

**United States Senate**  
WASHINGTON, DC 20510

July 8, 2024

**VIA ELECTRONIC TRANSMISSION**

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services

Dear Secretary Becerra and Administrator Brooks-LaSure:

On June 20, 2024, the Wall Street Journal reported that, according to a recent Paragon Health Institute study, five million individuals may have falsely reported their income to qualify for Affordable Care Act (ACA), or Obamacare, health-insurance subsidies.<sup>1</sup> The study found that in states not expanding Medicaid, individuals will, either intentionally or accidentally, overestimate their income, allowing them to become eligible to receive these premium tax credits (PTCs).<sup>2</sup> The administration's failure to ensure the integrity of the program by "seeking to inflate coverage numbers" has cost the taxpayer an estimated \$20 billion in 2024.<sup>3</sup>

President Biden signed the Democrats' 2021 and 2022 reconciliations laws, increasing the subsidies (structured as Advance PTCs) through 2025.<sup>4</sup> The advance PTCs are credited to individuals based on reported income, sent directly to insurers, and can be collected directly by the individuals as part of their tax refund.<sup>5</sup> These increased tax credits and reduction in cost-sharing makes health insurance plans fully subsidized for enrollees with an income between 100 percent and 150 percent of the federal poverty level (FPL). These enrollees also qualify for a cost-sharing reduction (CSR) program, reducing the patient's portion of costs for healthcare services

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<sup>1</sup> Brian Blasé, *The \$20 Billion ObamaCare Subsidy Fraud*, WSJ, June 19, 2024 5:41 pm, [https://www.wsj.com/articles/the-20-billion-obamacare-subsidy-fraud-abd89b0d?mod=opinion\\_lead\\_pos8](https://www.wsj.com/articles/the-20-billion-obamacare-subsidy-fraud-abd89b0d?mod=opinion_lead_pos8); see also Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, and a Basic Health Program, 89 Fed. Reg. 39392 (May 5, 2024). Premium Tax Credits are available to U.S. citizens, as well as individuals who are lawfully present in the United States. The Biden Administration expanded eligibility for Premium Tax Credits for DACA recipients.

<sup>2</sup> Brian Blase and Drew Gonshorowski, *The Great Obamacare Enrollment Fraud*, Paragon Health Inst., June 2024, [https://paragoninstitute.org/wp-content/uploads/2024/06/The-Great-Obamacare-Enrollment-Fraud\\_FOR\\_RELEASE\\_V2.pdf](https://paragoninstitute.org/wp-content/uploads/2024/06/The-Great-Obamacare-Enrollment-Fraud_FOR_RELEASE_V2.pdf). There is currently a safe harbor on reporting income but is limited based on the household income relative to the FPL, See Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Pub. L. No. 112-9, 125 Stat. 36.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* PTCs reduce the percentage and amount of income that a person must pay for a benchmark plan, the second-lowest-cost silver plan available to them.

<sup>5</sup> *Id.*

covered by their health insurance plan<sup>6</sup> that raises plan actuarial value to 94 percent.<sup>7</sup> In states that have not expanded Medicaid, the ACA does not apply these benefits to people below the FPL, which incentivizes enrollees, health care brokers, and insurers to incorrectly estimate incomes in order to receive subsidies.<sup>8</sup> The report found in nine states this year that the number of sign-ups reporting income between 100 percent and 150 percent FPL exceeded the number of potential enrollees. Florida in particular had four times as many enrollees reporting income in that range as those meeting legal requirements.<sup>9</sup>

Many ACA exchange enrollees rely on insurance brokers and agents.<sup>10</sup> According to recent reports, insurance agents and brokers have been accused of switching Obamacare enrollees into new plans without their consent to maximize their commissions.<sup>11</sup> Litigation has already started in Florida by people who responded to misleading advertisements promising free government “subsidies,” only to then lose access to their doctors or medications.<sup>12</sup> Further, these problems are particularly egregious on the federal-based health exchange, where unscrupulous agents only require a name, date of birth, and state of residence to make policyholder changes as opposed to State-based exchange markets.<sup>13</sup>

The Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS) are responsible for overseeing the federal-based exchange market.<sup>14</sup> CMS has promulgated rules around Consent and Review for all marketplace enrollments as of June 2023 requiring documented consumer consent before enrolling a consumer in Marketplace coverage or updating coverage.<sup>15</sup> But in April 2024, CMS had to issue a statement claiming CMS is “working closely with state departments of insurance and law enforcement partners to share

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<sup>6</sup> Under this program, the CSR affects the out-of-pocket limits and reduces deductibles for people with income below 200 percent FPL. See Brian Blase and Drew Gonshorowski, *The Great Obamacare Enrollment Fraud*, Paragon Health Inst., June 2024, [https://paragoninstitute.org/wp-content/uploads/2024/06/The-Great-Obamacare-Enrollment-Fraud\\_FOR\\_RELEASE\\_V2.pdf](https://paragoninstitute.org/wp-content/uploads/2024/06/The-Great-Obamacare-Enrollment-Fraud_FOR_RELEASE_V2.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> Brian Blasé, *The \$20 Billion ObamaCare Subsidy Fraud*, WSJ, June 19, 2024 5:41 pm, [https://www.wsj.com/articles/the-20-billion-obamacare-subsidy-fraud-abd89b0d?mod=opinion\\_lead\\_pos8](https://www.wsj.com/articles/the-20-billion-obamacare-subsidy-fraud-abd89b0d?mod=opinion_lead_pos8).

