



441 G St. N.W.  
Washington, DC 20548

August 24, 2020

The Honorable Robert P. Casey, Jr.  
Ranking Member  
Special Committee on Aging  
United States Senate

The Honorable Debbie Stabenow  
United States Senate

### **Private Health Coverage: Results of Covert Testing for Selected Offerings**

Millions of Americans obtain health insurance coverage in the individual market, which consists mainly of private plans sold directly to consumers without access to group coverage. While generally regulated by states, starting in 2014, the Patient Protection and Affordable Care Act (PPACA) established a number of new federal requirements for individual health insurance coverage. For example, PPACA prohibited insurers from excluding coverage or charging higher premiums for pre-existing conditions and required that individual market plans cover a set of essential health benefits, including coverage for mental health and substance abuse disorder services, prescription drugs, and maternity and newborn care.<sup>1</sup>

Certain types of health coverage arrangements that can be sold directly to consumers do not have to comply with some or all of PPACA's individual market requirements and, as a result, may be less expensive, but also offer more limited benefits compared to PPACA-compliant plans. For example, short-term, limited-duration insurance (STLDI), which was primarily designed to fill gaps in coverage, is excluded from the definition of individual health insurance under federal law and is therefore generally not subject to PPACA's requirements for the individual market.

---

<sup>1</sup>Pub. L. No. 111-148, §§ 1201, 1302, 124 Stat. 119, 154, 163 (2010).

Recent changes to federal law and regulations could result in the increased use of PPACA-exempt health coverage arrangements as alternatives to PPACA-compliant plans in the individual market.<sup>2</sup> For example, in 2018, federal regulations expanded the availability of STLDI plans, a type of PPACA-exempt arrangement. In addition, as of January 1, 2019, individuals who fail to maintain “minimum essential coverage,” as required by PPACA, no longer face a tax penalty.<sup>3</sup> Further, the devastating economic effects of the Coronavirus Disease 2019 (COVID-19) pandemic could create additional demand for affordable health coverage, including PPACA-exempt plans.

With these changes, and because of their lower relative costs, PPACA-exempt health coverage arrangements may be attractive to consumers, particularly those who find it difficult to afford PPACA-compliant plans. However, such arrangements generally do not need to follow PPACA’s requirement that plans in the individual market be presented to consumers in defined categories outlining the extent to which they are expected to cover medical care. As a result, depending on how they are marketed and sold, PPACA-exempt arrangements could present risks for consumers, if, for example, they buy them mistakenly believing that coverage is as comprehensive as for PPACA-compliant plans. Several states have raised concerns that insurance agents and brokers (hereafter referred to as sales representatives) may try to sell PPACA-exempt arrangements to consumers regardless of their suitability for the individual—for example, to those with pre-existing conditions that would not be covered—or mischaracterize the health coverage offered because of financial incentives.<sup>4</sup>

You requested that we obtain insights on the marketing and sales practices of insurance sales representatives who sell PPACA-exempt plans. In this report, we describe the results of covert tests we conducted involving selected sales representatives (as described below), when contacted by individuals stating that they had pre-existing conditions.

In this regard, we performed a number of covert tests (i.e., undercover phone calls) from November 2019 through January 2020, posing as individuals needing to purchase health insurance to cover pre-existing conditions. Specifically, we performed 31 covert tests to selected sales representatives and stated that we had pre-existing conditions, such as diabetes or heart disease, and we requested coverage for these conditions to see if the sales representative directed us to a comprehensive PPACA-compliant plan, or a PPACA-exempt plan that does not cover what we requested. The results of our covert testing are illustrative only of the sales and related behaviors we experienced during the calls and are not generalizable to any specific insurance brokerage or agency, state, or the PPACA-exempt health insurance industry at large.

---

<sup>2</sup>For the purposes of this report, we are defining PPACA-exempt as including health coverage arrangements that do not comply with PPACA’s individual health care market requirements, such as STLDI and limited benefit plans, depending on how they are sold. We are also including arrangements whose health coverage provisions are not explicitly addressed in federal law, such as health care sharing ministries.

<sup>3</sup>PPACA required that most individuals maintain “minimum essential coverage” or pay a tax penalty. Health insurance that meets the definition of “minimum essential coverage” includes certain types of government-sponsored coverage (such as Medicare Part A or most Medicaid coverage) as well as most types of private insurance plans that provide benefits consistent with the law, but does not include coverage that provides limited benefits. Legislation enacted in 2017 reduced this tax penalty to \$0, effective January 1, 2019. Pub. L. No. 115-97, § 11081, 131 Stat. 2054, 2092 (2017).

