116TH CONGRESS
1ST SESSION

H. R. 987

IN THE SENATE OF THE UNITED STATES

MAY 20, 2019

Received; read twice and referred to the Committee on Health, Education, Labor, and Pensions

AN ACT

To amend the Patient Protection and Affordable Care Act to provide for Federal Exchange outreach and educational activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Strengthening Health Care and Lowering Prescription Drug Costs Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

TITLE I—LOWERING PRESCRIPTION DRUG COSTS

Subtitle A—Bringing Low-Cost Options and Competition While Keeping Incentives for New Generics

SEC. 101. CHANGE CONDITIONS OF FIRST GENERIC EXCLUSIVITY TO SPUR ACCESS AND COMPETITION.

Section 505(j)(5)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)(iv)) is amended—

(1) in subclause (I), by striking ''180 days after'' and all that follows through the period at the end and inserting the following: ''180 days after the earlier of—

''(aa) the date of the first commercial marketing of the drug (including the commercial marketing of the listed drug) by any first applicant; or

''(bb) the applicable date specified in subclause (III).''; and

(2) by adding at the end the following new subclause:

"(III) APPLICABLE DATE.—The applicable date specified in this subclause, with respect to an application for a drug described in subclause (I), is the date on which each of the following conditions is first met:

"(aa) The approval of such an application could be made effective, but for the eligibility of a first applicant for 180-day exclusivity under this clause.

"(bb) At least 30 months have passed since the date of submission of an application for the drug by at least one first applicant.

"(cc) Approval of an application for the drug submitted by at least one first applicant is not precluded under clause (iii).

"(dd) No application for the drug submitted by any first applicant is approved at the time the conditions under items (aa), (bb), and (cc) are all met, regardless of whether such an

application is subsequently approved.''.

Subtitle B—Protecting Consumer Access to Generic Drugs

SEC. 111. UNLAWFUL AGREEMENTS.

(a) AGREEMENTS PROHIBITED.—Subject to subsections (b) and (c), it shall be unlawful for an NDA or BLA holder and a subsequent filer (or for two subsequent filers) to enter into, or carry out, an agreement resolving or settling a covered patent infringement claim on a final or interim basis if under such agreement—

(1) a subsequent filer directly or indirectly receives from such holder (or in the case of such an agreement between two subsequent filers, the other subsequent filer) anything of value, including a license; and

(2) the subsequent filer agrees to limit or forego research on, or development, manufacturing, marketing, or sales, for any period of time, of the covered product that is the subject of the application described in subparagraph (A) or (B) of subsection (g)(8).

(b) EXCLUSION.—It shall not be unlawful under subsection (a) if a party to an agreement described in such subsection demonstrates by clear and convincing evidence

that the value described in subsection (a)(1) is compensation solely for other goods or services that the subsequent filer has promised to provide.

(c) LIMITATION.—Nothing in this section shall prohibit an agreement resolving or settling a covered patent infringement claim in which the consideration granted by the NDA or BLA holder to the subsequent filer (or from one subsequent filer to another) as part of the resolution or settlement includes only one or more of the following:

(1) The right to market the covered product that is the subject of the application described in subparagraph (A) or (B) of subsection (g)(8) in the United States before the expiration of—

(A) any patent that is the basis of the covered patent infringement claim; or

(B) any patent right or other statutory exclusivity that would prevent the marketing of such covered product.

(2) A payment for reasonable litigation expenses not to exceed $7.5 million in the aggregate.

(3) A covenant not to sue on any claim that such covered product infringes a patent.

(d) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) GENERAL APPLICATION.—The requirements of this section apply, according to their terms, to an NDA or BLA holder or subsequent filer that is—

(A) a person, partnership, or corporation over which the Commission has authority pursuant to section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)); or

(B) a person, partnership, or corporation over which the Commission would have authority pursuant to such section but for the fact that such person, partnership, or corporation is not organized to carry on business for its own profit or that of its members.

(2) UNFAIR OR DECEPTIVE ACTS OR PRACTICES ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—A violation of this section shall be treated as an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

(B) POWERS OF COMMISSION.—Except as provided in subparagraph (C) and paragraphs (1)(B) and (3)—

(i) the Commission shall enforce this section in the same manner, by the same

means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section; and

(ii) any NDA or BLA holder or subsequent filer that violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(C) JUDICIAL REVIEW.—In the case of a cease and desist order issued by the Commission under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for violation of this section, a party to such order may obtain judicial review of such order as provided in such section 5, except that—

(i) such review may only be obtained in—

(I) the United States Court of Appeals for the District of Columbia Circuit;

(II) the United States Court of Appeals for the circuit in which the

ultimate parent entity, as defined in section 801.1(a)(3) of title 16, Code of Federal Regulations, or any successor thereto, of the NDA or BLA holder (if any such holder is a party to such order) is incorporated as of the date that the application described in subparagraph (A) or (B) of subsection (g)(8) or an approved application that is deemed to be a license for a biological product under section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)) pursuant to section 7002(e)(4) of the Biologics Price Competition and Innovation Act of 2009 (Public Law 111–148; 124 Stat. 817) is submitted to the Commissioner of Food and Drugs; or

(III) the United States Court of Appeals for the circuit in which the ultimate parent entity, as so defined, of any subsequent filer that is a party to such order is incorporated as of the date that the application described in subparagraph (A) or (B) of subsection

(g)(8) is submitted to the Commissioner of Food and Drugs; and

(ii) the petition for review shall be filed in the court not later than 30 days after such order is served on the party seeking review.

(3) ADDITIONAL ENFORCEMENT AUTHORITY.—

(A) CIVIL PENALTY.—The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any NDA or BLA holder or subsequent filer that violates this section.

(B) SPECIAL RULE FOR RECOVERY OF PENALTY IF CEASE AND DESIST ORDER ISSUED.—

(i) IN GENERAL.—If the Commission has issued a cease and desist order in a proceeding under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for violation of this section—

(I) the Commission may commence a civil action under subparagraph (A) to recover a civil penalty against any party to such order at any time before the expiration of the

1-year period beginning on the date on which such order becomes final under section 5(g) of such Act (15 U.S.C. 45(g)); and

(II) in such civil action, the findings of the Commission as to the material facts in such proceeding shall be conclusive, unless—

(aa) the terms of such order expressly provide that the Commission's findings shall not be conclusive; or

(bb) such order became final by reason of section 5(g)(1) of such Act (15 U.S.C. 45(g)(1)), in which case such findings shall be conclusive if supported by evidence.

(ii) RELATIONSHIP TO PENALTY FOR VIOLATION OF AN ORDER.—The penalty provided in clause (i) for violation of this section is separate from and in addition to any penalty that may be incurred for violation of an order of the Commission under

section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)).

(C) AMOUNT OF PENALTY.—

(i) IN GENERAL.—The amount of a civil penalty imposed in a civil action under subparagraph (A) on a party to an agreement described in subsection (a) shall be sufficient to deter violations of this section, but in no event greater than—

(I) if such party is the NDA or BLA holder (or, in the case of an agreement between two subsequent filers, the subsequent filer who gave the value described in subsection (a)(1)), the greater of—

(aa) three times the value received by such NDA or BLA holder (or by such subsequent filer) that is reasonably attributable to the violation of this section; or

(bb) three times the value given to the subsequent filer (or to the other subsequent filer)

reasonably attributable to the violation of this section; and

(II) if such party is the subsequent filer (or, in the case of an agreement between two subsequent filers, the subsequent filer who received the value described in subsection (a)(1)), 3 times the value received by such subsequent filer that is reasonably attributable to the violation of this section.

(ii) FACTORS FOR CONSIDERATION.—In determining such amount, the court shall take into account—

(I) the nature, circumstances, extent, and gravity of the violation;

(II) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, any effect on the ability to continue doing business, profits earned by the NDA or BLA holder (or, in the case of an agreement between two subsequent filers, the subsequent filer who gave the value described in subsection (a)(1)),

compensation received by the subsequent filer (or, in the case of an agreement between two subsequent filers, the subsequent filer who received the value described in subsection (a)(1)), and the amount of commerce affected; and

(III) other matters that justice requires.

(D) INJUNCTIONS AND OTHER EQUITABLE RELIEF.—In a civil action under subparagraph (A), the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate.

(4) REMEDIES IN ADDITION.—Remedies provided in this subsection are in addition to, and not in lieu of, any other remedy provided by Federal law.

(5) PRESERVATION OF AUTHORITY OF COMMISSION.—Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

(e) FEDERAL TRADE COMMISSION RULEMAKING.—The Commission may, in its discretion, by rule promul-

gated under section 553 of title 5, United States Code, exempt from this section certain agreements described in subsection (a) if the Commission finds such agreements to be in furtherance of market competition and for the benefit of consumers.

(f) ANTITRUST LAWS.—Nothing in this section shall modify, impair, limit, or supersede the applicability of the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), and of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition. Nothing in this section shall modify, impair, limit, or supersede the right of a subsequent filer to assert claims or counterclaims against any person, under the antitrust laws or other laws relating to unfair competition.

(g) DEFINITIONS.—In this section:

(1) AGREEMENT RESOLVING OR SETTLING A COVERED PATENT INFRINGEMENT CLAIM.—The term ''agreement resolving or settling a covered patent infringement claim'' means any agreement that—

(A) resolves or settles a covered patent infringement claim; or

(B) is contingent upon, provides for a contingent condition for, or is otherwise related to the resolution or settlement of a covered patent infringement claim.

(2) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(3) COVERED PATENT INFRINGEMENT CLAIM.—The term ''covered patent infringement claim'' means an allegation made by the NDA or BLA holder to a subsequent filer (or, in the case of an agreement between two subsequent filers, by one subsequent filer to another), whether or not included in a complaint filed with a court of law, that—

(A) the submission of the application described in subparagraph (A) or (B) of paragraph (9), or the manufacture, use, offering for sale, sale, or importation into the United States of a covered product that is the subject of such an application—

(i) in the case of an agreement between an NDA or BLA holder and a subsequent filer, infringes any patent owned by, or exclusively licensed to, the NDA or BLA holder of the covered product; or

(ii) in the case of an agreement between two subsequent filers, infringes any patent owned by the subsequent filer; or

(B) in the case of an agreement between an NDA or BLA holder and a subsequent filer, the covered product to be manufactured under such application uses a covered product as claimed in a published patent application.

(4) COVERED PRODUCT.—The term ''covered product'' means a drug (as defined in section 201(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g))), including a biological product (as defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i)).

(5) NDA OR BLA HOLDER.—The term ''NDA or BLA holder'' means—

(A) the holder of—

(i) an approved new drug application filed under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(1)) for a covered product; or

(ii) a biologics license application filed under section 351(a) of the Public Health

Service Act (42 U.S.C. 262(a)) with respect to a biological product;

(B) a person owning or controlling enforcement of the patent on—

(i) the list published under section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)) in connection with the application described in subparagraph (A)(i); or

(ii) any list published under section 351 of the Public Health Service Act (42 U.S.C. 262) comprised of patents associated with biologics license applications filed under section 351(a) of such Act (42 U.S.C. 262(a)); or

(C) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with any entity described in subparagraph (A) or (B) (such control to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the licensees, licensors, successors, and assigns of each of the entities.

(6) PATENT.—The term ''patent'' means a patent issued by the United States Patent and Trademark Office.

(7) STATUTORY EXCLUSIVITY.—The term ''statutory exclusivity'' means those prohibitions on the submission or approval of drug applications under clauses (ii) through (iv) of section 505(c)(3)(E) (5- and 3-year exclusivity), clauses (ii) through (iv) of section 505(j)(5)(F) (5-year and 3-year exclusivity), section 505(j)(5)(B)(iv) (180-day exclusivity), section 527 (orphan drug exclusivity), section 505A (pediatric exclusivity), or section 505E (qualified infectious disease product exclusivity) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)(3)(E), 355(j)(5)(B)(iv), 355(j)(5)(F), 360cc, 355a, 355f), or prohibitions on the submission or licensing of biologics license applications under section 351(k)(6) (interchangeable biological product exclusivity) or section 351(k)(7) (biological product reference product exclusivity) of the Public Health Service Act (42 U.S.C. 262(k)(6), (7)).

