

**Department of State
Division of Publications**

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-55	Navigator and Certified Application Counselor Registration Requirements
Rule Number	Rule Title
0780-01-55-.01	Purpose and Scope
0780-01-55-.02	Definitions
0780-01-55-.03	Registration Required
0780-01-55-.04	Application for Registration
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0780-01-55-.06	Navigator and Certified Application Counselor Conduct
0780-01-55-.07	Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration
0780-01-55-.08	Reporting to the Commissioner
0780-01-55-.09	Other laws; Severability

New Chapter
0780-01-55

Navigator and Certified Application Counselor Registration Requirements

- 0780-01-55-.01 Purpose and Scope.
- 0780-01-55-.02 Definitions.
- 0780-01-55-.03 Registration Required.
- 0780-01-55-.04 Application for Registration.
- 0780-01-55-.05 Registration Renewal.
- 0780-01-55-.06 Navigator and Certified Application Counselor Conduct.
- 0780-01-55-.07 Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration.
- 0780-01-55-.08 Reporting to the Commissioner.
- 0780-01-55-.09 Other laws; Severability.

Rule 0780-01-55-.01 Purpose and Scope.

The federal Patient Protection and Affordable Care Act creates health insurance exchanges that operate in Tennessee under federal law and employ navigators or certified application counselors whose federally designated and certified role will be to facilitate individuals' and companies' enrollment in qualified health plans offered through such exchanges. The federal government has a system for designating and certifying such individuals and companies. Tennessee Public Acts 2013, ch. 377 reflects the intent of the legislature that licensing and regulation of such navigators and certified application counselors is necessary and in the best interest of the people of Tennessee, to ensure that they are trained and knowledgeable in the subject matter of individual and group health insurance plans and insurance coverage, and to avoid substantial risk to the health, safety, and welfare of the residents of this state. Therefore the Department is hereby creating a registration program to identify and regulate the activity of navigators and certified application counselors in order to appropriately regulate their activity in this State. Individuals or companies who are not actually certified by the United States Department of Health and Human Services as navigators, navigator entities, certified application counselor organizations or certified application counselors or are not required by federal law and regulations to be certified as navigators, navigator entities, certified application counselor organizations or certified application counselors are not required to be registered by this Chapter.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1301 through 56-6-1305, Patient Protection and Affordable Care Act, Public Law 111-148 as amended by Public Law 111-152 (2010).

Rule 0780-01-55-.02 Definitions.

When used in this Chapter, unless the context clearly requires otherwise, the term:

- (1) "Commissioner" means the commissioner of the Tennessee Department of Commerce and Insurance;
- (2) "Department" means the Tennessee Department of Commerce and Insurance;
- (3) "Certified application counselor" means any employee or volunteer of a certified application counselor organization that enters into an agreement with the exchange to have its employees or volunteers:
 - (a) Provide information to individuals and employees about the full range of qualified health plan options and insurance affordability programs for which they are eligible;
 - (b) Assist individuals and employees to apply for coverage in a qualified health plan through the exchange and for insurance affordability programs; and
 - (c) Help to facilitate enrollment of eligible individuals in qualified health plans and insurance affordability programs.

- (4) "Certified application counselor organization" means any organization, including an organization designated as a Medicaid certified application counselor organization by a state Medicaid or CHIP agency, designated by the exchange to certify its staff members or volunteers to act as certified application counselors, and includes those organizations described in 45 CFR § 155.225.
- (5) "Exchange" means any health benefit exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services.
- (6) "Navigator" means all persons who are certified or are required to be certified by the federal government under the designation of "navigator" under the federal Patient Protection and Affordable Care Act, including any individual or entity, other than an insurance producer licensed pursuant to Title 56, who receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform any activities and duties identified in 42 U.S.C. 18031(i). Such persons required to be certified as navigators federally include an employee of a navigator grant awardee or sub-grantee of navigator grant awardee who performs the activities and duties identified in 42 U.S.C. 18031(i).
- (7) "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association trust or corporation;
- (8) "Qualified health plan" has the meaning given such term in 42 U.S.C.A. § 18021(a).
- (9) "Registrant" means any person registered under this chapter or any one required to be licensed under this chapter.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-1301 through 56-6-1305, Public Law 111-148 as amended by Public Law 111-152 (2010), 42 U.S.C. § 18021(a), 42 U.S.C. § 18031(i), and 45 CFR Part 155.

Rule 0780-01-55-.03 Registration Required.

- (1) No person shall act as, offer to act as, or advertise any service as a navigator, a certified application counselor or a certified application counselor organization in this state unless the individual or entity is registered with the commissioner pursuant to this rule.
- (2) A person that is a navigator, a certified application counselor or a certified application counselor organization is subject to regulation by the commissioner.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.04 Application for Registration.

