

**SUBCHAPTER W. Regulation of Navigators for Health Benefit Exchanges**  
**28 TAC §19.4001 – 19.4018**

**1. INTRODUCTION.** The Texas Department of Insurance proposes new Subchapter W, 28 TAC §19.4001 – 19.4018, concerning Regulation of Navigators for Health Benefit Exchanges. In accord with Senate Bill 1795, 83rd Legislature, Regular Session, these new sections are necessary to provide a state solution to help and protect Texas consumers by ensuring the security of their private information and ensuring that they are able to find and apply for affordable health coverage under the federally-run health benefit exchange with the assistance of qualified navigators.

**Background – ACA §1311 and SB 1795.** The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, which made amendments to the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. Collectively, these laws are referred to as the Affordable Care Act (ACA).

The ACA alters the way health insurance is addressed in federal law. Among other changes, it lays groundwork for a new forum consumers can use to shop for health insurance. The ACA requires creation of “American health benefit exchanges” (exchanges), which are marketplaces through which consumers can purchase health benefit plans that meet minimum requirements of the ACA and the regulations adopted under it. The plans are called “qualified health plans.” ACA §1311(b) and §1321(b) call for each state to establish its own exchange no later than January 1, 2014. ACA §1321(c)(1) requires the U.S. Department of Health and Human Services (HHS) to establish and operate such exchanges within states that elect to not establish an

exchange or that do not have an exchange operable by January 1, 2014. Federal regulations and guidance generally refer to these exchanges as “federally-facilitated exchanges.” Open enrollment in the exchanges was set to begin October 1, 2013.

In a letter dated July 9, 2012, Governor Rick Perry informed the secretary of HHS that Texas would not establish an exchange. Governor Perry reiterated this message in a letter dated November 15, 2012.

ACA §1311 requires each exchange to establish a program under which awards are granted to entities that carry out consumer assistance functions. These entities are called “navigators,” and their required duties as set out in ACA §1311(i)(3) include assisting consumers in completing the application for health coverage affordability programs available through a health benefit exchange; explaining how health coverage affordability programs work and interact, including Medicaid, the Children’s Health Insurance Program, or advance premium tax credits and cost-sharing assistance; explaining health insurance concepts related to qualified health plans, including premiums, cost sharing, networks, or essential health benefits; providing culturally and linguistically appropriate information; avoiding conflicts of interest; and establishing standards and processes relating to privacy and data security. In addition, ACA §1311(i)(4) requires HHS to establish standards for navigators, including provisions to ensure that any private or public entity selected as a navigator is qualified, and licensed if appropriate, to engage in the navigator activities described in ACA §1311(i) and to avoid conflicts of interest. ACA §1311(i)(5) also requires the HHS Secretary to work in collaboration with states to develop standards to ensure that information made available by navigators is fair, accurate, and impartial.

The 83rd Texas Legislature's regular session convened on January 8, 2013, and it adjourned sine die on May 27, 2013. The deadline for filing bills during the regular session was March 8, 2013, and as of that date, HHS had proposed no federal standards for navigators. Federal standards for navigators were not proposed prior to the Legislature's deadline for filing bills, so the members of the Legislature did not know what standards would be in place to regulate navigators and provide protection for the citizens of Texas under the new system of exchanges that would begin operation on October 1, 2013.

To address the uncertainty and the lack of federal standards for navigators, and to ensure that the authority to set standards for navigators in Texas had been established, State Senator Kirk Watson authored SB 1795 and filed it on the filing deadline, March 8, 2013. The intent of SB 1795, as recorded in the author's statement of intent in the Senate Research Center's analysis of the filed bill, is to "provide consumer protection by requiring that navigators, as established by the Patient Protection and Affordable Care Act (Act), have the training necessary to advise and guide the public through the process of finding the most appropriate health insurance options available to them." Additionally, the purpose of the law as stated in Insurance Code §4154.001 is to "provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state."

HHS proposed standards for navigators nearly one month after Senator Watson filed SB 1795. On April 5, 2013, the *Federal Register* included a proposed regulation addressing "Patient Protection and Affordable Care Act; Exchange Functions:

Standards for Navigators and Non-Navigator Assistance Personnel” at 78 Fed. Reg.

20581. But HHS did not adopt the proposed federal regulation during the regular session of the 83rd Texas Legislature, and it was not clear what standards the federal government would ultimately apply to navigators.

SB 1795 proceeded through the legislative process with much support in both the Senate and the House. The bill passed out of the Senate with 30 “yeas” and one “nay.” It passed out of the House with 120 “yeas,” 26 “nays,” and one representative present who did not vote. The Senate concurred with the House amendments to the bill with 30 “yeas” and one “nay,” and the bill was passed on May 26, 2013. Governor Rick Perry signed SB 1795 into law on June 14, 2013. The effective date for SB 1795 was September 1, 2013.

Over a month after SB 1795 was signed into law HHS adopted standards for navigators. HHS published its adoption order titled “Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors” in the *Federal Register* at 78 Fed. Reg. 42824 on July 17, 2013.

**Provisions of SB 1795.** SB 1795 adds new Chapter 4154 (relating to Navigators for Health Benefit Exchanges) to Insurance Code Title 13, Subtitle D. SB 1795 requires the commissioner to adopt rules necessary to implement the bill’s provisions and to meet the minimum requirements of applicable federal law. The commissioner must determine whether standards and qualifications for navigators provided under Title 42 United States Code (USC) §18031, which is the codified version

of ACA §1311, and any regulations enacted under that section are sufficient to ensure that navigators can perform their required duties. If the commissioner determines that the standards are insufficient, the commissioner must make a good faith effort to work in cooperation with HHS and to propose improvements to the federal standards. If after a reasonable interval the federal standards remain insufficient, the commissioner may adopt rules to establish standards and qualifications to ensure that navigators in Texas can perform their required duties.

SB 1795 specifies minimum standards that must be included in the navigator rules the commissioner adopts. It also requires the commissioner to obtain from the exchange a list of all navigators providing assistance in Texas and, with respect to an individual, the name of the individual's employer or organization. The bill also allows the commissioner to establish, by rule, a state registration for navigators sufficient to ensure that the minimum standards in SB 1795 are satisfied and the information is collected.

SB 1795 includes restrictions on navigator advertising and prohibits a navigator from receiving compensation for services or duties as a navigator that are prohibited by federal law.

The bill requires the commissioner to adopt rules authorizing additional training for navigators as necessary to ensure compliance with changes in state or federal law. In addition, the bill prohibits a navigator from performing certain acts unless the navigator is licensed to act as a life, accident, and health insurance agent.

**Federal standards for navigators.** Two sections in Title 45 of the Code of Federal Regulations (CFR) address federal standards for navigators, and a third section in the title addresses privacy requirements, including some provisions applicable to

navigators. Title 45 CFR §155.210 addresses “Navigator program standards.” This section addresses the navigator standards a state-operated exchange must implement. It also addresses requirements for an entity eligible to receive a navigator grant, prohibitions on navigator conduct, and duties of a navigator. Title 45 CFR §155.215 addresses “Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §155.205(d) and (e) in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant.” Because Texas has a federally-facilitated exchange, this section provides the standards applicable to navigators in Texas. Finally, 45 CFR §155.260 addresses “Privacy and security of personally identifiable information.” This section primarily addresses requirements for exchanges, but it also includes a subsection concerning non-exchange entities, including navigators.

Under 45 CFR §155.210, to be eligible to receive a navigator grant an entity or individual must: have or be able to establish relationships with employers, employees, consumers, and self-employed individuals likely to be eligible for enrollment in qualified health plans; meet state and exchange licensing, certification, or other standards that do not prevent the application of the ACA; not have a conflict of interest; and comply with privacy and security standards adopted under 45 CFR §155.260.

The prohibitions on navigator conduct in 45 CFR §155.210 require that an exchange ensure that navigators: not be health or stop loss insurance issuers or subsidiaries of health or stop loss insurance issuers, not be an association with members of or which lobbies on behalf of the insurance industry, or not receive direct or

indirect consideration from health or stop loss insurance issuers for enrollment of individuals or employees in health plans.

The standards in 45 CFR §155.215 address conflicts of interest; training, including certification and recertification standards and training module standards; provision of culturally and linguistically appropriate services; and ensuring access by persons with disabilities.

In part, the conflict of interest standards under 45 CFR §155.215 echo the prohibitions in 45 CFR §144.210. The standards require that navigator entities and grant applicants submit to the exchange a written attestation that the navigator and the navigator's staff are not health or stop loss insurance issuers, are not subsidiaries of health or stop loss insurance issuers, and will not receive direct or indirect consideration from health or stop loss insurance issuers for enrollment of individuals or employees in health plans. In addition, under the section a navigator entity must submit a plan to remain free of conflicts during its term as a navigator. The navigator entity and its staff must provide information to consumers about the full range of qualified health plans and insurance affordability programs available to a consumer. Finally, the navigator entity and its staff must disclose in plain language to the exchange and any consumer the navigator entity assists: all lines of permissible insurance business it intends to sell; any employment relationships with health or stop loss insurance issuers or their subsidiaries it has or it has had within the last five years; and any existing or anticipated financial, business, or contractual relationships with health or stop loss insurance issuers or their subsidiaries.

The conflict of interest standards under 45 CFR §155.215 do not address conflicts of interest due to criminal history of navigators or electioneering by navigators. In addition, they do not state what occurs if a navigator entity or its staff fails to comply with the standards, and they do not require that a navigator entity have in place any form of financial responsibility if a consumer is harmed due to a navigator entity or its staff failing to avoid a conflict of interest. The conflict of interest standards also do not address a state's role in taking action if a consumer is harmed due to a navigator's conflict of interest.

The training standards under 45 CFR §155.215 provide certification and recertification standards, and they list training module standards in which navigators must receive training.

Under the certification and recertification standards of 45 CFR §155.215, navigators must register for and complete HHS-approved training. In addition, before assisting consumers, navigators must pass all approved certification examinations based on the HHS-approved training and obtain certification from HHS.

Under 45 CFR §155.215, the training modules in which a navigator must receive training include qualified health plans, how they operate, benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual health plans; the range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program, and other public programs; tax implications of enrollment decisions; eligibility requirements for premium tax credits and cost sharing reductions, and the impact of premium tax credits on the cost of premiums; federal, state, and local agency contact information for consumers seeking additional

information about coverage options not available through the exchange; basic concepts about health insurance and the exchange, such as the benefits of having health insurance and enrolling through the exchange and the individual responsibility to have health insurance; eligibility and enrollment rules and procedures, and how to appeal an eligibility determination; providing culturally and linguistically appropriate services; ensuring physical and other accessibility for people with a full range of disabilities; understanding differences among health plans; privacy and security standards under 45 CFR §155.260 for handling and safeguarding consumers' personally identifiable information; working effectively with individuals with limited English proficiency, people with disabilities, and vulnerable, rural, and underserved populations; customer service standards; outreach and education methods and strategies; and applicable administrative rules, processes, and systems related to exchanges and qualified health plans.

The training standards stated in 45 CFR §155.215 do not address Texas-specific Medicaid; privacy beyond the standards under 45 CFR §155.260; or navigator ethics. The listed contents of the training modules do not include such necessary areas as: Texas Medicaid eligibility, enrollment processes, or benefits; Texas statutes and rules protecting nonpublic information; insurance fraud; ethical behavior of navigators; duty of navigator to a consumer; or the difference between ethics and laws.

The culturally and linguistically appropriate services standards under 45 CFR §155.215 require that navigators ensure that information they provide is culturally and linguistically appropriate to the needs of consumers being served, including individuals with limited English proficiency. Under the standards, navigators must develop and

maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs.

Under the culturally and linguistically appropriate services standards of 45 CFR §155.215 navigators must collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken. They must provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary or when requested by the consumer to ensure effective communication. Navigators can only rely on a consumer's family or friends as oral interpreters when requested by the consumer as the preferred alternative to an offer of other interpretive services. Navigators must provide oral and written notice to consumers with limited English proficiency, in their preferred language, to inform their right to receive language assistance services and how to obtain them.

Navigators must receive ongoing education and training in culturally and linguistically appropriate service delivery under the culturally and linguistically appropriate services standards of 45 CFR §155.215. They must also implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

The standards ensuring access by persons with disabilities, set out in 45 CFR §155.215, require that navigators ensure that any consumer education materials,

websites, or other tools used for consumer assistance purposes are accessible to people with disabilities, including people with sensory impairments, mental illness, addiction, and physical, intellectual, or developmental disabilities. To ensure effective communication, navigators must also provide auxiliary aids and services for individuals with disabilities at no cost to the individual, when necessary or when requested by a consumer. A navigator may only use a consumer's family or friends as interpreters when the consumer requests their assistance as the consumer's preferred alternative to the offer of other auxiliary aids and services. In addition, a navigator must: provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities; ensure that authorized representatives are permitted to assist an individual with a disability to make informed decisions; and acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term service and support programs. Finally, 45 CFR §155.215 requires that a navigator must be able to work with all individuals regardless of age, disability, or culture, and should seek advice or experts when needed.

The privacy requirements in 45 CFR §155.260 state that an exchange must require that navigators who gain access to personally identifiable information submitted to an exchange, and navigators who collect, use, or disclose personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while performing functions under an agreement with an exchange, must agree to the same or more stringent privacy and security standards as apply to the exchange.

Title 45 CFR §155.260 does not address what privacy requirements apply to a navigator who has not entered into an agreement with an exchange.

**Department consideration of federal standards for navigators.** After HHS adopted standards for navigators on July 17, 2013, department staff began reviewing them. Additionally, other agencies in Texas concerned with consumer protection reviewed the standards HHS adopted.

In a letter dated August 14, 2013, Texas Attorney General Greg Abbott joined 12 other attorneys general in a letter addressing concerns with the federal regulations. The letter set out issues the attorneys general identified in the federal standards, including inadequate training requirements and less consumer protection than in other contexts. The letter urged further work on the federal standards. It also raised questions about shortcomings in the standards, such as: limited requirements for screening navigator personnel, and lack of required background checks; unclear guidance on protection of consumer privacy, applicability of privacy laws, HHS monitoring of navigator compliance with privacy requirements, and outreach to consumers regarding privacy rights; liability of navigators who cause harm; fraud prevention and penalties for navigators who cause harm or commit fraud; and the role states have in regulating navigators.

In a letter to the commissioner dated September 17, 2013, Governor Rick Perry also addressed concerns with the standards for navigators set out in federal regulations. Governor Perry noted that the nature of a navigator's work and access to confidential information such as birth dates, social security numbers, and financial information make it imperative that navigators have training on the collection and security of data.

On September 30, 2013, the department conducted a stakeholder meeting to gather information from the public regarding registration of navigators, training of navigators, safeguards to protect consumer privacy, and continuing education

requirements for navigators. During the meeting 16 people spoke, including two members of the Legislature, representatives of navigator entities, individual navigators, and representatives of consumer and health care provider groups.

The department invited HHS to participate in the stakeholder meeting in order to hear and respond to Texas stakeholders' concerns regarding navigators. In response Gary Cohen, deputy administrator and director of the Center for Consumer Information and Insurance Oversight, replied to the invitation on November 1, 2013, with a request to discuss any issues that arose during the stakeholder meeting.

During the stakeholder meeting, the department learned that one navigator entity in Texas had taken steps to provide protections beyond those set out in federal standards. These steps included background checks on employees and extra training focused on Texas Medicaid and privacy. The department learned that another navigator entity had also addressed possible shortfalls in its own way, by applying privacy rules that it already had in place and using mostly existing staff that were already well versed in programs such as Medicaid, Medicare, and the Children's Health Insurance Program.

The department received correspondence from other entities and individuals following the stakeholder meeting, with questions about how they could become navigators and how navigators should operate in Texas. In particular, one group that is not operating with the benefit of a federal navigator grant asked for guidance on how it could proceed as a navigator.

The department conducted additional investigation into the federal standards for navigators in follow up to the stakeholder meeting. The department met or conducted

teleconferences with navigator entities, consumer advocates, and representatives of health care provider groups.

The department also conducted multiple conference calls with HHS regarding the federal standards.

In speaking with HHS staff, the department learned much about how the federal government oversees the regulation of navigators and how it applies its standards. Most notably, the department learned that the HHS navigator regulations only apply to entities who receive navigator grants and the individuals who represent those entities as navigators, while other related HHS regulations only apply to certified application counselors or in-person assisters. (Certified application counselors are individuals who provide some consumer service functions similar to those navigators provide, but do so under separate regulations and with separate funding sources. In-person assisters also provide functions similar to navigators, but are employed by contractors hired by HHS.) HHS does not believe it has jurisdiction over any other entity or individual who offers or provides navigator services, and it is up to states to regulate or oversee any entity or individual offering to provide navigator services who is not a federal grant recipient.

Also notable is the fact that many of the standards navigators are held to are not contained in regulation, but rather in contracts between HHS and navigator grant recipients. The department requested a navigator contract in order to view what standards exist, but HHS declined to provide one. The department also requested that HHS provide a contract template, if it determined that it could not release an executed contract, but HHS also declined that request. Finally, the department requested just the portion of a contract addressing navigator privacy standards. HHS initially agreed to

provide such a portion, but when the department followed up with HHS on this agreement, HHS declined to provide an example from a navigator contract, and instead provided a portion from a certified application counselor agreement. The email that included the portion of the certified application counselor agreement included assurance that the “terms of this document are very similar to the ones applicable to navigators.”

Though the department was unable to review the actual standards that HHS holds navigators to in its contracts with them, the department did glean from the calls with HHS a picture of what those standards include.

