

118TH CONGRESS
2D SESSION

S. _____

To amend the Patient Protection and Affordable Care Act to reduce fraudulent enrollments in qualified health plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN (for himself, Mr. BROWN, Ms. DUCKWORTH, Mrs. MURRAY, Mr. SCHATZ, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Patient Protection and Affordable Care Act to reduce fraudulent enrollments in qualified health plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insurance Fraud Ac-
5 countability Act”.

1 **SEC. 2. REDUCTION OF FRAUDULENT ENROLLMENT IN**
2 **QUALIFIED HEALTH PLANS.**

3 (a) PENALTIES FOR AGENTS AND BROKERS.—Sec-
4 tion 1411(h)(1) of the Patient Protection and Affordable
5 Care Act (42 U.S.C. 18081(h)(1)) is amended—

6 (1) in subparagraph (A)—

7 (A) by redesignating clause (ii) as clause
8 (iv);

9 (B) in clause (i)—

10 (i) in the matter preceding subclause
11 (I), by striking “If—” and all that follows
12 through the “such person” in the matter
13 following subclause (II) and inserting the
14 following: “If any person (other than an
15 agent or broker) fails to provide correct in-
16 formation under subsection (b) and such
17 failure is attributable to negligence or dis-
18 regard of any rules or regulations of the
19 Secretary, such person”; and

20 (ii) in the second sentence, by striking
21 “For purposes” and inserting the fol-
22 lowing:

23 “(iii) DEFINITIONS OF NEGLIGENCE,
24 DISREGARD.—For purposes”;

25 (C) by inserting after clause (i) the fol-
26 lowing

1 “(ii) CIVIL PENALTIES FOR KNOWING
2 VIOLATIONS BY AGENTS OR BROKERS.—

3 “(I) IN GENERAL.—Any agent or
4 broker who knowingly provides false
5 or fraudulent information under sub-
6 section (b) or section 1311(c)(8), or
7 other false or fraudulent information
8 as part of an application for enroll-
9 ment in a qualified health plan offered
10 through an Exchange, as specified by
11 the Secretary, shall be subject, in ad-
12 dition to any other penalties that may
13 be prescribed by law, including sub-
14 paragraph (C), to a civil penalty of
15 not more than \$200,000 with respect
16 to each individual who is the subject
17 of an application for which such false
18 or fraudulent information is provided.

19 “(II) PROCEDURE.—The provi-
20 sions of section 1128A of the Social
21 Security Act (other than subsections
22 (a) and (b) of such section) shall
23 apply to a civil monetary penalty
24 under subclause (I) in the same man-
25 ner as such provisions apply to a pen-

1 alty or proceeding under section
2 1128A of the Social Security Act.”;
3 and

4 (3) by adding at the end the following:

5 “(C) CRIMINAL PENALTIES.—Any agent or
6 broker who knowingly and willfully provides
7 false or fraudulent information under sub-
8 section (b) or section 1311(c)(8), or other false
9 or fraudulent information as part of an applica-
10 tion for enrollment in a qualified health plan of-
11 fered through an Exchange, as specified by the
12 Secretary, shall be fined under title 18, United
13 States Code, imprisoned for not more than 10
14 years, or both.”.

15 (b) CONSUMER PROTECTIONS.—

16 (1) IN GENERAL.—Section 1311(c) of the Pa-
17 tient Protection and Affordable Care Act (42 U.S.C.
18 18031(c)) is amended by adding at the end the fol-
19 lowing:

20 “(8) AGENT- OR BROKER-ASSISTED ENROLL-
21 MENT IN QUALIFIED HEALTH PLANS IN CERTAIN
22 EXCHANGES.—

23 “(A) IN GENERAL.—For plan years begin-
24 ning on or after such date specified by the Sec-
25 retary, but not later than January 1, 2028, in

1 the case of an Exchange that the Secretary op-
2 erates pursuant to section 1321(c)(1), the Sec-
3 retary shall establish a verification process for
4 new enrollments of individuals in, and changes
5 in coverage for individuals under, a qualified
6 health plan offered through such Exchange,
7 which are submitted by an agent or broker in
8 accordance with section 1312(e) and for which
9 the agent or broker is eligible to receive a com-
10 mission.

11 “(B) REQUIREMENTS.—The enrollment
12 verification process under subparagraph (A)
13 shall include—

14 “(i) a requirement that the agent or
15 broker provide with the new enrollment or
16 coverage change such documentation or
17 evidence (such as a standardized consent
18 form) or other sources as the Secretary de-
19 termines necessary to establish that the
20 agent or broker has the consent of the in-
21 dividual for the new enrollment or coverage
22 change;

23 “(ii) a requirement that any commis-
24 sions due to a broker or agent for such
25 new enrollment or coverage change are

1 paid after the enrollee has resolved all in-
2 consistencies in accordance with para-
3 graphs (3) and (4) of section 1411(e);

4 “ (iii) a requirement that the informa-
5 tion required under clause (i) and, as ap-
6 plicable, the date on which inconsistencies
7 are resolved as described in clause (ii), is
8 accessible to the applicable qualified health
9 plan through a database or other resource,
10 as determined by the Secretary, so that
11 any commissions due to a broker or agent
12 for such enrollment can be effectuated at
13 the appropriate time;

14 “ (iv) a requirement that individuals
15 are notified of any changes to enrollment,
16 coverage, the agent of record, or premium
17 tax credits in a timely manner and that
18 such notice provides plain language in-
19 structions on how individuals can cancel
20 unauthorized activity;

21 “ (v) a requirement that individuals be
22 able to access their account information on
23 a website or other technology platform, as
24 defined by the Secretary, when used to
25 submit an enrollment or plan change, in

1 lieu of the Exchange website described in
2 subsection (d)(4)(C), including information
3 on the agent of record, the qualified health
4 plan, and when any changes are made to
5 the agent of record or the qualified health
6 plan, on a consumer-facing website or
7 through a toll-free telephone hotline; and

8 “(vi) a requirement that the agent or
9 broker report to the Secretary any third-
10 party marketing organization or field mar-
11 keting organization (as such terms are de-
12 fined in section 1312(e)) involved in the
13 chain of enrollment (as so defined) with re-
14 spect to such new enrollment or coverage
15 change.

16 “(C) CONSUMER PROTECTION.—The Sec-
17 retary shall ensure that the enrollment
18 verification process under subparagraph (A)
19 prioritizes continuity of coverage and care for
20 individuals, including by not disenrolling indi-
21 viduals from a qualified health plan without the
22 consent of the individual, regardless of whether
23 the broker, agent, or qualified health plan is in
24 violation of any requirement under this para-
25 graph.”.

1 (2) REQUIRED REPORTING.—Section
2 1311(e)(1) of the Patient Protection and Affordable
3 Care Act (42 U.S.C. 18031(e)(1)) is amended—

4 (A) in subparagraph (H), by striking
5 “and” at the end;

6 (B) in subparagraph (I), by striking the
7 period at the end and inserting “; and”; and

8 (C) by adding at the end the following:

9 “(J) report to the Secretary the termi-
10 nation (as defined in section 1312(e)(4)(C)) of
11 an issuer.”.

12 (c) AUTHORITY TO REGULATE FIELD MARKETING
13 ORGANIZATIONS AND THIRD-PARTY MARKETING ORGANI-
14 ZATIONS.—Section 1312(e) of the Patient Protection and
15 Affordable Care Act (42 U.S.C. 18032(e)) is amended—

16 (1) by redesignating paragraphs (1) and (2) as
17 subclauses (I) and (II), respectively, and adjusting
18 the margins accordingly;

19 (2) in subclause (II) (as so redesignated), by
20 striking the period at the end and inserting “; and”;

21 (3) by striking the subsection designation and
22 heading and all that follows through “brokers—”
23 and inserting the following:

24 “(e) REGULATION OF AGENTS, BROKERS, AND CER-
25 TAIN MARKETING ORGANIZATIONS.—

1 “(1) AGENTS, BROKERS, AND CERTAIN MAR-
2 KETING ORGANIZATIONS.—

3 “(A) IN GENERAL.—The Secretary shall
4 establish procedures under which a State may
5 allow—

6 “(i) agents or brokers—”; and

7 (4) by adding at the end the following:

8 “(ii) field marketing organizations
9 and third-party marketing organizations to
10 participate in the chain of enrollment for
11 an individual with respect to qualified
12 health plans offered through an Exchange.

13 “(B) CRITERIA.—For plan years beginning
14 on or after such date specified by the Secretary,
15 but not later than January 1, 2028, the Sec-
16 retary, by regulation, shall establish criteria for
17 States to use in determining whether to allow
18 agents and brokers to enroll individuals and
19 employers in qualified health plans as described
20 in subclause (I) of subparagraph (A)(i) and to
21 assist individuals as described in subclause (II)
22 of such subparagraph and field marketing orga-
23 nizations and third-party marketing organiza-
24 tions to participate in the chain of enrollment

1 as described in subparagraph (A)(ii). Such cri-
2 teria shall, at a minimum, require that—

3 “(i) an agent or broker act in accord-
4 ance with a standard of conduct that in-
5 cludes a duty of such agent or broker to
6 act in the best interests of the enrollee;

7 “(ii) a field marketing organization or
8 third-party marketing organization agree
9 to report the termination of an agent or
10 broker to the applicable State and the Sec-
11 retary, including the reason for termi-
12 nation; and

13 “(iii) an agent, broker, field mar-
14 keting organization, or third-party mar-
15 keting organization—

16 “(I) meet such marketing re-
17 quirements as are required by the
18 Secretary;

19 “(II) meet marketing require-
20 ments in accordance with other appli-
21 cable Federal or State law;

22 “(III) does not employ practices
23 that are confusing or misleading, as
24 determined by the Secretary;

1 “(IV) submit all marketing mate-
2 rials to the Secretary for, as deter-
3 mined appropriate by the Secretary,
4 review and approval;

5 “(V) is a licensed agent or broker
6 or meets other licensure requirements,
7 as required by the State;

8 “(VI) register with the Secretary;
9 and

10 “(VII) does not compensate any
11 individual or organization for referrals
12 or any other service relating to the
13 sale of, marketing for, or enrollment
14 in qualified health plans unless such
15 individual or organization meets the
16 criteria described in subclauses (I)
17 through (VI).

