

SUBJECT: Regulating navigators in health benefit exchanges

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, C. Turner

1 nay — Taylor

1 absent — Sheets

WITNESSES: For — Greg Hansch, National Alliance on Mental Illness of Texas; Lee Loftis, Independent Insurance Agents of Texas; Bee Moorhead, Texas Impact; Stacey Pogue, Center for Public Policy Priorities; (*Registered, but did not testify*: Misty Baker, Independent Insurance Agents of Texas; Christine Bryan, Clarity Child Guidance Center; Jose Camacho, Texas Association of Community Health Centers; Jennifer Cawley, Texas Association of Life and Health Insurers; Melissa Davis, National Association of Social Workers - Texas Chapter; Kristine Donatello, American Cancer Society Cancer Action Network; Harry Holmes, Harris County Healthcare Alliance; Patricia Kolodzey, Texas Medical Association; Lee Manross, Texas Association of Health Underwriters; Simone Nichols-Segers, National Multiple Sclerosis Society; Des Taylor; Clayton Travis, Texans Care for Children)

Against — (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition)

On — Blake Hutson, Consumers Union; Jamie Walker, Texas Department of Insurance

BACKGROUND: Sec. 1311 of the Patient Protection and Affordable Care Act of 2010 (ACA) (42 U.S.C. §18031) establishes in each state a health benefit exchange, which is an online marketplace of private, government-regulated health insurance plans that are eligible for federal subsidies. The Health and Human Services Commission estimates that 40 percent of Texas' 6 million uninsured residents will be eligible to purchase subsidized insurance in Texas' federally operated exchange. Open enrollment in the exchange begins October 1, 2013, and its policies

become effective January 1, 2014.

Sec. 1311(i) of the ACA establishes in each exchange a program of navigators, organizations or individuals that receive federal grants to provide unbiased information to consumers about their coverage options in the exchanges and that facilitate their enrollment in qualified health plans. As directed by the ACA, the federal government is currently finalizing proposed qualification, accessibility, and conflict-of-interest standards for navigators.

DIGEST:

CSHB 459 would add Insurance Code, ch. 4154 to authorize various navigator activities, while prohibiting others, in Texas' health benefit exchange under the ACA. The bill also would authorize the Texas Department of Insurance (TDI) to regulate navigators if it determined that federal standards did not ensure they were qualified to perform their duties or avoid conflicts of interest.

Navigators. CSHB 459 would define "navigator" to include an individual or entity performing a navigator's duties as described in the ACA or any regulation enacted under the ACA. Navigators could provide information on public benefits and health coverage or other information consistent with the mission of the navigator.

The bill would allow navigators to act without obtaining a license from TDI or any other state agency. The bill would not apply to licensed life, accident, and health insurance agents or licensed life and health insurance counselors or companies.

Navigators would be prohibited from receiving compensation from a health benefit plan issuer or in any other manner prohibited by law.

The bill would prohibit navigators from engaging in any unfair method of competition or any deceptive or fraudulent trade practice. In advertising the navigator's duties and services, the bill would forbid a navigator from claiming professional superiority or from using words such as "advisor," "agent," "consultant," or any others in a deceptive or misleading manner.

CSHB 459 would prohibit navigators who were not licensed as agents from endorsing, selling, soliciting, or negotiating coverage under a health benefit plan. They could not advise consumers on which exchange health plan was preferable nor provide information or services about insurance

products not offered through an exchange and could not accept compensation that was wholly or partly dependent on whether a person enrolled in a health benefit plan.

TDI oversight. CSHB 459 would require the Texas Insurance Commissioner to determine whether the federal regulations established by the ACA sufficiently allowed navigators to

- assist consumers in completing the exchange's uniform application;
- explain how affordability programs such as exchange subsidies, Medicaid, and the children's health insurance program work;
- explain qualified health plan features;
- provide culturally and linguistically appropriate information;
- avoid conflicts of interest; and
- establish standards and processes relating to privacy and data security.

If the commissioner found the federal regulations insufficient, the commissioner would have to make a good faith effort to cooperate with the U.S. Department of Health and Human Services to propose improvements. To ensure navigators could perform their duties, the commissioner would establish standards and qualifications if, after a reasonable interval, the commissioner determined the federal standards remained insufficient.

At a minimum, standards established by rule would require that a navigator had not:

- had a professional license suspended or revoked;
- been the subject of any disciplinary action by a financial or insurance regulator; or
- been convicted of a felony.

CSHB 459 would require the commissioner to obtain at regular intervals a list of Texas' navigators and, for individuals, their associated organizations. The commissioner by rule could establish a state registration for navigators to allow TDI to collect this information and to ensure navigators satisfied the commissioner's standards.

To ensure compliance with any changes in state law, the commissioner could authorize additional training for navigators

The bill would take effect September 1, 2013, and Insurance Code, ch. 4154 would expire September 1, 2017.

**SUPPORTERS
SAY:**

By clarifying the regulatory environment around the navigator program, CSHB 459 would protect consumers in health benefit exchanges while preserving the program's ability to expand access to health care. The bill would ensure navigators were qualified, properly trained, and impartial by establishing essential consumer protections regardless of the outcome of federal rulemaking. It also would authorize TDI to evaluate and, if necessary, enforce quality standards. These consumer safeguards would be especially necessary during the program's initial implementation.

CSHB 459 would preserve the navigators' crucial role in expanding health insurance access in Texas. The opening of health benefit exchanges in 2014 will enable hundreds of thousands — if not millions — of uninsured Texans to enroll in a health benefit plan. Eighty percent of the exchange's new enrollees will receive subsidized coverage due to their lower income levels, and overall this population will face increased barriers to understanding their new health insurance options. This bill would maintain the navigator program's capacity without duplicating federal requirements or impeding existing health care access programs.

TDI's new rulemaking authority would be a common sense extension of its current responsibilities. It would impose no increased costs, and would be the most efficient way to manage a new federal program. Although the federal standards for navigators will not be finalized for another week and a half, the publicly available proposed rules are not unduly burdensome. Providing TDI with oversight capacity would actually prevent any increase in federal encroachment.

**OPPONENTS
SAY:**

CSHB 459 would be an unnecessary expansion of government. The bill would create a new program at the state level and empower TDI with broad new rulemaking authority. Assisting the navigator program would increase access to subsidized health benefit plans in the exchanges, further stressing the federal budget and causing more reliance on governmental programs. It also would set a precedent for future increases in the federal government's power to tax and regulate.

The bill would be a premature reaction to an evolving federal mandate. Because rulemaking for the navigator program is not yet complete,

authorizing this expansion could have unintended consequences in the future. Although there is no fiscal note, it is impossible to estimate the future financial costs of regulating navigators. Any statutory change now would likely require new regulation at a later date. It would be more prudent to legislate after certainty about the program is established.

NOTES:

A similar bill, SB 1795 by Watson, was passed by the Senate by a vote of 30-1 on April 22.

Comparison of original to substitute. While HB 459 as introduced and the committee substitute both concern the navigator program in Texas, the two versions have few specific provisions in common. HB 459 as introduced would have added Insurance Code, ch. 1509, governing the navigator program, and would have required TDI to:

- select entities qualified to serve as navigators under the ACA;
- certify navigators after the adoption of rules for that purpose; and
- set minimum standards for navigator training.

HB 459 as introduced also would have:

- prohibited navigators, with no exception for those licensed as agents, from selling, soliciting, or negotiating coverage under a health benefit plan; and
- prohibited navigators from receiving a commission from an insurer.