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May 20, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave, S.W.
Washington, D.C. 20201

Dear Administrator Brooks-LaSure:

I write to express my outrage with reports that agents and brokers are submitting plan changes and enrollments in the Federal marketplace without the consent of the people who rely on these plans. These plan changes and enrollments result in tangible harm to people including uncovered medical expenses, loss of coverage, and disruptions in care, and an unexpected tax liability that could be thousands of dollars out of their own pockets. Access to affordable health coverage is necessary for good health and should not be exploited by fraudsters to collect illicit commissions at the expense of working Americans. Therefore, I urge you to hold brokers who submit fraudulent enrollments accountable to the full extent of your authority by imposing civil monetary penalties and to take additional steps to protect consumers.

I know you and I both care deeply about the success of the ACA marketplace. In my view, the brokers, agencies, and lead generators participating in fraudulent enrollment schemes should be held criminally responsible. While CMS does not have this authority today, I intend to introduce legislation shortly to give you this authority.

Reports of bad actor agents and deceptive marketing practices are not new.¹ The Trump Administration's focus on privatizing the ACA marketplace introduced these enhanced web-broker platforms allowing brokers to bypass the benefits and protections of the ACA marketplace.² Stakeholders have informed my staff that this problem has become widespread and more sophisticated in the ACA marketplace as bad actors with access to a consumer's eligibility information through web-broker platforms can make plan and agent-of-record changes while keeping people and their legitimate brokers in the dark.

¹ Appleby J, "Some insurance brokers enroll people in ACA plans without consent", Jan 17, 2022. Available at: <https://www.npr.org/sections/health-shots/2022/01/17/1073282236/some-insurance-brokers-enroll-people-in-aca-plans-without-consent>; Abelson R, Sanger-Katz M, "Private Medicare Plans Misled Customers Into Signing Up, Senate Report Says" New York Times, Nov 3, 2022. Available at: <https://www.nytimes.com/2022/11/03/upshot/private-medicare-misleading-marketing.html>

² Straw T, "'Direct Enrollment' in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm New 'Enhanced Direct Enrollment' Heightens Risks," March 15, 2019. Available at: <https://www.cbpp.org/research/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes-them-to>

I appreciate the Centers for Medicare & Medicaid Services (CMS) statement from May 6, 2024 addressing this issue and approach to resolving the 40,000 complaints of unauthorized plan switches and 50,000 complaints of unauthorized enrollments in the first three months of 2024. Ensuring that consumers are held harmless and enrolled in the plan they choose is of the utmost importance. However, CMS must do more and you must do it now.

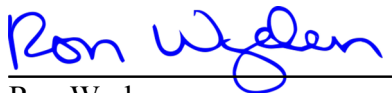
First, the burden should not fall on the people to report these problems. CMS should get ahead of these issues, by proactively informing individuals who may have been impacted as soon as CMS is aware. Some people may not yet know that their plan has been changed without their permission. They should be advised to check their coverage immediately. In my view, any individuals who have been enrolled by a broker who has fraudulently enrolled other consumers or who has been suspended or terminated for fraudulent enrollment should be proactively notified by CMS that they, the consumer, is working with a suspicious broker.

Second, CMS should conduct a thorough review of enhanced direct enrollment entities policies, their technology safeguards, and their business practices. The ability to directly enroll individuals into ACA coverage should be a privilege and companies that are not just meeting and exceeding CMS standards to protect consumer plan choices should have their contract terminated. Reports that brokers can change an individual's or family's coverage without their knowledge is unacceptable. CMS needs to step up its oversight of these entities and ensure that their business practices incentivize brokers to help individuals find the plan that is the best fit for them.

Third, Congress established financial penalties in Section 1411(h) of the ACA to hold individuals who submit fraudulent information in an application for a qualified health plan at "not more" than \$250,000 for knowing and willful violations. I am disappointed these penalties have not yet been used to hold bad actors accountable. CMS should hold individual bad acting brokers and their agencies or employers accountable for their schemes to the full extent of the law and you should do so now.

I appreciate your efforts thus far to address these violations against people, and appreciate your immediate attention to these recommendations. I look forward to working with you to ensure Americans have comprehensive, affordable health care under the ACA.

Sincerely,



Ron Wyden
United States Senator

CC: Ellen Montz, Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight