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Senate Bill 324 (as introduced 4-17-13)
Sponsor: Senator Jim Marleau
Committee: Health Policy

Date Completed: 5-16-13

CONTENT

The bill would amend the Insurance Code to do the following:

- **Require an individual to be licensed in order to act as an insurance navigator or receive funding from a health benefit exchange established under the Affordable Care Act.**
- **Authorize an insurance navigator to provide public education and general information regarding qualified health plans and facilitate enrollment in them.**
- **Prohibit a navigator from selling insurance and providing advice about or recommending a particular health plan.**
- **Require the Director of the Department of Insurance and Financial Services (DIFS) to establish a licensing and training program for prospective navigators.**
- **Require a business entity acting as a navigator to be licensed. Establish conditions for licensure, of an individual or business entity.**
- **Allow the DIFS Director to place on probation, suspend, or revoke a navigator's license and/or levy a civil fine for certain causes prescribed in the Code.**
- **Require license 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 license to protect insureds and the public.**

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

Navigator Licensure

The bill would amend Chapter 12 (Agents, Solicitors, Adjustors, and Counselors) of the Code to prohibit an individual from acting as a navigator or holding himself or herself out to the public as a navigator unless he or she was licensed. In addition, an individual could not receive funding from an exchange unless he or she was licensed 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). 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 general 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 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 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.

(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 above.

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.)

Under the bill, a navigator could not do any of the following:

- Sell, solicit, or negotiate health insurance.
- Provide advice concerning the benefits, terms, and features of a particular health plan or offer advice about which health plan was better or worse for a particular individual or entity.
- Recommend a particular health plan or advise consumers about which health plan to choose.
- Provide any information or services related to health benefit plans or other products not offered in the exchange.

Before an exchange became operational in Michigan, the DIFS Director would have to establish a licensing and training program for a prospective navigator that included a criminal records check performed according to Section 249a of the Code, 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.

(Section 249a requires certain individuals associated with an insurer or its affiliates to appear, at the Director's request, before the sheriff or any police agency for the county in which the person resides and request an impression of his or her fingerprints. The individuals include officers and directors, controlling stockholders, and others.

To the extent allowed by Federal law, the Director may request and the Michigan Department of State Police must provide State, multistate, and Federal criminal history records for the Director's use in making certain determinations, such as the fitness of an officer or director of an insurer.)

Under the bill, the fingerprint provisions in Section 249a also would apply to an individual involved or proposed to be involved in the activities of a navigator. The DIFS Director could

use the fingerprints to determine a navigator's fitness.

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

An individual applying for a navigator license 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 applicant would have to consent to the criminal records check. 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 the required preclicensing course of study for the qualifications for which the person had applied.
- Had successfully completed the criminal records check.

(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 license. A business entity applying for a license 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 licensed 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 license and/or levy a civil fine for any cause that would be a ground for refusal, suspension, or revocation of an insurance producer's license. The Director also would have to refuse to issue a navigator license for any of those causes. (Under the Code, a person who is found to have violated Chapter 12 may be ordered to pay a civil fine of up to \$500 for each violation, or, if the person knew or reasonably should have known that he or she was in violation, up to \$2,500 for each. In aggregate, the fines may not exceed \$25,000.)

Beginning October 1, 2013, the Director would have to revoke the license of, or refuse to issue a license for, any person who received financial compensation, gifts, or grants from an

insurer offering qualified health benefits through an exchange operating in Michigan. The Director could deny, suspend, approve, renew, or revoke a navigator license if he or she 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 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.

Business Entity Requirements

As prescribed by the DIFS Director, a business entity licensed as a navigator would have to make available a list of all individual navigators that it employed or supervised or with which 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.

Other Provisions

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 Chapter 12. 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 12 applied.

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.

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 licensing and training program for health insurance exchange navigators, process applications from prospective navigators, and develop and score licensing 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 licensing 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.