State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Theodore K. Nickel, Commissioner

Wisconsin.gov

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RECEIVED
JUN 25 2014
Legislative Reference Bureau

TO: Bruce Hoesly
Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53701-2037

FROM: Richard Wicka, Deputy Chief Legal Counsel
Office of the Commissioner of Insurance

DATE: June 24, 2014

SUBJECT: Sections Ins 6.91 to 6.99, Wis. Adm. Code, relating to navigators, nonnavigator assisters and related entities and affecting small business

Clearinghouse Rule No. 13-113

Enclosed are two originals of the above-referenced order of the Commissioner of Insurance promulgating a rule. The first is to be filed with the Legislative Reference Bureau and the other to be stamped by the Bureau and be retained by OCI.

I have e-mailed you an electronic copy of the rule. For additional information or if you did not get the e-mail, please contact Julie E. Walsh at (608) 264-8101 or e-mail at julie.walsh@wisconsin.gov. Pursuant to s. 227.114 (6), Wis. Stat., I am providing you with the following:

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

The legislative standing committees had no comments on this rule.

Attachments: 2 Original copies of the rule

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STATE OF WISCONSIN

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OFFICE OF THE COMMISSIONER OF INSURANCE

RECEIVED
JUN 25 2014
Legislative Reference Bureau

I, Theodore K. Nickel, Commissioner of Insurance and custodian of the official records, certify that the annexed rule affecting sections Ins 6.91 to 6.99, Wis. Adm. Code, relating to navigators, nonnavigator assisters and related entities and affecting small business, is duly approved and adopted by this Office on June 24, 2014.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street, Madison, Wisconsin, on June 24, 2014.

Theodore K. Nickel
Commissioner

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

Rule No. 145: To create Ins 6.91 to 6.99, Wis. Adm. Code.

Relating to: navigators, nonnavigator assisters and related entities and affecting small business.

The statement of scope for this rule SS 078-13, was approved by the Governor on July 1, 2013, published in Register No. 691, on July 15, 2013, and approved by the Commissioner on July 26, 2013. This rule was approved by the Governor on August 30, 2013 as an emergency rule and published September 10, 2013. The proposed rule was approved by the Governor on March 19, 2014 to submit to the legislature.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. **Statutes interpreted:**

   Sections 601.31, 601.41, 601.62, 601.65, and ch. 628, 631, Stats.

2. **Statutory authority:**

   Sections 227.11, 601.41, 628.98, Stats.

3. **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

   The office has authority to promulgate rules interpreting ch. 628, Stats., as amended, relating to the oversight and licensing of navigators and registering navigator entities and nonnavigator assisters through the registration of nonnavigator assister entities. The commissioner has general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Stats., in accordance with ss. 227.11 (2) (a) and 601.41 (3), Stats. Further under s. 628.98, Stats., the commissioner is permitted to promulgate any

rules necessary to carry out the purposes of subch. V of ch. 628, Stats. Additionally, the commissioner may promulgate rules under authority granted in ss. 601.42, and 628.34 (12), Stats.

4. Related statutes or rules:

Ins chs. 6, 26 and 28, Wis. Admin. Code.

5. The plain language analysis and summary of the proposed rule:

The proposed rule establishes training and licensing requirements for navigators in accordance with state law and consistent with federal law. Navigators must have contracts with and grants from the federal government to assist consumers in enrolling in the federally facilitated health insurance exchange. When navigators facilitate enrollment of consumers into the federal exchange they are by law transacting an insurance business. As such, the office through this proposed rule sets forth basic requirements of licensure including fingerprinting, criminal background checks, consideration of prior personal and financial transactions that may provide insight to the individual's character.

The proposed regulations include requirements for record keeping in addition to the federally established privacy and security requirements if a navigator or navigator entity retains personal or financial information since navigators and navigator entities will have access to personal and financial information of the consumers they assist. Further, to ensure if a consumer were harmed by the acts of a navigator, the proposed rule implements the statutory requirement of financial responsibility for wrongful acts of a navigator.

Under the proposed rule nonnavigator assisters, navigator entities and nonnavigator assister entities are required to be registered with the Office. The nonnavigator assisters

are registered with the commissioner through the nonnavigator assister entity with whom the nonnavigator assister is employed, supervised or affiliated with. Navigators, navigator entities and nonnavigator assister entities are designated by the federally facilitated exchange and navigators and navigator entities are under contract with the federally facilitated exchange to assist consumers enrolling in the exchange.

The state registration process will allow the office to ensure those persons and entities having direct contact with consumers have developed and implemented policies and procedures to ensure accurate guidance is given to consumers by properly trained persons. Through registration, the office will have current information for consumers of navigators and nonnavigator assisters who are compliant with training and knowledgeable of the exchange. The entities are legally responsible for the acts of the navigators or nonnavigator assisters that are employed, supervised or affiliated with the entities and are required to ensure the navigators and nonnavigator assisters are current in their training and are of good character, competent, and trustworthiness. Finally, the proposed rule delineates that the office may investigate the entities for compliance.

Both navigators and nonnavigator assisters must be trained to understand not only the federal exchange health insurance products, but must also be familiar with public assistance programs and premium tax credits. The proposed rule requires initial and on-going training to ensure that the navigators and nonnavigator assisters who are providing assistance to Wisconsin consumers are providing the most recent and accurate information.

The proposed rule contains provisions intended to protect consumers from deceptive practices by restricting the use of terms, including "navigator", "nonnavigator assister", and "certified application counselors", for use by only those persons who possess the proper training, licensure or registration status. The rule also delineates

prohibited acts by navigators and nonnavigator assisters, including making false or misleading statements, performing acts for which an insurance agent license is required, receiving compensation from an insurer, and for agents who are navigators or nonnavigator assisters they are prohibited from soliciting, advising or selling more than one insurance product at one appointment.

Finally, the proposed rule exempts state and federal governmental entities or persons acting on behalf of state and federal governmental entities from the regulations. Additionally the proposed rule exempts employees of hospitals, clinics and other health care facilities who, as part of their employment, provide assistance to patients including assistance with enrollment in state or federal assistance programs from compliance with the regulations. If however, an exempted entity chooses to utilize a designation or terms such as "certified counselors" then the person, persons or entity must be in compliance with applicable provisions of this proposed rule.

6. **Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The proposed rule dovetails with federal law and extends consumer protections through licensure, training and financial responsibility requirements. The federal law set forth in 45 CFR ss. 155.200 to 155.280, as amended, outlines federal training, grants, privacy and security and contracting requirements.

7. **Comparison of similar rules in adjacent states as found by OCI:**

Illinois: Public Act 098-0524, was signed into law on August 23, 2013. The law requires navigators to be licensed by the Insurance Department and to comply with state and federal training, clarifies the roles of navigators from licensed insurance agents, and

establishes requirements, including licensing, training, and financial responsibility. The law is similar to subch. V of ch. 628, Wis. Stats.

Iowa: Iowa Code ch. 522D (2013). The law establishes licensing requirements for navigators and navigator entities similar to subch. V of ch. 628, Wis. Stats. The Insurance Division is in the process of promulgating administrative rules establishing training, licensing, fees and evidence of financial responsibility similar to this proposed rule.

Michigan: No similar laws or rules.

Minnesota: Minn. Stat. § 62V.05 (2013). Law was effective March 21, 2013 and requires the Minnesota exchange board to establish policies and procedures for the ongoing operation of a navigator program including in-person assisters. The law requires navigators and in-person assisters to have training and certification prior to selling for the exchange.

8. **A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

The Office considered the federal law and the laws of surrounding states to ensure the consumer safety without being overly burdensome to navigators, nonnavigator assisters and related entities when developing the proposed rules regarding the training, licensing and registration requirements. The proposed regulations provide similar but less stringent oversight for navigators, nonnavigator assisters and related entities as compared to insurance agents, brokers and managing agencies. The approach minimizes potential consumer harm by ensuring those serving the public meet basic qualifications.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

The proposed rule may affect small businesses; however, the office has taken steps to minimize the impact of the rule by limiting the effect of the regulation to those navigators or nonnavigator assisters who are working on behalf of the federal government. For perspective, the federal government only awarded six navigator grants for the entire state of Wisconsin. The proposed rules impose no restrictions or regulations for state, local or federal governmental entities. There are many such entities already providing assistance to consumers with health insurance and public assistance concerns. By keeping the scope of the proposed rule very narrow, the impact on small businesses is significantly lessened.

The proposed rule fee amounts are consistent or lesser than similarly situated insurance agents and managing broker agencies. Further, there is no imposition of fees for nonnavigator assisters or nonnavigator assister entities other than the cost of prelicensing training and examination costs. To further minimize the impact to navigators and nonnavigator assisters, the office provided extensive free prelicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period.

10. Private Sector Fiscal Analysis.

See attached.