<sup>9</sup> Brian Blase and Drew Gonshorowski, *The Great Obamacare Enrollment Fraud*, Paragon Health Inst., June 2024, [https://paragoninstitute.org/wp-content/uploads/2024/06/The-Great-Obamacare-Enrollment-Fraud\\_FOR\\_RELEASE\\_V2.pdf](https://paragoninstitute.org/wp-content/uploads/2024/06/The-Great-Obamacare-Enrollment-Fraud_FOR_RELEASE_V2.pdf).

<sup>10</sup> Julie Appleby, *Rising Complaints of Unauthorized Obamacare Plan-Switching and Sign-Ups Trigger Concern*, KFF Health News, Apr. 8, 2024, <https://kffhealthnews.org/news/article/aca-unauthorized-obamacare-plan-switching-concern/>.

<sup>11</sup> *Id.*

<sup>12</sup> Julie Appleby, *Lawsuit Alleges Obamacare Plan-Switching Scheme Targeted Low-Income Consumers*, KFF Health News, Apr. 16, 2024, <https://kffhealthnews.org/news/article/federal-lawsuit-unauthorized-aca-obamacare-plan-enrollment-switching/>. See also Julie Appleby, *Unauthorized ACA Plan Switches Drive Call for Action Against Rogue Agents*, NPR, Apr. 8, 2024, <https://www.npr.org/sections/health-shots/2024/04/08/1243328699/health-insurance-obamacare-aca-plan-switch-rogue-agents>.

<sup>13</sup> Julie Appleby, *ACA Plans Are Being Switched Without Enrollees’ OK*, KFF Health News, Apr. 4, 2024, <https://kffhealthnews.org/news/article/aca-obamacare-plans-switched-without-enrollee-permission-investigation/>. States often require additional information to access policyholder information, such as a one-time passcode. Additional information could also be a social security number (or equivalent) or a clients’ direct signoff see Andrew Sprung, *On Broker Fraud in the ACA marketplace*, xpostfactoid, Apr. 10, 2024, <https://xpostfactoid.substack.com/p/on-broker-fraud-in-the-aca-marketplace>.

<sup>14</sup> Julie Appleby, *Rising Complaints of Unauthorized Obamacare Plan-Switching and Sign-Ups Trigger Concern*, KFF Health News, Apr. 8, 2024, <https://kffhealthnews.org/news/article/aca-unauthorized-obamacare-plan-switching-concern/>.

<sup>15</sup> HealthSherpa, *ACA Marketplace: New CMS Consent Rules Effective 6/18/23*, PMSBrokerage, June. 19, 2023, <https://www.pmsbrokerage.com/blog/aca-marketplace-new-cms-consent-rules-effective-6/18/23>. See also Ctrs. for Medicare and Medicaid Servs., *Overview of Marketplace Requirements for Agents and Brokers*, CMS, June 5, 2018, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/AB-MarketplaceRequirements-TipSheet-June52018.pdf>.

information and optimize resources to combat unauthorized and fraudulent activity in the Marketplaces,” in response to such widespread violations of CMS rules.<sup>16</sup>

HHS and CMS must ensure that proper care is taken to protect the American taxpayer from fraud, waste, and abuse. So that Congress may conduct an independent review, please answer the following questions no later than July 22, 2024.

1. What regulatory, operational, and technological options is CMS currently evaluating and has been evaluated to address unauthorized PTC claims? Provide all records.<sup>17</sup>
2. What specific auditing procedures does each agency perform before allocating PTCs and other ACA subsidies? In what ways are HHS and CMS communicating with each other, the Department of the Treasury, and the Internal Revenue Service to confirm authorized PTC claims? Provide all records.
3. By year, how many complaints have been filed for nonconsensual enrollee transfers to other plans, and how many of those complaints have been resolved? Provide all records.
4. By year, how many complaints have been filed for subsidy claims based on false income, and how many of those complaints have been resolved? Provide all records.
5. By year, how many civil money penalties (CMPs) have been levied against perpetrators of ACA subsidy fraud? Provide all records.
6. What data does HHS and CMS currently use to evaluate and verify income from ACA subsidy recipients? Provide all records.
7. Does either HHS or CMS have an estimated total cost to the taxpayer for ACA subsidy fraud? If so, how much?

Thank you for your prompt review and responses. If you have any questions, please contact Tucker Akin on my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget

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<sup>16</sup> Ctrs. for Medicare and Medicaid Servs., *CMS Statement on Agent and Broker Marketplace Activity*, CMS, Apr. 12, 2024, <https://www.cms.gov/newsroom/press-releases/cms-statement-agent-and-broker-marketplace-activity>.

<sup>17</sup> “Records” include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (emails, email attachments, and any other electronically created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether they resulted in final documents).