The contracted standards apparently do not include requirements for qualifications of individuals acting as navigators for navigator grant recipients. Instead, HHS evaluated the entities themselves during the grant review process to determine if the organizations met standards that would show they could provide professional and appropriate staff. HHS does not conduct or require a background check on navigators or individuals who represent navigator grant recipients.

Navigators have access to a consumer’s name, phone number, and, in some instances, other personal information, and HHS staff said that there are limited circumstances where a navigator may retain personal information for a period of time. However, HHS staff said that navigators cannot access information contained in a consumer’s application once the application is submitted. Additionally, HHS encourages navigators to have consumers enter their own information into the online application, to limit navigator access to personal information.

In regard to navigator training, the department learned that any person can access the federal training modules available to navigator grant recipients. An

individual who takes and passes the training will receive a certificate saying the individual passed the training, but the individual will not actually be certified by HHS unless the individual is verified by a navigator grant recipient. HHS has not finalized the training requirements for navigators who receive grants in 2014, but HHS will require up to 12 hours of continuing education for those who want to continue as navigators next year.

Following the department's review of the federal regulations setting standards for navigators, meetings with stakeholders, and discussions with HHS, the department posted an outline of solutions for potential insufficiencies identified by department staff. The outline presented steps that could be taken in either federal regulations or state rules to address issues with the standards set by the federal regulations. The department invited the public to comment on the outline, and has taken into consideration the comments it received in preparation of this rule proposal. The department will continue to take into consideration all comments stakeholders submit during the proposal comment period.

**Commissioner determination regarding sufficiency of federal standards.**

Insurance Code §4154.051(a) charges the commissioner with reviewing and determining the sufficiency of standards for navigators set under 42 USC §18031 and regulations enacted under that section. Additionally, Insurance Code §4154.051(b) requires the commissioner to establish standards and qualifications to ensure that navigators can perform their required duties. Based on the findings as outlined in this introduction, the commissioner has determined there are insufficiencies in the navigator standards set by federal regulation that should be corrected, and in compliance with

Insurance Code §4154.051(b) the commissioner proposes standards and qualifications to ensure navigators can perform their required duties.

A fundamental flaw in the HHS standards for navigators is that many of the standards are apparently included in confidential contracts, rather than regulations available for public review. Standards set by contract in this way cannot be enforced by or against entities or individuals who are not party to the contract. Because HHS will not disclose to the department the contents of its contracts with navigators, it is not clear what specific standards are in place and whether standards are uniformly applied to all navigators. In addition, because HHS can change its contracts with navigators, it is not clear if the standards contained in current contracts will be included in future contracts or be applied in the same way over time.

The commissioner finds that insufficiencies exist in the standards set by federal regulations in the following areas: applicability of federal regulations to navigators, qualifications of individuals who serve as navigators, education requirements for navigators, privacy requirements, and accountability of navigators.

*Applicability of federal regulations:* The standards set by federal navigator regulations under 42 USC §18031 are not applicable to all entities or individuals who purport to be navigators or who provide navigator services. They are only applicable to navigator grant recipients. Entities or individuals who provide navigator services but who are not grant recipients and do not work with a grant recipient are currently unregulated, and HHS said that it is up to states to regulate such entities and individuals.

To address this insufficiency, the commissioner proposes standards that, under §19.4003, are generally applicable to all entities and individuals performing the navigator function through a health benefit exchange including: federal navigator grant recipients; individuals employed by, associated with, or partnered with a federal navigator grant recipient; and entities or individuals who are neither federal navigator grant recipients, nor employed by, associated with, or partnered with a federal navigator grant recipient.

*Qualifications of individuals who serve as navigators:* The standards set by federal navigator regulations under 42 USC §18031 do not establish standards for or require background checks of individuals a navigator entity selects to serve as navigators. As acknowledged by HHS Secretary Kathleen Sebelius in a congressional hearing on October 30, 2013, under current federal standards the lack of a required background check means that a convicted felon could be hired as a navigator. During the hearing, Secretary Sebelius repeated a response HHS had included in the adoption order for the regulation setting federal navigator standards. She said states could create requirements for background checks. If a background check requirement were in place, it would satisfy one of the minimum standards for navigators set by Chapter 4154, the prohibition on convicted felons being navigators in Texas.

To address this insufficiency and implement the requirement in Chapter 4154, the commissioner proposes standards in §19.4005 that require navigators to: be 18 years of age; provide proof of U.S. citizenship or compliance with all federal laws pertaining to employment or to the transaction of business in the United States; provide proof of compliance with education requirements; submit to fingerprinting and a

background check; and be an individual eligible for an authorization issued by the department under the guidelines in 28 TAC §1.502 (relating to Licensing Persons with Criminal Backgrounds).

*Education requirements for navigators:* The standards set by federal navigator regulations under 42 USC §18031 do not require navigators to receive education related to Texas Medicaid, Texas statutes and rules protecting nonpublic information, or ethics.

To address this insufficiency, the commissioner proposes §19.4009, which requires that, in addition to meeting federal education requirements, individuals who would provide navigator services receive an additional 40 hours of education on Texas-specific Medicaid, applicable privacy requirements, and ethics. Section 19.4009 also provides that, in addition to federal continuing education requirements, navigators receive an additional six hours of education on Texas-specific Medicaid, applicable privacy requirements, and ethics each year.

*Privacy requirements:* The standards set by federal navigator regulations under 42 USC §18031 do not establish privacy requirements. Privacy requirements may exist in contracts HHS has with navigators, but the standards are not available for the public to review and may change year-to-year without notice to the public.

To address this insufficiency, the commissioner proposes §19.4013, which requires that navigators in Texas comply with the privacy requirements under the Insurance Code and department rules. The privacy requirements in the Insurance Code and department rules work in conjunction with federal privacy requirements to ensure the safety of consumers' nonpublic information.

*Accountability of navigators:* The standards set by federal navigator regulations under 42 USC §18031 do not address liability of or penalties applicable to navigators who cause harm to consumers.

To address this insufficiency, the commissioner proposes §19.4004, which requires that individual navigators identify a registered navigator entity the individual will be employed by or associated with as an individual navigator. In addition, the commissioner proposes §19.4011, which requires navigator entities to secure and maintain evidence of financial responsibility to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, employees of the navigator entity, or navigators associated with or employed by the navigator entity. The commissioner also proposes §19.4012, which requires that individual navigators provide identification prior to assisting a consumer with enrollment services. Finally, the commissioner proposes §19.4014 to set prohibitions on certain activities while an entity or individual is providing navigator services, and §19.4016 to provide for administrative action against entities or individuals who violate Insurance Code Chapter 4154 or department rules.

In addition to proposing these standards as state rules, the commissioner requests that HHS consider implementing them in federal regulations. The department will assist HHS in any way it can to revise federal standards for navigators to include the previously noted standards, so that more than just Texas consumers can benefit from the protections these improved standards would provide.

**Additional parts of department implementation of SB 1795.** SB 1795 set minimum requirements for rules adopted under Chapter 4154. It allows the

commissioner to establish a state registration for navigators to ensure that navigators satisfy minimum standards, requires the commissioner to adopt rules authorizing additional training for navigators, as necessary to ensure compliance with changes in state or federal law, and allows the commissioner to adopt rules necessary to implement Chapter 4154.

Insurance Code §4154.051(c) provides that rules adopted by the commissioner must ensure that navigators in Texas have not had a professional license suspended or revoked, have not been the subject of other disciplinary action by a state or federal financial or insurance regulator, and have not been convicted of a felony. The fingerprinting and background requirements the department proposes in §19.4005 are necessary to ensure that the department can satisfy these requirements.

The department proposes the state registration for navigators permitted by Insurance Code §4154.051(d) in §§19.4004, 19.4005, 19.4006, 19.4007, 19.4008, and 19.4015. These sections are necessary to establish the requirement for registration, address eligibility to register, list information the department requires with an application for registration, address renewal of registration, provide for funding of registration, and place limits on use of the term “navigator” by entities and individuals subject to the rules who do not register with the department. In proposing the registration process, the department attempts to limit the impact of the section to entities and individuals with the most direct access to consumer information. To this end, the department proposes that only entities and individuals who provide enrollment assistance in a health benefit exchange must register with the department.

Previously in this proposal the department addresses additional education requirements the commissioner believes necessary to improve the standards applicable to navigators. Topics the commissioner includes in these improved standards also provide for the additional education of navigators as required by Insurance Code §4154.054. The department proposes the education and examination requirements in §19.4009 and addresses qualifications of course providers in §19.4010.

Finally, to adopt rules necessary to implement Insurance Code Chapter 4154, as required by Insurance Code §4154.005, the department proposes definitions for use in the proposed rules in §19.4002, a severability clause in §19.4017, and an expiration provision in §19.4018.

The following section-by-section summary describes the proposed sections:

**Section 19.4001. Purpose.** This section states that the intent for 28 TAC Chapter 19, Subchapter W is to implement Insurance Code Chapter 4154.