11. A description of the Effect on Small Business:

This rule may have an effect on small businesses by requiring licensure or registration for navigators, nonnavigator assisters and related entities. However, the office minimized the impact by establishing less stringent requirements than those

imposed on licensed insurance agents and agencies. Further, the office provided extensive free prelicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period. Additionally, the office approved licensed vendors to provide prelicensing training both in-person and on-line to reduce imposition on organizations. Finally, the office imposed slightly lower fees than is required for licensed insurance agents.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: **http://oci.wi.gov/ocirules.htm**

or by contacting Inger Williams, OCI Services Section, at:

Phone:	(608) 264-8110
Email:	inger.williams@wisconsin.gov
Address:	125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail:	PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

Mailing address:
Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 691
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:
Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 691
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:
Julie E. Walsh
julie.walsh@wisconsin.gov

Web site: **http://oci.wi.gov/ocirules.htm**

The proposed rule changes are:

SECTION 1. Ins 6.91 to 6.99 is created to read:

Ins 6.91 Definitions. In addition to the definitions in s. 628.90, Stats., for the purposes of ss. 6.91 to 6.99 the following apply:

(1) "Business checking account" means any account utilized by a navigator, navigator entity, nonnavigator assister or nonnavigator assister entity in their capacity as a navigator, nonnavigator assister or related entity and in transacting of the business of insurance.

(2) "Cash disbursed record" means a record showing all monies paid out by the navigator, navigator entity, nonnavigator assister or nonnavigator assister entity in their capacity as a navigator, nonnavigator assister or related entity in transacting the business of insurance.

(3) "Cash receipts record" means a record showing all monies received by the navigator, navigator entity, nonnavigator assister or nonnavigator assister entity in their capacity as a navigator, nonnavigator assister or related entity and in transacting the business of insurance.

(4) "Certified application counselors" means a person who is a nonnavigator assister who is not an in-person assister and who is employed, supervised or affiliated with a registered nonnavigator assister entity.

(5) "Commissioner" means the commissioner of insurance.

(6) "Formal administrative action" includes consent decrees, cease and desist orders, stipulations, suspensions, revocations, license denials, fines, forfeitures, settlement agreements, navigator license restrictions or other actions limiting the navigator's method of transacting the business of insurance.

(7) "Insurance agent" means an "intermediary" as defined in s. 628.02 (4), Stats.

(8) "Navigator entity" means an entity or organization that employs, supervises or is affiliated with, one or more licensed navigators; is designated by the exchange as a navigator, works on

behalf of the exchange, and receives federal navigator grant funding; and is registered with the commissioner.

(9) "Nonnavigator assister entity" means an entity or organization that employs, supervises or is affiliated with one or more nonnavigator assisters including certified application counselors; is designated by and works on behalf of the exchange, enters into an agreement with the exchange; and is registered with the commissioner.

(10) "Personnel records" means those records pertaining to anyone who is employed by, supervised by or affiliated with a navigator entity or nonnavigator assister entity including independent contractors.

(11) "Policyholder records" means all records, applications, request for coverage changes, and coverage complaints associated with a policy generated by or through the navigator, navigator entity, certified application counselor or nonnavigator assister entity.

Ins 6.92 Individual navigators. (1) PURPOSE. This section protects insurance consumers by establishing procedures for the licensing of navigators when transacting the business of insurance, prescribing minimum standards and requirements to ensure timely and reliable information will exist and be available to the commissioner. This section implements and interprets ss. 628.095, 628.097, 628.10, 628.90 to 628.95, Stats., as applicable.

(2) PROCEDURE. (a) *Application for navigator license.* An individual applying for a navigator license shall submit an application to the office in the form prescribed by the commissioner. A completed application shall include: the navigator's name; the navigator's residence; mailing and business addresses; confirmation of successful completion of prelicensing training; fingerprints provided in a format specified by the commissioner to complete; an electronic confirmation of criminal history from the Wisconsin department of justice, crime information bureau, and the federal bureau of investigation completed not more than 180 days prior to the licensing examination date; payment of the nonrefundable fees to the testing vendor; an

electronic photograph of the applicant taken by the test vendor at the time of testing; confirmation of previous navigator licensure in another state, if applicable; payment of the fee under s. 601.31 (1) (nm), Stats.; proof of financial responsibility under sub. (7); and any documentation required in answer to questions on the application.

Note: A copy of the navigator license application form OCI 11-090, required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: oci.wi.gov.

