



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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**Clarification Regarding Roles and Activities of
Producers of Insurance and Exchange Enrollment Facilitators**

The Division has received inquiries regarding the roles and activities of producers of insurance (brokers and agents collectively, “producers”) and exchange enrollment facilitators (“EEFs”) in effectuating their respective roles when helping consumers obtain health insurance. With the significant changes to healthcare law the insurance industry is experiencing, it is essential that producers and EEFs understand the limits on their roles so that they are able to most effectively assist consumers. This Bulletin seeks to clarify some parameters.

Under the Patient Protection and Affordable Care Act (“ACA”), the roles of producers and EEFs are similar: to help consumers understand and transition into new healthcare plans. However, each works under different legal duties and limitations.

An EEF’s function varies with his or her role as a navigator, enrollment assister, or certified application counselors. None of these roles allows an EEF to sell, solicit or negotiate insurance. Additionally, pursuant to Nevada law, “An exchange enrollment facilitator[s]hall not[e]mploy, be employed by or be in partnership with, or receive any remuneration arising out of his or her activities as an exchange enrollment facilitator from, any licensed producer of insurance, insurance consultant or surplus lines broker or insurer.” Nev. Rev. Stat. § 695J.210.2(c) (2013). Further,

An exchange enrollment facilitator is obligated under his or her certificate to: 1. Serve with objectivity and complete loyalty the interests of his or her client; and 2. Render to his or her client information, counsel and service which, to the best of the exchange enrollment facilitator’s knowledge, understanding and opinion, best serves the client’s insurance needs and interests.

Nev. Rev. Stat. § 695J.220 (2013).

Under the ACA, EEFs¹ are required to avoid conflicts of interest. Conflicts of interest include receiving compensation or consideration “directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.” 42 U.S.C. § 18031(i)(4)(A)(ii). Further, EEFs are required to “distribute fair and impartial information concerning enrollment in qualified health plans” 42 U.S.C. § 18031(i)(3)(B).

Under Nevada law, producers are permitted to sell, solicit or negotiate insurance. The ACA allows states to permit producers to enroll eligible persons in qualified health plans, subject to certain provisions regarding how qualified health plans (“QHPs”) are sold if the producer has entered into a specific agreement with the Silver State Health Insurance Exchange. 45 C.F.R. § 155.220(a)–(d). The producer must also comply with state laws related to confidentiality and conflicts of interest. 45 C.F.R. § 155.220(e).

Concerning the participation of producers and EEFs at the same event (for example, community events) set up to assist consumers with obtaining health insurance, as long as they do not act outside of their legally specified roles, producers and EEFs may participate at the same event. It is important that producers and EEFs, therefore, take steps to ensure that the consumers they are serving do not misunderstand their respective roles based on the parameters of their licensure. For example, a mutually attended community event that requires EEFs to refer consumers to certain producers on site, or that restricts producers’ participation in that event based on their particular carrier appointments would cause questions about whether a licensee was acting outside the parameters of his or her licensure.

Producers and EEFs are welcome to contact the Division to inquire about specific circumstances, or visit www.doi.nv.gov for more information.



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Commissioner of Insurance

¹ The term “EEF” is used in lieu of “navigator”. In Nevada, the term “exchange enrollment facilitator” is used to include “a person certified pursuant to [NRS 695J] who is engaged in the business of facilitating enrollment in qualified health plans offered by the Exchange.” Nev. Rev. Stat. § 695J.050 (2013). An exchange enrollment facilitator is appointed to “act on behalf of the Exchange as an assister, navigator or any other designation authorized or required by the [ACA].” Nev. Rev. Stat. § 695J.020. Under the ACA, individuals providing consumer assistance and outreach on behalf of Exchanges are called “navigators” and “non-navigator assistance personnel carry out consumer assistance functions.”