

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

915V0176

SENATE BILL NO. 120

Introduced by: Senators Novstrup (Al), Brown, Heineman (Phyllis), Holien, Kirkeby, Maher, Rhoden, Tidemann, Tieszen, Van Gerpen, and White and Representatives Greenfield, Bolin, Carson, Ecklund, Haggar (Don), Hawley, Heinemann (Leslie), Hunhoff (Bernie), Kaiser, Latterell, Munsterman, Rounds, Schaefer, and Steele

1 FOR AN ACT ENTITLED, An Act to provide for the registration and administration of
2 navigators under the federal Patient Protection and Affordable Care Act and to declare an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

6 (1) "Director," the director of the Division of Insurance;

7 (2) "Exchange," any health insurance exchange established or operating in this state
8 pursuant to section 1311 of the federal act, as of January 1, 2014, including any
9 exchange established or operated by the United States Department of Health and
10 Human Services;

11 (3) "Federal act," the federal Patient Protection and Affordable Care Act (Public 25 Law
12 111-148), as amended by the federal Health Care and Education Reconciliation Act
13 26 of 2010 (Public Law 111-152) as of January 1, 2014, and regulations or guidance



1 issued under those acts;

2 (4) "Navigator," any individual, including an assistor, application counselor, or other
3 person, authorized pursuant to the federal act to provide insurance advice and
4 guidance to uninsured individuals and groups seeking health insurance coverage. For
5 the purposes of this Act, if an organization or business entity serves as a navigator,
6 an individual performing navigator duties for that organization or business entity
7 shall be considered to be acting in the capacity of a navigator.

8 Section 2. No individual or entity may perform, offer to perform, or advertise any service
9 as a navigator in this state unless registered as a navigator pursuant to this Act. No navigator
10 may:

- 11 (1) Provide advice, guidance, or other assistance with regard to health benefit plans as
12 a navigator under the provisions of the federal act;
- 13 (2) Engage in any activity that requires an insurance producer's license;
- 14 (3) Violate § 58-30-92;
- 15 (4) Recommend or endorse a particular health plan;
- 16 (5) Accept any compensation or consideration from an insurance company, broker, or
17 consultant that is dependent, in whole or in part, on whether a person enrolls in or
18 purchases a qualified health plan; or
- 19 (6) Fail to respond to any written inquiry from the director regarding the navigator's
20 duties as a navigator or fail to request additional reasonable time to respond within
21 fifteen working days.

22 A violation of this section is a Class 1 misdemeanor.

23 Section 3. The director may not register any applicant applying to be a navigator who does
24 not meet or conform to the following qualifications or requirements:

- 1 (1) The applicant shall establish to the satisfaction of the director that the applicant has
2 the background, experience, knowledge, and competency in the subject matter that
3 will enable the applicant to deliver accurate information and advice to individuals
4 and groups in this state seeking to obtain health insurance coverage under the
5 provisions of the federal act;
- 6 (2) The applicant shall have successfully completed not less than thirty-five hours of
7 instruction in health benefit insurance and the exchange provisions of the federal act;
- 8 (3) The applicant shall pass an examination as required by the director unless the
9 applicant is exempted by the director based on the applicant's experience and
10 qualifications and pursuant to regulations adopted by the director;
- 11 (4) No applicant may be less than eighteen years of age;
- 12 (5) The applicant shall have good moral character and shall submit in a form approved
13 by the director information, including criminal history and regulatory background
14 information, as the director may require. The director shall conduct a criminal
15 background check of the applicant;
- 16 (6) Has identified any entity navigator with which he or she is affiliated and supervised;
17 and
- 18 (7) An applicant for registration renewal shall have completed continuing education
19 classes approved by the director.

20 Section 4. No navigator may solicit any person or business that is currently insured under
21 an existing health benefit plan.

22 Section 5. No navigator may receive any commission, compensation, or anything of value
23 from any insurer, health benefit plan, business, or consumer for providing advice or services
24 specifically authorized to be provided as a navigator pursuant to the provisions of the federal

1 act. Each navigator may only be compensated for advice or services rendered pursuant to the
2 provisions of the federal act. A violation of this section is a Class 1 misdemeanor.

3 Section 6. Any individual applying for an individual navigator registration shall apply to the
4 director on a form developed by the director which, unless preempted by federal law, is
5 accompanied by the initial registration fee of fifty dollars. The individual shall declare in the
6 application under penalty of refusal, suspension, or revocation of the license that the statements
7 made in the application are true, correct, and complete to the best of the individual's knowledge
8 and belief. The director may require any documents deemed necessary to verify the information
9 contained in an application.

10 Section 7. An entity applying for an entity navigator registration shall make application on
11 a form developed by the director and which contains the information prescribed by the director
12 and which, unless preempted by federal law, is accompanied by the initial entity registration fee
13 of one hundred dollars. The director may require any documents deemed necessary to verify the
14 information contained in an application.

15 A registered navigator shall, in a manner prescribed by the director, notify the director
16 within thirty days of any federal action that restricts or terminates the navigator's authorization
17 to act as a navigator.

18 Section 8. A registered entity navigator shall, in a manner prescribed by the director, provide
19 the director with a list of all individual navigators that it employs, supervises, or is affiliated
20 with.

21 Section 9. The registration of an individual navigator and entity navigator expires one year
22 after the date of issuance.

23 An individual navigator may file an application for renewal of a registration on a form
24 developed by the director and, unless preempted by federal law, shall pay the renewal fee of

1 twenty-five dollars. An individual navigator who fails to file prior to the expiration of the
2 current registration for registration renewal, unless preempted by federal law, shall pay a late
3 fee of fifty dollars.

4 An entity navigator may file an application for renewal of a registration on a form developed
5 by the director and, unless preempted by federal law, shall pay the renewal fee of fifty dollars.

6 An entity navigator that fails to file prior to the expiration of the current registration for
7 registration renewal, unless preempted by federal law, shall pay a late fee of one hundred
8 dollars.

9 Any failure to fulfill the federal ongoing training and continuing education requirements
10 shall result in the revocation and expiration of the registration.

11 Section 10. On contact with any person who acknowledges having existing health insurance
12 coverage obtained through a licensed insurance producer, a navigator shall make a reasonable
13 effort to inform the individual that he or she may, but is not required to, seek further assistance
14 from that producer or another licensed producer for information, assistance, and any other
15 services and that tax credits may not be available to offset the premium cost of plans that are
16 marketed outside of the exchange.

17 Section 11. The director, after notice and hearing, may place on probation, suspend, revoke,
18 or refuse to issue, renew, or reinstate a navigator registration for violation of the Health
19 Insurance Exchange Navigator Registration Act.

20 Except as otherwise provided by law, the director may examine and investigate the business
21 affairs and records of any navigator as such business affairs and records regard the navigator's
22 duties as a navigator to determine whether the navigator has engaged or is engaging in any
23 violation of the Health Insurance Exchange Navigator Registration Act.

24 An entity navigator registration may be suspended or revoked or renewal or reinstatement

1 thereof may be refused if the director finds, after notice and hearing, that an individual
2 navigator's violation was known by the employing or supervising entity navigator and the
3 violation was not reported to the director and no corrective action was undertaken.

4 Section 12. The director may adopt and promulgate rules and regulations, pursuant to
5 chapter 1-26, concerning the following areas for navigators:

- 6 (1) Application and registration procedures;
- 7 (2) Instruction and continuing education; and
- 8 (3) Examination testing.

9 Section 13. Whereas, this Act is necessary for the immediate preservation of the public
10 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full
11 force and effect from and after its passage and approval.