

UTAH HEALTH POLICY PROJECT

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Health System Reform Amendments Legislation 12/14/12 Draft (Rep. J. Dunnigan): Review and Analysis of Key Sections with Recommended Changes

Overview: This draft legislation specifies how Utah plans to meet minimum ACA requirements for exchanges as the rules for these markets are completely transformed with full ACA implementation in 2014. Highlights: gives Utah insurance commissioner significant authority and discretion over the regulation of the new insurance marketplaces; clarifies standards and requirements for navigators. Plans for integration of behavioral health in Utah's Medicaid accountable care organizations. *In this document, "PPACA" (Patient Protection and Affordable Care Act) will be abbreviated to "ACA."*

Provision (Relevant UT Code)	Page #/ (line #)	Description	UHPP Analysis	Recommended Changes
Insurance commissioner given significant authority to regulate new, ACA-compliant insurance marketplace and Exchanges. Utah Code: 31A-2-212	p. 4-5 (line 118-149)	Commissioner will designate and regulate qualified health plans in new marketplaces, rating restrictions; and the role of producers (insurance agents) navigators, and enrollment assistors (who can be, and what training they must have).	This is in line with Gov. H's intention, as stated on 12/14, to run the exchanges at the state level. Remains to be seen whether Utah's blueprint will meet ACA standards. Producers typically sell insurance on behalf of an insurer. Thus around ACA-compliant exchanges, their role should be diminished. Navigators facilitate enrollment in exchange plans. While there can be some overlap between navigators and assisters, assisters also help consumers with the details of this process: get all the right paperwork together, report changes in status, select and enroll in plans. States that operate the exchanges (like UT) can obtain federal grants through CMS to support enrollment assisters. ⁱⁱ	Define or clarify the difference between producers, navigators, and enrollment assistors for Utah. Why mention all 3 if legislation only addresses requirements for first 2? Learn about difference here. ⁱⁱⁱ
Insurance commissioner may enter into agreements with the Feds to preserve state control over insurer conduct	p. 5 (lines 147-149)			Need a public input process and transparency around these negotiations.
Navigator standards and definition New UT Code: 31A-23b-101 & 102	p. 8 (lines 244-253)	Navigator definition subsumes enrollment assisters, yet the difference in terms of functions could be important for Utah. Also the requirements of navigators may be too onerous for the less formal		Clarify the difference between navigators and less formal (not less important) assisters. Give direction to apply for assister grants.

<p>Qualification for navigator license New UT Code: 31A-23b-202</p>	<p>p. 9-11 (lines 263-341)</p>	<p>assistors. No direction given to state to apply for enrollment assistors grants to be announced shortly by CMS. Must satisfy application, examination and training and character requirements. Must have a surety bond (like liability insurance)</p>		<p>Consider certification (not licensing) requirements for assistors and entities that only facilitate enrollment in public programs. Otherwise, there are no protections for people getting help with enrollment in public programs.</p>
<p>Criminal background check and fees for navigators/assistors</p>	<p>p. 11 (lines 327-341)</p>	<p>Individual must pay fees for criminal background check, if required by Commissioner.</p>	<p>The fee could be onerous for certain individuals who are otherwise well positioned to serve the need.</p>	<p>Consider application (and funding to cover) to waive the fee if individual passes the criminal background check and works for a nonprofit or can demonstrate need.</p>
<p>Application fee for navigators</p>	<p>p. 12 (lines 343-353)</p>	<p>Applicant must pay a license application fee</p>	<p>Not sure why the navigator or assister should be a citizen.</p>	<p>Change to "if available." Otherwise provide a state-issued ID number. Reflect this change in lines 366-7.</p>
<p>Application for Agency License... must provide social security number New UT Code: 31A-23b-203</p>	<p>p. 12 (line 354)</p>	<p>With a navigator license application</p>	<p>"may" is vague. What issues will the Commissioner look at?</p>	<p>Make this consistent with "shall" of line 428.</p>
<p>Exam and training requirements New UT Code: 31A-23b-205</p>	<p>p. 13 (line 404-5)</p>	<p>Commissioner may require applicants to pass exam and complete training</p>	<p>Important topics are missing from this list</p>	<p>Consider adding these to the list of training topics: <ul style="list-style-type: none"> the use of personal health information protocols and data security and encryption tools; Tools for tracking coverage status and renewal of coverage. </p>
<p>Requirements to obtain surety bond New UT Code: 31A-23b-207</p>	<p>p. 14 (lines 416-423 and similar list on lines 434-439)</p>	<p>.training on these topics: insurance plans, qualifications for enrollment in public programs...and premium subsidies; cultural and linguistic appropriateness; conflict of interest standards; other requirements that may be adopted...</p>	<p>This is positive (we asked for this), though what's not clear is how persons getting help with public plan enrollment are protected from bad navigators</p>	<p>Should define what we mean by cultural and linguistic appropriateness. For example, navigators should be trained in how to access qualified interpreters. Depending on cultural background of enrollees, training may be needed on the purpose of insurance and how to use benefits.</p>
<p>Agency designations (as</p>	<p>p. 16-19. (lines</p>	<p>Navigators who only help with enrollment in public programs are exempt from requirements to obtain surety bond</p>	<p>Nothing here on ensuring data</p>	<p>Add text to specify that</p>

