

United States Senate

WASHINGTON, DC 20510

November 20, 2019

The Honorable Randy Pate
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
U.S. Department of Health & Human Services
200 Independence Ave SW
Washington, DC 20201

The Honorable Joanne Chiedi
Acting Inspector General
U.S. Department of Health and Human Services
330 Independence Ave SW
Washington, DC 20201

Dear Director Pate and Acting Inspector General Chiedi:

As the Open Enrollment period for health insurance coverage for 2020 continues, we write to express concern regarding the increased promotion of short-term, limited-duration insurance plans, also known as “junk plans,” to consumers seeking coverage on the federal Health Insurance Marketplaces. We are concerned that the Centers for Medicare and Medicaid Services (CMS) is not only failing to conduct sufficient oversight to protect customers, but is actively emailing consumers to encourage them to obtain coverage through third-party agents and brokers instead of the HealthCare.gov website. These brokers often have significant incentives to enroll consumers in junk plans instead of comprehensive coverage that meets the Affordable Care Act’s (ACA’s) coverage and pre-existing condition protection standards.

We are extremely concerned that the increased availability of junk plans and lack of oversight by CMS will cause consumers who believe they are purchasing ACA-compliant health plans to inadvertently sign-up for junk plan coverage that is less comprehensive and could expose them to higher out-of-pocket costs. Americans who purchase these junk plans risk being denied coverage for pre-existing conditions and left vulnerable to unexpected gaps in coverage and massive medical bills in the case of health care emergencies.

Short-term, limited-duration insurance plans were never intended to be an alternative to comprehensive health coverage and pose dangerous risks for consumers. In 2018, the Trump Administration expanded the maximum coverage duration for junk plans from 90 days to 364 days, allowing for these plans to be easily confused with year-round comprehensive coverage that meets the ACA’s standards. The Trump Administration has also encouraged states to apply for waivers from the ACA that would allow for the ACA’s premium tax credits to be used to subsidize junk plan coverage.

Insurance brokers are now aggressively marketing junk plans to consumers—including consumers who come to the HealthCare.gov portal seeking comprehensive coverage and then click on links that re-direct them to web brokers and phone-based broker services.

Commissions that these brokers receive for enrolling a customer in a junk plan are often up to four times as high as the commissions that brokers would receive for enrolling the individual in an ACA-compliant plan. This creates inherent incentives for brokers to push customers to purchase a junk plan, even when tax credits may be available to help defray the cost of an ACA-compliant Marketplace plan. According to data from CMS, nearly 90 percent of Americans shopping for coverage on HealthCare.gov qualify for these tax credits.¹ These online broker sites also fail to sufficiently connect Medicaid-eligible consumers to their state Medicaid agency and can even continue to press a consumer to purchase junk plan coverage after informing the consumer of Medicaid eligibility.

Consumers should be able to trust that when using a government-operated platform such as HealthCare.gov, they will not be subject to aggressive or misleading marketing techniques by third-parties that are incentivized to steer individuals to a substandard product. Not only has CMS failed to make consumers aware of the commission payment incentives that exist for brokers to enroll customers in junk plans, but it is also uncertain whether the agency has procedures in place to track what happens to customers who are re-directed to third-party broker sites.

It is also unclear what statutory authority CMS relies upon to authorize the re-direction of HealthCare.gov customers toward third-party broker entities that sell ACA-compliant coverage and junk plan coverage on the same platforms. Section 1311(d)(2)(B)(i) of the ACA prohibits an Exchange from taking action to “make available any health plan that is not a qualified health plan” and does not meet the ACA’s coverage standards. By allowing HealthCare.gov customers to be re-directed to third-party brokers that can sell the customer a junk plan during the same interaction, the federal Exchange would appear to be “making available” health plans that are not qualified health plans under the ACA. By using either CMS program management funds or federal Health Insurance Marketplace user fees to support HealthCare.gov functionality that steers customers to brokers that can sell junk plans, CMS could also be violating the federal rules that govern the use of program management funds and user fee dollars.²

Furthermore, on November 6th and again on November 13th, HealthCare.gov sent an e-mail (see Exhibit 1) to consumers encouraging them to circumvent HealthCare.gov completely and directing them to HelpOnDemand.com, a third-party operated site for connecting agents and brokers with potential customers. We have serious concerns regarding the lack of oversight that CMS has over third-party agents and brokers and the usage of government resources to promote third-party platforms that may encourage junk plan enrollment from HealthCare.gov customers.

