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House Bill 4576 (Substitute H-3 as passed by the House)
Sponsor: Representative Hugh Crawford
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 3-12-14

CONTENT

The bill would add Chapter 12A to the Insurance Code to do the following:

- **Require an individual to be certified in order to act as an insurance navigator or receive funding from a health benefit exchange established under the Affordable Care Act (ACA).**
- **Authorize an insurance navigator to provide public education and information regarding qualified health plans.**
- **Prohibit a navigator from selling insurance or endorsing a particular health plan.**
- **Require the Director of the Department of Insurance and Financial Services (DIFS) to establish a certification and training program for prospective navigators, if he or she determined that other such programs would not protect the privacy and security of Michigan residents' personal information.**
- **Require a business entity acting as a navigator to be certified.**
- **Establish conditions for certification of an individual or business entity.**
- **Allow the DIFS Director to place on probation, suspend, or revoke a navigator's certificate and/or levy a civil fine for certain causes prescribed in the Code.**
- **Require certificate revocation or denial if person received a financial benefit from an insurer offering plans through an exchange.**
- **Authorize the Director to take action against a navigator's certificate to protect insureds and the public.**

The bill specifies that Chapter 12A would not authorize the establishment or operation of an American health benefit exchange pursuant to the ACA.

(The ACA is the Federal Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act.)

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

Navigator Certification

The bill would prohibit an individual from acting as a navigator as described under 42 USC 18031(i)(3) unless he or she filed an application as prescribed in the bill and was certified with the State as a navigator. In addition, an individual could not receive funding from an exchange unless he or she was certified as a navigator. ("Exchange" would mean an

American health benefits exchange established or operating pursuant to the Affordable Care Act.)

"Navigator" would mean a person required to be licensed under Michigan law to perform any of the activities described in 42 USC 18031(i).

(Under 42 USC 18031(i), a state exchange established under the ACA must implement a program to award grants to insurance navigators. Any entity that serves as a navigator under a grant must do all of the activities listed below.) The bill would authorize a navigator to do all of the following:

- Conduct public education activities to raise awareness of the availability of qualified health plans.
- Distribute fair and impartial information concerning enrollment in all qualified health plans offered within the exchange and the availability of the premium tax credits under Section 36b of the Internal Revenue Code and the cost-sharing reduction under Section 1402 of the ACA.
- Facilitate selection of a qualified health 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 his or her plan coverage.
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population served by the exchange.

(Section 36b of the Internal Revenue Code provides for a "premium assistance amount", i.e., an income tax credit to offset the cost of the monthly premiums of a taxpayer who enrolls in a qualified health benefit plan through an exchange. Section 1402 of the ACA requires insurers to reduce cost-sharing requirements, including the out-of-pocket limit, for individuals who enroll in certain qualified health plans through an exchange and who have a household income of between 100% and 400% of the poverty line.)

The bill would prohibit a navigator from doing any of the following:

- Selling, soliciting, or negotiating health insurance.
- Endorsing a particular health benefit plan or group of health benefit plans.
- Providing any information or services related to health benefit plans or other products not offered in the exchange.

If an exchange were operational in Michigan, the DIFS Director would have to determine whether a program to certify and train navigators, other than a program established by the State, protected the privacy and security of personally identifiable information of Michigan residents under Michigan law. If the Director determined that the program did not protect State residents, he or she would have to establish a certification and training program for a prospective navigator that included a criminal history check using the Department of State Police's Internet Criminal History Access Tool (ICHAT), as well as training on all of the following:

- Compliance with the Health Insurance Portability and Accountability Act and rules promulgated under that Act.
- Ethics.
- Provisions of the ACA relating to navigators.

The program also would have to include any necessary State-specific training as determined by the DIFS Director.

In addition, the Director would have to develop an application and disclosure form that a navigator could use to disclose any potential conflicts of interest, as well as any other information required by the Director.

An individual applying for a navigator certificate would have to file with the DIFS Director the required uniform application and declare under penalty of license refusal, suspension, or revocation that the statements made in the application were true, correct, and complete to the best of the individual's knowledge and belief. An application could not be approved unless the Director found that the applicant was at least 18 years old and met all of the following conditions:

- Had not committed any act that would be a ground for denial, suspension, or revocation of an insurance producer's license (described below).
- Had completed all required training courses.
- Had paid the required fees and successfully passed any required examination.
- Had successfully completed the criminal history check.

When applying for a navigator certificate, an applicant would have to report his or her mailing and electronic mail address to the Director. A navigator would have to notify the Director of any address change within 30 days after the change. The Director would have to maintain each navigator's address on file. A notice of hearing or service of process could be served upon a navigator in any action or proceeding for a violation of the Code by first-class mail.

(The Code prescribes a number of causes for which an insurance producer's license may be placed on probation, suspended, or revoked, and a license must be refused. The causes include the following, among others:

- Providing incorrect or materially untrue information in the license application.
- Violating any insurance laws or regulations.
- Having been convicted of a felony.
- Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.)

The bill also would require a business entity acting as a navigator to obtain a navigator certificate. A business entity applying for a certificate would have to file with the DIFS Director the required uniform business entity application. An application could not be approved unless the Director found all of the following:

- The business entity had paid the fees required by the Director.
- The business entity had designated an individual certified navigator responsible for compliance with the State's insurance laws, rules, and regulations.
- The business entity had not committed any act that would be a ground for denial, suspension, or revocation of an insurance producer's license.

The Director could require the production of any documents reasonably necessary to verify the information contained in an application.

License Sanctions & Penalties

In addition to any other powers under the Code, the DIFS Director could place on probation, suspend, or revoke a navigator's certificate and/or levy a civil fine as described below for any cause that would be a ground for refusal, suspension, or revocation of an insurance producer's license. The Director would have to refuse to issue a navigator certificate for any of those causes.

The Director would be required to revoke the certificate of, or refuse to issue a certificate for, any person who received financial compensation, gifts, or any compensation related to enrollment from an insurer offering qualified health benefits through an exchange operating in Michigan.

The Director could deny, suspend, approve, renew, or revoke a navigator certificate if he or she 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 an individual navigator's violation was known or should have been known by at least one of the partners, officers, or managers acting on the business entity's behalf, the violation was not reported to the Director, and corrective action was not taken.

The bill would allow the Director to examine a navigator's books and records in order to determine whether the navigator was conducting its business in accordance with proposed Chapter 12A. For the purpose of facilitating the examination, the navigator would have to allow the Director free access, at reasonable times, to all books and records relating to transactions to which Chapter 12A applied.

Business Entity Requirements

As prescribed by the DIFS Director, a business entity certified as a navigator would have to make available a list of all individual navigators it employed or supervised or with whom it was otherwise affiliated.

A business entity that terminated the employment, engagement, affiliation, or other relationship with an individual navigator would have to notify the Director within 30 days following the effective date of the termination, if the reason for it was one of the prescribed grounds for license sanctions or the business entity knew that the individual was found by a court or government body to have engaged in any of the listed activities.

Refusal, Suspension, or Revocation of Certificate

The DIFS Director would have to refuse to grant a navigator certificate to an applicant who failed to meet the requirements of proposed Chapter 12A. Notice of the refusal would have to be in writing and set forth the basis for it. If the applicant submitted a written request within 30 days after the notice was mailed, the Director promptly would have to conduct a hearing in which the applicant would have to be given an opportunity to show compliance with Chapter 12A.

After notice and opportunity for a hearing, the Director could suspend or revoke the certificate of a navigator who failed to maintain the standards required for initial certification or who violated any provision of the Code.

Without prior hearing, the Director could order summary suspension of a certificate if he or she found that protection of the public required emergency action and incorporated this finding in his or her order. The suspension would be effective on the date specified in the order or upon service of a certified copy of the order on the certificate holder, whichever was later. If requested, the Director would have to conduct a hearing on the suspension within a reasonable time but not later than 20 days after the effective date of the suspension, unless the person whose certificate was suspended requested a later date. At the hearing, the Director would have to determine if the suspension should be continued or withdrawn and, if proper notice were given, could determine if the certificate should be revoked. The Director would have to announce his or her decision within 30 days after

conclusion of the hearing. The suspension would have to continue until a decision was announced.

The Director or his or her designated deputy could issue subpoenas to require the attendance and testimony of witnesses and the production of documents necessary to the conduct of the hearing, and could designate a DIFS employee to make service. The subpoenas could be enforced upon petition to the Circuit Court of Ingham County to show cause why a contempt order should not be issued, as provided by law.

Violations

If the DIFS Director found that a person had violated proposed Chapter 12A, after an opportunity for a hearing pursuant to the Administrative Procedures Act, the Director would have to put the findings and decision in writing and issue and cause to be served upon the person a copy of the findings and an order requiring the person to cease and desist from the violation.

In addition, the Director could order payment of a maximum civil fine of \$500 for each violation. If the person knew or reasonably should have known that he or she was in violation, however, the maximum civil fine would be \$2,500 per violation. An order of the Director could not require the payment of civil fines exceeding \$25,000. A fine would have to be turned over to the State Treasurer and credited to the State's General Fund.

The Director also could order the suspension or revocation of the person's navigator certificate.

After notice and opportunity for a hearing, the Director could by order reopen and alter, modify, or set aside an order if, in his or her opinion, conditions of fact or of law had changed to required that action, or if it were in the public interest.

If a person knowingly violated a cease and desist order and had been given notice and an opportunity for a hearing, the Director could order a civil fine of up to \$10,000 for each violation, and/or a suspension or revocation of the person's navigator certificate. Under these circumstances, an order could not require the payment of civil fines exceeding \$50,000. A fine would have to be turned over to the State Treasurer and credited to the General Fund.

The Director could apply to the Circuit Court of Ingham County for an order of the court enjoining a violation of proposed Chapter 12A.

Nonauthorization of Health Benefit Exchange

The bill provides that Chapter 12A would not authorize and should not be construed to authorize the establishment or operation of an American health benefit exchange in Michigan pursuant to the ACA.

Additionally, the bill provides that it should not be construed to do any of the following:

- Authorize the establishment or operation of an American health benefit exchange in Michigan pursuant to the ACA.
- Authorize the State or a State agency to conduct or oversee State-level governmental consumer assistance functions for an exchange established or operating in Michigan pursuant to the ACA.
- Convey any administrative, statutory, rule-making, or other power to the State or a State agency to authorize, establish, or operate an exchange in Michigan that did not exist before the bill's effective date.

The bill states, "It is the intent of this legislature that any consumer assistance functions by or overseen by this state or an agency of this state with regard to an American health benefit exchange shall be conducted in a manner that utilizes and highlights Michigan-based resources, including insurance producers, in order to best serve the residents of this state and to ensure appropriate health care decisions."

MCL 500.102 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Insurance and Financial Services. Under the bill, the Department would be required to establish a certification and training program for health insurance exchange navigators, process applications from prospective navigators, and develop and score certification examinations for navigators. All of these requirements would result in new costs to the Department. The bill would allow the Director of the Department to establish a fee structure for the certification of navigators; to the extent that the fees were set at a level so as to generate sufficient revenue, new costs to the Department would be offset by revenue from the fees.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.