<sup>4</sup>Agents and brokers are generally paid by insurers and may sell products for one issuer from which they receive a salary, or from a variety of insurers and be paid a commission for each plan they sell. We use the term “sales representatives” in this correspondence to capture a variety of job titles that we encountered during our covert tests, including brokers, agents, call screeners, and compliance personnel.

As part of these tests, we gauged whether sales representatives engaged in potentially deceptive practices, such as making false or misleading statements about coverage or omitting material information about coverage. To do this, we used the Federal Trade Commission's (FTC) definition of deceptive practices to evaluate the marketing practices used during our covert tests.<sup>5</sup> Deceptive practices are defined in the FTC's *Policy Statement on Deception* as involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances.<sup>6</sup> For example, given the scenarios we tested, a misleading statement could include instances in which a sales representative said that a plan covered a pre-existing condition when it did not. An example of an omission could include instances in which a sales representative did not disclose that the plan offered would not cover our pre-existing condition after we expressed that we wanted this coverage, among other things. When sales representatives indicated to us that the PPACA-exempt coverage they were selling us would cover our pre-existing condition, we purchased the product to compare its benefits as described in a plan document we obtained with the benefits advertised and described during the covert phone calls.

We made the covert phone calls to representatives in a non-generalizable selection of five states (Alabama, Florida, Kansas, Pennsylvania, and Wyoming) selected for geographic and population-size variation. Given that STLDI plans—a type of PPACA-exempt arrangement—are not available for purchase in some states due to state laws prohibiting them or simply because they are not commercially available, we selected among states that offered STLDI plans. To select sales representatives within a selected state, we performed web searches using search terms such as “affordable health insurance,” and “cheap health insurance,” similar to how typical consumers likely seek out and purchase insurance, in order to create a list of entities from each state. After we created a list of potential entities, we randomly sorted the list for each state and selected different entities for 20 of 31 tests while ensuring variability across the states. For the remaining 11 of 31 tests, we attempted to contact a health insurance provider directly, as opposed to going through a third-party sales representative identified via a web search.<sup>7</sup> To do this, we identified insurance companies to select for testing using a health insurance consumer-information website that provides a listing of companies that offer STLDI plans among our selected states.<sup>8</sup>

---

<sup>5</sup>FTC enforces provisions of the FTC Act, including 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices affecting commerce.

<sup>6</sup>Federal Trade Commission, FTC Policy Statement on Deception, October 1983. <https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>, accessed June 10, 2020.

<sup>7</sup>Although we attempted to select separate entities and to contact and test each of these selected entities only once, it is possible that we contacted and tested the same entity on more than one undercover call. This is because our undercover phone calls were sometimes transferred to multiple parties in the course of a single call, and we could not always identify the entity we ultimately spoke with.

<sup>8</sup>This website is not associated with [www.healthcare.gov](http://www.healthcare.gov) or the Centers for Medicare & Medicaid Services (CMS), and we did not assess the comprehensiveness of the website, but instead used it to make non-generalizable selections of insurers. As mentioned, this selection of insurers is not intended to be a representative sample of insurers.

The 2020 Open Enrollment Period (OEP) for individual health insurance coverage sold through the federally facilitated exchange<sup>9</sup> ran from November 1, 2019, to December 15, 2019. We performed 16 of the 31 tests during the 2020 OEP as most individuals apply for and enroll in health insurance plans offered on the exchanges required by PPACA during this time. Performing tests during this time helped to ensure our testing closely resembled the experience most individuals have when purchasing insurance. The remaining tests (15 of 31) were conducted outside of the OEP to assess examples of marketing practices used in both time periods. For tests conducted outside of the OEP, we explained during those phone calls that we had recently moved to a new state so that we would trigger a PPACA Special Enrollment Period, and therefore, would be eligible to purchase a PPACA-compliant plan.<sup>10</sup>

Finally, to discuss the marketing and oversight of PPACA-exempt arrangements, we met with senior officials from federal agencies, including the FTC, and Centers for Medicare & Medicaid Services (CMS)<sup>11</sup> within the Department of Health and Human Services, as well as the National Association of Insurance Commissioners (NAIC).<sup>12</sup>

We conducted this performance audit from October 2019 to August 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted our related investigative work in accordance with investigative standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

## Summary

In summary, the results of the covert tests ranged from sales representatives appropriately explaining to us that a PPACA-exempt plan would not cover the pre-existing condition we stated that we had, to engaging in potentially deceptive marketing practices that misrepresented or omitted information about the products they were selling. Specifically, in 21 of 31 covert tests, the sales representative appropriately referred us to a PPACA-compliant plan. In two of 31 covert tests, the sales representatives did not appear to engage in deceptive marketing

---

<sup>9</sup>PPACA introduced significant changes to the individual market including how consumers shop for insurance coverage. PPACA directed each state to establish an exchange—referred to as a state-based exchange—or elect to use the federally facilitated exchange established by the Department of Health and Human Services (HHS). The exchanges are marketplaces where individuals can compare and select among plans that meet certain standards offered by participating private issuers licensed to engage in the business of insurance in a state.

<sup>10</sup>A Special Enrollment Period is a time outside the yearly OEP when individuals can sign up for health insurance. Individuals qualify for a Special Enrollment Period if they have had certain triggering events, including losing minimum essential health coverage, permanently moving into a new state and therefore gaining access to new Qualified Health Plans, or gaining a dependent through marriage, birth, or adoption. Depending on the Special Enrollment Period type, individuals may have 60 days before or 60 days following the event to enroll in a plan.

<sup>11</sup>While the business of insurance is primarily regulated by states, we met with CMS due to certain relevant federal requirements. For example, under 45 C.F.R. § 155.220, an agent or broker that assists or facilitates enrollment of individuals in PPACA-compliant plans through a federally-facilitated exchange must be registered with the federally facilitated exchange and comply with certain standards of conduct. Sales representatives who sell PPACA-exempt plans, but do not also facilitate enrollment into PPACA-compliant plans, are not subject to this requirement.

<sup>12</sup>NAIC is the standard setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.

practices but were not always consistent or clear in their explanation of the type of coverage and plans they were selling. In the remaining eight of 31 covert tests, the sales representatives engaged in potentially deceptive marketing practices, such as claiming our pre-existing condition was covered when the health plan documents we received after purchase said otherwise. We plan to refer these eight cases of potential deceptive marketing practices to the FTC and corresponding state insurance commissioners' offices for follow-up as appropriate.

## Background

### PPACA-Exempt Health Arrangements

There are several health coverage arrangements that can be sold directly to consumers and do not need to comply with at least some of PPACA's individual market requirements. These include:

- STLDI: Health insurance that is primarily designed to fill temporary gaps that may occur when an individual is transitioning from one plan or coverage to another plan or coverage. In August 2018, the Departments of Health and Human Services, Labor, and the Treasury issued a final rule changing the definition of STLDI from coverage that has an expiration date of less than 3 months from its effective date to coverage that has an expiration date of less than 12 months, and that is renewable for no more than 36 months.<sup>13</sup> STLDI is excluded from the definition of individual health insurance coverage under federal law, and therefore generally does not need to comply with PPACA's individual market requirements.
- Limited benefit plans: Different types of health insurance options that offer limited benefits, also known as "excepted benefits". For example, these include indemnity plans that cover a set dollar amount for limited prescription benefits, hospital stays or physician visits, or plans that offer accident-only coverage, limited scope dental or vision coverage, or coverage for a specified disease. These plans may be combined to mirror more comprehensive coverage, but generally do not need to comply with PPACA individual market requirements, depending on how they are offered.
- Health care sharing ministries: Entities whose members share a common set of religious or ethical beliefs and contribute funds to pay for medical expenses of other members; however, payment for member claims is not guaranteed. Health care sharing ministries in some ways may resemble insurance, but the requirements for what is covered are not explicitly addressed in federal law and typically do not comply with PPACA.<sup>14</sup> In addition, according to NAIC officials, the majority of states have exempted health care sharing ministries from state insurance laws provided they meet certain requirements, and in states where they are not explicitly exempted, states may not regulate them.
- Association health plans (AHP): Health insurance coverage sponsored by a group or association of employers, which may include trade associations who make plans available

---

<sup>13</sup>83 Fed. Reg. 38,212 (Aug. 3, 2018). The definition of STLDI as coverage that has an expiration date of less than 3 months from its effective date was promulgated in 2016. 81 Fed. Reg. 75,316 (Oct. 31, 2016). Prior to the 2016 rulemaking, STLDI had been defined as coverage that has an expiration date within 12 months from its effective date, but was not renewable past this time. See 62 Fed. Reg. 16,894 (April 8, 1997).

