



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

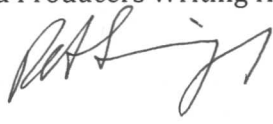
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Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

**BULLETIN
Docket No.: INS 13-009-AB**

TO: All New Hampshire Licensed Producers Writing Health Insurance in NH

FROM: Roger A. Sevigny
Insurance Commissioner 

DATE: April 26, 2013

RE: Producer Role in Assisting Consumers Using the NH Exchange/Marketplace

This Bulletin summarizes, on a preliminary basis, New Hampshire and federal law and guidance with respect to the role of insurance producers in assisting Marketplace and SHOP users and to explain the differences between the producer role and the roles of other assisters.

Background

On October 1, 2013, the New Hampshire Health Benefit Exchange¹ (Marketplace) and the Small Business Options Program (SHOP), both websites constructed and operated by the federal government, will begin enrollment in New Hampshire for Qualified Health Plans (QHPs) in the individual and small group markets. QHP coverage will take effect January 1, 2014, the same day individuals in New Hampshire become subject to the requirement under the federal Affordable Care Act (ACA) to either obtain health coverage or pay a tax penalty enforced by the federal government.

Income-eligible individuals who use the Marketplace and eligible small businesses that use the SHOP will gain access to subsidies and other assistance to help pay for health insurance. The Department expects that Marketplace users will seek assistance from licensed New Hampshire insurance producers. In addition, as of October 1, 2013, there will be two or more organizations operating as federally-selected and funded Navigators in New Hampshire. These Navigators, and potentially other types of entities, will also assist consumers in accessing premium subsidies and using the Marketplace.

¹ The federal government has determined that New Hampshire's Exchange will be called the New Hampshire Health Insurance Marketplace. New Hampshire has been conditionally approved for Exchange partnership status with respect to plan management and consumer assistance; however under federal law a partnership Exchange is still considered a federally-facilitated Exchange.

1. Producers in New Hampshire will have the option of assisting consumers enrolling through the Marketplace, and will be able to receive commissions and fees in connection with this work.

The ACA and regulations adopted by the federal Department of Health and Human Services (US DHHS)² give states the option of allowing agents and brokers to enroll qualified individuals, employers, and employees in QHPs through an Exchange. This option for producer involvement will allow producers to provide assistance not only with plan selection and enrollment, but also with completion of the application for subsidies to help make insurance affordable to eligible individuals.

A state law passed in 2012 allows New Hampshire producers to assist Marketplace users. The law requires the insurance commissioner to “allow producers to enroll individuals, employers, or employees in qualified health plans offered through a federally-facilitated exchange in this state, including enrollment using Internet websites.” RSA 420-N:8, IV.

The US DHHS has expressed its expectation that a QHP issuer participating in the Marketplace or SHOP will pay the same commission for a QHP sold inside and outside of an Exchange.³ While the mechanical details are still being worked out by the federal agency, the enrollment forms used in the Marketplace will include a place for identification of the producer’s registration number, to ensure payment of commissions by the issuer. Under federal regulations, a producer enrolling individuals in coverage through the Marketplace will be expected first to successfully complete a federally-designed training program and to enter into an agreement with US DHHS.⁴

2. Navigators and other assisters may not sell, solicit or negotiate insurance.

New Hampshire law prohibits persons assisting Marketplace users, including but not limited to Navigators, from acting as unlicensed producers:

Any person who sells, solicits, or negotiates insurance within the meaning of RSA 402-J:3 through a federally-facilitated exchange shall be licensed as a producer under RSA 402-J . . . This paragraph shall not be interpreted to require that all navigators as defined under the Act be licensed as producers, but rather that any individual who in fact performs a producer function be licensed, whether or not that person is employed by a navigator.

RSA 420-N:8, II. The Department has authority to establish standards and training requirements for Navigators (RSA 420-N:8, III), and intends to use this authority to make clear that Navigators may not recommend one plan over another. In addition, as part of its Consumer Assistance partnership, using funds awarded to it by US DHHS, the Department intends to oversee the day-to-day conduct of Navigators and other assisters, to assure that

² Section 1312(e) of the ACA and 45 C.F.R. § 155.220.

³ See CCIIO Final 2014 Letter to Issuers – April 5, 2013 (Section 10, Agents and Brokers, footnote 42): http://cciio.cms.gov/resources/regulations/Files/2014_letter_to_issuers_04052013.pdf.

⁴ See 45 CFR Section 155.220; additional federal guidance is expected to be issued in the near future.

these assisters are not acting unlawfully as unlicensed producers by steering consumers toward particular plans or carriers.

3. The Department intends to use federal grant funds to provide training for producers and to increase clarity about the roles of producers and other Marketplace assisters.

The Department has been awarded grant funds by the US DHHS to engage in a consumer assistance partnership.

The state has three central responsibilities in connection with consumer assistance:

- Monitor the activities of Navigators in the State, ensuring that Navigators treat consumers fairly and do not operate as unlicensed insurance producers;
- Develop, monitor and operate a “Marketplace Assister” program, which will:
 - temporarily (until the end of 2014) supplement the Navigator program; and
 - focus on enrolling currently uninsured populations within New Hampshire, particularly those who will likely be eligible for subsidies; and
- Conduct other outreach and education activities, which the Department expects will include working with local stakeholders to:
 - Provide accurate and up-to-date information explaining from a New Hampshire-specific perspective the requirements applicable to individuals, small business and those assisting them in any capacity, including producers; and
 - Facilitate a warm handoff between assisters and producers whenever a consumer asks for a recommendation about a health plan.

In designing the education and outreach programs, the Department is particularly interested in creating clear expectations about the roles of the different assisters, and establishing procedures for handoffs between them.

4. Next steps

On April 26, 2013, the Department issued a survey to licensed producers writing health insurance in the state, seeking information about their intentions with respect to assisting users of the federal Marketplace.

In addition, after the survey results are available, the Department plans to meet with producers who are interested in writing health coverage through the Marketplace or who would like to discuss the relative roles of New Hampshire producers and others providing assistance to Marketplace users. Any producers interested in attending this meeting should contact Marlene Sawicki at Marlene.sawicki@ins.nh.gov to be placed on the list to receive the meeting announcement.