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PATIENT PROTECTION AND AFFORDABLE CARE ACT

CMS Should Act to Strengthen Enrollment Controls and Manage Fraud Risk

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Accessible Version

Chairman Hatch, Ranking Member Wyden, and Members of the Committee:

I am pleased to be here today to discuss enrollment and verification controls for health-care coverage that individuals obtain through the federal health-insurance exchange under the Patient Protection and Affordable Care Act (PPACA). The act expands the availability of subsidized health-care coverage, and it provides for the establishment of health-insurance exchanges, or marketplaces, to help consumers in comparing and selecting among insurance plans offered by participating private issuers of health-care coverage. Under PPACA, states may elect to operate their own health-care marketplaces, or may rely on the federally facilitated marketplace, or Health Insurance Marketplace (Marketplace).[1] The Centers for Medicare & Medicaid Services (CMS), a unit of the Department of Health and Human Services (HHS), maintains the federal Marketplace.

To be eligible to enroll in a qualified health plan offered through a marketplace, an individual must be a U.S. citizen or national, or otherwise lawfully present in the United States; reside in the marketplace service area; and not be incarcerated (unless incarcerated while awaiting disposition of charges). Marketplaces, in turn, are required by law to verify application information to determine eligibility for enrollment and, if applicable, determine eligibility for income-based subsidies the act provides.

PPACA provides subsidies to those eligible to purchase private health-insurance plans who meet certain income and other requirements. According to the Congressional Budget Office, the estimated cost of subsidies and related spending under the act is $880 billion for fiscal years 2016–2025. While subsidies under the act are not paid directly to enrollees, participants nevertheless benefit through reduced monthly premiums or lower costs due at time of service, such as copayments.[2] Because subsidy costs hinge on eligibility for coverage, enrollment controls that help ensure only qualified applicants are approved for

[1]Specifically, the act required, by January 1, 2014, the establishment of health-insurance marketplaces in all states. In states not electing to operate their own marketplaces, the federal government was required to operate a marketplace.

[2]Enrollees can pay lower monthly premiums by virtue of a tax credit the act provides.

coverage with subsidies are a key factor in determining federal expenditures under the act.

A central feature of the enrollment controls is the federal "data services hub" (data hub), which, among other things, provides a vehicle to check applicant-provided information against a variety of data sources.[3] Verification steps include validating an applicant's Social Security number, if one is provided;[4] verifying citizenship, status as a national, or lawful presence by comparison with Social Security Administration (SSA) or Department of Homeland Security (DHS) records; and verifying household income and family size by comparison against tax-return data from the Internal Revenue Service (IRS), as well as data on Social Security benefits from SSA.

If the eligibility information applicants provide to the federal Marketplace cannot be verified through the external sources, such as SSA, IRS, and DHS, an "inconsistency" will result. In particular, an inconsistency can arise when the data hub query process yields no information; or when information is available through the data hub, but it does not match information the applicant has provided.[5]

[3]In particular, PPACA requires that consumer-submitted information be verified, and that determinations of eligibility be made, through either an electronic verification system or another method approved by HHS. To implement this verification process, CMS developed the data hub, which acts as a portal for exchanging information between the federal Marketplace, state-based marketplaces, and Medicaid agencies, among other entities, and CMS's external partners, including other federal agencies. The Marketplace uses the data hub in an attempt to verify that applicant information necessary to support an eligibility determination is consistent with external data sources.

[4]A marketplace must require an applicant who has a Social Security number to provide the number. 42 U.S.C. § 18081(b)(2) and 45 C.F.R. § 155.310(a)(3)(i). However, having a Social Security number is not a condition of eligibility.

[5]When an inconsistency is generated, the Marketplace is to proceed with determining other elements of eligibility using the attestations of the applicant, and ensure that subsidies are provided on behalf of the applicant, if he or she is qualified to receive them, while the inconsistency is being resolved. As part of this resolution process, the applicant is generally required to submit documentation to substantiate eligibility for the program. In the case of the federal Marketplace, CMS uses a document-processing contractor, which reviews documentation applicants submit, by mail or online upload, to resolve inconsistencies. Inconsistencies are discussed more fully later in this testimony.

