

# United States Senate

WASHINGTON, DC 20510

October 23, 2019

The Honorable Alex Azar II  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Ave SW  
Washington, DC 20201

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health & Human Services  
200 Independence Ave SW  
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

We are writing to raise concerns regarding the lack of oversight from the Centers for Medicare and Medicaid Services (CMS) relating to activities by web brokers to steer individuals toward “short-term limited-duration insurance plans,” also known as “junk plans,” that fail to provide protections for pre-existing conditions or comprehensive coverage of health benefits that patients need. As the 2020 Open Enrollment Period for Health Insurance Marketplace coverage approaches, we are also concerned that CMS has failed to establish any requirements for brokers to disclose to consumers the significantly higher commissions that brokers will receive for enrolling an individual in a junk plan versus an Affordable Care Act (ACA)-compliant qualified health plan (QHP).

CMS includes a link on the HealthCare.gov website to funnel customers toward third-party web broker sites for direct enrollment. For consumers who are re-directed away from HealthCare.gov and toward the web broker site, it is not clear that CMS has any tracking mechanism in place to determine whether the customer: (1) successfully enrolled in an ACA-compliant QHP, (2) was successfully transferred to a state Medicaid program for Medicaid enrollment, (3) was steered into enrollment in a junk plan or (4) was lost in the shuffle.

The lack of CMS oversight of the connection between web brokers and junk plans is particularly concerning given the evidence that brokers have significant financial incentives to steer patients toward junk plans. The typical commission that a broker can receive for enrolling an individual in a junk plan is often four times as high as the commission that the broker would receive for enrolling a customer into an ACA-compliant QHP that provides comprehensive coverage.<sup>1</sup> Issuers of junk plans are able to offer these higher commissions because, unlike ACA-compliant QHPs, these plans are not required to meet the ACA’s minimum Medical Loss Ratio (MLR) standards. Under the MLR standards, health plans in the individual market are required to devote at least 80 percent of premium revenue toward paying for health care services for enrollees or quality improvement activities. Due to their exemption from the ACA’s MLR standards, junk plans devoted less than 65 percent of premium revenue to health care services on average in 2017.<sup>2</sup> This allows for larger administrative budgets for junk plans and more lucrative broker commission payments. Under

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<sup>1</sup> Margot Sanger-Katz, “What to Know Before You Buy Short-Term Health Insurance,” *New York Times*, August 1, 2018. Available at: <https://www.nytimes.com/2018/08/01/upshot/buying-short-term-health-insurance-what-to-know.html>

<sup>2</sup> Katie Keith, “The Short-Term Limited-Duration Coverage Final Rule: The Background, The Content, and What Could Come Next,” *Health Affairs Blog*, August 1, 2018. Available at: <https://www.healthaffairs.org/doi/10.1377/hblog20180801.169759/full/>

current rules, consumers do not receive any information about the commissions that their brokers receive for facilitating enrollment in various types of health coverage.

These actions by brokers to promote junk plans are alarming. Not only are junk plans allowed to deny coverage or charge higher premiums based on an individual's pre-existing condition, but these plans also are not required to cover the ACA's essential health benefits, including maternity care, substance use disorder treatment and prescription medications. A recent analysis of 24 junk plans across 45 states found that only 29 percent offered prescription drug coverage and none of the plans offered maternity care coverage.<sup>3</sup> These plans are also allowed to establish arbitrary limits on the dollar value of services that will be covered annually. Junk plans are not subject to the ACA's rules that cap how much an insurer can require an enrollee to pay out-of-pocket each year for medical care. These junk plans present real risks for consumers that are often masked on web broker internet pages and in phone calls with brokers.

While federal rules prohibit brokers from displaying junk plans side-by-side with ACA-compliant QHPs, brokers can structure their webpages in ways that steer consumers toward higher-commission products, like junk plans.<sup>4</sup> ACA-compliant QHPs can often be presented on webpages in tabs adjacent to junk plans, with the premium information for each type of plan displayed in the tab without easily-noticeable information on the important differences in coverage and deductibles between QHPs and junk plans.

Equally concerning, web brokers' online screening tools can fail to identify instances where a customer is eligible for Medicaid.<sup>5</sup> In other instances, the screening tools may identify potential Medicaid eligibility, but the web broker platform may continue to push a customer to purchase a junk plan. For example, on the GoHealth web broker platform,<sup>6</sup> if a customer from Manchester, New Hampshire, enters information indicating a household that is composed of a 31-year old mother and a six-year old son, with total income of \$15,000, the web broker provides a pop-up notice indicating that the customer "might qualify" for Medicaid, but does not provide any links or additional information for the customer to use to contact the Medicaid program. Instead, when the customer clicks "Continue" to get rid of the pop-up notice, the customer is presented with ACA-compliant QHPs in one tab with full-cost premiums starting at \$274 per month and junk plans in another tab with premiums starting at \$112 per month. In this instance, the customer is not provided with readily available information warning about the junk plans' coverage limits.

