

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 362**

As Amended by Senate Committee on Public  
Health and Welfare

**Brief\***

SB 362, as amended, would create the Health Care Insurance Navigator Registration Act and would require health care insurance navigators to register on or before July 1, 2015, with the Attorney General prior to performing services or offering to perform services under the health care exchange requirements of the federal Affordable Care Act.

***Health Care Insurance Navigators Defined (Section 2)***

As used in the registration act, a “health care insurance navigator” would mean an individual who is selected to perform the activities and duties identified in 42 USC § 18031(i) (which addresses navigators in general and the related eligibility, duties, standards, fair and impartial information and services, and funding). A health care insurance navigator would include:

- Any individual who performs the activities and duties identified in 42 USC § 18031(i) and who is employed by any person who receives grant moneys from the U.S. Department of Health and Human Services, state or a health care exchange or receives private moneys to perform those activities and duties;
- Non-navigator assistants (outlined in 45 CFR § 155.205(d)); and
- Certified application counselors (outlined in 45 CFR § 155.225).

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill also would define other terms including “data breach” and “personal information.”

***Registration of Health Care Insurance Navigators; Duties and Compliance; Applicant Criteria (Sections 3-5)***

The bill would require persons who perform, offer to perform, or advertise any service as a health care insurance navigator or who receive health care insurance navigator grant funding to register with the Attorney General on or before June 30, 2015. The Attorney General would be required to maintain a website for the purpose of providing the public with a complete list of all currently registered health care insurance navigators.

***Compliance***

Navigators, in compliance with the registration act, would be required to:

- Conduct public education activities to raise awareness of the availability of qualified health plans (QHPs);
- Distribute fair and impartial information concerning enrollment in QHPs offered within the exchange and the availability of premium tax credits and cost sharing reductions;
- Facilitate enrollment in QHPs;
- Provide referrals to appropriate federal and state agencies for any enrollee with a grievance, complaint or question about a health plan or coverage; and
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange.

### *Application*

The bill would require registration and renewal applicants to apply on a form prescribed by the Attorney General and to declare, under penalty of perjury, that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief. A navigator would be required to:

- Have at least a high school diploma or general equivalency diploma;
- Successfully complete all federal and state training provided by the exchange or equivalent state requirements as determined by the Attorney General;
- Submit a set of fingerprints;
- Submit a \$100 non-refundable application renewal or registration fee;
- Reside in Kansas or maintain the principal place of business in the state;
- Disclose any disqualification due to having committed any act that would be grounds for denial, suspension or revocation of the person's registration; and
- Be a U.S. citizen or legal alien who possesses work authorization from the U.S. Bureau of Citizenship and Immigration Services.

The bill further would set out information that would be required to be reported on the navigator's application form. Among the required content the applicant must provide would be information concerning the applicant's credit rating and bankruptcies, as required by the Attorney General, and other information as required by rules and regulations set forth by the Attorney General.

The bill would authorize the Attorney General to not issue or to deny, suspend, revoke, or refuse to renew a registration in certain circumstances. Those circumstances would include conviction of any felony, conviction of a misdemeanor offense involving fraud or dishonesty, engaging in intentional or negligent conduct that resulted in the unauthorized release of a consumer's personal information and being convicted of any violation of KSA 2013 Supp. 21-5839 (unlawful acts concerning computers). The bill would provide for notice and opportunity for a hearing, in accordance with the Kansas Administrative Procedure Act (KAPA), upon any action taken that affects a registration or imposes an administrative penalty.

#### *Data Breaches; Reporting to the Legislature*

The bill would require health care insurance navigators and persons who employ such navigators to report to the Attorney General any data breach that results in the unauthorized release of a consumer's personal information. The report must be made within 24 hours after the discovery of the data breach. The Attorney General would be required to submit a report detailing the data breaches, on or before February 1 of each year, to the Senate President and Minority Leader and the House Speaker and Minority Leader.

#### *Prohibited Acts*

The bill would specify a number of activities a health care insurance navigator could not perform, including:

- Selling, soliciting, or negotiating insurance for any class of insurance when assisting individuals with enrollment or any other navigator activities or duties;
- Offering advice about which health insurance plan is better or worse for a particular individual or employer;

- Providing information or services related to any health insurance plan or other product not offered in the health care exchange; and
- Accepting any compensation or consideration directly or indirectly from any issuer of accident and health insurance or stop-loss insurance that is dependent on whether a person enrolls in or purchases a particular private health insurance plan.

### *Fingerprinting*

The Attorney General, under provisions of the Act, would be permitted to require an original applicant to be fingerprinted and submit to a state and national criminal history record check. The fingerprints would be used to identify the applicant and to determine whether the applicant has a criminal history record in Kansas or other jurisdictions. The Attorney General would be authorized to submit such fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation and could use the information obtained for the purpose of verification of the applicant's identity and the official determination of character and fitness for registration. Local and state law enforcement officers and agencies would be required to assist the Attorney General in taking and processing fingerprints and also would be required to release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country to the Attorney General.

The bill also would provide for a fee associated with the fingerprinting of applicants and registrants to reimburse the Attorney General. Such moneys would be deposited in the Health Care Insurance Navigator Registration Fund, which would be created by the bill. Local law enforcement officers and agencies also would be permitted to charge a fee to be reimbursed for expenses incurred in taking and processing the fingerprints.

