

## STATE OF MAINE

—  
 IN THE YEAR OF OUR LORD  
 TWO THOUSAND AND THIRTEEN

—  
 S.P. 376 - L.D. 1094

**An Act To Clarify Certification of Navigators and the Availability of  
 Regional Health Plans**

Be it enacted by the People of the State of Maine as follows:

**PART A**

**Sec. A-1. 24-A MRSA §2188**, as enacted by PL 2011, c. 631, §1, is amended to read:

**§2188. Permitted activities of insurance producers; navigators; requirements**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Exchange" means a health benefit exchange established or operated in this State, including a health benefit exchange established or operated by the Secretary of the United States Department of Health and Human Services, pursuant to Section 1311 of the federal Affordable Care Act.

B. "Navigator" means a person selected to perform the activities and duties identified in Section 1311(i) of the federal Affordable Care Act. For the purposes of this section, if an organization or business entity serves as a navigator, an individual performing navigator duties for that organization or business entity is considered to be acting in the capacity of a navigator within the meaning of subsection 4.

**2. Prohibited activities.** ~~Only a person~~ Certification as a navigator under this section does not authorize a person who is not licensed as an insurance producer or consultant in this State in accordance with chapter 16 to act as an insurance producer or consultant. Regardless of whether a navigator certified under this section is also licensed as an insurance producer or consultant in this State in accordance with chapter 16, or, with respect to paragraph B, a person licensed as a consultant in accordance with chapter 16, a navigator may not, while acting as a navigator for an individual, enrollee, potential enrollee or employer:

A. Sell, solicit or negotiate ~~health~~ insurance;

B. Make recommendations to purchasers, enrollees or employers or prospective purchasers or enrollees ~~concerning the substantive benefits, terms or conditions of~~ to choose or reject a particular health plans plan; or

C. Enroll an individual or employee in a qualified health plan offered through an exchange or act as an intermediary between an employer and an insurer that offers a qualified health plan offered through an exchange, except that the actions of a navigator to provide assistance to an individual or employee to facilitate that individual's or employee's enrollment in a qualified health plan is not considered enrolling an individual or employee in a qualified health plan under this paragraph.

**3. Certification of navigators.** Prior to any exchange becoming operational in this State, the superintendent shall:

~~A. Develop criteria for use by any exchange for the selection of a navigator pursuant to Section 1311(i) of the federal Affordable Care Act and state law;~~

B. Adopt rules to establish a certification ~~and training~~ program for ~~a~~ individual navigators who are not licensed as insurance producers and training requirements for all individual navigators and prospective individual navigator navigators that includes include initial and continuing education requirements and an examination; ~~and,~~

~~C. Adopt rules, to the extent permitted by the federal Affordable Care Act, that require a navigator to carry and maintain errors and omissions insurance to cover all activities contemplated or performed pursuant to this section and Section 1311(i) of the federal Affordable Care Act.~~

**4. Navigator requirements.** An individual, ~~other than a licensed insurance producer under chapter 16,~~ may not act in the capacity of a navigator unless the individual is either licensed as an insurance producer under chapter 16 or certified by the superintendent as a navigator under this section. To be certified as a navigator, an individual must:

A. ~~Is~~ Be at least 18 years of age;

B. ~~Has~~ Have completed and submitted a disclosure form, which must be developed by the superintendent and which may include such information as the superintendent determines necessary, and ~~has~~ have declared under penalty of refusal, suspension or revocation of the navigator certification that the statements made in the form are true, correct and complete to the best of the individual's knowledge and belief;

C. ~~Has~~ Have submitted to any criminal history record check or regulatory background check required by the superintendent by rule;

~~D. Has not committed any act that would be a ground for denial, suspension or revocation of a producer license as set forth in section 1420 K;~~

E. ~~Has~~ Have successfully completed the ~~certification and~~ initial training requirements and any other certification requirements adopted by the superintendent in accordance with subsection 3; and

F. ~~Has~~ Have paid any fees required by the superintendent.

**5. Unfair practices.** The provisions of this chapter ~~and chapter 24~~ and any rules adopted pursuant to ~~those chapters~~ this chapter apply to navigators. ~~For purposes of this~~

~~section and the application of other provisions of this Title, the duties of a navigator are deemed to constitute the business of insurance. This subsection may not be construed to create or imply a private cause of action for a violation of any provision of this chapter.~~

5-A. Privacy. A navigator may not collect, use, disclose or retain personal information, as defined in section 2204, subsection 20, except for the purposes of performing the duties of a navigator or as permitted by an exchange under privacy standards adopted in accordance with the federal Affordable Care Act. A navigator is a regulated insurance entity for purposes of chapter 24 only if the navigator collects, uses, discloses or retains personal information for purposes other than performing the duties of a navigator.

