

Utah Navigator Legislation Draft: Analysis and Recommendations



Health insurance exchanges are supposed to make it easier to purchase health insurance. But no matter what the customer interface looks like, some people will need help making their selection of qualified health plan. This is especially true in Utah, where the vast majority of the [estimated 377,000 uninsured](#) live in low-income households...

- 95% of the uninsured in Utah are in households with incomes less than 400% FPL (federal poverty level), meaning if they buy private health insurance in the new individual health insurance exchange they will qualify for premium tax credits.
- 76% are in households with incomes less than 200% of poverty, meaning they would potentially be eligible for the Basic Health Plan if Utah chooses to adopt it, or if they are children, they are eligible for the Children’s Health Insurance Program or Medicaid.

These numbers tell us that most Utahns who will be using the new exchange will have no or little experience with health insurance. What they need are “Navigators.” The ACA (Affordable Care Act) specifies that navigators will be trained, unbiased helpers who will do outreach to those who are eligible for coverage, help them choose a qualified health plan or, if eligible, enroll in Medicaid. Ideally they would help people understand and make good use of their benefits. Utah legislators face critical decisions in the design of the Navigator program, including: standards that entities must meet to be awarded Navigator funds; the training standards that all navigators must meet; deciding if Navigators have to meet any licensing, certification, or other standards; how entities will be awarded Navigator funds; how Navigators funds will be generated (for example, a service charge through the exchange).i

The draft legislation (October 26) circulated to the Insurance Market Reform Workgroup OF THE Health Reform Task Force seems geared more to brokers and less to community-based organizations (CBOs) that may be well positioned to serve the population in need. As long as they have no conflicts of interest, brokers *should* play a prominent role as navigators. But are they equipped to serve the populations that need help the most? Do they know where to find them? Will they want the (likely) lower commissions from the Exchange? Some of the parameters of the draft could make it more difficult for nonprofit community-based groups to serve as Navigators, as required by Federal regulations. This legislation needs to find the right balance between protecting consumers (for example from bad navigators) and making it possible for community-based organizations (CBOs) that know how to reach the target population to serve as navigators. The licensing or certification requirements should not be so onerous that qualified CBOs are disqualified or discouraged from applying. Most of our suggestions are designed to achieve this balance. Many could be addressed through the formation of a Navigator Advisory Committee.

SECTION/PAGE (10/2012 draft)	TITLE/CONTENT	QUESTIONS/COMMENTS	SOLUTIONS
Section 103/p. 1			
	Defines “enroll” as to mean advising	What does it mean to “solicit” insurance. “Solicit” should maybe have its own definition	Navigators should walk through plans and different options, but not actually sell or

	and <i>soliciting</i> insurance	in this section. In the world of insurance, “solicit” usually means attempting to sell insurance or urging a person to apply for a particular kind of insurance from a particular company.	solicit the insurance. The word “solicit” may be confusing in this respect. See the Federal definition?
Section 103/p. 1			Add new (2): “Commissioner’ means the Insurance Commissioner in cooperation with the Departments of Health and Workforce Services as facilitated by the Office of Consumer Health Services in the Governor’s Office of Economic Development;” Renumber all subsections that follow.
Section 103 / p. 3	Describes who can be a navigator	Subsection (b) (i) (A) says the navigator includes an in-person assister as described in federal regulations or PPACA guidance. These important qualifications should be spelled out in statute.	Add these clauses to (b) (i) (A): “Including but not limited to persons with expertise in: (i) the needs of underserved and vulnerable populations; (ii) eligibility and enrollment rules and procedures; (iii) the range of QHP options and insurance affordability programs; and, (iv) the privacy and security standards applicable under 45 CFR 155.260.
Section 103 / p. 3	Prevents providers from being navigators.	A lot of states are up in the air on this – there are pros (some may have good access to or trust with consumers in need) and cons (some may have conflicts of interest).	May not want to make this exclusion explicit in legislation. Maybe Utah’s navigator program should be designed first so that these and similar issues fall into place?

Section 201 /p. 4	Navigators must be licensed as such. They must have a navigator license or a producer license.	Licensure is part of the world of brokers. It has professional connotations that may exclude community organizations from the process. For example, peer counselors in the mental health community may be in the best position to help people with serious mental illness select a health plan, but these individuals may find a licensing requirement onerous or intimidating. PPACA does not require licensure, only certification, which is softer. Licensing requirements may discourage participation by nonprofit entities which are most familiar the target population, especially the 76% of uninsured with income < 200% of poverty.	Requirement should be the least onerous possible for all groups seeking to qualify as navigators, e.g. certification. Consider separate qualifications (for certification only?) for community nonprofit navigators or assisters.
Section 202/p. 4	Insurance commissioner issues and revokes navigator licenses.	Navigators are supposed to be certified by an Exchange (not the insurance commissioner) and we don't see that in here. This may violate CCIIO's regulations on Navigators.	Licensing (or certifying) authority should be assigned to the Exchange rather than Insurance Department., Or the Insurance Department should exercise this authority in conjunction with the Exchange. Streamline certification qualifications consistent with risk of abuse in case of community nonprofit navigators.
Section 202/p. 6,7	Requires extensive criminal background check FEES MUST BE PAID BY APPLICANT (P.7)	The criminal background seems overzealous. This degree of background check may also reduce the ability of community partners to participate. The fees for the background check may be onerous for nonprofit community-based navigators. We need to know how the criminal background checking is working now for brokers—maybe it's fine.	A criminal background check should be strong enough to protect consumers but not so strong (or expensive) that it discourages community-based organizations from serving as navigators. Consider reducing or waiving the fee for nonprofit CBO navigators or assisters—or cover the fees through a dedicated funding stream. The proposed Navigator Advisory Committee should give input on this.

