

## EmR1314

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Hearing Date: September 27, 2013

### OFFICE OF THE COMMISSIONER OF INSURANCE

**Rule No. 145-\_\_\_\_\_:** To create Ins ch. 6 subch. II, subch. II (title), and Ins 6.91 to 6.98, Wis. Adm. Code.

**Relating to:** navigators, nonnavigator assisters and related entities and affecting small business.

The statement of scope for this rule SS 078-13, was approved by the Governor on July 1, 2013, published in Register No. 691, on July 15, 2013, and approved by the Commissioner on July 26, 2013.

This emergency rule was approved by the Governor on August 30, 2013.

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### FINDING OF EMERGENCY

In accordance with s. 623.98, Stats., the commissioner may promulgate rules under ss. 227.24 (1) (a) and (3), Stats., without providing evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare and without a finding of emergency. The commissioner intends to publish the proposed rule sufficiently in advance of October 1, 2013 to permit proper licensing, certification and training of navigators and nonnavigator assisters and to permit proper registration of navigator and nonnavigator assister entities. The commissioner intends to promulgate permanent rules close in time to the emergency rules so not to create a gap in requirements.

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### ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

**1. Statutes interpreted:**

Sections 601.31, 601.41, 601.62, 601.65, and ch. 628, 631, Stats.

**2. Statutory authority:**

Sections 227.11, 601.41, 628.98, Stats.

**3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

The office has authority to promulgate rules interpreting ch. 628, Stats., as amended, relating to the oversight and licensing of navigators and registering navigator entities and nonnavigator assisters through the registration of nonnavigator assister entities. The commissioner has general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Stats., in accordance with ss. 227.11 (2) (a) and 601.41 (3), Stats. Further under s. 628.98, Stats., the commissioner is permitted to promulgate any rules necessary to carry out the purposes of subch. V. Additionally, the commissioner may promulgate rules under authority granted in ss. 601.42, and 628.34 (12), Stats.

**4. Related statutes or rules:**

Ins chs. 6, 26 and 28, Wis. Admin. Code.

**5. The plain language analysis and summary of the proposed rule:**

The proposed rule establishes training and licensing requirements for navigators in accordance with state law and consistent with federal law. Navigators must have contracts with and grants from the federal government to assist consumers in enrolling in the federally facilitated health insurance exchange. When navigators provide facilitate enrollment of consumers into the federal exchange they are by law transacting an insurance business. As such, the office through this proposed rule sets forth basic requirements of licensure including fingerprinting, criminal background checks, consideration of prior personal and financial transactions that may provide insight to the individual's character. Since as navigators will have access to personal and financial information of the consumers they assist the proposed regulations includes requirements for record keeping in addition to the federally established privacy and security requirements. Further to ensure if a consumer were harmed by the acts of a navigator, the proposed rule implements the statutory requirement of financial responsibility for wrongful acts of a navigator.

Under the proposed rule nonnavigator assisters, navigator and nonnavigator assister entities are required to be registered with the Office. The nonnavigator assisters are registered with the commissioner through the nonnavigator assister entity with whom the nonnavigator assister is employed, supervised or affiliated with. Navigators, navigator entities and nonnavigator assister entities are designated by the federally facilitated exchange and navigators and navigator entities are under contract with the federally facilitated exchange to assist consumers enrolling in the exchange.

The state registration process will allow the office to ensure those persons and entities having direct contact with consumers have developed and implemented policies and procedures to ensure accurate guidance is given to consumers by properly trained persons. Through registration, the office will have current information for consumers of navigators and nonnavigator assisters who are compliant with training and knowledgeable of the exchange. The entities are legally responsible for the acts of the navigators or nonnavigator assisters that are employed, supervised or affiliated with the entities and are required to ensure the navigators and nonnavigator assisters are current in their training and of good character, competent and trustworthy.

Both navigators and nonnavigator assisters will be trained to understand not only the federal exchange health insurance products, but will also be familiar with public assistance programs and premium tax credits. The proposed rule requires initial and on-going training to ensure that the navigators and nonnavigator assisters who are providing assistance to Wisconsin consumers are providing the most recent and accurate information.

The proposed rule contains provisions intended to protect consumers from deceptive practices by restricting the use of terms, including navigator, nonnavigator assister, and certified application counselors, for use by only those persons who possess the proper training, licensure or registration status. The rule also delineates prohibited acts by navigators and nonnavigator assisters including making false or misleading statements, performing acts for which an insurance

agent license is required, and receiving compensation from an insurer. Finally, the rule exempts governmental entities or persons acting on behalf of governmental entities from the regulations.

**6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The proposed law dovetails with federal law and extends consumer protections through licensure, training and financial responsibility requirements. The federal law set forth in 45 CFR ch. 155, as amended, outlines federal training, grants, privacy and security and contracting requirements. The proposed rule ensures that persons assisting Wisconsin consumers are also trained in Wisconsin insurance laws and public assistance programs available in this state. The proposed rules include financial responsibility for wrongful acts as a measure to provide greater protection to Wisconsin consumers. By requiring licensing or registration the proposed rule provides ready, verifiable information so consumers can be confident that the information and assistance they are provided by navigators and nonnavigator assisters are from persons of good character and who have successfully completed training.

**7. Comparison of similar rules in adjacent states as found by OCI:**

**Illinois:** 2013 SB 1194, passed by both houses June 2013, pending Governor signature. The Senate Bill proposes to clarify the roles of navigators from licensed insurance agents, establish requirements including licensing, training, and financial responsibility. The law as proposed is similar to the law passed in Wisconsin.

**Iowa:** Iowa Code § 522D (2013). The law establishes licensing requirements for navigators and navigator entities similar to the law passed in Wisconsin. The Insurance Division is in the process of promulgating administrative rules establishing training, licensing, fees and evidence of financial responsibility similar to this proposed rule.

**Michigan:** No similar laws or rules.

**Minnesota:** Minn. Stat. § 62V.05 (2013). Law was effective March 21, 2013 and requires the Minnesota exchange board to establish policies and procedures for the ongoing operation of a

navigator program including in-person assisters. The law requires navigators and in-person assisters to have training and certified prior to selling for the exchange.

**8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

The Office considered federal law and laws of surrounding states to ensure the consumer safety and balance state oversight of navigators, nonnavigator assisters and related entities. The proposed regulations provide similar oversight for navigators, nonnavigator assisters and related entities to that existing for insurance agents, brokers and managing agencies. The approach minimizes potential consumer harm by ensuring those serving the public meet basic qualifications and establish state regulation and control over the navigator and nonnavigator activities in the transaction of an insurance business.

**9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

The proposed rule may affect small businesses, however, the office has taken steps to minimize the impact of the rule by limiting the effect of the regulation to those navigators or nonnavigator assisters who are working on behalf of the federal government. For perspective, the federal government only awarded six navigator grants for the entire state of Wisconsin. The proposed rules and law impose no restrictions or regulations for governmental entities. There are many such entities already providing assistance to consumers with health insurance and public assistance concerns. By keeping the scope of the proposed rule very narrow, the impact on small businesses is significantly lessened.

The proposed rule fee amounts are consistent or lesser than similarly situated agents and managing broker agencies. Further, there is no imposition of fees for nonnavigator assisters or nonnavigator assister entities other than the cost of prelicensing training and examination costs. To further minimize the impact to navigators and nonnavigator assisters, the office provided and

continues to provide some free prelicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period.

**10. See the attached Private Sector Fiscal Analysis.**

**11. A description of the Effect on Small Business:**

This rule may have an effect on small businesses by requiring licensure or registration for navigators, nonnavigator assisters and related entities. However, the office minimized the impact by establishing less stringent requirements than those imposed on licensed insurance agents and agencies. Further, the office provided, and continues to provide, some free prelicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period. Additionally, the office approved licensed vendors to provide prelicensing training both in-person and on-line to reduce imposition on organizations. Finally the office imposed slightly lower fees than is required for licensed agents.

**12. Agency contact person:**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

**13. Place where comments are to be submitted and deadline for submission:**

The deadline for submitting comments is 4:00 p.m. on October 11, 2013.

Mailing address:

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Web site: <http://oci.wi.gov/ocirules.htm>

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**The proposed rule changes are:**

**SECTION 1. Subchapter II and title are created to read:**

SUBCHAPTER II -- NAVIGATORS, NONNAVIGATOR ASSISTERS AND RELATED ENTITIES.

