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Testimony before the Pennsylvania Senate Banking and Insurance Committee
“Public hearing on PPACA Navigators”
April 2, 2014

Good morning, Chairman White, Minority Chairman Stack, and members of the Committee. Thank you for inviting me to testify today on the issue of the Affordable Care Act’s (ACA) navigator program.

I’m sorry I can’t be with you in person.

I am here today not only as the Representative of Pennsylvania’s 16th Congressional District, but also as chairman of the House Energy and Commerce Subcommittee on Health.

My subcommittee has been exploring implementation of the Affordable Care Act for the last three years.

As you know, ACA Section 1311 directed states to set up health insurance exchanges or marketplaces to facilitate the buying and selling of qualified health plans (QHPs) under the law. It also authorized the Secretary of Health and Human Services (HHS) to establish exchanges in those states, such as Pennsylvania, which chose not to run their own exchanges.

Section 1311 also required the newly-established exchanges to operate programs in which “navigators” conduct public education activities to raise awareness about the ACA, distribute fair and impartial information concerning enrolling in QHPs and the availability of premium tax credits, and facilitate enrollment in QHPs.

When a majority of states opted not to establish their own exchanges, HHS set up an In-Person Assister program that is essentially identical to the navigator program, except for the funding streams.

On August 15, 2013, CMS announced \$67 million in one-year grants to 105 navigator entities, including \$2.7 million in grants for Pennsylvania.

I have several serious concerns with the navigator and assister programs, including the risk of fraud and abuse in these programs, the eligibility and training standards for these individuals, and other aspects of the programs’ management.

First, navigators and assisters have access to personally identifiable information (PII), including names, addresses, dates of birth, income levels, and Social Security numbers. However, there is *no federal requirement* that navigators and assisters undergo criminal background checks or fingerprinting.

This leaves Americans who are trying to comply with the law's requirement to purchase insurance open to potential identity theft and financial loss.

By comparison, HHS required all employees of the government contractor hired to process paper applications for the exchanges to undergo background checks and fingerprinting, and U.S. census workers and IRS employees who conduct outreach activities similar to those of navigators are subject to these same requirements.

On November 6, 2013, while being questioned by Sen. John Cornyn in front of the Senate Finance Committee, HHS Secretary Kathleen Sebelius agreed with the Senator's assertion that "a convicted felon could be a navigator and could acquire sensitive personal information from an individual, unbeknownst to them."

While individual states can choose to require background checks, even this does not ensure that convicted felons won't be serving as navigators, as seen in California.

Covered California, the state's health exchange, has released information showing that at least 43 convicted criminals have been hired in that state, despite the fact that background checks uncovered convictions for repeat forgery offenses, welfare fraud, burglary, and other serious crimes.

In approximately 30 states, there are *no* screening requirements at all for potential navigators.

Further, Americans' privacy and security could not only be compromised by navigators and assisters with convictions for financial fraud, identity theft, and other crimes, but also by those impersonating legitimate navigators and assisters.

The Federal Trade Commission's website currently states: "With the Affordable Care Act in the news, scammers are on the prowl, calling, emailing, sending letters and texts, trying to get your money – and your personal and financial information. Scammers know you have questions about the new Health Insurance Marketplace, and they're taking advantage of that to mislead you."

So, what is a consumer to do if approached by someone claiming to be a navigator or assister?

Don't contact HHS to verify if the person is legitimate. The Department considered whether it should maintain a list of certified navigators and assisters, but then decided *against* doing so. HHS, therefore, is unable to confirm if a particular person is with a legitimate organization.

HHS also debated and then decided *against* requiring navigators and assisters to carry any sort of official documentation or identification.

As far as I'm concerned, this leaves consumers with essentially no way to determine if the person offering to help them enroll in an insurance plan is a valid navigator or assister or a con artist.

Second, with the vast complexities of the Affordable Care Act and the insurance market, I am concerned that the training and educational requirements for navigators and assisters are inadequate.

HHS first announced that these individuals would be required to undergo 30 hours of training. While I believe even that amount of time is not adequate to properly educate navigators and assisters, HHS then announced that 20-30 hours of training would be sufficient. Now, navigators and assisters are required to take "approximately five to 20 hours of training," and while they must pass exams, the exams are done online and an individual has an unlimited number of attempts in which to pass.

There is also no requirement that navigators and assisters have a high school diploma or equivalent degree.

Third, while navigators and assisters are supposed to be free of conflicts of interest, a number of organizations that received navigator grants are paying their employees based on the number of people they enroll, creating an incentive for navigators to maximize enrollment any way they can.

In Texas, a navigator counseled an applicant to lie about his annual income to qualify for greater federal subsidies, making enrolling through the marketplace a more attractive option.

In North Carolina, a navigator organization has been collecting and mailing paper insurance applications for individuals, despite it being a prohibited action under the program.

Navigators and assisters are not even required to tell potential applicants that they are paid per enrollee.

And, unlike agents and brokers, navigators and assisters are not personally liable if they give out incorrect information or fail to fill out forms properly and an individual is damaged financially as a result.

So what can states do to protect their consumers and instill confidence in them that they can safely use navigators and assisters?

States may require that navigators and assisters undergo criminal background checks and fingerprinting; be licensed or certified; and pass more stringent training tests as a condition of employment.

I commend you for holding this hearing today and considering legislation, such as SB1268, introduced by Sen. Eichelberger.

My understanding is that this bill would require navigators to register with the Department of Insurance, and, prior to receiving approval, pass a criminal background check, submit a full set of fingerprints, and complete training on Pennsylvania's privacy laws and the distinctions between navigators and insurance agents and brokers.

These seem like commonsense steps to protect Pennsylvanians, where the federal government has failed to do so.

Thank you for inviting me to testify today, and I would be happy to answer any of your questions.