriate background checks to protect consumers required? Please list all minimum requirements.
2. All materials used to train navigators, assisters, application counselors and other consumer outreach personnel and identify the minimum training each will be required to complete as well as the minimum score they must achieve to pass the required examinations.
3. Will the navigators, assisters, application counselors and other consumer outreach personnel be contractors of the Department? If so, provide sample copies of the contracts that will be used by the Department to obtain the services of organizations performing these services.
4. Do you plan to limit the scope and standardize information that navigators, assisters, application counselors and other consumer outreach personnel may provide to consumers about qualified health plans (QHP) sold through exchanges?
5. Will navigators, assisters, application counselors or other consumer outreach personnel obtain access to confidential taxpayer returns and return information protected by section 6103 of the Internal Revenue Code? If so, provide copies of all guidelines promulgated to ensure the proper handling of taxpayer information.
6. Will navigators, assisters and other outreach contractors that receive taxpayer returns and return information in the course of the performance of their duties be advised of their potential criminal liability, pursuant to section 7213(a)(2) of the Code, for unauthorized disclosure of such information? Please provide copies of all training materials that inform grantees and grantee staff of their potential criminal liability in this regard.
7. How will the distinction between advising consumers about QHP options and merely helping consumers through the eligibility and enrollment process be made, monitored and enforced?
8. What is your statutory authority for the creation of the non-navigator program, application counselor and assister programs?
9. Why does the proposed rule limit the definition of navigator and non-navigator assistance personnel conflict of interests to relationships with health insurance issuers? Do you consider a financial relationship with a health care provider to be a conflict of interest? How will you address potential steering by navigators, assisters, application counselors and other consumer outreach personnel to certain provider networks and groups?
10. How do you plan to enforce the proposed conflict of interest standards and what will be the consequences for violations?
11. Where does liability rest in the case of a navigator, assister, application counselor or other consumer outreach personnel who causes harm to a consumer, either purposefully or unintentionally? Does liability rest with the individual who had direct consumer contact, the entity that received federal or exchange-generated funds for consumer outreach, or with the federally-facilitated, state-based and partnership exchanges? Is financial and

legal responsibility for addressing and rectifying such issues shared? Where does a consumer go for recourse?

12. How will the privacy requirements that apply to navigators, assisters, application counselors or other consumer outreach professionals be enforced? How does your Department plan to protect consumers from identity theft and related crimes?
13. Do you plan to require that entities that receive federal and/or exchange-generated funds for consumer outreach activities carry some sort of professional liability insurance?
14. How does your Department plan to inform state regulators about which entities and individuals may be performing federally-funded, out-of-state consumer outreach activities in their states, so that they will be aware of who may be interacting with their constituents and may enforce state-based consumer protection and licensing requirements?
15. How does your Department plan to prevent potential fraud by entities and individuals that may disingenuously represent themselves as navigators or other assisters to unsuspecting consumers for nefarious purposes, including any plans to provide assistance and relief to defrauded consumers?

We appreciate your prompt attention to these critical questions and request a response by August 1.

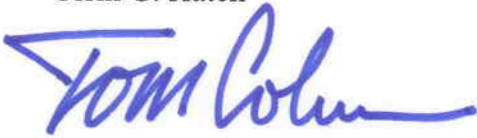


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Sincerely,



Johnny Isakson



Tom Coburn, M.D.



John Barrasso



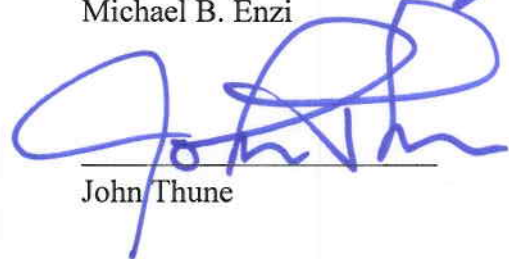
Pat Roberts



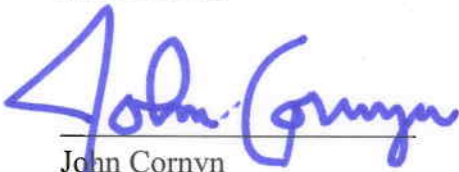
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