

Assister Tip Sheet: Dos and Don'ts for Outreach and Education Activities in Federally-facilitated Marketplaces^{i ii}

Updated November 2016

As a Navigator, non-Navigator assistance personnel (in-person assisterⁱⁱⁱ), or certified application counselor (CAC) in a Federally-facilitated Marketplace (FFM)^{iv} (collectively referred to as “you” or “assisters” in this document), you may be performing a variety of outreach and education activities in addition to providing application and enrollment assistance to consumers.^v It is important to keep in mind that there are certain limitations on your outreach and education activities. This tip sheet will help you understand what you may and may not do. Assisters must complete training prior to functioning as an assister, including before conducting outreach and education activities.^{vi}

Gifts and Promotional Items^{vii}

Assisters may find it helpful to provide gifts or promotional items to consumers at outreach and education events, or other forums attended by members of the public. We consider “gifts” to include gift items, gift cards, cash cards, cash, and promotional items that market or promote the products or services of a third party. Below are some rules to keep in mind:

Assisters **cannot**:

- Use Marketplace^{viii} funds (including funds awarded under an HHS Navigator grant or under an Enrollment Assistance Program contract) to purchase gifts of any value. If you perform outreach and education activities using federal funds that are not Marketplace funds (for example, if you perform health center patient outreach and education activities that are funded through a grant from the Health Resources and Services Administration (HRSA)), you should check the requirements associated with those funds for questions you may have about using those funds to purchase items like gifts and promotional items.
- Use funds from any source to provide gifts of **any value** as an inducement for enrollment. By “inducing enrollment,” we mean conditioning receipt of the gift(s) on a consumer’s actually enrolling in coverage, as opposed to encouraging consumers to seek or receive information, application assistance, or other authorized assistance.^{ix}

Assisters **can**:

- Provide gifts that do not exceed a \$15 value to encourage consumers to seek or receive information, application assistance, or other authorized assistance, **as long as receiving the gift is not conditioned on actual enrollment and Marketplace funds are not used to acquire the gift**. Assisters should also take note of the following:
 - The \$15 value limit applies to both individual gifts and the cumulative value of multiple gifts per encounter. A single outreach or educational event is considered to be a single encounter for this purpose. For example, an assister may provide three gifts valued at \$5 each to an individual at an outreach event.
 - The \$15 value limit applies at the individual level, not at the household level. For example, if a family of four comes to an event, each family member may receive a gift valued at \$15 each.
 - The \$15 value limit applies only to single encounters or events, and does not apply across multiple encounters or events. This means that assisters do not need to keep track of the cumulative value of the gifts previously given to consumers over multiple events.
- Reimburse legitimate expenses incurred by a consumer in an effort to receive Exchange application assistance, such as travel or postage expenses. These types of expenses are not considered gifts.

Example: Assisters can provide items like coffee shop gift cards, pens, magnets, or key chains worth \$15 or less each. These items may bear the name or logo of a local business, community organization, or social service program. These items may also be provided to consumers at outreach and education events or at other forums attended by members of the general public, *as long as they are not being provided as an inducement to enrollment and have not been purchased using Marketplace funds.*

Additionally, FFM Navigators **cannot** use HHS Navigator grant funds to purchase promotional t-shirts, sweatshirts, or other clothing for their staff.^x

Door-to-Door and Other Direct Contact Activities^{xi}

Under CMS assister regulations, you **may** conduct **outreach and education activities** by going door-to-door or through other unsolicited means of direct contact, such as a direct phone call to consumers' homes. Direct contact outreach and education activities may also include providing brochures and informational materials about the Marketplace, Marketplace enrollment and the annual Marketplace redetermination process, or informing consumers of application and enrollment assistance provided by your organization.^{xii}

- **Note:** It is against federal law to place outreach or educational materials directly into a consumer's mailbox.^{xiii}

Under CMS assister regulations, you **must not** go door-to-door, call, or use other means of direct contact for the purpose of **providing application or enrollment assistance** to consumers if they haven't requested or initiated the contact, or if you or your organization doesn't already have a relationship with the consumer. For example, you can't offer to help a consumer with an application or enrollment while conducting outreach by going door-to-door, or offer to schedule an appointment for application or enrollment assistance while conducting outreach by going door-to-door. However, if you're conducting outreach by going door-to-door, and a consumer makes an unprompted request for application or enrollment assistance, you may provide the requested assistance at that time or schedule a follow-up appointment.

If you or your organization already has a relationship with a consumer (for example, the consumer is an existing patient or client), then, under CMS assister regulations, you may contact the consumer by going to his or her door, directly calling the consumer via the telephone, or using other means of direct contact for the purpose of providing application or enrollment assistance. However, you must make sure that you're complying with any other federal, state, or local laws that may apply to these interactions. As a best practice for safety purposes, we recommend that assisters conduct door-to-door activities in groups of two or more.^{xiv}

- **Note:** If a consumer gives you his or her contact information, such as by filling out a contact card, this is considered consent by the consumer for future contact as long as the consumer was clearly made aware that the information might be used for future contact. In this case, follow-up contact with the consumer is permitted.

