



CONSUMER NAVIGATORS UNDER THE AFFORDABLE CARE ACT: Building a Community-Based, Patient-Centered System in New Mexico to Support Greater Healthcare Access and Coverage

Prepared for Con Alma Health Foundation
and its Blueprint for Health New Mexico Advisory Network

By

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The mission of the Southwest Women's Law Center is to increase opportunities for women and girls in New Mexico. The Southwest Women's Law Center engages in systemic legal and policy advocacy to address gender discrimination and disproportionate poverty among women and their families, and to increase access to comprehensive healthcare services for women and girls. The Center has been actively engaged in implementation of the Affordable Care Act in New Mexico since its adoption in March 2010. The Center's goals are to ensure that implementation of the Affordable Care Act maximizes healthcare coverage and access to healthcare services among women and girls throughout the state, and that systems are developed so that the law benefits the most vulnerable and hard-to-reach populations in New Mexico. *Con Alma Health Foundation provided funding for this paper.*

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CONSUMER NAVIGATORS

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In 2011, the W.K. Kellogg Foundation awarded Con Alma Health Foundation a strategic planning grant to help New Mexico ensure the successful implementation of the Patient Protection and Affordable Care Act (the "Affordable Care Act" or the "ACA").ⁱ Con Alma Health Foundation convened a Blueprint for Health New Mexico Advisory Network ("Blueprint for Health New Mexico") to help develop that strategic plan. The purpose of this paper is to assist the Blueprint for Health New Mexico to develop its plans related to the establishment of an effective community-based, patient-centered consumer navigator systems as the ACA is implemented in New Mexico.

I. EXECUTIVE SUMMARY

Hundreds of thousands of New Mexicans are thus unable to access basic healthcare, let alone high quality healthcare, because they are uninsured. Over 50 million Americans – and nearly 450,000 New Mexicans -- are uninsured today.ⁱⁱ One of the primary goals of the Affordable Care Act is to increase healthcare coverage substantially by expanding Medicaid and by offering subsidies – called premium tax credits – to help individuals and families purchase private health insurance coverage. Approximately 315,000 New Mexicans who are currently uninsured will be covered when Medicaid is expanded and premium tax credits are available to help pay for private health insurance.ⁱⁱⁱ An estimated 211,000 New Mexicans will be eligible for premium tax credits in 2014 to help cover the costs of private health insurance and, of those individuals, approximately 123,000 are currently uninsured.^{iv}

The premium tax credits will be available to people who live under 400% of the federal poverty level to help them purchase private health insurance for themselves and their families. This new initiative of the ACA will help low and middle-income families throughout New Mexico obtain private health insurance coverage. The premium tax credits will be available to help cover the cost of health insurance premiums for "qualified health plans" that meet certain minimal requirements. Qualified health plans will be offered to the public through a new competitive marketplace structure called an "Affordable Insurance Exchange" or "Exchange."^v States are authorized to develop their own Exchanges that meet federal requirements, but in the absence of a state Exchange, the federal government will operate an Exchange for residents of the State.

The Affordable Care Act (ACA § 1311(i)) requires Exchanges to establish a Navigator Program to award grants to entities to help people learn about and understand how the premium tax credits will work, what their choices are in selecting from among the qualified health plans offered on the Exchange, and to help them enroll in a plan. By the end of 2013, systems need to be established in New Mexico that will enable individuals to navigate the new coverage systems that will be available January 1, 2014.

The Navigator Program is described in a relatively short provision of the ACA, but it will potentially touch millions of Americans. There are many issues and details that will need to be

addressed over time and regulations and policies will not resolve them all. A strong Navigator Program should build on experience and develop and grow based on that experience.

One of the purposes of the ACA is to make it much simpler and easier for individuals to understand their choices among private health insurance plans and to navigate seamlessly between Medicaid and private insurance. By 2014, eligibility determinations for Medicaid and premium tax credits are to be made through the same initial entry point into the system. (ACA § 1413). The federal government released proposed regulations stating that the Exchange will be responsible for eligibility determinations for Medicaid, CHIP and premium tax credits to help individuals join qualified health plans on the Exchange. There will be significant changes in eligibility determination systems in state Medicaid and CHIP programs. It is one of the areas where a federal Exchange Establishment Grant may be able to help New Mexico develop a consumer-oriented system that minimizes administrative hurdles and unnecessary paperwork for New Mexicans.

Under our current system, health insurance brokers help individuals and employers find and choose private health insurance plans. A different group of individuals and entities – both governmental and private – assist low-income individuals determine whether they are eligible for Medicaid and assist in enrolling them in Medicaid. The challenge in 2014 will be to develop a system that works for all New Mexicans, ranging from small business owners and their employees, self-employed middle-class individuals and their families, hard-to-reach populations, those with limited English proficiency, Native Americans who have different options under the ACA and different health systems to navigate, and large numbers of uninsured and underinsured low- and middle-income New Mexicans who have little or no experience with private health insurance.

The Exchange itself is responsible for developing the Navigator Program. But a great deal of work could be done before an Exchange is created to help develop recommendations and proposals as to how such a program can best serve the needs of diverse communities within New Mexico. The first step is to evaluate what currently exists and how that might relate to the new Navigator Program that the Exchange is required to establish. A thorough needs assessment could be conducted by the State, perhaps under a federal Exchange Establishment Grant. Blueprint for Health New Mexico could also seek to conduct an environmental scan in specific counties to assess what exists and what might work within the ACA-created Navigator Program. These include commercial brokers, Income Support Division offices, Presumptive Eligibility and Medicaid On-Site Application Assistance Determiners, Promotoras, Community Health Workers and Community Health Representatives.

