

# MAINE STATE LEGISLATURE

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L.D. 1094

2 Date: 6/4/2013

(Filing No. S- 185)

3 **INSURANCE AND FINANCIAL SERVICES**

4 Reproduced and distributed under the direction of the Secretary of the Senate.

5 **STATE OF MAINE**

6 **SENATE**

7 **126TH LEGISLATURE**

8 **FIRST REGULAR SESSION**

9 COMMITTEE AMENDMENT "A" to S.P. 376, L.D. 1094, Bill, "An Act To Fully  
10 Implement Health Insurance Exchanges and To Make Maine Law Consistent with  
11 Federal Law"

12 Amend the bill by striking out the title and substituting the following:

13 **'An Act To Ensure State Coordination and Oversight of Health Plans'**

14 Amend the bill by striking out everything after the enacting clause and before the  
15 summary and inserting the following:

16 **'PART A**

17 **Sec. A-1. 24-A MRSA §2188**, as enacted by PL 2011, c. 631, §1, is amended to  
18 read:

19 **§2188. Permitted activities of insurance producers; navigators; requirements**

20 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
21 following terms have the following meanings.

22 A. "Exchange" means a health benefit exchange established or operated in this State,  
23 including a health benefit exchange established or operated by the Secretary of the  
24 United States Department of Health and Human Services, pursuant to Section 1311 of  
25 the federal Affordable Care Act.

26 B. "Navigator" means a person selected to perform the activities and duties identified  
27 in Section 1311(i) of the federal Affordable Care Act. For the purposes of this  
28 section, if an organization or business entity serves as a navigator, an individual  
29 performing navigator duties for that organization or business entity is considered to  
30 be acting in the capacity of a navigator within the meaning of subsection 4.

31 **2. Prohibited activities.** Only a person Certification as a navigator under this  
32 section does not authorize a person who is not licensed as an insurance producer or  
33 consultant in this State in accordance with chapter 16 to act as an insurance producer or

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consultant. Regardless of whether a navigator certified under this section is also licensed as an insurance producer or consultant in this State in accordance with chapter 16, or, with respect to paragraph B, a person licensed as a consultant in accordance with chapter 16, a navigator may not, while acting as a navigator for an individual, enrollee, potential enrollee or employer:

- A. Sell, solicit or negotiate health insurance;
- B. Make recommendations to purchasers, enrollees or employers or prospective purchasers or enrollees ~~concerning the substantive benefits, terms or conditions of to~~ choose or reject a particular health plans plan; or
- C. Enroll an individual or employee in a qualified health plan offered through an exchange or act as an intermediary between an employer and an insurer that offers a qualified health plan offered through an exchange, except that the actions of a navigator to provide assistance to an individual or employee to facilitate that individual's or employee's enrollment in a qualified health plan is not considered enrolling an individual or employee in a qualified health plan under this paragraph.

**3. Certification of navigators.** Prior to any exchange becoming operational in this State, the superintendent shall:

- ~~A. Develop criteria for use by any exchange for the selection of a navigator pursuant to Section 1311(i) of the federal Affordable Care Act and state law;~~
- B. Adopt rules to establish a certification ~~and training~~ program for ~~a~~ individual navigators who are not licensed as insurance producers and training requirements for all individual navigators and prospective individual navigator navigators that includes include initial and continuing education requirements and an examination; ~~and.~~
- ~~C. Adopt rules, to the extent permitted by the federal Affordable Care Act, that require a navigator to carry and maintain errors and omissions insurance to cover all activities contemplated or performed pursuant to this section and Section 1311(i) of the federal Affordable Care Act.~~

**4. Navigator requirements.** An individual, ~~other than a licensed insurance producer under chapter 16,~~ may not act in the capacity of a navigator unless the individual is either licensed as an insurance producer under chapter 16 or certified by the superintendent as a navigator under this section. To be certified as a navigator, an individual must:

- A. Is Be at least 18 years of age;
- B. ~~Has~~ Have completed and submitted a disclosure form, which must be developed by the superintendent and which may include such information as the superintendent determines necessary, and ~~has~~ have declared under penalty of refusal, suspension or revocation of the navigator certification that the statements made in the form are true, correct and complete to the best of the individual's knowledge and belief;
- C. ~~Has~~ Have submitted to any criminal history record check or regulatory background check required by the superintendent by rule;
- ~~D. Has not committed any act that would be a ground for denial, suspension or revocation of a producer license as set forth in section 1420-K;~~