**Section 19.4002. Definitions.** This section defines five terms used in Subchapter W: “enrollment assistance in a health benefit exchange,” “individual navigator,” “navigator entity,” “navigator services,” and “nonpublic information.” “Enrollment assistance in a health benefit exchange” refers to the provision of assistance to a consumer in applying for health coverage affordability programs through the health benefit exchange. “Individual navigator” and “navigator entity” refer to individuals and entities performing navigator services, respectively. “Navigator services” are those performed under Insurance Code Chapter 4154; 28 TAC Chapter 19, Subchapter W; 42 USC §18031; or any regulation issued under 42 USC §18031. The definition contains a nonexclusive list of possible services. The section creates the

term “nonpublic information,” which refers to information protected under existing Texas statutes and rules: Insurance Code Chapter 601 or 602 and 28 TAC Chapter 22 (relating to Privacy).

**Section 19.4003. Applicability.** Subchapter W would apply to any individual or entity providing navigator services in Texas on or after March 1, 2014. Section 19.4003 follows the language of Insurance Code §4154.004 in listing individuals and entities to whom Subchapter W does not apply: Texas-licensed life, accident, and health insurance agents, counselors, or companies. In addition, Subchapter W does not apply to an individual or entity providing assistance to consumers in compliance with state or federal authority other than 42 USC §18031, such as those providing services under Texas’ Health Information Counseling and Advocacy Program, nor does Subchapter W apply to a certified application counselor designated under 45 CFR §155.225.

**Section 19.4004. Registration Required.** Section 19.4004 identifies the entities and individuals who must register with the department before they may provide enrollment assistance in a health benefit exchange. They are: individuals who provide navigator services in Texas, entities that provide or facilitate the provision of navigator services in Texas, and employees of navigator entities who provide enrollment assistance in a health benefit exchange on behalf of the navigator entity in Texas. These employees of navigator entities must register as individual navigators.

**Section 19.4005. Registration Eligibility.** Section 19.4005 describes the criteria that entities and individuals must satisfy to register with the department.

To register as a navigator entity with the department, an entity must: establish procedures for handling nonpublic information; demonstrate financial responsibility, as

required in 28 TAC §19.4011 (relating to Financial Responsibility); designate a responsible party who will submit to fingerprinting and a background check; provide the department with a list of individuals performing navigator services on behalf of the entity; and complete an application for registration. The individual whom an entity designates as the responsible individual must be eligible for an authorization under the guidelines in 28 TAC §1.502 (relating to Licensing Persons with Criminal Backgrounds).

To register with the department as an individual navigator, an individual must be at least 18 years old, provide proof of US citizenship or of compliance with all federal employment laws, complete the applicable education and examination requirements of 28 TAC §19.4009 (relating to Navigator Education and Examination Requirements), submit to fingerprinting and a background check, identify the registered navigator entity with whom the individual will be associated or employed, and complete an application for registration. In addition, to register as an individual navigator, an individual must be eligible for an authorization under the guidelines in §1.502.

**Section 19.4006. Application for Registration.** Section 19.4006 lists the information an entity or individual must provide in an application for registration as a navigator entity or individual navigator. The application must be on a form specified by the department. The information should clearly identify the individual or entity and the responsible party the entity has designated, and obtain the individual's professional background information and criminal history. The entity or individual must also provide the date range for which they are seeking registration.

**Section 19.4007. Renewal of Registration as a Navigator Entity or Individual Navigator.** Section 19.4007 requires a navigator entity or individual

navigator to apply for renewal of registration on a department-specified form no later than August 31 of each year. If a navigator entity or individual navigator does not timely file an application for renewal of registration, the entity's or individual's registration will expire the next September 30 following the effective date of the registration or latest renewal of registration.

The application for renewal of registration must contain the same information the application for registration requires.

**Section 19.4008. Registration and Registration Renewal Fees.** Section 19.4008 sets a fee of \$50 for registration and renewal of registration for both navigator entities and individual navigators.

**Section 19.4009. Navigator Education and Examination Requirements.** Section 19.4009 lists the education requirements an individual must meet to register and to apply for renewal of registration as a navigator and the examination requirements that navigator education courses must meet.

To register, the individual must meet all training requirements of any regulation enacted under 42 USC §18031 and complete a department-certified preregistration course of at least 40 hours of education on Texas-specific Medicaid, applicable privacy requirements, and ethics. The training requirements for TDI-certified courses are not applicable until May 1, 2014.

To apply for renewal of registration, an individual navigator must complete all continuing education requirements under any regulation enacted under 42 USC §18031 and complete a department-certified continuing education course for at least 6 hours

each year on the topics of Texas-specific Medicaid, applicable privacy requirements, and ethics.

Final examinations given in navigator education courses must follow the requirements listed in §19.4009(c). Final examinations must consist of 50 multiple choice questions that students must answer in no more than 60 minutes. Other examination requirements are designed to ensure that students are not exposed to examination questions before the examination, and that they do not receive answers or assistance during the examination. Examination questions must test students on the subjects specified in §19.4009(d), which also specifies what percentage of the questions must be devoted to each subject. Students must pass the examination by correctly answering at least 70 percent of the examination questions, but may retake the examination, provided the examination has a different set of questions, one time without retaking the course.

Section 19.4009(e) requires individual navigators to retain proof of course completion for four years from the date of completion and provide proof of completion to the department.

**Section 19.4010. Course Providers.** Section 19.4010 lists the sections of Title 28 that apply to course providers in preparing education courses and providing education courses to navigators.

**Section 19.4011. Financial Responsibility.** Section 19.4011 describes the evidence of financial responsibility that a navigator entity must provide to the department in order to register to operate in Texas. The intent of this requirement is to protect individuals against wrongful acts, misrepresentations, errors, omissions, or

negligence of the navigator entity, its employees, or navigators associated or employed with the navigator entity.

Navigator entities must provide evidence of financial responsibility in one of three ways: 1) by obtaining a \$50,000 surety bond; 2) by obtaining a professional liability policy of at least \$100,000, with a deductible of not more than 10 percent; or 3) by depositing \$25,000 in securities backed by the full faith and credit of the U.S. government with the comptroller.

Among other requirements, the surety bond must be executed by the navigator entity, as principal, and a surety company authorized to do business in Texas as a surety; be payable to the department for the benefit of an insured; be separate from any other financial responsibility obligation; and may not be used to demonstrate professional responsibility for any other license, certification, or person.

If the navigator entity chooses to demonstrate financial responsibility by purchasing a professional liability policy, the navigator entity must either purchase it from an insurer authorized to engage in the business of insurance in Texas, or, if this is not possible, from an eligible surplus lines insurer under Insurance Code Chapter 981.

**Section 19.4012. Navigator Identification.** Section 19.4012 describes the identification that individual navigators must give consumers before providing enrollment assistance in a health benefit exchange. The identification must include a valid state-issued identification, and a notice identifying the navigator entity the individual navigator is employed by or associated with.

**Section 19.4013. Privacy of Nonpublic Information.** Section 19.4013 lists certain existing Texas statutes and rules that a navigator entity or individual navigator

must comply with Insurance Code Chapter 601 or 602 and 28 TAC Chapter 22 (relating to Privacy).

**Section 19.4014. Prohibitions.** Section 19.4014 describes acts that an entity or individual may not engage in while providing navigator services. Navigator entities and individual navigators may not engage in electioneering activities, charge consumers for providing information about health coverage affordability programs or health insurance concepts related to qualified health plans, sell or negotiate health insurance coverage, recommend a specific health benefit plan, or provide advice regarding substantive benefits or comparative benefits of different health plans.

**Section 19.4015. Limits on Use of Term “Navigator”.** Section 19.4015 prohibits an entity or individual from using the term “navigator” in a name, website address, or title, or from implying that the entity or individual is a navigator, unless that entity or individual is registered as 28 TAC Chapter 19, Subchapter W requires.

**Section 19.4016. Administrative Violations.** Section 19.4016 describes the actions that the commissioner or the commissioner’s designee will take if the commissioner or designee believes that an entity or individual has violated or is violating the provisions of Insurance Code Chapter 4154 or 28 TAC Chapter 19, Subchapter W. The commissioner or designee must notify the individual or entity of the alleged violation and may compel the production of documents. The commissioner or designee may begin contested case proceedings under Government Code Chapter 2001. If the commissioner or designee finds that a violation has occurred or is occurring, the commissioner or designee may impose the sanctions and penalties available under

Insurance Code Chapters 82, 83, and 84 and may also terminate the entity or individual's registration as a navigator.

**Section 19.4017. Severability Clause.** Section 19.4017 provides that if a court of competent jurisdiction finds any provision in 28 TAC Chapter 19, Subchapter W, or application of 28 TAC Chapter 19, Subchapter W to any person or circumstance, to be invalid for any reason, the remaining provisions are severable.

**Section 19.4018. Expiration.** In accord with Insurance Code §4154.006, 28 TAC Chapter 19, Subchapter W expires September 1, 2017.

**2. FISCAL NOTE.** Jamie Walker, associate commissioner, Licensing Services Section, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

**3. PUBLIC BENEFIT/COST NOTE.** Ms. Walker has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of the proposal is that the department will be able to regulate entities and individuals who provide navigator services to consumers in Texas; ensure the qualifications of entities and individuals who provide enrollment services; and protect the privacy of consumers who are assisted by navigators.

The costs to persons required to comply with the proposal will vary depending on whether the person is a navigator entity, an individual navigator, or a course provider.

Costs to navigator entities include the cost of completing and submitting an application, the cost to secure and maintain evidence of financial responsibility, the registration fee, fingerprinting costs, and the renewal registration fee.

An individual navigator will face costs related to the expense of completing and submitting an application, the expense of demonstrating compliance with the education requirements, fingerprinting fees, the registration fee, and the renewal registration fee. Course providers must register with the department, and at their option could choose to register individual navigator courses with the department for approval.

**Estimated Costs for Persons Required to Comply with the Proposal.**

The department has identified three categories of labor reasonably necessary to implement the new subchapter. A navigator entity may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The hourly cost of labor for each category might vary from the median due to factors such as additional compensation benefits paid or variations in wages in different parts of the state. The median hourly wage for each category of labor is published online by the Texas Workforce Commission at <http://www.texaswages.com/index3.aspx>, which lists median hourly wages as follows:

- (i) general operations manager or functional director: \$44.53;
- (ii) administrative assistant: \$14.42; and
- (iii) staff attorney: \$54.60.

The requirement in §19.4005 for a fingerprint background check on the designated responsible party or individual navigators will result in an additional cost

unless the individual is exempt under 28 TAC §1.504. The Texas Department of Public Safety vendor collects the fingerprints and processing fees. If the fingerprints are collected electronically at a vendor site, the current fee is \$41.45.

If electronic collection is not available or practical, fingerprints can be collected on paper cards and mailed to the DPS vendor and then scanned for electronic processing with payment of the vendor's fee. The fingerprints must be captured by a law enforcement agency. The DPS vendor fee for this service remains \$41.45, but the applicant may be required to pay additional amounts for capturing the fingerprints and will incur postal charges.

The department estimates the capture fee to be \$10 per set of fingerprints, but it is not feasible to estimate the exact amount because the jurisdiction capturing the fingerprint will determine the amount. The Legislature has established a \$10 charge in Human Resources Code §80.001(b), but individuals in Texas would be better served by the using the DPS vendor's electronic services. The charges for capturing fingerprints in other states will vary. The department estimates postal charges for mailing in the fingerprint card would be less than \$1. Additional postal services, such as certified or overnight mail, would increase this amount, but are not required by the proposal.

The total costs for fingerprints are estimated to range between \$41.45 and \$62.45.

Costs related to a navigator entity. In accord with Insurance Code Chapter 4154 and this subchapter, a navigator entity must submit an application for registration. The department bases its estimate of costs for a navigator entity to comply with §§19.4004 –

19.4009 on labor costs associated with completing the forms, and costs for printing and submitting the application for registration form.

The department estimates that to submit an application for registration, a navigator entity may incur costs related to employing or contracting with managerial and support staff necessary to complete the application, including the services of administrative assistants, general operations managers, and attorneys. The number of hours spent completing and submitting the application forms will depend on the size and number of employees of the navigator entity.

The department anticipates that a navigator entity may require up to four hours of time for an administrative assistant, and up to four hours of time for general management, to complete and submit an application for registration. The department estimates that a navigator entity may require an estimated one to two hours for an attorney to review the application form. The department estimates that the labor costs to an applicant navigator entity may vary depending on whether the entity elects to have an administrative assistant, a general operations manager, or a combination of both, complete and file the application. The applicant navigator entity, however, has the information necessary to determine its staffing needs to comply with proposed §§19.4004 – 19.4009.

A navigator entity will face costs associated with printing and mailing its application for registration form. It is not feasible for TDI to estimate the total amount of increased printing, copying, mailing, and transmitting costs attributable to compliance with the proposed new subchapter. The department estimates that each affected

person has the information necessary to determine its individual printing, copying, mailing, and transmitting costs necessary to meet the requirements of the subchapter.

As required by proposed §19.4005 and §19.4011 a navigator entity must secure and maintain evidence of financial responsibility. One method is to purchase a surety bond. The department estimates that the annual cost of a surety bond described in the proposal is 2 percent of the total bond amount, which is \$1,000 for a \$50,000 surety bond. The department bases its estimate on the costs to purchase similar surety bonds for other department-regulated entities and individuals.

Navigator entities may also maintain evidence of financial responsibility by obtaining a professional liability policy insuring the navigator entity against errors and omissions in at least the amount of \$100,000 or the deposit of \$25,000 in securities backed by the full faith and credit of the United States government with the comptroller. The department estimates that the cost of a \$100,000 professional liability policy would depend on the number of individual navigators employed by or associated with the navigator entity, but would be approximately \$700 for a 12-month term with a \$1,000 deductible.

The department estimates that the cost of depositing \$25,000 in securities is the opportunity cost in not utilizing the assets for other purposes. Each affected person has the information necessary to determine which method of maintaining evidence of financial responsibility is the most effective for their individual needs.

In addition, each navigator entity applicant must submit the application fee of \$50 required by proposed §19.4008. The department estimates the cost per person to have fingerprints taken is between \$41.45 and \$62.45. The fee to renew registration is \$50,

payable annually no later than August 31. The total cost to comply with the requirements applicable to a navigator entity applicant could also vary depending on the applicant's administrative processes.

Costs related to an individual navigator. In accord with Insurance Code Chapter 4154 and this subchapter, an individual navigator must submit an application for registration. The department estimates that it will take each individual navigator two to four hours to complete the application form, including the providing of proof of citizenship or compliance with federal employment laws and the scheduling and recording of the required fingerprints. The department estimates that the labor cost to an individual navigator applicant may vary depending on whether the individual navigator elects to receive assistance to complete and file the application. The individual navigator has the information necessary to determine the individual's staffing needs to comply with proposed §§19.4004 – 19.4009. In addition, an individual navigator will face costs associated with printing and mailing their application for registration form.

In accord with Insurance Code §4154.054 and proposed §§19.4004 – 19.4009 the commissioner must adopt rules authorizing additional training for navigators as the commissioner considers necessary. The department estimates that the costs for each person completing the required 40 hours of education under proposed §19.4009(a) will range from \$200 to \$800 for initial registration. The department estimates that the costs for each person required to complete the required six annual hours of continuing education required as specified by §19.4009(b) will range from \$60 to \$120 per annual registration period. The department bases these estimates on an anticipated range of

\$5 to \$20 per credit hour of education. The costs for the continuing education will depend on the market that develops to serve this need for continuing education. The total cost to comply with §19.4009 could also vary depending on the availability of free or navigator entity-provided training. An individual navigator must also maintain proof of completion of initial and continuing education.

Additional costs for the proposed subchapter also apply. Each individual navigator applicant must submit the application fee of \$50 required by proposed §19.4008. The fee to renew registration is \$50, payable annually no later than August 31 of each year. The department estimates the cost per person to have fingerprints taken is between \$41.45 and \$62.45. Also, in accord with proposed §19.4012, an individual must show consumers a valid state-issued identification prior to providing enrollment assistance in a health benefit exchange. The department has determined that the cost to obtain a state-issued identification is \$16 and that the identification would expire on the individual's birth date after six years.

*Costs related to course providers.* The existence of education requirements for navigators under Insurance Code Chapter 4154 is an opportunity for course providers to certify courses with the department. The department bases its estimate of costs for a course provider to comply with §19.4010 on the labor costs associated with registering a course under the applicable rules, and costs for printing and submitting the course registration.

Though each course provider has the information needed to estimate its individual costs, the department estimates that, to register a course, a course provider may incur costs related to managerial and support staff necessary to complete the

application including the services of administrative assistants, general operations managers, and attorneys. The department anticipates that for review of each course and creation of a final exam, a course provider registering courses with the department will require up to five hours of work from an administrative assistant, up to five hours of work from a general operations manager, and up to one hour of work from an attorney. The department estimates that the labor costs to a course provider to register a course may vary depending on whether the course provider elects to have assistance from an administrative assistant, a general operations manager, an attorney, or a combination of each to complete and file the course registration.

Additional costs for proposed §19.4010 may also apply. The department estimates that each affected person has the information necessary to determine its individual printing, copying, mailing, and transmitting costs necessary to meet the requirements of the subchapter. The costs will be consistent with the costs of preparing education courses for other entities and individuals under Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses).

Additional costs may apply if a course provider is not yet authorized to provide any continuing education in Texas under Chapter 19, Subchapter K of this title. Costs to register as a course provider depend on compliance with those existing rules. Each course provider has the information necessary to determine its staffing needs to comply with proposed §19.4010. Course providers are not required to offer navigator-related education and can otherwise act as course providers without complying with this proposed section. Navigator entities that want to provide courses that meet the

education requirements for individual navigators in proposed §19.4009 must become registered course providers as specified in proposed §19.4010 and existing §19.1005. In accord with §19.1012, an application for provider registration requires a fee of \$50, and a fee of \$10 for each hour of course credit requested.

The costs for compliance applicable to navigator entities and individuals will not vary between the smallest and largest businesses because these proposed rules do not establish requirements applicable to businesses. Under federal and state law, an entity or individual cannot make a business out of providing navigator services. Specifically, 42 USC §18031 says a navigator cannot be a health insurance issuer or receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan. Additionally, Insurance Code Chapter 4052 (relating to Life and Health Insurance Counselors) provides that, except for specified agents acting under their license and specified professionals acting in the course of their profession, a person may not seek compensation for examining or giving advice or information regarding a health insurance policy or health benefit plan unless the person is licensed as a life and health insurance counselor.

The costs for compliance applicable to course providers will not vary between the smallest and largest businesses because the costs for preparing and registering a course under these proposed rules relate to the course and not the size of the education provider offering the course.

Although the department does not believe that the proposed sections will have an adverse effect on small and micro businesses, the department has considered the

purpose of the applicable statutes, which is to provide a state solution to help and protect Texas consumers by ensuring the security of their private information, and ensuring that they are able to find and apply for affordable health coverage under the federally-run health benefit exchange with the assistance of qualified navigators. The department has determined that it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses. Additionally, it is the department's position that to waive or modify the requirements of the proposed sections for small and micro businesses would result in a disparate effect on other entities and individuals affected by the sections.

#### **4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS**

**FOR SMALL AND MICRO BUSINESSES.** As required by Government Code §2006.002(c), the department has determined that the proposal will not have an adverse economic effect on small or micro businesses. The navigator standards and requirements in the proposed subchapter do not apply to any small or micro businesses, and any economic costs related to course registration are the same as already exist for course providers under department rules. In accord with Government Code §2006.002(c), the department has determined that a regulatory flexibility analysis is not required.

**5. TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of

government action and does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** If you wish to comment on this proposal you must do so in writing no later than 5:00 pm on January 6, 2014 and address your comments to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Jamie Walker, Associate Commissioner, Licensing Services Section, Mail Code 305-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed sections in a public hearing under Docket No. 2759 scheduled for December 20, 2013, at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The department will consider written and oral comments presented at the hearing.

**7. STATUTORY AUTHORITY.** The sections are proposed under Insurance Code §§82.002(c), 82.003, 83.003, 84.004, 201.054, 541.401, 541.452, 601.051, 601.052, 602.004, 4001.005, 4001.103(b), 4004.103, 4005.109, 4052.051, 4154.001, 4154.005, 4154.051, 4154.054, and 36.001; Family Code §231.302(c); Government Code §411.087 and §411.106; Human Resources Code §80.001; Occupations Code Chapter 53, Occupations Code §53.021; 15 USC §6801(b), 15 USC §6801(b), 15 USC §6805(b)(2); and 15 USC §6805(c).

Section 82.002(c) provides that the commissioner's authority under Chapter 82 applies to each form of authorization and each person or entity holding an authorization. Section 82.003 provides that the commissioner's authority under Chapter 82 is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.

Section 83.003 provides that the commissioner may adopt reasonable rules to implement this chapter, including rules that provide, to the extent possible, uniformity of procedures between this state and other states, the United States, or the National Association of Insurance Commissioners.

Section 84.004(a) provides that the commissioner may adopt and enforce reasonable rules that the commissioner determines necessary to accomplish the purposes of this chapter.

Section 84.004(c) provides that the existence or absence of a rule adopted under this chapter does not limit the commissioner's authority to take any action authorized by law.

Section 201.054(b) requires the department to maintain a record of the federal identification number of each entity subject to regulation under the Insurance Code or another insurance law of this state and to include the appropriate number in any communication to or information shared with the comptroller relating to that entity.

Section 541.401(a) provides that the commissioner may adopt reasonable rules the commissioner determines necessary to accomplish the purposes of Chapter 541.

Section 541.452 provides that the powers vested in the department and the commissioner by Chapter 541 are in addition to any other powers to enforce a penalty,

fine, or forfeiture authorized by law with respect to a method of competition or act or practice defined as unfair or deceptive.

Section 601.051(a)(1) and (2) provides that the commissioner must adopt rules to implement Chapter 601 and any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act, 15 USC §6801 et seq., as amended, to make this state eligible to override federal regulations as described by 15 USC §6805(c), as amended.

Section 601.051(b) provides that in adopting rules under Chapter 601, the commissioner must attempt to keep state privacy requirements consistent with federal regulations adopted under Subtitle A, Title V, Gramm-Leach-Bliley Act (15 USC §6801 et seq.), as amended.

Section 601.052 provides that the department must implement standards as required by 15 USC §6805(b), as amended.

Section 602.004 provides that the commissioner may adopt rules as necessary to implement this chapter.

Section 4001.005 provides that commissioner may adopt rules necessary to implement Title 13 of the Texas Insurance Code and to meet the minimum requirements of federal law, including regulations.

Section 4001.103(b) provides that the department may deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the department.

Section 4004.103(a) provides that each continuing education program provider must register with the department as a course provider.

Section 4004.103(b) provides that the department must assess a registration fee for each application for registration as a course provider, set by the commissioner in an amount necessary for the proper administration of Chapter 4004.

Section 4004.103(c) provides that the commissioner may adopt rules establishing other requirements for continuing education program providers.

Section 4005.109(a) provides that the commissioner by rule may establish fines for certain violations to expedite the department's processing of violations of the Insurance Code.

Section 4005.109(b) provides that a violation for which a fine may be assessed under this section includes a failure to obtain the total number of continuing education hours before the renewal date of a license; timely report a change of address to the department; or notify the department of an administrative action against the agent by a financial or insurance regulator of another state or of the federal government.

Section 4005.109(c) provides that §4005.109 does not limit the department's authority to take any other disciplinary action against a license holder as otherwise provided by the Insurance Code.

Section 4052.051 provides that a person may not act as a life and health insurance counselor unless the person holds a license issued by the department under this chapter.

Section 4154.001 provides that the purpose of Insurance Code Chapter 4154 is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally-run health benefit exchange, while helping consumers in Texas.

Section 4154.005 provides that the commissioner must adopt minimum rules necessary to implement Insurance Code Chapter 4154 and to meet the minimum requirements of 42 USC §18031, including regulations.

Section 4154.051(a) provides that the commissioner must determine whether the standards and qualifications for navigators provided by 42 USC §18031 and any regulations enacted under that section are sufficient to ensure that navigators can perform their required duties.

Section 4154.051(b) provides that if the commissioner determines the standards are insufficient to ensure that navigators can perform their required duties, the commissioner must make a good faith effort to work in cooperation with the United States Department of Health and Human Services and propose improvements to those standards. The section further provides that if, after a reasonable interval, the commissioner determines that the standards remain insufficient, the commissioner by rule must establish standards and qualifications to ensure that navigators in Texas can perform their required duties. The section also states that, at a minimum, the rules the commissioner adopts must provide that a navigator in Texas has not had a professional license suspended or revoked; been the subject of any other disciplinary action by a financial or insurance regulator of Texas, another state, or the United States; or been convicted of a felony.

Section 4154.054 provides that the commissioner must adopt rules authorizing additional training for navigators as the commissioner considers necessary to ensure compliance with changes in state or federal law.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Family Code §231.302(c) provides that for the purpose of assisting in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act, 42 USC §§601 – 617 and §§651 – 669, each licensing authority is required to request and each applicant for a license is required to provide the applicant's social security number.

Government Code §411.087 permits the department to obtain criminal history record information maintained by the Federal Bureau of Investigations or from any other criminal justice agency in this state that pertains to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the department.

Government Code §411.106 permits the department to obtain criminal history record information from the Department of Public Safety that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the department.

Human Resources Code §80.001(a) provides that a state law enforcement agency or the law enforcement agency of any political subdivision of the state must comply with the request of a person to have a record of his fingerprints made.

Human Resources §80.001(b) provides that a law enforcement agency may charge a fee not to exceed \$10 for fingerprinting when requested by a person.

Occupations Code Chapter 53 generally provides the procedures a licensing authority must implement when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration.

Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of certain criminal offenses.

Title 15 USC §6801(b) provides that, in furtherance of the policy in subsection (a) of §6801, each agency or authority described in §6805(a) must establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards to ensure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of such records; and to protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

Title 15 USC §6805(b)(2) provides that the agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) of §6805 are required to implement the standards prescribed under §6801(b) of Title 15 by rule, with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a) of §6805.

Title 15 USC §6805(c) provides that if a state insurance agency fails to adopt regulations to carry out this subchapter, such state will not be eligible to override,

pursuant to §1831x(g)(2)(B)(iii) of Title 12, the insurance consumer protection regulations prescribed by a federal banking agency under §1831x(a) of Title 12.

**8. CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§§19.4001 – 19.4018	Insurance Code §§82.002, 541.401, 541.452, 4001.005, 4052.051, 4154.001, 4154.005, 4154.051, and 36.001.
§§19.4004 – 19.4008	Insurance Code §201.054 and §4001.103; Family Code §231.302; Government Code §411.087 and §411.106; Human Resources Code §80.001; and Occupations Code Chapter 53.
§19.4009	Insurance Code §§4154.054, 4004.103, and 4005.109.
§19.4010	Insurance Code §4004.103 and §4005.109.
§19.4013	Insurance Code §§601.051, 601.052, and 602.004; 15 USC §6801 and §6805.
§19.4016	Insurance Code §§82.003, 83.003,

and 84.004.

**9. TEXT.**

**SUBCHAPTER W. Regulation of Navigators for Health Benefit Exchanges**  
**28 TAC §19.4001 – 19.4019**

**§19.4001. Purpose.** The purpose of this subchapter is to implement Texas Insurance Code Chapter 4154, which is intended to provide a state solution to help Texas consumers and ensure that they are able to find and apply for affordable health coverage under the federal health benefit exchange.

**§19.4002. Definitions.** The following words and terms when used in this subchapter have the following meanings unless the context clearly indicates otherwise.

(1) Enrollment assistance in a health benefit exchange--The provision of assistance to a consumer in completing the application for health coverage affordability programs available through a health benefit exchange. This includes providing assistance in completing an electronic application, a paper application, or providing assistance in applying for an affordability program available through a health benefit exchange by phone or through email.

(2) Individual navigator--An individual performing navigator services.

(3) Navigator entity--An entity performing or overseeing an individual's performance of navigator services.

(4) Navigator services--Services performed under Insurance Code Chapter 4154, this subchapter, 42 USC §18031, or any regulation enacted under 42 USC §18031, including:

(A) assisting consumers in completing the application for health coverage affordability programs available through a health benefit exchange;

(B) explaining how health coverage affordability programs work and interact, including Medicaid, the Children's Health Insurance Program, or advance premium tax credits and cost-sharing assistance;

(C) explaining health insurance concepts related to qualified health plans, including premiums, cost sharing, networks, or essential health benefits;

(D) providing culturally and linguistically appropriate information;

(E) avoiding conflicts of interest; or

(F) establishing standards and processes relating to privacy and data security.

(5) Nonpublic information--Information protected under Insurance Code Chapter 601 or 602, and Chapter 22 of this title (relating to Privacy), including nonpublic personal financial information and nonpublic personal health information as those terms are defined under Chapter 22 of this title.

**§19.4003. Applicability.**

(a) Except as provided by subsections (b) - (d) of this section, this subchapter applies to any individual or entity that provides navigator services in Texas on or after March 1, 2014.

(b) In accord with Insurance Code §4154.004, this subchapter does not apply to:

(1) a licensed life, accident, and health insurance agent;

(2) a licensed life and health insurance counselor; or

(3) a licensed life and health insurance company.

(c) This subchapter does not apply to an individual or entity that provides assistance to consumers under and in compliance with state or federal authority other than 42 USC §18031, to the extent that the individual or entity is providing assistance consistent with that state or federal authority.

(d) This subchapter does not apply to a certified application counselor holding a certification issued under 45 CFR §155.225.

**§19.4004. Registration Required.**

(a) An individual who provides navigator services in Texas may not provide enrollment assistance in a health benefit exchange unless the individual or entity is registered with the department under this subchapter.

(b) An entity that provides or facilitates the provision of navigator services in Texas may not provide or facilitate the provision of enrollment assistance in a health benefit exchange unless the entity is registered with the department under this subchapter.

(c) Any employee of a navigator entity who provides enrollment assistance in a health benefit exchange on behalf of the navigator entity in Texas must be registered with the department as an individual navigator under this subchapter.

**§19.4005. Registration Eligibility.**

(a) Registration as a navigator entity. To register as a navigator entity, an entity must:

(1) establish procedures for the handling of nonpublic information;

(2) demonstrate financial responsibility as required under §19.4011 of this title (relating to Financial Responsibility);

(3) provide to the department the procedures and evidence of financial responsibility required by this subsection;

(4) designate an officer, manager, or other individual in a leadership position in the entity to act as a responsible party on behalf of the entity and submit to fingerprinting and a background check under Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct), to the same extent as that subchapter applies to any other applicant for a license, registration, certification, permit, or authorization under the Insurance Code;

(5) provide a list of individuals performing navigator services on behalf of or under the supervision of the entity; and

(6) complete and provide to the department an application for registration under §19.4006 of this title (relating to Application for Registration).

(b) Registration as an individual navigator. To register as an individual navigator an individual must:

(1) be at least 18 years of age;

(2) provide proof that the registrant is a citizen of the United States or has complied with all federal laws pertaining to employment or to the transaction of business in the United States;

(3) provide proof that the individual has complied with the applicable education and examination requirements of §19.4009 of this title (relating to Navigator Education and Examination Requirements);

(4) submit to fingerprinting and a background check under Chapter 1, Subchapter D of this title, to the same extent as that subchapter applies to any other applicant for a license, registration, certification, permit, or authorization under the Insurance Code;

(5) identify a registered navigator entity the individual will be employed by or associated with as an individual navigator;

(6) be an individual eligible for an authorization issued by the department under the guidelines in §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds); and

(7) complete and provide to the department an application for registration under §19.4006 of this title.

(c) An individual an entity designates as a responsible party under subsection (a) of this section must be an individual eligible for an authorization issued by the department under the guidelines in §1.502 of this title.

**§19.4006. Application for Registration.**

(a) An entity or individual must submit an application for registration as a navigator entity or individual navigator on a form specified by the department.

(b) The application for registration as a navigator entity must include:

(1) the name of the entity;

(2) the entity's federal employer identification number;

(3) information regarding the location and means of contacting the entity;

(4) disclosures regarding regulatory actions, criminal actions, and

litigation history;

(5) the date range for which the entity seeks registration;

(6) the form of the financial responsibility the entity elects;

(7) the name and biographical information of a designated responsible

party who will be the primary contact for the entity;

(8) the designated responsible party's:

(A) current name and any different names used by the designated

responsible party in the past;

(B) social security number;

(C) date of birth;

(D) current mailing address, phone number, and email address;

(E) professional background and criminal history information; and

(9) a complete set of the designated responsible party's fingerprints,

using the procedures under §1.509 of this title (relating to Fingerprint Format and

Complete Application), unless the individual meets the exemption in §1.504(b)(1) of this

title (relating to Fingerprint Requirement).

(c) The application for registration as an individual navigator must include:

(1) the individual's:

(A) name;

(B) social security number;

(C) mailing address, physical address, and email address;

(D) phone number; and

(E) professional background and criminal history information;

(2) the date range for which registration is sought;

(3) certificates showing completion of applicable initial education or continuing education; and

(4) a complete set of the individual's fingerprints, using the procedures under §1.509 of this title, unless the individual meets the exemption in §1.504(b)(1) of this title.

**§19.4007. Renewal of Registration as a Navigator Entity or Individual Navigator.**

(a) A navigator entity or individual navigator registered with the department under this subchapter must submit an application for renewal of registration on a form specified by the department no later than August 31 of each year. The application for renewal of registration must contain the same information required by §19.4006 of this title (relating to Application for Registration).

(b) The registration of a navigator entity or individual navigator under this subchapter will expire the next September 30 following the effective date of the registration or renewal of registration, unless the navigator entity or individual navigator submits an application for renewal under subsection (a) of this section.

**§19.4008. Registration and Registration Renewal Fees.** Fees to register or renew registration are:

(1) for an entity registering or renewing registration as a navigator entity: \$50;

and

(2) for an individual registering or renewing registration as an individual navigator: \$50.

**§19.4009. Navigator Education and Examination Requirements.**

(a) Initial education requirements. To be eligible to register as an individual navigator, an individual must:

(1) complete all training required for navigators under any regulation enacted under 42 USC §18031 and pass all examinations associated with the training requirements; and

(2) complete a preregistration education course that consists of a minimum of 40 hours of department-certified training. The education course must include:

(A) a minimum of 13 hours on Texas-specific Medicaid provisions;

(B) a minimum of 13 hours on applicable privacy requirements;

and

(C) a minimum of 14 hours on ethics.

(b) Ongoing education requirements. To be eligible for renewal of registration as an individual navigator, an individual navigator must:

(1) complete all continuing education requirements for navigators under any regulation enacted under 42 USC §18031 and pass all examinations associated with the training requirements; and

(2) complete a continuing education course that consists of a minimum of six hours of department-certified continuing education. The continuing education course must include:

(A) a minimum of two hours on Texas-specific Medicaid provisions;

(B) a minimum of two hours on applicable privacy requirements;

and

(C) a minimum of two hours on ethics.