(8) SUBSEQUENT FILER.—The term ''subsequent filer'' means—

(A) in the case of a drug, a party that owns or controls an abbreviated new drug appli-

cation submitted pursuant to section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) or a new drug application submitted pursuant to section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (21U.S.C. 355(b)(2)) and filed under section 505(b)(1) of such Act (21 U.S.C. 355(b)(1)) or has the exclusive rights to distribute the covered product that is the subject of such application; or

(B) in the case of a biological product, a party that owns or controls an application filed with the Food and Drug Administration under section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)) or has the exclusive rights to distribute the biological product that is the subject of such application.

(h) EFFECTIVE DATE.—This section applies with respect to agreements described in subsection (a) entered into on or after the date of the enactment of this Act.

SEC. 112. NOTICE AND CERTIFICATION OF AGREEMENTS.

(a) NOTICE OF ALL AGREEMENTS.—Section 1111(7) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (21 U.S.C. 355 note) is amended by inserting ''or the owner of a patent for which

a claim of infringement could reasonably be asserted against any person for making, using, offering to sell, selling, or importing into the United States a biological product that is the subject of a biosimilar biological product application'' before the period at the end.

(b) CERTIFICATION OF AGREEMENTS.—Section 1112 of such Act (21 U.S.C. 355 note) is amended by adding at the end the following:

''(d) CERTIFICATION.—The Chief Executive Officer or the company official responsible for negotiating any agreement under subsection (a) or (b) that is required to be filed under subsection (c) shall, within 30 days of such filing, execute and file with the Assistant Attorney General and the Commission a certification as follows: 'I declare that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement referenced in this certification—

'''(1) represent the complete, final, and exclusive agreement between the parties;

'''(2) include any ancillary agreements that are contingent upon, provide a contingent condition for,

were entered into within 30 days of, or are otherwise related to, the referenced agreement; and

''(3) include written descriptions of any oral agreements, representations, commitments, or promises between the parties that are responsive to subsection (a) or (b) of such section 1112 and have not been reduced to writing.'.''.

SEC. 113. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

Section 505(j)(5)(D)(i)(V) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(D)(i)(V)) is amended by inserting ''section 111 of the Strengthening Health Care and Lowering Prescription Drug Costs Act or'' after ''that the agreement has violated''.

SEC. 114. COMMISSION LITIGATION AUTHORITY.

Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D), by striking ''or'' after the semicolon;

(2) in subparagraph (E), by inserting ''or'' after the semicolon; and

(3) by inserting after subparagraph (E) the following:

''(F) under section 111(d)(3)(A) of the Strengthening Health Care and Lowering Prescription Drug Costs Act;''.

SEC. 115. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), the Commission shall commence any administrative proceeding or civil action to enforce section 111 of this Act not later than 6 years after the date on which the parties to the agreement file the Notice of Agreement as provided by section 1112(c)(2) and (d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (21 U.S.C. 355 note).

(b) CIVIL ACTION AFTER ISSUANCE OF CEASE AND DESIST ORDER.—If the Commission has issued a cease and desist order under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for violation of section 111 of this Act and the proceeding for the issuance of such order was commenced within the period required by subsection (a) of this section, such subsection does not prohibit the commencement, after such period, of a civil action under section 111(d)(3)(A) against a party to such order or a civil action under subsection (l) of such section 5 for violation of such order.

Subtitle C—Creating and Restoring Equal Access to Equivalent Samples

SEC. 121. ACTIONS FOR DELAYS OF GENERIC DRUGS AND BIOSIMILAR BIOLOGICAL PRODUCTS.

(a) DEFINITIONS.—In this section—

(1) the term ''commercially reasonable, market-based terms'' means—

(A) a nondiscriminatory price for the sale of the covered product at or below, but not greater than, the most recent wholesale acquisition cost for the drug, as defined in section 1847A(c)(6)(B) of the Social Security Act (42 U.S.C. 1395w–3a(c)(6)(B));

(B) a schedule for delivery that results in the transfer of the covered product to the eligible product developer consistent with the timing under subsection (b)(2)(A)(iv); and

(C) no additional conditions are imposed on the sale of the covered product;

(2) the term ''covered product''—

(A) means—

(i) any drug approved under subsection (c) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or biological product licensed under subsection (a) or (k) of section 351 of the Public Health Service Act (42 U.S.C. 262);

(ii) any combination of a drug or biological product described in clause (i); or

(iii) when reasonably necessary to support approval of an application under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), or section 351 of the Public Health Service Act (42 U.S.C. 262), as applicable, or otherwise meet the requirements for approval under either such section, any product, including any device, that is marketed or intended for use with such a drug or biological product; and

(B) does not include any drug or biological product that appears on the drug shortage list in effect under section 506E of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356e), unless—

(i) the drug or biological product has been on the drug shortage list in effect under such section 506E continuously for more than 6 months; or

(ii) the Secretary determines that inclusion of the drug or biological product as a covered product is likely to contribute to alleviating or preventing a shortage.

(3) the term ''device'' has the meaning given the term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321);

(4) the term ''eligible product developer'' means a person that seeks to develop a product for approval pursuant to an application for approval under subsection (b)(2) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or for licensing pursuant to an application under section 351(k) of the Public Health Service Act (42 U.S.C. 262(k));

(5) the term ''license holder'' means the holder of an application approved under subsection (c) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or the holder of a license under subsection (a) or (k) of section 351 of the Public Health Service Act (42 U.S.C. 262) for a covered product;

(6) the term ''REMS'' means a risk evaluation and mitigation strategy under section 505–1 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1);

(7) the term ''REMS with ETASU'' means a REMS that contains elements to assure safe use

under section 505–1(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1(f));

(8) the term ''Secretary'' means the Secretary of Health and Human Services;

(9) the term ''single, shared system of elements to assure safe use'' means a single, shared system of elements to assure safe use under section 505–1(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1(f)); and

(10) the term ''sufficient quantities'' means an amount of a covered product that the eligible product developer determines allows it to—

(A) conduct testing to support an application under—

(i) subsection (b)(2) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355); or

(ii) section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)); and

(B) fulfill any regulatory requirements relating to approval of such an application.