Section 203/ p. 8			
	Applicant applies for license and pays a license fee.	How much is the fee for a license? If it's too expensive, nonprofit CBO navigators may not apply.	Waive or reduce the fees for nonprofit CBO navigators with a certain budget size (for example <\$500,000).
Sec. 204/ p. 9			
	Applicant for license must show good intent, etc. to engage as navigator	Unclear how the Commissioner will determine good intent, competence, or trustworthiness. There is a cultural overlay to these features of character. Find out how these elements are handled for brokers now.	A committee comprised of representatives from the target populations should be appointed to guide the Commissioner (or Exchange) in these determinations of character.
Sec. 205/ p. 10			
	Commissioner may require applicants to complete training and pass an exam.	It seems problematic that the insurance commissioner is developing the training for Navigators. Is that the right person to make this decision? The training components make sense.	There should be input on the training curriculum and selection of trainers from groups that actually serve the target population—from the proposed Navigator Advisory Committee. The Exchange grant should fund curriculum development.
Sec. 206/ p. 11-13			
	Commissioner prescribes continuing educ. requirements by rule; charge a fee for this (p. 13)	Again, requirements are consistent with licensure, but may not be suited to community nonprofit navigators. The continuing education topics make sense. Depending on amount, the fee could be onerous for community groups.	Community nonprofit navigators should be subject to refresher training every 2 years at a minimum with updates during the interim as changes in insurance options may dictate. The advisory committee should guide this process also.
Sec. 207/ p. 13-14			
	Navigator must be covered for the legal liability that may results from erroneous acts or failure to act as a navigator; EXEMPTS NAVIGATORS	The exemption is helpful, but given that 95% of the uninsured in Utah are in households with incomes less than 400% FPL (federal poverty level) and therefore eligible for premium subsidies, why have this requirement at all? These requirements are appropriate to navigators soliciting insurance, but not to community nonprofit navigators. This requirement may make it more difficult	Maybe find another way to hold navigators accountable. For example: create and fund a complaint line or a Yelp-like tool for consumer reviews. The Navigator Practice Act should do more than prevent errors and omissions. It should also support the recruitment and retention of effective navigators. Metrics

	WHOSE SCOPE OF PRACTICE IS LIMITED TO PUBLIC PROGRAM OR PREMIUM SUBSIDIES ENROLLMENT	for community partners to become navigators. CCIIO's regulations (preamble) are explicit that E&O insurance is not appropriate. This is basically saying that every Navigator in UT must be a broker – that is clearly not allowed, per the regulations .	are needed to measure their effectiveness in serving different segments of the target population.
Section 208/ p. 14			See above recommendations on licensure
Section 209/p. 15	Makes it possible for organizations to serve as navigator agencies thru individual that is licensed		
Sec. 210/ p. 17-18	Licensee must register their contact info and all records with Commissioner	This is fine, but should specify how licensee or certified navigator will follow personal health information protocols.	Specify how the records containing personal information of consumers will be housed to protect identity of consumers.
Section 211/ p. 19			See above recommendations on licensure
Section 301/ p. 21			See above recommendations on licensure
Section 401/ p. 24		Inapplicable to community nonprofit navigator	See above recommendations on licensure
Section 402/ p. 30			See above recommendations on licensure
Section 403/ p. 31			See above recommendations on licensure

			See above recommendations on licensure
Section 404/ p. 32			
			See above recommendations on licensure

CONCLUSION

Policy makers should design Utah’s Navigator program and policy with the population that will be using Navigator services in mind. To effectively reach the target population, UHPP recommends a “no wrong door” approach to navigation: Wherever people interact with the health care system, they should be able to find help in getting coverage. To these ends and to best address the concerns raised above, this legislation should form a Navigator Advisory Committee to guide the Insurance Commissioner (and the Exchange) in oversight and education of navigators. This committee should consist of representatives or advocates from the target populations, including: low-income uninsured, homeless, people with serious mental illness or substance use disorders, ethnic and groups with limited English proficiency, also the Exchange and broker community. It may make sense to revisit this draft legislation after the Health Reform Task Force decides what Utah’s navigator program should look like and how it should operate.

ⁱ <http://www.healthreformgps.org/wp-content/uploads/2.28.11-Rosenbaum-Exchange-Navigators.pdf>