<sup>14</sup>While not as common, there are other arrangements that similarly resemble insurance, but are also not explicitly addressed in federal law, such as farm bureau coverage currently offered in three states—Iowa, Kansas, and Tennessee. Farm bureau membership is open to anyone who pays a membership fee.

to their members.<sup>15</sup> While these plans are generally considered group health insurance coverage, historically, AHPs sold directly to consumers under certain circumstances were considered individual health insurance and subject to relevant PPACA requirements.<sup>16</sup> However, in June 2018, the Department of Labor issued a final rule that expanded provisions for determining when employers may join together to offer AHPs, which included self-employed individuals without employees. This would have broadened the types of AHPs that were considered large group insurance and could be sold to the self-employed, meaning such plans would no longer be subject to certain small group and individual market requirements, such as the requirement to cover essential health benefits.<sup>17</sup> However, in March 2019, a federal court vacated this provision of the final rule; however, the Department of Labor has appealed the decision.<sup>18</sup> According to NAIC officials, some states have authorized the sale of certain AHPs that meet the rule's broader definition.

Data on the extent to which consumers purchase PPACA-exempt health coverage arrangements are limited, but generally suggest that use of such arrangements is growing. For example, the most recently available estimate of the STLDI market was about 87,000 covered people in 2018, but these data are based on policies issued before the 2018 final rule that extended the allowed duration for STLDI plans. In October 2019, NAIC issued a data call to better understand the extent of the STLDI market in each state.<sup>19</sup> In another example, while the estimated number of individuals enrolled in health care sharing ministries in 2010 prior to PPACA was less than 200,000, as of 2018 the enrollment is estimated to be about 1 million people.<sup>20</sup>

#### Oversight of the Marketing and Sale of PPACA-Exempt Arrangements

Under the McCarran-Ferguson Act, the business of insurance is primarily regulated by states.<sup>21</sup> Therefore, states are the primary regulators of private health insurance, including the marketing and sale of PPACA-exempt health coverage arrangements. As such, each state sets its own standards for most PPACA-exempt arrangements and licenses and oversees insurers, and third-party sales representatives that sell such arrangements in their state. According to NAIC officials, state insurance commissioners may take enforcement actions against insurers and

---

<sup>15</sup>Association health plans are formed under the authority of the Employee Retirement Income Security Act of 1974. This Act authorizes some employer associations to qualify as “employers” for the purpose of sponsoring an employee benefit plan, such as a plan that offers medical, surgical, or hospital care or benefits, so long as the group or association of employers acts “in the interest of an employer.” 29 U.S.C. § 1002.

<sup>16</sup>Centers for Medicare & Medicaid Services, *Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage Is Sold to, or through, Associations*, (Baltimore, MD.: September 2011).

<sup>17</sup>83 Fed. Reg. 28,912 (June 21, 2018).

<sup>18</sup>New York v. Dep’t of Labor, 363 F. Supp. 3d. 109 (D.D.C. 2019), *appeal docketed*, No. 19-5125 (D.C. Cir. Apr. 30, 2019).

<sup>19</sup>For the 2018 estimate see National Association of Insurance Commissioners, *2018 Accident and Health Policy Experience Report* (NAIC, 2019).

<sup>20</sup>See K. Lucia, J. Giovannelli, S. Corlette et al., “State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting the Risk to the Individual Market.” *The Commonwealth Fund*, March 2018

<sup>21</sup>Pub. L. No. 79-15, 59 Stat. 33 (1945), codified as amended at 15 U.S.C. §§ 1011 - 1015.

sales representatives that engage in deceptive marketing practices, such as by suspending or revoking their license to sell insurance.<sup>22</sup>

FTC and CMS also have a more limited role in overseeing the marketing and sale of PPACA-exempt arrangements. Specifically, FTC enforces provisions of the FTC Act, including 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices affecting commerce.<sup>23</sup> Under the law, FTC's jurisdiction in this area includes instances where entities sell health care arrangements, but are not themselves engaged in the business of insurance—such as business associations that may offer health insurance plans to their members, but are not themselves engaged in the business of insurance.<sup>24</sup> Similarly, federal regulations require sales representatives that assist or facilitate enrollment in PPACA-compliant plans sold through the [www.healthcare.gov](http://www.healthcare.gov) website to provide consumers with correct information,<sup>25</sup> without omission of material fact, and refrain from marketing or conduct that is misleading.<sup>26</sup> However, sales representatives who sell PPACA-exempt plans, but do not also facilitate enrollment into the PPACA-compliant plans sold through [www.healthcare.gov](http://www.healthcare.gov), are not subject to this requirement. Although CMS does not provide oversight of PPACA-exempt plans, officials told us that the agency works with state insurance commissioners to confirm that insurance sales representatives listed on [www.healthcare.gov](http://www.healthcare.gov)—which can include those that sell both PPACA-compliant and PPACA exempt plans—have an active state license to sell insurance.