6. Denial, suspension or revocation. The superintendent may deny, certification and may suspend or revoke the authority of a navigator certified pursuant to this section for ~~good cause~~ any ground specified in section 1420-K, subsection 1. The superintendent may assess civil penalties in accordance with section 12-A for violations of laws regulating the activities of navigators.

7. Rules. The superintendent may adopt rules as necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8. Construction. This section may not be construed to prevent the application of any provisions of the federal Affordable Care Act relating to the duties of a navigator.

## PART B

**Sec. B-1. 24-A MRSA §405-A, sub-§1,** as enacted by PL 2011, c. 90, Pt. C, §3, is amended to read:

**1. Regional insurer or health maintenance organization defined.** As used in this section, "regional insurer or health maintenance organization" means an insurer or health maintenance organization that holds a valid certificate of authority to transact individual health insurance in Connecticut, Massachusetts, New Hampshire ~~or~~ Rhode Island or Vermont.

**Sec. B-2. 24-A MRSA §405-A, sub-§2, ¶B,** as enacted by PL 2011, c. 90, Pt. C, §3, is amended to read:

B. A regional insurer or health maintenance organization shall meet the requirements of section 4302 for reporting plan information with respect to individual health plans offered for sale in this State and disclose to prospective enrollees how the health plans differ from individual health plans offered by domestic insurers in a format approved by the superintendent. Health plan policies and applications for coverage must contain the following disclosure statement or a substantially similar statement on the face page of the policy or application in a type size of at least 14 points and font that is easily readable by a person with average eyesight: "This policy is issued by a regional insurer or health maintenance organization and is governed by the laws and rules of (regional insurer's or health maintenance organization's state of

domicile). This policy may not be subject to all the insurance laws and rules of the State of Maine, including coverage of certain health care services or benefits mandated by Maine law. Before purchasing this policy, you should carefully review the terms and conditions of coverage under this policy, including any exclusions or limitations of coverage."

**Sec. B-3. 24-A MRSA §405-B, first ¶**, as enacted by PL 2011, c. 90, Pt. C, §4, is amended to read:

Notwithstanding any other provision of this Title, a domestic insurer or licensed health maintenance organization authorized to transact individual health insurance in this State may offer for sale in this State an individual health plan duly authorized for sale in Connecticut, Massachusetts, New Hampshire ~~or~~, Rhode Island or Vermont by a parent or corporate affiliate of the domestic insurer or licensed health maintenance organization if the following requirements are met.

**Sec. B-4. 24-A MRSA §405-B, sub-§3**, as enacted by PL 2011, c. 90, Pt. C, §4, is amended to read:

**3. Disclosure and reporting.** The domestic insurer or licensed health maintenance organization shall meet the requirements of section 4302 for reporting plan information with respect to individual health plans offered for sale in this State and disclose to prospective enrollees how the individual health plans of the parent or corporate affiliate differ from individual health plans offered by other domestic insurers or licensed health maintenance organizations in a format approved by the superintendent. Health plan policies and applications for coverage must contain the following disclosure statement or a substantially similar statement on the face page of the policy or application in a type size of at least 14 points and font that is easily readable by a person with average eyesight: "This policy is issued by a domestic insurer or licensed health maintenance organization but is governed by the laws and rules of (state of domicile of parent or corporate affiliate of domestic insurer or licensed health maintenance organization), which is the state of domicile of the parent or corporate affiliate of the domestic insurer or licensed health maintenance organization. This policy may not be subject to all the insurance laws and rules of the State of Maine, including coverage of certain health care services or benefits mandated by Maine law. Before purchasing this policy, you should carefully review the terms and conditions of coverage under this policy, including any exclusions or limitations of coverage."