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May 14, 2013

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Ave, SW
Washington, D.C. 20201

Dear Secretary Sebelius,

I write expressing serious concerns with the Department of Health and Human Services' (HHS) proposed rules on health insurance exchange "navigators" pursuant to the President's health care law. The administration has moved in a direction that broadens the intended size and scope of the Navigator program, resulting in the illegal use of taxpayer dollars and potentially violating patient privacy laws. According to HHS guidance, the federal government will soon be offering grants to navigators working in states that opted to use federal healthcare exchanges, as well as for "non-navigator assisters" that were never mentioned in the law. As these individuals will have access to sensitive taxpayer information, I respectfully request that you provide answers to the following questions by no later than May 25, 2013.

Section 1311(i) of the Patient Protection and Affordable Care Act (PPACA) explicitly states, "[Navigator] Grants under this subsection shall be made from operational funds of the exchanges and not Federal funds received by the state to establish the Exchange." However HHS guidance allows navigators and non-navigator assisters to assist individuals in signing up for health insurance through federal and state-based exchanges, and will be funded in part through \$54 million in taxpayer-funded grants from the Prevention and Public Health Fund (PPHF). In addition, Section 4002 of the law only gives the Secretary authority to transfer prevention funds for the purposes of "prevention, wellness, and public health activities," which does not match the role your department has identified for the Navigator program. Does HHS still plan on financing the Navigator program through the PPHF? If so, how does this action comply with the law under Section 1311(i) and Section 4002?

The proposed rule also extensively outlines potential "conflicts of interest" by prohibiting any individual who has accepted compensation from an insurer from being a navigator, but does not require background checks for eligible navigators who may be members of a labor union, politically active tax-exempt organization, political party, or individuals with a record of identity theft potentially permitting convicted felons or non-citizens to possess sensitive information. These individuals are tasked with recording personally identifiable information such as Social

Security Numbers, bank statements, income and assets, and health status on paper enrollment forms, which puts at risk the security and privacy of American citizens. What steps will HHS take to ensure that these paper documents are handled in a manner compliant with patient privacy laws under the Health Insurance Portability and Accountability Act (HIPAA)? What penalties will be enforced should a navigator or non-navigator assister, intentionally or by human error, break the law? How will HHS know when a HIPAA violation has occurred?

The limited amount of time navigators and non-navigator personnel will have to receive the required training on privacy and security issues, the Exchange, Qualified Health Plans (QHPs) and insurance, new complexities in the tax code- including the law's premium tax credits, Medicaid, and the Children's Health Insurance Program (CHIP), increase the likelihood of human error and grants being distributed to applicants that do not intend to use these funds in the best interest of the taxpayer. HHS has prohibited individuals such as insurance brokers from participating in the Navigator program, ignoring their vast experience in steering the complexities of the health insurance industry and adhering to HIPAA laws, and will instead offer substantial taxpayer dollars to conceivably politically connected and inexperienced individuals and groups to handle private information. To what extent will navigators and non-navigators receive education and training to become experts in the programs mentioned above including; length of training sessions, range of experience in these public programs prior to enactment of PPACA, and comparable education and quality assurance that is contingent upon private brokers maintaining their license?

The greatest portion of taxpayer funds should be dedicated to treating patients, not paying politically connected and inexperienced navigators. The Administration has a responsibility to ensure individuals and families receive the most accurate information regarding all health coverage options, both in and out of the PPACA exchanges. Continuing to fund this program outside of operational funds is a gross violation of the law and failing to enact real safe-guards for this program breaches each person's Fourth Amendment right to privacy under the Constitution.

Thank you for your attention to this matter and I look forward to your response.

Sincerely,



Diane Black
Member of Congress