



Ohio Legislative Service Commission

Final Analysis

Nick Thomas

Sub. H.B. 3

130th General Assembly
(As Passed by the General Assembly)

Reps. Sears and Kunze, Hottinger, Anielski, Brown, Hackett, Henne, Rosenberger, Sprague, Wachtmann, Batchelder

Sens. Bacon, Hite, Peterson

Effective date: July 30, 2013

ACT SUMMARY

- Provides for the certification of insurance navigators that assist individuals in purchasing health insurance through a health insurance exchange established under the Patient Protection and Affordable Care Act of 2010.
- Enables a licensed insurance agent to become certified to sell health benefit plans offered through an exchange and prescribes associated requirements.
- Prohibits an insurance navigator from engaging in the act of selling insurance and other related functions.
- Specifies eligibility requirements for insurance navigators.
- Specifies insurance navigator duties.
- Prescribes duties for the Superintendent of Insurance in relation to the certification of insurance navigators.
- Specifies the disciplinary actions that the Superintendent can take against an insurance navigator that commits a violation of the Insurance Law.
- Requires a health insurance exchange to maintain a list of the contact information of licensed insurance agents that are also certified to sell insurance through an exchange and a list of individuals certified as insurance navigators.

- Requires a health insurance exchange to provide information on contacting both licensed agents certified to sell insurance through an exchange and nonlicensed individuals or entities who are certified as insurance navigators that are operating in an individual's area to any individual seeking such information.
- Limits in-person assisters to licensed insurance agents who are certified to sell health plans through an exchange and insurance navigators.
- Alters cost-sharing requirements imposed on health insuring corporations (HICs), limiting the maximum total cost-sharing charge that a HIC can impose to 40% of the costs for providing health services.
- Adds approved proprietary continuing education institutions to the list of entities that are authorized to provide cosmetology continuing education programs.

TABLE OF CONTENTS

Overview	2
General insurance navigator provisions	3
Authorized activities	3
Prohibited activities	4
Eligibility requirements	4
Business entity certification	5
Responsibilities of the Superintendent of Insurance	5
Revocation of certification	6
Insurance agents	7
Contact information of insurance agents and certified navigators.....	7
In-person assisters.....	8
Plans offered through an exchange.....	8
Cost sharing.....	8
Definitions	9
Continuing education requirements for cosmetologists	10

CONTENT AND OPERATION

Overview

The act provides for the certification and oversight of health exchange insurance navigators. These insurance navigators are an element of the health care reforms included in the Patient Protection and Affordable Care Act of 2010 (ACA).¹ Insurance navigators are individuals or entities charged with helping individuals obtain information on purchasing health insurance through health care exchanges established

¹ 124 Stat. 119.

under the ACA.² Entities that have regular access to groups of working individuals who might not be provided with insurance through an employer group plan, such as trade associations, chambers of commerce, or community organizations, are likely candidates for becoming navigators.

The act also alters cost-sharing requirements imposed on health insuring corporations (HICs), limiting the maximum total cost sharing charge that a HIC can impose to 40% of the costs for providing health services.

General insurance navigator provisions

Authorized activities

The act prohibits an individual or entity from acting as, presenting itself as, an insurance navigator unless that individual or entity is actually certified as an insurance navigator and is receiving funding under division (i) of Section 1311 of the ACA.³

The act expressly authorizes certified insurance navigators that are not licensed insurance agents to undertake certain activities. Under the act, nonlicensed insurance navigators are authorized 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 on the availability of the premium tax credits and cost-sharing reductions under the ACA;
- Facilitate enrollment in qualified health plans, without suggesting that an individual select a particular plan;
- Provide referrals to appropriate state agencies for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan;

² U.S. Department of Health and Human Services, *Final Rule on the Establishment of Exchanges and Qualified Health Plans*, published March 27, 2012, p. 140.

³ R.C. 3905.471(A).



- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange.⁴

Prohibited activities

The act prohibits an insurance navigator from doing any of the following:

- Sell, solicit, or negotiate health insurance;
- Provide advice concerning the substantive benefits, terms, and conditions of a particular health benefit plan or offer advice about which health benefit plan is better or worse or suitable for a particular individual or entity;
- Recommend a particular health plan or advise consumers about which health benefit plan to choose;
- Provide any information or services related to health benefit plans or other products not offered in the exchange; however, the act specifies that this provision is not to be interpreted as prohibiting an insurance navigator from providing information on eligibility for Medicaid;
- Engage in any unfair method of competition or any fraudulent, deceptive, or dishonest act or practice.⁵

Eligibility requirements

The act outlines basic eligibility requirements for individuals seeking to be certified as an insurance navigator or individuals working for an entity that is certified as an insurance navigator. An individual, or an individual performing insurance navigator duties on behalf of an organization serving as an insurance navigator, must meet all of the following requirements:

- Is at least 18 years of age;
- Has completed and submitted the application and disclosure form declaring any potential conflicts of interest and any other information the Superintendent of Insurance considers pertinent;
- Has successfully completed a criminal records check;

⁴ R.C. 3905.471(B).

⁵ R.C. 3905.471(C).



- Has successfully completed the insurance navigator certification and training requirements adopted by the Superintendent;
- Has paid all associated fees.⁶

Under the act, any fees collected in association with insurance navigator certification are to be deposited in the Department of Insurance Operating Fund.⁷ Also, the act subjects insurance navigators to Ohio Insurance Law, and any rules adopted pursuant to that Law, in so far as that Law is applicable.⁸

Business entity certification

The act requires any business entity acting as an insurance navigator, supervising an insurance navigator, or receiving funding to provide insurance navigator services to obtain an insurance navigator business entity certification. Such an entity must apply for the certification via a form prescribed by the Superintendent. Such an entity must also make available a list of all insurance navigators that the business entity employs, supervises, or with which the business entity is affiliated.⁹

A business entity that terminates the employment, engagement, affiliation, or other relationship with an individual insurance navigator must notify the Superintendent within 30 days of such an action, if the reason for the termination was due to an action that could be subject to disciplinary action by the Superintendent.¹⁰

Responsibilities of the Superintendent of Insurance

The act prescribes certain duties for the Superintendent of Insurance in relation to the certification of insurance navigators. The act requires the Superintendent to adopt rules to establish a certification and training program for a prospective insurance navigator and the insurance navigator's employees that includes screening via a criminal records check, initial and continuing education requirements, and an examination. The certification and training program must include training on compliance with the Health Insurance Portability and Accountability Act of 1996 (popularly known as HIPAA), training on ethics, and training on provisions of the ACA related to insurance navigators and exchanges. Additionally, the Superintendent is

⁶ R.C. 3905.471(D).

⁷ R.C. 3905.471(M).

⁸ R.C. 3905.471(I).

⁹ R.C. 3905.471(E).

¹⁰ R.C. 3905.471(H).



required to develop an application and disclosure form by which an insurance navigator may disclose any potential conflicts of interest and any other information the Superintendent considers pertinent. These duties must be performed prior to any exchange becoming operational in Ohio.¹¹

Revocation of certification

The Superintendent may suspend, revoke, or refuse to issue or renew the insurance navigator certification of any person, or levy a civil penalty against any person, that has committed any act that would be a ground for the denial, suspension, or revocation of an insurance agent license. The Superintendent is authorized to examine and investigate the business affairs and records of any insurance navigator. The act requires the Superintendent to not certify as an insurance navigator, or to revoke any existing insurance navigator certification of, any person or entity that is receiving financial compensation, including monetary and in-kind compensation, gifts, or grants, on or after October 1, 2013, from an insurer offering a qualified health benefit plan through an exchange operating in Ohio. However, the act specifies that a qualified health center or federally qualified health center look-alike may be certified as an insurance navigator. If the Superintendent discovers that an individual insurance navigator has violated applicable law with the knowledge of an employing or supervising entity, or that such an entity should reasonably have been aware of the violation, and the violation was not reported to the Superintendent and no timely corrective action was taken, the Superintendent may suspend, revoke, or refuse to renew the insurance navigator certification of the supervising or employing entity. Additionally, the Superintendent may levy a civil penalty against such an entity.¹² Finally, the Superintendent may deny, suspend, approve, renew, or revoke the certification of an insurance navigator if the Superintendent determines that doing so would be in the interest of Ohio insureds or the general public. These latter actions are not subject to the Administrative Procedure Act.¹³

The act authorizes the Superintendent to adopt rules to implement the act's provisions.¹⁴

¹¹ R.C. 3905.471(F).