(b) CIVIL ACTION FOR FAILURE TO PROVIDE SUFFICIENT QUANTITIES OF A COVERED PRODUCT.—

(1) IN GENERAL.—An eligible product developer may bring a civil action against the license holder for a covered product seeking relief under this subsection in an appropriate district court of the United States alleging that the license holder has declined to provide sufficient quantities of the covered product to the eligible product developer on commercially reasonable, market-based terms.

(2) ELEMENTS.—

(A) IN GENERAL.—To prevail in a civil action brought under paragraph (1), an eligible product developer shall prove, by a preponderance of the evidence—

(i) that—

(I) the covered product is not subject to a REMS with ETASU; or

(II) if the covered product is subject to a REMS with ETASU—

(aa) the eligible product developer has obtained a covered product authorization from the Secretary in accordance with subparagraph (B); and

(bb) the eligible product developer has provided a copy of

the covered product authorization to the license holder;

(ii) that, as of the date on which the civil action is filed, the product developer has not obtained sufficient quantities of the covered product on commercially reasonable, market-based terms;

(iii) that the eligible product developer has submitted a written request to purchase sufficient quantities of the covered product to the license holder and such request—

(I) was sent to a named corporate officer of the license holder;

(II) was made by certified or registered mail with return receipt requested;

(III) specified an individual as the point of contact for the license holder to direct communications related to the sale of the covered product to the eligible product developer and a means for electronic and written communications with that individual; and

(IV) specified an address to which the covered product was to be shipped upon reaching an agreement to transfer the covered product; and

(iv) that the license holder has not delivered to the eligible product developer sufficient quantities of the covered product on commercially reasonable, market-based terms—

(I) for a covered product that is not subject to a REMS with ETASU, by the date that is 31 days after the date on which the license holder received the request for the covered product; and

(II) for a covered product that is subject to a REMS with ETASU, by 31 days after the later of—

(aa) the date on which the license holder received the request for the covered product; or

(bb) the date on which the license holder received a copy of the covered product authorization

issued by the Secretary in accordance with subparagraph (B).

(B) AUTHORIZATION FOR COVERED PRODUCT SUBJECT TO A REMS WITH ETASU.—

(i) REQUEST.—An eligible product developer may submit to the Secretary a written request for the eligible product developer to be authorized to obtain sufficient quantities of an individual covered product subject to a REMS with ETASU.

(ii) AUTHORIZATION.—Not later than 120 days after the date on which a request under clause (i) is received, the Secretary shall, by written notice, authorize the eligible product developer to obtain sufficient quantities of an individual covered product subject to a REMS with ETASU for purposes of—

(I) development and testing that does not involve human clinical trials, if the eligible product developer has agreed to comply with any conditions the Secretary determines necessary; or

(II) development and testing that involves human clinical trials, if the eligible product developer has—

(aa)(AA) submitted protocols, informed consent documents, and informational materials for testing that include protections that provide safety protections comparable to those provided by the REMS for the covered product; or

(BB) otherwise satisfied the Secretary that such protections will be provided; and

(bb) met any other requirements the Secretary may establish.

(iii) NOTICE.—A covered product authorization issued under this subparagraph shall state that the provision of the covered product by the license holder under the terms of the authorization will not be a violation of the REMS for the covered product.

(3) AFFIRMATIVE DEFENSE.—In a civil action brought under paragraph (1), it shall be an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence—

(A) that, on the date on which the eligible product developer requested to purchase sufficient quantities of the covered product from the license holder—

(i) neither the license holder nor any of its agents, wholesalers, or distributors was engaged in the manufacturing or commercial marketing of the covered product; and

(ii) neither the license holder nor any of its agents, wholesalers, or distributors otherwise had access to inventory of the covered product to supply to the eligible product developer on commercially reasonable, market-based terms;

(B) that—

(i) the license holder sells the covered product through agents, distributors, or wholesalers;

(ii) the license holder has placed no restrictions, explicit or implicit, on its

agents, distributors, or wholesalers to sell covered products to eligible product developers; and

(iii) the covered product can be purchased by the eligible product developer in sufficient quantities on commercially reasonable, market-based terms from the agents, distributors, or wholesalers of the license holder; or

(C) that the license holder made an offer to the individual specified pursuant to paragraph (2)(A)(iii)(III), by a means of communication (electronic, written, or both) specified pursuant to such paragraph, to sell sufficient quantities of the covered product to the eligible product developer at commercially reasonable market-based terms—

(i) for a covered product that is not subject to a REMS with ETASU, by the date that is 14 days after the date on which the license holder received the request for the covered product, and the eligible product developer did not accept such offer by the date that is 7 days after the date on which the eligible product devel-

oper received such offer from the license holder; or

(ii) for a covered product that is subject to a REMS with ETASU, by the date that is 20 days after the date on which the license holder received the request for the covered product, and the eligible product developer did not accept such offer by the date that is 10 days after the date on which the eligible product developer received such offer from the license holder.

(4) REMEDIES.—

(A) IN GENERAL.—If an eligible product developer prevails in a civil action brought under paragraph (1), the court shall—

(i) order the license holder to provide to the eligible product developer without delay sufficient quantities of the covered product on commercially reasonable, market-based terms;

(ii) award to the eligible product developer reasonable attorney's fees and costs of the civil action; and

(iii) award to the eligible product developer a monetary amount sufficient to

deter the license holder from failing to provide eligible product developers with sufficient quantities of a covered product on commercially reasonable, market-based terms, if the court finds, by a preponderance of the evidence—

(I) that the license holder delayed providing sufficient quantities of the covered product to the eligible product developer without a legitimate business justification; or

(II) that the license holder failed to comply with an order issued under clause (i).

(B) MAXIMUM MONETARY AMOUNT.—A monetary amount awarded under subparagraph (A)(iii) shall not be greater than the revenue that the license holder earned on the covered product during the period—

(i) beginning on—

(I) for a covered product that is not subject to a REMS with ETASU, the date that is 31 days after the date on which the license holder received the request; or

(II) for a covered product that is subject to a REMS with ETASU, the date that is 31 days after the later of—

(aa) the date on which the license holder received the request; or

(bb) the date on which the license holder received a copy of the covered product authorization issued by the Secretary in accordance with paragraph (2)(B); and

(ii) ending on the date on which the eligible product developer received sufficient quantities of the covered product.

