



Agents, Brokers and Navigators: Issues to Consider When Creating A State-Based Health Insurance Exchange

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The Starting Point



PPACA requires every state to have an exchange as a health insurance purchasing option for individual consumers and small employers.

Exchanges will be a purchasing portal for subsidized and unsubsidized qualified health plans, as well as an enrollment point for Medicaid, CHIP and other state public health assistance programs.

PPACA requires every exchange to have a Navigator program to facilitate health plan enrollment.

Agents and brokers are specifically listed by the law as one of the groups that may be Navigators, but the law also stipulates a compensation/financing method that conflicts with traditional agent compensation structures.

PPACA specifically provides for state health insurance exchanges to choose to utilize the services of agents and brokers beyond the navigator program to help exchange customers both with enrollment in qualified plans and also with the premium tax credits.

Existing laws in every state provide for licensed health insurance producers to sell and service all health plans offered in the state.

Issues to Address

- The use of agents and brokers in an exchange, both as navigators and/or through traditional means
- Funding of navigator program
- Compensation of agents and brokers and individuals performing navigator functions
- Regulation of navigators, agents and brokers

Navigator Duties Required by PPACA

- Conduct public education activities to raise awareness of the availability of Qualified Health Plans;
- Distribute fair and impartial information concerning enrollment in Qualified Health Plans, and the availability of premium tax credits and cost-sharing reductions in accordance with federal tax laws;
- Facilitate enrollment in Qualified Health Plans;
- Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman, or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage;
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange.

Strengths of Navigators, Agents/Brokers

Navigators

Ability to provide outreach to special and underserved populations

Language and/or cultural expertise

Familiarity with public sector health programs

Potential Overlap

Public Education

Marketing and advertising

Distributing fair and impartial information about coverage options

Facilitating enrollment in Qualified Health Plans

Providing referrals to appropriate state entities to address questions, grievances or complaints

Agents and Brokers

Familiarity with private health insurance markets and coverage options

Coordination and integration of all benefits (LTC, disability, life insurance, dental, vision, Medicare products, financial services)

Assistance with coverage issues (networks, authorizations, etc.)

Assistance with claims issues throughout the plan year (resolving matters with providers, insurers, assisting with appeals)

Assistance with policy renewals (plan comparisons, benefit utilization analysis, negotiation of appropriate benefits)

Integration of cost-saving measures (wellness programs, disease management, plan utilization)

Assistance with detailed employer/employee enrollment issues (verifications, participation requirements, certifications etc.)

Familiarity with state insurance regulators, laws, regulations and programs

Compliance assistance (HIPAA, COBRA, ERISA, PPACA, Medicare Secondary Payer, plan testing, etc.)

Precedent for Traditional Agent Involvement

- *Utah Exchange*
- *Massachusetts Connector*
- *Existing State-Level Private Health Insurance Exchanges*
- *Previous State-Level Purchasing Pool Experiments*
- *State-Level High Risk Pools*
- *State-Level Subsidy Programs*
- *Long-Term Care Partnerships*
- *Federal Preexisting Condition Insurance Plan*



Financing of the Navigator Program

Financing Navigators

- PPACA requires that states finance their navigator programs using grants.
- Additionally, a navigator may not receive any direct or indirect compensation from a health insurance issuer.
- States may not use federal exchange grant funds to establish or pay for navigators.
- The state Medicaid/CHIP programs may claim a portion of the navigator expenses, if the navigator facilitates enrollment in those programs.
- An Exchange may charge a separate fee to compensate the navigator

Questions to Raise

- Are navigators paid in lump sum grants or on a per-head basis?
- Are payments made to individuals or entities?
- Are payments consistent across markets and/or products?
- Are accountability standards in any way tied to payments?
- Are exchange users charged a navigator fee?
- How do you segment exchange operating funds that may stem from a carrier?
- How do you prevent conflicts of interest?

Agent/Broker Compensation

Restrictions on navigator compensation not coming directly or indirectly from a carrier is at odds with the traditional independent producer compensation model.

Exchanges may be able to resolve that conflict by using agents and brokers to assist exchange consumers outside of the navigator program.

Issues to consider

- *Does producer compensation come from the exchange or the carriers?*
- *Consistency of compensation between markets to maintain a level playing field and avoid adverse selection*
- *PPACA requirement that premiums not vary based on whether or not an agent is used for purchase*
- *Are exchange consumers charged a producer fee outside of the premium?*

Licensure Issues To Address

- Will navigators be individuals or entities?
 - *If entities, should that entity be appropriately licensed/regulated by the state?*
- How will the state ensure legitimacy and accountability?
- Should entities be responsible for the conduct of their employees and/or volunteers? Or should these individuals be held personally accountable/licensed as well?
- What liability will navigators have?
- How will potential complaints and/or grievances be addressed?
- How should individual performing navigator functions be regulated and held accountable?
 - *Producer Licensure?*
 - *Exchange-specific Certification?*

What are the consumer protection issues involved?

- Protection of Access to highly sensitive information
 - Financial information
 - Identifying information (SSNs)
 - Protected Health Information
- Fraud Prevention
- Protection against mistakes that could have severe financial consequences for consumers

Existing Regulation of Agents and Brokers

- Agents and brokers have been regulated by state insurance departments for 100+ years and are legally accountable for their actions
- National Insurance Producers Registry (NIPR) is the national database and means of tracking producer activity in all states and territories
- To be in business agents/brokers must:
 - *Comply with state licensing requirements (fees, background check, etc)*
 - *Pass licensing exam*
 - *Comply with CE requirements*
 - *Demonstrate financial responsibility*
 - *Maintain professional liability insurance*
 - *Maintain appointment standards with licensed insurers*

Existing State Laws Regarding Agent/Broker Licensure



- State laws on producer licensure are extremely consistent from state-to-state
- State-level licensing uniformity was mandated by the Gramm-Leach-Bliley Act enacted in 1999
- Existing state laws are based on the NAIC Producer Licensing Model adopted in 2000

What triggers the need for an insurance producer license in every state?

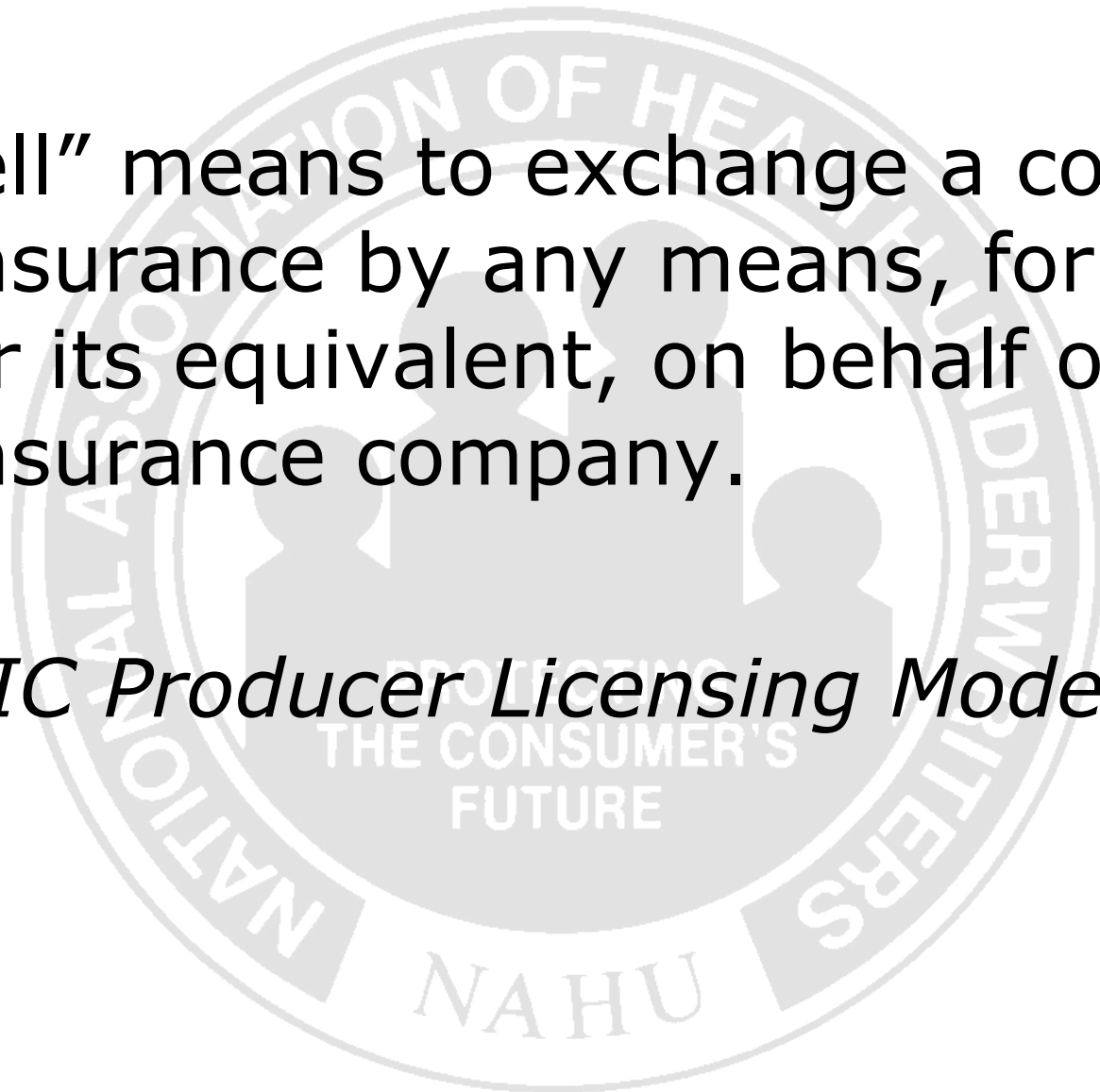
- It's not:
 - Where an individual works
 - An individual's job title
 - How an individual is compensated
- It is:
 - the individual's actions

“A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Act.”