- (1) An individual applying for a navigator or certified application counselor registration shall make application to the commissioner on a form developed by the commissioner and declare under penalty of refusal, suspension, or revocation of the registration that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:
 - (a) Is at least eighteen years of age;
 - (b) Is not disqualified for having committed any act that would be a ground for denial, suspension, or revocation of a registration under rule 0780-01-55-.07;
 - (c) Has not had an insurance producer license, a navigator license, a certified application counselor license, or an equivalent license or certification denied, suspended, or revoked in any state, province, district, or territory or by the United States Department of Health and Human Services;
 - (d) Has successfully passed the applicable federal training program for navigators or certified application counselors;

- (e) Has submitted a full set of fingerprints to the commissioner and successfully completed a criminal background check in a manner prescribed by the commissioner. The commissioner may accept an equivalent criminal background check performed by the navigator entity or the certified application counselor organization;
 - (f) When applicable, has the written consent of the commissioner pursuant to 18 U.S.C. 1033 and T.C.A. § 56-53-106(b), or any successor statute regulating crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce;
 - (g) Possesses the requisite character and integrity; and
 - (h) Has identified the entity with which the individual is affiliated and supervised.
- (2) An entity that acts as a navigator, supervises or is responsible for the activities of individual navigators, or receives funding to perform such activities shall obtain a navigator entity registration. An entity applying for navigator entity registration shall:
 - (a) Make application on a form and containing the information prescribed by the commissioner;
 - (b) Designate an individual registered as a navigator to be responsible for the entity's compliance with this chapter.
 - (3) An entity that acts as a certified application counselor organization, supervises or is responsible for the activities of individual certified application counselors, or receives funding to perform such activities shall obtain a certified application counselor registration. An entity applying for a certified application counselor registration shall:
 - (a) Make application on a form and containing the information prescribed by the commissioner;
 - (b) Designate an individual registered as a certified application counselor to be responsible for the entity's compliance with this chapter.
 - (4) The commissioner may require any documents deemed necessary to verify the information contained in an application submitted in accordance with rule 0780-01-55-.04(1), (2) and (3).
 - (5) Entities registered as navigator shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual navigators that are no longer affiliated with the navigator entity within thirty (30) days of the termination of affiliation.
 - (6) Entities registered as certified application counselor organizations shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual certified application counselors that are no longer affiliated with the certified application counselor organization within thirty (30) days of the termination of affiliation.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-107, 56-2-301 and 56-6-1301 through 56-6-1305, 56-53-106 and 18 U.S.C. § 1033.

Rule 0780-01-55-.05 Registration Renewal.

- (1) A navigator, business entity navigator, certified application counselor and certified application counselor organization registration shall be valid for one year. A navigator, business entity navigator, certified application counselor and certified application counselor organization registration shall expire after twelve (12) months after registration. A navigator's, business entity navigator's, certified application counselor's and certified application counselor organization's existing registration shall remain in effect during the pendency of a renewal application.
- (2) Thirty days prior to the end of the twelve (12) month period, a navigator, business entity navigator, certified application counselor and certified application counselor organization may file an application for renewal on the application prescribed by the commissioner.

(3) Prior to the filing date for application for renewal of a license, an individual navigator or certified application counselor shall complete twelve (12) hours of continuing education requirements with one (1) credit hour equaling fifty (50) minutes in length. An entity registered as a navigator or a certified application counselor organization shall provide or shall arrange for continuing education to be provided to the individual navigators and certified application counselors. Any failure to fulfill the ongoing continuing education requirements shall result in the expiration of the individual navigator's or certified application counselor's registration. Individual navigators and certified application counselors whose registration has expired for failing to complete the continuing education requirements may not apply for a registration until they have provided satisfactory proof to the commissioner that they have completed the required continuing education requirements and have filed for an application for registration in accordance with rule 0780-01-55-.04.

(4) For the continuing education provided to navigators and certified application counselors:

(a) It is recommended that one (1) hour should have course concentration in ethics during each continuing education year.

(b) Except for those individuals described in rule 0780-01-55-.05(5), the federal training required for navigators and certified application counselors may only count toward a maximum of five (5) continuing education requirement hours under this rule.

(c) It is recommended an educational program should be a formal program of learning which contributes directly to the professional competence of the registrant. It is recommended that such formal programs:

1. File the education program with the commissioner on a form approved by the commissioner;

2. Prepare and maintain a detailed outline for four (4) years after the presentation;

3. Concentrate on subject areas such as:

(i) Insurance laws and regulations;

(ii) Health insurance overview;

(iii) Providing assistance in the marketplace;

(iv) Eligibility and enrollment;

(v) Privacy and security;

(vi) TennCare and other Tennessee assistance programs;

(vii) Financial literacy;

(viii) Special marketplace circumstances;

(ix) Ethics;

4. Avoid subject areas such as:

(j) Committee service in any professional organization;

(ii) Computer science courses; and

(iii) Motivational, psychology, or sales training courses.

(d) Reporting of Continuing Education. Entities registered as navigators and certified application counselor organizations shall, in a manner prescribed by the commissioner, provide the

commissioner with a list of all individual navigators or certified application counselors that it employs, supervises or is affiliated with on an annual basis upon renewal. This list shall certify that continuing education has been provided for individual navigator and certified application counselor registrants.

- (e) The commissioner may, upon written request, extend the time in which a registrant must comply with or grant exception to the continuing education requirements of this Rule for reasons of poor health, military service, or other reasonable and just causes, including situations in which an individual navigator or certified application counselor becomes affiliated with, employed by or supervised by an entity registered as a navigator or a certified application organization and such individual has not completed the continuing education requirements before the individual's renewal because the continuing education has not yet been provided by the entity or organization.
- (5) For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, proof of satisfactory completion of federal training requirements shall meet the continuing education requirements for their first registration renewal only, provided such proof is filed with the Department on a form prescribed by the Commissioner.
- (6) For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, those registrations shall remain effective until this rule becomes effective. Individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, may renew their registrations in accordance with the provisions of this rule. For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, such registrations shall remain in effect during the review of the renewal application.
- (7) For individuals not registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, that have received federal navigator or certified application counselor certifications, such applicants may continue to offer navigator or certified application counselor assistance after receiving notification that a completed application that includes a federal certification number has been received by the Department during the review of the application.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.06 Navigator and Certified Application Counselor Conduct.

- (1) A navigator or certified application counselor may not:
 - (a) Engage in any activities that would require an insurance producer license;
 - (b) Provide any information or services related to health benefit plans or other products not offered in the exchange except as may be required or contemplated by the duties of such person under federal law or regulation on behalf of the exchange;
 - (c) Accept any compensation or consideration that is dependent, in whole or in part, on whether a person enrolls in or purchases a health plan;
 - (d) Engage in any unfair method of competition or any fraudulent, deceptive, or dishonest act or practice; or
 - (e) Violate any applicable insurance law or regulation of this state or any subpoena or order of the commissioner.
- (2) Only a person licensed as an insurance producer in this state may:
 - (a) Sell, solicit, or negotiate health insurance.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-103 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.07 Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration.

- (1) The commissioner may refuse to issue a registration or, if after providing notice consistent with the process established by T.C.A. § 4-5-320(c) and providing the opportunity for a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, to be conducted pursuant to the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-04-01, the commissioner may place on probation, suspend, revoke, or refuse to renew or reinstate, a registration issued pursuant to this chapter, or may levy a fine not to exceed One Thousand dollars (\$1000) for each violation, or any combination of actions, for any one or more of the following causes:
 - (a) Providing incorrect, misleading, incomplete or materially untrue information in the registration application or any other report or filing submitted to the commissioner or Department;
 - (b) Violating any law, rule, including this Chapter, regulation, subpoena or order of the commissioner or of another state's commissioner;
 - (c) Obtaining or attempting to obtain a license or registration through misrepresentation or fraud;
 - (d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
 - (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - (f) Having been convicted of a felony;
 - (g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
 - (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
 - (i) Having an insurance producer license, navigator license or certified application counselor license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
 - (j) Forging another's name to an application for insurance or to any document related to an insurance transaction;
 - (k) Violating the unfair trade practices as enumerated in § 56-6-125 as if the individual were the insurance producer referenced in that statute.
 - (l) Failing to maintain the certification or approval to be a navigator or certified application counselor, or having such approval terminated, by the Department of Health and Human Services, or the exchange.
- (2) The commissioner may examine and investigate the business affairs and records of any registrant, or any person required to be registered, to determine whether the individual or entity has engaged or is engaging in any violation of this chapter or applicable insurance law.
- (3) The registration of a business entity may be suspended, revoked or subject to a monetary penalty if the commissioner finds, after a hearing, that an individual registrant's violation was known or should have been known by one (1) or more of the partners, officers or managers acting on behalf of the entity and the violation was neither reported to the commissioner nor corrective action taken.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-204, 56-2-301, 56-2-305, 56-6-112, and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.08 Reporting to the Commissioner.

- (1) Each registrant shall report to the commissioner any administrative action taken by a governmental agency against him in this state or in any other jurisdiction within thirty calendar days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.
- (2) A registrant shall immediately report to the commissioner any criminal prosecution of the navigator or certified application counselor taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. Failure to report within thirty days following the hearing date shall be considered a violation of this rule subject to rule 0780-01-55-.07.
- (3) An entity registered under this chapter that terminates the employment, engagement, affiliation, or other relationship with an individual navigator or certified application counselor shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in rules 0780-01-55-.06 or 0780-01-55-.07, or the entity has knowledge the navigator or certified application counselor was found by a court or government body to have engaged in any of the activities in rules 0780-01-55-.06 or 0780-01-55-.07. Upon the written request of the commissioner, the entity shall provide additional information, documents, records, or other data pertaining to the termination or activity of the individual.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-204, 56-2-301 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.09 Other laws; Severability.

- (1) The requirements of Title 56, Chapter 8, Part 1, and any related rules, shall apply to individuals and entities registered under this chapter. The activities and duties of navigators and certified application counselors shall be deemed to constitute transacting the business of insurance.
- (2) The requirements of this chapter shall not apply to any individual or entity licensed as an insurance producer in this state or any entity or individual exempted from having to have an insurance producer license under T.C.A. § 56-6-104(b)(1).
- (3) The requirements of this chapter shall not apply to hospitals licensed in this state under Title 68 or Title 33 of the Tennessee Code Annotated.
- (4) The requirements of this chapter shall not apply to the Department of Human Services of this state and any employees of the Department of Human Services acting in their official capacities as employees of that department, or any contractors to the extent of their official duties for that department.
- (5) If any provision of this chapter or its application to any person or circumstance is held invalid by a court, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable and the valid provisions or applications shall remain in full force and effect.

Authority: Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-104, 56-8-101 through 56-8-113 and 56-6-1301 through 56-6-1305.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

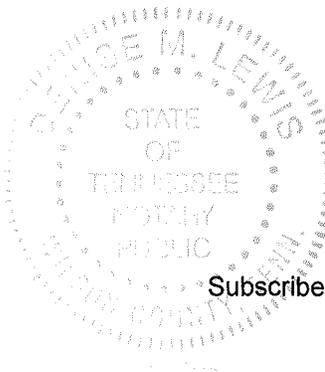
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 11/4/14 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/12/13

Rulemaking Hearing(s) Conducted on: (add more dates). 2/3/14



Date: 11/4/14

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 11/4/14

Notary Public Signature: Charles M. Lewis

My commission expires on: 2/15/16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
12/22/2014
Date

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PUBLICATIONS

Filed with the Department of State on: 2-20-15

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Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment 1

0780-01-55-.9

It was commented by two separate commenters that hospitals should be subject to the registration for navigators and certified application counselors.