New Mexico should develop a navigator system that meets the needs of small businesses and their employees and the diverse communities and populations throughout the state. The Exchange Navigator Program should address the needs of the most vulnerable populations and take into consideration New Mexico's cultural and linguistic diversity. This area of Affordable Care Act implementation is a particularly promising area of focus for Blueprint for Health New

Mexico because the Advisory Network is based in diverse communities around the state. A strong navigator system can increase access to health care coverage and services and ultimately improve health outcomes. The navigator and consumer health assistance programs ("CHAP") could work parallel to each other with the Navigator Program addressing basic outreach, education, eligibility and enrollment issues and the CHAPs dealing with denial of benefits, claims or coverage.

II. THE GAP BETWEEN ELIGIBILITY AND ENROLLMENT: DESIGNING A SYSTEM THAT WILL ENABLE OVER 300,000 CURRENTLY UNINSURED NEW MEXCIANS OBTAIN MEDICAID AND PRIVATE INSURANCE COVERAGE.

Over 50 million Americans – and nearly 450,000 New Mexicans -- are uninsured today.^{vi} Hundreds of thousands of New Mexicans are thus unable to access basic healthcare, let alone high quality healthcare, because they are uninsured. One of the primary goals of the ACA is to increase healthcare coverage substantially by expanding Medicaid and by offering subsidies – called premium tax credits – to help individuals and families purchase private health insurance coverage. According to data compiled by Families USA, approximately 315,000 New Mexicans who are currently uninsured will be covered when Medicaid is expanded and premium tax credits are available to help pay for private health insurance.^{vii} An estimated 211,000 New Mexicans will be eligible for premium tax credits in 2014 to help cover the costs of private health insurance and, of those individuals, approximately 123,000 are currently uninsured.^{viii}

Thus thousands of New Mexicans may be entering the private health insurance market for the first time when premium tax credits are available to help them participate in a qualified health plan on the new Exchange. The Kaiser Family Foundation ("KFF") prepared an analysis of the people who are likely to enroll in the new exchanges.^{ix} According to the KFF report, by 2019, approximately 16 million people will be enrolled in exchanges who otherwise would have been uninsured.^x The report found that the people who will most likely obtain coverage on the exchanges are "relatively older, less educated, lower income, and more racially diverse than current privately-insured populations."^{xi} Most of the exchange enrollees are expected to be transitioning from being previously uninsured and, as a result, will likely need greater care when they finally do have insurance coverage.^{xii}

By the end of 2013, systems need to be established in New Mexico that will enable individuals to navigate the new coverage systems that will be available January 1, 2014. Availability of coverage does not guarantee that people will enroll or obtain the benefits of expanded coverage. According to a recent study by the Robert Wood Johnson Foundation and the Urban Institute, it is estimated that **38 percent** of the uninsured who would be eligible for Medicaid or the Children's Health Insurance Program ("CHIP") under the ACA are not expected to enroll.^{xiii} That same report showed that only 85% of eligible children 18 and under participated in Medicaid/CHIP in New Mexico in 2009.^{xiv} A 2008 report by New Mexico Voices for Children found that 50,000 children in New Mexico were eligible for Medicaid but not enrolled in the program.^{xv}

New Mexico's experience with children who are eligible for Medicaid/CHIP but do not enroll is an important warning. Unless New Mexico prepares for covering the estimated 315,000 uninsured who will be newly-eligible for Medicaid or premium tax credits in 2014, the promise of expanded coverage will not be realized by many New Mexicans.

III. BUILDING A CONSUMER NAVIGATOR SYSTEM IN NEW MEXICO THAT MAXIMIZES ENROLLMENT IN MEDICAID AND CHIP AND PARTICIPATION IN THE NEW AFFORDABLE INSURANCE EXCHANGE.

One of the most significant initiatives in the ACA is the provision of federal premium tax credit subsidies ("premium tax credits") to people who live under 400% of the federal poverty level (\$89,400 for a family of four in 2011)^{xvi} to help them purchase private health insurance for themselves and their families. This new initiative of the ACA will help low and middle-income families throughout New Mexico obtain private health insurance coverage. The premium tax credits will be available to help cover the cost of health insurance premiums for "qualified health plans" that meet certain minimal requirements. Qualified health plans will be offered to the public through a new competitive marketplace structure called an "Affordable Insurance Exchange" or "Exchange."^{xvii} States are authorized to develop their own Exchanges that meet federal requirements or the federal government will run an Exchange for residents of the State.

The Affordable Care Act (ACA § 1311(i)) requires Exchanges to establish a Navigator Program to award grants to entities to help people learn about and understand how the premium tax credits will work, what their choices are in selecting from among the qualified health plans offered on the Exchange and to help them enroll in a plan. The New Mexico Center on Law and Poverty has prepared a separate paper on Exchanges for Blueprint for Health New Mexico. This paper on Navigators provides a brief overview of: (1) the elements of the Navigator Program in the new Exchanges; (2) how that program relates to Medicaid and CHIP enrollment; (3) some existing navigator-type programs that might be helpful in planning for New Mexico's Navigator Program; (4) the challenges New Mexico faces in developing a community-based, patient-centered navigator system; and (5) the importance of developing a strong Consumer Health Assistance Program in New Mexico.

A. THE NAVIGATOR PROVISIONS OF THE AFFORDABLE CARE ACT.

The Navigator Program is described in a relatively short provision of the ACA^{xviii}, but it will potentially touch millions of Americans. There are many issues and details that will need to be addressed over time and regulations and policies will not resolve them all. A strong Navigator Program should build on experience and develop and grow based on that experience.

The Navigator Program must be established by an Exchange and award grants to "navigators." A significant issue that the Exchange will have to address is that no federal money may be used for the Navigator grants. Funding will need to be generated through the operations of the Exchange, but that could be supplemented with state funding.