¹² R.C. 3905.471(G).

¹³ R.C. 3905.471(J).

¹⁴ R.C. 3905.471(K).



Insurance agents

The act prohibits insurance agents from selling, soliciting, or negotiating insurance through an exchange, or enrolling or offering to enroll a person in a health benefit plan offered through an exchange without first completing initial training related to the ACA and exchanges. The training program may be required by the exchange or approved by the Superintendent if the exchange does not require training. After this initial training, agents must also complete continuing education to remain certified. The act requires the Superintendent to adopt appropriate education requirements and specifies what must be included in these courses. Any course the Superintendent approves must consist of topics related to insurance offered within an exchange, including (1) the levels of coverage provided in an exchange, (2) the eligibility requirements for individuals to purchase insurance through an exchange, (3) the eligibility requirements for employers to make insurance available to their employees through a SHOP program, (4) individual eligibility requirements for Medicaid, (5) the use of enrollment forms used in an exchange, and (6) any other topics as required by the Superintendent. Insurance agent continuing education courses approved by the Superintendent under continuing law may satisfy the continuing education requirement.¹⁵

Contact information of insurance agents and certified navigators

The act provides a means for individuals seeking insurance through an exchange to contact both a licensed insurance agent and a certified insurance navigator. The act requires the exchange to maintain a current list of licensed insurance agents that have met all of the requirements necessary to offer or sell insurance through an exchange and certified insurance navigators. An exchange is required to make available to an individual, upon the individual's request, a list of insurance agents certified to sell a health benefit plan through an exchange operating near the individual's residence and insurance navigators. Also, any web site, software application, or other electronic medium, or an exchange-sanctioned outreach event that enables a consumer to determine eligibility for, and to purchase, health insurance through an exchange must also provide information on how an individual can contact an insurance agent that is certified to sell health insurance through an exchange and certified insurance navigators.¹⁶

¹⁵ R.C. 3905.47(A) to (C).

¹⁶ R.C. 3905.473.



In-person assisters

Under the act, an "in-person assister" is any person, other than an insurance navigator who receives funding from, or who is selected or designated by, an exchange, the state, or the federal government to perform any of the activities or duties outlined in division (i) of Section 1311 of the ACA. The act prohibits a person from acting as, performing the duties of, or from holding itself out to be an in-person assister unless the person is either a licensed insurance agent certified to sell insurance through an exchange or a certified navigator. Note that it is unclear how this prohibition will be reconciled with the definition of "in-person assister," which specifies that an assister cannot be a navigator. Additionally, the act authorizes the Superintendent to, by rule, apply the requirements of the Insurance Procedures Licensing Law to any additional entity or person delineated by the federal government to assist consumers or participate in exchange activities.¹⁷

Plans offered through an exchange

The act requires an exchange to permit an insurer to offer any health benefit plan that the insurer seeks to offer through the exchange, so long as the health benefit plan is a qualified health plan under the ACA, as determined by the Superintendent. The Superintendent may not impose any additional state certification requirements in order for a plan to be a qualified health plan.¹⁸

Cost sharing

The act alters cost-sharing requirements imposed on health insuring corporations (HICs). These changes bring state law in line with the cost-sharing requirements prescribed in the ACA.

Continuing law, unchanged by the act, stipulates, for HICs, that copayments must be reasonable and must not be a barrier to receiving health services. To ensure that this requirement was met, under prior law, HICs could choose either of the following options when setting copayments:

- Charge up to 40% of the average cost of providing a particular service;
- Impose copayment charges, the sum of which did not annually exceed 20% of the total annual cost to the HIC of providing all covered basic health care services when aggregated to all persons that would be

¹⁷ R.C. 3905.01(D), 3905.471(L), and 3905.474.

