



BEFORE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Comments of Project Vote, Demos, the League of Women Voters, Fair Elections Legal Network, and Health Care for American Now on Standards for Navigators and Non-Navigator Assistance Personnel

I. INTRODUCTION:

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Through its research, advocacy, and direct legal services, Project Vote works to ensure that these constituencies are able to participate fully in American civic life by registering and voting. In pursuit of this goal, Project Vote has also been a national leader in increasing implementation and enforcement of Section 7 of the National Voter Registration Act (NVRA), 42 USC §1973gg-5, which requires that certain offices providing public assistance also offer voter registration services. Working with other civil rights organizations, Project Vote has improved Section 7 compliance in 18 states through investigation, cooperative efforts, and litigation.

Dēmos is a research, public policy, and advocacy organization dedicated to building a more democratic and equitable America that promotes the common good. Dēmos combines original research, focused advocacy, and multi-platform communications strategies to advance four fundamental changes to American society: 1) to rebuild pathways to the middle class for all Americans; 2) to reduce the role of wealth and corporate power in politics and policy; 3) to develop a new, reformed economic model for capitalism that promotes the common good; 4) and to reduce racial and class inequities in power, representation, and participation. Dēmos' work has brought about real progress toward political and economic equality for all Americans, with recent successes including the facilitation of voter registration applications by 1.8 million new, primarily low-income voters through work to implement the oft-neglected National Voter Registration Act.

The League of Women Voters is a nonpartisan, community-based organization that encourages Americans to participate actively and knowledgeably in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League

now has more than 150,000 members and supporters, and is organized in approximately 800 communities and in every State. For over 90 years, the League has led efforts to protect and enhance every American citizen's right to vote.

The Fair Elections Legal Network (FELN) is a national, nonpartisan advocacy organization whose mission is to remove barriers to registration and voting for traditionally underrepresented constituencies and improve overall election administration.

Health Care for America Now (HCAN) is the nation's leading grassroots health care coalition and led the fight to win health reform. HCAN works to promote the Affordable Care Act, protect Medicare and Medicaid and advocate for fair taxes to support public services.

Project Vote, Demos, the League of Women Voters, FELN, and HCAN submit the following comments addressing the Proposed Rule regarding Standards for Navigator and Non-Navigator Assistance Personnel issued by Centers for Medicare & Medicaid ("CMS"), Department of Health and Human Services ("HHS"), published at 78 FR 20581-20597. CMS has requested comments on this proposed Rule.

Among other things, this proposed Rule establishes the standards related to conflict-of-interest, training, certification and recertification for Navigators and non-Navigator assistance personnel in Federal-facilitated Exchanges, including State Partnership Exchanges; and non-Navigator assistance programs and personnel in State-based Exchanges that are funded through federal section 1311(a) Exchange Establishment grants. In particular, proposed §155.215(b)(2) addresses the Training Module Content Standards for these Navigators and non-Navigator assistance personnel.

The proposed content for these training module standards does not address voter registration. For reason explained herein, these Navigators and non-Navigator assistance personnel are required pursuant to Section 7 of the National Voter Registration Act ("NVRA") to provide assistance with voter registration equivalent to the assistance provided in completing eligibility applications. Project Vote, Demos, the League of Women Voters, FELN, and HCAN therefore, urge CMS to include a training module standard that addresses voter registration.

II. BACKGROUND:

Section 7:

The National Voter Registration Act was enacted in 1993 with the express purpose of expanding voter registration by making it both simpler to apply and more accessible to demographic groups previously under-represented in the electorate. Section 7 of the NVRA sets forth specific requirements about how voter registration services shall be offered by public assistance offices. Under Section 7, public assistance offices shall: (i) distribute a voter registration application form **with each application for public assistance and with each recertification, renewal or application for a change of address** unless the individual applicant or client affirmatively opts out of voter registration by declining in writing to register to vote; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration

address; and **(iii) provide assistance in completing the voter registration form to the same degree that assistance is provided in completing own benefits applications (“equal assistance”)** See 42 U.S.C. § 1973gg-5(a)(6) (emphasis added).

Affordable Care Act and Section 7:

The Patient Protection and Affordable Care Act (“ACA”) requires the creation of a unitary application system that will allow any individual applying for health insurance, including those eligible for one of the many forms of health subsidies available under the ACA, to complete a “single streamlined application” that will be effective for whichever program is appropriate for that individual. 45 C.F.R. § 155.405(a). This application system will be operated by an entity called a Health Benefit Exchange (“Exchange”). (The Exchanges are governed by sections 1311 to 1321 of the ACA, as implemented by 45 C.F.R. § 155.) States may choose to operate their own Exchange, be covered by an Exchange operated by the federal government, or participate in a partnership between the federal government and the state.

Exchanges will be responsible for administering insurance affordability programs, including premium tax credits, Medicaid and the Children’s Health Insurance Program (“CHIP”), 45 C.F.R. § 155.300-335, and consumers will apply to these programs through the one streamlined application (herein after “eligibility application”). 45 C.F.R. § 155.405(a). These insurance affordability programs are public assistance. See, e.g., U.S. Department of Justice, *The National Voter Registration Act of 1993: Questions and Answers*, available at http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php (establishing that both Medicaid and CHIP are public assistance programs covered by the NVRA).

Because there will be one streamlined application for *all* consumers, which will include consideration of eligibility, this Exchange application will also be an application for insurance affordability programs, which are public assistance. The Exchanges will be administering applications for public assistance through the single streamlined application system, and are therefore subject to the National Voter Registration Act of 1993. 42 U.S.C. § 1973gg-5. Section 7 of the NVRA requires “all offices in [a] State that provide public assistance” to help certain applicants register to vote. 42 U.S.C. § 1973gg-5(a)(2) & (a)(6).

Navigators:

Sections 1311(d)(4)(K) and 1311(i) of the Affordable Care Act, and the regulations implementing those provisions, 45 C.F.R. 155.210, direct all Exchanges to award grants to Navigators who will provide fair and impartial information to consumers about health insurance, the Exchange, Qualified Health Plans (“QHPs”), and insurance affordability programs, including premium tax credits, Medicaid and CHIP. Thus, “Navigators will help consumers through the eligibility and enrollment process.” 78 FR at 20583. While Navigators will not determine eligibility and enroll applications in Qualified Health Plans, “Navigators may play an important role in facilitating a consumer’s enrollment in a QHP by providing fair, impartial and accurate information that assists consumers with submitting the eligibility application, clarifying the distinctions among QHPs, and helping qualified individuals make informed decisions during the health plan selection process.” 78 FR at 20583. And this Rule proposes that “Navigators should

be trained so that they will be prepared to fulfill the duty at §155.210(e) to ‘provide information and services in a fair, accurate and impartial manner,’ including the requirement that ‘such information acknowledge other health programs’ including Medicaid and CHIP.” 78 FR at 20589.

Given these regulatory requirements, Navigators and other non-Navigator personnel will clearly provide assistance to individuals applying for public assistance, such as the premium tax credits, Medicaid and CHIP. Because the Navigators will be providing consumers assistance in completing the Exchange eligibility application, they are providing assistance with public assistance applications and, therefore, pursuant to the requirements of Section 7, must provide consumers equal assistance in completing voter registration application forms. This means that Navigators and other non-Navigator personnel must provide the same degree assistance in completing voter registration application forms as they provide in completing the eligibility application, unless the consumer refuses such assistance.

III. PROPOSED TRAINING FOR NAVIGATORS:

The Rule proposes a number of areas for the module content standards for the training of Navigators and other applicable non-Navigator assistance personnel, including training so they are equipped with the necessary information to help consumers apply for coverage through the Exchange; training on privacy and security requirements for the protection of personally identifiable information, including relevant state laws; training to educate consumers about the advance payment of the premium tax credit and cost-sharing reductions and help them submit the appropriate information to receive an eligibility determination for insurance affordability programs; and training so that they can fill their duty to provide information and services in a fair, accurate and impartial manner, including the requirement that such information acknowledge other health programs, including Medicaid and CHIP. *See* 78 FR at 20589.

But there is no mention of training related to voter registration. As explained, to comply with the requirements of Section 7 of the NVRA, Navigators and other non-Navigator assistance personnel must provide assistance to consumers regarding voter registration that is equal to the assistance they provide to consumers in completing the eligibility applications. We, therefore, recommend that a training module regarding voter registration be included in the Navigator training.

