

Legislative Analysis



NAVIGATORS UNDER AFFORDABLE CARE ACT: CERTIFY & REGULATE

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4576 (H-2 Substitute)
Sponsor: Rep. Hugh Crawford
Committee: Health Policy

Complete to 6-18-13

A SUMMARY OF HOUSE BILL 4576 AS REPORTED FROM COMMITTEE

The bill would create a navigator certificate 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 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 add Chapter 12A to the Insurance Code (MCL 500.102 et al.) to create a regulatory framework for navigators. "Navigator" would be defined to mean a person performing the activities and duties of a navigator as described in federal law at 42 USC 18031 or in regulations promulgated under the bill. The bill would prohibit an individual from acting as a navigator or performing the duties of a navigator without being certified as a navigator. Only certified navigators could receive funding from an exchange.

The bill would apply to policies, certificates, or contracts delivered, issued for delivery, or renewed in the state on and after the bill's effective date.

The bill would also specify that it would not authorize, nor should it be construed to authorize, the establishment or operation of an American Health Benefit Exchange under the Patient Protection and Affordable Care Act. Further, the bill could not be construed to authorize the state or a state agency to conduct or oversee state-level governmental consumer assistance functions for an exchange or convey any administrative, statutory,

rule-making, or other power to the state or state-agency to authorize, establish, or operate and exchange in Michigan that did not exist before August 1, 2013, the bill's effective date.

Legislative Intent

The bill would specify that it is the Legislature's intent that any consumer assistance functions by or overseen by the state or a state agency with regard to an American Health Benefit Exchange be conducted in a manner that utilizes and highlights Michigan-based resources, including insurance producers, in order to best serve the residents of the state and to ensure appropriate health care decisions.

The First Step

If a state exchange were operational, the director of the Department of Insurance and Financial Services (DIFS) would have to establish a certification and training program for prospective navigators that includes, but is not limited to, 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.

"Certificate" would mean a document issued by the director of DFIS authorizing a person to act as a navigator for the qualifications specified in the document. The certificate itself would not create any actual, apparent, or inherent authority in the holder to represent or commit an insurer.

Exemption from Certification

An individual who volunteers to conduct public education activities to raise awareness of qualified health plans would be exempt from the certification requirement of Chapter 12A if the individual is not compensated for the public education activities and a navigator directly supervises the individual at the navigator's physical address or place of business. A navigator could not permit an individual under its direct supervision to violate Chapter 12 A.

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.
- Providing any information or services related to health benefit plans or other products not offered in the exchange.

Applying for a Navigator Certification

An individual or a business entity acting as a navigator would be required to apply for and obtain a navigator certificate 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 certificate—that all statements are true, correct, and complete to the best of the individual's knowledge and belief.

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 precertification course of study for the qualifications for which the person has applied as required under the bill; 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 certified 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.]

Alternatively, an individual or business applicant could be approved if the individual or business is licensed or certified to act as a navigator in another state, or is certified or

licensed to act as a navigator by an appropriate federal agency, and the applicant substantially meets Chapter 12A's requirements and rules promulgated under the new chapter for navigator certification.

Penalties

In addition to any other powers under the Insurance Code, the director may place on probation, suspend, or revoke a navigator's certificate or levy a civil fine or any combination of actions, and must refuse to issue a certificate, 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 certificate of any person that received financial compensation, including monetary and in-kind compensation, gifts, or any compensation related to enrollment from an insurer offering qualified health benefits through a state exchange. The director could deny, suspend, approve, renew, or revoke the certificate of a navigator if the director considered it necessary to protect insureds and the public.

A business entity's navigator certificate could be suspended, revoked, or refused if the director found, after a hearing, that a violation by an individual navigator was known about or should have been known about by one or 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 12A. For the purpose of facilitating the examination, 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 certified 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 (Agents, Solicitors, Adjusters, and Counselors); and suspension or revocation of a license of an individual who violates the code or fails to maintain licensing standards. The bill would include sections that are substantially similar to these except that they would be specific to 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 certification and regulation of Navigators described in the federal Affordable Care Act and in House Bill 4576. The Director of DIFS would have the authority to establish the certification 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 House Bill 4576.

POSITIONS:

Representatives of the following organizations testified or indicated support for the bill on 6-4-13 and/or 6-11-13:

Michigan Association of Health Underwriters
Michigan Primary Care Association
Michigan Consumers for Healthcare
National Association of Insurance and Financial Advisors
MICHUHCAN (though still have concerns regarding fees)

The Michigan Health & Hospital Association indicated support for the concept of the bill. (6-4-13)

The Department of Insurance and Financial Services and the Michigan Association of Insurance Agents are neutral on the substitute. (6-11-13)

The Michigan Cancer Society Cancer Action Network indicated opposition to the bill. (6-4-13)

The Campaign for Liberty and Tenth Amendment Central indicated opposition to the bill. (6-4-13)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul Holland

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.