

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

September 18, 2013

To: Committee on Energy and Commerce Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Preliminary Findings of Affordable Care Act Navigators Investigation

On August 29, 2013, Chairman Upton and 14 Republican members of the House Committee on Energy and Commerce sent a detailed request for documents and briefings to 51 groups that received grants to serve as Navigators to help the uninsured sign up for benefits under the Affordable Care Act.

The following day, Ranking Member Henry A. Waxman wrote: "there is no legitimate predicate for these letters and no evidence of any malfeasance from any of the organizations. It is an abuse of your oversight authority to launch groundless investigations into civic organizations that are trying to make health reform a success."

The Committee has received grant applications and other information from 42 of the 51 organizations. A review of these applications reveals that there is no basis for the Republican concerns about the Navigator program. It finds that:

- **Navigators will help millions obtain health insurance coverage.** The recipients of the Navigator grant aim to directly enroll over one million uninsured people in the Health Insurance Marketplaces and Medicaid and will reach an additional 7.3 million people through public education efforts.
- **Navigators have extensive experience assisting individuals with federal and state benefit programs.** The role of educating and enrolling individuals for benefits is not a new role for these organizations; most have vast experience helping individuals in targeted communities with Medicaid or other health insurance coverage, food security programs, legal services, and other counseling or assistance programs.

- **Most Navigators are nonprofit, community service providers, and all Navigators are nonpartisan organizations.**
- **Navigator grant recipients have effective privacy protections in place.** All the grant recipients must abide by statutory provisions providing for the privacy and security of personally identifiable information under the Affordable Care Act, and many are taking additional steps to protect individuals' privacy or already have extensive experience handling highly sensitive personal financial and health data information

I. BACKGROUND

On August 29, 2013, Chairman Upton and 14 Republican members of the House Committee on Energy and Commerce sent request letters to 51 groups that received grants to serve as Navigators to help the uninsured sign up for benefits under the Affordable Care Act. The letter demanded that the groups provide “all documents and communications related to your Navigator grant,” and asked that they provide briefings and answer many questions on organization budgets and employee training, education, monitoring, review, and supervision.¹

The following day, Ranking Member Henry A. Waxman wrote: “there is no legitimate predicate for these letters and no evidence of any malfeasance from any of the organizations. It is an abuse of your oversight authority to launch groundless investigations into civic organizations that are trying to make health reform a success.”² He concluded that the impact of the Republican investigations “is not to enlighten the Committee, but to intimidate and divert resources from the effort to implement the law.”³

Recent comments by Republican Committee member Rep. Renee Ellmers, who signed the Committee’s original letter, appear to confirm Ranking Member Waxman’s concern. The *Charlotte News and Observer* reported that “she said she would be pleased if the congressional navigator inquiry stymies the nonprofits planning navigator work. ‘If this ended up resulting in a delay, I wouldn’t be unhappy about it,’ Ellmers said.”⁴

One organization that received the letter from the Committee has withdrawn from the program and returned the funding, telling the Committee that it is returning the grant because “emerging State and Federal regulatory scrutiny surrounding the Navigator program requires us to allocate resources which we cannot spare and will distract us from fulfilling our obligations to

¹ See, e.g., Letter from Chairman Fred Upton et al. to Arizona Association of Community Health Centers (Aug. 29, 2013).

² Letter from Ranking Member Henry A. Waxman to Chairman Fred Upton (Aug. 30, 2013).

³ *Id.*

⁴ *NC Groups Working to Implement Health Care Law Targeted by GOP Data Request*, *Charlotte News and Observer* (Sept. 7, 2013) (online at www.newsobserver.com/2013/09/07/3166895/nc-groups-working-to-implement.html#storylink=cpy).

our clients.”⁵ The grant to this organization, Cardon Outreach, was to fund outreach activities in Pennsylvania, Ohio, Florida, and Utah.⁶

On September 9, 2013, the Department of Health and Human Services (HHS) responded to the Committee’s request. In an effort to “enable the Navigators to focus on training staff to begin to assist uninsured Americans,” the Department answered the Committee’s questions and provided copies of the Navigator grant applications. The Department produced 42 grant applications from the 51 organizations originally requested by the majority. At the request of Ranking Members Waxman and DeGette, Democratic staff reviewed the Navigator grant applications produced by the Department. This memo provides a summary of the preliminary findings of this review.