NAIC Producer Licensing Model Act

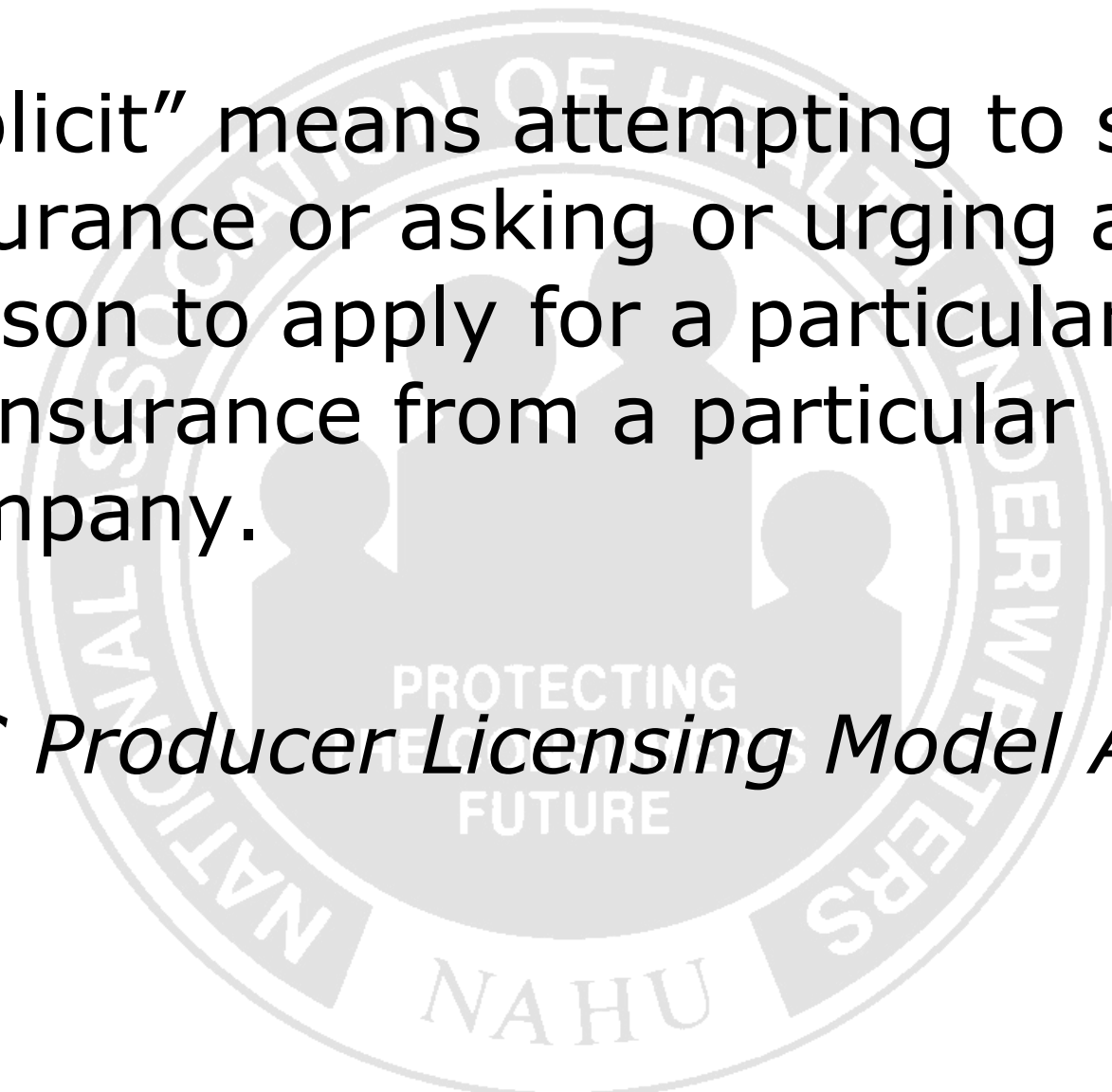
“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

NAIC Producer Licensing Model Act



“Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

NAIC Producer Licensing Model Act



“Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

NAIC Producer Licensing Model Act

Exchange-Specific Certification

Beyond the issue of producer licensure, states need to consider whether or not they want to require additional “exchange-specific certification” for navigators, producers and/or other exchange personnel. This will be a new market with new requirements, subsidies, programs, products, etc. and specific training may be warranted.

Issues to consider include:

- Precedent/existing structural models including the Utah Exchange, state-level subsidy programs, LTC partnerships, Medicare Advantage
- How will it be structured, enforced, tracked?
- Will different types entities/individuals receive different training?
- Will accountability standards be involved?

For More Information

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