Navigators under the ACA are entities, not individuals. The ACA specifies a strikingly diverse set of entities that may serve as navigators, but then adds a catch-all for "other" entities not specifically listed. The July 15, 2011 proposed Exchange regulations require that a Navigator Program include entities in at least **two** of the following categories of organizations:

- (i) Community and consumer-focused nonprofit groups;
- (ii) Trade, industry, and professional associations;
- (iii) Commercial fishing industry organizations, ranching and farming organizations;
- (iv) Chambers of commerce;
- (v) Unions;
- (vi) Resource partners of the Small Business Administration;
- (vii) Licensed agents and brokers; and
- (viii) ***Other public or private entities that meet the requirements of this section.*** Other entities may include but are not limited to Indian tribes, tribal organizations, urban Indian organizations and State or local human service agencies.^{xix}

It is important to note that the regulations refer to at least two "categories" of navigator entities, not two entities. So, for example, there could be numerous and diverse "community and consumer-focused nonprofit groups" included within that single category.

The ACA requires that, to receive a grant as a "navigator," an entity must demonstrate that it has existing relationships, or could readily establish relationships with employers, employees, consumers and self-employed individuals who are likely to be qualified to enroll in a qualified health plan on the Exchange. Significantly the statute defines consumers as including the uninsured and the underinsured. Thus the ACA recognizes that no one type of navigator will meet the needs of all potential participants in the Exchange.

The ACA specifies several duties for navigators. They include:

- conducting public education to raise awareness of qualified health plans;
- distributing "fair and impartial information" regarding how to enroll in qualified health plans and the availability of premium tax credits and cost-sharing reductions that will be available to lower-income individuals;
- "facilitating" enrollment in the Exchange;
- providing referrals to appropriate consumer health assistance programs if someone has a complaint, grievance or question about their health plan or coverage under the plan; and
- providing information "***in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges.***"^{xx}

The proposed regulation also addresses access by persons with disabilities:

Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.^{xxi}

The ACA also includes important conflict of interest provisions. Insurance carriers cannot serve as navigators. Nor can navigators “receive any 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.” This provision of the ACA will likely become controversial. For example, could brokers serve as navigators if they sell health plans and receive commissions *outside* the Exchange from the same insurance companies that offer qualified health plans *in* the exchange?

B. THE RELATIONSHIP BETWEEN THE EXCHANGE, MEDICAID AND CHIP FOR ELIGIBILITY AND ENROLLMENT DETERMINATIONS.

One of the purposes of the ACA is to make it much simpler and easier for individuals to understand their choices among private health insurance plans and to navigate seamlessly between Medicaid and private insurance. But the Navigator Program in the ACA appears in the section of the law that describes the creation of the new Exchanges (ACA § 1311(i)), not the section that addresses Medicaid expansion.

By 2014, eligibility determinations for Medicaid and premium tax credits are to be made through the same initial entry point into the system. (ACA § 1413). The United States Department of Health and Human Services (“HHS”) just published proposed regulations (referred to in this paper as the “Eligibility Determination Regulations”) stating that the Exchange will be responsible for eligibility determinations for both the Exchange **and** Medicaid and CHIP.^{xxii} The Eligibility Determination Regulations spell out in greater detail how Exchanges will determine eligibility to enroll in a “qualified health plan” offered on the Exchange. In these proposed regulations HHS states that the ACA intended “to establish a system of streamlined and coordinated eligibility and enrollment” for premium tax credits, cost-sharing reductions allowed for lower income recipients of premium tax credits, Medicaid, and CHIP.^{xxiii} As HHS explains: “We also interpret [Section 1413(b)(2) of the ACA] to mean that ***the eligibility and enrollment function should be consumer-oriented, minimizing administrative hurdles and unnecessary paperwork for applicants.***”^{xxiv}

This is a huge change for eligibility determinations in state Medicaid and CHIP programs. It is one of the areas where a federal Exchange Establishment Grant may be able to help New Mexico develop a “consumer-oriented” system that minimizes administrative hurdles and unnecessary paperwork for New Mexicans. What remains unclear is how navigators will

interact with the eligibility determination system. Presumably individuals will contact navigators to obtain information about eligibility and enrollment. The Exchange will make the eligibility determination for all the available programs and then – again, presumably – the individual will work with the navigator to decide which qualified health plan to choose and how to enroll for the plan on the Exchange.

It is not clear, however, what happens when an individual is eligible for Medicaid and not a qualified health plan. Will navigators be able to help patients enroll in Medicaid? Allowing those who currently help enroll patients in Medicaid and CHIP also serve as navigators may help streamline this process. But those individuals will need to be trained to learn about qualified health plans. Moreover, can providers – who currently help enroll patients in Medicaid – serve as navigators and advise patients which health plan to choose if the provider participates in one or more of the qualified health plans available? Does that present a conflict of interest?

Another question is whether any program will be available to help Medicaid patients choose from among Medicaid managed care plans offered in the state Medicaid program. No such counseling or navigator program currently exists for Medicaid managed care. If it is going to be created for the Exchange, why not develop an assistance plan to help patients determine which managed care plan will best meet their needs?

One of the challenges in developing a seamless system will be the ACA's requirement that federal funds not be used to pay for the navigator grants under the Exchange. Yet federal funding *can* be used to assist patients to enroll in Medicaid and CHIP. How can a navigator do both under these circumstances?

HHS has suggested a method by which states could fund Exchange navigators to perform "Medicaid and CHIP administrative functions" if there is a method for identifying and attributing costs to those functions. Indeed the proposed regulations make clear that states could allow – or even require – navigators to address "Medicaid and CHIP administrative functions."^{xxv} This type of flexibility will help New Mexico create a more effective Navigator Program that meets the needs of our communities.

C. THE ROLE OF EXISTING ENTITIES AND PROGRAMS IN NEW MEXICO'S NAVIGATOR PROGRAM.

Under our current system, health insurance brokers help individuals and employers find and choose private health insurance plans. A different group of individuals and entities – both governmental and private – help low-income individuals determine whether they are eligible for Medicaid and assists in enrolling them in Medicaid. The challenge in 2014 will be to develop a system that works for all New Mexicans, ranging from small business owners and their employees, self-employed middle-class individuals and their families, hard-to-reach populations, those with limited English proficiency, Native Americans who have different options under the ACA and different health systems to navigate, and large numbers of

uninsured and underinsured low- and middle-income New Mexicans who have little or no experience with private health insurance.