II. FINDINGS

A. Navigators Will Help Millions of Americans Obtain Health Care Coverage

According to their application materials, the recipients of the 42 Navigator grants reviewed by the Committee will directly enroll nearly 1.1 million uninsured people in the Health Insurance Marketplaces and Medicaid. They also expect to assist an additional 7.3 million people through public education efforts – such as marketing campaigns, community enrollment and education events, and extensive information, outreach, and referral services – about the benefits of the Affordable Care Act.

In Texas, Navigators will help over 450,000 people sign up for health insurance coverage and will educate over 1.2 million; in Florida, Navigators will help over 330,000 people sign up for health insurance coverage and will educate more than 830,000.

Many of these groups will focus on ensuring that minorities, low-income individuals, individuals with mental illnesses or substance abuse problems, and other vulnerable populations have access to health care coverage under the law. One organization explains that its “primary target clientele are Hispanic field workers and their families.”⁷ Their programs “reach a variety of ethnicities and communities, but most clients have limited education, many limited English language skills, and are culturally Hispanic.”⁸ Another organization will target specialized navigation services to “people in recovery from mental illness and/or substance abuse, individuals in active addiction, or those who are seeking behavioral health treatment services.”⁹

⁵ Letter from Charles W. Kable, Cardon Outreach, to Members of the Committee on Energy and Commerce (Sept. 13, 2013).

⁶ *Citing scrutiny, firm won’t aid Pa. on ACA*, Associated Press (Sept. 17, 2013).

⁷ [Redacted], *Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges*, at 33 (June 6, 2013).

⁸ *Id.*

⁹ [Redacted], [Redacted] *has been developed [to] provide specialized navigation services to people in recovery from mental illness and/or substance abuse, individuals in active addiction, or seeking treatment*, at 26 (June 7, 2013).

A third organization explains that it traditionally “serves persons who are considered poor or working poor and who are in need of insurance. Some of these populations are single mothers with children, individuals who are victims of crime and domestic violence and urban populations.”¹⁰

B. Navigators Have Extensive Experience Assisting Individuals with Federal and State Benefits

Outreach to these vulnerable communities is not a new role for these organizations. One Navigator grant recipient explains its extensive experience, writing, “[s]ince 2008, our Benefits Access Program has linked families in need with public and private benefits for which they are eligible, especially food stamps, free tax preparation, utilities assistance programs, Medicaid, ... and most recently, disaster assistance in the aftermath of Superstorm Sandy.”¹¹

Another group states that over the last 12 years, it “has helped more than 80,000 individuals and families enroll in and retain public health insurance including Medicaid, Child Health Plus, and Family Health Plus.”¹² Another recipient highlights the work of just one of its nonprofit consortium members, explaining that it has “extensive prior experience assisting low-income individuals with public health insurance, such as Medicaid and CHIP, including applying the regulations to an individual’s situation, administrative and judicial appeals, and navigating the bureaucratic process inherent in the administration of public benefit programs.”¹³

At least one organization plans to complete the same education and outreach activities for the Affordable Care Act that is undertaken during the rollout of the Medicare Part D program. The organization explained in its Navigator grant application that in the past, it served as the lead “in an effort to enroll eligible, low-income populations in the Low Income Subsidy (LIS) and the Medicare Part D benefit.”¹⁴ The organization explained:

Beginning in 2004, this effort encompassed education and outreach efforts for initial efforts into these brand-new federal programs. [The organization] mobilized its network to hold regional enrollment events, conducted telethons, provided mobile enrollment services, fielded telephone inquiries through its hotline, performed eligibility screening, and completed hundreds of applications for the LIS and during open enrollment periods

¹⁰ [Redacted], *Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges*, at 12 (June 5, 2013).