(b) *Prelicensing Training.* An individual seeking a navigator license, in addition to any training requirements of the federal government, shall complete at least 16 hours of commissioner-approved navigator prelicensing training. Training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

(c) *Scheduling the navigator licensing examination.* An applicant must schedule an examination with the testing vendor at least twenty-four hours prior to the desired navigator licensing examination date. The written examination will test the applicant's knowledge of the duties and responsibilities of a navigator; the insurance laws and regulations of this state; and the state's public assistance programs and eligibility. The written examination shall be approved by the commissioner and offered through a commissioner-approved testing vendor.

(d) *Exception.* 1. An insurance agent who holds an active resident license with the accident and health line of authority and is in compliance with continuing education requirements may apply to be licensed as a navigator if the currently licensed insurance agent demonstrates all of the following:

a. Compliance as set forth in s. 628.92 (1), Stats., including competence and trustworthiness.

b. Satisfactory completion of 4 hours of navigator training specific to public assistance programs, including Medicaid, in addition to the completion of any federally required navigator

training and compliance with federal restrictions and requirements including those set forth in 45 CFR §§ 155.205 (d), 155.210, 155.215 (b) and (c), and 155.260 (b), as amended. The state training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

2. A currently licensed insurance agent who is in compliance with subd. 1. is exempt from passing the navigator examination and photograph requirements described in par. (a). The currently licensed insurance agent shall provide new fingerprints unless the office has received current, valid fingerprint results provided in a format specified by the commissioner and an electronic confirmation of criminal history from the Wisconsin department of justice, crime information bureau, and the federal bureau of investigation that were completed not more than 180 days prior to the date of the application. The currently licensed insurance agent shall submit a completed application as described in par. (a) and pay the licensing fee in accordance with s. 601.31 (1) (nm), Stats., to the commissioner.

(e) *Issuance of license.* The commissioner shall issue a navigator license to an applicant who completes and satisfies the requirements in pars. (a) and (b), in addition to any federal training or requirements including the requirements set forth in 45 CFR §§ 155.205 (d), 155.210, 155.215 (b) and (c), and 155.260 (b), as amended, has passed the commissioner-approved written examination with a satisfactory grade, and meets the standards of competence and trustworthiness as described in sub. (3). Examination scores are valid for 180 days. Failure to apply for a license within 180 days will require the applicant to re-take the examination. Determination of the acceptance or rejection of a completed application shall be made within 90 days of receipt by the commissioner of the completed application, which is tolled until receipt of any additional required or requested documentation.

(3) COMPETENCE AND TRUSTWORTHINESS. The following criteria may be used by the commissioner in assessing trustworthiness and competence of a navigator; failure to meet trustworthiness and competence is cause for denial, suspension or revocation or a license:

(a) *Criminal record.* The conviction for crimes which are substantially related to the circumstances of holding an insurance or navigator license, including a felony or misdemeanor conviction under the law of Wisconsin or any other state or under federal law .

(b) *Accuracy of information.* Any material misrepresentation in the information submitted on the application form.

(c) *Regulatory action.* Any formal regulatory action taken in any jurisdiction with regard to any occupational license held, such as insurance licenses in other states, real estate licenses and security licenses.

(d) *Other criteria.* Other criteria which the commissioner considers evidence of untrustworthiness or incompetence, including:

1. Providing incorrect, misleading, incomplete or materially untrue information in the licensing application.

2. Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner, or of the federal government.

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

4. Improperly withholding, misappropriating or converting any monies or properties received in the course of acting as a navigator or insurance agent.

5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

6. Having admitted or been found to have committed any insurance unfair trade practice or fraud.

7. Using fraudulent, coercive, or dishonest practices in the conduct of business in this state or elsewhere.

8. Demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of personal financial transactions or professional business in this state or elsewhere.

9. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.

10. Forging another's name to an application for insurance or to any document related to an insurance transaction.

11. Improperly using notes or any other reference material to complete an examination for an insurance or navigator license.

12. Failing to comply with an administrative or court order imposing a child support obligation.

13. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(e) *Minimum Age and Residency.* An applicant for navigator licensure shall have attained at least eighteen (18) years of age and shall be a resident of this state or maintain his or her principal place of business in this state.

(4) CHANGE OF NAME OR ADDRESS. (a) A licensed navigator shall, within 30 days, notify the commissioner in writing of any change in the navigator's name, residence address, principal place of business, and mailing address.

(b) A navigator who is not employed or supervised by or affiliated with a navigator entity and changes residency to a location outside of this state or changes his or her principal place of business to an address outside this state and is not a resident of this state shall have his or her navigator license terminated effective 60 days after the change of address.

