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March 31, 2022

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan,

I am concerned about reports of misleading marketing practices by substandard plans that lack consumer protections provided under the Affordable Care Act (ACA). Individuals are being directed to these plans based on false or misleading information, later becoming saddled with extreme medical bills due to the failure to protect against pre-existing conditions and meager (or lack of) coverage for particular health care items under these plans. No American should improperly be directed to a substandard health plan that can expose them to catastrophic medical bills – and the COVID-19 pandemic has only emphasized the importance of affordable and comprehensive health insurance options. Accordingly, I urge the Federal Trade Commission (FTC) to exercise its full range of oversight and enforcement tools with respect to the misleading marketing of substandard health plans.

Thanks to the ACA and subsequent enhancements through the American Rescue Plan (ARP), millions of Americans previously locked out of the private insurance market can now obtain high-quality and affordable health insurance coverage. The ACA guarantees protections for people with pre-existing medical conditions and ensures that health plans in the individual and small group markets cover certain essential health benefits, such as maternity care, mental health, and emergency services. Financial assistance is available under the ACA to substantially lower premiums and out-of-pocket costs for consumers.

The Trump Administration sought to weaken the ACA by expanding and promoting short-term plans, fixed indemnity plans, health care sharing ministries, and other products that lack the consumer protections guaranteed under the ACA. As a result, various press reports highlighted consumers drawn in by prices that appeared cheap only to learn after obtaining medical services that they were exposed to substantial medical bills.¹

The Biden Administration has admirably sought to strengthen the ACA and expand enrollment opportunities for consumers through Health Insurance Marketplaces amidst the COVID-19 epidemic. In 2021, thanks to the enhanced premium tax credits under the ARP and the Biden Administration's special enrollment period (SEP), 2.8 million Americans newly gained access to ACA Marketplace plans.

Unfortunately, multiple studies show that consumers who could benefit from ACA Marketplace coverage must overcome various deceptive marketing practices. In August 2020, the U.S. Government Accountability Office outlined deceptive marketing practices from sales representatives when undercover individuals represented that they needed coverage for certain pre-existing conditions.² A recent Georgetown University Center on Health Insurance Reforms (CHIR) report found that misleading marketing practices persisted during the 2021 SEP to push consumers toward substandard and junk plans.³ Through a secret shopper study methodology, the CHIR study examined conversations with agents, brokers, and sales representatives who provided inaccurate and misleading information to consumers about the affordability of ACA Marketplace plans and the benefits provided under substandard plans that lack the ACA's protections.⁴ These efforts to steer consumers toward such substandard plans are deeply troubling.

The Committee on Ways and Means is committed to building on the success of the ACA in expanding access to comprehensive and affordable health coverage. A central component to expanding access to coverage is ensuring that outreach and enrollment assistance efforts are robust, inclusive, and fully accurate. I am grateful that the FTC and other regulators have previously taken enforcement actions to protect consumers from such deceptive marketing practices. Therefore, I request that the FTC provide a nonpublic briefing to Committee staff within two weeks regarding any enforcement activities related to misleading marketing of health plans that are not compliant with the ACA's consumer protections.

Thank you for your prompt attention to and consideration of this urgent matter. If you have any questions about this request, please contact Zachary Baron of the Committee on Ways and Means Majority staff at Zach.Baron@mail.house.gov.

¹ See, e.g., Vox, *How Trump gave insurance companies free rein to sell bad health plans* (June 30, 2020), <https://www.vox.com/2020/6/30/21275498/trump-obamacare-repeal-short-term-health-care-insurance-scam>.

² U.S. Gov't Accountability Off., GAO-20-634R, *Private Health Coverage: Results of Covert Testing for Selected Offerings* (2020).

³ Georgetown University Center on Health Insurance Reforms, *Misleading Marketing of Non-ACA Health Plans Continued During COVID-19 Special Enrollment Period* (Oct. 2021), <https://georgetown.app.box.com/s/mn7kgnhbn4kapb46tqmv6i7putry9gt>.

⁴ *Id.*

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard E. Neal". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Richard E. Neal
Chair
Committee on Ways and Means