

113TH CONGRESS
1ST SESSION

S. 1666

To amend the Patient Protection and Affordable Care Act to improve the patient navigator program.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2013

Mr. RUBIO (for himself, Mr. BOOZMAN, Mr. COCHRAN, Mr. INHOFE, Mr. McCONNELL, Mr. ROBERTS, and Mr. FLAKE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Patient Protection and Affordable Care Act to improve the patient navigator program.

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 “Healthcare Privacy
5 and Anti-Fraud Act”.

1 **SEC. 2. TRAINING, BACKGROUND CHECKS, AND NON-**
2 **DISCLOSURE FOR PATIENT NAVIGATORS.**

3 (a) **IN GENERAL.**—Section 1311(i) of the Patient
4 Protection and Affordable Care Act (42 U.S.C. 18031(i))
5 is amended by adding at the end the following:

6 “(7) **SECURITY AND NONDISCLOSURE.**—

7 “(A) **GUIDANCE BY SECRETARY.**—Not
8 later than 90 days after the date of enactment
9 of this paragraph, the Secretary shall issue
10 guidance on the implementation of this para-
11 graph in order to protect the privacy of individ-
12 ually identifiable information submitted to, or
13 accessed by, navigators under this subsection.

14 “(B) **BACKGROUND CHECKS.**—

15 “(i) **IN GENERAL.**—An entity that re-
16 ceives a grant under this subsection shall
17 ensure that universal background checks
18 are conducted on all employees of the enti-
19 ty prior to such employees providing navi-
20 gator services to individuals, or prior to
21 such employees having access to individ-
22 ually identifiable information as a result of
23 providing such services. Such background
24 checks shall, at minimum, include a crimi-
25 nal background check, fingerprinting, and
26 credit report.

1 “(ii) LIMITATION.—An individual who
2 has been found guilty of a felony, or guilty
3 of a misdemeanor involving deceit or dis-
4 honestly (including identity theft, fraud, or
5 perjury), under Federal or State law shall
6 not be employed by an entity described in
7 clause (i).

8 “(C) OATH.—

9 “(i) IN GENERAL.—Prior to com-
10 mencing employment with an entity that
11 receives a grant under this subsection, an
12 individual described in clause (ii) shall
13 have sworn or taken an oath that he or she
14 will not disclose any individually identifi-
15 able information obtained in the course of
16 their employment (except information rel-
17 evant to the commission of a felony when
18 provided to an appropriate law enforce-
19 ment authority).

20 “(ii) INDIVIDUAL DESCRIBED.—An in-
21 dividual is described in this clause if such
22 individual is being employed by an entity
23 described in clause (i) as a navigator, a
24 non-navigator assistant, or as an employee

1 with access to individually identifiable in-
2 formation.

3 “(D) EDUCATIONAL, TRAINING, AND LI-
4 CENSURE REQUIREMENTS.—Prior to conducting
5 navigation services for an entity under this sub-
6 section, an individual shall meet educational
7 and licensure requirements that are identical or
8 comparable to those currently applicable to
9 health insurance agents and brokers within the
10 State in which they seek to provide navigation
11 services, including the completion of at least 30
12 hours of training (including training on privacy
13 rights under this Act and other relevant Fed-
14 eral laws).

15 “(E) LIABILITY.—Not later than 90 days
16 after the date of the enactment of this para-
17 graph, the Secretary—

18 “(i) shall issue guidance concerning
19 how liability and penalties will be applied
20 by the Secretary in instances of failure to
21 comply with requirements of this para-
22 graph, including where consumer outreach
23 and enrollment assistance causes harm to
24 an individual as a result of misuse or neg-

1 ligence in protection and privacy of individ-
2 ually identifiable information;

3 “(ii) shall determine whether such li-
4 ability lies with the navigator or non-navi-
5 gator assistance personnel involved or
6 whether liability lies with the entity that
7 received the grant under this subsection;
8 and

9 “(iii) shall determine whether the in-
10 dividuals or entities identified under clause
11 (ii) are required to obtain professional li-
12 ability coverage.

13 “(F) PENALTIES.—

14 “(i) IN GENERAL.—Whoever having
15 sworn or taken the oath described under
16 subparagraph (C), publishes or commu-
17 nicates any individually identifiable infor-
18 mation which comes into his or her posses-
19 sion by reason of his or her being em-
20 ployed (or otherwise providing services)
21 under this subsection, shall be fined not
22 more than \$5,000 or imprisoned not more
23 than 5 years, or both.

24 “(ii) MISREPRESENTATION.—Any per-
25 son who knowingly and falsely represents

1 that such person is, or holds himself or
2 herself out as, a navigator under this sub-
3 section shall be fined not more than
4 \$5,000 or imprisoned not more than 5
5 years, or both.

6 “(iii) ENHANCED PENALTY FOR SALE
7 OR TRANSFER.—A person who commits the
8 offense described under clause (i) with the
9 intent to sell, transfer, or use individually
10 identifiable information for commercial ad-
11 vantage, personal gain, or malicious harm
12 shall be fined not more than \$250,000, im-
13 prisoned for not more than 10 years, or
14 both.

15 “(G) GREATER PROTECTIONS.—Nothing in
16 subparagraphs (A), (B), (C) or (D) shall be
17 construed to prohibit States from imposing ad-
18 ditional standards and protections to protect
19 consumer information.

20 “(8) LIST OF NAVIGATORS.—Not later than 90
21 days after the date of enactment of this paragraph,
22 and annually thereafter, the Secretary shall make
23 available a list of entities providing navigator serv-
24 ices in accordance with this subsection and a list of
25 entities that have been determined to be ineligible to

1 provide such services or who have been convicted of
2 a violation under paragraph (7).”.

3 (b) LIMITATION ON LIABILITY.—Section 5000A(e) of
4 the Internal Revenue Code of 1986 is amended by adding
5 at the end the following:

6 “(6) RELIANCE ON NAVIGATOR ADVICE.—Any
7 applicable individual who for any month failed to ob-
8 tain minimum essential coverage as a result of the
9 good faith reliance on the advice of a patient navi-
10 gator, counselor, or other employee of an entity re-
11 ceiving a grant under section 1311(i) of the Patient
12 Protection and Affordable Care Act (or a person
13 purporting to be such a navigator, counselor, or
14 other employee).”.

15 (c) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect on the date of the enact-
17 ment of this Act and shall apply to grants made before,
18 on, or after the date of the enactment of this Act. The
19 Secretary of Health and Human Services shall provide for
20 the prompt modification of such grants made before the
21 date of the enactment of this Act in order to comply with
22 the requirement imposed by such amendment.

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