(c) Criteria used by the commissioner to evaluate state residency shall include:

1. Jurisdiction for payment of state taxes.

2. Jurisdiction for automobile driver's license and motor vehicle registration.

3. Location of voter registration.

4. Location of principal residence, such as owned or rented dwelling, condominium or apartment.

5. Location of principal place of business.

(5) APPLICABILITY OF OTHER LAWS. Licensed navigators are subject to the requirements contained at ss. 628.095, 628.097 and 628.10, Stats., as applicable to individual navigators.

(6) LICENSE RENEWALS. (a) The nonrefundable renewal fee of $35.00 is due before October 1 of each year. The commissioner shall send notice of the renewal fee by 1st-class mail to the mailing address on file at least 60 days prior to the fee due date to each navigator. Applications for navigator license renewal shall be submitted before the October 1 renewal deadline. The navigator shall provide proof financial responsibility under sub. (7).

(b) An individual navigator is required to complete at least 8 hours of accident and health insurance continuing education training before October 1 of each year. Training must be completed prior seeking annual renewal of a navigator license. Recurring training shall be completed and reported at a rate of not less than 8 hours each 12 months of each compliance period. Training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

(c) Any navigator whose license is revoked for failing to pay renewal fees, failing to complete required annual navigator continuing education, or failing to pay delinquent taxes may, within 12 months from the revocation date, apply to reinstate for the same navigator license without completing prelicensing navigator training or passing a written examination. The navigator must satisfy the requirement of s. 628.10 (2) (a), (am) or (cm), Stats., satisfactorily complete a reinstatement application and pay twice the amount of the license renewal fee under par. (a). If

a navigator license has been revoked for more than 12 months, the navigator shall, in order to be relicensed, satisfy the examination and other licensing requirements established by subs. (2) to (4).

(7) FINANCIAL RESPONSIBILITY REQUIREMENTS. Each individual navigator not affiliated with a navigator entity shall comply with the requirements of s. 628.92 (5) (b), Stats., by submitting the original bond and form to the office in the form prescribed by the commissioner or by providing evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

Note: A copy of a sample navigator and navigator entity bond form OCI 11-093, required in sub. (7), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: oci.wi.gov.

Ins 6.93 Registration of navigator entities. (1) (a) *Registration application for navigator entity.* An entity registering as a navigator entity shall submit an application to the commissioner in the form prescribed by the commissioner. A completed application shall include: the navigator entity's name; the names of the entity's officers; the current mailing address; the name of at least one licensed designated responsible navigator; names, license number and mailing addresses for the navigators it employs, supervises or is affiliated with; proof of financial responsibility under sub. (4) (b), and compliance with competence and trustworthiness criteria under s. Ins 6.92 (3), and any documentation required to questions on the application.

Note: A copy of the navigator entity registration application form OCI 11-091, required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: oci.wi.gov.

(b) *Payment of fees.* An applicant for an original registration shall pay an initial, non-refundable, registration fee of $100.00 is due with submission of the application.

(c) *Acknowledgement of registration.* Determination of the acceptance or rejection of a completed application shall be made within 90 days of receipt by the commissioner of the

completed application, which is tolled until receipt of any additional required or requested documentation. The commissioner shall accept a registration if the applicant satisfies the requirements of pars. (a) and (b), and if the applicant is designated by the exchange as a navigator entity, receives funding through a federal grant, is in compliance with s. 628.92 (2), Stats., and is in compliance with applicable federal requirements including 45 CFR § 155.215 (a) (1), as amended.

(2) REGISTRATION RENEWALS. The renewal fee of $100.00 is due before October 1 of each year. The commissioner shall send notice of the registration renewal fee by 1st-class mail to the mailing address on file at least 60 days prior to the fee due date to each navigator entity. Applications for navigator entity renewal shall be submitted before the October 1 renewal deadline. The navigator entity shall comply with the requirements of s. 628.92 (5) (a), by submitting proof of a current bond or by providing evidence of an equivalent coverage alternative subject to the commissioner's prior approval. Failure to comply with the requirements of this section may be cause for the commissioner to deny, revoke, or suspend the registration of a navigator entity.

(3) ENTITY REPORTING. The navigator entity shall report any updates to the list of navigators given in the application to register as a navigator entity, including additions, deletions or modifications, within 30 days of the addition, deletion or modification to the list of navigators.

(4) ENTITY LIABILITY. (a) A navigator entity assumes full legal responsibility for the acts of the navigators whom the entity employs, supervises or is affiliated with for acts that are performed in this state and that are within the scope of the apparent authority to act as a navigator on behalf of the entity.

(b) The entity shall provide evidence of financial responsibility consistent with s. 628.92 (5) (a), Stats., by submitting the original bond and form to the office in the form prescribed by the

commissioner. Alternatively the navigator entity, subject to the commissioner's prior approval, may provide evidence of an equivalent coverage alternative.

Note: A copy of a sample navigator and navigator entity bond form OCI 11-093, required in sub. (4)(b), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: oci.wi.gov.

(5) INVESTIGATION AND REVIEW. (a) The commissioner, or designated examiner, may investigate and review all navigator entities under ss. 601.43 and 601.44, Stats. The method and timing of the reviews shall be determined by the commissioner in each case and may consist of any of the following:

1. Consideration of information available from state, federal, or local agencies, private organizations or agencies, or interested persons.

2. Investigation upon receipt of a complaint from any person.

3. Any other information the commissioner deems relevant to the investigation.

(b) If, after the investigation the commissioner suspends, denies or revokes the registration, written notification shall be given with reasons for such action. The suspension, denial or revocation constitutes an order pursuant to s. 601.62 (3) (a), Stats., and the navigator entity may request a hearing before the commissioner under that section.

Ins 6.95 Registration of certified application counselors, nonnavigator assisters and nonnavigator assister entities. Certified application counselors and other nonnavigator assisters shall be employed or supervised by a registered nonnavigator assister entity, or be affiliated with a registered nonnavigator assister entity.

(1) ELECTRONIC REGISTRATION FOR A NONNAVIGATOR ASSISTER ENTITY. An entity registering as a nonnavigator assister entity shall provide all of the following information to the commissioner in the form prescribed by the commissioner:

(a) The nonnavigator assister entity's name and current mailing address.

(b) The name and contact information for the nonnavigator assister entity.

(c) The name, business address and type of nonnavigator assister for each nonnavigator assister it employs, supervises or is affiliated with.

(d) An attestation that each nonnavigator assister is in compliance with applicable state law including any nonnavigator assister who is a certified application counselor and who has complied with s. 628.96 (2), Stats.

(e) The nonnavigator assister entity's agreement to provide to the commissioner all supporting documents as requested by the commissioner.

(2) CERTIFIED APPLICATION COUNSELORS AND OTHER NONNAVIGATOR ASSISTERS. (a) Certified application counselors under 45 C.F.R. s. 155.225, and other nonnavigator assisters, are eligible to be registered by a nonnavigator assister entity if either of the following apply:

1. The application counselor or other nonnavigator assister is designated by the federal government to provide consumer assistance; that designation is not withdrawn; and the person has completed the training and examination requirement under ss. 628.92 (7) and 628.96 (2), Stats.

2. The application counselor or other nonnavigator assister is an insurance agent who hold an active resident license with the accident and health line of authority and is in compliance with continuing education requirements; complies with s. 628.96 (3), Stats., including competence and trustworthiness, and satisfactorily completes 4 hours of navigator training specific to public assistance programs, including Medicaid, in addition to the completion of any federally required nonnavigator assister training and compliance with federal restrictions and requirements. An insurance agent who meets the requirements of this subdivision is not required to complete prelicensing training or the navigator licensing examination under ss. 628.92 (7) and 628.96 (2), Stats.

(b) The nonnavigator assister entity shall maintain records that each certified application counselor and other nonnavigator assister registered under par. (a) has completed the annual continuing education training. The nonnavigator assister entity shall provide an attestation of compliance with such requirement to the commissioner in a form prescribed by the commissioner by October 1 of each year. The commissioner will provide guidance on the topics for the continuing education training required under this subsection.

(c) The commissioner may deny registration for a certified application counselor and other nonnavigator assisters, for any of the following:

1. Failure to possess requisite character, integrity, competency and trustworthiness. In addition to the requirements set forth in s. 628.04, Stats., and s. Ins 6.92 (3)

2. Commission of any act that would warrant the denial, suspension, or revocation of an insurance license or registration including any of the acts delineated in s. Ins 6.92 (3).

3. Failure to fully provide required or requested information, to complete requisite training including continuing education, to maintain certification from the federal government as a certified application counselor or nonnavigator assister entity.