**SECTION 2. Ins 6.91 to 6.99 is created to read:**

**Ins 6.91 Definitions.** In addition to the definitions in s. 628.90, Stats., which apply to this subchapter, in this subchapter:

- (1) "Agent" means an agent as defined in s. 628.02, Stats.
- (2) "Business checking account" means any account utilized by a navigator, navigator entity, nonnavigator assister or nonnavigator assister entity for insurance-related transactions.
- (3) "Cash disbursed record" means a record showing all monies paid out by the navigator, navigator entity, nonnavigator assister or nonnavigator assister entity in transacting the business of insurance.

(4) "Cash receipts record" means a record showing all monies received by the navigator, navigator entity, nonnavigator assister or nonnavigator assister entity in transacting the business of insurance.

(5) "Certified application counselors" means a nonnavigator assister who is employed, supervised or affiliated with a registered nonnavigator assister entity as established by 45 CFR § 155.225, as amended, and who works for a nonnavigator assister entity that has been designated by and entered into an agreement with the exchange.

(6) "Commissioner" means the commissioner of insurance.

(7) "Formal administrative action" means consent decrees, cease and desist orders, stipulations, suspensions, revocations, license denials, fines, forfeitures, settlement agreements, navigator license restrictions or other actions limiting the navigator's method of transacting the business of insurance.

(8) "Navigator entity" means an entity or organization that employs, supervises or is affiliated with, one or more licensed navigators; is designated by the exchange as a navigator, works on behalf of the exchange and enters into an federal navigator grant funding agreement in accordance with 45 CFR § 155.210 (c), as amended; and is registered with the commissioner.

(9) "Nonnavigator assister entity" means entity or organization that employs, supervises or is affiliated with one or more nonnavigator assisters including certified application counselors; is designated by and works on behalf of the exchange and enters into an agreement with the exchange in accordance with 45 CFR § 155.225 (b) (1), as amended; and is registered with the commissioner.

(10) "Personnel records" means those records pertaining to anyone who is employed by, supervised by or affiliated with a navigator entity or nonnavigator assister entity including independent contractors.

(11) "Policyholder records" means all records, applications, request for changes, and complaints associated with a policy generated by or through the navigator, navigator entity, certified application counselor or nonnavigator assister entity.

**Ins 6.92 Individual navigators. (1) PURPOSE.** This section protects insurance consumers by establishing procedures for the licensing of navigators when transacting the business of insurance, prescribing minimum standards and requirements to ensure timely and reliable information will exist and be available to the commissioner. This section implements and interprets ss. 628.095, 628.097, 628.10, 628.90 to 628.93, Stats., as applicable.

**(2) PROCEDURE.** (a) *Application for navigator license.* An individual applying for a navigator license shall submit an application to the office in the form prescribed by the commissioner. A completed application consists of the navigator's name, the navigator's residence and mailing addresses, confirmation of successful completion of prelicensing training, fingerprints provided in a format specified by the commissioner to complete, an electronic confirmation of criminal history from the Wisconsin department of justice, crime information bureau, and the federal bureau of investigation completed not more than 180 days prior to the test date, payment of the nonrefundable fees to the testing vendor, an electronic photograph of the applicant taken by the test service at the time of testing, confirmation of previous navigator licensure in another state, if applicable, and any documentation required in answer to questions on the application.

Note: A copy of the navigator license application form OCI 11-090, required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: [oci.wi.gov](http://oci.wi.gov).

(b) *Prelicensing Training.* An individual seeking a navigator license, in addition to any training requirements of the federal government, shall complete at least 16 hours of commissioner-approved navigator prelicensing training and pass with a satisfactory grade a commissioner-approved written navigator examination. Training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

(c) *Scheduling the navigator licensing examination.* An applicant shall notify the testing vendor, at least twenty-four hours prior to the desired navigator licensing examination date. The written examination will test the applicant's knowledge of the duties and responsibilities of a navigator; the insurance laws and regulations of this state; and the state's public assistance programs and eligibility. The written examination shall be commissioner approved offered through a commissioner-approved testing vendor.

(d) *Exception.* 1. An agent who holds an active resident license with the accident and health line of authority and is in compliance with continuing education requirements may apply to be licensed as a navigator if the currently licensed agent can meet all of the following:

a. Demonstrate compliance as set forth in s. 628.92 (1), Stats., including competence and trustworthiness.

b. Demonstrate satisfactory completion of 4 hours of navigator training specific to public assistance programs, including Medicaid, in addition to the completion of any federally required navigator training and compliance with federal restrictions and requirements including those set forth in 45 CFR §§ 155.205 (d), 155.210, 155.215 (b) and (c), and 155.260 (b), as amended. The state training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

2. A currently licensed agent that is in compliance with subd. 1. is exempt from passing the navigator examination and photograph requirements described in sub. (2) (a). The currently licensed agent will be required to obtain new fingerprints unless the office has received current, valid fingerprint results provided in a format specified by the commissioner and an electronic confirmation of criminal history from the Wisconsin department of justice, crime information bureau, and the federal bureau of investigation that were completed not more than 180 days from the date of the application:

(e) *Issuance of license.* An applicant for an original navigator license who completes and satisfies the requirements in pars. (a) and (b), in addition to any federal training or requirements including the requirements set forth in 45 CFR §§ 155.205 (d), 155.210, 155.215 (b) and (c), and 155.260 (b), as amended, and meets the standards of competence and trustworthiness as described in sub. (3), shall be issued a navigator license. Examination scores are valid for 180 days. Failure to apply for a license within 180 days will require the applicant to re-take the examination. Determination of the acceptance or rejection of a completed application shall be made within 90 days of receipt by the commissioner of the completed application including any documentation required.

**(3) COMPETENCE AND TRUSTWORTHINESS.** The following criteria may be used in assessing trustworthiness and competence:

(a) *Criminal record.* The conviction for crimes which are substantially related to the circumstances of holding an insurance or navigator license, including a felony or misdemeanor conviction that is significantly related to the circumstances of holding a navigator or insurance license.

(b) *Accuracy of information.* Any material misrepresentation in the information submitted on the application form.

(c) *Regulatory action.* Any formal regulatory action taken in any jurisdiction with regard to any occupational license held, such as insurance licenses in other states, real estate licenses and security licenses.

(d) *Other criteria.* Other criteria which the commissioner considers evidence of untrustworthiness or incompetence, including but not limited to:

1. Providing incorrect, misleading, incomplete or materially untrue information in the licensing application.

2. Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner, or of the federal government.

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

4. Improperly withholding, misappropriating or converting any monies or properties received in the course of acting as a navigator or insurance agent.

5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

6. Having admitted or been found to have committed any insurance unfair trade practice or fraud.

7. Using fraudulent, coercive, or dishonest practices in the conduct of business in this state or elsewhere.

8. Demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of personal financial transactions or professional business in this state or elsewhere.

9. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.

10. Forging another's name to an application for insurance or to any document related to an insurance transaction.

11. Improperly using notes or any other reference material to complete an examination for an insurance or navigator license.

12. Failing to comply with an administrative or court order imposing a child support obligation.

13. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(e) *Minimum Age and Residency.* An applicant for navigator licensure shall have attained at least eighteen (18) years of age and shall be a resident of this state or maintain his or her principal place of business in this state.

(f) *Proof of Financial Responsibility.* An applicant who is not affiliated with a navigator entity shall comply with the requirements of s. 628.92 (5) (b), Stats., or provide evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

**(4) CHANGE OF NAME OR ADDRESS.** (a) Each navigator shall, within 30 days, notify the commissioner in writing of any change in the navigator's name, residence address, principal place of business, and mailing address.

(b) A navigator who is not employed or supervised by or affiliated with a navigator entity and changes residency to a location outside of this state or changes his or her principal place of business to an address outside this state and is not a resident of this state shall have his or her navigator license terminated effective 60 days after the change of address.

(c) Criteria used by the insurance commissioner to establish state residency shall include, but not be limited to:

1. Jurisdiction for payment of state taxes.
2. Jurisdiction for automobile driver's license and motor vehicle registration.
3. Location of voter registration.
4. Location of principal residence, such as owned or rented dwelling, condominium or apartment.
5. Location of principal place of business.

**(5) APPLICABILITY OF OTHER LAWS.** Licensed navigators are subject to the requirements contained at ss. 628.095, 628.097 and 628.10, Stats., as applicable to individual navigators.