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1 E. ~~Has~~ Have successfully completed the ~~certification~~ and initial training  
2 requirements and any other certification requirements adopted by the superintendent  
3 in accordance with subsection 3; and

4 F. ~~Has~~ Have paid any fees required by the superintendent.

5 **5. Unfair practices.** The provisions of this chapter ~~and chapter 24~~ and any rules  
6 adopted pursuant to ~~those chapters~~ this chapter apply to navigators. ~~For purposes of this~~  
7 ~~section and the application of other provisions of this Title, the duties of a navigator are~~  
8 ~~deemed to constitute the business of insurance.~~ This subsection may not be construed to  
9 create or imply a private cause of action for a violation of any provision of this chapter.

10 **5-A. Privacy.** A navigator may not collect, use, disclose or retain personal  
11 information, as defined in section 2204, subsection 20, except for the purposes of  
12 performing the duties of a navigator or as permitted by an exchange under privacy  
13 standards adopted in accordance with the federal Affordable Care Act. A navigator is a  
14 regulated insurance entity for purposes of chapter 24 only if the navigator collects, uses,  
15 discloses or retains personal information for purposes other than performing the duties of  
16 a navigator.

17 **6. Denial, suspension or revocation.** The superintendent may deny, certification  
18 and may suspend or revoke the authority of a navigator certified pursuant to this section  
19 for good cause any ground specified in section 1420-K, subsection 1. The superintendent  
20 may assess civil penalties in accordance with section 12-A for violations of laws  
21 regulating the activities of navigators.

22 **7. Rules.** The superintendent may adopt rules as necessary to implement this  
23 section. Rules adopted pursuant to this subsection are routine technical rules as defined  
24 in Title 5, chapter 375, subchapter 2-A.

25 **8. Construction.** This section may not be construed to prevent the application of  
26 any provisions of the federal Affordable Care Act relating to the duties of a navigator.

27 **PART B**

28 **Sec. B-1. 24-A MRSA §405-A, sub-§1,** as enacted by PL 2011, c. 90, Pt. C, §3,  
29 is amended to read:

30 **1. Regional insurer or health maintenance organization defined.** As used in this  
31 section, "regional insurer or health maintenance organization" means an insurer or health  
32 maintenance organization that holds a valid certificate of authority to transact individual  
33 health insurance in Connecticut, Massachusetts, New Hampshire ~~or~~, Rhode Island or  
34 Vermont.

35 **Sec. B-2. 24-A MRSA §405-A, sub-§2, ¶B,** as enacted by PL 2011, c. 90, Pt. C,  
36 §3, is amended to read:

37 B. A regional insurer or health maintenance organization shall meet the requirements  
38 of section 4302 for reporting plan information with respect to individual health plans  
39 offered for sale in this State and disclose to prospective enrollees how the health  
40 plans differ from individual health plans offered by domestic insurers in a format  
41 approved by the superintendent. Health plan policies and applications for coverage

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1 must contain the following disclosure statement or a substantially similar statement  
2 on the face page of the policy or application in a type size of at least 14 points and  
3 font that is easily readable by a person with average eyesight: "This policy is issued  
4 by a regional insurer or health maintenance organization and is governed by the laws  
5 and rules of (regional insurer's or health maintenance organization's state of  
6 domicile). This policy may not be subject to all the insurance laws and rules of the  
7 State of Maine, including coverage of certain health care services or benefits  
8 mandated by Maine law. Before purchasing this policy, you should carefully review  
9 the terms and conditions of coverage under this policy, including any exclusions or  
10 limitations of coverage."

11 **Sec. B-3. 24-A MRSA §405-B, first ¶**, as enacted by PL 2011, c. 90, Pt. C, §4, is  
12 amended to read:

13 Notwithstanding any other provision of this Title, a domestic insurer or licensed  
14 health maintenance organization authorized to transact individual health insurance in this  
15 State may offer for sale in this State an individual health plan duly authorized for sale in  
16 Connecticut, Massachusetts, New Hampshire or Rhode Island or Vermont by a parent or  
17 corporate affiliate of the domestic insurer or licensed health maintenance organization if  
18 the following requirements are met.