The Exchange itself is responsible for developing the Navigator Program. But a great deal of work could be done before an Exchange is created to help develop recommendations and proposals as to how such a program can best serve the needs of diverse communities within New Mexico. The first step is to evaluate what currently exists and how that might relate to the new Navigator Program that the Exchange is required to establish. A thorough needs assessment could be conducted by the State, perhaps under a federal Exchange Establishment Grant. Blueprint for Health New Mexico could also seek to conduct an environmental scan in specific counties to assess what exists and what might work within the ACA-created Navigator Program. The following is meant to start the discussion, not serve as a thorough analysis of what currently exists.

1. Commercial Insurance Brokers

Small businesses are accustomed to relying on brokers to help them choose health plans for their employees. Under the ACA, a State must offer a Small Business Health Option Program (a "SHOP Exchange") to assist small employers in enrolling their employees in qualified health plans. The SHOP Exchange may be operated within the same Exchange that is created for individuals, but it has separate requirements. To date, all of the legislative proposals to create a state Exchange in New Mexico combined the individual market with the small group SHOP Exchange. The proposed Exchange regulations provide the same standards for navigators within the individual and the SHOP exchanges.^{xxvi}

While an insurance broker may be the best navigator for a small business owner and her employees, a broker is less likely to be able to work well among low-income, hard-to-reach populations. Insurance brokers do not usually work with the Medicaid population. Moreover, even individuals who use premium tax credits to obtain insurance on the Exchange are expected to be "relatively older, less educated, lower income, and more racially diverse than current privately-insured populations,"^{xxvii} with whom brokers are accustomed to working today.

Health insurance brokers currently play a significant role in the small group and individual market. Brokers help small business owners and individuals sort through available health insurance options so they can choose a plan that fits their needs and budget. Brokers also may function as a source of information if the employees of small businesses need assistance with appealing the denial of a claim or other service issues. Health insurance companies frequently consider brokers to be an important part of their marketing strategy because they are influential in directing consumers to their particular products. Generally brokers receive a commission from health insurance companies in exchange for selling their products. These commissions can create a conflict of interest between the consumer's needs and the broker's desire to earn an income. Despite the possibility of a conflict of interest, brokers serve an important function in the health insurance market and will likely continue to be an important

resource for employees working for small businesses. On the other hand, low income or vulnerable populations may be better served by a community-based, non-broker system.

2. Income Support Division

The Income Support Division ("ISD") is housed in the New Mexico Human Service Department. ISD helps individuals and families enroll in a range of programs including Medicaid, the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance for Needy Families (TANF) program, and other state-based services. The Income Support Division offers services in Santa Fe as well as throughout New Mexico at thirty-three regional offices.

3. Presumptive Eligibility and Medicaid On-Site Application Assistance Determiners

Presumptive Eligibility and Medicaid On-Site Application Assistance Determiners are individuals throughout New Mexico who are trained and certified to help people enroll in Medicaid programs. Presumptive Eligibility ("PE") is short-term Medicaid coverage for children up to age 19 or for pregnant women as well as the process for applying for this type of Medicaid coverage.^{xxviii} Medicaid On-Site Application Assistance ("MOSAA") is the process of completing an application for Medicaid for children, women who are pregnant and women or men who are seeking family planning services.^{xxix} A PE/MOSAA Determiner conducts an interview and gathers the information needed to complete an eligibility determination. The PE/MOSAA Determiner then mails the paperwork to the local Income Support Division office where a final eligibility determination is made. A PE/MOSAA Determiner must be a member of an eligible agency or organization such as an employee of a primary care clinic. The New Mexico Medical Assistance Division also requires PE/MOSAA Determiners to attend a training session in order to become certified.

4. Promotoras, Community Health Workers, and Community Health Representatives

Promotoras, community health workers and community health representatives all work with communities to improve the health of members by providing a range of information and resources. The promotora model strives to reach underserved individuals in the Hispanic community through peer education. Community Health Workers ("CHW") are members of a community who are chosen by that community to provide basic health and medical care to their community.^{xxx} Community Health Representatives ("CHR") are an important part of many Native American tribes, pueblos and nations.^{xxxi} The function served by promotoras, community health workers and community health representatives are very similar. Promotoras, CHWs and CHRs are usually referred to community members by hospitals or other health care providers and then they assist those community members with care coordination and other resources. Promotoras, CHWs and CHRs will meet with community members in their homes, in health care providers offices or in other spaces such as community centers. Promotoras, CHWs and CHRs also perform extensive community outreach so that people are aware of the resources available to them.

Promotoras, CHWs and CHRs provide important and effective assistance navigating the health care system and that model could serve as the basis for any navigator or consumer health assistance program that New Mexico develops. Community health workers can improve access to health care as well as health outcomes.^{xxxii} In order to achieve positive outcomes it is important that community health workers be adequately trained and continuously supported.^{xxxiii} In addition, community health workers must be firmly embedded in the community; outsiders cannot effectively fill this function.^{xxxiv} It is less effective to expect community health workers to serve in a volunteer capacity^{xxxv} and any navigator or consumer health assistance program that New Mexico develops should include a method to compensate CHWs.

5. Aging and Long-Term Care Systems of Navigation: The SHIP Program Offers a Possible Model for Certifying/Training Navigators.

The State Health Insurance Assistance Program ("SHIP") is a part of the Aging and Disability Resource Center housed at the New Mexico Aging and Long-Term Services Department.^{xxxvi} The SHIP provides counseling and assistance to individuals with Medicare and their families. Coordinators are available to provide counseling regarding Medicare, the Medicare prescription drug program, Social Security, Medicaid, and Veterans benefits. The program does not sell or endorse any specific insurance or health plan. Instead, coordinators provide accurate unbiased information about the range of health care options and entitlement benefits. Consumers may contact the Aging and Disability Resource Center by telephone or walk into the office for assistance. In addition, the SHIP utilizes volunteers and employees at senior centers and other organizations to provide local in-person assistance. These in-person counselors attend an annual certification program so that they can provide consumers with the most up to date information.