### **Covert Tests Identified Potentially Deceptive Marketing Practices by Some Insurance Sales Representatives**

The results of our 31 covert tests—all of which included individuals requesting coverage for pre-existing conditions—ranged from insurance sales representatives appropriately explaining that a PPACA-exempt plan would not cover the pre-existing condition, to engaging in potentially

---

<sup>22</sup>According to NAIC officials, states may exempt policies issued by out-of-state associations from some or all of their market standards. Specifically, in out-of-state associations—which are separate from AHPs—insurers file plans for approval in one state and sell the same plans in other states, which may lack authority to regulate such associations. Where associations are exempt from standards, they are regulated by the state of approval, rather than the state in which consumers' purchase coverage.

<sup>23</sup>An "unfair" act or practice is one that is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition, whereas a "deceptive" act or practice is one involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. For purposes of this report, we focus on deceptive acts or practices because of the results of our covert tests.

<sup>24</sup>Specifically, those activities that constitute the "business of insurance" are exempted from the FTCs jurisdiction, but only to the extent that such activities are regulated by state law. 15 U.S.C. § 1012(b).

<sup>25</sup>Sometimes called the "health care exchange," [www.healthcare.gov](http://www.healthcare.gov) is a federal government website managed by CMS. The website allows users to enroll in PPACA-compliant plans and apply for various marketplace insurance options.

<sup>26</sup>45 C.F.R. § 155.220(j)(2). An agent or broker that assists or facilitates enrollment of individuals in PPACA-compliant "qualified health plans" through a federally facilitated exchange or state-based exchange on the federal platform must be registered with the federally facilitated exchange and comply with certain standards of conduct. These standards include the requirement that the individual or entity "must provide consumers with correct information, without omission of material fact, regarding the federally facilitated Exchanges, [PPACA-compliant plans] offered through the federally facilitated exchanges, and insurance affordability programs, and refrain from marketing or conduct that is misleading (including by having a direct enrollment Web site that the Department of Health and Human Services determines could mislead a consumer into believing they are visiting HealthCare.gov)."

deceptive marketing practices that omitted or misrepresented information about the products they were selling. Specifically,

- In 21 of 31 covert tests, the sales representatives appropriately referred us to PPACA-compliant plans. In these instances, the representatives typically referred us to the federal government's PPACA health care exchange.
  - For example, one sales representative stated that a PPACA plan would be a better option for us and recommended that we contact the federal PPACA exchange for coverage required for our pre-existing condition. The representative told us that plans sold by him lacked coverage for our condition, which in this case was diabetes. The representative further told us that our condition would disqualify us from a short-term health plan and also informed us that our condition would not be covered in the event that anyone else tried to sell us such a plan.
- In two of 31 covert tests, the sales representatives did not appear to engage in deceptive marketing practices, but the representatives were not always consistent or clear in their explanation of the type of coverage and plans they were selling.
  - For example, one sales representative recommended a PPACA plan due to the pre-existing condition that we stated we had and told us that the plan also included an accidental and critical illness benefit to cover the financial gap that could be created by the plan's deductible and high out-of-pocket maximum, as well as a basic dental plan. Information we later obtained from the representative showed that the PPACA plan was free of cost due to our stated income, and that 100 percent of the price the representative quoted during the call was for the additional gap coverage and dental plans. The sales representative had not clearly disclosed that we could obtain comprehensive PPACA coverage at no cost, nor did he clarify that the additional coverage he sold us was optional and would cost additional money until we specifically requested this information and spoke to the representative in a follow-up phone call made after reviewing the documents we obtained. The representative explained that this optional coverage provided value at a cost that was significantly less money than our stated monthly budget.
- In the remaining eight of 31 covert tests, the sales representatives engaged in potentially deceptive marketing practices while we were posing as customers with pre-existing conditions, by omitting or misrepresenting information about the products they were selling.<sup>27</sup> While conducting the covert tests, we were provided with applications containing terms and disclosures about the purchase that we were required to sign electronically. However, the oral descriptions provided by the sales representatives did not always align with these terms and disclosures. We plan to refer these eight cases of potential deceptive marketing practices to the FTC and corresponding state insurance commissioners' offices as appropriate.