18 “(C) DEFINITIONS.—In this paragraph:

19 “(i) CHAIN OF ENROLLMENT.—The
20 term ‘chain of enrollment’, with respect to
21 enrollment of an individual in a qualified
22 health plan offered through an Exchange,
23 means any steps taken from marketing to
24 such individual, to such individual making

1 an enrollment decision with respect to such
2 a plan.

3 “(ii) FIELD MARKETING ORGANIZA-
4 TION.—The term ‘field marketing organi-
5 zation’ means an organization or individual
6 that directly employs or contracts with
7 agents and brokers, or contracts with car-
8 riers, to provide functions relating to en-
9 rollment of individuals in qualified health
10 plans offered through an Exchange as part
11 of the chain of enrollment.

12 “(iii) MARKETING.—The term ‘mar-
13 keting’ means the use of marketing mate-
14 rials to provide information to current and
15 prospective enrollees in a qualified health
16 plan offered through an Exchange.

17 “(iv) MARKETING MATERIALS.—The
18 term ‘marketing materials’ means mate-
19 rials relating to a qualified health plan of-
20 fered through an Exchange or benefits of-
21 fered through an Exchange that—

22 “(I) are intended—

23 “(aa) to draw an individual’s
24 attention to such plan or the pre-
25 mium tax credits or cost-sharing

1 reductions for such plan or plans
2 offered through an Exchange;

3 “(bb) to influence an indi-
4 vidual’s decision-making process
5 when selecting a qualified health
6 plan in which to enroll; or

7 “(cc) to influence an enroll-
8 ee’s decision to stay enrolled in
9 such plan; and

10 “(II) include or address content
11 regarding the benefits, benefit struc-
12 ture, premiums, or cost sharing of
13 such plan.

14 “(v) TERMINATION.—The term ‘ter-
15 mination’, with respect to a contract or
16 business arrangement between an agent or
17 broker and a field marketing organization,
18 third-party marketing organization, or
19 health insurance issuer, means—

20 “(I) the ending of such contract
21 or business arrangement, either uni-
22 laterally by one of the parties or on
23 mutual agreement; or

24 “(II) the expiration of such con-
25 tract or business arrangement that is

1 not replaced by a substantially similar
2 agreement.

3 “(vi) THIRD-PARTY MARKETING ORGA-
4 NIZATION.—The term ‘third-party mar-
5 keting organization’ means an organization
6 or individual that is compensated to per-
7 form lead generation, marketing, or sales
8 relating to enrollment of individuals in
9 qualified health plans offered through an
10 Exchange as part of the chain of enroll-
11 ment.”.

12 (d) TRANSPARENCY.—Section 1312(e) of the Patient
13 Protection and Affordable Care Act (42 U.S.C. 18032(e))
14 (as amended by subsection (c)) is amended by adding at
15 the end the following:

16 “(2) AUDITS.—

17 “(A) IN GENERAL.—For plan years begin-
18 ning on or after such date specified by the Sec-
19 retary, but not later than January 1, 2028, the
20 Secretary, in coordination with the States and
21 in consultation with the National Association of
22 Insurance Commissioners, shall implement a
23 process for the oversight and enforcement of
24 agent and broker compliance with this section

1 and other applicable Federal and State law (in-
2 cluding regulations) that shall include—

3 “(i) periodic audits of agents and bro-
4 kers based on—

5 “(I) complaints filed with the
6 Secretary by individuals enrolled by
7 such an agent or broker in a qualified
8 health plan offered through an Ex-
9 change;

10 “(II) an incident or enrollment
11 pattern that suggests fraud; and

12 “(III) other factors determined
13 by the Secretary; and

14 “(ii) a process under which the Sec-
15 retary shall share audit results and refer
16 potential cases of fraud to the relevant
17 State department of insurance.

18 “(B) EFFECT.—Nothing in this paragraph
19 limits or restricts any referrals made under sec-
20 tion 1311(i)(3) or any enforcement actions
21 under section 1411(h).

22 “(3) LIST.—The Secretary shall develop a proc-
23 ess to regularly provide to qualified health plans,
24 Exchanges, and States a list of suspended and ter-
25 minated agents and brokers.”.