(C) AVOIDANCE OF DELAY.—The court may issue an order under subparagraph (A)(i) before conducting further proceedings that may be necessary to determine whether the eligible product developer is entitled to an award under clause (ii) or (iii) of subparagraph (A), or the amount of any such award.

(c) LIMITATION OF LIABILITY.—A license holder for a covered product shall not be liable for any claim under

Federal, State, or local law arising out of the failure of an eligible product developer to follow adequate safeguards to assure safe use of the covered product during development or testing activities described in this section, including transportation, handling, use, or disposal of the covered product by the eligible product developer.

(d) NO VIOLATION OF REMS.—Section 505–1 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1) is amended by adding at the end the following new subsection:

''(l) PROVISION OF SAMPLES NOT A VIOLATION OF STRATEGY.—The provision of samples of a covered product to an eligible product developer (as those terms are defined in section 121(a) of the Strengthening Health Care and Lowering Prescription Drug Costs Act) shall not be considered a violation of the requirements of any risk evaluation and mitigation strategy that may be in place under this section for such drug.''.

(e) RULE OF CONSTRUCTION.—

(1) DEFINITION.—In this subsection, the term ''antitrust laws''—

(A) has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12); and

(B) includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair methods of competition.

(2) ANTITRUST LAWS.—Nothing in this section shall be construed to limit the operation of any provision of the antitrust laws.

SEC. 122. REMS APPROVAL PROCESS FOR SUBSEQUENT FILERS.

Section 505–1 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1), as amended by section 121, is further amended—

(1) in subsection (g)(4)(B)—

(A) in clause (i) by striking ''or'' after the semicolon;

(B) in clause (ii) by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(iii) accommodate different, comparable aspects of the elements to assure safe use for a drug that is the subject of an application under section 505(j), and the applicable listed drug.'';

(2) in subsection (i)(1), by striking subparagraph (C) and inserting the following:

''(C)(i) Elements to assure safe use, if required under subsection (f) for the listed drug, which, subject to clause (ii), for a drug that is the subject of an application under section 505(j) may use—

''(I) a single, shared system with the listed drug under subsection (f); or

''(II) a different, comparable aspect of the elements to assure safe use under subsection (f).

''(ii) The Secretary may require a drug that is the subject of an application under section 505(j) and the listed drug to use a single, shared system under subsection (f), if the Secretary determines that no different, comparable aspect of the elements to assure safe use could satisfy the requirements of subsection (f).'';

(3) in subsection (i), by adding at the end the following:

''(3) SHARED REMS.—If the Secretary approves, in accordance with paragraph (1)(C)(i)(II), a different, comparable aspect of the elements to assure safe use under subsection (f) for a drug that is the subject of an abbreviated new drug application under section 505(j), the Secretary may require that

such different comparable aspect of the elements to assure safe use can be used with respect to any other drug that is the subject of an application under section 505(j) or 505(b) that references the same listed drug.''; and

(4) by adding at the end the following:

''(m) SEPARATE REMS.—When used in this section, the terms 'different, comparable aspect of the elements to assure safe use' or 'different, comparable approved risk evaluation and mitigation strategies' means a risk evaluation and mitigation strategy for a drug that is the subject of an application under section 505(j) that uses different methods or operational means than the strategy required under subsection (a) for the applicable listed drug, or other application under section 505(j) with the same such listed drug, but achieves the same level of safety as such strategy.''.

SEC. 123. RULE OF CONSTRUCTION.

(a) IN GENERAL.—Nothing in this subtitle, the amendments made by this subtitle, or in section 505–1 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1), shall be construed as—

(1) prohibiting a license holder from providing an eligible product developer access to a covered

product in the absence of an authorization under this subtitle; or

(2) in any way negating the applicability of a REMS with ETASU, as otherwise required under such section 505–1, with respect to such covered product.

(b) DEFINITIONS.—In this section, the terms ''covered product'', ''eligible product developer'', ''license holder'', and ''REMS with ETASU'' have the meanings given such terms in section 121(a).

Subtitle D—Study on Role of Federal Assistance in Drug Development

SEC. 131. STUDY ON ROLE OF FEDERAL ASSISTANCE IN DRUG DEVELOPMENT.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Secretary of the Health and Human Services shall enter into a contract with the National Academy of Medicine to conduct a study on, and submit to Congress a report on, the following:

(1) The percentage of drugs developed in the United States using at least some amount of Federal funding from any Federal source.

(2) The average cost incurred by a drug developer to develop a drug.

(3) The average amount of revenue and profits made by drug developers from the sales of drugs.

(4) The percentage of such revenue and profits that are reinvested into research and development of new drugs.

(5) The appropriate percentage, if any, of such revenue and profits the Secretary, in consultation with the National Academy of Medicine, recommends should be returned to Federal entities for Federal funding used in the development of the drugs involved.

(b) ENFORCEMENT.—A drug developer shall, as a condition of receipt of any Federal funding for the development of drugs, comply with any request for the data necessary to perform the study under subsection (a).

(c) CONFIDENTIALITY.—This section does not authorize the disclosure of any trade secret, confidential commercial or financial information, or other matter listed in section 552(b) of title 5, United States Code.

(d) DEFINITIONS.—In this section:

(1) The term ''drug'' has the meaning given such term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(2) The term ''drug developer'' means an entity that submitted, and received approval of, an applica-

tion under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or section 351 of the Public Health Service Act (42 U.S.C. 262).

Subtitle E—Pharmacy School Outreach

SEC. 141. PHARMACY SCHOOL OUTREACH.

