

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), to enact R.S. 22:1566, and to repeal R.S.
3 22:753(H)(5), relative to health insurance navigators and similar individuals or
4 entities; to provide for definitions; to provide with respect to regulation by the
5 commissioner of insurance, including registration or licensing of individuals and
6 entities acting as navigators or providing similar services; to authorize the
7 commissioner to assess fees and impose penalties; to provide for an exemption from
8 the Public Records Law; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

11 §1566. Health insurance navigators; definitions

12 A. As used in this Section:

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

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

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

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

4 (b) Is described or designated by an exchange, the state, or any office or
5 agency of the federal government, or who could be reasonably described or
6 designated as a navigator.

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

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

15 B.(1) The legislature finds that regulation of navigators and non-navigator
16 personnel, including registration or licensure by the commissioner of insurance, to
17 ensure that they are properly trained and knowledgeable in the subject matter of
18 individual and group health insurance benefit plans and insurance coverages is
19 necessary to avoid substantial risk to the health, safety, and welfare of the people of
20 this state.

21 (2) Navigators and non-navigator personnel shall be subject to regulation by
22 the commissioner as provided in this Section.

23 (a) No individual or entity shall act as, offer to act as, or market any service
24 as a navigator in this state unless licensed as a navigator by the commissioner under
25 this Section.

26 (b) Individuals or entities conducting activities as non-navigator personnel,
27 such as in-person assisters, enrollment assisters, application counselors, or
28 application assisters, shall register with the commissioner in the manner and form

1 prescribed by the commissioner. An entity conducting non-navigator activities may
2 register its non-navigator personnel with the commissioner on their behalf.

3 (3) The following individuals or entities are exempt from the provisions of
4 this Section and shall not be considered navigators or non-navigator personnel:

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

12 (b) Employees of an employer who facilitates enrollment in the health
13 benefit plan of the employer.

14 (c) A licensed insurance producer.

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

17 (e) An employee of a health insurance issuer, including a health maintenance
18 organization.

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

23 C.(1) An individual applying for registration as non-navigator personnel with
24 the commissioner shall complete a registration form as prescribed by the
25 commissioner.

26 (2) Any individual applying for a navigator license shall make application
27 to the commissioner on a form prescribed by the commissioner. Such individual
28 shall meet each of the following requirements:

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

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

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

4 (d) Has completed all required training and education prescribed by any
5 office or agency of the federal government or by an Exchange.

6 (e) Has identified the entity licensed as a navigator with which he is
7 affiliated and by which he is supervised, if applicable.

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

12 (4) A navigator license shall be valid for a period of two years from the date
13 the license is issued. The commissioner shall prescribe the form for an application
14 for renewal of a license.

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

20 (6) For any individual applying for licensure as or licensed as a navigator,
21 the commissioner may prescribe any education, training, or examinations in addition
22 to education, training, or examinations required by any office or agency of the
23 federal government or by an Exchange; however, such additional education, training,
24 or examinations shall not exceed thirty hours for initial education, training, or
25 examinations and fifteen hours per year for continuing educational purposes when
26 combined with education, training, or examinations required by any office or agency
27 of the federal government or by an Exchange.

1 D.(1) In order to make a determination of license eligibility for individuals
2 applying for a navigator license, the commissioner shall require fingerprints of
3 applicants and submit the fingerprints and the fees required to perform the criminal
4 history record checks to the Louisiana Bureau of Criminal Identification and
5 Information for state and national criminal history record checks. The commissioner
6 shall require a criminal history record check on each applicant in accordance with
7 this Subsection. The commissioner shall require each applicant to submit a full set
8 of fingerprints in order for the commissioner to obtain and receive National Criminal
9 History Records from the Criminal Justice Information Services Division of the
10 Federal Bureau of Investigation.

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

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

1 E.(1) A navigator may:

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

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

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

10 (d) Provide referrals to the Department of Insurance or other local, state, or
11 federal offices or agencies for any grievance, complaint, or inquiry in connection
12 with a health benefit plan or health insurance issuer, including a health maintenance
13 organization.

