

BILL ANALYSIS

C.S.H.B. 459
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently enacted federal law established a navigator program to allow navigators to engage in insurance consulting, placement, and enrollment activities, however, there are concerns that the Texas Department of Insurance does not currently have a means to hold navigators accountable and protect consumers. These concerns are magnified by reports that, while many navigators lack basic insurance knowledge and relevant experience, they are still charged with performing significant and sensitive duties. Interested parties assert that navigators should be subject to the jurisdiction and oversight of state insurance regulators so that the state will have the authority to take enforcement action when navigators engage in improper conduct. In an effort to establish such oversight and protect consumers, C.S.H.B. 459 seeks to give the Texas Department of Insurance a mechanism to regulate the navigator program to ensure that the federal program appropriately addresses the needs of Texans.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance and the commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 459 amends the Insurance Code to add temporary provisions, set to expire September 1, 2017, to authorize a navigator that performs the activities and duties described in provisions of federal law relating to the establishment of health benefit exchanges and that satisfies the bill's requirements to perform any duty or function authorized or required by the bill's provisions or any applicable federal law or regulation without obtaining a license from the Texas Department of Insurance (TDI) or any other state agency. The bill exempts from the bill's provisions a licensed life, accident, and health insurance agent; a licensed life and health insurance counselor; and a licensed life and health insurance company.

C.S.H.B. 459 requires the commissioner of insurance to adopt rules necessary to implement the bill's provisions and to meet the minimum requirements of federal law, including regulations. The bill requires the commissioner to determine whether the standards and qualifications for navigators provided under applicable federal law and any regulations enacted under that law are sufficient to ensure that navigators can perform the duties required under state law, including certain specified duties. The bill requires the commissioner to make a good faith effort to work in cooperation with the United States Department of Health and Human Services and to propose improvements to the standards provided by federal regulations if the commissioner determines that the standards are insufficient to ensure that navigators can perform the duties required under state law. The bill requires the commissioner by rule to establish standards and qualifications to ensure that navigators in Texas can perform the duties required under state law if, after a reasonable interval, the commissioner determines that the federal standards remain insufficient. The bill establishes minimum requirements for such rules.

C.S.H.B. 459 requires the commissioner, at regular intervals, to obtain from the health benefit

exchange a list of all navigators providing assistance in Texas and, with respect to an individual, the name of the individual's employer or organization. The bill authorizes the commissioner by rule to establish a state registration for navigators sufficient to allow TDI to ensure that navigators satisfy certain standards adopted by commissioner rule and collect the information regarding all navigators providing assistance in Texas.

C.S.H.B. 459 sets out restrictions relating to the information indicated, suggested, or included in any advertisement or other materials that are published or distributed by or on behalf of a navigator. The bill prohibits a navigator from receiving compensation for services or duties as a navigator that are prohibited by law, including compensation from a health benefit plan issuer. The bill requires the commission to adopt rules authorizing additional training for navigators as the commissioner considers necessary to ensure compliance with changes in state law.

C.S.H.B. 459 prohibits a navigator from taking any of the following actions unless the navigator is licensed to act as a life, accident, or health agent: selling, soliciting, or negotiating coverage under a health benefit plan; endorsing a health benefit plan or group of health benefit plans; providing, or offering to provide, information or services related to insurance products not offered through a health benefit exchange; offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable; or accepting any compensation that is wholly or partly dependent on whether a person enrolls in or purchases a health benefit plan. The bill prohibits a navigator from engaging in any unfair method of competition or any deceptive, dishonest, or fraudulent trade practice. The bill clarifies that the prohibitions do not prohibit a navigator from providing information on public benefits and health coverage, or other information and services consistent with the mission of the navigator.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 459 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle G, Title 8, Insurance Code, is amended by adding Chapter 1509 to read as follows:

CHAPTER 1509. NAVIGATOR PROGRAM

Sec. 1509.001. NAVIGATOR PROGRAM. (a) The department shall:

- (1) establish a navigator program as described by Section 1311(i), Patient Protection and Affordable Care Act (42 U.S.C. Section 18031(i));
- (2) select entities qualified to serve as navigators in accordance with Section 1311(i), Patient Protection and Affordable Care Act (42 U.S.C. Section 18031(i)), and standards developed by the secretary of the United States Department of Health

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

No equivalent provision, but see added Sec. 4154.051 in SECTION 1 below.

and Human Services;

(3) adopt rules governing the certification of a navigator;

(4) certify navigators as able to carry out the duties required by Section 1311(i)(3), Patient Protection and Affordable Care Act (42 U.S.C. Section 18031(i)(3)); and

(5) provide training to navigators.

(b) At a minimum, training under this section must:

(1) enable a navigator to provide individuals and enrollees with complete and accurate information about coverages available through a health care exchange formed in compliance with Section 1311, Patient Protection and Affordable Care Act (42 U.S.C. Section 18031); and

(2) educate navigators regarding how, and under what circumstances, to refer an individual or enrollee to an agent licensed under Section 4054.051.

(c) The department may charge a reasonable fee for training services provided under this section, except that the department may not charge a fee to a navigator that is a nonprofit, tax-exempt organization listed in Section 501(c) or (d) of the Internal Revenue Code of 1986, including a faith-based organization.

(d) A navigator may not:

(1) sell, solicit the sale or purchase of, or negotiate concerning the sale of health benefit plan coverage; or

(2) receive a commission from a health benefit plan issuer or other insurer.

No equivalent provision.

No equivalent provision, but see added Sec. 4154.051 in SECTION 1 below.

No equivalent provision, but see added Sec. 4154.054 in SECTION 1 below.

No equivalent provision, but see added Secs. 4154.053 and 4154.101 in SECTION 1 below.

SECTION 1. Subtitle D, Title 13, Insurance Code, is amended by adding Chapter 4154 to read as follows:

CHAPTER 4154. NAVIGATORS FOR HEALTH BENEFIT EXCHANGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4154.001. DEFINITIONS. In this chapter:

(1) "Health benefit exchange" means a health benefit exchange established or operating in this state, including a health benefit exchange established or operated by the secretary of the United States Department of Health and Human Services under 42 U.S.C. Section

18041.

(2) "Health benefit plan issuer" means an insurance company or health maintenance organization regulated by the department and authorized to issue a health insurance policy or other health benefit plan. The term includes:

(A) a stock life, health, or accident insurance company;

(B) a mutual life, health, or accident insurance company;

(C) a stock casualty insurance company;

(D) a mutual casualty insurance company;

(E) a Lloyd's plan;

(F) a reciprocal or interinsurance exchange;

(G) a fraternal benefit society;

(H) a stipulated premium company;

(I) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842; and

(J) a health maintenance organization.

(3) "Navigator" means an individual or entity performing the activities and duties of a navigator as described by 42 U.S.C. Section 18031 or any regulation enacted under that section.

Sec. 4154.002. APPLICABILITY OF OTHER LAW. Notwithstanding Section 101.051, 101.102, 4001.051, or 4001.101 or any other law, a navigator that satisfies the requirements of this chapter may perform any duty or function authorized or required by this chapter or any applicable federal law or regulation without obtaining a license from the department or any other agency of this state.

Sec. 4154.003. EXEMPTIONS. This chapter does not apply to:

(1) a licensed life, accident, and health insurance agent;

(2) a licensed life and health insurance counselor; or

(3) a licensed life and health insurance company.

Sec. 4154.004. RULES. The commissioner shall adopt rules necessary to implement this chapter and to meet the minimum requirements of federal law, including regulations.

Sec. 4154.005. EXPIRATION OF CHAPTER. This chapter expires September 1, 2017.

SUBCHAPTER B. STANDARDS AND QUALIFICATIONS FOR NAVIGATORS

Sec. 4154.051. SUFFICIENCY OF FEDERAL QUALIFICATIONS. (a) The

commissioner shall determine whether the standards and qualifications for navigators provided by 42 U.S.C. Section 18031 and any regulations enacted under that section are sufficient to ensure that navigators can perform the duties required under state law, including:

(1) assisting consumers in completing the uniform application for health coverage affordability programs available through a health benefit exchange;

(2) explaining how health coverage affordability programs work and interact, including Medicaid, the children's health insurance program, and advance premium tax credits and cost-sharing assistance;

(3) explaining health insurance concepts related to qualified health plans, including premiums, cost-sharing, network, and essential health benefits;

(4) providing culturally and linguistically appropriate information;

(5) avoiding conflicts of interest; and

(6) establishing standards and processes relating to privacy and data security.

(b) If the commissioner determines that the standards provided by regulations enacted under 42 U.S.C. Section 18031 are insufficient to ensure that navigators can perform the duties required under state law, the commissioner shall make a good faith effort to work in cooperation with the United States Department of Health and Human Services and to propose improvements to those standards. If after a reasonable interval the commissioner determines that the standards remain insufficient, the commissioner by rule shall establish standards and qualifications to ensure that navigators in this state can perform the duties required under state law.

(c) At a minimum, rules adopted under this section must provide that a navigator in this state has not:

(1) had a professional license suspended or revoked;

(2) been the subject of any other disciplinary action by a financial or insurance regulator of this state, another state, or the United States; or

(3) been convicted of a felony.

(d) The commissioner shall at regular intervals obtain from the health benefit exchange a list of all navigators providing assistance in this state and, with respect to an individual, the name of the individual's

employer or organization.

(e) The commissioner may by rule establish a state registration for navigators sufficient to allow the department to ensure that navigators satisfy the standards provided by Subsection (c) and collect the information described by Subsection (d).

Sec. 4154.052. LIMITS ON ADVERTISING.

A navigator may not, in any advertisement or other materials that are published or distributed in any manner by or on behalf of the navigator:

(1) indicate or suggest the professional superiority of the navigator;

(2) indicate or suggest the performance of professional service by the navigator in a superior manner;

(3) include one or more of the following words or phrases in the navigator's name or materials in a deceptive or misleading manner:

(A) "advisor" or "advisory";

(B) "agent" or "agency"; or

(C) "consultant" or "counselor"; or

(4) include other words or phrases that describe a navigator's services and duties in a deceptive or misleading manner to the public.

Sec. 4154.053. CERTAIN

COMPENSATION PROHIBITED. A

navigator may not receive compensation for services or duties as a navigator that are prohibited by law, including compensation from a health benefit plan issuer.

Sec. 4154.054. ADDITIONAL TRAINING REQUIREMENTS. The commission shall adopt rules authorizing additional training for navigators as the commissioner considers necessary to ensure compliance with changes in state law.

SUBCHAPTER C. PROHIBITED ACTS

Sec. 4154.101. NAVIGATORS NOT

LICENSED AS AGENTS. (a) Unless the navigator is licensed to act as an agent under Chapter 4054, a navigator may not:

(1) sell, solicit, or negotiate coverage under a health benefit plan;

(2) endorse a health benefit plan or group of health benefit plans;

(3) provide, or offer to provide, information or services related to insurance products not offered through a health benefit exchange;

(4) offer advice or advise consumers on which qualified health plan available through a health benefit exchange is preferable; or

(5) accept any compensation that is wholly or partly dependent on whether a person enrolls

in or purchases a health benefit plan.

(b) A navigator may not engage in any unfair method of competition or any deceptive, dishonest, or fraudulent trade practice.

(c) This section does not prohibit a navigator from providing information on public benefits and health coverage, or other information and services consistent with the mission of the navigator.

SECTION 2. This Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.