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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Tony Greer, Assistant General Counsel
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to T.C.A. § 4-5-208, the Commissioner of Commerce and Insurance is authorized to promulgate emergency rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 377 of the Public Acts of 2013 ("Act"), created a new law that specifically restricts the activities of navigators. Navigators are individuals and entities that facilitate enrollment in exchanges created pursuant to the Federal Patient Protection and Affordable Care Act ("PPACA"). The Act clarifies that navigators who are not licensed as insurance producers cannot perform any function that would require an insurance producer license, such as selling, soliciting or negotiating a contract of insurance. The Act gives the Commissioner broad rulemaking authority necessary to regulate the activities of navigators. These rules create a registration and continuing education program for navigators to ensure that individuals who are not of good moral character cannot act as navigators in this State. Further, these rules provide penalties for violations of the Act and these regulations. The Act became effective on July 1, 2013 and the public chapter was signed into law by the Governor on April 16, 2013. The exchanges being created under PPACA become operational on October 1, 2013. As such, navigators will begin facilitating enrollment in the exchanges on October 1, 2013 as well. However, the Federal Department of Health and Human Services ("HHS") did not release the final federal navigator rule until July 17, 2013. There is not enough time to go through a notice of rulemaking hearing before the October 1, 2013 operational date of the exchanges.

These rules are necessary for the Commissioner of Commerce and Insurance to establish criteria for registering navigators to ensure that individuals who are not of good moral character cannot act as navigators in this State. These rules are intended to keep convicted felons from gaining access to Tennessee citizen's financial information and to ensure that navigators are not acting as insurance producers.

The October 1, 2013 operational date did not provide adequate time to conduct a notice of rulemaking hearing after the Act became effective on July 1, 2013. Due to the length of time necessary to complete the rulemaking process to promulgate rules for the registration of navigators, these emergency rules are required in order for the Commissioner of Commerce and Insurance to comply with the enactment of Legislature and to ensure that the Commissioner of Commerce and Insurance has the resources necessary to implement the Act. The Commissioner of Commerce and Insurance will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules.

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/RuleTitle 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
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

**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 role will be to facilitate individuals' and companies' enrollment in qualified health plans offered through such exchanges. 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 regulate the activity of navigators in order to appropriately regulate their activity in this State.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1201 through 56-6-1205, 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" includes all persons listed in Tenn. Code Ann. § 56-6-1201(3), who are or should be certified as "navigators" under the federal Patient Protection and Affordable Care Act, and means any individual or entity, other than an insurance producer licensed pursuant to Tennessee Code Annotated Title 56, who:
 - (a) Receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform any of the activities and duties identified in 42 U.S.C. 18031(i);
 - (b) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;
 - (c) Conducts public education or consumer assistance activities for or on behalf of an exchange; or
 - (d) Is described or designated by an exchange, the state, or the United States Department of Health and Human Services, or could reasonably be described or designated as, navigators, "non-Navigator assistance personnel" or "in-person assistance personnel", enrollment assisters, application assisters or application counselors including certified application counselors.
- (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, 56-6-1201 through 56-6-1205, 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 56-6-1201 through 56-6-1205.

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) Maintains his or her principal place of business in the state;
 - (c) 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;
 - (d) 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;
 - (e) Has successfully passed the applicable federal training program for navigators or certified application counselors;
 - (f) 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;
 - (g) 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;
 - (h) Possesses the requisite character and integrity; and
 - (i) 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 it employs, supervises, or is affiliated with on a quarterly basis.
- (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 it employs, supervises, or is affiliated with on a quarterly basis.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-107, 56-2-301 and 56-6-1201 through 56-6-1205, 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.
- (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 approved by the commissioner. Such individual shall file with the commissioner, by a method prescribed by the commissioner, satisfactory certification of completion of the continuing education requirements. Any failure to fulfill the ongoing continuing education requirements shall result in the expiration of the 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.

Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1201 through 56-6-1205.

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) Discuss the benefits, terms, and features of a particular health plan over any other health plans and offer advice about which health plan is better or worse or suitable for a particular individual or employer;
 - (c) Recommend or endorse a particular health plan or advise consumers about which health plan to

choose; or

- (d) 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.
 - (e) Accept any compensation or consideration that is dependent, in whole or in part, on whether a person enrolls in or purchases a health plan;
 - (f) Engage in any unfair method of competition or any fraudulent, deceptive, or dishonest act or practice; or
 - (g) 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 56-6-1201 through 56-6-1205.

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) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this state; and
 - (l) Violating the unfair trade practices as enumerated in § 56-6-125 as if the individual were the insurance producer referenced in that statute.
 - (m) 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) In addition to imposing the penalties authorized by rule 0780-01-55-.07(1), pursuant to T.C.A. § 56-6-114, a registrant shall be personally liable for any premiums paid for, or valid claims made on, all contracts of insurance unlawfully sold, solicited or negotiated within this state by or through the registrant directly or indirectly, for or on behalf of an insurance company not authorized to do business in this state.
 - (3) Pursuant to T.C.A. § 56-6-115, a registrant who solicits a policy of insurance on behalf of an insurer shall become liable for all the duties, requirements, liabilities and penalties to which an insurance producer of the insurer is subject.
 - (4) 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.
 - (5) 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, 56-6-114, 56-6-115 and 56-6-1201 through 56-6-1205.

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 56-6-1201 through 56-6-1205.

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) 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 56-6-1201 through 56-6-1205.

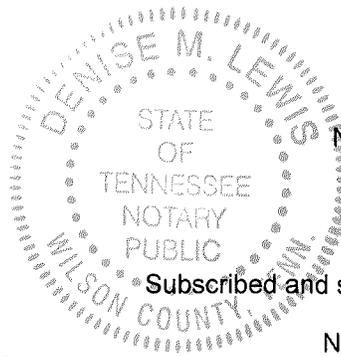
* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

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

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 9/16/13
Signature: Julie Mix McPeak
Name of Officer: Julie Mix McPeak
Title of Officer: Commissioner
*Subscribed and sworn to before me on: 9/16/13
Notary Public Signature: Denise M. Lewis
My commission expires on: 2/15/2016

My Commission Expires



All emergency 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.

Robert E. Cooper, Jr. W.E.Y.
Robert E. Cooper, Jr.
Attorney General and Reporter
9/18/13
Date

Department of State Use Only

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DEPARTMENT OF STATE

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* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett
Tre Hargett
Secretary of 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;

These rules create a registration and continuing education program for navigators to ensure that individuals who are not of good moral character cannot act as navigators in this State. Further, these rules provide penalties for violations of the Act and these regulations. Finally these rules are designed to keep convicted felons from gaining access to Tennessee citizen's financial information and to ensure that navigators are 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;

This emergency rule is promulgated pursuant to 2013 Public Acts, Chapter 377, and Tenn. Code Ann. §§ 56-2-301.

- (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;

This rule will affect all individuals and entities that receive federal grant funds to operate as navigators and certified application counselors in Tennessee. The entities and individuals applying for federal grant funds may oppose these rules; however, these rules are necessary to protect the citizens of this state. Individuals who have been denied insurance producer licenses because of their background have already contacted the department inquiring how they could become navigators.

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

None known.

- (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;

Chlora Lindley-Myers, Deputy Commissioner; Tony Greer, Chief Counsel for Insurance and TennCare Oversight.

- (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

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2199, tony.greer@tn.gov.

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

None.