

113TH CONGRESS
1ST SESSION

H. R. 3299

To amend section 340A of the Public Health Service Act to protect the privacy of personally identifiable information in relation to enrollment activities of health insurance exchanges, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2013

Mr. ROSS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend section 340A of the Public Health Service Act to protect the privacy of personally identifiable information in relation to enrollment activities of health insurance exchanges, 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 “Security Before Access
5 Act of 2013”.

1 **SEC. 2. PROTECTING THE PRIVACY OF PERSONALLY IDEN-**
2 **TIFIABLE INFORMATION IN ENROLLMENT**
3 **ACTIVITIES OF HEALTH INSURANCE EX-**
4 **CHANGES.**

5 (a) IN GENERAL.—Section 340A(c) of the Public
6 Health Service Act (42 U.S.C. 256a(c)) is amended by
7 adding at the end the following new paragraph:

8 “(3) ENSURING PRIVACY OF PERSONALLY
9 IDENTIFIABLE INFORMATION; LIABILITY; PEN-
10 ALTIES; CONSUMER OPT OUT.—

11 “(A) IN GENERAL.—The Secretary shall
12 require each recipient of a grant under this sec-
13 tion to implement procedures specified by the
14 Secretary consistent with this paragraph in
15 order protect the privacy of personally identifi-
16 able information.

17 “(B) REQUIRED PROCEDURES.—The pro-
18 cedures specified by the Secretary under sub-
19 paragraph (A) shall include at least the fol-
20 lowing:

21 “(i) PROHIBITION OF ACCESS WITH-
22 OUT EXPLICIT CONSENT.—No certified ap-
23 plication counselor, health insurance navi-
24 gator, or non-navigator assistance per-
25 sonnel shall have access to personally iden-
26 tifiable information relating to an indi-

1 vidual without the express, witnessed, writ-
2 ten consent of that individual.

3 “(ii) REQUIRING LICENSURE, BACK-
4 GROUND CHECKS.—No such individual
5 shall have access to personally identifiable
6 information unless the individual—

7 “(I) has undergone, within 60
8 days before commencing enrollment
9 assistance for any consumer seeking
10 coverage through health insurance ex-
11 changes, both a criminal background
12 and fingerprint check and has a clean
13 record free of criminal infractions;
14 and

15 “(II) meets educational and li-
16 censure requirements that are iden-
17 tical or comparable to those currently
18 applicable to health insurance agents
19 and brokers within the State they
20 seek to assist consumers with health
21 insurance enrollment.

22 “(iii) REQUIREMENT FOR PRIOR CER-
23 TIFICATION OF SAFEGUARDS.—The recipi-
24 ent of the grant may not collect personally
25 identifiable information for any reason

1 until the Comptroller General of the
2 United States, in agreement with the In-
3 spector General of the Department of
4 Health and Human Services, certifies to
5 Congress that such Department, along
6 with any other relevant Federal agencies
7 involved with health insurance assistance
8 or enrollment, or collection or verification
9 of personally identifiable information, have
10 implemented all appropriate and necessary
11 actions to safeguard both the such infor-
12 mation and financial information of indi-
13 viduals seeking enrollment in a health plan
14 through an Exchange and to protect such
15 individuals from fraud and abuse.

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

19 “(i) shall issue guidance concerning
20 how liability and penalties will be applied
21 in instances of failure to comply with re-
22 quirements of this paragraph, including
23 where consumer outreach and enrollment
24 assistance causes harm to an individual as
25 a result of misuse or negligence in protec-

1 tion and privacy of personally identifiable
2 information;

3 “(ii) shall determine whether such li-
4 ability lies with the person (such as a navi-
5 gator, certified application counselor, or
6 non-navigator assistance personnel) having
7 direct contact with the prospective enrollee
8 in enrollment assistance-related actions or
9 whether liability lies with the entity that
10 received Federal or Exchange-generated
11 funds to carry out consumer outreach ac-
12 tivities; and

13 “(iii) shall determine whether the en-
14 tities identified under clause (ii) are re-
15 quired to obtain professional liability cov-
16 erage.

17 “(D) PENALTIES.—

18 “(i) CRIMINAL PENALTIES.—

19 “(I) Any individual or entity who,
20 under this section, has possession of,
21 or access to, personally identifiable in-
22 formation the disclosure of which is
23 prohibited by this section (or section
24 552a of title 5, United States Code)
25 or by rules or regulations established

1 thereunder, and who knowing that
2 disclosure of the specific material is so
3 prohibited, willfully discloses the ma-
4 terial in any manner to any person or
5 entity not entitled to receive it, shall
6 be guilty of a misdemeanor and fined
7 not more than \$5,000.

8 “(II) A person who commits the
9 offense described under subclause (I)
10 with the intent to sell, transfer, or use
11 personally identifiable information for
12 commercial advantage, personal gain,
13 or malicious harm shall be fined not
14 more than \$250,000, imprisoned for
15 not more than 10 years, or both.

16 “(III) Any person who knowingly
17 and willfully requests or obtains any
18 personally identifiable information
19 protected under this section con-
20 cerning an individual under false pre-
21 tenses shall be guilty of a felony and
22 fined not more than \$100,000, impris-
23 oned for not more than 5 years, or
24 both.

1 “(ii) POTENTIAL EXPOSURE TO TAX
2 PENALTY.—Any navigator, certified appli-
3 cation counselor, or non-navigator assist-
4 ance personnel who engages in health plan
5 enrollment consumer assistance activities
6 under this section and who is exposed to
7 consumer tax return information is poten-
8 tially subject to criminal liability under
9 section 7213(a) of the Internal Revenue
10 Code of 1986 for any instances of unau-
11 thorized disclosure of such information.

12 “(iii) DISQUALIFICATION FROM FUR-
13 THER ASSISTANCE.—If the Secretary de-
14 termines that any individual, including any
15 navigator, certified application counselor,
16 or non-navigator assistance personnel, has
17 a criminal background or is otherwise in
18 violation of this paragraph with respect to
19 the requirements relating to disclosure and
20 use of personally identifiable information,
21 the Secretary shall permanently disqualify
22 the individual from any further involve-
23 ment in consumer assistance activities re-
24 quired under this section or the Patient
25 Protection and Affordable Care Act and

1 may disqualify and rescind the Federal
2 and Exchange-generated funds from the
3 entity which employs or contracts with
4 such an individual.

5 “(E) CONSUMER OPT OUT FOR LACK OF
6 PRIVACY PROTECTION.—Beginning on the date
7 of health insurance exchange operations for
8 both individuals and businesses, no individual
9 consumer shall be made responsible for failure
10 to meet a requirement under the Patient Pro-
11 tection and Affordable Care Act (including any
12 amendments made by this Act) for obtaining
13 qualified health insurance coverage through an
14 Exchange unless the Secretary has dem-
15 onstrated with reasonable certainty that effec-
16 tive and comprehensive protection of personally
17 identifiable information, with respect to any
18 health insurance enrollment activity electronic
19 or otherwise, are in place prior to any consumer
20 disclosure or transmission of personally identifi-
21 able information for health insurance enroll-
22 ment purposes.

23 “(F) PERSONALLY IDENTIFIABLE INFOR-
24 MATION DEFINED.—In this paragraph, the term
25 ‘personally identifiable information’ includes So-

1 cial Security numbers, bank account informa-
2 tion, insurance records, health records, personal
3 income data, and any other information deemed
4 personally identifiable and sensitive in nature
5 by the Federal Trade Commission, the Depart-
6 ment of Justice, the Social Security Adminis-
7 tration, the Consumer Financial Protection Bu-
8 reau, the President’s Task Force on Identity
9 Theft, and any other relevant Federal agency,
10 which is disclosed or obtained in connection
11 with any health insurance enrollment activity
12 conducted under this section.”.

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

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