Agency Response to Comment 1

2014 Public Acts, Chapter 660 became effective on March 24, 2014. This public chapter amends T.C.A. § 56-6-1301(3) to remove from the definition of navigator any hospital licensed pursuant to Title 68 or Title 33 of the Tennessee Code Annotated. Hospitals are no longer subject to the registration requirements of this rule.

Comment 2

0780-01-55-.06

It was commented that the prohibitions on navigators and certified application counselors from discussing the benefits, terms, and features of a particular health plan over any other health plans and offering advice about which health plan is better or worse or suitable for a particular individual or employer, or recommending or endorsing a particular health plan or advising consumers about which health plan to choose were preventing organizations that arrange for physicians to volunteer their services for the poor from explaining to potential marketplace enrollees whether their specialty care physicians and medications were covered by a specific plan.

Agency Response to Comment 2

The purposes of these prohibitions are to keep navigators and certified application counselors from recommending, endorsing, or choosing a plan for someone. It is the Department's position that recommending, endorsing or choosing a plan for someone amounts to soliciting insurance and would require an insurance producer license. Pursuant to T.C.A. § 56-6-103, a person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with Tennessee Code Annotated Title 56, Chapter 6, Part 1. Under T.C.A. § 56-6-102(17), "solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company. In order to clarify the intent of these rules, the Department has deleted rule 0780-01-55-.06(1)(b) and (c) but leaves rule 0780-01-55-.06(1)(a) intact. Rule 0780-01-55-.06(1)(a) already prohibits a navigator from selling, soliciting or negotiating insurance. This is to clarify that a navigator or certified application may discuss the substantive benefits, terms, and features of a particular health plan over any other health plans. Further, the federal navigator rule, 45 CFR § 155.210(c)(1)(iii)(C), and certified application counselor rule, 45 CFR § 155.225(d)(8)(iii), now clarify that the Federal Government considers any requirements that prevent navigators and certified application counselors from providing advice regarding substantive benefits or comparative benefits of different health plans would prevent the application of the provisions of Title I of the Affordable Care Act.

Comment 3

0780-01-55

It was commented by two separate commenters that the proposed rule in the notice of rulemaking hearing did not need any changes.

Agency Response to Comment 3

While the Department appreciated the support expressed in this comment, certain changes have been made to this rule in order to address other comments and to ensure this rule complies with applicable federal laws and regulations.

Comment 4

0780-01-55

It was commented by two separate commenters that the Department was being sued in both federal and state court over the emergency navigator emergency rules and it was asked whether these rulemaking hearing rules would comply with any decisions in those cases.

Agency Response to Comment 4

This rule is drafted to comply with the agreed orders entered in both the state and federal court actions. Further, the Department has posted frequently asked questions (FAQ3 and FAQ4) that explain the agreed orders in both cases and how those agreed orders impact the emergency navigator rule issued by the Department and the permanent navigator rule the Department is promulgating.

Comment 5

0780-01-55-.05

It was commented that the twelve hours of continued education that certified application counselors must get every year was approximately two and half times the training that the federal government requires for certified application counselors.

Agency Response to Comment 5

Because of the complexity of the federal health care law, and because of the number of qualified health plans sold on the federal marketplace for Tennessee, the Department believes that certified application counselors and navigators need a minimum of twelve hours of continuing education every year. Federal regulations are continuously evolving and we want to ensure that certified application counselors and navigators have a satisfactory understanding of the marketplace. Further, the Department wants certified application counselors to have an understanding of the Tennessee market. There were over seventy different qualified health plans offered by four different companies in certain parts of Tennessee for the 2014 open enrollment period. We believe that twelve hours of continuing education is the minimum amount of time in which a certified application counselor or a navigator can receive enough education to understand the changing federal regulations and the Tennessee insurance market.

Comment 6

0780-01-55-.05

It was commented that the federal certification and recertification training that certified application counselors and navigators receive should count toward the twelve hours of continuing education required in rule 0780-01-55-.05.

Agency Response to Comment 6

The Department has amended rule 0780-01-55-.05 in response to this comment. Rule 0780-01-55-.05 specifies a framework for continuing education for certified application counselors and navigators. Under this rule, certified application counselors and navigators can count up to five (5) hours of federal certification and recertification training as counting toward the twelve hour continuing education requirement. Furthermore, for individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, proof of satisfactory completion of federal training requirements shall meet the continuing education requirements for their first registration renewal only, provided such proof is filed with the Department on a form prescribed by the Commissioner

Comment 7

0780-01-55-.05

It was commented that training provided by certified application counselor organizations and navigator organizations to their certified application counselors and navigators should count toward the twelve hours of continuing education required in rule 0780-01-55-.05.

Agency Response to Comment 7

The department has amended rule 0780-01-55-.05 in response to this comment. Rule 0780-01-55-.05 specifies a framework for continuing education for certified application counselors and navigators. Under this rule, certified application counselor organizations and entities registered as navigators would be responsible for providing continuing education to the individual certified application counselors and navigators affiliated with the organizations and entities.

Comment 8

0780-01-55-.05

It was commented that certified application counselors and navigators should be required to complete the amount of training that Federally Qualified Health Centers have funding for.