**(6) LICENSE RENEWALS.** (a) The nonrefundable renewal fee of \$35.00 is due before September 1 of each year. The commissioner shall send notice of the renewal fee by 1st-class mail at least 60 days prior to the fee due date to each navigator at the mailing address on file. Applications for navigator license renewal shall be submitted before the September 1 renewal deadline. The navigator shall provide proof of a bond in compliance with s. 628.92 (5) (b), or evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

(b) An individual navigator is required to complete at least 8 hours of navigator continuing education training before September 1 of each year. Training must be completed prior seeking annual renewal of a navigator license. Recurring training shall be completed and reported at a rate of not less than 8 hours each 12 months of each compliance period. Training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

(c) Any navigator whose license is revoked for failing to pay renewal fees, failing to complete required annual navigator continuing education, or failing to pay delinquent taxes may, within 12 months from the revocation date, apply to reinstate for the same navigator license without completing preclicensing navigator training or passing a written examination. The navigator must satisfy the requirement of s. 628.10 (a), (am) or (cm), Stats., satisfactorily complete a reinstatement application and pay twice the amount of the license renewal fee under par. (a). If a navigator license has been revoked for more than 12 months, the navigator shall, in order to be relicensed, satisfy the examination and other licensing requirements established by subs. (2) to (6).

**(7) FINANCIAL RESPONSIBILITY REQUIREMENTS.** Each individual navigator not affiliated with a navigator entity shall comply with the requirements of s. 628.92 (5) (b), Stats., or provide evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

Note: A copy of a sample navigator and navigator entity bond form OCI 11-093, required in sub. (7), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: [oci.wi.gov](http://oci.wi.gov).

**Ins 6.93 Registration of navigator entities. (1) (a) *Registration application for navigator entity.*** An entity registering as a navigator entity shall submit an application to the commissioner in the form prescribed by the commissioner. A completed application consists of the navigator entity's name, the names of the entity's officers, the current mailing address, the name of at least one licensed designated responsible navigator, names and addresses for the navigators it employs, supervises or is affiliated with, and any documentation required to questions on the application. The navigator entity shall be designated by the exchange as a navigator entity, receive funding through a federal grant, and be in compliance s. 628.92 (2), Stats., and with applicable federal requirements including 45 CFR § 155.215 (a) (1), as amended.

Note: A copy of the navigator entity registration application form OCI 11-091, required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: [oci.wi.gov](http://oci.wi.gov).

(b) *Payment of fees.* An applicant for an original registration shall pay an initial, non-refundable, registration fee of \$100.00 is due with submission of the application.

(c) *Acknowledgement of registration.* An applicant for an original registration who satisfies the requirements in pars. (a) and (b) shall be registered as a navigator entity. Determination of the acceptance or rejection of a completed application shall be made within 90 days of receipt by the commissioner of the completed application including any required or requested documentation.

**(2) REGISTRATION RENEWALS.** The renewal fee of \$100.00 is due before September 1 of each year. The commissioner will send notice of the registration renewal fee by 1<sup>st</sup>-class mail at least 60 days prior to the fee due date to each navigator entity at the mailing address on file. The navigator entity shall provide proof of a current bond in compliance with s. 628.92 (5) (a), or evidence of an equivalent coverage alternative subject to the commissioner's prior approval.

**(3) ENTITY REPORTING.** A navigator entity shall comply with s. 628.92 (4), Stats., by filing with the commissioner the list of individual licensed navigators it employs, supervises or is affiliated with in a manner prescribed by the commissioner. After providing the commissioner with an initial notification of navigators in the application form, the navigator entity shall report any updates to the list of navigators, including additions, deletions or modifications, within 30 days of the addition, deletion or modification to the list of navigators.

**(4) ENTITY LIABILITY.** (a) A navigator entity assumes full legal responsibility for the acts of the navigators whom the entity employs, supervises or is formally affiliated with for acts that are performed in this state and that are within the scope of the apparent authority to act as a navigator on behalf of the entity.

(b) The entity shall provide evidence of financial responsibility consistent with s. 628.92 (5) (a), Stats., by submitting the original bond and form to the office in the form prescribed by the commissioner. Alternatively the navigator entity, subject to the commissioner's prior approval, may provide evidence of an equivalent coverage alternative.

Note: A copy of a sample navigator and navigator entity bond form OCI 11-093, required in sub. (5), may be obtained at no cost from the Office of the Commissioner of Insurance at 125 S. Webster Street, Madison WI 53703, or at the Office's web address: [oci.wi.gov](http://oci.wi.gov).

