



Testimony before the Senate Banking and Insurance Committee

Public Hearing on Affordable Care Act Navigators

Presented by:

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Additional Department Panelists:

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Good morning Chairman White, Chairman Stack and members of the Banking and Insurance Committee. My name is Mike Consedine and I am the Insurance Commissioner for Pennsylvania. Joining me today are Jack Yanosky, Director of the Department's Bureau of Licensing and Enforcement and Carolyn Morris, Director of the Department's Bureau of Consumer Services. We thank you for the opportunity to come before you today to discuss Senate Bill 1268 and the role of Affordable Care Act (ACA) navigators.

At the Pennsylvania Insurance Department, our core mission is to administer the laws of this Commonwealth that regulate the insurance industry in order to protect Pennsylvania's insurance consumers. In that context, the Department works to assure that consumers may make fully informed decisions by facilitating access to information about the insurance market. To ensure that consumers know where to seek trusted information as they purchase insurance, the Department licenses professionals who have undergone training about insurance and complied with the background check required for licensure – these individuals are insurance producers.

As signed into law by President Obama in 2010, the federal ACA requires that all Americans obtain health insurance coverage. To help individuals understand the health insurance market, the ACA created "navigators" to educate consumers and help them explore their health insurance options. Under the law, navigators are individuals or organizations who satisfy federal standards and receive funding grants to assist consumers enrolling in health insurance policies through the health insurance exchange. In Pennsylvania, federal authorities awarded \$2.5 Million to four organizations across the Commonwealth to develop navigator programs for the Federally-Facilitated Marketplace.

The ACA contemplates navigator entities assisting consumers in understanding their health insurance options through education and information. The ACA also permits navigators to "facilitate enrollment in qualified health plans." However, they may not function as producers in selling, soliciting or negotiating the sale of health insurance.

As the regulator of the insurance industry in Pennsylvania, the Insurance Department diligently works to ensure that consumers are educated and protected when participating in the insurance market. To that end, the Department enforces Pennsylvania laws that may be implicated during a consumer's health insurance purchase. One such law is the Producer Licensing Act (Act 147 of 2002), which the Pennsylvania General Assembly passed in order to protect Pennsylvania's insurance consumers. The Act prohibits a person from selling, soliciting or negotiating a contract of insurance, or receiving commissions from these activities, unless the person is licensed as an insurance producer. The Act establishes various consumer protections, including background check provisions and requirements that producers maintain an awareness of current insurance issues by taking continuing education courses on an ongoing basis. Under Pennsylvania law, engaging in unlicensed producer activity can be subject to both civil and criminal penalties, depending on the circumstances under which the unlicensed activity was conducted and whether the person knowingly engaged in unlicensed producer activity.

Recognizing the potential for confusion on the part of navigators and the public as to the permissible scope of navigator activities, the Insurance Department published an industry notice in the Pennsylvania Bulletin this past November to clarify the activities that require an insurance producer license under Act 147 and those that do not. This industry notice was developed with the input and collaboration of industry stakeholders. Recognizing that not everyone reads the Bulletin, we also distributed the notice to the entities that received federal grants to operate as navigators in Pennsylvania, as well as to others who have expressed interest in assisting consumers in the new health insurance marketplace. For your reference, a copy of Notice 2013-09 is included as an attachment to this testimony.

The Department has the authority under existing law to investigate allegations regarding navigators should their actions rise to a level of requiring a producer license. The Department intends to exercise

existing regulatory authority established in Act 147 to investigate complaints of unlicensed producer activity, including complaints involving navigators. Additionally, substantiated complaints, as warranted, will be referred to the Office of Attorney General for review. I will point out that since the implementation of the ACA's health insurance exchange provisions and the establishment of the navigator program, our Department has not yet received any complaints related to navigators violating the law.

It should also be noted that under the ACA, Pennsylvania has thus far opted for a federally-facilitated health insurance exchange rather than a state-run exchange. Therefore, federal authorities approve and fund the navigator program in Pennsylvania and ultimately retain the ability to revoke the funding of navigators in circumstances of noncompliance. Thus, even if Pennsylvania were to find a navigator operating improperly, we would not have the authority to undo the navigator's selection and withdraw the navigator's grant funding.

Finally, should there be interest in licensing or certifying navigators in Pennsylvania, the federal regulations make it clear that the state law may not "prevent the application" of the ACA exchange provisions. This is an issue that has garnered recent attention, and is the subject of a federal lawsuit in Missouri. HHS also suggested, in a regulation it issued just a few weeks ago, that it intends to promulgate future rules specifically to address this issue.

In conclusion, the Department has enforcement tools in hand to address any unlicensed activity related to the sale, solicitation or negotiation of health insurance. If a federally approved navigator does not step over the line, it may operate as permitted by the federal government under the ACA. If the navigator steps over that line, the Department may take action under state law.

Thank you for the opportunity to discuss the Insurance Department's role of regulating the insurance industry to protect insurance consumers. We are acutely aware of the dynamic landscape of the health insurance market, and will continue to be responsive to the needs of consumers. We prioritize the availability of accurate information for consumers, and will facilitate access to such information through our existing regulatory authority established in Act 147. We welcome any questions you have for the Department on this issue.

Attachment 1: PA Insurance Department Industry Notice re Navigators Published in PA Bulletin

Notice

The Sale, Solicitation, and Negotiation of Insurance; Department Notice 2013-009

The federal Affordable Care Act (ACA) requires that all individuals obtain health insurance coverage. To help individuals navigate the health insurance market, the ACA created consumer assistance functions to educate consumers and help them explore their health insurance options. The Pennsylvania Insurance Department (Department) protects the insurance purchasing consumer by enforcing state laws. As such, the Department distinguishes between professionals who have undergone training about health insurance and the background check required for licensure (i.e., insurance producers) and individuals who perform general customer service/assistance functions. This Department Notice will help provide clarity regarding activities that may require a producer license and those that typically do not.

In order to protect Pennsylvania insurance consumers, the Pennsylvania General Assembly has limited the sale, solicitation, and negotiation of insurance to those who are licensed under the Producer Licensing Act (Act), 40 P.S. §§ 310.1 – 310.99a. The Act establishes various consumer protections including requiring producers to maintain an awareness of current insurance issues by taking education courses on an ongoing basis.

In general, the Act prohibits a person from selling, soliciting or negotiating a contract of insurance, or receiving commissions from these activities, unless the person is licensed as an insurance producer. The terms “sell,” “solicit,” and “negotiate” are defined broadly by the Act. *See* 40 P.S. § 310.1. Under Pennsylvania law partaking in unlicensed producer activity can be subject to both civil and criminal penalties, depending on the circumstances under which the unlicensed activity was conducted and whether the person knowingly engaged in unlicensed producer activity.

A license is generally not required for a person performing only the following services, provided that no commission is paid for the services: secures and furnishes written information for the purpose of group or blanket accident and health insurance; performs administrative services related to the enrollment of individuals under plans; issues certificates under plans or otherwise assists in administering plans. 40 P.S. § 310.3(b)(4).

The Department provides the following lists of activities that require a producer license and activities that do not require a producer license. Please note that the Department reserves the right to determine compliance with the Act on a case-by-case basis in accordance with the particular circumstances presented in each case.