(c) Education course final examination requirements. The department-certified education courses under subsections (a)(2) and (b)(2) of this section must include a final examination and must provide students with instruction sufficient to take and pass the final examination, and are not considered complete unless a student receives at least a 70 percent score on the examination.

(1) Final examinations may be written or computer-based, must be designed to test applicants on the materials as specified in this section, and must meet the criteria in subparagraphs (A) – (G) of this paragraph.

(A) A student must complete a 50-question examination in less than 60 minutes over subjects specified in subsection (d) of this section with question percentages specified in subsection (d) of this section.

(B) Examination questions must not be the same or substantially similar to questions a student encounters in the course materials or review examinations, and must not be designed to make the correct answer obvious by its content.

(C) Examination questions must be multiple choice questions stemming from an inquiry with at least four appropriate potential responses and must not include "all of the above" or "none of the above" as an option.

(D) Specific examination questions must not be made available to a student until the test is administered. Security measures must be in place to maintain the integrity of the examination and ensure the people who take the examination are the students who registered for and attended the course.

(E) Course providers must maintain records of students' examination results for a minimum of four years.

(F) Course providers and instructors may not give any person answers to examination questions at any time before, during, or after a course, except as necessary to allow an authorized staff member to grade the examination.

(G) The instructor, an authorized staff member of the course provider, or a computer program must grade examinations.

(2) A student may be allowed to retake an examination for a department-certified examination course one time without being required to retake the course if the student does not achieve a score of 70 percent or higher on the examination. A retest must consist of an alternate examination consisting of questions that are different from the questions that were on the examination the student has previously taken.

(3) The final examination for an education course must include at least three separate complete examinations which are distributed alternately to students and which are revised or updated consistent with applicable course updates or revisions.

An instructor or course provider may distribute only one examination to any one student at the time examinations are conducted.

(4) A disinterested third party must monitor the final examination. During the examination, students may not use course material, personal notes, or any other written or electronic material or media that is not part of the examination, nor engage in communication of any kind with any other person except to receive instructions from the examination monitor. On completion of the examination, the person monitoring the examination must mail or deliver the completed examination directly to the course provider.

(5) Education providers must issue certificates of completion to course participants who successfully pass the examination by correctly answering at least 70 percent of the examination questions. The course provider must:

(A) issue the certificate in a manner that ensures that the person receiving the certificate is the student who took the course;

(B) issue the certificate within 30 days of the student passing the examination; and

(C) complete the certificate to reflect the dates the student took the course and examination.

(6) Course providers must not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.

(d) Examination topics. The subjects and question percentages required for navigator course examinations are:

(1) eligibility for Texas Medicaid: 14 percent;

(2) enrollment processes for Texas Medicaid: 10 percent;

(3) benefits provided under Texas Medicaid: 8 percent;

(4) Texas statutes and rules pertinent to the protection of nonpublic

information: 34 percent;

(5) insurance fraud (Penal Code Chapter 35): 10 percent;

(6) ethical behavior of a navigator: 10 percent;

(7) duty of the navigator to the consumer being assisted: 8 percent; and

(8) the difference between ethics and laws: 6 percent.

(e) Proof of course completion. An individual navigator must maintain proof of completion of education courses for four years from the date of completion of the course. As required by §19.4006 of this title (relating to Application for Registration) or on request by the department, the individual navigator must provide proof of completion of all training and continuing education courses. An individual navigator must immediately report to the department any discrepancy the individual navigator discovers between a course taken by the individual navigator and the credit hours certified to the individual navigator by a course provider.

(f) The requirements of subsection (a)(2) of this section are not applicable until May 1, 2014.

**§19.4010. Course Providers.**

(a) A course provider for navigator initial education or continuing education must comply with:

(1) Sections 19.1005, 19.1007, and 19.1008 of this title (relating to Provider Registration, Instructor, and Speaker Criteria; Course Certification Submission Applications, Course Expirations, and Resubmissions; and Certified Course Advertising, Modification, and Assignment, respectively);

(2) Section 19.1009 of this title (relating to Types of Courses);

(3) Section 19.1010 of this title (relating to Hours of Credit);

(4) Section 19.1011 of this title (relating to Requirements for Successful Completion of Continuing Education Courses); and

(5) Section 19.1014 of this title (relating to Provider Compliance Records).

(b) A course provider that fails to comply with the requirements of this section is subject to:

(1) Section 19.1015 of this title (relating to Failure to Comply); and

(2) Section 19.1016 of this title (relating to Automatic Fines).

**§19.4011. Financial Responsibility.**

(a) A navigator entity operating in Texas must secure and maintain evidence of financial responsibility to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, employees of the navigator entity, or navigators associated with or employed by the navigator entity. Evidence of financial responsibility may be shown by:

(1) obtaining a surety bond in the amount of \$50,000;

(2) obtaining a professional liability policy insuring the navigator entity against errors and omissions in at least the amount of \$100,000, with a deductible of not more than 10 percent of the full amount of the policy; or

(3) the deposit of \$25,000 in securities backed by the full faith and credit of the United States government with the comptroller.

(b) A surety bond used to maintain and demonstrate proof of financial responsibility under this section must:

(1) be in the form specified by the department;

(2) be executed by the navigator entity, as principal, and a surety company authorized to do business in this state as a surety;

(3) be payable to the Texas Department of Insurance for the use and benefit of a consumer, conditioned that the navigator entity must pay any final judgment recovered against it by a consumer;

(4) provide that the surety will give no less than 30 days written notice of bond termination to the navigator entity and the department;

(5) be separate from any other financial responsibility obligation; and

(6) not be used to demonstrate professional responsibility for any other license, certification, or person.

(c) A professional liability policy used to maintain and demonstrate proof of financial responsibility under this section must:

(1) be issued by an insurer authorized to engage in the business of insurance in this state; or

(2) if a policy cannot be obtained from an insurer authorized to engage in the business of insurance in this state, be issued by a surplus lines insurer under Insurance Code Chapter 981.

**§19.4012. Navigator Identification.**

(a) This section applies only to individuals registered with the department under this subchapter.

(b) Before providing or facilitating the provision of enrollment assistance in a health benefit exchange to a consumer, an individual navigator must provide identification to the consumer.

(c) The identification an individual navigator provides to a consumer under this section must include a valid state-issued identification and a notice that identifies the navigator entity the individual navigator is employed by or associated with.

**§19.4013. Privacy of Nonpublic Information.** A navigator entity or an individual navigator registered with the department under this subchapter must comply with Insurance Code Chapters 601 and 602, and Chapter 22 of this title (relating to Privacy).

**§19.4014. Prohibitions.** In the course of providing navigator services, an entity or an individual may not:

(1) engage in electioneering activities or finance or otherwise support the candidacy of an individual for government positions (including campaigning, persuading, promoting, advertising, or coordinating with any political party, committee, or candidate);

(2) charge consumers for providing information about health coverage affordability programs or health insurance concepts related to qualified health plans;

(3) sell, solicit, or negotiate health insurance coverage;

(4) recommend a specific health benefit plan; or

(5) provide advice regarding substantive benefits or comparative benefits of different health benefit plans.

**§19.4015. Limits on Use of Term “Navigator.”** Unless registered with the department as a navigator entity or an individual navigator under this subchapter, an entity or individual may not:

(1) use the term “navigator” as part of an entity’s name or website address or in an individual’s title;

(2) imply or represent that the entity or individual is a navigator in advertising or outreach material.

**§19.4016. Administrative Violations.**

(a) If the commissioner or the commissioner’s designee believes that an entity or individual has violated or is violating any provision of Insurance Code Chapter 4154 or this subchapter, the commissioner or the commissioner’s designee must notify the individual or entity of the alleged violation and may compel the production of any and all documents or other information necessary to determine whether such violation has taken place.

(b) The commissioner or commissioner's designee may initiate proceedings under this section.

(c) Proceedings under this section are contested cases for the purpose of Government Code Chapter 2001.

(d) If the commissioner or the commissioner's designee determines that an entity or individual has violated or is violating any provision of Insurance Code Chapter 4154 or this subchapter, the commissioner or the commissioner's designee may:

- (1) impose sanctions under Insurance Code Chapter 82;
- (2) issue a cease and desist order under Insurance Code Chapter 83;
- (3) assess administrative penalties under Insurance Code Chapter 84;
- (4) terminate the entity or individual's registration as a navigator entity; or
- (5) any combination of these actions.

**§19.4017. Severability Clause.** If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

**§19.4018. Expiration.** In accord with Texas Insurance Code §4154.006, this subchapter expires September 1, 2017.

**10. CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on November 26, 2013.



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Sara Waitt  
General Counsel  
Texas Department of Insurance