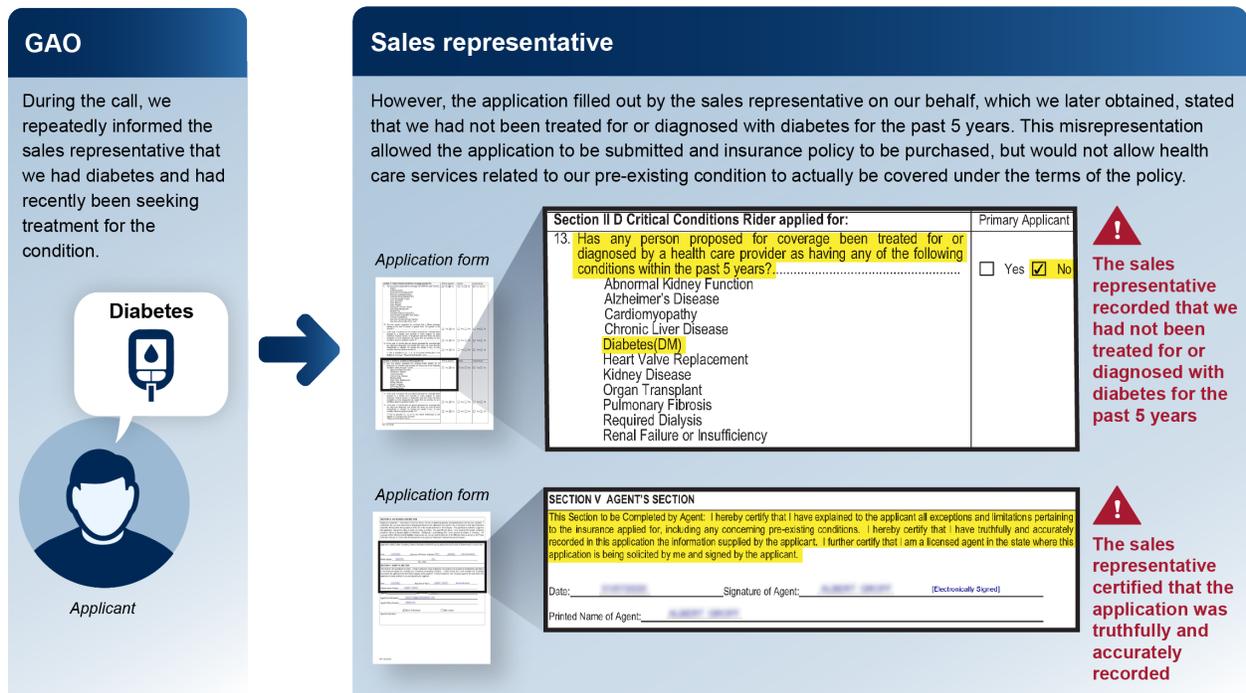
---

<sup>27</sup>In performing our 31 covert tests, we purchased a total of eight limited benefit health insurance plans and one health care sharing ministry membership across nine tests. For further details on the covert tests and the products we purchased, see Enclosure.

- For example, one sales representative told us that we were purchasing a comprehensive health insurance plan, but instead sold us two limited benefit insurance plans. During the call, we repeatedly informed the sales representative that we had diabetes and had recently been seeking treatment for the condition. However, the application filled out by the sales representative on our behalf, which we later obtained, stated that we had not been treated for or diagnosed with diabetes for the past 5 years. This indicates that the broker may have intentionally falsified information on the application, which allowed the application to be submitted and the insurance policy to be purchased, but would not allow health care services related to our pre-existing condition to actually be covered under the terms of the policy. Figure 1 illustrates where the sales representative falsified information on our application. Further, during this call, the sales representative told us that the plan's pre-existing condition limitations only applied to people who were pregnant or had cancer, but plan documents we later obtained as part of our purchase showed that pre-existing condition limitations would also apply to treatment for diabetes.

**Figure 1: Illustration of Falsified Information on Application for Insurance**

**Sales representative may have intentionally falsified information on the application**



Source: GAO analysis of covert phone call and application materials. | GAO-20-634R

- In another example, a sales representative for another company told us multiple times that the plan would cover our diabetes and necessary medication, including insulin. However, plan documents we obtained after purchase stated that pre-existing conditions and prescription drug costs were not covered by the plan. While the sales representative acknowledged the plan was not comprehensive, the representative described it as a typical health insurance plan similar to coverage offered by employers. However, the representative sold us a limited benefit health insurance supplement and a vision and dental discount program,

which we had not sought. Additionally, when we asked the name of the insurance carrier, the representative instead told us the name of the plan itself instead of the insurance company.

While the results of our covert tests cannot be generalized to all sales representatives, any particular state, or the PPACA-exempt health care industry at large, they illustrate how sales representatives in some cases engaged in potentially deceptive marketing practices that could lead a consumer to make poor decisions with the potential to incur significant and unexpected costs if plans purchased do not meet their health coverage needs. The enclosure provides additional details on each of the 31 covert tests we performed. To view selected video clips of these covert tests, go to <https://www.gao.gov/products/GAO-20-634R>.

