

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 505.8(19) and 522D.10, the Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 85, “Regulation of Navigators,” Iowa Administrative Code.

Chapter 85 is needed to provide additional guidance to navigators as required by Iowa Code chapter 522D. Navigators are individuals or entities that are regulated by the Iowa Insurance Division and 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 requirements, and other minimum practice standards for entities and individuals acting as navigators. The adopted rules shall become effective September 25, 2013. Compliance with the adopted rules will also begin on September 25, 2013, in order to allow enforcement of the rules before navigators begin their required enrollment duties on October 1, 2013.

Any interested party may make written suggestions or comments on the proposed rules on or before July 19, 2013, at 10 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 e-mail to angel.robinson@iid.iowa.gov.

A public hearing regarding these proposed rules will be held on July 19, 2013, at 10 a.m., at the Iowa Insurance Division office located at 330 Maple Street, Des Moines, Iowa. Persons intending to attend the hearing and 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 rules are subject to waiver consistent with the waiver provisions provided for in Iowa Code section 522D.6.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code section 505.8(19) and chapter 522D.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 85:

CHAPTER 85 REGULATION OF NAVIGATORS

191—85.1(505,522D) 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 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.10.

191—85.2(505,522D) 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*” means an 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 medical care, but excluding:

1. Coverage only for accident or disability income insurance, or any combination thereof;
2. Coverage issued as a supplement to liability insurance;
3. Liability insurance, including general liability insurance and automobile liability insurance;
4. Workers’ compensation or similar insurance;
5. Automobile medical payment insurance;
6. Credit-only insurance;
7. Coverage for on-site medical clinics;
8. Coverage only for limited-scope vision benefits;
9. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
10. Coverage for specified disease or critical illness;
11. Hospital indemnity or other fixed indemnity insurance;
12. Medicare supplement policies;
13. Medicare, Medicaid, or the Federal Employee Health Benefit Program, 5 U.S.C. §§ 8901 - 8914, as it existed on January 1, 2013;
14. Coverage only for medical and surgical outpatient benefits;
15. Excess or stop-loss insurance; and
16. 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 authorization by the commissioner for a person to act as a navigator in the state of Iowa.

“*Marketplace*” means any health benefit exchange authorized under the ACA and established or operating in this state, including any exchange established or operated by the U.S. Department of Health and Human Services.

“*Navigator*” means the individual or business entity that is granted the title, duties, and responsibilities under 45 CFR § 155.210 of a navigator or non-navigator by the granting or appointing authority. A navigator would engage in the activities and meet the standards described in 45 CFR § 155.210, including:

1. Maintaining expertise in eligibility, enrollment, and program specification;
2. Conducting public education activities to raise awareness about the marketplace;
3. Providing information and services in a fair, accurate, and impartial manner, including information that acknowledges other health programs such as Medicaid and the healthy and well kids in Iowa program;
4. Facilitating selection of a qualified health plan;
5. Providing referrals for consumers with questions, complaints, or grievances to any applicable office of health insurance consumer assistance or health insurance ombudsman established under Section 2793 of the Public Health Service Act, or other appropriate state agency or agencies;
6. Providing information in a culturally and linguistically appropriate manner, including to persons with limited English proficiency; and
7. Ensuring accessibility and usability of navigator tools and functions for persons with disabilities.

For the purposes of this chapter, other entities as provided for in 45 CFR §155.210 shall be included in the definition of “navigator.”

“*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 advising 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. The definition of “negotiate” shall not include:

1. Impartially informing a purchaser or prospective purchaser about substantive benefits, terms or conditions of a contract while facilitating the enrollment in a qualified health plan by providing fair, impartial, and accurate information that assists a purchaser or prospective purchaser with submitting an eligibility application;

2. Clarifying the distinctions among qualified health plans; and

3. Helping qualified individuals make informed decisions during a health plan selection process.

“*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.

“*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(505,522D) Requirement to hold a license. No person may act as a navigator in Iowa until that person has been issued an Iowa navigator license.

85.3(1) To be licensed as a navigator, a person 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—85.10(505,522D);

- 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 score of 70 percent or higher;

- f. Pay the nonrefundable navigator license fee of \$20; and

- g. Pass a background check or security screening.

85.3(2) The division may require any documents reasonably necessary to verify the information or attestations contained in the application or to verify that the applicant 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.

85.3(3) Except for producers licensed in Iowa, a person acting as a navigator without an Iowa navigator license or a person performing the enrollment duties of a navigator without an appointment, certification, or a grant to perform such duties by the U.S. Department of Health and Human Services shall be in violation of this chapter.

- a. Upon the determination by the commissioner that a person is in violation of this chapter, the commissioner may issue a summary order directing the person to cease and desist from engaging in the act or practice in violation of this chapter. A person that has been issued a summary order under this rule may contest the order by filing a request for a contested case proceeding and hearing as provided in Iowa Code chapter 17A.

