



# Assister Conflict of Interest Requirements



*October 2023*

*This information is intended only for the use of entities and individuals certified to serve as Navigators, certified application counselors, enrollment assistance personnel or non-Navigator personnel in a Federally-facilitated Marketplace. The terms "Federally-facilitated Marketplace" and "FFM," as used in this document, include FFMs where the state performs plan management functions. Some information in this manual may also be of interest to individuals helping consumers in State-based Marketplaces and State-based Marketplaces using the Federal Platform. This material was produced and disseminated at U.S. taxpayer expense.*

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# A Note About This Presentation

- This presentation is current as of the date it was presented.
- It is intended to serve as an overview of the conflict-of-interest requirements that apply to Navigators, certified application counselors (CACs) and enrollment assistance personnel (EAPs) (collectively referred to as “assisters” in this presentation) in Federally-facilitated Marketplaces (“Marketplaces” or “FFMs”) under the Affordable Care Act (ACA) and the Centers for Medicare & Medicaid Services’ (CMS) regulations and guidance.
- We encourage assisters to review the applicable statutes and regulations for a complete and current statement of their contents.
- Individual assisters who are government employees or licensed professionals should take appropriate steps to ensure compliance with any additional requirements that may apply to them.

# Purpose of This Presentation

This presentation will cover conflict of interest (COI) requirements for the following assisters and assister organizations in FFM:

- Navigators and Navigator organizations
- CACs and certified application counselor designated organizations (CDOs)
- Enrollment assistance personnel (EAPs)



# Conflict of Interest Requirements: Overview

Conflict of interest requirements are designed to ensure that assisters and assister organizations do not have relationships that could interfere with their ability to provide unbiased outreach and enrollment assistance and fair, accurate, and impartial information to consumers.

To avoid conflicts of interests when helping consumers apply for and enroll in Marketplace coverage, assisters must:

- Provide unbiased outreach and enrollment assistance.
- Provide fair, accurate, and impartial information.
- Avoid steering consumers toward a certain plan.



# Navigator Conflict of Interest Requirements



Navigator-specific requirements apply to both:

- Individual Navigators, and
- Navigator organizations.

# Navigators and Navigator Organizations

- Individual Navigators and Navigator organizations include:
  - Both staff and volunteers of a Navigator organization who:
    - Perform work related to Navigator program activities.
    - Perform Navigator services.
  - A sub-grantee or subcontractor of a Navigator organization that:
    - Performs work related to Navigator program activities.
    - Performs Navigator services.
  - Anyone who performs:
    - Work related to the sub-grantee's or subcontractor's Navigator program activities.
    - Navigator services for a sub-grantee or subcontractor of a Navigator grantee organization.

# Navigators and Navigator Organizations (Cont.)

- Individual Navigators and Navigator organizations include:
  - Anyone working for a Navigator organization in roles supervising Navigator program activities, even if they are not performing on-the-ground application and enrollment assistance.
  - Anyone working for a Navigator organization who is engaged in Navigator outreach and education activities.
- This does not include persons who are in no way involved with a Navigator organization's Navigator program.
  - Those individuals are not required to comply with Navigator conflict of interest requirements.



# Providing Information in a Fair, Accurate, and Impartial Manner: Navigators

- Individuals or entities subject to the conflict of interest requirements for Navigators in FFMJs must provide information and services to consumers in a fair, accurate, and impartial manner. This includes:
  - Providing information that helps consumers submit their eligibility applications;
  - Clarifying the distinctions among health coverage options, including qualified health plans (QHPs); and
  - Helping consumers make informed decisions during the health coverage selection process.
- Navigators also have a duty to provide information to consumers about the full range of QHP options for which they are eligible, as well as Medicaid, the Children's Health Insurance Program (CHIP), advance payments of the premium tax credit (APTC), and cost-sharing reductions (CSRs), if they are eligible for those programs.



# Conflict of Interest Prohibitions

Navigator grant applicants, individuals or entities that perform Navigator services, and individuals or entities that perform work related to Navigator program activities on behalf of a Navigator organization must not:

- 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.
- Receive any consideration directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any consumer in a QHP or non-QHP.

# Navigator Organization Conflict of Interest Attestation

- Navigator organizations in FFMs must attest in writing that the organization and anyone who performs work related to the organization's Navigator program activities or who performs Navigator services for the organization, such as any subgrantees or contractors, do not have any of the prohibited relationships described in the previous slide.
- Before making this attestation, the organization must carefully evaluate the relationships of anyone who performs work related to Navigator program activities or who performs Navigator services for the organization (including a subgrantee or contractor).
- CMS Navigator grant applicants must make this attestation during the grant application process.

# Navigator Conflict of Interest Disclosures

Navigators must disclose to the Marketplace and, in plain language, to each consumer who receives application assistance from the Navigator, whether they, their Navigator organization, or anyone who performs work related to the organization's Navigator program activities or who performs Navigator services for the organization have any non-prohibited relationships that must be disclosed.



