

Regular Session, 2014

HOUSE BILL NO. 764

BY REPRESENTATIVE PEARSON

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:

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

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

1 (c) Is employed by or is a volunteer on behalf of a navigator or navigator
2 entity for the purposes of conducting consumer outreach or education, or for the
3 purposes of facilitating enrollment in qualified health plans.

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

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

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

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

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

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

26 (a) Individuals who facilitate enrollment in a health benefit plan without
27 receiving any form of direct or indirect compensation or who are employed by an
28 employer who directly or indirectly benefits from enrollment in a health benefit plan,
29 such as individuals assisting in the enrollment of family members, tutors acting for
30 a minor child or acting as a continuing tutor, individuals with the authority to

1 contract on behalf of interdicted persons, or a mandatary with the authority to
2 contract on behalf of a principal.

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

5 (c) A licensed insurance producer.

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

8 (e) An employee of a health insurance issuer, including a health maintenance
9 organization.

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

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

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

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

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

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

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

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

28 (3) Each entity licensed as a navigator shall, in a manner and frequency
29 prescribed by the commissioner, provide the commissioner with an accurate list of

1 all licensed individual navigators that it employs, in addition to completing an
2 application for a navigator license.

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

6 (5) An individual applying for a navigator license shall submit any
7 documents that the commissioner deems necessary to verify the information
8 contained in a license application, shall submit a full set of fingerprints to the
9 commissioner, and shall successfully complete a criminal history and regulatory
10 background check as provided for pursuant to this Section.

11 (6) For any individual applying for licensure as or licensed as a navigator,
12 the commissioner may prescribe any education, training, or examinations in addition
13 to education, training, or examinations required by any office or agency of the
14 federal government or by an exchange; however, such additional education, training,
15 or examinations shall not exceed thirty hours for initial education, training, or
16 examinations and fifteen hours per year for continuing educational purposes when
17 combined with education, training, or examinations required by any office or agency
18 of the federal government or by an exchange.

19 D.(1) In order to make a determination of license eligibility for individuals
20 applying for a navigator license, the commissioner shall require fingerprints of
21 applicants and submit the fingerprints and the fees required to perform the criminal
22 history record checks to the Louisiana Bureau of Criminal Identification and
23 Information for state and national criminal history record checks. The commissioner
24 shall require a criminal history record check on each applicant in accordance with
25 this Subsection. The commissioner shall require each applicant to submit a full set
26 of fingerprints in order for the commissioner to obtain and receive national criminal
27 history records from the Criminal Justice Information Services Division of the
28 Federal Bureau of Investigation.

29 (2) The commissioner may contract for the collection, transmission, and
30 resubmission of fingerprints required under this Subsection. If the commissioner

1 does so, the fee for collecting and transmitting fingerprints and the fee for the
 2 criminal history record check shall be payable directly to the contractor by the
 3 applicant. The commissioner may agree to a reasonable fingerprinting fee to be
 4 charged by the contractor.

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

16 E.(1) A navigator may:

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

21 (b) Facilitate the selection of a health benefit plan offered for sale on an
 22 exchange.

23 (c) Initiate the enrollment process for a health benefit plan offered for sale
 24 on an exchange.

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

29 (e) Carry out any activities required or authorized pursuant to 42 U.S.C.
 30 18031(i).

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

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

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

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

12 F. Unless an individual navigator or non-navigator personnel possesses an
13 accident and health insurance producer license, no navigator or non-navigator
14 personnel shall:

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

17 (2) Engage in any activity that would exclusively require an insurance
18 producer license.

19 (3) Provide partial advice concerning the benefits, terms, and features of
20 health benefit plans or offer advice about which health benefit plan, health insurance
21 issuer, or health maintenance organization is better or worse for a particular
22 individual or employer.

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

25 (5) Provide any plan specific or product specific information or services
26 related to any health benefit plan issued or issued for delivery in this state if such
27 health benefit plan is not offered for sale on an exchange.

28 (6) Disclose any information obtained in the course of navigator activities
29 where such information is confidential or protected from disclosure by law.

1 (7) Violate any of the provisions of 45 CFR 155.260 or other state or federal
2 laws or regulations.

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

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

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

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

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

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

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

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

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

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

22 L. The commissioner may, in addition to his enforcement discretion,
23 establish an enforcement moratorium for the provisions of this Section relating to the
24 license requirement for navigators, the registration process for non-navigator
25 personnel, and any prescribed training, education, or examinations for the purposes
26 of properly effectuating the provisions of this Section.

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

28 §4.1. Exceptions

29 * * *

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

6 * * *

7 (11) R.S. 22:2, 14, 31(B), 42.1, 88, 244, 461, 572, 572.1, 574, 618, 732, 752,
 8 753, 771, 1019.2(B)(5)(a), 1203, 1460, 1466, 1546, 1566(D), 1644, 1656, 1723,
 9 1927, 1929, 1983, 1984, 2036, 2303

10 * * *

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.