Robo-Calls^{xv}

Under CMS assister regulations, you **must not** call consumers using an automatic telephone dialing system or an artificial or prerecorded voice (frequently referred to as robo-calls) unless the consumer has an existing relationship with you or your organization and you comply with otherwise applicable state or federal law.

If you or your organization already has a relationship with a consumer, then, under CMS assister regulations, you **may** use this type of tool to reach out to those consumers for things like reminding these consumers of upcoming events. Additionally, this requirement doesn't prohibit a health care provider organization from using an automatic dialing system, or an artificial or prerecorded voice, to call existing patients to remind them of a doctor's appointment, for example, as long as this activity doesn't violate other applicable state or federal law. Even in cases when robo-calls are appropriate under CMS assister regulations, you must be sure that you're complying with any other federal, state, or local law that may apply to these interactions.

Physical Presence^{xvi}

Navigators and in-person assisters in FFM states must maintain a physical presence in the state where they are authorized to help consumers with the Marketplace (also referred to as the “Marketplace service area”). This requirement ensures that consumers get face-to-face assistance, and that Navigators and in-person assisters understand and can meet the specific needs of the communities they serve. For Federally-facilitated Marketplace (FFM) states, it’s not necessary for a Navigator or in-person assister to have its principal place of business located in the Marketplace service area.^{xvii}

- **For example:** A national organization with its principal place of business in New York may operate as an HHS Navigator grantee in the FFM for New Jersey and help consumers apply for and enroll in coverage through the FFM in New Jersey, as long as the organization maintains a physical presence in New Jersey, such as by operating a local chapter in that state.

Unlike Navigators and in-person assisters in FFM states, CACs in FFM states aren’t required to maintain a physical presence in the state where they help consumers with the Marketplace, but CACs are encouraged to provide face-to-face assistance to consumers as much as possible. However, like Navigators and in-person assisters in FFM states, it’s not necessary for a CAC individual or organization in an FFM state to have its principal place of business located in the Marketplace service area.^{xviii}

- **For example:** A CAC organization in North Dakota may be designated to assist consumers with applying for and enrolling in coverage through the Marketplace in both North Dakota and South Dakota (as applicable), even if the organization doesn’t have any CACs physically located in South Dakota.

Note: The examples above are not exhaustive. If you have specific questions, please contact the following:

- **Certified Application Counselors:** CACQuestions@cms.hhs.gov
- **Navigators:** Your Navigator grantee Project Officer or NavigatorGrants@cms.hhs.gov



ⁱ This document is current as of the date it was posted to Marketplace.cms.gov and discusses federal requirements that apply to Navigators, in-person assisters, and certified application counselors in FFMs. We encourage readers to review the applicable statutes, regulations, and interpretive materials for a complete and current statement of their contents.

ⁱⁱ This communication was printed, published, or produced and disseminated at U.S. taxpayer expense.

ⁱⁱⁱ By “in-person assister,” we mean non-Navigator assistance personnel carrying out consumer assistance functions under 45 CFR 155.205(d) and (e) in a Federally-facilitated Marketplace. “In-person assister” does not include an individual certified application counselor or a certified application counselor designated organization.

^{iv} The terms “Federally-facilitated Marketplace” and “FFM,” as used in this document, include FFMs where the state performs plan management functions and State Partnership Marketplaces.

^v Unlike Navigators, certified application counselors are encouraged but not required to conduct community outreach activities. See 78 FR 42844.

^{vi} See 45 CFR 155.205(d); 155.215(b)(1)(i); 155.225(d)(1); and 81 FR 12256-57 (March 8, 2016).

^{vii} See 45 CFR 155.210(d)(6)-(7); 155.215(a)(2)(i); 155.225(g)(4); and 81 FR 12257-58 (March 8, 2016).

^{viii} Marketplace funds include, but are not limited to, funds awarded under a federal Navigator grant, as well as section 1311 Exchange Establishment funds granted to a State. CACs generally do not receive FFM funds, and therefore CMS assister regulations do not include a provision regarding CACs’ use of FFM funds to purchase gifts. See 79 FR 30284.

^{ix} See 81 FR 12258.

^x See 45 CFR 75.421. In accordance with 45 CFR 75.421, CMS does not consider expenditures to purchase promotional t-shirts, sweatshirts, or other clothing for Navigator grantee staff to be allowable costs under the federal Navigator grants.

^{xi} See 45 CFR 155.210(d)(8); 155.215(a)(2)(i); 155.225(g)(5); 79 FR 30284-85 (May 27, 2014), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>.

^{xii} See 79 FR 30284.

^{xiii} Federal law prohibits placing mailable materials, like circulars and sale bills, on which postage has not been paid, in U.S. Postal Service mailboxes with intent to avoid payment of postage. (18 U.S.C. § 1725.)

^{xiv} See 79 FR 30285.

^{xv} See 45 CFR 155.210(d)(9); 155.215(a)(2)(i); 155.225(g)(6); see also 79 FR 30285.

^{xvi} See 45 CFR 155.210(e)(7); 155.215(h); see also 79 FR 30287.

^{xvii} See 45 CFR 155.210(e)(7); 155.215(h).

^{xviii} See 45 CFR 155.225(b)(3); see also 79 FR 30287.