My testimony today is based on a report we issued on February 23, 2016, that examined eligibility and enrollment controls, and fraud risk, of the federal Marketplace.[6] It addresses

1. the extent to which applicant information is verified through the data hub—the primary means for verifying eligibility—and
2. the extent to which the federal Marketplace resolved inconsistencies that resulted from the data hub verification process.[7]

In our report, to examine outcomes of the data hub applicant verification process, we obtained summary data from key federal agencies involved in the process—SSA, IRS, and DHS—on the nature and extent of their responses to electronic inquiries made through the data hub, for the 2014 and 2015 coverage years.[8] We also interviewed agency officials and reviewed statutes, regulations, and other policy and related information. In addition, we obtained applicant data on inconsistencies, subsidies awarded, and submission of required verification documentation, from CMS data systems for coverage year 2014. To determine the reliability of data we used, we interviewed CMS officials and others responsible for

[6]GAO, *Patient Protection and Affordable Care Act: CMS Should Act to Strengthen Enrollment Controls and Manage Fraud Risk*, GAO-16-29 (Washington, D.C.: Feb. 23, 2016). In addition, we have presented two other related testimonies prior to issuance of the report. See GAO, *Patient Protection and Affordable Care Act: Preliminary Results of Undercover Testing of Enrollment Controls for Health Care Coverage and Consumer Subsidies Provided Under the Act,* GAO-14-705T (Washington, D.C.: July 23, 2014); and GAO, *Patient Protection and Affordable Care Act: Observations on 18 Undercover Tests of Enrollment Controls for Health-Care Coverage and Consumer Subsidies Provided under the Act*, GAO-15-702T (Washington, D.C.: July 16, 2015).

[7]In addition to findings presented in this testimony—and as described in detail in our July 2015 testimony, with additional information provided in our February 2016 report—our work also identified vulnerability to fraud, when we obtained, through covert vulnerability testing, federal Marketplace approval of subsidized coverage for 11 of 12 fictitious applicants for 2014, with coverage continuing into 2015. We concluded CMS has assumed a passive approach to identifying and preventing fraud, and that adopting a more strategic, risk-based approach could help identify fraud vulnerabilities before they could be exploited in the enrollment process. We recommended that HHS direct CMS to conduct a fraud risk assessment, consistent with best practices provided in GAO's framework for managing fraud risks in federal programs, of the potential for fraud in the process of applying for qualified health plans through the federal Marketplace. HHS concurred with our recommendation and said it plans to conduct such an assessment. See the framework at GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, D.C.: July 2015).

[8]In this testimony, we use "outcomes" to mean results obtained from inquiries made through the data hub, and not any ultimate determination made whether an applicant inconsistency exists.

their respective data, reviewed relevant documentation, and performed electronic testing to determine the validity of specific data elements we used to perform our work. Based on this reliability examination, we concluded that the data we used were sufficiently reliable for our purposes.

Additional details on our scope and methodology can be found in our report. We conducted our performance audit from January 2014 to February 2016 in accordance with generally accepted government auditing standards.

CMS's Approach to Applicant Verification Information Needs Improvement

HHS officials described the data hub process to us as being part of an innovative, multilayered approach to verifying applicant information efficiently and without undue burden on individuals and families. Through secure electronic connections, the data hub provides real-time responses to eligibility queries, HHS told us.

In our February 2016 report, however, we found that although the data hub plays a key role in the eligibility and enrollment process, CMS officials said the agency does not track the extent to which the federal agencies deliver responsive information to a request, or, alternatively, whether they report that information was not available. Additionally, CMS officials said they do not analyze data provided in response to data hub inquiries. This is because, they said, by design, the data hub does not store individual transactional data that could be collectively analyzed over time. For policy reasons, the officials said, the agency did not want the data hub to become a data repository itself, and in particular, a repository of sensitive personal data.[9] The CMS officials also said the agency is barred legally from maintaining IRS taxpayer information in the data hub.

Asked about analysis of data hub responses, CMS officials told us when we conducted work for our February 2016 report that the key performance measures for the data hub are the extent to which the system is available for queries, and the extent to which transmissions of

[9]In particular, according to CMS officials, the data hub does not read and store the content of requests received. It only validates message structure and determines routing information to send the request to the correct destination. The data hub next returns the response it receives to the requester. The data hub stores data such as transaction identifier for each request. By CMS requirements, the data hub cannot store privacy data, the officials said.

queries and responses are successfully accomplished; that is, that an inquiry is made and a corresponding reply received, without regard to content.[10]

Further, the federal agencies responding to data hub queries generally told us they do not analyze outcomes of data hub inquiries. Instead, SSA, IRS, and DHS officials said they focus on responding to inquiries received. Our review also found that SSA, IRS, and DHS had limited information on the nature and extent of the inquiries made by the data hub. According to the three agencies, available statistics reflect data hub inquiries in general, and cannot be broken out by program, such as a qualified health plan or Medicaid. In addition, according to agency officials, an unknown number of data hub applicant inquiries were duplicates, which we could not eliminate from our examination.[11] Instead, agency officials told us, they generally process inquiries sequentially as they are received from the data hub. Thus, we found that while the agencies can provide some information on data hub queries, they cannot provide comprehensive information specifically on number of inquiries and individuals represented by those queries.