(3) ENTITY REPORTING OF UPDATES. A nonnavigator assister entity shall comply with s. 628.96 (1), Stats., reporting in an electronic format as prescribed by the commissioner, any updates to the list of nonnavigator assisters that the nonnavigator assister entity provided when it first registered with the commissioner, including additions, deletions or modifications. The information shall be provided within 30 days of the addition, deletion or modification to the list of nonnavigator assisters.

(4) ENTITY LIABILITY. A nonnavigator assister entity assumes legal responsibility, in accordance with s. 628.96 (3), Stat., for the acts of the nonnavigator assisters, on behalf of the entity, that the entity employs, supervises or is formally affiliated with, that are performed in this state and that are within the scope of the apparent authority to act as a nonnavigator assister.

(5) REVOCATION OF ENTITY REGISTRATION. The commissioner may deny, suspend or revoke a nonnavigator assister entity registration if the nonnavigator assisters it employs, supervises or is affiliated with, fail to comply with s. Ins 6.92 (3), or the nonnavigator assister entity fails to comply with any provision contained in this section or by failing to comply with requests of the commissioner.

(6) INVESTIGATION AND REVIEW. (a) The commissioner, or designated examiner, may investigate and review all nonnavigator entities under ss. 601.43 and 601.44, Stats. The method and timing of the reviews shall be determined by the commissioner in each case and may consist of any of the following:

1. Consideration of information available from state, federal, or local agencies, private organizations or agencies, or interested persons.

2. Investigation upon receipt of a complaint from any person.

3. Any other information the commissioner deems relevant to the investigation.

(b) If, after the investigation the commissioner suspends, denies or revokes the registration, written notification shall be given with reasons for such action. The suspension, denial or revocation constitutes an order pursuant to s. 601.62 (3) (a), Stats., and the nonnavigator entity may request a hearing before the commissioner under that section.

Ins 6.96 Prohibited business practices. In addition to the prohibited acts contained in s. 628.95 (2), Stats., navigators, navigator entities, nonnavigator assisters and nonnavigator assister entities are prohibited from all of the following:

(1) Providing enrollment or other specific information regarding a health benefit plan that is not offered in the federal exchange.

(2) Providing a recommendation comparing health benefit plans that may be better or worse for the consumer or employer.

(3) Making misleading statements to a consumer or employer regarding or otherwise misrepresenting one's qualifications or services.

(4) Offering a recommendation directly to a consumer or employer regarding a particular health benefit plan concerning deductible, coinsurance, or any substantive benefits, terms or conditions of the contract.

(5) Asking or urging a consumer to apply for a particular health benefit plan from a particular insurance company.

(6) Distributing cards, documents or advertisements regarding a particular health insurer.

(7) Recommending a particular health benefit plan or insurer.

(8) Receiving consideration directly or indirectly from any health insurer in connection with the enrollment of individual or employees into a qualified health plan as defined 45 CFR § 155.20, as amended.

(9) Using a single appointment for selling, soliciting or advising a consumer or employer about a product other than health benefit plans by a navigator or nonnavigator assister who is also a licensed insurance agent. Insurance agents shall make a separate appointment with the consumer or employer for selling, soliciting or advising about a product other than a health benefit plan.

6.97 Navigator, nonnavigator assister, navigator entity, and nonnavigator assister entity records. (1) PURPOSE. This section protects consumers by prescribing minimum standards and techniques of accounting and data handling of navigators, nonnavigator assisters, navigator entities and nonnavigator assister entities to ensure that timely and reliable information will exist, if applicable, and be available to the commissioner. This section implements and interprets ss. 601.42 and 628.34, Stats., by establishing the minimum records that are to be maintained.

(2) RECORDKEEPING REQUIREMENTS. (a) Beginning October 1, 2013, each navigator, nonnavigator assister, navigator entity or nonnavigator assister entity shall maintain, for at least

a 3-year period, unless a specific period is provided elsewhere, all of the following financial, consumer and employee records arising from or related to the activities of the navigator or nonnavigator assister, as applicable:

1. Business checking account.

2. Cash disbursed records.

3. Cash receipts records.

4. Personnel records.

5. Consumer or policyholder records.

(b)CASH DISBURSED RECORD. The cash disbursed record shall show the name of the party to whom the payment was made, date of payment, and reason for payment.

(c) CASH RECEIPTS RECORD. The cash receipts record shall show the name of the party who remitted the money, date of receipt, and reason for payment.

(d) PERSONNEL RECORDS. Personnel records shall include dates of employment, supervision or affiliation; position held; description of principal duties; name and last known address and telephone number of employee, supervisee or affiliated person.

