

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

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

September 20, 2013

Mr. Gary Cohen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Mr. Cohen:

Thank you for your testimony yesterday at the hearing before the Subcommittee on Oversight and Investigations, "Two Weeks Until Enrollment: Questions for CCIIO."

During this hearing, members of the Subcommittee asked you several questions about the Navigator program. The Patient Protection and Affordable Care Act (PPACA), and subsequent regulations implementing the law, established that "Navigators" may facilitate enrollment in qualified health plans. Due to concerns about how the health and financial information of exchange applicants will be protected by Navigators, and because the Department of Health and Human Services' (HHS) two-month delay in implementing the program reduced by half the time available to Navigator organizations to train their staff,¹ this Committee recently asked 51 Navigator grant recipients to provide basic information about their enrollment plans. Those questions included how they intended to spend this taxpayer money, how they would protect private consumer information, and what standards would be in place to prevent conflicts of interest. HHS ultimately provided to the Committee copies of the grant applications for nearly all of the organizations the Committee contacted.

We write to you to follow-up on your testimony at yesterday's hearing and to secure responses to Members' questions about implementation of the Navigator program that have arisen in light of our review of the Navigator grant applications provided by HHS. The questions and concerns that emerged in our review appear to be a direct result of the rushed implementation of the Navigator program by HHS and the limited time available for training Navigator grant recipient organizations and their staff. The Committee's review has identified the following issues, many of which were discussed at yesterday's hearing:

¹ United States Government Accountability Office Report, "Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges", June 2013 (GAO-13-601).

- **Some Navigator recipients plan to engage in enrollment activities that increase the likelihood of fraud or abuse, including door-to-door contacts.** The recipient of one of the largest Navigator grants explained in their application that they expected a substantial portion of their program to involve door-to-door contacts. Another described their work plan as involving “door to door outreach to 10,000 households per week.” In a report issued by the Oversight and Government Reform Committee, you and Vicki Gottlich, Director of the Consumer Support Group at CCIIO, acknowledged that allowing Navigators to go door-to-door could be problematic.² At the hearing yesterday, you stated that you are “confident” that Navigators will follow their instructions not to make door-to-door contact.
- **The plans of some Navigator organizations do not correspond with the enrollment calendar.** Enrollment in the Marketplace will be open from October 1, 2013, until March 31, 2014. This indicates that most enrollment activity should occur during that six-month timeframe, and some Navigators did indeed indicate to Committee staff that they expect the open enrollment period to be the most active period, during which most individuals would enroll in the exchanges. Yet, some Navigator organizations have planned for an equal amount of enrollment activities outside this time period. For example, one Navigator indicated in their application that they expected to enroll the same number of individuals per month during open enrollment as after open enrollment. Likewise, based on their grant applications, many Navigator organizations have budgeted to spend the same amount of funding in each fiscal quarter. It is unclear why a Navigator would plan for significant enrollment activities and spending to take place outside the open enrollment period.
- **The amount of grant funding per expected enrollee varies widely among Navigator grant recipients.** As was discussed yesterday one Navigator received approximately \$80,000 to enroll 300 people. Another grant recipient estimated they would be able to enroll 577,500 individuals (75 percent of those reached directly, at a cost of approximately \$2.25 per enrollee) across two states. Yet, another Navigator operating in one of those states won a grant for one-third of the funding to enroll 1,500 individuals during open enrollment. This is less than 1 percent of the 577,500 individuals that the other group promises to enroll. In addition, as was discussed yesterday at the hearing, one organization is predicting that each one of their 50 Navigators will be able to enroll over 11,000 individuals.
- **A Navigator that received one of the largest grants plans to engage in extensive enrollee tracking, while other Navigators maintain they will avoid recording or retaining personal information.** One grant recipient’s application includes plans to use a “needs based survey to monitor and track healthcare coverage to identify potential new applicants” combined with “survey and tracking of those who attend community meetings.” This application also says “contacts” will be entered into a database for

² Report of the Committee on Oversight and Government Reform: *Risks of Fraud and Misinformation with Obamacare Outreach Campaign: How Navigator and Assister Program Mismanagement Endangers Consumers*, Sept. 18, 2013.

“follow-up.” The applicant did not provide additional detail on this Navigator database, but the fact that HHS awarded this grantee the exact amount of funding they requested to operate in multiple states suggests that HHS has approved this applicant’s planned surveys and enrollee tracking. Based on the applications provided to the Committee by HHS, this kind of enrollment activity is not typical. Other applicants informed Committee staff of the great steps they would take *not* to collect consumer data, with one grant recipient informing the Committee they will not retain “any” information.

