

INSURANCE DIVISION [191]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 505.8(19) and 522D, the Insurance Division hereby gives Notice of Intended Action to adopt Chapter 85, “Regulation of Navigators,” Iowa Administrative Code.

Chapter 85 is needed to provide additional guidance to Navigators as required by Iowa Code 522D. Navigators are individuals or entities regulated by the Iowa Insurance Division that will provide assistance to Iowa consumers in all areas required by the federal Patient Protection and Affordable Care Act and related regulations. The purpose of Chapter 85 will be to provide the licensing, training, application, and other minimum practice standards for entities and individuals acting as a Navigator. The adopted rule shall be effective September 25, 2013. Compliance with the adopted rule will also begin on September 25, 2013 in order to allow enforcement of the rule before Navigators begin their required enrollment duties on October 1, 2013.

Any interested party may make written suggestions or comments on the proposed rule on or before July 19, 2013 at 10:00 a.m. Such written materials should be directed to Angel Robinson, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted by fax at (515) 281-3059 or by email at angel.robinson@iid.iowa.gov. A public hearing will be held regarding this proposed rule on July 19, 2013, at 10 a.m., at the Iowa Insurance Division office located within the Two Ruan Building, 601 Locust Street, 4th Floor, Des Moines, Iowa 50309. Persons intending to attend the hearing requiring assistive services or

devices to observe or participate should contact Angel Robinson two weeks in advance of the public hearing to allow time to accommodate the assistive need.

The proposed rule is subject to waiver consistent with the waiver provisions provided for in Iowa Code section 522D.6

This rule will implement Iowa Code sections 505.8(19) and 522D.

The following new chapter is proposed.

CHAPTER 85

REGULATION OF NAVIGATORS

191-85.1 (505.8(19), 522D) Purpose and Authority.

85.1(1) The purpose of these rules is to set out the requirements, procedures and fees relating to the qualification, licensure, training, continuing education requirements and regulation of navigators.

85.1(2) These rules are established based upon the authority provided in Iowa Code sections 505.8(19) and 522D.

191-85.2 (505.8(19), 522D) Definitions. As used in this chapter:

“ACA” means collectively, the Patient Protection and Affordable Care Act (Pub.L. 111-148) and Health Care and Education Reconciliation Act (Pub. L. 111-152).

“Applicant” and individual or entity applying or intending to apply for a Navigator license.

"Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

“Commissioner” means the Iowa Commissioner of Insurance.

“Credit” means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

“Division” means the Iowa Insurance Division.

"Health insurance" means insurance that is primarily for the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure of the body, including transportation that is essential to obtaining health insurance, but excluding:

- (a) Coverage only for accident or disability income insurance, or any combination thereof;
- (b) Coverage issued as a supplement to liability insurance;
- (c) Liability insurance, including general liability insurance and automobile liability insurance;
- (d) Workers' compensation or similar insurance;
- (e) Automobile medical payment insurance;
- (f) Credit-only insurance;
- (g) Coverage for on-site medical clinics;
- (h) Coverage only for limited scope vision benefits;
- (i) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
- (j) Coverage for specified disease or critical illness;
- (k) Hospital indemnity or other fixed indemnity insurance;
- (l) Medicare supplement policies;
- (m) Medicare, Medicaid, or the Federal Employee Health Benefit Program, 5 U.S.C.

§§ 8901 - 8914, as it existed on January 1, 2013;

- (n) Coverage only for medical and surgical outpatient benefits;
- (o) Excess or stop-loss insurance; and
- (p) Other similar insurance coverage under which benefits for health insurance are secondary or incidental to other insurance benefits.

"Individual" means a private or natural person, as distinguished from a partnership, corporation or association.

"License" means the division's authorization for a person to act as a navigator in the state of Iowa.

"Navigator" means the individual or business entity that is granted the title, duties, and responsibilities of a navigator by the granting or appointing authority. The navigator would engage in the activities and meet the standards described in 45 C.F.R. § 155.210, including facilitating enrollment in a marketplace by assisting with the selection of and enrollment in a qualified health plan or a public program or applying for premium subsidiaries through an exchange.

"Navigator renewal notice" means a written or electronic communication issued by the division to inform a navigator about license renewal.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract provided that the person engaged in that act either sells insurance or obtains insurance for purchasers.

"Marketplace" means any health benefit exchange authorized under the ACA established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services.