Licensed producer activities:

1. Discussing the effect of age, health or other risk-related conditions of the prospective policy holder;
2. Urging or advising any prospective purchaser to buy any particular policy or to insure with any particular company;

3. Initiating sales over the telephone or otherwise;
4. Collecting premiums in person at other than a recorded place of business;
5. Making or proposing to make an insurance contract;
6. Disseminating information as to specific coverages or for any particular policy, except that this shall not prohibit the dissemination of buyer's guides or applications for coverage in response to requests from prospective policyholders;
7. Disseminating information as to rates in general or for any particular policy where the rate cannot be secured by referring to a published or printed list of standard rates;
8. Initiating an inquiry as to the terms of existing coverage, except exclusively in the course of clerical duties;
9. Discussing or describing the specific coverages or terms of a proposed contract of insurance with a prospective policyholder, including counseling as to which coverages to buy;
Example: If an insured or prospective insured requests advice in any communication with an unlicensed employee, the response must be made by a licensed producer.
10. Recommending or independently initiating additions or deletions to an insured's policy;
11. Signing binders, endorsements and insurance policies;
12. Authorizing the issuance or delivery of certificates of insurance, endorsements, binders or insurance policies or insurance identification cards; and
13. Responding to a policyholder's request for advice or counsel regarding policy provisions or coverage.

Example: In the course of requesting an application form or a change to an existing policy, if a policyholder or prospective policyholder, while speaking to an unlicensed person, requests an opinion about the terms of the proposed insurance contract or the proposed change to the existing contract, the response must be made by a licensed producer.

Non-licensed clerical and CSR activities:

1. Receiving requests for coverage for transmittal to a licensed insurance producer or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer;
2. Mailing billings and opening mail;
3. Scheduling appointments for and with insurance producers;
4. Office filing;
5. Marketing research or prospecting so long as no attempt is made to solicit or to discuss a specific insurance product or to encourage replacement of an existing policy;

6. Receiving and recording information from an applicant or policyholder and preparing for an insurance producer's review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer;
7. Receiving and recording information from an applicant or policyholder and preparing an application for insurance pursuant to instructions from and for the review of an insurance producer;
8. Receiving and recording information from a policyholder or prospective policyholder to give to an insurance producer for his or her response, or transmitting information to a policyholder or prospective policyholder under the supervision of an insurance producer;

Example: An unlicensed sales representative in a car dealership collects information from a car buyer that is given to a licensee to complete a credit insurance transaction.

9. Receiving and recording an insured's request concerning any additions or deletions to an existing policy and preparing the appropriate endorsements or processing the appropriate changes through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer and notifying the insurance producer of the endorsements or changes;

Example: An unlicensed person may receive and process a request from an insured to delete an automobile on an existing policy and to add a replacement automobile, or may receive and process a request to delete physical damage coverage on a particular automobile, or receive and process a request for similar routine policy changes initiated by an insured. An unlicensed person may not, however, initiate a change by, for example, telephoning a life insurance policyholder and suggesting that the insured increase the face amount of the policy. Should these changes require a producer license, the unlicensed person should advise the consumer they are being transferred to a licensee.

10. Provide general information on the availability of insurance products and hold educational seminars on insurance products providing no attempt to sell, solicit or negotiate insurance with a consumer is made at the presentation;
11. Receiving premiums at the recorded place of business where the payment is being made on a binder, endorsement or existing policy;
12. Taking factual information relative to a claim;
13. Communicating with the policyholder or prospective policyholder in order to obtain factual information necessary for an insurance producer to complete a review;

Example: An unlicensed person may call an applicant to request the submission of additional documents;

14. Informing the insured as to his or her coverages as indicated in policy records;
15. Communicating with a prospective or existing insured for the purpose of auditing records or providing loss control on underwriting verifications and inspections;
16. Disseminating buyer's guides, applications for coverage, coverage selection forms or other similar forms in response to a request from a prospective or currently policyholder;

Example: An unlicensed person may receive a request for an application and respond by mailing or giving an application for insurance and other related literature. The unlicensed person may not, however, initiate the conversation.

17. Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates;

Example: An unlicensed person may respond to a specific request for the cost of a specific coverage from a rate manual published in print or in an electronic format. However, an unlicensed person may not provide advice or suggestions concerning the benefits or drawbacks or a particular coverage, deductible, limit, etc., in the course of disseminating this information.

Questions or comments applicable to this bulletin should be directed to:

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