¹¹ [Redacted], *Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges*, at 12 (June 6, 2013).

¹² [Redacted], *Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges*, at 43 (June 6, 2013)

¹³ [Redacted], *Statewide consortium of navigators to enroll the uninsured into the federally facilitated marketplace*, at 23 (June 6, 2013).

¹⁴ [Redacted], *Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges*, at 34 (June 5, 2013).

for Medicare Part D. This experience demonstrates a long-standing commitment to expanding access to health coverage through public education and outreach.¹⁵

C. Most Navigators Are Nonprofit Community Service Providers

The grant applications reviewed by the Committee staff reveal that the vast majority of Navigators are nonprofit community service providers, many of whom have extensive experience in assisting low-income people with complex public benefit programs. Forty of the 42 organizations for which the Committee has applications are not-for-profit entities. Thirty-five are nonprofits or nonprofit-led consortia, two are state universities, two are private entities or private entity-led consortia, one is a county government, and one is a municipal corporation.

Republican leaders have raised concerns that the Navigators would use information provided from individuals they help sign up for coverage for “fundraising, voter registration efforts, [or] campaign activities.”¹⁶ But all 42 of the organizations whose applications were reviewed by the Committee staff were nonpartisan and nonpolitical in nature.

D. Navigators Have Effective Privacy Protections in Place

Republican attorneys general have written that “we are concerned that [HHS] has failed to adequately protect the privacy of those who will use the assistance programs connected with the new health insurance exchanges.”¹⁷ But the Democratic staff review of Navigator grant applications indicates that the recipients have effective privacy protections in place.

All the grant recipients must abide by 45 C.F.R. § 155.260, the statutory provisions providing for the privacy and security of personally identifiable information under the Affordable Care Act. These regulations dictate the manner in which grant recipients can collect, use, and access personally identifiable information. Among other requirements, the law provides that “[p]ersonally identifiable information should be protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure.”¹⁸ Any organization or individual that knowingly or willfully uses or discloses information in violation of these regulations is subject to a civil penalty of \$25,000 per individual, per disclosure.¹⁹

¹⁵ *Id.*

¹⁶ *See, e.g.*, Letter from Chairman Fred Upton et al. to Arizona Association of Community Health Centers (Aug. 29, 2013).

¹⁷ Letter from State Attorneys General to the Honorable Kathleen Sebelius (Aug. 14, 2013).

¹⁸ 45 C.F.R. § 155.260(a)(3)(vii)

¹⁹ Exchange Establishment Standards And Other Related Standards Under The Affordable Care Act, 45 C.F.R. § 155.260.

In addition to these privacy safeguards, many organizations that received navigator grants are taking additional steps to protect individuals' privacy. At least 15 of the organizations have additional privacy practices for their Navigator staff, including background checks, training in Health Insurance Portability and Accountability Act (HIPAA) privacy requirements, and computer security policies.

Moreover, many of the organizations already have extensive experience handling highly sensitive personal financial and health data information in the course of their work to assist individuals in need of state or federal assistance program. Grant applications reveal that at least 27 of the 42 organizations have extensive past experience in handling such information. One organization explained:

As a HUD-approved housing counseling agency, [the organization] already has extensive data privacy and security standards and protocols in place as a result of our contracts to provide foreclosure prevention counseling. During the mortgage modification application process, clients are required to gather and bring in a variety of official documents that include private and/or confidential information; applications are submitted online, but the paper copies must be kept on file at our location. Application data is submitted online, protocols regarding the use of computers and laptops or tablets are already in accordance with 45 C.F.R. § 155.260. In addition to online data privacy and security policies, we have protocols in place that physically separate client data files in a secured room away from other program areas and offices. We have written procedures for accessing filed client data for appointment and returning it to the client file, (including signature logs identifying the staff who access files) and policies governing the data destruction once the mandatory storage timeframe has expired. Finally, all staff and contractors are required to sign confidentiality agreements covering client information as a condition of employment. These policies and protocols will be used for the Navigator program as well.²⁰

²⁰ [Redacted], *Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges*, at 37 (June 7, 2013).