“Person” means an individual or entity.

"Producer" means a person required to be licensed in this state to sell, solicit or negotiate insurance.

"Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in section 1311(c) of the ACA.

"Resident" means a person whose home state is Iowa.

"Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

“U.S. Department of Health and Human Services” means the United States Department of Health and Human Services and any of its subsidiaries.

191-85.3 (505.8(19), 522D) Requirement to hold a license. No person may act as a navigator in Iowa until that person has been issued an Iowa navigator license.

191-85.4 (505.8(19), 522D) Licensing of resident navigators.

85.4(1) A person whose home state is Iowa and who desires to be licensed as a navigator must satisfy the following requirements:

- a. Be at least 18 years of age;
- b. Demonstrate compliance with the initial training and certification requirements set forth in rule 191-85.12;
- c. Have not committed any act that is grounds for denial, suspension or revocation under Iowa Code Section 522D.7;

- d. Submit a completed uniform application;
- e. Pass an examination on the duties and responsibilities of a navigator and the insurance laws and regulations of Iowa with a 70%; and
- f. Pay the nonrefundable navigator license fee of \$20.
- g. Pass a background check or security screening.

85.4(2) The division may require any documents reasonably necessary to verify the information or attestations contained in the application or to verify that the individual making application has the character and competency required to receive a navigator license. If an applicant does not provide the additional information requested by the division within 45 days of receipt of the request, the application will expire and the license fee will not be returned.

191-85.5 (505.8(19), 522D) Licensing of nonresident navigators.

85.5(1) A navigator for whom Iowa is not the home state who desires to act as a navigator in Iowa must satisfy the following requirements to obtain an Iowa nonresident navigator license:

- a. Be licensed and in good standing in the home state;
- b. Have not committed any act that is grounds for denial, suspension or revocation under Iowa Code Section 522D.7;
- c. Submit a proper request for licensure using the uniform application ; and
- d. Pay the \$ 20 licensing fee.

85.5(2) A license will not be issued to a nonresident navigator if the navigator's resident state does not issue licenses to Iowa resident navigators applying for nonresident navigator licenses in that state or if the navigator's 's resident state restricts Iowa resident navigators' nonresident activities in that state.

85.5(3) Issuance of an Iowa nonresident navigator license is contingent on proper licensure in the nonresident navigator 's home state. Termination of the navigator's resident license will be deemed termination of the Iowa nonresident navigator license unless the navigator timely files a change of address pursuant to this rule.

85.5(4) The division may require any documents reasonably necessary to verify the information or attestations contained in the application or to verify that the individual making application has the character and competency required to receive a navigator license. If an applicant does not provide the additional information requested by the division within 45 days of receipt of the request, the application will expire and the license fee will not be returned.

191-85.6 (505.8(19), 522D) Issuance of license.

85.6(1) A person who meets the requirements of this chapter and of Iowa Code sections 522D.4 and 522D.5, unless otherwise denied licensure pursuant to Iowa Code section 522D.7, shall be issued a navigator license. A navigator license shall be valid for three years. A navigator license remains in effect, unless revoked or suspended as long as all required fees are paid and continuing education requirements are met. A renewal term is three years. If not renewed, a navigator license automatically terminates on the last day of the month of the initial or renewal term.

85.6(2) An individual navigator whose license has expired may seek reinstatement as set forth in rule 191-85.8.

85.6(3) The license shall contain the navigator's name, address, date of issuance, date of expiration and any other information the division deems necessary.

85.6(4) If the division issues or renews a navigator license and subsequently determines that payment for the license or renewal was returned to the division by a bank without payment,

or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the division are paid, at which time the license may be reinstated. The individual may request a hearing within 30 days of receipt of notice by the division that the license was suspended.

191-85.7 (505.8(19), 522D) License renewal.

85.7(1) A navigator must apply for license renewal within 60 days prior to the expiration date of the license. Failure to apply to renew a license and pay appropriate fees prior to the expiration date of the license will result in expiration of the license.

191-85.8 (505.8(19), 522D) License reinstatement.

85.8(1) A resident navigator may reinstate an expired license up to 12 months after the license expiration date by proving that during the continuing education term the navigator met the continuing education requirements of rule 191-85.13 (505.8(19), 522D), and by paying a reinstatement fee and license renewal fees. A resident navigator who fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

85.8(2) A nonresident navigator may reinstate an expired license up to 12 months after the expiration date by submitting a request to the division by paying a reinstatement fee and license renewal fee. After the 12-month period, a nonresident navigator must apply for a new license.