¹⁸ R.C. 3905.472.



expected to utilize a particular health insurance product or to an actual individual covered under such a plan.¹⁹

Prior law also imposed the following additional limitations:

- The sum of copayments charged to an enrollee in a year could not be more than twice what the enrollee pays in annual premium;²⁰
- An annual deductible could not be more than \$1,000 per enrollee or \$2,000 per family.²¹

Note that none of these prior-law limitations applied to high-deductible plans that were linked to a health-savings account.²²

Under the act, the maximum percentage that a HIC would be able to charge to an enrollee for providing health services, in addition to premium, is 40% of the annual cost of providing those services when applied to a standard population expected to be covered under the product. This includes all copayments, deductibles, or other cost-sharing provisions of a health insurance plan. A HIC must demonstrate that this requirement is met via a qualified actuary.²³

However, under continuing law, high-deductible plans are not required to meet such limitations, so long as the deductibles imposed do not create a barrier to the use of services by an enrollee. Also, the act adds that catastrophic-only plans are not subject to this 40/60 cost sharing split, provided that such a plan meets all minimum federal requirements.²⁴

Definitions

The act adds the following definitions to Ohio Insurance Law:

- "Affordable Care Act" means the "Patient Protection and Affordable Care Act," 124 Stat. 119, 42 U.S.C. 18031 (2011).

¹⁹ R.C. 1751.12(D)(1) and (2).

²⁰ R.C. 1751.12(D)(3).

²¹ R.C. 1751.12(F).

²² R.C. 1751.12(D)(4) and (F)(1).

²³ R.C. 1751.12(D), (F), and (G).

²⁴ R.C. 1751.12(D)(3).



- "Insurance navigator" means a person selected to perform the activities and duties identified in division (i) of section 1311 of the Affordable Care Act that is certified by the Superintendent under the provisions of the act. Under that division, an entity that serves as an insurance navigator must (1) conduct public education activities to raise awareness of the availability of qualified health plans, (2) distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits and cost-sharing reductions under the Affordable Care Act, (3) facilitate enrollment in qualified health plans, (4) provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under the federal Public Health Service Act or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding the enrollee's health plan, coverage, or a determination under such plan or coverage, and (5) provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange or exchanges. "Insurance navigator" refers to a navigator specified in section 1311 of the Affordable Care Act.²⁵
- "Exchange" means a health benefit exchange established by Ohio or an exchange established by the U.S. Department of Health and Human Services in accordance with the Affordable Care Act.
- "In-person assister" means any person, other than an insurance navigator, who receives any funding from, or who is selected or designated by, an exchange, the state, or the federal government to perform any of the activities and duties identified in division (i) of section 1311 of the ACA. "In-person assister" includes any individual that is employed by, supervised by, or affiliated with an in-person assister and performs any of the activities and duties identified in division (i) of section 1311 of the ACA, any non-navigator assistance personnel, and any other person deemed as such by rules adopted by the Superintendent.

Continuing education requirements for cosmetologists

Under continuing law unchanged by the act, cosmetologists must meet certain continuing education requirements, which are met by completing a continuing education program. These programs must be approved by the State Board of Cosmetology. The programs must be operated by a nonprofit professional association, a

²⁵ 42 U.S.C. 18031(i)(3).

college or university, a vocational school, a postsecondary proprietary school of cosmetology licensed by the Board, a salon licensed by the Board, or a manufacturer of supplies or equipment used in the practice of cosmetology. The act adds proprietary continuing education institutions that provide programs approved by the Board to the list of entities that are authorized to provide continuing education programs.²⁶

HISTORY

ACTION	DATE
Introduced	01-30-13
Reported, H. Health & Aging	03-06-13
Passed House (90-5)	03-13-13
Reported, S. Insurance and Financial Institutions	04-23-13
Passed Senate (23-9)	04-23-13
House concurred in Senate amendments (88-7)	04-24-13

13-hb3-130.docx/ks

²⁶ R.C. 4713.62(B)(3).