Agency Response to Comment 8

Because of the complexity of the federal health care law, and because of the number of qualified health plans sold on the federal marketplace for Tennessee, the Department believes that certified application counselors and navigators need a minimum of twelve hours of continuing education every year. Federal regulations are continuously evolving and we want to ensure that certified application counselors and navigators have a satisfactory understanding of the marketplace. Further, the Department wants certified application counselors to have an understanding of the Tennessee market. There were over seventy different qualified health plans offered by four different companies in certain parts of Tennessee for the 2014 open enrollment period. We believe that twelve hours of continuing education is the minimum amount of time in which a certified application counselor or a navigator can receive enough education to understand the changing federal regulations and the Tennessee insurance market.

However, the Department has amended rule 0780-01-55-.05 in response to this comment. Rule 0780-01-55-.05 specifies a framework for continuing education for certified application counselors and navigators. Under this rule, certified application counselor organizations and entities registered as navigators would be responsible for providing continuing education to the individual certified application counselors and navigators affiliated with the organizations and entities.

Comment 9

0780-01-55-.01

It was commented that in Tennessee, navigators and certified application counselors had to complete multiple steps in order to be cleared to help others, but "Assisters" in the community are advertising their ability to help with health insurance without any requirements. Large local organizations whose assisters have not even completed the certified application counselor training, let alone been certified, are hosting call centers. It was commented that assisters receive some kind of training or operate under the guidance of someone who is trained (say, for example, a sponsoring Navigator Grantee/Sub-Grantee or federally qualified health center certified application counselor organization). It was further commented that volunteer assisters should only be allowed to provide Center for Medicare Services or our State's approved Department of Health information, specifically for the TennCare and CHIP programs, and assist at enrollment events as supportive staff. It was commented that providing fact sheets and referrals to navigators and certified application counselors seems to be appropriate behavior for assisters, but not providing enrollment assistance. Actual enrollment events should be required to have navigators and certified application counselors conducting the enrollments.

Agency Response to Comment 9

Pursuant to guidance from the federal government, individuals and entities that are not registered with the federal government as navigators, navigator entities, certified application counselors, or certified application counselor organizations, and who do not represent themselves as such to the public are not required to register with the federal government. Pursuant to court orders entered into by the Department, it will register entities and individuals registered with the U.S. Department of Health and Human Services as navigators, navigator entities, certified application counselors, or certified application counselor organizations. Individuals or entities representing themselves to the public as navigators, navigator entities, certified application counselors, or certified application counselor organizations must also register with the federal government and with the Department of Commerce and Insurance.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are anticipated not to have a significant economic impact affecting small businesses. T.C.A. §§ 56-2-301, 56-6-104, 56-8-101 through 56-8-113 and 56-6-1301 through 56-6-1305 and 2014 Public Acts 2013, Chapter 377 authorize the Commissioner to promulgate rules in order to regulate the activities of navigators. The proposed rules create a registration and continuing education program for navigators and certified application counselors to ensure that individuals who have been convicted of a felony cannot act as navigators or certified application counselors in this State. Further, these rules provide penalties for violations of these regulations. These rules are necessary for the Commissioner of Commerce and Insurance to establish criteria for registering navigators to keep convicted felons from gaining access to Tennessee citizens' financial information and to ensure that navigators are not acting as insurance producers.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) The proposed rules will only apply to entities and individuals registered with the U.S. Department of Health and Human Services as navigators, navigator entities, certified application counselors, or certified application counselor organizations and to individuals or entities representing themselves to the public as navigators, navigator entities, certified application counselors, or certified application counselor organizations.
- (2) The projected administrative costs associated with complying with this rule are minimal. There is no licensing or registration fee associated with registering as a navigator, navigator entity, certified application counselor, or certified application counselor organization under this rule. Navigators and certified application counselors will be required to meet twelve (12) hours of continuing education requirements each year, however, the rules allow navigator entities and certified application counselor organizations to develop and provide continuing education programs for their own employees.
- (3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers and will only affect navigators, navigator entities, certified application counselors, or certified application counselor organizations.
- (4) There are no alternative methods to make the rule less costly, less intrusive or less burdensome.
- (5) There are no other counterparts in the State of Tennessee; however, this regulation is similar to regulations in effect in sixteen (16) different states.
- (6) Only navigators, navigator entities, certified application counselors, or certified application counselor organizations are subject to this rule. Exempting any navigators, navigator entities, certified application counselors, or certified application counselor organizations from this regulation would place Tennessee residents at a greater risk of having their personal information stolen by allowing convicted felons to act as navigators and certified application counselors in this State.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules create a registration and continuing education program for navigators and certified application counselors to ensure that individuals who have been convicted of a felony cannot act as navigators or certified application counselors in this State. Further, these rules provide penalties for violations of these regulations. These rules are necessary for the Commissioner of Commerce and Insurance to establish criteria for registering navigators to keep convicted felons from gaining access to Tennessee citizens' financial information and to ensure that navigators are not acting as insurance producers.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 56-2-301, 56-6-104, 56-8-101 through 56-8-113 and 56-6-1301 through 56-6-1305 and 2014 Public Acts 2013, Chapter 377 authorize the Commissioner to promulgate rules in order to regulate the activities of navigators.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules only apply to entities and individuals registered with the U.S. Department of Health and Human Services as navigators, navigator entities, certified application counselors, or certified application counselor organizations and to individuals or entities representing themselves to the public as navigators, navigator entities, certified application counselors, or certified application counselor organizations. The Department is not aware of anyone who urges adoption or rejection of this rule. Several individuals and organization sued to challenge the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014. However, those lawsuits have been settled and this rule conforms to the settlement agreements in those lawsuits.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

On September 18, 2013, the Department promulgated emergency rules for the registration of navigators, navigator entities, certified application counselors, or certified application counselor organizations. On September 27, 2013 a case was filed in Davidson County Chancery Court seeking to enjoin the emergency rule and on October 4, 2013 a case was filed in Federal Court in the Middle District of Tennessee seeking to enjoin the emergency rule. Both cases have been settled and these rulemaking hearing rules are drafted to be compliant with those settlements. Explanations of the settlements may be found on the Department of Commerce and Insurance's web site.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kimberly Biggs, Director of the Agent Licensing Section of the Insurance Division of the Tennessee Department of Commerce and Insurance.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Tony Greer, Chief Counsel for Insurance and TennCare Oversight.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Eighth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, (615) 253-7847.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

New Chapter
0780-01-55

Navigator and Certified Application Counselor Registration Requirements

0780-01-55-.01 Purpose and Scope.

0780-01-55-.02 Definitions.

0780-01-55-.03 Registration Required.

0780-01-55-.04 Application for Registration.

0780-01-55-.05 Registration Renewal.

0780-01-55-.06 Navigator and Certified Application Counselor Conduct.

0780-01-55-.07 Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration.

0780-01-55-.08 Reporting to the Commissioner.

0780-01-55-.09 Other laws; Severability.

Rule 0780-01-55-.01 Purpose and Scope.

The federal Patient Protection and Affordable Care Act creates health insurance exchanges that operate in Tennessee under federal law and employ navigators or certified application counselors whose federally designated and certified role will be to facilitate individuals' and companies' enrollment in qualified health plans offered through such exchanges. The federal government has a system for designating and certifying such individuals and companies. Tennessee Public Acts 2013, ch. 377 reflects the intent of the legislature that licensing and regulation of such navigators and certified application counselors is necessary and in the best interest of the people of Tennessee, to ensure that they are trained and knowledgeable in the subject matter of individual and group health insurance plans and insurance coverage, and to avoid substantial risk to the health, safety, and welfare of the residents of this state. Therefore the Department is hereby creating a registration program to identify and regulate the activity of navigators and certified application counselors in order to appropriately regulate their activity in this State. Individuals or companies who are not actually certified by the United States Department of Health and Human Services as navigators, navigator entities, certified application counselor organizations or certified application counselors or are not required by federal law and regulations to be certified as navigators, navigator entities, certified application counselor organizations or certified application counselors are not required to be registered by this Chapter.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1301 through 56-6-1305, Patient Protection and Affordable Care Act, Public Law 111-148 as amended by Public Law 111-152 (2010).

Rule 0780-01-55-.02 Definitions.

When used in this Chapter, unless the context clearly requires otherwise, the term:

- (1) "Commissioner" means the commissioner of the Tennessee Department of Commerce and Insurance;
- (2) "Department" means the Tennessee Department of Commerce and Insurance;
- (3) "Certified application counselor" means any employee or volunteer of a certified application counselor organization that enters into an agreement with the exchange to have its employees or volunteers:
 - (a) Provide information to individuals and employees about the full range of qualified health plan options and insurance affordability programs for which they are eligible;
 - (b) Assist individuals and employees to apply for coverage in a qualified health plan through the exchange and for insurance affordability programs; and
 - (c) Help to facilitate enrollment of eligible individuals in qualified health plans and insurance affordability programs.
- (4) "Certified application counselor organization" means any organization, including an organization designated as a Medicaid certified application counselor organization by a state Medicaid or CHIP

agency, designated by the exchange to certify its staff members or volunteers to act as certified application counselors, and includes those organizations described in 45 CFR § 155.225.

- (5) "Exchange" means any health benefit exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services.
- (6) "Navigator" means all persons who are certified or are required to be certified by the federal government under the designation of "navigator" under the federal Patient Protection and Affordable Care Act, including any individual or entity, other than an insurance producer licensed pursuant to Title 56, who receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform any activities and duties identified in 42 U.S.C. 18031(i). Such persons required to be certified as navigators federally include an employee of a navigator grant awardee or sub-grantee of navigator grant awardee who performs the activities and duties identified in 42 U.S.C. 18031(i).
- (7) "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association trust or corporation;
- (8) "Qualified health plan" has the meaning given such term in 42 U.S.C.A. § 18021(a).
- (9) "Registrant" means any person registered under this chapter or any one required to be licensed under this chapter.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-1301 through 56-6-1305, Public Law 111-148 as amended by Public Law 111-152 (2010), 42 U.S.C. § 18021(a), 42 U.S.C. § 18031(i), and 45 CFR Part 155.

Rule 0780-01-55-.03 Registration Required.

- (1) No person shall act as, offer to act as, or advertise any service as a navigator, a certified application counselor or a certified application counselor organization in this state unless the individual or entity is registered with the commissioner pursuant to this rule.
- (2) A person that is a navigator, a certified application counselor or a certified application counselor organization is subject to regulation by the commissioner.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.04 Application for Registration.

- (1) An individual applying for a navigator or certified application counselor registration shall make application to the commissioner on a form developed by the commissioner and declare under penalty of refusal, suspension, or revocation of the registration that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:
 - (a) Is at least eighteen years of age;
 - (b) Is not disqualified for having committed any act that would be a ground for denial, suspension, or revocation of a registration under rule 0780-01-55-.07;
 - (c) Has not had an insurance producer license, a navigator license, a certified application counselor license, or an equivalent license or certification denied, suspended, or revoked in any state, province, district, or territory or by the United States Department of Health and Human Services;
 - (d) Has successfully passed the applicable federal training program for navigators or certified application counselors;
 - (e) Has submitted a full set of fingerprints to the commissioner and successfully completed a criminal background check in a manner prescribed by the commissioner. The commissioner may accept an

equivalent criminal background check performed by the navigator entity or the certified application counselor organization;

- (f) When applicable, has the written consent of the commissioner pursuant to 18 U.S.C. 1033 and T.C.A. § 56-53-106(b), or any successor statute regulating crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce;
 - (g) Possesses the requisite character and integrity; and
 - (h) Has identified the entity with which the individual is affiliated and supervised.
- (2) An entity that acts as a navigator, supervises or is responsible for the activities of individual navigators, or receives funding to perform such activities shall obtain a navigator entity registration. An entity applying for navigator entity registration shall:
- (a) Make application on a form and containing the information prescribed by the commissioner;
 - (b) Designate an individual registered as a navigator to be responsible for the entity's compliance with this chapter.
- (3) An entity that acts as a certified application counselor organization, supervises or is responsible for the activities of individual certified application counselors, or receives funding to perform such activities shall obtain a certified application counselor registration. An entity applying for a certified application counselor registration shall:
- (a) Make application on a form and containing the information prescribed by the commissioner;
 - (b) Designate an individual registered as a certified application counselor to be responsible for the entity's compliance with this chapter.
- (4) The commissioner may require any documents deemed necessary to verify the information contained in an application submitted in accordance with rule 0780-01-55-.04(1), (2) and (3).
- (5) Entities registered as navigator shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual navigators that are no longer affiliated with the navigator entity within thirty (30) days of the termination of affiliation.
- (6) Entities registered as certified application counselor organizations shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual certified application counselors that are no longer affiliated with the certified application counselor organization within thirty (30) days of the termination of affiliation.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-107, 56-2-301 and 56-6-1301 through 56-6-1305, 56-53-106 and 18 U.S.C. § 1033.

Rule 0780-01-55-.05 Registration Renewal.

- (1) A navigator, business entity navigator, certified application counselor and certified application counselor organization registration shall be valid for one year. A navigator, business entity navigator, certified application counselor and certified application counselor organization registration shall expire after twelve (12) months after registration. A navigator's, business entity navigator's, certified application counselor's and certified application counselor organization's existing registration shall remain in effect during the pendency of a renewal application.
- (2) Thirty days prior to the end of the twelve (12) month period, a navigator, business entity navigator, certified application counselor and certified application counselor organization may file an application for renewal on the application prescribed by the commissioner.
- (3) Prior to the filing date for application for renewal of a license, an individual navigator or certified application counselor shall complete twelve (12) hours of continuing education requirements with one (1) credit hour equaling fifty (50) minutes in length. An entity registered as a navigator or a certified

application counselor organization shall provide or shall arrange for continuing education to be provided to the individual navigators and certified application counselors. Any failure to fulfill the ongoing continuing education requirements shall result in the expiration of the individual navigator's or certified application counselor's registration. Individual navigators and certified application counselors whose registration has expired for failing to complete the continuing education requirements may not apply for a registration until they have provided satisfactory proof to the commissioner that they have completed the required continuing education requirements and have filed for an application for registration in accordance with rule 0780-01-55-.04.

- (4) For the continuing education provided to navigators and certified application counselors:
- (a) It is recommended that one (1) hour should have course concentration in ethics during each continuing education year.
 - (b) Except for those individuals described in rule 0780-01-55-.05(5), the federal training required for navigators and certified application counselors may only count toward a maximum of five (5) continuing education requirement hours under this rule.
 - (c) It is recommended an educational program should be a formal program of learning which contributes directly to the professional competence of the registrant. It is recommended that such formal programs:
 - 1. File the education program with the commissioner on a form approved by the commissioner;
 - 2. Prepare and maintain a detailed outline for four (4) years after the presentation;
 - 3. Concentrate on subject areas such as:
 - (i) Insurance laws and regulations;
 - (ii) Health insurance overview;
 - (iii) Providing assistance in the marketplace;
 - (iv) Eligibility and enrollment;
 - (v) Privacy and security;
 - (vi) TennCare and other Tennessee assistance programs;
 - (vii) Financial literacy;
 - (viii) Special marketplace circumstances;
 - (ix) Ethics;
 - 4. Avoid subject areas such as:
 - (j) Committee service in any professional organization;
 - (ii) Computer science courses; and
 - (iii) Motivational, psychology, or sales training courses.
 - (d) Reporting of Continuing Education. Entities registered as navigators and certified application counselor organizations shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual navigators or certified application counselors that it employs, supervises or is affiliated with on an annual basis upon renewal. This list shall certify that continuing education has been provided for individual navigator and certified application counselor registrants.
 - (e) The commissioner may, upon written request, extend the time in which a registrant must comply with

or grant exception to the continuing education requirements of this Rule for reasons of poor health, military service, or other reasonable and just causes, including situations in which an individual navigator or certified application counselor becomes affiliated with, employed by or supervised by an entity registered as a navigator or a certified application organization and such individual has not completed the continuing education requirements before the individual's renewal because the continuing education has not yet been provided by the entity or organization.

