

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1268 Session of 2014

INTRODUCED BY EICHELBERGER, SCARNATI, ALLOWAY, ARGALL, WHITE, RAFFERTY, FOLMER, ERICKSON, VOGEL, HUTCHINSON, VULAKOVICH, MENSCH, BRUBAKER AND BROWNE, MARCH 10, 2014

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, SEPTEMBER 22, 2014

AN ACT

1 Regulating navigators, AND assisters in the education and <--  
2 promotion of health insurance exchanges.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Navigator AND <--  
7 EXCHANGE ASSISTER Accessibility and Regulation Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 ~~"Affiliate." A person that directly or indirectly, through <--  
13 one or more intermediaries or controls, is controlled by or is  
14 under common control with a specified person.~~

15 "Commissioner." The Insurance Commissioner of the  
16 Commonwealth.

17 "Department." The Insurance Department of the Commonwealth.

1 "Exchange." A health insurance exchange established or  
2 operating in this Commonwealth, including an exchange  
3 established or operated by the United States Department of  
4 Health and Human Services, under the Patient Protection and  
5 Affordable Care Act (Public Law 111-148, 124 Stat. 119).

6 "EXCHANGE ASSISTER." AN INDIVIDUAL OR ORGANIZATION, <--  
7 INCLUDING A NAVIGATOR, NAVIGATOR ORGANIZATION OR CERTIFIED  
8 APPLICATION COUNSELOR, WHO PROVIDES PUBLIC EDUCATION OR ASSISTS  
9 CONSUMERS FOR OR ON BEHALF OF AN EXCHANGE. THIS TERM DOES NOT  
10 INCLUDE A LICENSED INSURANCE PRODUCER.

11 "Federal health care act." The Patient Protection and  
12 Affordable Care Act (Public Law 111-148, 124 Stat. 119), as  
13 amended by the Health Care Education Reconciliation Act of 2010  
14 (Public Law 111-152, 124 Stat. 1029), and regulations or  
15 guidance issued under those acts.

16 ~~"Health insurance carrier." An entity, subject to the <--~~  
17 ~~insurance laws of this Commonwealth or under the jurisdiction of~~  
18 ~~the Insurance Commissioner, that contracts or offers to contract~~  
19 ~~to provide, deliver, arrange for, pay for or reimburse any of~~  
20 ~~the cost of a health care service. The term includes an entity~~  
21 ~~organized under:~~

22 ~~(1) The act of May 17, 1921 (P.L.682, No.284), known as~~  
23 ~~The Insurance Company Law of 1921, including section 630 and~~  
24 ~~Article XXIV thereof.~~

25 ~~(2) The act of December 29, 1972 (P.L.1701, No.364),~~  
26 ~~known as the Health Maintenance Organization Act.~~

27 ~~(3) 40 Pa.C.S. Chs. 61 (relating to hospital plan~~  
28 ~~corporations) and 63 (relating to professional health~~  
29 ~~services plan corporations).~~

30 "Health insurance producer." An insurance producer with an

1 accident and health line of authority as defined in section 601-  
2 A of the act of May 17, 1921 (P.L.789, No.285), known as The  
3 Insurance Department Act of 1921.

4 "Insurance producer." Insurance producer has the meaning  
5 given it in section 601-A of the act of May 17, 1921 (P.L.789,  
6 No.285), known as The Insurance Department Act of 1921.

7 "Navigator." An organization or individual under the Federal  
8 health care act that provides public education or consumer  
9 assistance activities for or on behalf of an exchange to  
10 uninsured individuals and groups seeking health insurance  
11 coverage. The term shall include an individual performing  
12 navigator duties for an organization, association or business  
13 entity, if the organization, association or business entity is  
14 serving as a navigator.

15 "Negotiate." The term has the same meaning given it in  
16 section 601-A of the act of May 17, 1921 (P.L.789, No.285),  
17 known as The Insurance Department Act of 1921.

18 ~~"Qualified employer." The term has the same meaning given it <--~~  
19 ~~in the Federal health care act.~~

20 ~~"Qualified health plan." The term has the same meaning given~~  
21 ~~it in the Federal health care act.~~

22 ~~"Qualified individual." The term has the same meaning given~~  
23 ~~it in the Federal health care act.~~

24 "REGISTRATION." A REGISTRATION CERTIFICATE ISSUED BY THE <--  
25 DEPARTMENT UNDER SECTION 3(C).

26 "Sell." The term has the same meaning given it in section  
27 601-A of the act of May 17, 1921 (P.L.789, No.285), known as The  
28 Insurance Department Act of 1921.

29 "Shop exchange." The term has the same meaning given it in  
30 the Federal health care act.

1       ~~"Small employer." An employer that purchasers accident and <--~~  
2 ~~health insurance in the small group market, as defined in~~  
3 ~~section 2791(e) (5) of the Public Health Service Act (110 Stat.~~  
4 ~~1972, 42 U.S.C. § 300gg 91(e) (5)), except that for plan years~~  
5 ~~beginning prior to January 1, 2016, or other date as established~~  
6 ~~in Federal law, 50 employees shall be required.~~

7       "Sollicit." The term has the same meaning given it in section  
8 601-A of the act of May 17, 1921 (P.L.789, No.285), known as The  
9 Insurance Department Act of 1921.

10 Section 3. Registration.

11       (a) Prohibition.--An individual or organization may not  
12 advertise a service as a navigator or an exchange assister or  
13 operate in this Commonwealth as a navigator or an exchange  
14 assister without first registering with the department.

15       (b) Registration application.--An individual or organization  
16 shall register with the department as a navigator or exchange  
17 assister, on a form approved by the department. The department  
18 shall review each application and may conduct an investigation  
19 of each applicant who applies for a registration in accordance  
20 with this act. The department shall issue a registration, as  
21 appropriate, to an applicant when the department determines that  
22 the applicant:

23           (1) Is at least 18 years of age.

24           (2) Resides in this Commonwealth or maintains a  
25 registered place of business in this Commonwealth.

26           (3) Is not disqualified for having committed an act that  
27 would be grounds for denial, suspension or revocation of a  
28 license as an insurance producer.

29           (4) Has not had a license as an insurance producer  
30 denied, suspended or revoked.

1 (5) Has submitted a completed application.

2 (6) Has submitted the applicant's fingerprints, for the  
3 department to receive national criminal history records  
4 information from the Criminal Justice Information Services  
5 Division of the Federal Bureau of Investigation.

6 (7) Has paid the required registration fee and fees for  
7 obtaining national criminal history records information  
8 as prescribed by the department.

9 ~~(b)~~ (C) Confirmation.--The department shall issue, in paper <--  
10 or electronic form, a nontransferable registration certification  
11 TO EACH REGISTERED NAVIGATOR OR EXCHANGE ASSISTER, which shall <--  
12 prominently list the expiration date of the registration and  
13 which must be shown upon request to potential enrollees.

14 ~~(e)~~ (D) Term.--The term of registration shall be two years <--  
15 from the date of issue.

16 ~~(d)~~ (E) Searchable list.--The department shall maintain and <--  
17 make available to the public a searchable list of all  
18 registrants on its publicly accessible Internet website.

19 Section 4. Scope of activity.

20 (a) Registration required.--An individual or organization  
21 may not act or present itself to be a navigator or an exchange  
22 assister unless the individual or organization is registered as  
23 a navigator or an exchange assister under this act.

24 (b) Limitations.--A navigator or an exchange assister may  
25 not engage in an activity for which licensure as a producer is  
26 required, except as explicitly permitted by Federal law or  
27 regulation, including any of the following:

28 (1) Sell, solicit or negotiate insurance.

29 ~~(2) Discuss the effect of age, health or other risk <--~~  
30 ~~related conditions of the prospective policyholders.~~

- 1           ~~(3)~~ (2) Urge or advise a prospective purchaser to buy a <--  
2 particular policy or to insure with a particular company.
- 3           ~~(4)~~ (3) Initiate sales over the telephone or otherwise. <--
- 4           ~~(5)~~ (4) Collect premiums. <--
- 5           ~~(6)~~ (5) Make or propose to make an insurance contract. <--
- 6           ~~(7)~~ (6) Other than as necessary to inform a prospective <--  
7 purchaser of the availability of health insurance off the  
8 exchange, provide information or services related to health  
9 benefit plans or other products other than those offered in  
10 the health insurance marketplace, SHOP exchange, the  
11 Children's Health Insurance Program or product available  
12 through the Social Security Act (49 Stat. 620, 42 U.S.C. §301  
13 et seq.).
- 14           ~~(8)~~ (7) Initiate an inquiry as to the terms of existing <--  
15 coverage.
- 16           ~~(9) Discuss or describe the specific coverages or terms <--  
17 of a proposed contract of insurance with a prospective  
18 policyholder, including counseling as to which coverages to  
19 buy.~~
- 20           ~~(10)~~ (8) Recommend or initiate additions or deletions to <--  
21 an insured's policy.
- 22           ~~(11)~~ (9) Sign binders, endorsements and insurance <--  
23 policies.
- 24           ~~(12)~~ (10) Authorize the issuance or delivery of <--  
25 certificates of insurance, endorsements, binders or insurance  
26 policies on insurance identification cards.
- 27           ~~(13)~~ (11) Respond to a policyholder's request for advice <--  
28 or counsel regarding policy provisions or coverage.
- 29 Section 5. Enforcement by department.
- 30 (a) Notice.--Upon evidence of a violation of this act or

1 Article VI-A of the act of May 17, 1921 (P.L.789, No.285), known  
2 as The Insurance Department Act of 1921, the department shall  
3 notify the person of the alleged violation. The notice shall  
4 specify the nature of the alleged violation and fix a time and  
5 place, at least ten days thereafter, when a hearing on the  
6 matter shall be held.

7 (b) Hearing.--The department shall conduct the hearing on  
8 the violation in accordance with 2 Pa.C.S. Ch. 5 Subch. A  
9 (relating to practice and procedure of Commonwealth agencies).

10 (c) Evidence.--No person shall be excused from testifying or  
11 from producing any books, papers, contracts, agreements or  
12 documents at any hearing held by the commissioner on the ground  
13 that the testimony or evidence may tend to incriminate that  
14 person.

15 (d) Penalties.--After the hearing or upon failure of the  
16 person to appear at the hearing, if a violation is found, the  
17 commissioner may, in addition to any penalty which may be  
18 imposed by a court, do any combination of the following deemed  
19 appropriate:

20 (1) Deny, suspend, refuse to renew or revoke the  
21 registration, if any, of the person.

22 (2) Impose a civil penalty of up to \$5,000 for each  
23 violation of this act.

24 (3) Impose an order to cease and desist.

25 (4) Report violations of this act to the United States  
26 Department of Health and Human Services.

27 (5) Refer potential violations of any laws of this  
28 Commonwealth relating to privacy of personal information to  
29 the Office of Attorney General.

30 (6) Enforce other violations of The Insurance Department

1 Act of 1921, as applicable.

2 (7) Impose any other conditions the commissioner deems  
3 appropriate.

4 (e) Regulations and form.--The department may promulgate  
5 regulations and publish forms as necessary and appropriate to  
6 carry out this act.

7 Section 6. Effective date.

8 This act shall take effect February 15, 2015, or the close of  
9 the 2015 open enrollment period, whichever is later.