

1 HOUSE BILL 564

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Thomas C. Taylor

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO INSURANCE; ENACTING THE INSURANCE NAVIGATOR  
12 LICENSING ACT; REQUIRING LICENSING FOR INSURANCE NAVIGATORS;  
13 REQUIRING CONTINUING EDUCATION; PROHIBITING CERTAIN CONDUCT;  
14 REQUIRING REPORTS TO THE SUPERINTENDENT OF INSURANCE; PROVIDING  
15 FOR RULEMAKING; PROVIDING FOR SEVERABILITY.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the New Mexico Insurance Code  
19 is enacted to read:

20 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the  
21 "Insurance Navigator Licensing Act".

22 SECTION 2. A new section of the New Mexico Insurance Code  
23 is enacted to read:

24 "[NEW MATERIAL] DEFINITIONS.--As used in the Insurance  
25 Navigator Licensing Act:

.192502.1

underscored material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

1           A. "exchange" means a health benefit exchange  
2 established or operating in this state, including an exchange  
3 established or operated by the United States department of  
4 health and human services; and

5           B. "navigator" means a person, other than an  
6 insurance producer, who:

7                   (1) receives funding, directly or indirectly,  
8 from an exchange, the state or the federal government to  
9 perform any of the activities and duties identified for a  
10 navigator in the federal Patient Protection and Affordable Care  
11 Act of 2010;

12                   (2) facilitates enrollment of individuals or  
13 employers in health plans or public insurance programs offered  
14 through an exchange;

15                   (3) conducts public education or consumer  
16 assistance activities for or on behalf of an exchange; or

17                   (4) is described or designated by an exchange,  
18 the state or the United States department of health and human  
19 services, or could reasonably be described or designated as, a  
20 navigator, an in-person assister, enrollment assister,  
21 application assister or application counselor."

22           SECTION 3. A new section of the New Mexico Insurance Code  
23 is enacted to read:

24           "[NEW MATERIAL] LICENSE REQUIRED.--A person shall not act  
25 as, offer to act as or advertise a service as a navigator

.192502.1

underscored material = new  
[bracketed material] = delete

1 unless licensed as a navigator pursuant to the Insurance  
2 Navigator Licensing Act. A licensed navigator is subject to  
3 regulation by the superintendent."

4 SECTION 4. A new section of the New Mexico Insurance Code  
5 is enacted to read:

6 "[NEW MATERIAL] APPLICATION FOR LICENSE.--

7 A. A person applying for a navigator license shall  
8 make application to the superintendent on a form developed by  
9 the superintendent and declare under penalty of refusal,  
10 suspension or revocation of the license that the statements  
11 made in the application are true, correct and complete to the  
12 best of the person's knowledge and belief. Before approving  
13 the application, the superintendent shall find that the person:

14 (1) is at least eighteen years of age;

15 (2) resides in this state or maintains the  
16 person's principal place of business in the state;

17 (3) is not disqualified for having committed  
18 an act that would be grounds for denial, suspension or  
19 revocation of a license pursuant to the Insurance Code;

20 (4) has not had a license issued pursuant to  
21 the Insurance Code or an equivalent license or certification  
22 from another jurisdiction denied, suspended or revoked;

23 (5) has completed the pre-licensing training  
24 and course of study prescribed by the superintendent;

25 (6) has successfully passed the written

.192502.1

underscoring material = new  
~~[bracketed material] = delete~~

1 examination prescribed by the superintendent;

2 (7) has submitted a full set of fingerprints  
3 to the superintendent and successfully completed a criminal  
4 history and regulatory record check in a manner prescribed by  
5 the superintendent;

6 (8) when applicable, has the written consent  
7 of the superintendent pursuant to a federal law regulating  
8 crimes by or affecting persons engaged in the business of  
9 insurance whose activities affect interstate commerce;

10 (9) possesses the requisite character and  
11 integrity;

12 (10) has identified the entity with which it  
13 is affiliated and supervised; and

14 (11) has paid the fees prescribed by the  
15 superintendent.

