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SENATE BILL NO. 542

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 20, 2014)

(Patron Prior to Substitute—Senator Martin)

A BILL to amend and reenact §§ 38.2-3455 and 38.2-3456 of the Code of Virginia and to amend the Code of Virginia by adding in Article 7 of Chapter 34 of Title 38.2 sections numbered 38.2-3457 through 38.2-3460, relating to the regulation of navigators for health benefit exchanges.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3455 and 38.2-3456 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 34 of Title 38.2 sections numbered 38.2-3457 through 38.2-3460 as follows:

§ 38.2-3455. Definitions.

As used in this article, unless the context requires otherwise:

"Exchange" means a health benefit exchange established or operated in the Commonwealth, including a health benefit exchange established or operated by the U.S. Secretary of Health and Human Services, pursuant to § 1311(b) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Qualified dental plan" means a limited scope dental plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(d)(2)(B)(ii) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Health carrier" has the same meaning assigned to that term in § 38.2-3438.

"Navigator" means an individual or entity described in 42 U.S.C. § 1311(i)(2) that is selected to perform the activities and duties identified in 42 U.S.C. § 18031(i) in the Commonwealth. "Navigator" does not include an individual or entity licensed as an agent under Chapter 18 (§ 38.2-1800 et seq.) of this title to sell, solicit, or negotiate contracts of insurance or annuity in the Commonwealth.

"Other affordable care options" means the programs provided under the state plan for medical assistance services pursuant to Title XIX of the Social Security Act, as amended, and the Family Access to Medical Insurance Security (FAMIS) Plan developed pursuant to Title XXI of the Social Security Act, as amended.

"Qualified dental plan" means a limited scope dental plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(d)(2)(B)(ii) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Secretary" means the Secretary of the U.S. Department of Health and Human Services.

§ 38.2-3456. Prohibited activities.

A. A navigator shall not:

1. Engage in any activity that would require an insurance agent license under this title;
2. Offer advice about which qualified health plan or qualified dental plan is better or worse for a particular individual or employer;

3. Act as an intermediary between an employer and an insurer that offers a qualified health plan or qualified dental plan offered through an exchange; or

4. Violate any unfair trade practice and privacy requirements in §§ 38.2-502, 38.2-503, 38.2-506, 38.2-509, 38.2-512, 38.2-515, 38.2-612.1, 38.2-613, and 38.2-614 to the extent such requirements are applicable to the activities of navigators; or

5. Receive compensation for services or duties as a navigator that are prohibited by federal law, including compensation from a health carrier.

B. An individual or entity shall not claim to be, or otherwise hold himself or itself out as, a navigator or conduct business as a navigator in the Commonwealth without having:

1. Having been selected as a navigator in accordance with applicable federal law and without having;

2. Having evidence of successful completion of all navigator requirements prescribed by the Secretary; and

3. Having met requirements established pursuant to § 38.2-3457.

C. If an individual or entity has engaged in the Commonwealth in one or more of the prohibited activities identified in this section, a complaint may be filed with the Commission. The Commission,

60 upon investigation and verification of the prohibited activity or activities, may order such individual or
61 entity to cease and desist such prohibited conduct.

62 **§ 38.2-3457. Application for registration.**

63 A. On or after September 1, 2014, no individual or entity shall act as a navigator in the
64 Commonwealth unless such individual or entity has been certified by the U.S. Department of Health and
65 Human Services and registered with the Commission.

66 B. An application for registration under this article shall be in the form and containing the
67 information the Commission prescribes. Each applicant shall, at the time of applying for registration,
68 pay a nonrefundable application processing fee in an amount and in a manner prescribed by the
69 Commission. A criminal history record report shall accompany each individual registration application.

70 C. The Commission shall register the applicant if it finds that the character and general fitness of
71 the applicant are such as to warrant belief that the applicant will act as a navigator fairly, in the public
72 interest, and in accordance with law.

73 **§ 38.2-3458. Power of Commission to investigate navigators.**

74 A. The Commission shall have the power to examine and investigate the affairs of any person
75 engaged or alleged to be engaged in navigator activities in the Commonwealth to determine whether the
76 individual or entity has engaged or is engaging in any violation of this article.

77 B. Each registered navigator shall report to the Commission within 30 calendar days the following:
78 (i) any action taken by the U.S. Department of Health and Human Services to decertify the navigator;
79 (ii) upon conviction of a felony, the facts and circumstances surrounding that conviction; and (iii) the
80 disposition of the matter of any administrative action taken against the navigator in another jurisdiction
81 or by another governmental agency in the Commonwealth.

82 **§ 38.2-3459. Grounds for termination, placing on probation, revocation, or suspension of**
83 **registration.**

84 A. If the Commission determines that a registered navigator has violated this article, or any order or
85 regulation adopted thereunder, after notice and opportunity to be heard, the Commission may impose a
86 penalty in accordance with §§ 38.2-218 and 38.2-219 and place on probation, suspend, or revoke any
87 individual's or entity's registration.

88 B. The registration of any navigator shall terminate immediately when such navigator becomes
89 decertified by the U.S. Department of Health and Human Services, whether or not the Commission has
90 been notified of such decertification.

91 **§ 38.2-3460. Sufficiency of federal requirements; additional standards and qualifications for**
92 **navigators.**

93 The Commission may determine whether the standards and qualifications for navigators provided by
94 42 U.S.C. § 18031 and any regulations enacted thereunder are sufficient to ensure that navigators can
95 perform the required duties. If the Commission determines that the standards and qualifications are
96 insufficient, the Commission shall make a good faith effort to work in cooperation with the Secretary to
97 propose improvements. If after a reasonable interval the Commission determines that the standards and
98 qualifications remain insufficient, the Commission shall adopt regulations establishing additional
99 standards and qualifications to ensure that navigators can perform their required duties.