# Navigator Conflict of Interest Disclosures (Cont.)

The following non-prohibited relationships must be disclosed to each consumer who receives application assistance from the Navigator:

- Any non-prohibited lines of insurance business (typically non-health-related insurance such as auto, life, and homeowners' policies) that the Navigator or their organization intend to sell while serving as a Navigator.
- 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.
- Any non-prohibited financial, business, or contractual relationships that the person or organization has with a health insurance issuer or issuer of stop loss insurance or subsidiaries of health insurance issuers or issuers of stop loss insurance.
  - This includes both existing and anticipated financial, business, and contractual relationships.

# Navigator Organization Conflict of Interest Plan

- All Navigator grantee organizations must submit to the Marketplace a written plan to remain free of disqualifying conflicts of interest, and to disclose to the Marketplace certain non-disqualifying conflicts of interest during their term as a Navigator grantee.
- Depending on the specific relationships that the Navigator entity and their Navigator staff have with health insurance and stop loss insurance issuers, and on whether these relationships change over the course of the organization's term as a Navigator grantee, the Marketplace might require the organization to update this plan or to include specific topics and mitigation strategies in it.

# CAC and EAP Conflict of Interest Requirements

CAC and EAP COI-specific requirements apply to both:

- Individual CACs,
- EAPs, and
- CDOs.



# CACs and CDOs

- CACs and CDOs include:
  - All staff and volunteers certified by a CDO to perform CAC services, including certified staff and volunteers of a CDO engaged in outreach and education activities;
  - Anyone who performs work related to CAC program activities on a CDO's behalf, even if they are not performing on-the-ground application and enrollment assistance, including anyone supervising a CDO's CAC program activities on the organization's behalf.
- These requirements do not apply to persons working for a CDO who are in no way involved with the CAC program. Those individuals are not required to comply with CAC conflict of interest requirements.

# Enrollment Assistance Personnel (EAP) Program

- EAPs serve as “mobile assisters” and help consumers navigate coverage transitions from Medicaid into QHPs through the FFM.
- EAPs operate under a contracted assistance model to conduct direct assister-to-consumer outreach alongside Navigator grantees in FFM states to help consumers maintain continuity of coverage.





# Providing Information in a Fair, Accurate, and Impartial Manner: CACs & EAPs

- Individuals or entities certified as CACs or EAPs in FFMs must provide fair, accurate, and impartial information to consumers. This includes:
  - Providing information that assists consumers with submitting the eligibility application;
  - Clarifying the distinctions among health coverage options, including QHPs; and
  - Helping consumers make informed decisions during the health coverage selection process.
- CACs & EAPs also have a duty to provide information to consumers about the full range of QHP options for which they are eligible, as well as about Medicaid, CHIP, APTC, or CSRs, if they are eligible for those programs.
- In addition, CACs and EAPs must act in the best interests of the applicants they are helping.

# Conflict of Interest Disclosures: CACs & EAPs

Persons certified as CACs **must** disclose to the CDO, or to the Marketplace if directly certified by a Marketplace, and to every potential applicant, any relationships the CAC or sponsoring agency has with QHPs or insurance affordability programs or other potential conflicts of interest.

EAPs must disclose to their contracting entity or the Marketplace if directly certified by a Marketplace, and to every potential applicant, any relationships the EAP or contracting entity has with QHPs or insurance affordability programs or other potential conflicts of interest.



# Prohibition on Compensation: All Assisters

- All individuals in FFMs who perform assister services or who perform work related to an assister program's activities on behalf of an assister organization (including supervising those activities) as well as their respective assister organizations **must not** receive any consideration, including any form of compensation (monetary or in-kind), directly or indirectly from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any consumers in a QHP or non-QHP.
- We refer to this requirement as the prohibition on compensation.
- This section of the presentation provides information on CMS requirements related to the prohibition on compensation.



# Prohibition on Compensation: Examples

Prohibited compensation **does** include any financial compensation or other consideration from a health insurance issuer or stop loss insurance issuer that is connected to the enrollment of any consumer(s) in a QHP or non-QHP, including but not limited to:

- Monetary or in-kind compensation of any type,
- Grants,
- Gifts,
- Free travel, or
- Any other type of influence a health insurance or stop loss insurance issuer could use which may create incentives for assisters to steer individuals to particular QHPs or non-QHPs.

For example, if an issuer offers to pay for assisters to fly to a conference to discuss plans for outreach and enrollment activities for the general public, this would be a conflict of interest. It would be prohibited because it could create an incentive for assisters who receive a free flight to the conference from the issuer to steer consumers to the issuer's QHPs and other insurance products and services.