**Ins 6.94 Registration of certified application counselors and other nonnavigator assisters.**

Certified application counselors and other nonnavigator assisters shall be employed or supervised by a registered nonnavigator assister entity, or be affiliated with a registered nonnavigator assister entity. To be registered with a nonnavigator assister entity as a certified application counselor or other nonnavigator assister, the individual is required to comply with all of the following:

**(1) PROCEDURE.** (a) Certified application counselors and other nonnavigator assisters must be authorized by the exchange to provide consumer assistance and compliant with federal requirements set forth in 45 CFR § 155.225, as amended.

(b) Certified application counselors shall complete 16 hours of prelicensing navigator training, successfully pass a written examination, and annually thereafter complete 8 hours of navigator continuing education training that is approved by the commissioner, in addition to any federal training or other federal requirements. The state training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

**(2) EXCEPTION.** (a) An agent who holds an active resident license with the accident and health line of authority and is in compliance with continuing education requirements, may apply to be registered as a nonnavigator assister by a nonnavigator assister entity if the currently licensed agent can meet all of the following:

1. Demonstrate compliance as set forth in s. 628.96, Stats., including competence and trustworthiness.
2. Demonstrate satisfactory completion of 4 hours of navigator training specific to public assistance programs, including Medicaid, in addition to the completion of any federally required nonnavigator assister training and compliance with federal restrictions and requirements including those set forth in 45 CFR § 155.225, as amended. The state training required under this subsection must be approved by the commissioner and provided by an education provider that is approved by the commissioner.

(b) A currently licensed agent that is in compliance with par. (a) is exempt from taking prelicensing training and passing the written navigator examination.

**(3) REFUSAL TO REGISTER NONNAVIGATOR ASSISTERS.** The commissioner may refuse to register a nonnavigator assister for any of the following reasons:

(a) Failing to possess requisite character, integrity, competency and trustworthiness. In addition to the requirements set forth in s. 628.04, Stats., the commissioner may consider the criteria established in s. Ins 6.92 (3), in assessing trustworthiness and competence.

(b) Commission of any act that would warrant the denial, suspension, or revocation of an insurance license or registration including any of the acts delineated in s. Ins 6.92 (3).

**Ins 6.95 Registration of nonnavigator assister entities. (1) ELECTRONIC REGISTRATION FOR A NONNAVIGATOR ASSISTER ENTITY.** An entity registering as a nonnavigator assister entity shall provide all of the following information to the commissioner in the form prescribed by the commissioner:

(a) The nonnavigator assister entity's name and current mailing address.

(b) The name and contact information for the nonnavigator assister entity.

(c) The name, business address and type of nonnavigator assister for each nonnavigator assister it employs, supervises or is affiliated with.

(d) An attestation that each nonnavigator assister is in compliance with applicable state law including any nonnavigator assister who is a certified application counselor and who has complied with s. 628.96 (2), Stats.

(e) The nonnavigator assister entity's agreement to provide to the commissioner all supporting documents as requested by the commissioner.

**(2) ENTITY REPORTING OF UPDATES.** A nonnavigator assister entity shall comply with s. 628.96 (1), Stats., reporting in an electronic format as prescribed by the commissioner, any updates to the list of nonnavigator assisters that the nonnavigator assister entity provided when it first registered with the commissioner, including additions, deletions or modifications. The information shall be provided within 30 days of the addition, deletion or modification to the list of nonnavigator assisters.

**(3) ENTITY LIABILITY.** A nonnavigator assister entity assumes legal responsibility, in accordance with s. 628.95 (3), Stat., for the acts of the nonnavigator assisters, on behalf of the entity, that the entity employs,

supervises or is formally affiliated with, that are performed in this state and that are within the scope of the apparent authority to act as a nonnavigator assister.

**(4) REVOCATION OF ENTITY REGISTRATION.** The commissioner may revoke a nonnavigator assister entity registration if the nonnavigator assisters it employs, supervises or is affiliated with, fail to comply with s. Ins 6.95 (3), or the nonnavigator assister entity fails to comply with any provision contained in this section or by failing to comply with requests of the commissioner.

