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 Nashville, TN 37243
 Phone: 615.741.2650
 Fax: 615.741.5133
 Email: register.information@tn.gov

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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
Contact Person:	Tony Greer, Assistant General Counsel
Address:	500 James Robertson Parkway Davy Crockett Tower, 8 th Floor Nashville, Tennessee 37243
Phone:	615-741-2199
Email:	tony.greer@state.tn.us

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway Davy Crockett Tower, 5 th Floor Nashville, Tennessee 37243
Phone:	615-741-0481
Email:	don.coleman@state.tn.us

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Tower, 8 th Floor Conference Room 8-C		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	02/03/14		
Hearing Time:	10:00 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

For a copy of this notice of rulemaking hearing, contact: Tony Greer, Department of Commerce and Insurance, Office of Legal Counsel, 500 James Robertson Parkway, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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
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 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 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 56-6-1301 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.
- (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 56-6-1301 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) 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 56-6-1301 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) 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 56-6-1301 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.

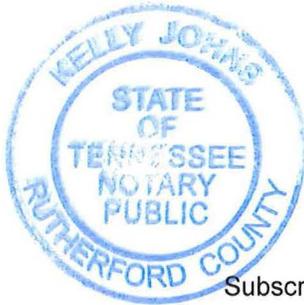
Authority: Tenn. Public Acts 2013, ch. 377, T.C.A. §§ 56-1-204, 56-2-301 and 56-6-1301 through 56-6-1305.

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) 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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: 12/12/13

Signature: [Handwritten Signature]

Name of Officer: Tony Greer

Title of Officer: Chief Counsel for Insurance

Subscribed and sworn to before me on: 12/12/13

Notary Public Signature: [Handwritten Signature]

My commission expires on: 10/20/2014

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Filed with the Department of State on: 12/12/13

[Handwritten Signature]

Tre Hargett
Secretary of State

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