14 (e) Carry out any activities required or authorized pursuant to 42 U.S.C.
15 18031(i).

16 (2) Non-navigator personnel may carry out the functions and duties
17 authorized for non-navigator personnel under 45 CFR Part 155 and shall:

18 (a) Disclose all conflicts of interest that the non-navigator personnel may
19 have with health insurance issuers to enrollees and potential enrollees in a health
20 benefit plan.

21 (b) Not receive any form of compensation, whether direct or indirect, from
22 a health insurance issuer or an issuer of health stop loss insurance if prohibited by
23 federal law.

24 (c) Not disclose any information obtained in the course of non-navigator
25 personnel activities where such information is confidential or protected from
26 disclosure by law.

27 F.(1) Unless an individual navigator or non-navigator personnel possesses
28 an accident and health insurance producer license, no navigator or non-navigator
29 personnel shall:

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

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

5 (c) Provide partial advice concerning the benefits, terms, and features of
6 health benefit plans or offer advice about which health benefit plan, health insurance
7 issuer, or health maintenance organization is better or worse for a particular
8 individual or employer.

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

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

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

16 (g) Violate any of the provisions of 45 CFR 155.260 or other state or federal
17 laws or regulations.

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

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

25 (3) A navigator entity license may be suspended or revoked, or renewal or
26 reinstatement thereof may be refused, or a fine may be levied, with or without a
27 suspension, revocation, or refusal to renew a license, if the commissioner finds that
28 an individual navigator licensee's violation was known or should have been known

1 by the employing or supervising entity and the violation was not reported to the
2 commissioner on a timely basis.

3 (4) In the event that the commissioner suspends or revokes a navigator
4 license, refuses the renewal or reinstatement of a license, or levies a fine, with or
5 without suspension, revocation, or refusal to renew a license, the commissioner, in
6 accordance and compliance with R.S. 49:961, shall notify the licensee in writing of
7 the determination. An aggrieved party affected by the commissioner's decision, act,
8 or order may demand a hearing in accordance with Chapter 12 of this Title, R.S.
9 22:2191 et seq.

10 H.(1) An individual navigator shall report to the commissioner any
11 administrative action taken by a governmental agency against him in any jurisdiction
12 within thirty calendar days of the final disposition of the matter. This report shall
13 include a copy of the order or other relevant legal documents.

14 (2) Within thirty days of the initial pretrial hearing date, an individual
15 navigator shall report to the commissioner any criminal prosecution of the navigator
16 instituted in any jurisdiction. The report shall include a copy of the initial complaint
17 filed, the order resulting from the hearing, and any other relevant legal documents.

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

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

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

8 K. The commissioner may promulgate such rules and regulations as may be
9 necessary or proper to carry out the provisions of this Section. Such rules and
10 regulations shall be promulgated and adopted in accordance with the Administrative
11 Procedure Act, R.S. 49:950 et seq.

12 L. Upon this Section acquiring the force of law, the commissioner may, in
13 addition to his enforcement discretion, establish an enforcement moratorium for the
14 provisions of this Section relating to the license requirement for navigators, the
15 registration process for non-navigator personnel, and any prescribed training,
16 education, or examinations for the purposes of properly effectuating the provisions
17 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, 732, 752, 771,
2 1203, 1460, 1466, 1546, 1566(D), 1644, 1656, 1723, 1927, 1929, 1983, 1984, 2036,
3 2303

4 * * *

5 Section 3. R.S. 22:753(H)(5) is hereby repealed in its entirety.

6 Section 4. If any provision or provisions of this Act or its application to a particular
7 circumstance is held to be invalid by a court of competent jurisdiction, the invalidity does
8 not affect the other provisions or applications of this Act. A court of competent jurisdiction
9 shall properly sever provisions that are held to be invalid, and the valid portions, provisions,
10 or applications shall retain full force and effect.