6. Patient Navigators for Healthcare Services.

The navigators that will receive grants from the Exchange are not the same as "patient navigators" that work in hospitals or in programs that assist patients in navigating healthcare services directly. Some of these navigator programs, such as programs for cancer patients, are government-funded, but they are different than the ACA's consumer Navigator Program that will address eligibility and enrollment issues. Blueprint for Health New Mexico, however, could explore how to strengthen and expand patient navigators systems within the healthcare delivery system.

7. Licensing or Certification Requirements for Navigators

The ACA will simplify the documents provided to individuals and small businesses so that it will be much easier to understand the costs and the benefits of different insurance plans. In

addition, there will be online resources to compare health plans so that “apples” are compared to “apples” and the choices for consumers are clearer. The inevitable result of these critical reforms is that it will have an impact on the insurance broker industry. If the whole idea is to simplify and make information more readily accessible to average consumers, then it will no longer be as important to rely on an insurance broker to wade through the different plans and options and provide comparative information to clients. Understandably, there is great concern in the broker industry about what will happen in 2014 when the exchanges open and all of these reforms are in place.^{xxxvii} One of the issues that has emerged in other states is brokers have backed legislation that would require navigators to be licensed.

For the navigator program to function effectively, a range of entities working together will be needed.^{xxxviii} As discussed previously, New Mexico already has several different types of systems in place that provide some of the functions required by navigators. In the future the Exchange's Navigator Program can have a place for insurance brokers as long as a strong network of other community-based organizations also participate. However, it is unnecessary for all entities providing navigator services to be licensed as brokers.^{xxxix} Licensure can be onerous and includes competency in areas that are irrelevant to navigating the health care system.^{xl} For instance navigators will not need to know about other forms of insurance such as life or disability.^{xli} It is also important to note that navigators will be required to know information not included in broker licensure such as premium tax credits, cost-sharing assistance, and public health insurance programs.^{xlii} Training and some type of certification program – like that used in SHIP – is an alternative and more appropriate method of ensuring that navigators provide fair and accurate information.^{xliii} But the training and certification should be tailored specifically for the role of navigators rather than utilizing a procedure meant to test competency in a different role.

D. MOVING TOWARD A COMMUNITY-BASED, PATIENT-CENTERED NAVIGATOR SYSTEM THAT MEETS THE NEEDS OF DIVERSE POPULATIONS INCLUDING THOSE THAT WILL BE HARDEST TO REACH AND SERVE.

New Mexico should develop a navigator system that meets the needs of small businesses and their employees and the diverse communities and populations throughout the state. The Exchange Navigator Program should address the needs of the most vulnerable populations and take into consideration New Mexico's cultural and linguistic diversity. This area of Affordable Care Act implementation is a particularly promising area of focus for Blueprint for Health New Mexico because the Advisory Network is based in diverse communities around the state. A strong navigator system can increase access to health care coverage and services and ultimately improve health outcomes. The navigator and consumer health assistance programs (“CHAP”) could work parallel to each other with the Navigator Program addressing basic outreach, education, eligibility and enrollment issues and the CHAPs dealing with denial of benefits, claims or coverage.

In 2011, the New Mexico Office of Health Care Reform contracted with several organizations to collect public input from a range of stakeholders including general consumers, individuals with disabilities, uninsured adults, and small employers. This data was meant to assist policy makers in developing a New Mexico-specific navigator program. A range of New Mexicans weighed in on how the navigator function of the health insurance exchange could best serve them. The information was obtained through telephone and online surveys, focus groups and in-person interviews.

Although cost was identified as the largest barrier to obtaining and keeping health insurance, consumers considered the complexity of the health insurance market to be another significant barrier.^{xliv} In New Mexico, consumers experience difficulty understanding several aspects of the health insurance market including: the benefits and limitations of different health insurance policies, the enrollment process, and the mechanism for appealing a denial of coverage.^{xlv} In addition, many New Mexicans are unaware of the details of the Affordable Care Act and how it will benefit them.^{xlvi} These factors, in conjunction with the unique demographics of our state, illustrate the need for a community-based, patient-centered navigator and consumer health assistance program in New Mexico.

The importance of developing a strong community-based system cannot be understated. The availability of a strong navigator system in conjunction with a consumer health assistance program (CHAP) will help New Mexican families gain health insurance coverage and increase access to appropriate health care. According to participants in the focus groups, the navigator and CHAP systems developed in New Mexico should provide services online, in person and over the phone.^{xlvii} An online system would be helpful because it will allow access to information on any day and at any time. But it is important to have in person and telephonic assistance especially for those in the disability community and those with limited access to computers.^{xlviii} In addition to the opportunities for New Mexicans to seek out assistance, the focus groups showed that the navigator program and CHAP will need to conduct extensive outreach and consumer education.^{xlix} This is particularly important for the Native American population because they are not currently well connected to the private insurance marketplace.^l

The Affordable Care Act requires that the Navigator Program provide culturally and linguistically appropriate services. New Mexico is unique in its cultural and linguistic diversity with a large proportion of Hispanics and a substantial proportion of Native Americans.^{li} In addition nearly thirty-six percent of the population speaks a language other than English at home.^{lii} As a result of these characteristics, cultural and linguistic competence within the navigator program and CHAP is particularly significant. To address the unique cultural and linguistic needs of New Mexicans, the navigator program and CHAP should draw its pool of navigators from the communities they serve.^{liii} Navigators from within a community will be most knowledgeable about that community's needs and will be better able to gain the trust of those needing assistance. Navigators should also include people who speak Spanish, Navajo and Puebloan languages. They should also be aware of and sensitive to cultural differences

among New Mexico's communities including individuals with disabilities, and lesbian, gay, bisexual and transgender individuals.^{liv}