- b. The person shall have at least 30 days from the date that the order is issued in order to file the request. The order shall remain effective from the date of issue unless overturned by a presiding officer

of the court following a request for a hearing. If a hearing is not timely requested, the summary order becomes final by operation of law.

c. A person violating a summary order issued under this rule shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court may assess a civil penalty against the person and may issue further orders as it deems appropriate.

191—85.4(505,522D) Issuance of license.

85.4(1) A person that 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.

85.4(2) An individual navigator whose license has expired may seek reinstatement as set forth in rule 191—85.6(505,522D).

85.4(3) The license shall contain the navigator’s name and address, the date of issuance, the date of expiration and any other information the division deems necessary.

85.4(4) If the division issues or renews a navigator license and subsequently determines that payment for the license or renewal was returned without payment to the division by a bank, 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—85.5(505,522D) License renewal. 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—85.6(505,522D) License reinstatement.

85.6(1) A 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 this chapter and by paying a reinstatement fee and license renewal fees. A navigator that fails to apply for license reinstatement within 12 months of the license expiration date must apply for a new license.

85.6(2) A navigator that 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—85.7(505,522D) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

85.7(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.

85.7(2) Any navigator whose license has been revoked or suspended by order, or that 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. The applicant 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.

85.7(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.

85.7(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.

85.7(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.

85.7(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. The navigator may request reinstatement pursuant to this rule. 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—85.8(505,522D) Change in name, address or state of residence.

85.8(1) If a navigator changes the navigator's 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 previous name and new name.

85.8(2) If a navigator changes the navigator's 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, previous address, and new address. A navigator may designate a business address instead of a residential address at the option of the navigator.

85.8(3) 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—85.9(505,522D) Licensing of a business entity.

85.9(1) A business entity that has been appointed as a navigator shall obtain a navigator license.

85.9(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.

85.9(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—85.10(505,522D) Initial training of navigators.

85.10(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 in 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.

85.10(2) Courses provided by the federal government or approved by the federal government on ACA-related topics will be considered approved by the commissioner.

85.10(3) Individual navigators shall complete all training and certification requirements provided by the U.S. Department of Health and Human Services.

191—85.11(505,522D) Continuing education requirements of navigators.

85.11(1) Prior to each renewal term, 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, the healthy and well kids in Iowa program, health care-related public assistance programs, or other ACA-related topics.

85.11(2) Courses provided by the federal government or approved by the federal government on ACA-related topics will be considered approved by the commissioner.

85.11(3) A navigator shall not carry over continuing education requirements from one term to the next term.

85.11(4) A navigator shall not receive continuing education credit for the same course taken twice in the term of license.

191—85.12(505,522D) Administration of examinations.

85.12(1) The commissioner will enter into a contractual relationship with an outside testing service to provide the licensing examinations for individual navigators.

85.12(2) The outside testing service will administer all examinations for applicants.

85.12(3) The testing service will inform the applicants of procedures and requirements for taking the licensing examination.

85.12(4) The fee for examination shall be determined by the testing service.

85.12(5) A listing of subjects that could potentially be included on the navigator's examination may be provided on the division's Web site at <http://www.iid.state.ia.us/>.

85.12(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—85.13(505,522D) Fees.

85.13(1) Fees may be paid by check or credit card.

85.13(2) The fee for issuance or renewal of a navigator license is \$20 for three years.

85.13(3) The fee for reinstatement of a navigator license is a total of the renewal fee plus \$100.

85.13(4) The division may charge a reasonable fee for the compilation and production of navigator licensing records.

191—85.14(505,522D) Evidence of financial responsibility.

85.14(1) Prior to the issuance by the division 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.

85.14(2) The minimum coverage for financial responsibility shall be \$50,000.

85.14(3) A navigator shall immediately inform the commissioner in writing of any pending termination of a written financial responsibility instrument. 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 existing 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.

85.14(4) An individual navigator may meet the financial responsibility requirement if the individual navigator is covered by the financial responsibility instrument issued to a navigator entity with which the individual navigator is affiliated.

85.14(5) A navigator's financial responsibility instrument shall specifically authorize recovery by the commissioner on behalf of any person in Iowa that 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—85.15(505,522D) Practices.

85.15(1) Navigators shall comply with all federal and state statutes, regulations, and rules affecting insurance and navigators.

85.15(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 penalties as set forth in Iowa Code section 522D.8.

85.15(3) Navigators shall be subject to examination upon the discretion of the commissioner and at the cost of the navigator.

85.15(4) Navigators shall maintain detailed records of all assistance provided. Consumer assistance records shall be available to the commissioner upon request.

85.15(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.

85.15(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, to non-renew, or to select different insurance coverage;
- c. Recommend or endorse a particular health plan; and
- d. 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 the navigator's 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 penalties as set forth in Iowa Code section 522D.8.

191—85.16(505,522D) 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 provisions of this chapter that are severable and the valid provisions or applications shall remain in full force and effect.

These rules are intended to implement Iowa Code section 505.8(19) and chapter 522D.