***Complaints and Violations of the Act (Sections 6-7)***

The bill would allow any person to file a duly verified complaint with the Attorney General alleging one or more violations of this act. The bill would authorize the Attorney General to prepare a complaint form that would include information about the alleged act or omission(s) that have been committed. The bill would authorize the Attorney General to investigate such acts and would permit the Attorney General, or any officer designated by the Attorney General, to, among other things, administer oaths and affirmations, subpoena witnesses, and adduce evidence and require production of any matter relevant to the examination and investigation.

Applicants or persons violating provisions of this registration act or any related rules and regulations could incur a civil penalty in an amount between \$100 and \$3,000 for each violation. In the case of continuing violations, every day the violation occurs could be deemed a separate violation. Such applicants would be permitted to make written request to the Attorney General for a hearing in accordance with KAPA.

***Rules and Regulations; Severability Clause (Sections 8-9)***

The bill would permit the Attorney General to adopt rules and regulations as deemed necessary for the administration of this act.

Finally, the bill would include a severability clause.

**Background**

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Pilcher-Cook. At the Senate Committee hearing, Senator Shultz and

a representative from Americans for Prosperity testified in support of the bill. Senator Shultz asked the Committee to consider training, background checks, bonding, and licensing as protections for insurance consumers. The Americans for Prosperity representative indicated the bill would hold accountable those individuals and groups who have been given approval and funding from the federal government to assist Kansans in the federal health care marketplace and, as these persons deal with personal and financial information, care must be taken to ensure the safety of this information. The representative suggested amendments to expand the definition of health care insurance navigator and to delete a provision regarding political activity. A representative of the Kansas Association of Insurance Agents submitted written testimony in support of the bill.

A Deputy Attorney General offered neutral testimony on the bill and indicated there are a number of approaches policymakers could take to regulate and background-check navigators. The critical point, the official indicated, is ensuring that background checks are conducted and oversight of navigators is implemented. A representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association submitted written neutral testimony that included an amendment regarding reimbursement for fingerprinting services.

Representatives of the Health Reform Resources Project, the Kansas Association of Area Agencies on Aging and Disabilities, the Kansas Association for the Medically Underserved (KAMU), and the Kansas Health Consumer Coalition appeared in opposition to the bill at the Senate Committee hearing. The KAMU representative spoke on behalf of the Kansas Marketplace Consortium and indicated the Consortium agrees background checks are good public policy and national criminal background checks have been implemented for all of the Consortium navigators. In addition, the Consortium maintains navigator support agreements with every organization that employs navigators. Other conferees spoke to the regulatory costs and the likelihood the bill would

affect the number of navigators providing services in Kansas. Written testimony in opposition to the bill was submitted by representatives of the American Cancer Society, the Center for Health and Wellness, the Kansas Association of Local Health Departments, the Kansas Insurance Department, REACH Healthcare Foundation, Salina Family Healthcare Center, the Wichita Independent Business Association, and a private citizen from Ellis.

The Senate Committee on Public Health and Welfare amendments expand the definition of “health care insurance navigator” to include non-navigator assistants and certified application counselors; delete a registration criterion that had required registrants to maintain a \$10,000 surety bond; delete a registration criterion relating to political activity; delay the registration deadline for initial applicants from January 1, 2015 to June 30, 2015; allow local enforcement officials to charge a fee for reimbursement for fingerprinting services; clarify the use of the Health Care Insurance Navigator Registration Fund; specify complaints regarding violations of the act would only be investigated by the Attorney General (the original language permitted investigation referrals to county or district attorneys); and update language regarding a request for an administrative hearing to comply with KAPA. Technical amendments also were made.

The fiscal note prepared by the Division of the Budget indicates the Attorney General estimates the bill, as introduced, would require a new 0.5 FTE position at a cost of \$27,900 per year to implement the bill. Also, \$6,100 for rent, \$1,500 for initial set-up expenses and \$5,000 in annual operating expenditures would be needed. Altogether, the fiscal note concludes, \$40,500 would be needed for FY 2015 and \$39,000 annually thereafter. Additional expenses could be incurred from defending any legal challenges upon passage of the bill and obtaining injunctive relief for any violations of the law. In its present form, there are portions of the bill, the fiscal note suggests, which would likely be challenged in court. The Office of the Attorney General would handle any lawsuit in-house, but may need to retain outside



counsel if the number of cases is large. There would be some case expenses that would involve the use of Kansas Tort Claim Act resources. The total cost of this potential litigation is estimated to range from \$10,000 to \$75,000.

The fiscal note also indicates the bill would allow the Attorney General to collect a registration fee from the navigators and charge for the cost of investigations and examinations of health insurance navigator operations. Both of these revenue sources would go into the Health Care Insurance Navigator's Registration Fund, which could be used only to pay the Kansas Bureau of Investigation for background checks. Civil penalties imposed by the Attorney General would go to the State General Fund.

The Office of Judicial Administration reports passage of the bill could increase the number of cases filed in district courts and the number of appeals relating to regulation of insurance navigators. Any complaints filed with the Attorney General could be investigated by that agency or could be referred to any county or district attorney. (The Senate Committee amendment removes referrals to county and district attorneys.) The Attorney General would be given the power to administer oaths and affirmations, subpoena witnesses, adduce evidence and impose civil penalties. The court system would become involved with the process if a health care insurance navigator failed to comply with the subpoena or order by the Attorney General. The court could order compliance with the Attorney General. Failure to obey would be punishable as contempt of court. Following an administrative action, an aggrieved party could appeal the final order to the district court. However, it is not possible to predict how complex or time-consuming the cases would be. Therefore, the fiscal note concludes, a precise fiscal effect cannot be determined.

Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.