19 **Sec. B-4. 24-A MRSA §405-B, sub-§3**, as enacted by PL 2011, c. 90, Pt. C, §4,  
20 is amended to read:

21 **3. Disclosure and reporting.** The domestic insurer or licensed health maintenance  
22 organization shall meet the requirements of section 4302 for reporting plan information  
23 with respect to individual health plans offered for sale in this State and disclose to  
24 prospective enrollees how the individual health plans of the parent or corporate affiliate  
25 differ from individual health plans offered by other domestic insurers or licensed health  
26 maintenance organizations in a format approved by the superintendent. Health plan  
27 policies and applications for coverage must contain the following disclosure statement or  
28 a substantially similar statement on the face page of the policy or application in a type  
29 size of at least 14 points and font that is easily readable by a person with average  
30 eyesight: "This policy is issued by a domestic insurer or licensed health maintenance  
31 organization but is governed by the laws and rules of (state of domicile of parent or  
32 corporate affiliate of domestic insurer or licensed health maintenance organization),  
33 which is the state of domicile of the parent or corporate affiliate of the domestic insurer or  
34 licensed health maintenance organization. This policy may not be subject to all the  
35 insurance laws and rules of the State of Maine, including coverage of certain health care  
36 services or benefits mandated by Maine law. Before purchasing this policy, you should  
37 carefully review the terms and conditions of coverage under this policy, including any  
38 exclusions or limitations of coverage."

39 **PART C**

40 **Sec. C-1. 5 MRSA §12004-I, sub-§31-B** is enacted to read:

41 **31-B.**

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1	<u>Health Care</u>	<u>Maine Health</u>	<u>Legislative per diem</u>	<u>24-A MRSA §4345</u>
2		<u>Exchange Advisory</u>	<u>and travel expenses</u>	
3		<u>Council</u>		

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5 **Sec. C-2. 24-A MRSA c. 56-A, sub-c. 4** is enacted to read:

6 **SUBCHAPTER 4**

7 **MAINE HEALTH EXCHANGE ADVISORY COUNCIL**

8 **§4345. Maine Health Exchange Advisory Council**

9 The Maine Health Exchange Advisory Council, referred to in this section as "the  
 10 advisory council," established under Title 5, section 12004-I, subsection 31-B, is  
 11 established to advise the Governor, the Legislature, the Department of Health and Human  
 12 Services, the bureau and the Federal Government regarding the interests of individuals  
 13 and employers with respect to any exchange that may be created for this State pursuant to  
 14 the federal Affordable Care Act.

15 **1. Appointment; composition.** The advisory council consists of 20 members  
 16 pursuant to this subsection.

17 A. Thirteen members of the advisory council must be appointed by the  
 18 superintendent with the approval of the joint standing committee of the Legislature  
 19 having jurisdiction over insurance and financial services matters:

- 20 (1) Two persons representing health insurance carriers;
- 21 (2) One person representing dental insurance carriers;
- 22 (3) One person representing insurance producers;
- 23 (4) One person representing Medicaid recipients;
- 24 (5) Two persons representing health care providers and health care facilities,  
 25 including one member representing federally qualified health centers;
- 26 (6) One person who is an advocate for enrolling hard-to-reach populations,  
 27 including individuals with mental health or substance abuse disorders;
- 28 (7) One member representing a federally recognized Indian tribe; and
- 29 (8) Four members representing individuals and small businesses, including:
  - 30 (a) One person who can reasonably be expected to purchase individual  
 31 coverage through an exchange with the assistance of a premium tax credit  
 32 and who can reasonably be expected to represent the interests of consumers  
 33 purchasing individual coverage through the exchange;

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1                    (b) One person representing an employer that can reasonably be expected to  
2                    purchase group coverage through an exchange who can reasonably be  
3                    expected to represent the interests of such employers;

4                    (c) One person representing navigators or entities likely to be licensed as  
5                    navigators; and

6                    (d) One person employed by an employer that can reasonably be expected to  
7                    purchase group coverage through an exchange who can reasonably be  
8                    expected to represent the interests of such employees.

9                    Prior to making appointments to the advisory council, the superintendent shall seek  
10                   nominations from the public statewide associations representing the interests under  
11                   this paragraph and other entities as appropriate.

12                   B. Five members of the advisory council must be members of the Legislature, of  
13                   whom 3 members must serve on the joint standing committee of the Legislature  
14                   having jurisdiction over insurance and financial services matters and 2 members must  
15                   serve on the joint standing committee of the Legislature having jurisdiction over  
16                   health and human services matters or the joint standing committee of the Legislature  
17                   having jurisdiction over appropriations and financial affairs:

18                   (1) Two members of the Senate, appointed by the President of the Senate,  
19                   including one member recommended by the Senate Minority Leader; and

20                   (2) Three members of the House of Representatives, appointed by the Speaker of  
21                   the House, including one member recommended by the House Minority Leader.