The Secretary of Health and Human Services and the Secretary of Education shall make every effort necessary to ensure appropriate outreach to institutions of higher education to ensure that students and faculty at schools of pharmacy are provided with materials regarding generic drugs and biosimilar biological products, including materials on—

(1) how generic drugs and biosimilar biological products are equivalent or similar to brand-name drugs;

(2) the approval process at the Food and Drug Administration for generic drugs and biosimilar biological products;

(3) how to make consumers aware of the availability of generic drugs and biosimilar biological products;

(4) requirements for substituting generic drugs and biosimliar biological products in place of corresponding drugs products; and

(5) the impacts of generic drugs and biosimilar biological products on consumer costs.

Subtitle F—Reports

SEC. 151. EFFECTS OF INCREASES IN PRESCRIPTION DRUG PRICE.

Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a report to the Congress on the extent to which increases in prescription drug prices may have caused Medicare beneficiaries to forego recommended treatment, including failing to fill prescriptions.

TITLE II—HEALTH INSURANCE MARKET STABILIZATION

SEC. 201. PRESERVING STATE OPTION TO IMPLEMENT HEALTH CARE MARKETPLACES.

(a) IN GENERAL.—Section 1311 of the Patient Protection and Affordable Care Act (42 U.S.C. 18031) is amended—

(1) in subsection (a)—

(A) in paragraph (4)(B), by striking ''under this subsection'' and inserting ''under this paragraph or paragraph (1)''; and

(B) by adding at the end the following new paragraph:

''(6) ADDITIONAL PLANNING AND ESTABLISHMENT GRANTS.—

''(A) IN GENERAL.—There shall be appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, $200 million to award grants to eligible States for the uses described in paragraph (3).

''(B) DURATION AND RENEWABILITY.—A grant awarded under subparagraph (A) shall be for a period of 2 years and may not be renewed.

''(C) LIMITATION.—A grant may not be awarded under subparagraph (A) after December 31, 2023.

''(D) ELIGIBLE STATE DEFINED.—For purposes of this paragraph, the term 'eligible State' means a State that, as of the date of the enactment of this paragraph, is not operating an Exchange (other than an Exchange described in section 155.200(f) of title 45, Code of Federal Regulations).''; and

(2) in subsection (d)(5)(A)—

(A) by striking ''OPERATIONS.—In establishing an Exchange under this section'' and inserting ''OPERATIONS.—

"(i) IN GENERAL.—In establishing an Exchange under this section (other than in establishing an Exchange pursuant to a grant awarded under subsection (a)(6))"; and

(B) by adding at the end the following:

"(ii) ADDITIONAL PLANNING AND ESTABLISHMENT GRANTS.—In establishing an Exchange pursuant to a grant awarded under subsection (a)(6), the State shall ensure that such Exchange is self-sustaining beginning on January 1, 2025, including allowing the Exchange to charge assessments or user fees to participating health insurance issuers, or to otherwise generate funding, to support its operations.".

(b) CLARIFICATION REGARDING FAILURE TO ESTABLISH EXCHANGE OR IMPLEMENT REQUIREMENTS.—Section 1321(c) of the Patient Protection and Affordable Care Act (42 U.S.C. 18041(c)) is amended—

(1) in paragraph (1), by striking "If" and inserting "Subject to paragraph (3), if"; and

(2) by adding at the end the following new paragraph:

"(3) CLARIFICATION.—This subsection shall not apply in the case of a State that elects to apply the requirements described in subsection (a) and satisfies the requirement described in subsection (b) on or after January 1, 2014.".

SEC. 202. PROVIDING FOR ADDITIONAL REQUIREMENTS WITH RESPECT TO THE NAVIGATOR PROGRAM.

(a) IN GENERAL.—Section 1311(i) of the Patient Protection and Affordable Care Act (42 U.S.C. 18031(i)) is amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

"(C) SELECTION OF RECIPIENTS.—In the case of an Exchange established and operated by the Secretary within a State pursuant to section 1321(c), in awarding grants under paragraph (1), the Exchange shall—

"(i) select entities to receive such grants based on an entity's demonstrated capacity to carry out each of the duties specified in paragraph (3);

"(ii) not take into account whether or not the entity has demonstrated how the entity will provide information to individ-

uals relating to group health plans offered by a group or association of employers described in section 2510.3–5(b) of title 29, Code of Federal Regulations (or any successor regulation), or short-term limited duration insurance (as defined by the Secretary for purposes of section 2791(b)(5) of the Public Health Service Act); and

''(iii) ensure that, each year, the Exchange awards such a grant to—

''(I) at least one entity described in this paragraph that is a community and consumer-focused nonprofit group; and

''(II) at least one entity described in subparagraph (B), which may include another community and consumer-focused nonprofit group in addition to any such group awarded a grant pursuant to subclause (I).

In awarding such grants, an Exchange may consider an entity's record with respect to waste, fraud, and abuse for purposes of maintaining the integrity of such Exchange.''.

(2) in paragraph (3)—

(A) by amending subparagraph (C) to read as follows:

''(C) facilitate enrollment, including with respect to individuals with limited English proficiency and individuals with chronic illnesses, in qualified health plans, State medicaid plans under title XIX of the Social Security Act, and State child health plans under title XXI of such Act;'';

(B) in subparagraph (D), by striking ''and'' at the end;

(C) in subparagraph (E), by striking the period at the end and inserting a semicolon;

(D) by inserting after subparagraph (E) the following:

''(F) conduct public education activities in plain language to raise awareness of the requirements of and the protections provided under—

''(i) the essential health benefits package (as defined in section 1302(a)); and

''(ii) section 2726 of the Public Health Service Act (relating to parity in mental health and substance use disorder benefits); and'';

(E) by inserting after subparagraph (F) (as added by subparagraph (D)) the following new subparagraph:

''(G) provide referrals to community-based organizations that address social needs related to health outcomes.''; and

(F) by adding at the end the following flush left sentence:

''The duties specified in the preceding sentences may be carried out by such a navigator at any time during a year.'';

(3) in paragraph (4)(A)—

(A) in the matter preceding clause (i), by striking ''not'';

(B) in clause (i)—

(i) by inserting ''not'' before ''be''; and

(ii) by striking ''; or'' and inserting a semicolon;

(C) in clause (ii)—

(i) by inserting ''not'' before ''receive''; and

(ii) by striking the period and inserting a semicolon; and

(D) by adding at the end the following new clauses:

''(iii) maintain physical presence in the State of the Exchange so as to allow in-person assistance to consumers;

''(iv) receive training on how to assist individuals with enrolling for medical assistance under State plans under the Medicaid program under title XIX of the Social Security Act or for child health assistance under State child health plans under title XXI of such Act; and

''(v) receive opioid specific education and training that ensures the navigator can best educate individuals on qualified health plans offered through an Exchange, specifically coverage under such plans for opioid health care treatment.''; and

(4) in paragraph (6)—

(A) by striking ''FUNDING.—Grants under'' and inserting ''FUNDING.—

''(A) STATE EXCHANGES.—Subject to subparagraph (C), grants under''; and

(B) by adding at the end the following new subparagraphs:

"(B) FEDERAL EXCHANGES.—For purposes of carrying out this subsection, with respect to an Exchange established and operated by the Secretary within a State pursuant to section 1321(c), the Secretary shall obligate $100 million out of amounts collected through the user fees on participating health insurance issuers pursuant to section 156.50 of title 45, Code of Federal Regulations (or any successor regulations) for fiscal year 2020 and each subsequent fiscal year. Such amount for a fiscal year shall remain available until expended.

"(C) STATE EXCHANGES.—For the purposes of carrying out this subsection, with respect to an Exchange operated by a State pursuant to this section, there is authorized to be appropriated $25 million for fiscal year 2020 and each subsequent fiscal year. Each State receiving a grant pursuant to this subparagraph shall receive a grant in an amount that is not less than $1 million.".

(b) STUDY ON EFFECTS OF FUNDING CUTS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall study the effects of funding cuts made for plan year 2019

with respect to the navigator program (as described in section 1311(i) of the Patient Protection and Affordable Care Act (42 U.S.C. 18031(i))) and other education and outreach activities carried out with respect to Exchanges established by the Secretary of Health and Human Services pursuant to section 1321(c) of such Act. Such study shall describe the following:

(1) How such funding cuts negatively impacted the ability of entities under such program to conduct outreach activities and fulfill duties required under such section 1311(i).

(2) The overall effect on—

(A) the number of individuals enrolled in health insurance coverage offered in the individual market for plan year 2019; and

(B) the costs of health insurance coverage offered in the individual market.

(c) PROMOTE TRANSPARENCY AND ACCOUNTABILITY IN THE ADMINISTRATION'S EXPENDITURES OF EXCHANGE USER FEES.—For plan year 2020 and each subsequent plan year, not later than the date that is 3 months after the end of such plan year, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress and make available to the public an annual report on the expenditures by the Department of

Health and Human Services of user fees collected pursuant to section 156.50 of title 45, Code of Federal Regulations (or any successor regulations). Each such report for a plan year shall include a detailed accounting of the amount of such user fees collected during such plan year and of the amount of such expenditures used during such plan year for the federally facilitated Exchange operated pursuant to section 1321(c) of the Patient Protection and Affordable Care Act (42 U.S.C. 18041(c)) on outreach and enrollment activities, navigators, maintenance of Healthcare.gov, and operation of call centers.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2020.

SEC. 203. FEDERAL EXCHANGE OUTREACH AND EDUCATIONAL ACTIVITIES AND ANNUAL ENROLLMENT TARGETS.

(a) IN GENERAL.—Section 1321(c) of the Patient Protection and Affordable Care Act (42 U.S.C. 18041(c)), as amended by section 201(b)(2), is further amended by adding at the end the following new paragraphs:

"(4) OUTREACH AND EDUCATIONAL ACTIVITIES.—

"(A) IN GENERAL.—In the case of an Exchange established or operated by the Secretary

within a State pursuant to this subsection, the Secretary shall carry out outreach and educational activities for purposes of informing individuals about qualified health plans offered through the Exchange, including by informing such individuals of the availability of coverage under such plans and financial assistance for coverage under such plans. Such outreach and educational activities shall be provided in a manner that is culturally and linguistically appropriate to the needs of the populations being served by the Exchange (including hard-to-reach populations, such as racial and sexual minorities, limited English proficient populations, individuals residing in areas where the unemployment rates exceeds the national average unemployment rate, individuals in rural areas, veterans, and young adults) and shall be provided to populations residing in high health disparity areas (as defined in subparagraph (E)) served by the Exchange, in addition to other populations served by the Exchange.

''(B) LIMITATION ON USE OF FUNDS.—No funds appropriated under this paragraph shall

be used for expenditures for promoting non-ACA compliant health insurance coverage.

''(C) NON-ACA COMPLIANT HEALTH INSURANCE COVERAGE.—For purposes of subparagraph (B):

''(i) The term 'non-ACA compliant health insurance coverage' means health insurance coverage, or a group health plan, that is not a qualified health plan.

''(ii) Such term includes the following:

''(I) An association health plan.

''(II) Short-term limited duration insurance.

''(D) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are hereby appropriated for fiscal year 2020 and each subsequent fiscal year, $100 million to carry out this paragraph. Funds appropriated under this subparagraph shall remain available until expended.

''(E) HIGH HEALTH DISPARITY AREA DEFINED.—For purposes of subparagraph (A), the term 'high health disparity area' means a contiguous geographic area that—

"(i) is located in one census tract or ZIP code;

"(ii) has measurable and documented racial, ethnic, or geographic health disparities;

"(iii) has a low-income population, as demonstrated by—

"(I) average income below 138 percent of the Federal poverty line; or

"(II) a rate of participation in the special supplemental nutrition program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) that is higher than the national average rate of participation in such program;

"(iv) has poor health outcomes, as demonstrated by—

"(I) lower life expectancy than the national average; or

"(II) a higher percentage of instances of low birth weight than the national average; and

''(v) is part of a Metropolitan Statistical Area identified by the Office of Management and Budget.

''(5) ANNUAL ENROLLMENT TARGETS.—For plan year 2020 and each subsequent plan year, in the case of an Exchange established or operated by the Secretary within a State pursuant to this subsection, the Secretary shall establish annual enrollment targets for such Exchange for such year.''.

(b) STUDY AND REPORT.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall release to Congress all aggregated documents relating to studies and data sets that were created on or after January 1, 2014, and related to marketing and outreach with respect to qualified health plans offered through Exchanges under title I of the Patient Protection and Affordable Care Act.