- **Navigators will receive disparate salaries for similar work tasks.** One organization operating in Florida proposed to hire 50 Navigators to “dedicate 100% of their time to the program at a salary of \$15,738.” Another organization operating in the same area reported that they will hire four Navigators at salaries of \$43,000 per year. This pay disparity is also found in organizations receiving Navigator grants that will be working with a consortium of other agencies to perform the Navigator functions.
- **Navigators are split on the importance of background checks or whether they are cost prohibitive.** While several Navigators reported that they would conduct background checks on their hires, others informed Committee staff that they would not be doing so, with one grant recipient remarking that it would be cost prohibitive. Yet, a recipient of one of the largest Navigator grants informed Committee staff during a briefing that they believe it is “very important” to do background checks regardless of the cost, and would be performing such checks on *every* Navigator.
- **Grant recipients could utilize pay-for-play methods of rewarding Navigators and enrolling consumers.** One Navigator grant recipient’s application explicitly stated that it would provide bonuses for enrolling a certain number of people in the PPACA. In addition, another Navigator indicated that they would utilize gift cards so that *consumers* would provide “feedback on assistance provided and consumer knowledge from and satisfaction with events.”
- **Third parties are contacting Navigators about enrollment.** Navigators are prohibited from receiving any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any individuals or employees. Yet, some Navigators informed us that they were being approached by outside groups in response to news that they had obtained a Navigator grant, including unsolicited emails from companies and insurance agents. One Navigator told Committee staff that individuals have attempted to provide brochures on certain health plans.
- **Robo calls.** One Navigator grant recipient’s work plan promises to make 240,000 “robo calls” over the course of their contract.

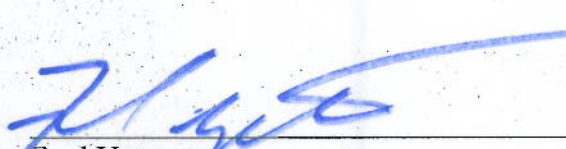
Although you acknowledged that your office is responsible for overseeing the Navigator program, you explained that you had not reviewed the individual grant applications and therefore could not comment on the individual Navigators’ planned enrollment activities. You did testify that HHS plans to issue guidance on permissible Navigator activities, and that this guidance will make clear that certain activities, like door-to-door outreach for the purpose of enrollment and

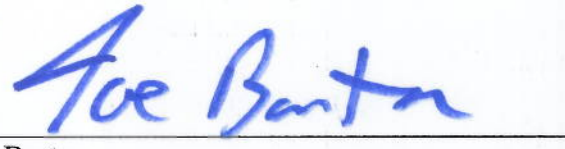
paying Navigators based on the number of individuals enrolled, will not be permitted. With less than two weeks until Navigators are to begin working with consumers, the fact that this guidance has not yet been issued leaves Navigator grant recipients without the clear instruction they would need. In order to better understand the manner in which HHS reviewed Navigator grant applications and plans to implement and monitor the Navigator program, we request a written response to the following questions no later than October 3, 2013:

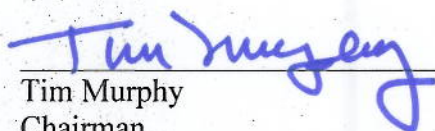
1. How many Navigator grant recipients list door-to-door contacts as part of their planned enrollment activities? Please describe whether HHS plans to contact those Navigators that plan to engage in door-to-door contacts and whether those Navigators will be permitted to engage in this activity. In addition, please describe whether the grant awards of any Navigators will be adjusted should they not be permitted to engage in this activity.
2. How many Navigator grant recipients indicate in their applications that they plan to pay Navigator staff based on the number of individuals enrolled in the exchanges? Please describe whether HHS plans to contact those Navigators that plan to pay staff based on enrollment and whether those Navigators will be permitted to engage in this activity.
3. The Navigator grant organizations will spend widely varying amounts of funding per expected enrollee. Please describe how HHS evaluated the budget of Navigator grant applicants as compared to the number of expected enrollees. Please identify what other metrics HHS used to evaluate the budgets of Navigator grant applicants. Of the 105 Navigator organizations, please identify any Navigator grant recipients whose planned staff salaries were adjusted or changed by HHS during the grant review process.
4. The enrollment goals of Navigator grant recipients varied broadly. Please describe how HHS evaluated the enrollment goals and plans of Navigator grant recipients. Please identify what steps were taken to ensure reasonable enrollment targets and whether these enrollment targets were adjusted or changed by HHS during the grant review process.
5. Please explain whether Navigator enrollee tracking, the use of gift cards, robo calls, or third party contact, is permitted by HHS and why.