### **Agency Comments**

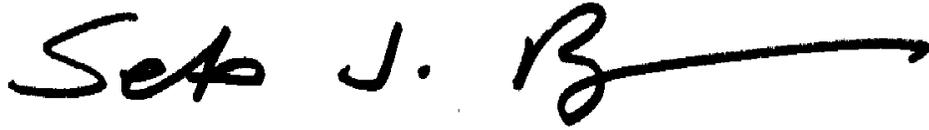
We provided a draft of this product to FTC, HHS, and NAIC for comment. FTC, HHS, and NAIC provided technical comments that we incorporated as appropriate. HHS also provided written comments, which are attached as enclosure II.

In its comments, HHS stated that it plans to conduct a review of sales representatives who we identified as engaging in potentially deceptive marketing practices to determine whether they are registered with the PPACA federal exchange and take action as appropriate. HHS also described steps it takes to validate the state licenses of sales representatives who are registered to work with the exchange and noted that these sales representatives sign agreements that prohibit them from providing misleading or false information to consumers or to the exchange. HHS also stated that STLDI plans offer another option for consumers facing rising costs of PPACA-compliant plans and noted our finding that sales representatives we identified as engaging in potentially deceptive marketing practices did not offer or sell STLDI plans. With the scope of our review, we did not evaluate HHS's efforts to validate the selected sales representatives' licenses or assess health insurance costs and other factors that may lead individuals to select STLDI or other PPACA-exempt plans.

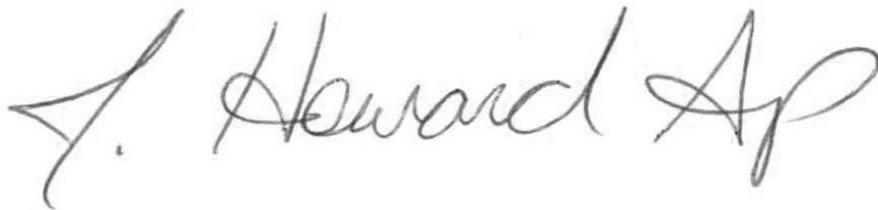
- - - - -

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to appropriate congressional committees, the Chairman of the Federal Trade Commission, the Administrator of CMS, the Chief Executive Officer of the National Association of Insurance Commissioners, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact Seto J. Bagdoyan at (202) 512-6722 or [bagdoyans@gao.gov](mailto:bagdoyans@gao.gov), or Howard Arp at [arpj@gao.gov](mailto:arpj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report were Robert Graves (Assistant Director), Jonathon Oldmixon (Assistant Director), Scott Clayton (Analyst-in-Charge), Barbara Lewis, Maria McMullen, James Murphy, George Ogilvie, Ramon Rodriguez, Daniel Silva, Rachel Svoboda, and Elizabeth Wood.

A handwritten signature in black ink that reads "Seto J. Bagdoyan". The signature is stylized, with the first letters of each name being large and prominent. A long horizontal line extends from the end of the signature to the right.

Seto J. Bagdoyan  
Director of Audits; Forensic Audits and Investigative Service

A handwritten signature in black ink that reads "Howard Arp". The signature is written in a cursive, flowing style.

Howard Arp  
Director of Investigations; Forensic Audits and Investigative Service

Enclosures – 2

**Enclosure 1**

The table below describes the results of 31 covert tests (i.e., undercover phone calls) we performed from November 2019 through January 2020, posing as individuals needing to purchase health insurance to cover pre-existing conditions. For tests performed outside the federal health insurance exchange 2020 open enrollment period of November 1, 2019 – December 15, 2019, we explained that we had recently moved to a new state so that we would trigger a Patient Protection and Affordable Care Act (PPACA) Special Enrollment Period, and therefore, would be eligible to purchase a PPACA-compliant plan. During these covert tests, we stated that we had pre-existing conditions, such as diabetes or heart disease, to see if the sales representative would direct us to a comprehensive PPACA-compliant plan, or to a PPACA-exempt plan that does not cover what we requested. As part of these tests, we observed whether sales representatives engaged in potentially deceptive practices, such as making false or misleading statements about coverage or omitting material information about coverage. The results of our covert testing are presented below by test outcome and are illustrative only and not generalizable to any specific insurance brokerage or agency, state, or the PPACA-exempt health insurance industry at large.