16 B. A person other than an individual that acts as a  
17 navigator, supervises or is responsible for the activities of  
18 individual navigators or receives funding to perform those  
19 activities shall obtain a navigator license as an entity. An  
20 entity applying for a navigator license shall:

21 (1) make application on a form and containing  
22 the information prescribed by the superintendent; and

23 (2) designate an individual licensed as a  
24 navigator to be responsible for the entity's compliance with  
25 the Insurance Code.

.192502.1

underscored material = new  
[bracketed material] = delete

1 C. The superintendent may require any documents  
2 deemed necessary to verify the information contained in an  
3 application submitted in accordance with Subsections A and B of  
4 this section.

5 D. An entity licensed as a navigator shall, in a  
6 manner prescribed by the superintendent, periodically provide  
7 the superintendent with a list of all individual navigators  
8 that it employs, supervises or with whom it is affiliated.

9 E. The superintendent shall require that each  
10 navigator obtain a surety bond in an amount acceptable to the  
11 superintendent or otherwise demonstrate a level of financial  
12 responsibility capable of protecting all persons against the  
13 wrongful acts, misrepresentations, errors, omissions or  
14 negligence of the navigator. The superintendent may ask for a  
15 copy of the bond or other evidence of financial responsibility  
16 at any time.

17 F. Prior to an exchange becoming operational, the  
18 superintendent shall prescribe initial training, continuing  
19 education and written examination standards and requirements  
20 for navigators."

21 SECTION 5. A new section of the New Mexico Insurance Code  
22 is enacted to read:

23 "[NEW MATERIAL] LICENSE TERM--RENEWAL--CONTINUING  
24 EDUCATION.--

25 A. A navigator license shall be valid for two

.192502.1

underscored material = new  
[bracketed material] = delete

1 years.

2 B. A navigator may file an application for renewal  
3 of a license in a method prescribed by the superintendent and  
4 pay the renewal fee prescribed by the superintendent. Any  
5 navigator who fails to timely file for license renewal shall be  
6 charged a late fee in an amount prescribed by the  
7 superintendent.

8 C. Prior to the filing date for application for  
9 renewal of a license, an individual licensee shall comply with  
10 ongoing training and continuing education requirements  
11 established by the superintendent. The navigator shall file  
12 with the superintendent, by a method prescribed by the  
13 superintendent, satisfactory certification of completion of the  
14 continuing education requirements. A failure to fulfill the  
15 ongoing training and continuing education requirements shall  
16 result in the expiration of the license."

17 SECTION 6. A new section of the New Mexico Insurance Code  
18 is enacted to read:

19 "[NEW MATERIAL] NAVIGATOR CONDUCT--INSURANCE PRODUCER  
20 FUNCTIONS.--

21 A. A navigator shall not:

22 (1) engage in any activities that would  
23 require an insurance producer license;

24 (2) provide advice concerning the benefits,  
25 terms and features of a particular health plan or offer advice

.192502.1

underscored material = new  
[bracketed material] = delete

1 about which health plan is better or worse or suitable for a  
2 particular individual or employer;

3 (3) recommend or endorse a particular health  
4 plan or advise consumers about which health plan to choose; or

5 (4) provide information or services related to  
6 health benefit plans or other products not offered in the  
7 exchange.

8 B. Only a person licensed as an insurance producer  
9 in this state may:

10 (1) sell, solicit or negotiate health  
11 insurance;

12 (2) provide advice concerning the benefits,  
13 terms and features of a particular health plan or offer advice  
14 about which health plan is better or worse for a particular  
15 individual or employer; or

16 (3) recommend a particular health plan or  
17 advise consumers about which health plan to choose.

18 C. On contact with a person who acknowledges having  
19 existing health insurance coverage obtained through an  
20 insurance producer, a navigator shall refer the person back to  
21 that insurance producer for information, assistance and other  
22 services."