For states that have not yet expanded Medicaid, the web broker platforms also fail to consistently identify Medicaid eligibility for children that are part of a family application submitted to the broker

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<sup>3</sup> Pollitz, Karen *et al*, "Understanding Short-Term Limited Duration Health Insurance," Kaiser Family Foundation, April 23, 2018. Available at: <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>

<sup>4</sup> Tara Straw, "Direct Enrollment' in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm," Center on Budget and Policy Priorities. March 15, 2019. Available at: <https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>

<sup>5</sup> *Ibid*.

<sup>6</sup> GoHealth, "Your Health Insurance Portal," Accessed October 16, 2019. Available at: <https://www.gohealthinsurance.com/marketplace/>

portal.<sup>7</sup> Even in cases where the web broker identifies the child's eligibility, the broker may still steer the customer to a junk plan for family coverage. For example, on the eHealth online platform, if a 31-year old mother from Milwaukee, Wisconsin, with annual income of \$15,000 submits information for coverage for herself and her six-year old son, the eHealth portal provides notification of potential Medicaid eligibility and links for the Wisconsin Medicaid website. However, the eHealth portal also suggests that "While you wait for a decision from your state's Medicaid authority, a short-term health plan can help bridge coverage gaps." As a part of this same page, the eHealth portal displays a link for a junk plan with a \$68 per month quoted premium and no immediate information about the coverage restrictions associated with the junk plan.<sup>8</sup> This junk plan<sup>9</sup> does not cover pre-existing conditions, has a \$12,500 annual deductible for each family member and does not cover prescription drugs.

In other instances, web broker internet pages are used predominantly as a "lead generation" tool, where customers fill out contact information and then receive follow-up phone calls from a broker to discuss insurance options. For these cases, "secret shopper" research suggests that broker phone calls often involve "aggressive sales tactics, encouraging consumers to purchase [junk plan] coverage over the phone with minimal plan information."<sup>10</sup> Broker phone calls are not recorded for subsequent oversight by CMS or other regulators. These findings further underscore the need to improve oversight of broker-based enrollment through HealthCare.gov website links and related direct enrollment agreements with CMS.

To help address the concerns raised in this letter, we request answers to the following questions:

1. Please explain what protocols or processes, if any, CMS has in place to track whether individuals who access HealthCare.gov and click through to web broker links are ultimately enrolled in a QHP, enrolled in a junk plan, or successfully transferred to a State Medicaid Agency for enrollment in Medicaid. If no such tracking protocols exist, please explain why the agency does not support such tracking and oversight.
2. Please explain how CMS intends to ensure that individuals who access web broker platforms and are eligible for Medicaid are provided with comprehensive information about Medicaid eligibility and successfully transferred to the appropriate State Medicaid Agency.
3. Please explain why CMS has not included contractual requirements with its broker partners to require any disclosure to consumers of commissions that web brokers will receive for facilitating enrollment in various types of plans, including junk plans in particular.

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<sup>7</sup> Tara Straw, "Direct Enrollment' in Marketplace Coverage Lacks Protections for Consumers, Exposes Them to Harm," Center on Budget and Policy Priorities. March 15, 2019. Available at: <https://www.cbpp.org/research/health/direct-enrollment-in-marketplace-coverage-lacks-protections-for-consumers-exposes>

<sup>8</sup> eHealth, "Affordable Family and Individual Insurance," Accessed October 16, 2019. Available at: <https://www.ehealthinsurance.com/individual-family-health-insurance?returnWithoutQLE=true>

<sup>9</sup> eHealth, "United Healthcare Golden Rule Insurance Company: Short Term Medical Value Select A," Accessed October 16, 2019. Available at: <https://www.ehealthinsurance.com/ehealthinsurance/benefits/st/UHO/2019/45062E-G201904.pdf>

<sup>10</sup> Corlette, Sabrina *et al* "The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses," Urban Institute. January 2019. Available at: [https://www.urban.org/sites/default/files/publication/99708/moni\\_stldi\\_final\\_0.pdf](https://www.urban.org/sites/default/files/publication/99708/moni_stldi_final_0.pdf)

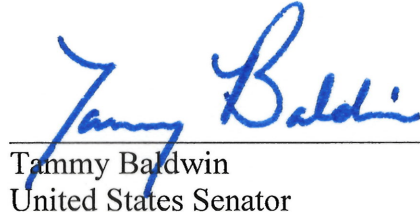
An effective and well-functioning health insurance market is only possible if consumers are provided transparent information regarding the scope and cost of coverage available, the tax credits available to consumers to offset premiums for comprehensive health plans and the incentives that brokers have for selling various products. Availability of this transparent information is particularly critical in light of your agency's decision to reduce funding for Health Insurance Marketplace advertising, outreach and education efforts by approximately 90 percent compared to 2016 levels. Your regulatory oversight in this area is vitally important to achieving this effective insurance market. We urge you to take this oversight responsibility seriously.

Sincerely,



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Jeanne Shaheen  
United States Senator



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Tammy Baldwin  
United States Senator



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Mark R. Warner  
United States Senator