We further found, based on our examination of available statistics from SSA, IRS, and DHS, that while the agencies could successfully provide applicant verification information in a large percentage of cases, they did not have data in their records to verify information for millions of data hub inquiries over the course of PPACA's first two enrollment cycles, for 2014 and 2015 coverage.[12]

[10]According to CMS officials, the data hub only captures a code for type of reply that is generated when agencies respond to the inquiries, and those codes are not associated with any other applicant-identifying information or information that may have been provided in response to the query. There are no additional data kept on what information might have been transmitted in the source agency's response, such as income or family size. Likewise, the data hub does not track whether information provided through the data hub matches information originally provided by the applicant, the officials said.

[11]The agencies could not comprehensively identify the number of duplicates.

[12]For example, SSA accomplished a match on name, Social Security number, and date of birth in about 95 percent of cases for PPACA's first enrollment cycle, for 2014 coverage. However, for about 4.4 million inquiries—or about 5 percent of the total—the applicant information did not match SSA records. In addition, after completion of the name, Social Security number, and date of birth match, when SSA attempted to verify additional information, the agency could not confirm citizenship in about 8.2 million inquiries where individuals claimed they were citizens.

We concluded that by not assessing the extent to which data hub–provided data matches applicant-provided information, CMS foregoes analysis of the extent to which responding agencies successfully deliver applicant verification information in response to data hub requests. In doing so, CMS foregoes information that could suggest potential program issues or potential vulnerabilities to fraud, as well as information that might be useful for enhancing program management.[13] We recommended that HHS direct CMS to conduct a comprehensive feasibility study on actions CMS can take to monitor and analyze, both quantitatively and qualitatively, the extent to which data hub queries provide requested or relevant applicant verification information, for the purpose of improving the data-matching process and reducing the number of applicant inconsistencies; and for those actions identified as feasible, create a written plan and schedule for implementing them. HHS said it concurred with our recommendation and is reviewing options for such a study.

[13]By analyzing the outcomes of data hub inquiries, and in particular, clarifying the nature and extent of inconsistencies arising from this process, CMS could, for example, assess whether other sources of data, such as the National Directory of New Hires, could be useful for more current applicant information on income. Similarly, CMS could analyze the information to examine whether other sources of citizenship information, such as the Department of State's passport data, could be used to aid in verifying applicant citizenship. There may also be correlations observed between various types of applicants and types of information available from trusted data sources.

The Federal Marketplace Did Not Resolve About One-Third of Applicant Inconsistencies for Coverage Year 2014, Involving $1.7 Billion in Associated Subsidies

For qualifying applicants, the act provides two forms of subsidies for consumers enrolling in individual health plans, both of which are paid directly to insurers on consumers' behalf. One is a federal income tax credit, which enrollees may elect to receive in advance of filing tax returns, and which reduces a consumer's monthly premium payment. This is known as the advance premium tax credit (APTC).[14] The other, known as cost-sharing reduction (CSR), is a discount that lowers the amount consumers pay for out-of-pocket charges such as deductibles, coinsurance, and copayments.

In our report, for applicants who obtained subsidies but had application inconsistencies, we identified about 1.1 million applications with a total of about 2 million inconsistencies.[15] These applications had combined APTC and CSR subsidies of about $4.4 billion associated with them for coverage year 2014. We found, based on our analysis of CMS data, that the agency resolved about 58 percent of the total inconsistencies,

[14]When applicants apply for coverage, they report family size and the amount of projected income. Based, in part, on that information, the Marketplace will calculate the maximum allowable amount of APTC. An applicant can then decide if he or she wants all, some, or none of the estimated credit paid in advance, in the form of payment to the applicant's insurer that reduces the applicant's monthly premium payment. If an applicant chooses to have all or some of his or her credit paid in advance, the applicant is required to "reconcile" on his or her federal tax return the amount of advance payments the government sent to the applicant's insurer on the applicant's behalf with the tax credit for which the applicant qualifies based on actual reported income and family size.