<p>navigators) & Place of Business--Records New UT Code: 31A-23b-209 New UT Code: 31A-23b-210</p>	573-576)	<p>qualified to serve as navigators. The Commissioner may inspect the records of agencies designated as navigators.</p>	<p>security and encryption</p>	<p>commissioner will oversee data security protocols.</p>
<p>Exceptions to Navigator Licensing New UT Code: 31A-23b-211</p>	p. 19-21 (lines 584-600)	<p>These entities are exempt from navigator licensing requirements (presumably because they have their own similar qualifying standards: -health care facilities...licensed under Title 26, Chap. 22 to assist w/enrollment in public programs -state agencies and school districts -federally qualified health centers -officer, director, or employee of navigator</p>	<p>We asked for this, but did not mean that there would be no protections around enrollment assistance for public programs.</p>	<p>Should verify that standards and training provided in these institutions is comparable to that proposed as requirement for navigator licenses. Maybe associations of these exempt entities should submit their plans for training and qualification standards every few years?</p>
<p>Unlawful Conduct and Limitation of Scope of Practice New UT Code: 31A-23b-301</p>	p. 21-22 (lines 643-692)	<p>Clarifies what constitutes unlawful conduct by navigators</p>	<p>Makes sense</p>	<p>No changes, except we may need some mechanism, like an ombudsperson, for individuals to file complaints if have any.</p>
<p>Revocation, suspension...of navigator license New UT Code: 31A-23b-401</p>	p. 22 (lines 695-827)	<p>Specifies conditions and procedures under which navigator licenses may be revoked or suspended.</p>	<p>Nothing here to enforce cultural and linguistic appropriateness.</p>	<p>Should there be any consequences for license if the navigator fails to refer the LEP client to qualified interpreter?</p>
<p>Probation—Grounds for Revocation New UT Code: 31A-23b-402</p>	p. 26 (lines 829-855)	<p>Licenses may be placed on probation for no more than 2 years with cause.</p>	<p>These terms are pretty standard, though missing is any mechanism for appeal.</p>	<p>Add language on process for appeal?</p>
<p>Penalties (31A-23b-404)</p>	p. 28 (lines 891-907)	<p>Standard penalties</p>		
<p>Classes of Business for Insurers (31A-30-105)</p>	p. 31 (lines 975-1014)	<p>Insurance carriers may have up to 4 classes of business: 1) For individual plans not <i>grandfathered</i> under PPACA 2) For small employer plans not grandfathered under PPACA 3) For individual plans that <u>are</u> grandfathered under PPACA 4) For small employer plans that <u>are</u> grandfathered under PPACA</p>	<p>Plans that meet minimum benefit, affordability standards of PPACA and were in place before passage of PPACA, can be <i>grandfathered</i> (they can stay in place)</p>	
<p>Discontinuance and Nonrenewal Limitations and Conditions (31A-30-107.3)</p>	p. 32-33 (lines 1016-1066)	<p>If an insurer stops offering individual or small business insurance, they cannot offer new business in these markets for 5 years. But commissioner can waive this if "in the public interest."</p>	<p>This protects the new insurance marketplace by minimizing cherry picking. If insurer can waive this, again we need transparency and a public input process around these decisions.</p>	<p>Add language on factors that may be considered in determining the public's interest. Also add language to support transparency and a public input process or reporting requirement (before the fact).</p>
<p>PPACA- Market Transition</p>	p. 35 (lines 1103-	<p>Commissioner shall adopt rules to</p>	<p>The administrative rules process</p>	<p>Might want language around</p>

