

Regular Session, 2013

HOUSE BILL NO. 614

BY REPRESENTATIVE HUVAL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE/HEALTH: Provides for licensing and regulation of individuals and entities as health insurance navigators for a health benefit exchange

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(11) and to enact R.S. 22:821(B)(36) and 1566,
3 relative to health insurance navigators; to provide for definitions; to provide with
4 respect to licensing and regulation by the commissioner of insurance of individuals
5 and entities as navigators for health benefit exchanges, including the authority of the
6 commissioner to assess fees and impose penalties; to provide for an exemption from
7 the Public Records Law; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:821(B)(36) and 1566 are hereby enacted to read as follows:

10 §821. Fees

11 * * *

12 B. The following fees and licenses shall be collected in advance by the
13 commissioner of insurance:

14 * * *

15 (36) Health insurance navigators

16 (a) Initial license application.....\$ 75.00

17 (b) Renewal.....\$ 50.00

18 * * *

1 §1566. Health insurance navigators

2 A. As used in this Section:

3 (1) "Exchange" means any health benefit exchange established or operating
4 in this state, including any exchange established or operated by the United States
5 Department of Health and Human Services.

6 (2) "Navigator" means any individual or entity, except for a licensed health
7 insurance producer, unless the licensed health insurance producer has been certified
8 or approved by an exchange or the United States Department of Health and Human
9 Services as a navigator, who meets at least one of the following requirements:

10 (a) Receives any funding, directly or indirectly, from an exchange, the state,
11 or the federal government to perform any of the activities and duties identified in 42
12 U.S.C. 18031(i).

13 (b) Facilitates enrollment of individuals or employers in health benefit plans
14 or public insurance programs offered through an exchange.

15 (c) Conducts public education or consumer assistance activities for or on
16 behalf of an exchange.

17 (d) Is described or designated by an exchange, the state, or the United States
18 Department of Health and Human Services, or could reasonably be described or
19 designated as a navigator, in-person assister, enrollment assister, application assister,
20 or application counselor.

21 B.(1) The Louisiana Legislature finds that licensing and regulating
22 navigators and navigator entities authorized under the federal Patient Protection and
23 Affordable Care Act to ensure that they are properly trained and knowledgeable in
24 the subject matter of individual and group health insurance benefit plans and
25 insurance coverages is necessary to avoid substantial risk to the health, safety, and
26 welfare of this state.

27 (2) No individual or entity shall act as, offer to act as, or advertise any
28 service as a navigator in this state unless licensed as a navigator by the commissioner
29 of insurance under this Section.

1 (3) Any individual or entity that is a navigator shall be subject to regulation
2 by the commissioner of insurance as provided in this Section.

3 C.(1) An individual applying for a navigator license shall make application
4 to the commissioner of insurance on a form developed by the commissioner and
5 declare under penalty of refusal, suspension, or revocation of the license that the
6 statements made in the application are true, correct, and complete to the best of the
7 individual's knowledge and belief. Before approving the application, the
8 commissioner shall verify that the individual meets each of the following
9 requirements:

10 (a) Is at least eighteen years of age.

11 (b) Intends to conduct business as a navigator in this state.

12 (c) Is not disqualified for having committed any act that would be grounds
13 for denial, suspension, or revocation of an insurance producer license under
14 R.S. 22:1554.

15 (d) Has not had a navigator license or an equivalent license or certification
16 denied, suspended, or revoked in any state, province, district, or territory of the
17 United States.

18 (e) Has completed all required training and education prescribed by the
19 United States Department of Health and Human Services or other appropriate entity
20 or prescribed by the commissioner.

21 (f) Has successfully passed the written examination and completed three
22 hours of ethics continuing education as prescribed by the commissioner.

23 (g) Has submitted a full set of fingerprints to the commissioner and
24 successfully completed a criminal history and regulatory record check as further
25 provided in Subsection D of this Section.

26 (h) When applicable, has the written consent of the commissioner pursuant
27 to 18 U.S.C. 1033, or any successor statute regulating crimes by or affecting persons
28 engaged in the business of insurance whose activities affect interstate commerce.

29 (i) Possesses the requisite character and integrity.

1 (j) Has identified the entity with which he is affiliated and supervised.

2 (k) Has paid the initial license application fee provided for in R.S.
3 22:821(B)(36).

4 (2) An entity that acts as a navigator, supervises or is responsible for the
5 activities of individual navigators, or receives funding to perform such activities
6 shall obtain a navigator entity license from the commissioner. An entity applying
7 for a navigator entity license shall:

8 (a) Make application for licensure on a form containing information
9 prescribed by the commissioner and pay the initial license application fee provided
10 for in R.S. 22:821(B)(36).

11 (b) Designate an individual licensed as a navigator to be responsible for the
12 entity's compliance with this Section.

13 (3) The commissioner may require any documents deemed necessary to
14 verify the information contained in an application submitted in accordance with this
15 Subsection.

16 (4) Each entity licensed as a navigator shall, in a manner prescribed by the
17 commissioner, periodically provide the commissioner with a list of all individual
18 navigators that it employs, supervises, or with whom it is affiliated.

19 (5) Prior to any exchange becoming operational in this state, the
20 commissioner shall prescribe pre-licensing training, continuing education, and
21 written examination standards and requirements for navigators.

22 (6) The commissioner may adopt, by rule or regulation promulgated and
23 adopted pursuant to the Administrative Procedure Act, R.S. 49:950 et seq., any
24 education, training, or examinations approved or administered by the exchange or
25 the United States Department of Health and Human Services.

26 D.(1) In order to make a determination of license eligibility, the
27 commissioner shall require fingerprints of applicants and submit the fingerprints and
28 the fees required to perform the criminal history record checks to the Louisiana
29 Bureau of Criminal Identification and Information for state and national criminal

1 history record checks. The commissioner shall require a criminal history record
2 check on each applicant in accordance with this Subsection. The commissioner shall
3 require each applicant to submit a full set of fingerprints in order for the
4 commissioner to obtain and receive National Criminal History Records from the
5 Criminal Justice Information Services Division of the Federal Bureau of
6 Investigation.

7 (2) The commissioner may contract for the collection, transmission, and
8 resubmission of fingerprints required under this Subsection. If the commissioner
9 does so, the fee for collecting and transmitting fingerprints and the fee for the
10 criminal history record check shall be payable directly to the contractor by the
11 applicant. The commissioner may agree to a reasonable fingerprinting fee to be
12 charged by the contractor.

13 (3) The commissioner shall treat and maintain an applicant's fingerprints and
14 any criminal history record information obtained under this Section as confidential
15 and shall apply security measures consistent with the Criminal Justice Information
16 Services Division of the Federal Bureau of Investigation standards for the electronic
17 storage of fingerprints and necessary identifying information and limit the use of
18 records solely to the purposes authorized in this Section. The fingerprints and any
19 criminal history record information shall be exempt from the Public Records Law,
20 R.S. 44:1 et seq., shall not be subject to subpoena, other than a subpoena issued in
21 a criminal proceeding or investigation, shall be confidential by law and privileged,
22 and shall not be subject to discovery or admissible in evidence in any private civil
23 action.

24 E.(1) A navigator license shall be valid for one year.

25 (2) A navigator shall file an application for renewal of a license in a method
26 prescribed by the commissioner and pay the renewal fee provided for in R.S.
27 22:821(B)(36). Any navigator who fails to file timely for license renewal shall be
28 charged a late fee in an amount prescribed by the commissioner.

1 (3) Prior to the filing date for application for renewal of a license, an
2 individual licensee shall comply with at least sixteen hours of ongoing training and
3 continuing education requirements, including three hours of ethics training
4 prescribed by the commissioner. Such navigator shall file with the commissioner,
5 by a method prescribed by the commissioner, satisfactory certification of completion
6 of the continuing education requirements. Any failure to fulfill the ongoing training
7 and continuing education requirements shall result in the expiration of the license.

8 F.(1) A navigator shall not do any of the following:

9 (a) Engage in any activities that would require a health and accident
10 insurance producer license.

11 (b) Provide advice concerning the benefits, terms, and features of a particular
12 health benefit plan or offer advice about which health benefit plan is better or worse
13 or suitable for a particular individual or employer.

14 (c) Recommend or endorse a particular health benefit plan or advise
15 consumers about which health benefit plan to choose.

16 (d) Provide any services related to health benefit plans or other products not
17 offered in the exchange.

18 (e) Accept any compensation or consideration that is dependent on whether
19 a person enrolls in or purchases a health benefit plan.

20 (2) Only a person licensed as an insurance producer in this state may do any
21 of the following:

22 (a) Sell, solicit, or negotiate health insurance.

23 (b) Provide advice concerning the benefits, terms, and features of a particular
24 health benefit plan or offer advice about which health benefit plan is better or worse
25 for a particular individual or employer.

26 (c) Recommend a particular health benefit plan or advise consumers about
27 which health benefit plan to choose.

28 (3) Upon contact with a person who acknowledges having existing health
29 insurance coverage obtained through an insurance producer, a navigator shall refer

1 the person back to that insurance producer for information, assistance, and any other
2 services.

3 G.(1) The commissioner may place on probation, suspend, revoke, or refuse
4 to issue, renew, or reinstate a navigator license, or may levy a fine not to exceed five
5 hundred dollars for each violation, or any combination of actions, for any one or
6 more of the causes set forth in Paragraph (F)(1) of this Section or R.S. 22:1554, or
7 for other good cause.

8 (2) The commissioner may examine and investigate the business affairs and
9 records of any navigator to determine whether the individual or entity has engaged
10 or is engaging in any violation of this Section.

11 (3) A navigator entity license may be suspended or revoked, or renewal or
12 reinstatement thereof may be refused, or a fine may be levied, with or without a
13 suspension, revocation, or refusal to renew a license, if the commissioner finds that
14 an individual navigator licensee's violation was known or should have been known
15 by the employing or supervising entity and the violation was not reported to the
16 commissioner on a timely basis.

17 (4) In the event that the commissioner suspends or revokes a license, refuses
18 the renewal or reinstatement of a license, or levies a fine, with or without suspension,
19 revocation, or refusal to renew a license, the commissioner, in accordance and
20 compliance with R.S. 49:961, shall notify the licensee in writing of the
21 determination. An aggrieved party affected by the commissioner's decision, act, or
22 order may demand a hearing in accordance with Chapter 12 of this Title, R.S.
23 22:2191 et seq.

24 H.(1) Each licensed navigator shall report to the commissioner any
25 administrative action taken by a governmental agency against him in any jurisdiction
26 within thirty calendar days of the final disposition of the matter. This report shall
27 include a copy of the order or other relevant legal documents.

28 (2) Within thirty days of the initial pretrial hearing date, a navigator shall
29 report to the commissioner of insurance any criminal prosecution of the navigator

1 instituted in any jurisdiction. The report shall include a copy of the initial complaint
2 filed, the order resulting from the hearing, and any other relevant legal documents.

3 (3) An entity that acts as a navigator that terminates the employment,
4 engagement, affiliation, or other relationship with an individual navigator shall
5 notify the commissioner of insurance within thirty days following the effective date
6 of the termination, using a format prescribed by the commissioner, if the reason for
7 termination is one of the reasons set forth in R.S. 22:1554 or the entity has
8 knowledge that the navigator was found by a court or governmental agency to have
9 engaged in any of the activities set forth in R.S. 22:1554. Upon the written request
10 of the commissioner, the entity shall provide additional information, documents,
11 records, or other data pertaining to the termination or activity of the individual.

12 I. The provisions of R.S. 22:1964, and any related rules, shall apply to
13 navigators. The activities and duties of a navigator shall be deemed to constitute
14 transacting the business of insurance.

15 J. The commissioner may, pursuant to the Administrative Procedure Act,
16 R.S. 49:950 et seq., adopt and promulgate such rules and regulations as may be
17 necessary or appropriate for the administration and enforcement of this Section.

18 Section 2. R.S. 44:4.1(B)(11) is hereby amended and reenacted to read as follows:

19 §4.1. Exceptions

20 * * *

21 B. The legislature further recognizes that there exist exceptions, exemptions,
22 and limitations to the laws pertaining to public records throughout the revised
23 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
24 limitations are hereby continued in effect by incorporation into this Chapter by
25 citation:

26 * * *

1 (11) R.S. 22:2, 14, 42.1, 88, 244, 461, 572, 572.1, 574, 618, ~~706~~, 732, 752,
 2 771, 1203, 1460, 1466, 1546, 1566(D), 1644, 1656, 1723, 1927, 1929, 1983, 1984,
 3 2036, 2303

4 * * *

5 Section 3. This Act shall become effective upon signature by the governor or, if not
 6 signed by the governor, upon expiration of the time for bills to become law without signature
 7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 9 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Huval

HB No. 614

Abstract: Provides with respect to licensing and regulation by the commissioner of insurance of individuals and entities as navigators for a health benefit exchange authorized under the federal Patient Protection and Affordable Care Act.

Proposed law for licensing and regulation by the commissioner of insurance of individuals and entities as navigators for a health benefit exchange authorized under the federal Patient Protection and Affordable Care Act (PPACA), as follows:

- (1) Defines a navigator as any individual or entity, except for a licensed health insurance producer, unless the licensed health insurance producer has been certified or approved by an exchange or the U. S. Department of Health and Human Services (HHS) as a navigator, who does at least one of the following:
 - (a) Receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform any of the activities and duties identified in PPACA.
 - (b) Facilitates enrollment of individuals or employers in health benefit plans or public insurance programs offered through an exchange.
 - (c) Conducts public education or consumer assistance activities for or on behalf of an exchange.
 - (d) Is described or designated by an exchange, the state, or HHS, or could reasonably be described or designated as a navigator, in-person assister, enrollment assister, application assister, or application counselor.
- (2) Requires that an applicant for an individual navigator license meet certain qualifications, including passage of an examination, completion of three hours of ethics continuing education, and payment of an initial license application fee of \$75.

- (3) Requires that an entity that acts as a navigator, supervises or is responsible for the activities of individual navigators, or receives funding to perform such activities shall obtain a navigator entity license. Further requires that such an entity make application for licensure, pay a \$75 initial license application fee, and designate an individual licensed as a navigator to be responsible for its compliance with proposed law.
- (4) Prior to any exchange becoming operational in this state, requires the commissioner to prescribe pre-licensing training, continuing education, and written examination standards and requirements for navigators. Further authorizes the commissioner to adopt any education, training, or examinations approved or administered by the exchange or HHS.
- (5) Authorizes the commissioner, in order to make a determination of license eligibility, to require fingerprints and a criminal history record check on each applicant. Specifies that such fingerprints and information shall be exempt from the public records law, shall not be subject to subpoena, other than a subpoena issued in a criminal proceeding or investigation, shall be confidential by law and privileged, and shall not be subject to discovery or admissible in evidence in any private civil action.
- (6) Provides that a navigator license shall be valid for one year. Further provides relative to the application for license renewal and sets the renewal fee at \$50. Requires individual licensees to comply with certain ongoing training and continuing education requirements prior to renewal.
- (7) Prohibits certain acts by navigators and specifies that only an insurance producer (agent) may: (a) sell, solicit, or negotiate health insurance; (b) provide advice concerning the terms, of a particular health benefit plan or offer advice about which health benefit plan is better or worse for a particular individual or employer; or (c) recommend a particular health benefit plan or advise consumers about which health benefit plan to choose. Further requires that a navigator, upon contact with a person who acknowledges having existing health insurance coverage obtained through an insurance producer, refer the person back to that insurance producer for information, assistance, and any other services.
- (8) Authorizes the commissioner to place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator license, or to levy a fine not to exceed \$500 for each violation, or any combination of actions, for any cause set forth in present law relative to grounds for denial, nonrenewal, or revocation of a producer license, or for other good cause. Additionally gives the commissioner the authority to examine and investigate the business affairs and records of any navigator to determine whether the individual or entity has engaged or is engaging in any violation of proposed law. Specifies that a navigator entity license may be suspended or revoked, renewal or reinstatement thereof may be refused, or a fine may be levied if the commissioner finds that an individual navigator licensee's violation was known or should have been known by such entity and that the violation was not reported to the commissioner on a timely basis. Provides for notice to an applicant or licensee of any such action by the commissioner and provides for an opportunity to be heard pursuant to present law.
- (9) Requires that each navigator report to the commissioner any administrative action taken by a governmental agency against him or any criminal prosecution of him instituted in any jurisdiction. Specifies that an entity acting as a navigator that terminates its relationship with an individual navigator shall notify the commissioner if the reason for termination is one of the reasons set forth in present law relative to grounds for denial, nonrenewal, or revocation of a producer license or if the entity has knowledge that the navigator was found by a court or governmental agency to have engaged in any activities that constitute such grounds.

- (10) Provides that present law relative to unfair trade practices in the business of insurance shall apply to navigators. Further provides that the activities of a navigator shall be deemed to constitute transacting the business of insurance.
- (11) Authorizes the commissioner to adopt and promulgate rules necessary for the administration and enforcement of proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 44:4.1(B)(11); Adds R.S. 22:821(B)(36) and 1566)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Insurance to the original bill.

1. Changed definition of "navigator" to include a licensed health insurance producer who has been certified or approved by an exchange or HHS as a navigator. Also deleted provisions making proposed law inapplicable to licensed insurance producers.
2. Changed training requirements for individuals applying for a navigator license from at least 16 hours of pre-licensing training to all required training and education prescribed by HHS or other appropriate entity or prescribed by the commissioner, in addition to three hours of ethics continuing education.
3. Added authorization for the commissioner to adopt any education, training, or examinations approved or administered by the exchange or HHS.
4. Set license application and renewal fees for navigators at \$75 and \$50, respectively, rather than allowing the commissioner to set them. Also shortened term of the license from two years to one year.
5. Added more detailed provisions relative to the commissioner requiring fingerprints and criminal background checks of navigators, including a public records exemption for such information.
6. Deleted authorization for the commissioner to require that restitution be made to any person who has suffered financial injury because of a violation of proposed law.

House Floor Amendments to the reengrossed bill.

1. Deleted requirement that the navigator reside in this state or maintain his principal place of business in this state. Instead required that the navigator intend to conduct business as a navigator in this state.
2. Deleted prohibition against a navigator providing information related to health benefit plans or other products not offered in the exchange.