The Navigator Program must also provide unbiased information so that consumers will consider navigators to be a trustworthy and useful resource. According to New Mexico First, there is a high level of agreement that the health insurance exchange and the navigator program protect the interests of the consumer rather than insurance companies or brokers.^{lv} New Mexico First also found that New Mexicans agree that the navigator program should be staffed by individuals who are free from conflicts of interest and are independent from insurance companies and brokers.^{lvi}

F. DEVELOPING A STRONG CONSUMER HEALTH ASSISTANCE SYSTEM AS THE ACA IS IMPLEMENTED.

Consumers often face a range of obstacles to accessing quality comprehensive health insurance coverage. Given the complexity of the health care system in the United States, it is understandable that many consumers would have difficulty navigating that system. Health insurance companies often provide confusing information that consumers must sort through in order to choose an appropriate insurance plan for themselves and their families. Once a consumer has chosen a plan, they must then navigate myriad systems in order to obtain the health care they deserve. If an insurance company denies coverage of a benefit, consumers must find their way through a convoluted appeals process before they receive the care they need.

Each of these scenarios could be addressed if consumers had access to the information and assistance they needed. In addition to the Navigator Program, a strong consumer health assistance program (CHAP) in New Mexico could help New Mexicans obtain the healthcare they need after they have chosen their health plan or enrolled in Medicaid.

Prior to the Affordable Care Act many communities recognized the need to have a resource for people who needed assistance navigating the entire health care system not just the private health insurance market. These programs are called consumer health assistance programs (CHAPs). These programs have three purposes: (1) educating consumers about their rights and responsibilities; (2) assisting consumers in their efforts to resolve complaints about their health care coverage and health care services; and (3) collecting information and providing insight into the types of problems encountered by consumers so that improvements can be made. CHAPs will be a critical component of the health care system as more people gain coverage due to the Affordable Care Act. New Mexico has received a Consumer Assistance Grant from the federal government to establish a consumer health assistance program within the Division of Insurance that is designed to serve all three of the functions described above. But in the long-term, community-based CHAPs that are separate from the agency responsible for regulating insurance will be important to meet the needs of diverse communities.

New Mexico has an important opportunity to create a consumer friendly program, which will be particularly helpful to families navigating the complexity of the health care system. The state should ensure that it develops an effective program so that children and families are able to have meaningful engagement with their insurance providers and the Division of Insurance, should they need assistance in challenging denials of coverage and benefits.

IV. OPPORTUNITIES FOR IMPLEMENTATION OF A STRONG NAVIGATOR AND CONSUMER HEALTH ASSISTANCE SYSTEM IN NEW MEXICO.^{lvii}

New Mexico faces unique challenges in developing an effective Navigator Program, Medicaid and CHIP eligibility determination and enrollment programs, and a strong consumer health assistance program in anticipation of the new systems that will begin to operate in January, 2014. Because it represents communities around the State, Blueprint for Health New Mexico could provide significant support, ideas and information to the State and to any Exchange operating in New Mexico regarding how to meet the needs of the State's diverse population. This is an area where members of the Advisory Network and community health councils could develop creative and important ideas for inclusion in the planning for these new systems. These are just a few ideas to start that conversation:

1. Conduct an environmental scan of available resources and entities that could participate in the Navigator Program in communities throughout New Mexico.
2. Conduct multiple community education sessions throughout the state about the anticipated changes in Medicaid and CHIP eligibility determinations and enrollment, qualified health plans, premium tax credits, and the Exchange. Ask participants for input on what type of support, information and assistance will best help them, their families, and their communities participate fully in these new programs. While the focus groups conducted under the Exchange Planning Grant were extremely helpful, this project would delve more deeply into the navigator and consumer assistance systems that will meet the needs of diverse populations and communities in the state.
3. Participate in the Consumer Stakeholder Advisory Group to the New Mexico Office of Healthcare Reform. Provide input into that process from communities across the state and organize meetings and focus groups to help frame responses to key areas for which the state seeks input from the stakeholder advisory groups.
4. Develop recommendations for the Exchange regarding what constitutes culturally and linguistically appropriate programs and services among Navigators.
5. Develop recommendations for the Exchange regarding the training needed in their communities for navigators.

6. Offer to assist the state in testing new IT systems for eligibility determinations in Medicaid, CHIP and on the Exchange so that they are user-friendly and meet the needs of diverse populations.
7. Encourage state officials to include sufficient funding for consumer assistance in their grant proposals to seek funding to establish a state health insurance exchange.
8. Work with the Consumer Ombudsman that the Division of Insurance intends to hire to advise that individual regarding effective strategies for outreach, education and filing of complaints by individuals in the communities participating in the Advisory Network.
9. Analyze the pros and cons of having a Basic Health Plan in New Mexico that will cover those between 133% and 200% of the federal poverty level.
10. Develop plans for the establishment of a strong Consumer Health Assistance Program that is able to conduct appropriate outreach and education throughout New Mexico and ensure that development of any such program takes into consideration the unique racial, ethnic, linguistic, gender, sexuality, ability and cultural demographics of New Mexico communities.
11. Address ways in which a Consumer Health Assistance Program can avoid being siloed within commercial insurance only and can address insurance reforms and consumer protections, navigators within the new health insurance exchange, Medicare, and Medicaid eligibility, enrollment and claims disputes.
12. Address ways in which existing patient navigator systems (unrelated to insurance coverage) could be developed and strengthened to assist families navigate healthcare delivery systems, not just healthcare coverage systems.

V. ENDNOTES

ⁱ The Patient Protection and Affordable Care Act (Public Law 111-148) was enacted on March 23, 2010. It was amended by the Health Care and Education Reconciliation Act (Public Law 111-152), which was enacted on March 30, 2010. This paper uses the acronym ACA or the term "Affordable Care Act" to refer collectively to both of those laws.