85.8(3) A navigator who has surrendered a license for a nondisciplinary reason and stated an intent to exit the insurance business may file a request to reactivate the license. The request must be received at the division within 90 days of the date the license was placed on inactive

status. The request will be granted if the former navigator is otherwise eligible to receive the license. If the request is not received within 90 days, the navigator must apply for a new license.

191-85.9 (505.8(19), 522D) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

85.9(1) The term "reinstatement" as used in this rule means the reinstatement of a suspended license. The term "reissuance" as used in this rule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This rule does not apply to the reinstatement of an expired license.

85.9(2) Any navigator whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

a. All proceedings for reinstatement or reissuance shall be initiated by the applicant who shall file with the commissioner an application for reinstatement or reissuance of a license.

b. An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant's license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

c. A navigator may request reinstatement of a suspended license prior to the end of the suspension term.

d. Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension, revocation, or acceptance of the forfeiture of a license.

85.9(3) All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be recorded in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

85.9(4) An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner or the commissioner's designee deems desirable. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

85.9(5) A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

85.9(6) When a navigator's license has been suspended for a period of time which extends beyond the navigator's license expiration date, the license will terminate at the license

expiration date, and the navigator must request reinstatement pursuant to subrule 85.10(2). If suspension for a period of time ends prior to the navigator's license expiration date, the division shall reinstate the license at the end of the suspension period. The commissioner is not prohibited from bringing an additional immediate action if the navigator has engaged in misconduct during the period of suspension.

191-85.10 (505.8(19), 522D) Change in name, address or state of residence.

85.10(1) If a navigator changes their legal name, the navigator must file written notification with the division within 30 days of the name change. The notification must include the navigator's prior name and new name.

85.10(2) If a navigator changes their address, the navigator must file written notification with the division within 30 days of the address change. The notification must include the navigator's name and previous address. A navigator may designate a business address instead of a resident address at the option of the navigator.

85.10(3) A nonresident navigator who moves from one state to another state or an Iowa resident navigator who moves to another state and wishes to retain an Iowa navigator license must file a change of address with the division and provide a certification from the new resident state within 30 days of the change of legal residence. A nonresident licensed navigator who moves to Iowa and wishes to retain the nonresident's navigator license must file a change of address with the division within 90 days of the change of legal residence. No fee or license application is required.

85.10(4) If a navigator has provided an E-mail address to the division, the division has the option to send information to the navigator through the E-mail address rather than through the mail.

191-85.11 (505.8(19), 522D) Licensing of a business entity.

85.11(1) A business entity that has been appointed as a navigator shall obtain a navigator license.

85.11(2) Navigator entities shall be exempt from the requirements of training, examination, and continuing education. All individual navigators that are hired, retained, recruited, employed, affiliated, work for or in conjunction, or as a part of a consortium, with a navigator entity shall be subject to all training, examination, and continuing education requirements under this chapter.

85.11(3) Navigator entities shall be liable for the acts of individual navigators that are hired, retained, recruited, employed, affiliated, work for or in conjunction, or as a part of a consortium, with a navigator entity when the individual navigator is performing the duties of or acting as a navigator.

191-85.12 (505.8(19), 522D) Initial training of navigators.

85.12(1) Individual navigators shall complete a minimum of 32 credits of initial training in courses approved by the commissioner. Initial training must include a minimum of 2 credits of Iowa specific training on Medicaid and Healthy and Well Kids of Iowa Program training, as well as a minimum of 1 credit in the subject of ethics. Navigators shall be responsible for obtaining their own training.

85.12(2) Courses provided by the federal government or approved by the federal government on ACA related topics will be considered approved by the commissioner.

85.12(3) Individual navigators shall complete all training and certification requirements provided by the U.S. Department of Health and Human Services.

191-85.13 (505.8(19), 522D) Continuing education requirements of navigators.

85.13(1) Individual navigators must complete a minimum of 36 continuing education credits for each continuing education term in courses approved by the commissioner on subjects relevant to navigators including health insurance, tax credits, tax penalties, Medicaid, Healthy and Well Kids of Iowa Program, health care related public assistance programs, or other ACA related topics.