# Prohibition on Compensation: Examples (Cont.)

The prohibition on compensation **does not** include compensation received from a health insurance or stop loss insurance issuer that is not connected with the enrollment of any consumer(s) in a QHP or non-QHP. For example,

- Health care providers are not prohibited from operating as assisters in an FFM solely because they receive consideration from a health insurance issuer for health care services they provide.
- An assister organization may host an annual fundraising event that is sponsored by a health insurance issuer or stop loss insurance issuer as long as:
  - The funds raised are not allocated towards the assister organization's application and enrollment assistance activities.
  - Application and enrollment activities or issuer marketing activities are not performed during the fundraising event.
- As long as these criteria are met, CMS would not consider the issuer's sponsorship of the fundraising event to be compensation connected with enrollment in a QHP or non-QHP.

# Staff Member of Health Insurance Issuers or Stop Loss Insurance Issuers as Assisters

- While health insurance and stop loss insurance issuers cannot serve as assisters in assister organizations in FFM, individuals who are staff members of health insurance issuers or stop loss insurance issuers may be interested in serving as assisters.
- If they meet eligibility requirements, these individuals may become Navigators, CACs, or EAPs in an FFM (and thereby perform assister services) or perform work related to those assister programs' activities (including supervising those activities) for a Navigator, CAC or EAP organization in an FFM provided that any direct or indirect compensation they might receive from the issuer is not in connection with the enrollment of any consumers in a QHP or non-QHP.



# Prohibited Situations for Issuer Staff Members as Assisters

There are certain prohibitions because the compensation from the issuer may be considered to be in connection with the enrollment of consumers in a QHP or non-QHP.

Examples of situations that **would prohibit** health insurance and stop loss insurance issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities) include:

- Actively licensed "captive" agents employed by a health insurance or stop loss insurance issuer who receive any commissions or salary in connection with the enrollment of any consumers in a QHP or non-QHP.
- An individual who is a marketing or outreach strategy consultant under contract with a health insurance or stop loss insurance issuer and who receives compensation from the issuer for marketing and outreach activities.
- An individual who is employed by a health insurance or stop loss insurance issuer as a customer service representative or member services representative and who receives compensation from the issuer for customer or member services activities.

# Allowed Situations for Issuer Staff Members as Assisters

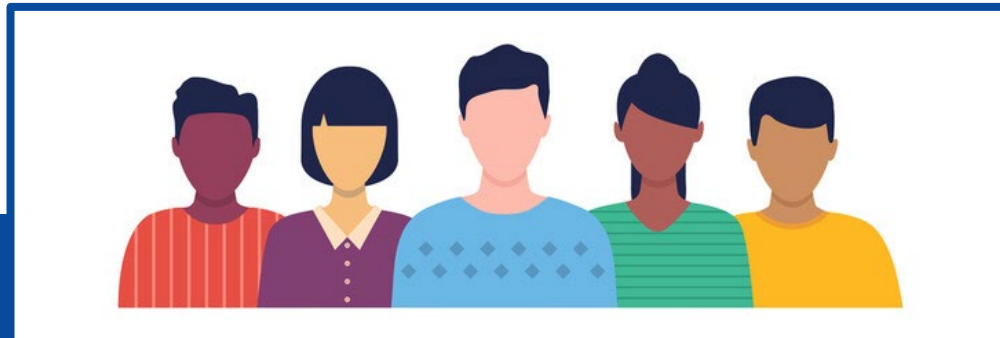
Examples of situations that would **not prohibit** health insurance and stop loss insurance issuer staff members from becoming assisters and from performing work related to an assister program's activities on behalf of an assister organization (including supervising those activities):

- Issuer staff members whose activities and compensation are not connected with the enrollment of consumers into an issuer's QHPs or non-QHPs, which might include:
  - Administrative assistants
  - Facilities managers
  - Nurses or social workers who perform case management or care coordination work



# Scenario 1

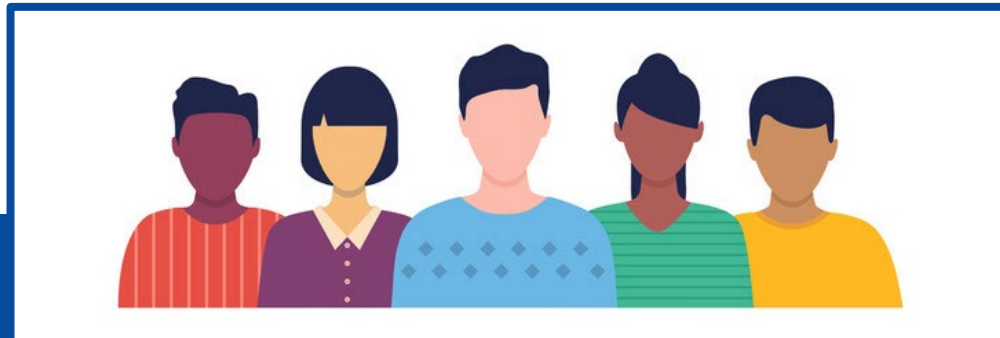
I work for a health insurance issuer. Can I be an assister?