ⁱⁱ Kaiser Family Foundation has extensive data on an array of healthcare issues, including the insured and uninsured. It also maintains data on individual states. Its most recent "State Health Facts" on Health

Coverage and Uninsured Persons in New Mexico can be found online at <http://www.statehealthfacts.org/comparecat.jsp?cat=3&rgn=33&rgn=1> (last accessed August 23, 2011).

ⁱⁱⁱ See Families USA, “Health Coverage in New Mexico: How Will Reform Help?” at 2 (March 2010), available at <http://www.familiesusa.org/assets/pdfs/health-reform/state-gains-2010/new-mexico.pdf> (last accessed August 29, 2011).

^{iv} See Families USA, “Lower Taxes, Lower Premiums: The New Health Insurance Tax Credit in New Mexico,” at 1, 4, (September 2010), available at <http://www.familiesusa.org/assets/pdfs/health-reform/premium-tax-credits/New-Mexico.pdf> (last accessed August 29, 2011).

^v The Exchanges have been called different things since the ACA was adopted: Health Insurance Exchanges, Health Benefit Exchanges, and, most recently, Affordable Insurance Exchanges. This latter term appears in the proposed federal regulations addressing several key issues that must be addressed by states if they choose to build a state exchange. See 76 Federal Register [FR] 41866 (July 15, 2011).

^{vi} Kaiser Family Foundation has extensive data on an array of healthcare issues, including the insured and uninsured. It also maintains data on individual states. Its most recent “State Health Facts” on Health Coverage and Uninsured Persons in New Mexico can be found online at <http://www.statehealthfacts.org/comparecat.jsp?cat=3&rgn=33&rgn=1> (last accessed August 23, 2011).

^{vii} See Families USA, “Health Coverage in New Mexico: How Will Reform Help?” at 2 (March 2010), available at <http://www.familiesusa.org/assets/pdfs/health-reform/state-gains-2010/new-mexico.pdf> (last accessed August 29, 2011).

^{viii} See Families USA, “Lower Taxes, Lower Premiums: The New Health Insurance Tax Credit in New Mexico,” at 1, 4, (September 2010), available at <http://www.familiesusa.org/assets/pdfs/health-reform/premium-tax-credits/New-Mexico.pdf> (last accessed August 29, 2011).

^{ix} See “A Profile of Health Insurance Exchange Enrollees,” Henry J. Kaiser Family Foundation (March, 2011) available at <http://www.kff.org/healthreform/upload/8147.pdf> (last accessed August 29, 2011).

^x *Id.* at 2.

^{xi} *Id.* at 3.

^{xii} *Id.*

^{xiii} Genevieve M. Kenney, Victoria Lynch, Jennifer Haley, Michael Huntress, Dean Resnick and Christine Coyer, “Gains for Children: Increased Participation in Medicaid and CHIP in 2009,” at 3 and n.2 (Robert Wood Johnson Foundation and Urban Institute (August 2011), available at <http://www.rwjf.org/files/research/20110816coveragegainsforkidsfull.pdf> (last accessed August 29, 2011).

^{xiv} *Id.*, at 24.

^{xv} New Mexico Voices for Children, “Maximizing Medicaid: Reaching and Retaining All Eligible Children,” at 1 (January 2008), available at http://www.nmvoices.org/attachments/maximizing_medicaid_1_08.pdf (last accessed August 29, 2011).

^{xvi} The United States Department of Health and Human Services (“HHS”) publishes annual poverty guidelines that are the basis for many eligibility determinations in federal and state benefit programs. *See* 76 Federal Register (FR) 3637-3638 (January 20, 2011)(announcing the 2011 federal poverty guidelines). The 2011 federal poverty guidelines can be found at <http://aspe.hhs.gov/poverty/11fedreg.shtml> (last accessed August 29, 2011).

^{xvii} The Exchanges have been called different things since the ACA was adopted: Health Insurance Exchanges, Health Benefit Exchanges, and, most recently, Affordable Insurance Exchanges. This latter term appears in the proposed federal regulations addressing several key issues that must be addressed by states if they choose to build a state exchange. *See* 76 Federal Register [FR] 41866 (July 15, 2011).

^{xviii} *See* ACA § 1311(i). This paper does not provide citations to every subsection in ACA § 1311(i) addressed. Rather than a legal analysis, this paper is designed to present a general understanding of how the Navigator Program is supposed to work.

^{xix} *See* 76 FR 41866, 41915, proposed § 155.210(b). The federal government has issued additional proposed regulations that relate to the Exchanges, but the regulations proposed by HHS on July 15, 2011 address the basic structure and responsibilities of Exchanges and are the ones that address the navigator provisions of the ACA.

^{xx} ACA § 1413(i)(3)(e) (emphasis added).

^{xxi} 76 FR at 4196, proposed § 155.210 (d)(5).

^{xxii} 76 Federal Register (FR) 51202, 51204 (August 17, 2011).

^{xxiii} 76 FR at 51203. If a state establishes a “Basic Health Plan” for individuals between 133% and 200% of the federal poverty level, eligibility for that plan would also have to be determined at this coordinated entry point. ***Although beyond the scope of this paper, the Southwest Women’s Law Center recommends that Blueprint for Health New Mexico address whether New Mexico should establish a Basic Health Plan under the ACA. Individuals in that income range would not participate in the Exchange or receive premium tax credits.***

^{xxiv} *Id.* (emphasis added).

^{xxv} 76 FR at 41878.

^{xxvi} *See* 76 FR at 41877.

^{xxvii} “A Profile of Health Insurance Exchange Enrollees,” at 3, Henry J. Kaiser Family Foundation (March, 2011) available at <http://www.kff.org/healthreform/upload/8147.pdf> (last accessed August 29, 2011).

^{xxviii} See New Mexico Medical Assistance Division website at <http://www.hsd.state.nm.us/mad/HPE.html> (last accessed August 26, 2011).

^{xxix} See New Mexico Medical Assistance Division website at <http://www.hsd.state.nm.us/mad/PMOSAA.html> (last accessed August 26, 2011).