85.13(2) Courses provided by the federal government or approved by the federal government on ACA related topics will be considered approved by the commissioner.

85.13(3) A navigator shall not carry over continuing education requirements from one term to the next.

85.13(4) A navigator shall not receive continuing education credit for the same course taken twice in the term of license.

191-85.14 (505.8(19), 522D) Administration of examinations.

85.14(1) The commissioner will enter into a contractual relationship with an outside testing service to provide the licensing examinations for individual navigators.

85.14(2) The outside testing service will administer all examinations for license applicants.

85.14(3) The testing service will inform the applicants of procedures and requirements for taking the licensing examination.

85.14(4) The fee for examination shall be determined by the testing service.

85.14(5) A listing of test subject matters that could be potentially be included on the navigator's examination may be provided on the division website at <http://www.iid.state.ia.us/>.

85.14(6) Examination results are valid for 90 days after the date of the test. Failure to apply for licensure within 90 days after the examination is passed shall void the examination results.

191-85.15 (505.8(19), 522D) Fees.

85.15(1) Fees may be paid by check or credit card.

85.15(2) The fee for issuance or renewal of a navigator license is \$20 for three years.

85.15(3) The fee for issuance or renewal of a business entity license is \$20 for three years.

85.15(4) The fee for reinstatement of a navigator license is a total of the renewal fee plus \$100.

85.15(6) The division may charge a reasonable fee for the compilation and production of navigator licensing records.

191-85.16 (505.8(19), 522D) Evidence of financial responsibility.

85.16(1) Prior to the issuance of a license as a navigator and for the duration of the license, including any renewal thereof, a navigator shall secure and maintain evidence of financial responsibility in the form of a surety bond or other alternative financial responsibility instrument that protects individuals and entities against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator, or other violation of insurance law.

85.16(2) The minimum coverage for financial responsibility shall be \$50,000.

85.16(3) A navigator shall inform the commissioner of any pending termination of a written financial responsibility instrument immediately in writing. The navigator shall secure a new financial responsibility instrument and provide evidence of new financial responsibility to the commissioner prior to the date of termination for the previous financial responsibility

instrument. If evidence of a new financial responsibility instrument is not provided to the commissioner prior to termination, the navigator's license shall be forfeited.

85.16(4) An individual navigator may meet the financial responsibility requirement if they are covered by the financial responsibility instrument issued to a navigator entity in which they are affiliated.

85.16(5) A navigator's financial responsibility instrument shall specifically authorize recovery by the commissioner on behalf of any person in Iowa who sustained damages as the result of wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator, or other violation of insurance law in the individual's or entity's capacity as a navigator.

191-85.17 (505.8(19), 522D) Practices.

85.17(1) Navigators shall comply with all federal and state statutes, regulations, and rules affecting insurance and navigators.

85.17(2) Navigators shall comply with any inquiries or requests submitted by the commissioner. Navigators shall respond to requests by the commissioner within the time designated in the request. A navigator that fails to provide the information in the time requested or fails to obtain an approved extension shall be subject to the penalties as set forth in Iowa Code section 522D.8.

85.17(3) Navigators shall be subject to examination upon the discretion of the commissioner at the cost of the navigator.

85.17(4) Navigators shall maintain detailed records of all assistance provided. Consumer assistance records shall be available to the commissioner upon request.

85.17(5) Navigators shall provide duplicate copies of all data and information submitted to the U.S. Department of Health and Human Services to the commissioner upon request.

85.17(6) Unless licensed as a producer, a navigator shall not:

- a. Sell, select, solicit, refer, or negotiate insurance coverage for individuals or entities.
- b. Advise an individual or entity to cancel, non-renew, or to select different insurance coverage.
- c. Receive compensation from an insurance company for enrollment or have a conflict of interest while serving as a navigator. A navigator that receives compensation from an insurance company for enrollment or enters into a conflicted relationship must forfeit their navigators license. A navigator that fails to notify the Commissioner of a conflicted relationship or receives compensation from an insurer for enrollment while licensed as a navigator shall be subject to the penalties as set forth in Iowa Code section 522D.8.

191-85.18 (505.8(19), 522D) Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction or by federal law, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provision of the chapter that are severable and the valid provisions or applications shall remain in full force and effect.

This rule is intended to implement Iowa Code sections 505.8(19) and 522D.