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September 19, 2013

Julia Rathgeber  
Commissioner  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714

Dear Commissioner Rathgeber:

This letter concerns the implementation of Senate Bill 1795, which I passed in the recent legislative session to give Texas the flexibility it needs to regulate healthcare navigators while making it easier – not harder – for Texans to secure the health insurance they need.

The purpose of SB 1795 is to ensure that Texans are able to find and apply for affordable health coverage in the new Health Insurance Marketplace. While SB 1795 does authorize the Texas Department of Insurance (TDI) to write rules to implement the bill, it does not authorize the agency to put in place many of the provisions outlined in Governor Perry's letter to you on September 17.

Navigators will perform the essential work of educating Texans about coverage under the Affordable Care Act and helping them enroll in insurance plans. In a state with 6.4 million uninsured individuals and the highest percentage of uninsured residents in the nation, we need an all-hands-on-deck approach to outreach and enrollment. Texas can and must do better in helping people get covered; this is an issue that affects all of us.

The cost that comes with having so many Texans uninsured is not only human; it's also economic. We know that access to excellent, early and frequent health care means fewer visits to emergency rooms and increased productivity in the workplace. We also know that when individuals know enough about the health system to take an active role in their own care, many chronic illnesses can be prevented.

It makes no sense that Texas would make it more difficult for individuals and families to enroll in an insurance plan that's right for them. Hard-working Texans who seek healthcare want and need information, and that information can and should be provided without efforts to create barriers.

In recent months, navigators have come under political attack in many states. It's important to note that these attacks generally have been purely political in nature and do not represent legitimate concerns about consumer protection and privacy. Rather, they have sought to intimidate the groups that will perform critical outreach and enrollment functions. The intended effects of these attacks has been to erect barriers that will

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prevent eligible low-income and middle-class citizens from enrolling in more affordable coverage in the new Health Insurance Marketplace.

With programs such as Medicaid, CHIP and Medicare, Texas has a long, successful history of partnering with informed community-based groups to help people enroll in health insurance. None of this enrollment assistance has stirred controversy in the past. With Medicare, the State Health Insurance Assistance Program (known as the Health Information, Counseling and Advocacy Program, or HICAP, in Texas) has been helping seniors for more than two decades. And community partners who assist with outreach and enrollment have been a key part of covering children in Texas Medicaid and CHIP. Existing navigator-like programs work, and just like with navigators under the ACA, they are subject to thorough training, certification and oversight requirements.

Navigators are held to strict federal standards for training, certification, conflicts of interest, and privacy and security, as well as federal monitoring and enforcement. When I first started working on SB 1795, back at the beginning of the year, final federal navigator standards and training requirements had not been released. The purpose behind the bill was to ensure that TDI could have some oversight over navigators, if it proved needed.

As is evident, my bill was crafted carefully so as to not duplicate federal training and certification requirements or place any undue burden on navigators. Rather, the bill lets TDI step in if the agency finds that federal standards and training prove insufficient in equipping navigators to perform their federally defined duties. Every stakeholder working on the bill backed this conditional approach, which provides consumer protection without adding unnecessary red tape and regulation.

SB 1795 does not authorize the agency to place onerous restrictions on navigators that will make it harder for them to do their important work. I'm sorry to say that many of the provisions suggested by Governor Perry seem to have this intended effect. For example, **SB 1795 provides no authority** for TDI to require:

- Age restrictions for navigators;
- Navigators' citizenship status to be reported to TDI (though it should be noted that navigators already have to prove that they have legal status to work for their employers);
- A purely arbitrary amount of additional training (Sec. 4154.054 authorizes only additional continuing education training "necessary to ensure compliance with changes in state or federal law");
- Additional exam requirements (all navigators must already complete 30 or more hours of training and pass a certification exam);
- Navigators' use of state-issued identification;
- Background checks or the submission of fingerprints by navigators' employers to TDI;
- The creation of a statewide database showing people who are assisted by navigators and locations where they were assisted;
- Requirements governing the time, place, and manner of contacts between navigators and people they're trying to assist;
- Fees on navigators; and
- Surety bonds for navigator services.

One of the goals of this legislation was to ensure that the bill was consistent with federal law and avoided pre-emption issues. Two sections of the bill make that intent clear. Section 4154.005 directs that rules to implement the bill must “meet the minimum requirements of 42 U.S.C. Section 18031, including regulations.” In addition, Sec. 4154.101, which prohibits non-agent navigators from performing certain acts, clarifies in subsection (b) that the bill does not “prohibit a navigator from providing information on public benefits and health coverage, or other information and services consistent with the mission of a navigator.” In other words, SB 1795 does not prohibit a navigator from performing duties assigned in federal law.

I’m very concerned that the Governor’s heavy-handed regulatory demands that appear to conflict with federal law and to prevent navigators from performing their federally required duties. Specifically, the following appear to both conflict with federal law and be inconsistent with SB 1795:

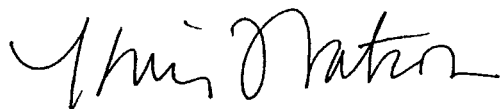
- *Prohibiting navigators from providing advice on the substantive benefits or comparative benefits of different plans.* Navigators have to provide fair and impartial information and cannot recommend a specific plan, but they are required to help consumers understand the differences between plans and make plan comparisons so that the consumer can make an informed choice.
- *Requiring navigators to report to TDI on a regular basis the names of those persons they sign up for the federal health care exchange and locations at which sign-ups take place.*  
Navigators cannot retain or report data on people who they assist.

Lastly, SB 1795 directs that before TDI can write rules regarding navigator standards and registration, the agency must make a determination that federal standards are insufficient to ensure federal navigators can perform their federally-defined duties, and make a good faith effort to work with the federal Health and Human Services Department to improve standards. I understand the agency is moving forward with the rulemaking process and already has a stakeholder meeting scheduled for this month.

Please let me know specifically what federal navigator standards TDI found insufficient and how TDI has worked with federal agencies to improve standards.

I look forward to working with TDI to ensure that rules written to implement SB 1795 fulfill the purpose of the bill: to ensure that Texans have the help they need to apply for new healthcare coverage in a manner that’s consistent with both state and federal law.

Sincerely,



Kirk Watson