We ask that you please provide us with a written response to the following questions by no later than December 4, 2019:

¹ Centers for Medicare and Medicaid Services, “Plan Year 2020 Qualified Health Plan Choice and Premiums in HealthCare.gov States,” October 22, 2019

² See Affordable Care Act section 1311(b); See also Anti-Deficiency Act (Pub. L. 97-258) and OMB User Fee Circular (Circular No. A-25 Revised).

1. Please explain the statutory authority that CMS relies upon to direct HealthCare.gov customers to third-party insurance brokers who sell both ACA-compliant qualified health plans and junk plans on the same platform.
2. Please detail the resources that CMS has expended to direct HealthCare.gov customers to third-party insurance brokers who sell both ACA-compliant qualified health plans and junk plans on the same platform, and detail the authority that allows CMS to expend resources in that way.
3. Please provide an accounting of the Department of Health and Human Services (HHS) and CMS budget for advertising or promoting Open Enrollment.
4. Please provide the total number of consumers who received the November 6, 2019 and November 13, 2019 e-mails sent by HHS promoting the use of HealthOnDemand.com (see Exhibit 1). Please provide an estimate of the number of recipients who accessed HelpOnDemand.com through the November 6th and November 13th e-mails.
5. Please detail the policies and procedures implemented by CMS to ensure that agents and brokers comply with the guidelines established in the CMS-approved vendor training that they are required to complete in order to sell insurance through HealthCare.gov. How does CMS ensure that agents or brokers using third-party sites such as HelpOnDemand.com remain in compliance with the HealthCare.gov vendor training?
6. Please describe what controls CMS has implemented to ensure that consumers who qualify for cost-sharing subsidies or are eligible for enrollment in Medicaid or Medicare are properly informed of their eligibility if they are directed away from HealthCare.gov and attempt to enroll in coverage through third-party sites such as HelpOnDemand.com.

We are calling on HHS and CMS to take action to limit the availability of junk plans and take steps to ensure that consumers using HealthCare.gov are being offered comprehensive health insurance, receiving premium tax credits, and being enrolled in Medicaid, if eligible. Furthermore, CMS should take action to hold insurance brokers accountable when they mislead HealthCare.gov customers and misrepresent junk plans as safe alternatives to ACA-complaint health insurance coverage. During this year's Open Enrollment period, it is essential that you act fast in order to protect consumers.

Sincerely,



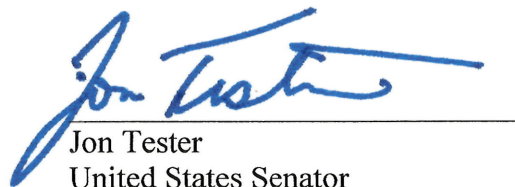
Jeanne Shaheen
United States Senator



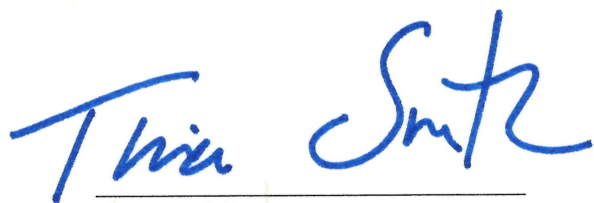
Debbie Stabenow
United States Senator



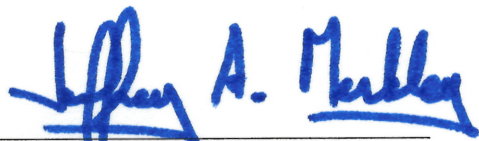
Tammy Baldwin
United States Senator



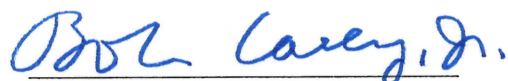
Jon Tester
United States Senator



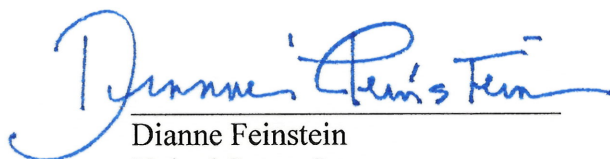
Tina Smith
United States Senator



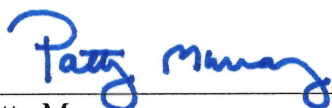
Jeffrey A. Merkley
United States Senator



Robert P. Casey, Jr.
United States Senator



Dianne Feinstein
United States Senator



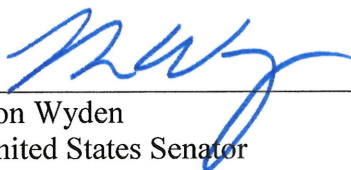
Patty Murray
United States Senator



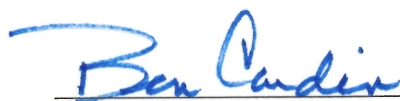
Mazie K. Hirono
United States Senator



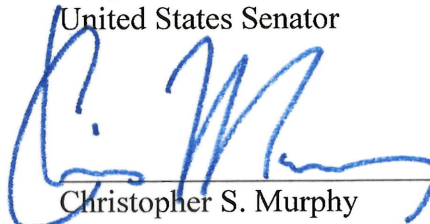
Sheldon Whitehouse
United States Senator



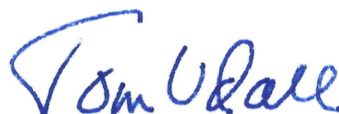
Ron Wyden
United States Senator



Benjamin L. Cardin
United States Senator



Christopher S. Murphy
United States Senator



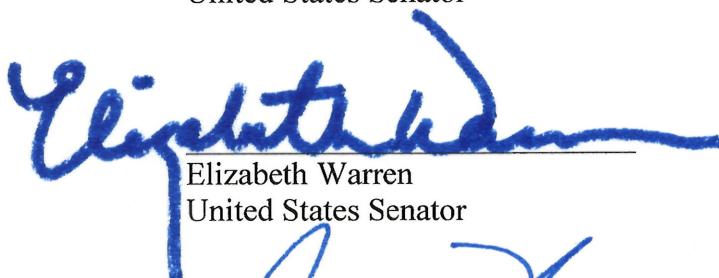
Tom Udall
United States Senator



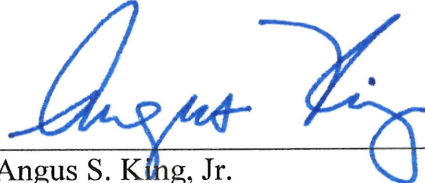
Margaret Wood Hassan
United States Senator



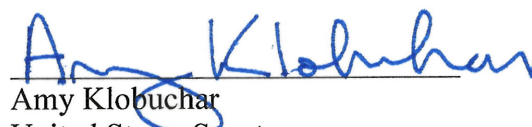
Brian Schatz
United States Senator



Elizabeth Warren
United States Senator



Angus S. King, Jr.
United States Senator



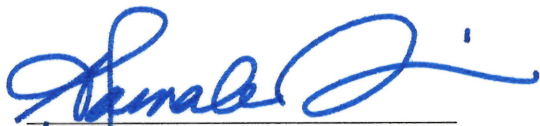
Amy Klobuchar
United States Senator



Richard Blumenthal
United States Senator



Charles E. Schumer
United States Senator



Kamala D. Harris
United States Senator

Exhibit 1.

Get help selecting a plan for 2020

Health Insurance Marketplace sent this bulletin at 11/06/2019 11:30 AM EST

[View in browser](#)

HealthCare.gov

Get help picking a plan before December 15

We can connect you to a Marketplace-registered agent or broker who will contact you to help you enroll in a health care plan for 2020, through a service we've partnered with, Help On Demand.

Agents or brokers are trained and registered by the Marketplace and licensed in their respective state. They are usually paid by the insurance companies whose plans they sell; however, they are required in many states to act in the consumer's best interest.

If you would like help from an agent or broker, select the button below and provide your contact information. By continuing, you'll be taken to a third party website.

Visit the Help On Demand website

Note: Simply providing your contact information is not considered enrolling. You must still complete your application and pick a plan by the December 15 deadline.

[HealthCare.gov](#) provides this link to the "Help On Demand" third-party website for your convenience. Once you visit the site, you're subject to the privacy and security policies of the site, which is operated by BigWave Systems.

Remember: The deadline to enroll in a 2020 Marketplace plan is December 15.

If you don't wish to use an agent or broker to select a plan, you can find other forms of assistance using our [Find Local Help](#) tool.

The [HealthCare.gov](#) Team