22                   C. Two members of the advisory council are ex officio members:

23                   (1) The superintendent or the superintendent's designee; and

24                   (2) The Commissioner of Health and Human Services or the commissioner's  
25                   designee.

26                   2. Term. Except for members who are Legislators and the ex officio members,  
27                   members of the advisory council serve 3-year terms. A member may not serve more than  
28                   2 consecutive terms. Members who are Legislators serve 2-year terms coterminous with  
29                   their elected terms. Except for a member who is a Legislator, a member may continue to  
30                   serve after expiration of the member's term until a successor is appointed.

31                   3. Duties. The advisory council shall:

32                   A. Advise the Governor, the Legislature, the Department of Health and Human  
33                   Services, the bureau and the Federal Government regarding the interests of  
34                   individuals and employers with respect to any exchange that may be created for this  
35                   State;

36                   B. Serve as a liaison between any exchange and individuals and small businesses  
37                   enrolled in the exchange;

38                   C. Evaluate the implementation and operation of any exchange with respect to the  
39                   following:

# COMMITTEE AMENDMENT

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- 1           (1) The essential health benefits benchmark plan designated in this State under  
2           the federal Affordable Care Act, including whether the State should change its  
3           designation;
- 4           (2) The impact of federal and state laws and regulations governing the health  
5           insurance rating for tobacco use and coverage for wellness programs and  
6           smoking cessation programs on accessibility and affordability of health  
7           insurance;
- 8           (3) The consumer outreach and enrollment conducted by the exchange and  
9           whether the navigator program is effective and whether navigators or other  
10           persons providing assistance to consumers are in compliance with any federal or  
11           state certification and training requirements;
- 12           (4) The coordination between the state Medicaid program and the exchange;
- 13           (5) Whether health insurance coverage through the exchange is affordable for  
14           individuals and small businesses, including whether individual subsidies are  
15           adequate;
- 16           (6) Whether the exchange is effective in providing access to health insurance  
17           coverage for small businesses;
- 18           (7) The implementation of rebates under the federal Affordable Care Act and  
19           section 4319; and
- 20           (8) The coordination of plan management activities between the bureau and the  
21           exchange, including the certification of qualified health plans and rate review;
- 22           D. Following the release of guidance or regulations from the federal Centers for  
23           Medicare and Medicaid Services addressing the basic health program option, as set  
24           forth in Section 1331 of the federal Affordable Care Act, conduct a study, and make  
25           recommendations as appropriate, that examines the potential for establishing a basic  
26           health program for eligible individuals in order to ensure continuity of care and that  
27           families previously enrolled in Medicaid remain in the same plan. In conducting the  
28           study, the advisory council shall consider the affordability of coverage for low-  
29           income populations, the potential cost savings to the state Medicaid program, the  
30           systems needed to create a seamless transition between a basic health program and  
31           Medicaid coverage, the impact of a basic health program on the negotiation of rates  
32           or receipt of rebates and the cost-effectiveness of delivering coverage through a basic  
33           health program; and
- 34           E. Based on the evaluations conducted by the advisory council pursuant to  
35           paragraphs C and D, make recommendations for any changes in policy or law that  
36           would improve the operation of an exchange for consumers and small businesses in  
37           the State.
- 38           4. Compensation. Except for members of the advisory council who are Legislators,  
39           members serve as volunteers and without compensation or reimbursement for expenses.  
40           Members who are Legislators are entitled to receive the legislative per diem as defined in

# COMMITTEE AMENDMENT



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Title 3, section 2 and reimbursement for travel for attendance at meetings of the advisory council.

**5. Quorum.** A quorum is a majority of the members of the advisory council.

**6. Chair.** The advisory council shall choose one of its members who is a Legislator to serve as chair for a 2-year term.

**7. Meetings.** The advisory council shall meet at least 4 times a year at regular intervals and may meet at other times at the call of the chair, except that the superintendent shall schedule the first meeting of the advisory council as soon as practicable after all appointments have been made. Meetings of the council are public proceedings as provided by Title 1, chapter 13, subchapter 1.

**8. Records.** Except for information designated as confidential under federal or state law, information obtained by the advisory council is a public record as provided by Title 1, chapter 13, subchapter 1.

**9. Staffing.** The Legislative Council shall provide staff support for the operation of the advisory council, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session or for more than 4 meetings between regular or special sessions of the Legislature. In addition, the advisory council may contract for administrative, professional and clerical services if funding permits.

**10. Outside funding for advisory council activities.** The advisory council may apply for and receive funds, grants or contracts from public and private sources to support its activities. Contributions to support the work of the advisory council may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory council's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory council.

**11. Annual report.** Beginning March 15, 2014, and annually thereafter, the advisory council shall report on its activities. The advisory council shall submit the report to the Governor and to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.

**Sec. C-3. Maine Health Exchange Advisory Council appointments; initial member terms.** Within 30 days of the effective date of this Part, the appointing authorities shall appoint the members of the Maine Health Exchange Advisory Council as required by the Maine Revised Statutes, Title 24-A, section 4345, subsection 1. Notwithstanding Title 24-A, section 4345, subsection 2, except for members who are Legislators, initial appointees to the Maine Health Exchange Advisory Council must include 3 members appointed to one-year terms, 5 members appointed to 2-year terms and 5 members appointed to 3-year terms.

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**Sec. C-4. Federal grant funding.** In order to assist in the implementation of a federal health insurance exchange as required by federal law pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and any amendments to, or regulations or guidance issued under, those acts, the Department of Professional and Financial Regulation, Bureau of Insurance and the Department of Health and Human Services are authorized to accept, receive and use as appropriate for and on behalf of the State any grant funding made available to states for exchange implementation and plan management activities. The bureau and the department shall share federal grant funding with and give support to the Maine Health Exchange Advisory Council.

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**Sec. C-5. Evaluation of Maine Health Exchange Advisory Council.** During the Second Regular Session of the 127th Legislature, the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters shall conduct a review and evaluation of the continued necessity of the Maine Health Exchange Advisory Council, including the staffing and funding needs of the advisory council. Before April 1, 2016, the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters shall make a recommendation as to whether the Maine Health Exchange Advisory Council should continue and whether any changes should be made to the statutes governing the advisory council. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may report out a bill based on its recommendations to the Second Regular Session of the 127th Legislature.'

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**SUMMARY**

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This amendment replaces the bill.

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Part A makes changes to the current provisions in law relating to navigators to make them consistent with recent federal regulations and clarifies that navigators are subject to the provisions prohibiting unfair trade practices.

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Part B allows an insurance company authorized to do business in Vermont to offer individual health insurance for sale in this State. Current law limits that business to insurance companies authorized to do business in Connecticut, Massachusetts, New Hampshire and Rhode Island.

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Part C establishes the Maine Health Exchange Advisory Council to advise the Governor, the Legislature, the Department of Health and Human Services, the Department of Professional and Financial Regulation, Bureau of Insurance and the Federal Government on the implementation and operation of a health exchange in this State pursuant to the federal Patient Protection and Affordable Care Act. The advisory council is comprised of 20 members, including 5 members who are Legislators and 2 ex officio members representing the Department of Health and Human Services and the Department of Professional and Financial Regulation, Bureau of Insurance.

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**FISCAL NOTE REQUIRED**

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(See attached)



# 126th MAINE LEGISLATURE

LD 1094

LR 1019(02)

**An Act To Fully Implement Health Insurance Exchanges and To Make Maine Law Consistent with Federal Law**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (S-185)**  
**Committee: Insurance and Financial Services**  
**Fiscal Note Required: Yes**

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## Fiscal Note

### Legislative Cost/Study

#### Legislative Cost/Study

The general operating expenses of the Maine Health Exchange Advisory Council are projected to be \$4,250 annually beginning in fiscal year 2013-14. The Legislature's proposed budget includes \$10,000 in fiscal year 2013-14 and \$10,000 in fiscal year 2014-15 for legislative studies. Whether the amounts are sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature. The additional costs associated with providing staff assistance to the advisory council can be absorbed by the Legislature utilizing existing budgeted resources. If outside sources of funding for the advisory council are received and accepted by the Legislative Council, the General Fund costs would be reduced.

#### Fiscal Detail and Notes

Additional costs to the Department of Health and Human Services and the Bureau of Insurance in the Department of Professional and Financial Regulation are assumed to be minor and can be absorbed within existing budgeted resources.