23 SECTION 7. A new section of the New Mexico Insurance Code  
24 is enacted to read:

25 "[NEW MATERIAL] GROUNDS FOR PLACING ON PROBATION, REFUSAL

.192502.1

underscoring material = new  
[bracketed material] = delete

1 TO ISSUE OR RENEW, REVOCATION OR SUSPENSION OF LICENSE.--

2 A. The superintendent may place on probation,  
3 suspend, revoke or refuse to issue, renew or reinstate a  
4 navigator license, or may levy a fine not to exceed five  
5 thousand dollars (\$5,000), for each violation of the Insurance  
6 Code or for other good cause.

7 B. In addition to imposing the penalties authorized  
8 by Subsection A of this section, the superintendent may require  
9 that restitution be made to any person who has suffered  
10 financial injury because of a violation of the Insurance  
11 Navigator Licensing Act.

12 C. The superintendent may examine and investigate  
13 the business affairs and records of a navigator to determine  
14 whether the individual or entity has engaged or is engaging in  
15 a violation of the Insurance Code.

16 D. The navigator license held by an entity may be  
17 suspended or revoked, or renewal or reinstatement of the  
18 license may be refused or a fine may be levied, with or without  
19 a suspension, revocation or refusal to renew a license, if the  
20 superintendent finds that an individual licensee's violation  
21 was known or should have been known by the employing or  
22 supervising entity and the violation was not reported to the  
23 superintendent on a timely basis."

24 SECTION 8. A new section of the New Mexico Insurance Code  
25 is enacted to read:

.192502.1

1           "[NEW MATERIAL] REPORTING TO THE SUPERINTENDENT.--

2           A. A licensed navigator shall report to the  
3 superintendent an administrative action taken by a governmental  
4 agency against the navigator in this state or in another  
5 jurisdiction within thirty calendar days of the final  
6 disposition of the matter. This report shall include a copy of  
7 the order, consent to order or other relevant legal documents.

8           B. Within thirty days of the initial pretrial  
9 hearing date, a navigator shall report to the superintendent a  
10 criminal prosecution of the navigator taken in another  
11 jurisdiction. The report shall include a copy of the initial  
12 complaint filed, the order resulting from the hearing and any  
13 other relevant legal documents.

14           C. An entity that acts as a navigator that  
15 terminates the employment, engagement, affiliation or other  
16 relationship with an individual navigator shall notify the  
17 superintendent within thirty days following the effective date  
18 of the termination, using a format prescribed by the  
19 superintendent, if the reason for termination is one of the  
20 reasons set forth in the Insurance Navigator Licensing Act or  
21 the entity has knowledge that the navigator was found by a  
22 court or government body to have engaged in any of the  
23 activities prohibited by the Insurance Code. Upon the written  
24 request of the superintendent, the entity shall provide  
25 additional information, documents, records or other data

.192502.1

underscoring material = new  
[bracketed material] = delete

1       pertaining to the termination or activity of the individual."

2               **SECTION 9.** A new section of the New Mexico Insurance Code  
3 is enacted to read:

4               "[NEW MATERIAL] OTHER LAWS--RULEMAKING AUTHORITY.--

5                       A. The requirements of the Insurance Code and the  
6 Unfair Practices Act and rules promulgated pursuant to those  
7 acts shall apply to navigators. The activities and duties of a  
8 navigator shall be deemed to constitute transacting the  
9 business of insurance.

10                      B. The requirements of the Insurance Navigator  
11 Licensing Act shall not apply to a person licensed as an  
12 insurance producer in this state.

13                      C. The superintendent may promulgate rules that are  
14 necessary or appropriate for the administration and enforcement  
15 of the Insurance Navigator Licensing Act."

16               **SECTION 10. SEVERABILITY.**--If any part or application of  
17 the Insurance Navigator Licensing Act is held invalid, the  
18 remainder or its application to other situations or persons  
19 shall not be affected.

20               **SECTION 11. EFFECTIVE DATE.**--The effective date of the  
21 provisions of this act is July 1, 2013.