SEC. 204. SHORT-TERM LIMITED DURATION INSURANCE RULE PROHIBITION.

(a) FINDINGS.—Congress finds the following:

(1) On August 3, 2018, the Administration issued a final rule entitled ''Short-Term, Limited-Duration Insurance'' (83 Fed. Reg. 38212).

(2) The final rule dramatically expands the sale and marketing of insurance that—

(A) may discriminate against individuals living with preexisting health conditions, including children with complex medical needs and disabilities and their families;

(B) lacks important financial protections provided by the Patient Protection and Affordable Care Act (Public Law 111–148), including the prohibition of annual and lifetime coverage limits and annual out-of-pocket limits, that may increase the cost of treatment and cause financial hardship to those requiring medical care, including children with complex medical needs and disabilities and their families; and

(C) excludes coverage of essential health benefits including hospitalization, prescription drugs, and other lifesaving care.

(3) The implementation and enforcement of the final rule weakens critical protections for up to 130 million Americans living with preexisting health conditions and may place a large financial burden on those who enroll in short-term limited-duration insurance, which jeopardizes Americans' access to quality, affordable health insurance.

(b) PROHIBITION.—The Secretary of Health and Human Services, the Secretary of the Treasury, and the

Secretary of Labor may not take any action to implement, enforce, or otherwise give effect to the rule entitled ''Short-Term, Limited Duration Insurance'' (83 Fed. Reg. 38212 (August 3, 2018)), and the Secretaries may not promulgate any substantially similar rule.

SEC. 205. PROTECTION OF HEALTH INSURANCE COVERAGE IN CERTAIN EXCHANGES.

In the case of an Exchange that the Secretary of Health and Human Services operates pursuant to section 1321(c)(1) of the Patient Protection and Affordable Care Act (42 U.S.C. 18041(c)(1)), the Secretary may not implement any process that would terminate the health insurance coverage of an enrollee solely because such enrollee did not actively enroll during the most recent open enrollment period.

SEC. 206. SENSE OF CONGRESS RELATING TO THE PRACTICE OF SILVER LOADING.

It is the sense of Congress that the Secretary of Health and Human Services should not take any action to prohibit or otherwise restrict the practice commonly known as ''silver loading'' (as described in the rule entitled ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020'' published on April 25, 2019 (84 Fed. Reg. 17533)).

SEC. 207. CONSUMER OUTREACH, EDUCATION, AND ASSISTANCE.

(a) OPEN ENROLLMENT REPORTS.—For plan year 2020 and each subsequent year, the Secretary of Health and Human Services (referred to in this section as the ''Secretary''), in coordination with the Secretary of the Treasury and the Secretary of Labor, shall issue biweekly public reports during the annual open enrollment period on the performance of the Federal Exchange. Each such report shall include a summary, including information on a State-by-State basis where available, of—

(1) the number of unique website visits;

(2) the number of individuals who create an account;

(3) the number of calls to the call center;

(4) the average wait time for callers contacting the call center;

(5) the number of individuals who enroll in a qualified health plan; and

(6) the percentage of individuals who enroll in a qualified health plan through each of—

(A) the website;

(B) the call center;

(C) navigators;

(D) agents and brokers;

(E) the enrollment assistant program;

(F) directly from issuers or web brokers; and

(G) other means.

(b) OPEN ENROLLMENT AFTER ACTION REPORT.—For plan year 2020 and each subsequent year, the Secretary, in coordination with the Secretary of the Treasury and the Secretary of Labor, shall publish an after action report not later than 3 months after the completion of the annual open enrollment period regarding the performance of the Federal Exchange for the applicable plan year. Each such report shall include a summary, including information on a State-by-State basis where available, of—

(1) the open enrollment data reported under subsection (a) for the entirety of the enrollment period; and

(2) activities related to patient navigators described in section 1311(i) of the Patient Protection and Affordable Care Act (42 U.S.C. 18031(i)), including—

(A) the performance objectives established by the Secretary for such patient navigators;

(B) the number of consumers enrolled by such a patient navigator;

(C) an assessment of how such patient navigators have met established performance

metrics, including a detailed list of all patient navigators, funding received by patient navigators, and whether established performance objectives of patient navigators were met; and

(D) with respect to the performance objectives described in subparagraph (A)—

(i) whether such objectives assess the full scope of patient navigator responsibilities, including general education, plan selection, and determination of eligibility for tax credits, cost-sharing reductions, or other coverage;

(ii) how the Secretary worked with patient navigators to establish such objectives; and

(iii) how the Secretary adjusted such objectives for case complexity and other contextual factors.

(c) REPORT ON ADVERTISING AND CONSUMER OUTREACH.—Not later than 3 months after the completion of the annual open enrollment period for the 2020 plan year, the Secretary shall issue a report on advertising and outreach to consumers for the open enrollment period for the 2020 plan year. Such report shall include a description of—

(1) the division of spending on individual advertising platforms, including television and radio advertisements and digital media, to raise consumer awareness of open enrollment;

(2) the division of spending on individual outreach platforms, including email and text messages, to raise consumer awareness of open enrollment; and

(3) whether the Secretary conducted targeted outreach to specific demographic groups and geographic areas.

SEC. 208. GAO REPORT.

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a study that analyzes the costs and benefits of the establishment of State-administered health insurance plans to be offered in the insurance market of such States that choose to administer and offer such a plan.

SEC. 209. REPORT ON THE EFFECTS OF WEBSITE MAINTENANCE DURING OPEN ENROLLMENT.

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report examining whether the Department of Health and Human Services has been conducting maintenance on the website commonly referred to

as ''Healthcare.gov'' during annual open enrollment periods (as described in section 1311(c)(6)(B) of the Patient Protection and Affordable Care Act (42 U.S.C. 18031(c)(6)(B)) in such a manner so as to minimize any disruption to the use of such website resulting from such maintenance.

TITLE III—BUDGETARY EFFECTS

SEC. 301. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Passed the House of Representatives May 16, 2019.

Attest: CHERYL L. JOHNSON,

Clerk.