- (5) For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, proof of satisfactory completion of federal training requirements shall meet the continuing education requirements for their first registration renewal only, provided such proof is filed with the Department on a form prescribed by the Commissioner.
- (6) For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, those registrations shall remain effective until this rule becomes effective. Individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, may renew their registrations in accordance with the provisions of this rule. For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, such registrations shall remain in effect during the review of the renewal application.
- (7) For individuals not registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, that have received federal navigator or certified application counselor certifications, such applicants may continue to offer navigator or certified application counselor assistance after receiving notification that a completed application that includes a federal certification number has been received by the Department during the review of the application.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.06 Navigator and Certified Application Counselor Conduct.

- (1) A navigator or certified application counselor may not:
 - (a) Engage in any activities that would require an insurance producer license;
 - (b) Provide any information or services related to health benefit plans or other products not offered in the exchange except as may be required or contemplated by the duties of such person under federal law or regulation on behalf of the exchange;
 - (c) Accept any compensation or consideration that is dependent, in whole or in part, on whether a person enrolls in or purchases a health plan;
 - (d) Engage in any unfair method of competition or any fraudulent, deceptive, or dishonest act or practice;
or
 - (e) Violate any applicable insurance law or regulation of this state or any subpoena or order of the commissioner.
- (2) Only a person licensed as an insurance producer in this state may:
 - (a) Sell, solicit, or negotiate health insurance.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-103 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.07 Grounds for Placing on Probation, Refusal to Issue or Renew, Revocation or Suspension of Registration.

- (1) The commissioner may refuse to issue a registration or, if after providing notice consistent with the process established by T.C.A. § 4-5-320(c) and providing the opportunity for a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, to be conducted pursuant to the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-04-01, the commissioner may place on probation, suspend, revoke, or refuse to renew or reinstate, a registration issued pursuant to this chapter, or may levy a fine not to exceed One Thousand dollars (\$1000) for each violation, or any combination of actions, for any one or more of the following causes:
 - (a) Providing incorrect, misleading, incomplete or materially untrue information in the registration application or any other report or filing submitted to the commissioner or Department;
 - (b) Violating any law, rule, including this Chapter, regulation, subpoena or order of the commissioner or of another state's commissioner;
 - (c) Obtaining or attempting to obtain a license or registration through misrepresentation or fraud;
 - (d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
 - (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - (f) Having been convicted of a felony;
 - (g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
 - (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
 - (i) Having an insurance producer license, navigator license or certified application counselor license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
 - (j) Forging another's name to an application for insurance or to any document related to an insurance transaction;
 - (k) Violating the unfair trade practices as enumerated in § 56-6-125 as if the individual were the insurance producer referenced in that statute.
 - (l) Failing to maintain the certification or approval to be a navigator or certified application counselor, or having such approval terminated, by the Department of Health and Human Services, or the exchange.
- (2) The commissioner may examine and investigate the business affairs and records of any registrant, or any person required to be registered, to determine whether the individual or entity has engaged or is engaging in any violation of this chapter or applicable insurance law.
- (3) The registration of a business entity may be suspended, revoked or subject to a monetary penalty if the commissioner finds, after a hearing, that an individual registrant's violation was known or should have been known by one (1) or more of the partners, officers or managers acting on behalf of the entity and the violation was neither reported to the commissioner nor corrective action taken.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-204, 56-2-301, 56-2-305, 56-6-112, and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.08 Reporting to the Commissioner.

- (1) Each registrant shall report to the commissioner any administrative action taken by a governmental agency against him in this state or in any other jurisdiction within thirty calendar days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

- (2) A registrant shall immediately report to the commissioner any criminal prosecution of the navigator or certified application counselor taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. Failure to report within thirty days following the hearing date shall be considered a violation of this rule subject to rule 0780-01-55-.07.
- (3) An entity registered under this chapter that terminates the employment, engagement, affiliation, or other relationship with an individual navigator or certified application counselor shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in rules 0780-01-55-.06 or 0780-01-55-.07, or the entity has knowledge the navigator or certified application counselor was found by a court or government body to have engaged in any of the activities in rules 0780-01-55-.06 or 0780-01-55-.07. Upon the written request of the commissioner, the entity shall provide additional information, documents, records, or other data pertaining to the termination or activity of the individual.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-204, 56-2-301 and 56-6-1301 through 56-6-1305.

Rule 0780-01-55-.09 Other laws; Severability.

- (1) The requirements of Title 56, Chapter 8, Part 1, and any related rules, shall apply to individuals and entities registered under this chapter. The activities and duties of navigators and certified application counselors shall be deemed to constitute transacting the business of insurance.
- (2) The requirements of this chapter shall not apply to any individual or entity licensed as an insurance producer in this state or any entity or individual exempted from having to have an insurance producer license under T.C.A. § 56-6-104(b)(1).
- (3) The requirements of this chapter shall not apply to hospitals licensed in this state under Title 68 or Title 33 of the Tennessee Code Annotated.
- (4) The requirements of this chapter shall not apply to the Department of Human Services of this state and any employees of the Department of Human Services acting in their official capacities as employees of that department, or any contractors to the extent of their official duties for that department.
- (5) If any provision of this chapter or its application to any person or circumstance is held invalid by a court, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable and the valid provisions or applications shall remain in full force and effect.

Authority: Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-104, 56-8-101 through 56-8-113 and 56-6-1301 through 56-6-1305.

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