<p><i>New UT Code: 31A-30-117</i></p> <p>Insurer participation in defined contribution arrangement <i>UT Code: 31A-30-202.5</i></p>	<p>1121)</p> <p>p. 35-37 (lines 1123-1169)</p>	<p>transition the market to new ACA requirements.</p> <p>Makes it possible for dental and vision benefits to be offered on Avenue H, Utah's current exchange.</p>	<p>contains its own</p> <p>Given Gov. Herbert's confusing decision to run the ACA-compliant exchanges (freely to demonstrate that Avenue H is compliant or should be found to be compliant) leaves questions about the future of Avenue H.</p>	<p>governance (to help guide the Commissioner in this process).</p> <p>Revisit the proposal to offer dental and vision benefits after the future status of Avenue H is understood.</p>
<p>Health System Reform Task Force-Duties <i>UT Code 631-2-231</i></p>	<p>p. 40 (lines 1272-1282)</p>	<p>Sets forth the topics to be studied by the Task Force next year:</p> <ol style="list-style-type: none"> 1. impact of ACA implementation on the state 2. options for Medicaid expansion 3. health care cost containment strategies 4. Role of state's current exchange, Avenue H (defined contribution market for small businesses) 5. Governing structure for Avenue H 6. Integration of behavioral health in Medicaid ACOs. 	<p>Since HHS Secretary clarified that the expansion is a black and white decision, or all or nothing deal,^{iv} the task force should focus instead on the costs and benefits of the Medicaid expansion.</p>	<p>Strike "options" on line 1276 and substitute "costs and benefits." Since it will decide the future status of Avenue H this year, the task force should also study the results of Avenue H on the market, cost containment, on insurance coverage rates. Also should study the interface between Avenue H and the new exchanges. Should also determine governing structure for ACA-compliant exchanges.</p> <p>Add Ruth Ann Frost's language for BHI study topics and goals to be assigned to Task Force.</p> <p>If task force is going to study cost containment strategies, it should begin by reviewing results from cost containment strategies and results from the first 5 years of state health reform. It should also review cost containment initiatives and related grant opportunities under the ACA.</p>

ⁱ Kaiser Family Foundation. <https://capsules.kaiserhealthnews.org/index.php/2012/12/facing-deadline-most-states-say-no-to-running-their-own-insurance-exchanges/>

ⁱⁱ Guidance on Federally Facilitated Exchanges, issued on May 16, 2012, available online at <http://ccio.cms.gov/resources/files/ffguidance-05-16-2012.pdf>; Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchanges, issued on June 29, 2012 available on www.grants.gov by searching for CFDA 93.525 under "fnd grant opportunities." Also see Blueprint for Approval of Affordable State-Based and State Partnership Insurance Exchanges, issued on August 14, 2012, available online at <http://www.ccio.cms.gov/resources>.

ⁱⁱⁱ Families USA (2012). How Exchanges can Use Assistants. <http://familiesusa2.org/assets/pdfs/health-reform/How-Exchanges-Can-Use-Assistants.pdf>.

^{iv} Deseret News (2012). <http://www.deseretnews.com/article/865568539/Gov-Gary-Herbert-issues-last-minute-plea-to-President-Obama-regarding-health-care-reform.html>