(3) PLACE OF MAINTAINING RECORDS. (a) The navigator or navigator entity shall maintain records, if any, required by sub. (2) at the business address of the navigator or the navigator entity, or at another location only if the navigator provides written notice of the other location to the commissioner.

(b) The nonnavigator assister or nonnavigator assister entity shall maintain records, if any, required by sub . (2), at the business address of the nonnavigator assister entity or at another location only if the nonnavigator assister entity provides written notice of the other location to the commissioner.

(4) UPDATING RECORDS. The navigator, navigator entity, and nonnavigator assister entity shall maintain financial records, if any, all records of compliance with prelicensing training

completion, successful passage of the examination and continuing education completion, compliance with federal training and other federal requirements for the navigators and nonnavigator assisters it employs, supervises, or is affiliated with, as applicable for at least 3 years from the transaction of an insurance business.

Ins 6.98 Prohibition of uses of designations. (1) PROHIBITED USES OF DESIGNATIONS. It is an unfair and deceptive trade practice under s. 628.34 (12), Stats., for a person to use terms including "navigator," "navigator entity," "nonnavigator assister," "certified application counselor," "certified," and "nonnavigator assister entity," in such a way as to mislead a purchaser or prospective purchaser that the person has special certification or training in advising or providing services to consumers in connection with the advertising, solicitation, sale, or purchase of a health benefit plan or in the provision of advice as to the advisability of purchasing a health benefit plan, either directly or indirectly, offered in the state either within or outside the exchange. The terms may not be used by a person who is not licensed as a navigator or registered as a nonnavigator assister. The terms may not be used alone or in combination with one or more terms such as "certified," "licensed," "registered," or like words, in the name of a certification or professional designation unless such terms appear in a certification or professional designation and that person has attained the certification or professional designation.

(2) PENALTIES. A violation of this section is an unfair and deceptive trade practice under s. 628.34 (12), Stats., and shall subject the violator to ss. 601.41, 601.62, 601.64, 601.65 and 628.10, Stats.

Ins 6.99 Exemption. (1) (a) State and local governmental entities or any persons acting on behalf of a state or local governmental entity are exempt from ss. Ins 6.91 to 6.98 provided all of the following are met:

1. All communications, advertisements, notices or other marketing materials including verbal communications must identify the entity as working on behalf of the state or local unit of government.

2. The state or local unit of government, upon request, confirms to the commissioner that the entity is responsible or has an agreement or contract that establishes financial responsibility for the acts of the entity and the individual navigators, and nonnavigator assisters employed, supervised or affiliated with the entity.

3. The state or local governmental entity shall not use any term or designation denoting that it is certified as a navigator, nonnavigator assister or related entity unless the person, persons or entity using the term or designation is in compliance with ss. Ins 6.92 or 6.95 and any other applicable sections.

(b) Federal governmental entities or any persons acting on behalf of a federal governmental entity through a federal contract are exempt from ss. Ins 6.91 to 6.98 provided all of the following are met:

1. All communications, advertisements, notices or other marketing materials including verbal communications must identify the entity as working on behalf of the federal government.

2. The federal government, upon request, confirms to the commissioner that the federal governmental is responsible or has an agreement or contract that establishes financial responsibility for the acts of the entity and the individual navigators, and nonnavigator assisters employed, supervised or affiliated with the entity.

3. The state or local unit of governmental entity shall not use any term or designation denoting that it is certified as a navigator, nonnavigator assister or related entity unless the person, persons or entity using the term or designation is in compliance with ss. Ins 6.92 or 6.95 and any other applicable sections.

(c) 1. Employees of a health care facility, including hospitals, clinics and other health care facilities are exempt from ss. Ins 6.91 to 6.98 if as part of their employment they provide

assistance to patients including assistance with enrollment in state or federal assistance programs.

2. The health care facility, including hospitals, clinics and other health care facilities shall not use any term or designation denoting that it is certified as a navigator, nonnavigator assister or related entity unless the person, persons or entity using the term or designation is in compliance with ss. Ins 6.92 or 6.95 and any other applicable sections.

SECTION 2. Effective Date. This rule will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 24th day of June, 2014.

Theodore K. Nickel
Commissioner

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

Section Ins 6.91 relating to navigators and nonnavigator assisters and affecting small business.

The proposed rule will not have a significant effect on the private sector. With an exemption for state, local and federal governmental entities, there will be no effect on county, city, village, town, school district, technical college district and sewerage districts. Additionally the office will be able to manage any cost associated with maintaining the licensure and registration process without additional state funds being provided to the office during this current biennium.