This training regarding voter registration should include instruction to Navigators and other non-Navigator assistance personnel that voter registration is part of the eligibility application and that they must provide consumers the same level of assistance in completing voter registration applications forms as they provide with completing the eligibility applications unless the consumer specifically refuses such assistance. This instruction should be part of the standards created for the training.

To ensure the provision of equal assistance, the content of the voter registration component of the training should also include, among other things, instruction about how to complete and submit a voter registration application and should provide such instruction in a culturally and linguistically appropriate way (including through the use of foreign-language assistance). More

specifically, there should be instruction regarding each of the elements of a voter registration application and the different options for consumers to receive voter registration application forms. For example, it will be important to provide information as to whether online voter registration is offered by the consumer's home state and, if so, who is eligible to use that option; and instruction on how to provide a consumer the voter registration application form if there is no online voter registration available or the consumer cannot use the online voter registration (for example because they do not have a driver's license). The training should also include information about how a consumer can submit a voter registration application form once it is completed. Additionally, if the consumer is able to download and print-out the voter registration application form while the Navigator is assisting the consumer, the Navigator should be trained to review the voter registration application form to ensure that required information, including the signature, is provided.

IV. IMPORTANCE OF INCLUDING VOTER REGISTRATION IN TRAINING:

In addition to ensuring that Navigators and other non-Navigator assistance personnel are trained so that they can comply with Section 7, including voter registration as a topic in the module content standards for the Navigator training is important for two policy reasons.

Purpose of the NVRA and Navigators is similar:

The purpose of Section 7 of the NVRA is to ensure that voter registration is offered to individuals applying for public assistance because these individuals are not likely to have an opportunity to register to vote through other means, such as at the department of motor vehicles. *See* H.R. Rep. No. 103-66, at 15 (1993) (House-Senate Conference Report). Similarly, "Navigators are an important resource for all consumers, particularly communities that are under-represented in the current health insurance market." 78 FR at 20583. The goal of both these statutes is to provide assistance to individuals with limited access to other resources of assistance. It is consistent with the purpose of the Section 7 of the NVRA to have the Navigators provide assistance with voter registration to ensure that the voter registration opportunity including in the eligibility application is a meaningful opportunity. And similarly, it is consistent for the purpose of having Navigators as part of the Exchange system if they are trained to provide assistance with every part of the eligibility application, including the voter registration question.

States with State-based Exchanges will look to the Federal Training Standards for Guidance:

The content of the standards proposed in this Rule are also important to the Navigators and non-Navigator assistance personnel not funded through Exchange Establishment grants for State-based Exchanges; State-based Exchanges will be looking to CMS and the federal Navigator and non-Navigator assistance personnel programs, to provide guidance for what these programs will look like in State-based Exchanges, and what is required by the NVRA for the Exchanges. As noted by the proposal, "we believe that State-based Exchanges may find the federal standards to be useful models, and could draw upon them as they develop and disseminate conflict-of-interest and training standards for Navigators [for State-based Exchanges], or when establishing standards for any non-Navigator assistance program that is established by the State-based

Exchange that is not funded by federal 1311(a) Exchange Establishment grants.” 78 FR at 20585.

V. CONCLUSION

Project Vote, Demos, the League of Women Voters, FELN, and HCAN commend CMS for the overall thoroughness of the proposed Navigator training standards. But as noted the proposed standards should be expanded to include instruction on providing equal assistance with voter registration. This addition to the training is important because it will make the training consistent both with the purpose of the NVRA and the purpose of the Navigator program, namely to assist currently under-represented and under-served populations. Moreover, the State-based Exchanges are likely, and in fact encouraged, to rely upon the federal training standards for their own training programs. This underscores the necessity for CMS to create training standards for Navigators that are in full compliance with the NVRA.

Finally, we also recommend that CMS release for notice and comment the specific content of the Navigator training program once it is complete (the actual substance of the training) so that individuals and entities with expertise in the different components of the training program can provide further comment and recommendations. Project Vote, Demos, the League of Women Voters, FELN, and HCAN remain available to offer any additional assistance.