**Ins 6.96 Prohibited business practices.** In addition to the prohibited acts contained in s. 628.95 (2), Stats., navigators and nonnavigator assisters are prohibited from all of the following:

- (1) Receiving compensation from an insurer, stop-loss insurance or a third-party administrator.
- (2) Receiving compensation that is dependent upon, in whole or in part, on whether an individual enrolls in or renews coverage in a health benefit plan.
- (3) Providing any information related to enrollment or other insurance products not offered in the federal exchange.
- (4) Making or causing to be made false or misleading statements.
- (5) Providing advice comparing health benefit plans that may be better or worse for the consumer or employer.
- (6) Recommending a particular health benefit plan or insurer or advising consumers or employers regarding a particular insurer or health benefit plan selection.
- (7) Engaging in any fraudulent, deceptive or dishonest acts or unfair methods of competition.
- (8) Receiving consideration directly or indirectly from any health insurance issuer in connection with the enrollment of individual or employees into a qualified health plan as defined 45 CFR § 155.20, as amended.

**6.97 Navigator, nonnavigator assister, navigator entity, and nonnavigator assister entity records.** **(1) PURPOSE.** This section protects consumers by prescribing minimum standards and techniques of accounting and data handling of navigators, nonnavigator assisters, navigator entities and nonnavigator assister entities to ensure that timely and reliable information will exist, if applicable, and be available to the commissioner. This section implements and interprets ss. 601.42, and 628.34, Stats., by establishing the minimum records that are to be maintained.

**(2) CASH DISBURSED RECORD.** The cash disbursed record shall show the name of the party to whom the payment was made, date of payment, and reason for payment.

**(3) CASH RECEIPTS RECORD.** The cash receipts record shall show the name of the party who remitted the money, date of receipt, and reason for payment.

**(4) PERSONNEL RECORDS.** Personnel records shall include dates of employment, supervision or affiliation; position held; description of principal duties; name and last known address and telephone number of employee, supervisee or affiliated person.

**(5) RECORDKEEPING REQUIREMENTS.** Beginning October 1, 2013, each navigator, nonnavigator assister, navigator entity or nonnavigator assister entity shall maintain, for at least a 3-year period, unless a specific period is provided elsewhere, all of the following financial, consumer and employee records, as applicable:

- (a) Business checking account.
- (b) Cash disbursed records.
- (c) Cash receipts records.
- (d) Personnel records.
- (e) Consumer or policyholder records.

**(6) PLACE OF MAINTAINING RECORDS.** (a) The navigator shall maintain records required by subs. (2) to (5), at the business address of the navigator or the navigator entity, or at another location only if the navigator provides written notice of the other location to the commissioner of insurance.

(b) The nonnavigator assister shall maintain records required by subs. (2) to (5), at the business address of the nonnavigator assister entity or at another location only if the nonnavigator assister entity provides written notice of the other location to the commissioner of insurance.

**(7) UPDATING RECORDS.** The navigator entities and nonnavigator assister entities shall maintain all financial records, records of compliance with prelicensing training completion, successful passage of the examination and continuing education completion, compliance with federal training and other federal requirements for the navigators and nonnavigator assisters it employs, supervises, or is affiliated with, as applicable for at least 3 years from the transaction of an insurance business.

**Ins 6.98 Prohibition of uses of designations. (1) PROHIBITED USES OF DESIGNATIONS.** It is an unfair and deceptive trade practice under s. 628.34 (12), Stats., for an agent to use terms including “navigator,” “navigator entity,” “nonnavigator assister,” “certified application counselor,” and “nonnavigator assister entity,” in such a way as to mislead a purchaser or prospective purchaser that the agent has special certification or training in advising or providing services to consumers in connection with the advertising, solicitation, sale, or purchase of a health insurance policy or in the provision of advice as to the advisability of purchasing a health insurance policy, either directly or indirectly, offered in the state either within or outside the exchange. The terms may not be used by an agent who is not licensed as a navigator or registered as a nonnavigator assister. The terms may not be used alone or be combined with one or more such terms as “certified,” “licensed,” “registered,” or like words, in the name of the certification or professional designation that appears as a certification or professional designation.

**(2) PENALTIES.** A violation of this section is an unfair and deceptive trade practice under s. 628.34 (12), Stats., and shall subject the violator to ss. 601.41, 601.62, 601.64, 601.65 and 628.10, Stats.

