

# Legislative Analysis

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## NAVIGATORS UNDER AFFORDABLE CARE ACT: LICENSE & REGULATE

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### House Bill 4576

**Sponsor: Rep. Hugh Crawford**

**Committee: Health Policy**

**Complete to 6-3-13**

## A SUMMARY OF HOUSE BILL 4576 AS INTRODUCED 4-17-13

The bill would create a navigator license for individuals and business entities acting as a navigator under the federal Affordable Care Act, prescribe the duties of a navigator, prohibit certain conduct, provide penalties, and define terms.

Beginning October 1, 2013, under a provision of the federal Affordable Care Act, consumers will be able to choose affordable health insurance plans through state exchanges (also known as health insurance marketplaces). The ACA also requires states to establish a "navigator" program by which approved entities educate and assist consumers as they explore the insurance plans and options offered on their state's exchange.

Navigators will not receive commissions, as they do not actually sell insurance plans to consumers; their role is limited to providing information and assistance in the enrollment process. States with a federally-facilitated marketplace, such as Michigan, are eligible for federal grants to fund their navigator programs. Though state-licensed insurance agents and insurance brokers may be eligible to be navigators under the ACA, the function of a navigator is different from an agent or broker and therefore requires its own regulatory structure.

House Bill 4576 would amend the Insurance Code to create a regulatory framework for navigators. "Navigator" would be defined to mean a person required to be licensed under the laws of this state to perform any of the activities described in 42 USC 18031(i). The bill would prohibit an individual from acting as a navigator or holding himself or herself out to the public as a navigator without being licensed as a navigator. Only licensed navigators could receive funding from an exchange.

### The First Step

Prior to an exchange being operational, the director of the Department of Insurance and Financial Services (DIFS) must establish a licensing and training program for prospective navigators that includes, but is not limited to: (1) performing a criminal records check on applicants; and (2) training on compliance with the Health Insurance Portability and Accountability Act (or regulations promulgated under that act), training on ethics, and training on provisions of the ACA relating to navigators.

The director would also have to develop an application and disclosure form by which a navigator could disclose any potential conflicts of interest and any other information the director required.

#### Duties of and Prohibited Conduct by Navigators

A navigator would be authorized to do all of the following:

- Conduct public education activities to raise awareness of the availability of qualified health plans.
- Distribute fair and impartial general information concerning enrollment in all qualified health plans offered within the exchange and also the availability of premium tax credits under the federal tax code and cost-sharing reduction under the ACA.
- Facilitate enrollment in qualified health plans, without suggesting that an individual select a particular plan.
- Provide referrals to appropriate state agencies for an enrollee with a grievance, complaint, or question regarding the enrollee's health plan, coverage, or a determination under such plan coverage.
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population served by the exchange.

A navigator would be prohibited from doing any of the following:

- Selling, soliciting, or negotiating health insurance.
- Providing advice concerning the benefits, terms, and features of a particular health plan or offering advice about which health plan is better or worse for a particular individual or entity.
- Recommending a particular health plan or advising consumers about which health plan to choose.
- Providing any information or services related to health benefit plans or other products not offered in the exchange.

#### Applying for a Navigator License

An individual, or a business entity acting as a navigator, would be required to apply for and obtain a navigator's license as follows:

***Individuals:*** An individual must file the uniform application required by the director and declare—under penalty of refusal, suspension, or revocation of the license—that all statements are true, correct, and complete to the best of the individual's knowledge and belief. Applicants must consent to a criminal records check as required by the bill, and obtain a copy of their fingerprints, at their own cost.

In addition, the applicant must be at least 18 years of age; have not committed any act constituting grounds for denial, suspension, or revocation of an insurance producer's license in Section 1239(1) of the code; completed a prelicensing course of study for the qualifications for which the person has applied as required under Section 1229; paid the

required fees; successfully passed the examination required for each qualification for which the person applied; and successfully completed a criminal records check.

***Businesses:*** A business entity must file the uniform business entity application required by the director. To be approved, the entity must have paid the required fees; designated an individual licensed navigator responsible for the entity's compliance with the state's insurance laws, rules, and regulations; and, as an entity, not have committed any act listed in Section 1239(1). The director could require the production of any documents reasonably necessary to verify the information contained in an application.

[Section 1239(1) allows the director to place on probation, suspend, or revoke an insurance producer's license or levy a civil fine, or any combination of actions for certain conduct, which include, among other things, various insurance-related violations; having been convicted of a felony; or noncompliance with child support obligations.]

#### Penalties

In addition to any other powers under the Insurance Code, the director may place on probation, suspend, or revoke a navigator's license or levy a civil fine or any combination of actions, and must refuse to issue a license, for one or more causes that would be a ground for refusal, suspensions, or revocation of an insurance producer's license under Section 1239.

Beginning October 1, 2013, the director must revoke, or refuse to issue, the navigator license of any person that received financial compensation, including monetary and in-kind compensation, gifts, or grants from an insurer offering qualified health benefits through a state exchange. The director could deny, suspend, approve, renew, or revoke the license of a navigator if the director considered it necessary to protect insureds and the public.

A business entity's navigator license could be suspended, revoked, or refused if the director found, after a hearing, that a violation by an individual navigator's was known about or should have been known about by one of more of the partners, officers, or managers acting on behalf of the business entity and that the violation was neither reported to the director nor corrective action taken.

The director would be authorized to examine the books and records of a navigator to determine whether the navigator was conducting its business in accordance with Chapter 12 of the code (Agents, Solicitors, Adjusters, and Counselors). A navigator would have to allow the director free access, at reasonable times, to all of the navigator's books and records relating to transactions to which Chapter 12 applies.

#### Provisions Specific to Business Entities

A business entity licensed as a navigator must make a list of all individual navigators employed or supervised by the entity or with which the entity is otherwise affiliated.

A business entity would have to notify the director using a prescribed format within 30 days of the effective date of terminating the employment, engagement, affiliation, or other relationship with an individual navigator if the reason for termination was one of the reasons listed in Section 1239 or the business entity had knowledge that the individual navigator had been found by a court or government body to have engaged in any of the activities listed in Section 1239.

#### Miscellaneous Provisions

The code contains provisions applicable to an insurance agent, solicitor, counselor, or adjuster regarding the submission of a licensee's or license applicant's mailing address and electronic mail address to the DIFS director. The code also contains provisions applicable to a solicitor, counselor, or adjuster pertaining to the refusal of a license to an applicant who fails to meet the requirements of Chapter 12; and suspension or revocation of a license of an individual who violates the code or fails to maintain licensing standards. Under the bill, these provisions also would apply to insurance navigators.

#### **FISCAL IMPACT:**

House Bill 4576 would have an indeterminate fiscal impact on the Department of Insurance and Financial Services (DIFS) to the extent that it would engender additional administrative costs for DIFS in the licensure and regulation of Navigators described in the federal Affordable Care Act and in HB 4576. The Director of DIFS would have the authority to establish the licensure and associated fees collected both from individuals and business entities seeking to become Navigators. Thus, DIFS would be able to establish fees that generate sufficient revenue to support the administrative costs engendered by HB 4576.

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