Instructions for responding to the Committee's requests are included as an attachment to this letter. Thank you for your prompt attention to this matter. Please contact Committee staff at (202) 225-2927 if you have any questions about this request.

Sincerely,


Fred Upton
Chairman


Joe Barton
Chairman Emeritus



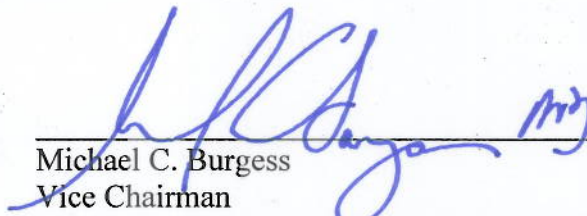
Tim Murphy
Chairman
Subcommittee on Oversight and Investigations



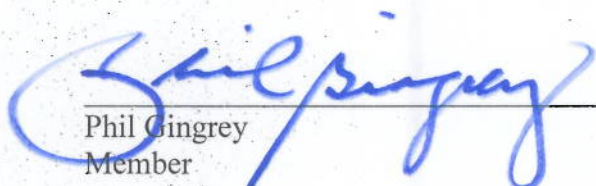
Joseph R. Pitts
Chairman
Subcommittee on Health



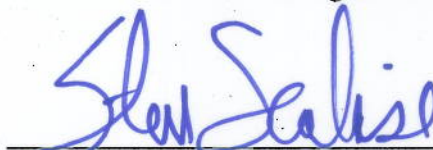
Marsha Blackburn
Vice Chairman



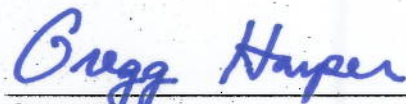
Michael C. Burgess
Vice Chairman
Subcommittee on Oversight and Investigations



Phil Gingrey
Member



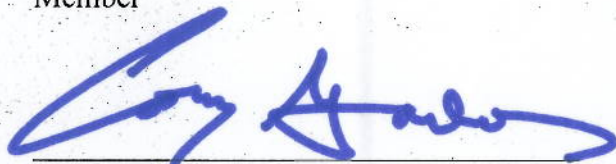
Steve Scalise
Member



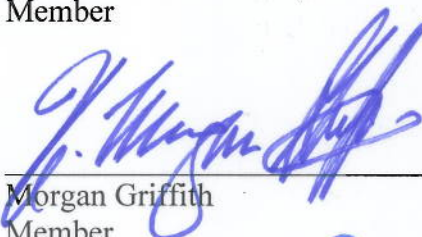
Gregg Harper
Member



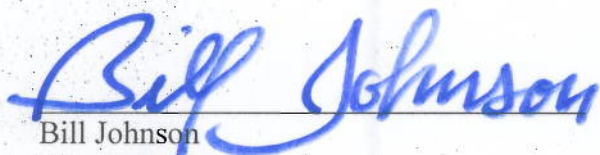
Pete Olson
Member



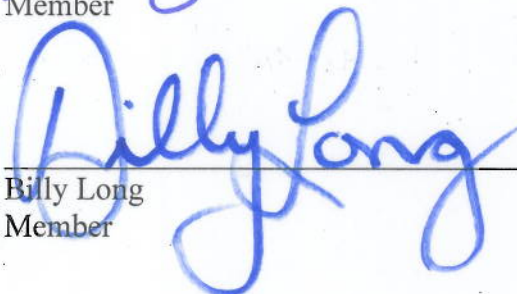
Cory Gardner
Member



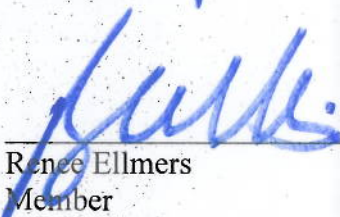
Morgan Griffith
Member



Bill Johnson
Member



Billy Long
Member



Renee Ellmers
Member

Letter to Mr. Gary Cohen

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cc: The Honorable Henry Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations