

No. 2015-7

AN ACT

SB 293

Regulating navigators and assisters in the education and promotion of health insurance exchanges.

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

Section 1. Short title.

This act shall be known and may be cited as the Navigator and Exchange Assister Accessibility and Regulation Act.

Section 2. Definitions.

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

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Exchange." A health insurance exchange established or operating in this Commonwealth, including an exchange established or operated by the United States Department of Health and Human Services, under the Federal health care act.

"Exchange assister." An individual or organization, including a navigator, navigator organization or certified application counselor, who provides public education or assists consumers for or on behalf of an exchange. This term does not include a licensed insurance producer. This term does not include an individual employed to provide insurance enrollment or coverage assistance by a health care facility as defined in section 103 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

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

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

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

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

"Registration." A registration certificate issued by the department under section 3(c).

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

"SHOP Exchange." The term has the same meaning given it in the Federal health care act.

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

Section 3. Registration.

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

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

(1) Is at least 18 years of age.

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

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

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

(5) Has submitted a completed application.

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

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

(c) Confirmation.—The department shall issue, in paper or electronic form, a nontransferable registration certification to each registered navigator or exchange assister, which shall prominently list the expiration date of the registration and which must be shown upon request to potential enrollees.

(d) Term.—The term of registration shall be two years from the date of issue.

(e) Searchable list.—The department shall maintain and make available to the public a searchable list of all registrants on its publicly accessible Internet website.

Section 4. Scope of activity.

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

(b) Authority.—A navigator or an exchange assister may:

(1) Refer an individual to an insurance producer.

(2) Provide information or services related to health benefit plans or other products other than those offered in the health insurance marketplace, SHOP Exchange, the Children's Health Insurance Program or product available through the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.). The navigator or exchange assister shall fairly provide information under this paragraph about the health benefit plan or other product in accordance with Federal law or regulation.

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

(1) Sell, solicit or negotiate insurance.

(2) Urge or advise a prospective purchaser to buy a particular policy or to insure with a particular company.

(3) Initiate sales over the telephone or otherwise.

(4) Collect premiums.

(5) Make or propose to make an insurance contract.

(6) Recommend or initiate additions or deletions to an insured's policy.

(7) Sign binders, endorsements and insurance policies.

(8) Issue or deliver certificates of insurance, endorsements, binders or insurance policies on insurance identification cards.

Section 5. Enforcement by department.

(a) Notice.—Upon evidence of a violation of this act or Article VI-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, the department shall notify the person of the alleged violation. The notice shall specify the nature of the alleged violation and fix a time and place, at least 10 days thereafter, when a hearing on the matter shall be held.

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

(c) Evidence.—A person may not be excused from testifying or from producing any books, papers, contracts, agreements or documents at any hearing held by the commissioner on the ground that the testimony or evidence may tend to incriminate that person.

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

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

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

- (3) Impose an order to cease and desist.
 - (4) Report violations of this act to the United States Department of Health and Human Services.
 - (5) Refer potential violations of any laws of this Commonwealth relating to privacy of personal information to the Office of Attorney General.
 - (6) Enforce other violations of The Insurance Department Act of 1921, as applicable.
 - (7) Impose any other conditions the commissioner deems appropriate.
- (e) Regulations and form.—The department may promulgate regulations and publish forms as necessary and appropriate to carry out this act.
- Section 6. Effective date.

This act shall take effect February 15, 2016, or the close of the 2016 open enrollment period, whichever is later.

APPROVED—The 19th day of June, A.D. 2015

TOM WOLF