

Regular Session, 2014

HOUSE BILL NO. 764

BY REPRESENTATIVE PEARSON

INSURANCE/HEALTH: Provides for the licensing and regulation of health insurance navigators and similar individuals and entities

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:1566 is hereby enacted to read as follows:

10 §1566. Health insurance navigators; definitions

11 A. As used in this Section:

12 (1) "Commissioner" means the commissioner of insurance.

13 (2) "Exchange" means any health benefit exchange established or operating
14 in this state, including any exchange established or operated by the United States
15 Department of Health and Human Services or any other federal office or agency.

16 (3) "Navigator" means any individual or entity who meets at least one of the
17 following requirements:

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

1 **(b) Is described or designated by an exchange, the state, or any office or**
2 **agency of the federal government, or who could be reasonably described or**
3 **designated as a navigator.**

4 **(c) Is employed by or is a volunteer on behalf of a navigator or navigator**
5 **entity for the purposes of conducting consumer outreach or education, or for the**
6 **purposes of facilitating enrollment in Qualified Health Plans.**

7 **(4) "Non-navigator personnel" means any individual or entity that facilitates**
8 **enrollment of individuals or employers in a health benefit plan or public insurance**
9 **program offered through an exchange and is certified, designated, or reasonably**
10 **described as an in-person assister, enrollment assister, application counselor, or**
11 **application assister.**

12 **B.(1) The legislature finds that licensing and regulating navigators and**
13 **similar persons or entities to ensure that they are properly trained, knowledgeable in**
14 **the subject matter of individual and group health insurance benefit plans and**
15 **insurance coverages is necessary to avoid substantial risk to the health, safety, and**
16 **welfare of the people of this state.**

17 **(2) No individual or entity shall act as, offer to act as, or market any service**
18 **as a navigator in this state unless licensed as a navigator by the commissioner under**
19 **this Section.**

20 **(3) Any individuals or entities that are navigators or non-navigator personnel**
21 **shall be subject to regulation by the commissioner as provided for in this Section.**

22 **(4) Individuals or entities conducting activities as non-navigator entities or**
23 **non-navigator personnel, such as in-person assisters, enrollment assisters, application**
24 **counselors, or application assisters, shall register with the commissioner in the**
25 **manner and form prescribed by the commissioner. An entity conducting**
26 **non-navigator activities may register its non-navigator personnel with the**
27 **commissioner on their behalf.**

28 **(5) The following individuals or entities are exempt from the provisions of**
29 **this Section, and shall not be considered navigators or non-navigator personnel:**

1 (a) Individuals who facilitate enrollment in a health benefit plan without
2 receiving any form of direct or indirect compensation, or being employed by an
3 employer who directly or indirectly benefits from enrollment in a health benefit plan,
4 such as individuals assisting in the enrollment of family members, tutors acting for
5 a minor child or acting as a continuing tutor, individuals with the authority to
6 contract on behalf of interdicted persons, or a mandatary with the authority to
7 contract on behalf of a principal.

8 (b) Employees of an employer who facilitate enrollment in the health benefit
9 plan of the employer.

10 (c) A licensed insurance producer.

11 (d) An attorney in good standing who is licensed or authorized to act as an
12 attorney in this state.

13 (e) An employee of a health insurance issuer, which includes a health
14 maintenance organization.

15 (f) Any individual or entity granted an exemption by the commissioner. For
16 the purposes of granting exemptions from the provisions of this Section, the
17 commissioner may grant exemptions in a manner and form determined by the
18 commissioner.

19 C.(1) An individual applying for a navigator license or registering with the
20 commissioner as non-navigator personnel shall make an application for a license or
21 shall complete a registration form as prescribed by the commissioner. Any
22 individual submitting a navigator license shall meet each of the following
23 requirements:

24 (a) Be at least eighteen years of age.

25 (b) Intend to conduct business as a navigator or non-navigator personnel in
26 this state.

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

1 (d) Has completed all required training and education prescribed by any
2 office or agency of the federal government or by an exchange.

3 (e) Has identified the entity to which he is affiliated and by which he is
4 supervised, if applicable.

5 (2) Each entity licensed as a navigator shall, in a manner and frequency
6 prescribed by the commissioner, provide the commissioner with an accurate list of
7 all licensed navigators that it employs, in addition to completing an application for
8 a navigator license.

9 (3) A navigator license shall be valid for a period of two years from the date
10 the license is issued. The commissioner shall prescribe the form for an application
11 for renewal of a license.

12 (4) An individual applying for a navigator license shall submit any
13 documents that the commissioner deems necessary to verify the information
14 contained in a license application, and shall submit a full set of fingerprints to the
15 commissioner and successfully complete a criminal history and regulatory
16 background check as provided for under this Section.

17 (5) The commissioner may prescribe any education, training, or examination
18 in addition to education, training, or examinations required by any office or agency
19 of the federal government or by an exchange, provided that such additional
20 education, training or examinations shall not exceed thirty hours for initial training
21 education or examinations, or fifteen hours per year for continuing educational
22 purposes when combined with education, training, or examinations required by any
23 office or agency of the federal government or by an exchange.

24 (6) The commissioner may examine any navigator or non-navigator for the
25 purposes of determining whether such navigator or non-navigator personnel are in
26 compliance with this Section.

27 D.(1) In order to make a determination of license eligibility the
28 commissioner shall require fingerprints of applicants and submit the fingerprints and
29 the fees required to perform the criminal history record checks to the Louisiana

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

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

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

25 E.(1) A navigator may:

26 (a) Provide fair and impartial information and services in connection with
27 eligibility, enrollment, and program specifications of any health benefit plan issued
28 or issued for delivery in this state, including information about the costs of coverage,
29 advanced payment of premium tax credits, and cost sharing reductions.

1 (b) Facilitate the selection of a health benefit plan offered for sale on an
2 Exchange.

3 (c) Initiate the enrollment process for a health benefit plan offered for sale
4 on an Exchange.

5 (d) Provide referrals to the Department of Insurance or other local, state, or
6 federal offices or agencies for any grievance, complaint, or inquiry in connection
7 with a health benefit plan or health insurance issuer or health maintenance
8 organization.

9 (e) Carry out any activities required or authorized pursuant to 42 U.S.C.
10 18031(i).

11 (2) Non-navigator personnel:

12 (a) May carry out the functions and duties authorized for non-navigator
13 personnel under 45 CFR Part 155.

14 (b) Shall disclose all conflicts of interest that the non-navigator personnel
15 may have with health insurance issuers to enrollees and potential enrollees in a
16 health benefit plan.

17 (c) Shall not receive any form of compensation, whether direct or indirect,
18 from a health insurance issuer or issuer of health stop loss insurance.

19 (d) Shall not disclose any information obtained in the course of
20 non-navigator personnel activities where such information is confidential or
21 protected from disclosure by law.

22 F.(1) Unless a navigator or non-navigator personnel possesses an accident
23 and health insurance producer license, no navigator shall:

24 (a) Sell, solicit, or negotiate a health benefit plan or any form of accident and
25 health insurance.

26 (b) Engage in any activity that would exclusively require an insurance
27 producer license.

28 (c) Provide partial advice concerning the benefits, terms, and features of
29 health benefit plans or offer advice about which health benefit plan, health insurance

1 issuer, or health maintenance organization is better or worse for a particular
2 individual or employer.

3 (d) Recommend or endorse a particular health benefit plan or health
4 insurance issuer or health maintenance organization.

5 (e) Provide any plan specific or product specific information or services
6 related to any health benefit plan issued or issued for delivery in this state if such
7 health benefit plan is not offered for sale on an Exchange.

8 (f) Disclose any information obtained in the course of navigator activities
9 where such information is confidential or protected from disclosure by law.

10 (g) Violate any of the provisions of 45 CFR 155.260, or other state or federal
11 laws or regulations.

12 G.(1) The commissioner may place on probation, suspend, revoke, or refuse
13 to issue, renew, or reinstate a navigator license, or may levy a fine not to exceed five
14 hundred dollars for each violation, or any combination of actions, for any one or
15 more violations of this Section or R.S. 22:1554, or for other good cause.

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

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

25 (4) In the event that the commissioner suspends or revokes a license, refuses
26 the renewal or reinstatement of a license, or levies a fine, with or without suspension,
27 revocation, or refusal to renew a license, the commissioner, in accordance and
28 compliance with R.S. 49:961, shall notify the licensee in writing of the
29 determination. An aggrieved party affected by the commissioner's decision, act, or

1 order may demand a hearing in accordance with Chapter 12 of this Title, R.S.
2 22:2191 et seq.

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

7 (2) Within thirty days of the initial pretrial hearing date, a navigator shall
8 report to the commissioner any criminal prosecution of the navigator instituted in
9 any jurisdiction. The report shall include a copy of the initial complaint filed, the
10 order resulting from the hearing, and any other relevant legal documents.

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

20 I. The provisions of R.S. 22:1964, and any related rules or regulations, shall
21 apply to navigators. The activities and duties of navigators shall be deemed to
22 constitute transacting the business of insurance.

23 J. A navigator that is required to file annual and quarterly progress reports
24 or annual financial reports with the Centers for Medicare and Medicaid Services
25 shall also file such reports with the commissioner within fifteen days of filing with
26 the appropriate federal office or agency.

27 K. The commissioner may promulgate such rules and regulations as may be
28 necessary or proper to carry out the provisions of this Section. Such rules and

1 regulations shall be promulgated and adopted in accordance with the Administrative
2 Procedure Act, R.S. 49:950 et seq.

3 L. Upon this Section acquiring the force of law, the commissioner may, in
4 addition to his enforcement discretion, establish an enforcement moratorium for the
5 provisions of this Section relating to the license requirement for navigators, the
6 registration process for non-navigator personnel, and any prescribed training,
7 education or examinations for the purposes of properly effectuating the provisions
8 of this Section.

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

10 §4.1. Exceptions

11 * * *

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

17 * * *

18 (11) R.S. 22.2, 14, 42.1, 88, 244, 461, 572, 572.1, 574, 618, 732, 752, 771,
19 1203, 1460, 1466, 1546, 1566(D), 1644, 1656, 1723, 1927, 1929, 1983, 1984, 2036,
20 2303

21 * * *

22 Section 3. If any provision or provisions of this Act or its application to a particular
23 circumstance is held to be invalid by a court of competent jurisdiction, the invalidity does
24 not affect the other provisions or applications of this Act. A court of competent jurisdiction
25 shall properly sever provisions that are held to be invalid, and the valid portions, provisions,
26 or applications shall retain full force and effect.

27 Section 4. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 of the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor, and subsequently approved by the Legislature, this Act shall become
2 effective on the day following such approval.
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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)]

Pearson

HB No. 764

Abstract: Provides for licensing and regulation of health insurance navigators and registration of non-navigator personnel by the commissioner of insurance.

Proposed law requires that health insurance navigators be licensed by the commissioner of insurance. Also requires non-navigator personnel to register with the commissioner.

Proposed law requires that navigators be at least 18 year old and not be disqualified for any act that would be grounds for denial or revocation of an insurance producer license under present law. Proposed law requires that navigators complete all training and education required by the federal government or an exchange.

Proposed law requires that navigators identify any entities affiliated with and any supervisors.

Proposed law requires that entities licensed as a navigator provide the commissioner with a list of licensed navigators employed by the entity.

Proposed law provides that a navigator license is valid for two years from the date issued.

Proposed law requires all applicants for a navigator license to submit a full set of fingerprints to the commissioner and successfully complete a criminal history and regulatory background check conducted by the commissioner. Proposed law requires that the commissioner submit the fingerprints of every navigator license applicant to the Louisiana Bureau of Criminal Identification and Information for state and national criminal history checks. Proposed law requires that the applicant's fingerprints and any criminal history record information received be treated as confidential and are exempt from the Public Records Law.

Proposed law provides that the commissioner may require education and training in addition to that required by the federal government or exchange. Such training will not exceed 30 hours for initial training and education, or 15 hours for continuing education.

Proposed law specifies the activities that navigators and non-navigator personnel may perform and may not perform.

Proposed law provides penalties that the commissioner may impose for violations, including a fine up to \$500.00 per violation, probation, suspension of license, revocation of license, or refusal to issue, renew, or reinstate a navigator license, and provides for appeal of the commissioner's decision to impose a penalty.

Proposed law requires navigators to report to the commissioner any administrative action taken against him by a governmental agency in any jurisdiction within 30 days of the final disposition of the matter.

Proposed law requires navigators to report to the commissioner any criminal prosecution instituted in any jurisdiction within 30 days of the initial pretrial hearing date.

Proposed law requires an entity acting as a navigator that terminates the employment or other association with an individual navigator to notify the commissioner within 30 days following the effective date of the termination, the reason for the termination if the reason is one set forth in R.S. 22:1554.

Proposed law requires navigators to file with the commissioner the annual and quarterly progress reports or annual financial reports the navigators file with the Centers for Medicare and Medicaid Services.

Proposed law provides for the commissioner to establish an enforcement moratorium for the provisions of this section to allow the drafting of regulations to implement the provisions of this section.

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