11 Section 5. This Act shall become effective upon signature by the governor or, if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 of the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor, and subsequently approved by the Legislature, this Act shall become
15 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)]

Pearson

HB No. 764

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

Proposed law provides for regulation of health insurance navigators and registration of non-navigator personnel by the commissioner of insurance, as follows:

- (1) Provides for definitions, including defining "health insurance navigators" and "non-navigator personnel" as individuals or entities which meet specific requirements.
- (2) Requires that health insurance navigators be licensed by the commissioner of insurance. Also requires non-navigator personnel to register with the commissioner. However, provides for exemptions from proposed law for certain individuals or entities and authorizes the commissioner to grant additional exemptions.
- (3) Requires that individual navigators be at least 18 years old and not be disqualified for any act that would be grounds for denial or revocation of an insurance producer license under present law. Additionally requires that any such navigator complete all training and education required by the federal government or an Exchange.

- Further provides that any such navigator shall identify any navigator entity with which he is affiliated and by which he is supervised.
- (4) Requires that each entity licensed as a navigator provide the commissioner with a list of licensed individual navigators employed by the entity.
 - (5) Provides that a navigator license is valid for two years from the date issued and that the commissioner prescribe the form for an application for license renewal.
 - (6) Requires that any applicant for an individual navigator license submit a full set of fingerprints to the commissioner and successfully complete a criminal history and regulatory background check conducted by the commissioner. Further requires that the commissioner submit the fingerprints of each such navigator license applicant to the Louisiana Bureau of Criminal Identification and Information for state and national criminal history checks. Makes applicants' fingerprints and any criminal history record information exempt from the Public Records Law, confidential and privileged, and not subject to discovery or admissible in evidence in any private civil action.
 - (7) Authorizes the commissioner to require education and training for individual navigators in addition to that required by the federal government or an Exchange. Limits such education and training to not more than 30 hours for initial education and not more than 15 hours per year for continuing education when combined with education or training required by any office or agency of the federal government or by an Exchange.
 - (8) Specifies the activities that navigators and non-navigator personnel may perform and may not perform.
 - (9) Provides penalties that the commissioner may impose on navigators for violations of proposed law, including a fine up to \$500 per violation, probation, suspension, or revocation of a navigator license, or refusal to issue, renew, or reinstate a navigator license, and provides for appeal of the commissioner's decision to impose a penalty.
 - (10) Requires an individual navigator to report to the commissioner any administrative action taken against him by a governmental agency or any criminal prosecution instituted against him in any jurisdiction within 30 days of the final disposition of the matter. Also requires an individual navigator to report to the commissioner any criminal prosecution instituted against him in any jurisdiction within 30 days of the initial pretrial hearing date.
 - (11) 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 if the reason for the termination is one set forth in present law relative to prohibited activities by producers.
 - (12) Requires navigators to file with the commissioner the annual and quarterly progress reports or annual financial reports required to be filed with the Centers for Medicare and Medicaid Services.
 - (13) Authorizes the commissioner to promulgate rules and regulations to carry out the provisions of proposed law in accordance with present law, the Administrative Procedure Act.
 - (14) Authorizes the commissioner to establish an enforcement moratorium for the provisions of proposed law relative to licensing and training of education of navigators and registration of non-navigator personnel for the purposes of effectuating the provisions of proposed law.

- (15) Deletes provisions contained in present law relative to life insurance which authorized the commissioner to promulgate rules relative to navigators and required the House and Senate insurance committees to review such rules.

(Amends R.S. 44:4.1(B)(11); Adds R.S. 22:1566; Repeals R.S. 22:753(H)(5))

Summary of Amendments Adopted by House

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

1. Clarified which provisions of proposed law apply to individual navigators, navigator entities, and/or non-navigator personnel.
2. Specified that the provision of proposed law prohibiting non-navigator personnel from receiving any direct or indirect compensation from a health insurance issuer or an issuer of health stop loss insurance is only applicable if prohibited by federal law.
3. Deleted provisions contained in present law relative to life insurance which authorized the commissioner to promulgate rules relative to navigators and required the House and Senate insurance committees to review such rules, as such provisions are superceded by proposed law.