**Ins 6.99 Exemption.** Governmental entities or any persons acting on behalf of a governmental entity are exempt from subch. II.

**SECTION 3.** These changes first apply to navigators, navigator entities, nonnavigator assisters and nonnavigator assister entities on the effective date of the emergency rule.

**SECTION 4.** This subchapter may be enforced under ss. 601.41, 601.64, 601.65, 628.095, 628.097, 628.10, and subch. V of ch. 628, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

**SECTION 5.** These emergency rule changes will take effect on day of publication as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 4th day of September, 2013.

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Theodore K. Nickel  
Commissioner of Insurance

**Office of the Commissioner of Insurance  
Private Sector Fiscal Analysis**

Section Ins 6.91 relating to navigators and nonnavigator assisters and affecting small business.

The proposed rule will not have a significant effect on the private sector. With an exemption for governmental entities, there will be no effect on county, city, village, town, school district, technical college district and sewerage districts. Additionally the office will be able to manage any cost associated with maintaining the licensure and registration process without additional state funds being provided to the office during this current biennium.

**SUMMARY OF PROPOSED RULE & FISCAL ESTIMATE**

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Insurance agents, community outreach organizations, consumer support organizations who are designated and under contract with the federally facilitated exchange as navigators, nonnavigator assisters or related entities. Governmental agencies are exempt from this rule.

b. Description of reporting and bookkeeping procedures required:

Navigator and nonnavigator assister entities, in addition to any federal requirements, will be required to maintain training records as well as current names and addresses of those who they employ, supervise or are affiliated with. Additionally, for entities handling consumer's money, and for navigators not affiliated with a navigator entity, proper financial accounts must be maintained.

c. Description of professional skills required:

Basic consumer, employee and business financial record keeping in addition to any requirements of the federal government.

**OCI SMALL BUSINESS REGULATORY COORDINATOR**

The OCI small business coordinator is Louie Cornelius and may be reached at phone number (608) 264-8113 or at email address [louie.cornelius@wisconsin.gov](mailto:louie.cornelius@wisconsin.gov)

**CONTACT PERSON**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov), (608) 264-8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

## ADMINISTRATIVE RULES – FISCAL ESTIMATE

### 1. Fiscal Estimate Version

Original  Updated  Corrected

### 2. Administrative Rule Chapter Title and Number

**INS 691**

### 3. Subject

navigators and nonnavigator assisters and affecting small business

### 4. State Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

### 5. Fund Sources Affected:

GPR  FED  PRO  PRS  SEG  SEG-S

### 6. Affected Ch. 20, Stats. Appropriations:

### 7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

### 8. Local Government Units Affected:

Towns  Villages  Cities  Counties  School Districts  WTCS Districts  Others: None

### 9. Private Sector Fiscal Effect (small businesses only):

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

### 10. Types of Small Businesses Affected:

Individual licensed agents working as a navigator or nonnavigator assister, small organizations that work with consumers, and some surety bond issuers that may be considered a small business.

### 11. Fiscal Analysis Summary

The proposed rule may affect small businesses, however, the Office has taken steps to minimize the impact of the rule by limiting the effect of the regulation to those navigators or nonnavigator assisters who are working on behalf of the federal government. For perspective, the federal government only awarded six navigator grants for the entire state of Wisconsin. There are no restrictions or regulations for governmental entities or persons who work with such entities. These governmental entities currently assist consumers with health insurance and public assistance concerns and will not be impacted by this regulation. By keeping the scope of the proposed rule very narrow, the impact on small businesses is lessened. Further, the proposed rule limited the amount of fees navigator and navigator entities are required to pay annually and did not impose fees on nonnavigator assisters or nonnavigator assister entities other than the cost of preclicensing training and examination costs. The office minimized the impact by establishing less stringent requirements than those imposed on licensed insurance agents and agencies. Further, the office provided, and continues to provide, some free preclicensing training to interested parties and in locations throughout the state in advance of the first open enrollment period. Additionally, the office approved licensed vendors to provide preclicensing training both in-person and on-line to reduce imposition on organizations. Finally the office imposed slightly lower fees than is required for licensed agents.

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12. Long-Range Fiscal Implications

None.

13. Name - Prepared by Julie E. Walsh	Telephone Number (608) 264-8101	Date Aug. 26, 2013
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number	Date

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