# Scenario 1 Answer

It depends. As long as you do not receive any consideration directly or indirectly from the health insurance issuer in connection with the enrollment of consumers in QHPs or non-QHPs, you would be considered eligible to serve as an assister provided you meet all other eligibility requirements.

- If any Navigator has a current, non-prohibited employment relationship with an issuer, this relationship must be disclosed to the Marketplace and to every consumer assisted.
- A CAC must disclose this type of relationship to the CAC organization and to every consumer assisted.



# Scenario 2

My spouse works for a health insurance issuer. Can I still be an assister?



# Scenario 2 Answer

Yes, as long as this relationship is disclosed either to the Marketplace or your CAC organization or EAP contracting entity, as applicable, and to each consumer you assist.



# Scenario 3

I'm an agent or broker actively engaged in selling health insurance or stop loss insurance. Can I be an assister?



# Scenario 3 Answer

No. Agents or brokers who receive commissions or other direct or indirect consideration from a health insurance or stop loss insurance issuer as a result of their active involvement in selling health insurance or stop loss insurance receive consideration in connection with the enrollment of consumers in a QHP or non-QHP and therefore cannot serve as Navigators, EAPs, or CACs.



# Scenario 4

I sell auto insurance, but do not sell health insurance or stop loss insurance. Can I be an assister?



# Scenario 4 Answer

Yes, as long as this activity is disclosed either to the Marketplace, your CAC organization, or EAP contracting entity, as applicable, and to each consumer you assist.





# Scenario 5

Can an assister organization receive a grant or other funds from a health insurance issuer for activities that are not connected with enrollment in a QHP or non-QHP?



# Scenario 5 Answer

Yes. An entity that receives a grant or other funding from a health insurance issuer would not be prohibited from serving as an assister organization unless the grant or funding is provided in connection with the enrollment of individuals or employees in a QHP or non-QHP.

- However, operating as a Navigator grantee, the organization would need to disclose the receipt of the grant or funding from the issuer to the Marketplace and to each consumer assisted because it would be an existing or anticipated financial, business, or contractual relationship with an issuer.
- Similarly, CAC organizations, either directly or through their CACs, must disclose this potential non-prohibited conflict of interest to each consumer assisted.
- An EAP contracting entity, either directly or through their EAPs, must disclose this potential non-prohibited conflict of interest to each consumer assisted.

# Scenario 6

Can I invite health insurance issuers to share plan information with consumers or with my organization's assisters?



# Scenario 6 Answer

Yes.

- Assister organizations may invite issuers in their area to share information or attend education sessions regarding plan benefits and details **as long as** all health insurance issuers in the Marketplace service area are invited and all applicable assister conflict of interest provisions are followed, including the rule prohibiting assisters from receiving any consideration directly or indirectly from any health insurance issuer or stop loss insurance issuer in connection with the enrollment of any individuals or employees in a QHP or non-QHP.
- Such an event would not represent a prohibited conflict of interest or violate an assister's duty to provide information and services in a fair, accurate, and impartial manner.

# Scenario 7

An assister has been unable to resolve a specific issue on the consumer or tax household's application for Marketplace coverage. Can the assister ask an agent or broker or issuer for advice?



# Scenario 7 Answer

No, the assister should not be collaborating with agents, brokers, or issuers for questions about Marketplace applications. Depending on the issue, assisters should submit an inquiry to the FFM Complex Case web form at [MATS.secure.force.com/complexcase/](https://MATS.secure.force.com/complexcase/). This web form allows assisters to submit a complex case for investigation by the Complex Case Help Center team. For policy, programmatic, or general questions, assisters should contact [assisterquestions@cms.hhs.gov](mailto:assisterquestions@cms.hhs.gov).



# Resources

- The examples above are not exhaustive. If you have specific questions, please contact the following:
  - Certified Application Counselors: [CACQuestions@cms.hhs.gov](mailto:CACQuestions@cms.hhs.gov)
  - Navigators: Your Navigator grant Project Officer or [NavigatorGrants@cms.hhs.gov](mailto:NavigatorGrants@cms.hhs.gov)
  - EAPs: [EAPQuestions@cms.hhs.gov](mailto:EAPQuestions@cms.hhs.gov)
- Training materials for Navigators, EAPs and CACs: [CMS.gov/marketplace/in-person-assisters/training-webinars/training](https://www.cms.gov/marketplace/in-person-assisters/training-webinars/training)
- Assister webinars: [CMS.gov/marketplace/in-person-assisters/training-webinars/webinars](https://www.cms.gov/marketplace/in-person-assisters/training-webinars/webinars)