^{xxx} See Community health workers: What do we know about them? at 3; 6-8 http://www.who.int/hrh/documents/community_health_workers.pdf (last accessed August 26, 2011).

^{xxxi} See <http://www.ihs.gov/nonmedicalprograms/chr/index.cfm?module=history> for more information on the history of community health representatives (last accessed August 26, 2011).

^{xxxii} Community health workers: What do we know about them? at v.

^{xxxiii} *Id.*

^{xxxiv} *Id.*

^{xxxv} *Id.* at vi.

^{xxxvi} See Aging and Disability Resource Center website at http://www.nmaging.state.nm.us/Resource_Center.html (last accessed August 26, 2011).

^{xxxvii} The National Association of Professional Insurance Agents produced an Issue Paper, which in part calls for the preservation of the role of independent agents and brokers. See <http://www.pianet.com/NR/rdonlyres/0E79633B-2965-49A0-ABAB-91531BA7A045/20864/HealthCareAugust2011.pdf>

^{xxxviii} Families USA, *Navigators Need Not Be Licensed as Insurance Brokers of Agents*. Available at http://www.thcc2.org/PDFs/iwg_navigators_brokers.pdf (last accessed August 30, 2011).

^{xxxix} The National Association of Insurance Commissioners’ “Producer Modeling Act” only requires licensure if a person “sells, solicits or negotiates” insurance. See National Association of Insurance Commissioners, *Producer Licensing Model Act* (Kansas City, MO: National Association of Insurance Commissioners, January 2005). People who provide general information about insurance and are not paid a commission are not required to be licensed under this model.

^{xl} *Navigators Need Not Be Licensed as Insurance Brokers of Agents*, 4-5.

^{xli} *Id.* at 5.

^{xlii} *Id.*

^{xliii} *Id.*

^{xliiv} New Mexico First, NM Health Insurance Exchange: Consumer Feedback Meetings Final Report, 13 (June 30, 2011) (<http://www.hsd.state.nm.us/pdf/hcr/General%20Consumer%20Final%20Report%20June%202011.pdf>). See also New Mexico Office of Healthcare Reform Uninsured Adult Household Survey, 54-55 (May 2011)(Table indicating that a majority of respondents thought that the complexity of purchasing health insurance was a barrier to obtaining coverage.) (<http://www.hsd.state.nm.us/pdf/hcr/Uninsured%20Survey%20Final%20Report%20June%202011.pdf>)

^{xliv} New Mexico First at 13.

^{xlv} Uninsured Adult Household Survey, 5-6; Health Insurance Exchange Stakeholder Input: Sex and Gender Implications, 22 (June 2011)(<http://www.hsd.state.nm.us/pdf/hcr/Sex-Gender%20Final%20Report%20June%202011.pdf>); Consumer Input and Analysis: Individuals Living with Disabilities, 2-3 (June 30, 2011) (<http://www.hsd.state.nm.us/pdf/hcr/DRNM%20Final%20Report%20Complete.pdf>); New Mexico Small Employers, 20 (June 30, 2011) (<http://www.hsd.state.nm.us/pdf/hcr/Small%20Employer%20Final%20Report%20June%202011.pdf>)

^{xlvii} New Mexico First at 19.; Adult Household Survey at 7, 22-23.; Young Adults and Marginally Employed Final Report, 18 (June 2011) (<http://www.hsd.state.nm.us/pdf/hcr/Young%20Adults%20and%20Marginally%20Employed%20Final%20Report%20June%202011.pdf>); New Mexico Small Employers, 19.

^{xlviii} Individuals Living with Disabilities at 3-4.

^{xlix} New Mexico First at 17-18.; Young Adults and Marginally Employed at 18, 29.; Sex and Gender Implications at 20.; Towards an LGBT-Inclusive Approach to Health Care Reform Implementation: Recommendations for Establishing a New Mexico Health Insurance Exchange, 20-21 (July 2011) (<http://www.hsd.state.nm.us/pdf/hcr/LGBT%20Final%20Report%20June%202011.pdf>); Individuals Living with Disabilities at 4.; Adult Household Survey at 7.

^l Individuals with Disabilities at 4-5.; Towards an LGBT-Inclusive Approach at 6.

^{li} See New Mexico Quick Facts from the U.S. Census Bureau <http://quickfacts.census.gov/qfd/states/35000.html>

^{lii} *Id.*

^{liii} Individuals Living with Disabilities at 5.; Sex and Gender Implications at 17-21.; Young Adults and Marginally Employed at 18.

^{liv} Individuals Living with Disabilities at 5.

^{lv} New Mexico First at 18, 20.

^{lvi} *Id.*

^{lvii} There are many resources available related to navigators and consumer health assistance programs. As organizations begin commenting on the sections of the health insurance exchange regulations related to navigators, additional information will become available. For more information about these critical programs see the following resources: Community Catalyst *Navigators: Guiding People Through the Exchange* (June 2011) (http://www.communitycatalyst.org/doc_store/publications/Navigators_June_2011.pdf); Community Catalyst, *Making Health Reform Work: State Consumer Assistance Programs* (September 2010) (http://www.communitycatalyst.org/doc_store/publications/CAP_report.pdf); Community Catalyst, *Assessing Consumer Protections in the July 2011 HHS Exchange Regulations* (July 31, 2011) (http://www.communitycatalyst.org/doc_store/publications/Checklist_Exchange_July.pdf); Families USA, *Designing a Consumer Health Assistance Program*, (August 2010) (<http://www.familiesusa.org/assets/pdfs/Designing-Consumer-Health-Assistance-Programs.pdf>); Families USA, *Consumer Health Assistance Programs: Report on a National Survey* (June 2001) (<http://www.familiesusa.org/assets/pdfs/Consumer-Health-Assistance-Programs-Report-on-a-National-Survey.pdf>); Center for Health Care Rights, *From Concept to Operation: A Guide to Developing Assistance Programs for Health Care Consumers* (January 2003) (<http://www.kff.org/insurance/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=14204>).