[15]In particular, we obtained data from CMS on applicant inconsistencies generated for the federal Marketplace and the value of APTC and CSR subsidies associated with them, for the 2014 coverage year. Specifically, to observe the number of inconsistencies created and subsequently resolved, we examined applications that were awarded subsidies and that were created and submitted during the 2014 open-enrollment period plus a special enrollment period extension that followed. The open-enrollment period ran from October 1, 2013, to March 31, 2014, and the extension was through April 19, 2014.

We excluded from our analysis applications modified after submission, because CMS officials told us that inconsistencies can be generated or resolved based on consumer actions, such as updating of application information. We selected the unmodified applications that had received subsidies as presenting the simplest case for examining inconsistency generation and subsequent resolution.

Our selection criteria meant excluding 17 percent of the total number of applications with subsidies and inconsistencies because they had been modified. A single application may reflect more than one person, each of whom might have different inconsistencies in different stages of resolution. The CMS data provided the APTC and CSR amounts at the application level. Consequently, the results of our analysis are not mutually exclusive by type of inconsistency, and applications and their associated subsidy amounts may be represented in multiple categories.

meaning the inconsistencies were settled by consumer action, such as document submission, or removed due to events such as life change, application deletion, or consumer cancellation. Meanwhile, our analysis found that about 34 percent of inconsistencies, with about $1.7 billion in associated subsidies, remained open, as of April 2015—that is, inconsistencies still open several months following the close of the 2014 coverage year.[16]

We also found, based on our analysis of the 2014 data, that CMS did not terminate or adjust subsides for any applications with incarceration or Social Security number inconsistencies, plus other inconsistencies.[17] Further, CMS officials told us that they currently do not plan to take any actions on individuals with unresolved Social Security number or incarceration inconsistencies.

Social Security number inconsistencies. Under CMS regulations, the Marketplace must validate all Social Security numbers provided by submitting them to SSA along with other identifying information. If the Marketplace is unable to validate the Social Security number, it must follow the standard process for resolving all types of inconsistencies.[18] In our analysis, we identified about 35,000 applications that had an unresolved Social Security number inconsistency, which were associated with about $154 million in combined subsidies.

We reported that CMS officials told us they did not take action to terminate coverage or adjust subsidies during 2014 based on Social Security number inconsistencies. They said this was because such inconsistencies are generally related to other inconsistencies, such as citizenship or immigration status, and that document submissions for citizenship or immigration status may also resolve Social Security number inconsistencies. Overall, CMS officials told us they do not consider

[16]The remainder were terminations or adjustments based on failure to submit documentation to resolve inconsistencies. By comparison with the inconsistency results in our analysis, HHS reported that more than 8.84 million people selected or were automatically reenrolled in 2015 plans through the federal Marketplace as of the end of the second open enrollment period on February 15, 2015.

[17]These other inconsistencies relate to American Indian status, and presence of qualifying employer-sponsored coverage or other minimum essential coverage.

[18]45 C.F.R. § 155.315(b).

missing or invalid Social Security number information to be a stand-alone inconsistency that must be resolved, and do not take adverse action in such cases.

However, CMS regulations state that "to the extent that the [Marketplace] is unable to validate an individual's Social Security number through the Social Security Administration," the Marketplace must follow its standard inconsistency procedures.[19] Further, when promulgating this regulation, CMS explained that transmitting Social Security numbers to SSA for validation "is separate from the [PPACA] provision regarding citizenship verification, and only serves to ensure that SSNs [Social Security numbers] provided to the [Marketplace] can be used for subsequent transactions, including for verification of family size and household income with IRS."[20]

In addition to unresolved Social Security number inconsistencies generally, our analysis also found in particular more than 2,000 applications with Social Security number inconsistencies that had no corresponding citizenship or immigration inconsistencies. We also identified nearly 5,500 applications with Social Security number inconsistencies that had no corresponding income inconsistency. These applications had total subsidies of about $10 million and $31 million associated with them, respectively. They indicate that Social Security number inconsistencies can stand alone, unrelated to other inconsistencies.

Social Security number inconsistencies also affect tax compliance. Missing or invalid Social Security numbers can affect IRS verification that taxpayers have properly filed APTC information on their tax returns, as well as impair IRS outreach to taxpayers who have received the APTC subsidy.[21]

We recommended that HHS direct CMS to identify and implement procedures to resolve Social Security number inconsistencies where the Marketplace is unable to verify Social Security numbers or applicants do

[19] 45 C.F.R. § 155.315(b).

[20] 77 Fed. Reg. 18310, 18355 (Mar. 27, 2012).

[21] See GAO-16-29 for a full discussion.

not provide them. HHS concurred with our recommendation, but did not provide details on how it would seek to implement it.

Incarceration inconsistencies. In our inconsistency analysis that we reported on in February 2016, we identified about 22,000 applications having an unresolved incarceration inconsistency, which were associated with about $68 million in combined subsidies. CMS officials, however, told us they did not terminate eligibility for incarceration inconsistencies, because the agency determined in fall 2014 that SSA's Prisoner Update Processing System (PUPS) was unreliable for use by the Marketplace.[22] As a result, CMS officials told us the agency elected to rely on applicant attestations on incarceration status.[23]

PPACA provides that incarcerated individuals are not eligible to enroll in a qualified health plan through a marketplace, with the exception of those incarcerated pending disposition of charges. CMS currently uses PUPS to generate incarceration inconsistencies when there are indications an applicant may be incarcerated. As part of the inconsistency resolution process, the Marketplace notifies applicants to send documentation to resolve the inconsistency. To do so, consumers can submit documentation such as release papers, CMS officials told us.

Under CMS's approach to incarceration inconsistencies, agency officials told us, the Marketplace continues to make an initial verification attempt using the PUPS data. If a consumer maintains he or she is not incarcerated, CMS will rely on that representation and not take adverse action, regardless of what PUPS indicates, officials told us. According to HHS officials, based on the data reliability issue, the Marketplace no longer requires applicants to submit documentation on incarceration status.

[22]The PUPS system contains information on incarcerated individuals in all 50 state corrections departments, the Federal Bureau of Prisons, and local and other facilities. According to SSA, it is the only national database with records of federal, state, and local incarcerations. SSA uses PUPS to identify individuals who may no longer be eligible for SSA benefits due to incarceration. In addition to SSA, other federal programs, such as Medicare, use PUPS data.

[23]In the absence of an approved data source, the Marketplace may accept applicant attestation on incarceration status without further verification, unless the attestation is not reasonably compatible with other information in its records. 45 C.F.R. § 155.315(e).

In its 2013 computer-matching agreement with CMS, SSA acknowledged that PUPS is not as accurate as other SSA data and contains information that SSA may not have independently verified. Thus, the agreement states that CMS will independently verify information it receives from PUPS and will provide individuals an opportunity to contest an incarceration inconsistency before any adverse action in an eligibility determination. Overall, according to SSA officials, PUPS information can be used to identify individuals who require additional follow-up to determine eligibility.

We reported that our review of documentation CMS provided for its decision to take no adverse action on incarceration inconsistencies showed it did not contain key information supporting the agency's decision to not use PUPS data. Specifically, the documentation did not provide specific details on why, or to what extent, people were misidentified as incarcerated; why CMS also judged inmate release information to be unreliable; any criteria or assessment employed to conclude that the PUPS data were not sufficiently current or accurate; or the potential cost associated with not verifying incarceration status.

We concluded that without clearly identifying such elements as analysis, scope, and costs of significant decisions, CMS is at greater risk of providing benefits to ineligible applicants, and also may undermine confidence in the applicant verification process and compromise overall program integrity. We further concluded that by not using PUPS data as a lead for further investigation, and by relying on applicant attestation in the alternative, CMS may be granting eligibility to, and making subsidy payments on behalf of, individuals who are ineligible to enroll in qualified health plans.

We recommended that HHS direct CMS to reevaluate use of PUPS incarceration data and make a determination to either (1) use the PUPS data, among other things, as an indicator of further research required in individual cases, and to develop an effective process to clear incarceration inconsistencies or terminate coverage; or (2) if no suitable process can be identified to verify incarceration status, accept applicant attestation on status in all cases, unless the attestation is not reasonably compatible with other information that may indicate incarceration, and forego the inconsistency process. HHS concurred with our recommendation, but did not provide details on how it would seek to implement it.

We also recommended that HHS direct CMS to fully document prior to implementation, and have readily available for inspection thereafter, any significant decision on qualified health plan enrollment and eligibility matters, with such documentation to include details such as policy objectives, supporting analysis, scope, and expected costs and effects. HHS concurred with our recommendation, and said it was committed to documenting significant decisions.[24]

Chairman Hatch, Ranking Member Wyden, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Seto J. Bagdoyan, Director, Forensic Audits and Investigative Service, (202) 512-6722 or BagdoyanS@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony.

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[24]In all, our February 2016 report contained eight recommendations to HHS, and the agency concurred with all of them. See GAO-16-29 for the complete list of recommendations, as well as HHS agency comments and our evaluation of them.