**Table 1. Results of Covert Phone Tests to Insurance Sales Representatives When Contacted by Individuals Claiming to Have Pre-existing Conditions**

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
1	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease <sup>a</sup>	No coverage purchased	 <p>The sales representative appropriately referred us to a Patient Protection and Affordable Care Act (PPACA)-compliant plan. Specifically, during the call, the sales representative stated that a short-term insurance plan would not provide coverage for us due to our pre-existing condition. The representative further explained the steps we should take to obtain the proof necessary to qualify for a Special Enrollment Period in order to buy a PPACA-compliant plan outside of open enrollment.</p>
2	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative told us PPACA plans covered pre-existing conditions, compared the benefits and costs of several options, and emailed us a summary of benefits to review.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
3	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The representative told us that we would not qualify for short-term health insurance because of our pre-existing condition. The representative told us a PPACA plan would provide coverage for our pre-existing condition, noted that our recent move to a different state would qualify us to obtain PPACA coverage outside the open enrollment period, and provided us with contact information for the PPACA federal exchange.</p>
4	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative recommended we consider a PPACA plan first to cover our pre-existing condition and told us the plans he sold would not cover our pre-existing condition until after 12 months.</p>
5	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative recommended a PPACA plan that would cover our pre-existing condition and informed us that we were eligible to receive federal subsidies that would lower the cost of our monthly premium due to our stated low income. A different representative we spoke with during the call also informed us that non-PPACA plans would not cover our pre-existing condition.</p>
6	Test performed during the federal health insurance exchange 2020 open enrollment period, with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative informed us that we qualified for federal PPACA subsidies due to our stated low income and stated that, unlike short-term plans, PPACA plans could not disqualify us because of our pre-existing condition. The representative also compared the benefits and costs of several options, and emailed us written information to review.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
7	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative stated that he could sell us a short-term plan, but he wanted to ensure we found a plan that covered our pre-existing condition and provided us with contact information for the PPACA federal exchange.</p>
8	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative explained that short-term insurance wouldn't cover our pre-existing condition and recommended we contact the PPACA federal exchange for a health insurance plan that would cover it.</p>
9	Test performed during the federal health insurance exchange 2020 open enrollment period, with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with said we would not qualify for the plans offered due to our pre-existing condition and provided us with PPACA federal exchange contact information for a plan that would cover it.</p>
10	Test performed outside the federal health insurance exchange 2020 open enrollment period, with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with explained that our recent move qualified us to enroll in a PPACA-compliant plan outside of open enrollment and told us to visit the PPACA federal exchange web site.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
11	Test performed during the federal health insurance exchange 2020 open enrollment period, with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with informed us that we may qualify for a federal subsidy if we enrolled for a PPACA plan through the federal exchange and provided us information on how to contact the exchange.</p>
12	Test performed outside the federal health insurance exchange 2020 open enrollment period, with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with said that she did not recommend a short-term plan due to our pre-existing condition and told us that a PPACA plan would be the best option for us, explaining that our recent move qualified us to purchase a plan outside of open enrollment.</p>
13	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative told us that we may be eligible for federal subsidies due to our stated low income and advised us to contact the PPACA federal exchange. The representative told us that we would not qualify for a short-term insurance plan due to our pre-existing condition and also informed us that our condition would not be covered in the event that anyone else tried to sell us such a plan.</p>
14	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with informed us that the insurance she sold would not be our best option due to our pre-existing condition and recommended we contact the PPACA federal exchange.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
15	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The representatives we spoke with recommended that we contact the PPACA federal exchange and explained that we likely would qualify to enroll outside of open enrollment because of our recent move. One sales representative informed us that short-term plans would not be good for us due to our pre-existing condition.</p>
16	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with recommended that we obtain a PPACA plan if we had a pre-existing condition, and assisted us with determining whether we would potentially qualify to receive federal subsidies to help pay for the plan.</p>
17	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative recommended a PPACA plan, stating it would cover pre-existing conditions, and transferred us to a PPACA federal exchange representative.</p>
18	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with provided cost and benefit information for PPACA plans and e-mailed us information about them. The representative did not recommend a short-term plan due to our pre-existing condition.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
19	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative told us that a PPACA plan would cover our pre-existing condition and that short-term plans would not. The representative checked costs and benefits of multiple plans on the federal PPACA exchange, told us that our recent move qualified us to enroll outside of open enrollment, and provided us with contact information for the PPACA federal exchange.</p>
20	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative stated because of our recent move we would likely qualify for a PPACA plan outside of open enrollment, referred us to a PPACA plan specialist due to our pre-existing condition, and told us that while he sold short-term plans, a short-term plan would not immediately cover our pre-existing condition.</p>
21	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative appropriately referred us to a PPACA-compliant plan. The sales representative we spoke with told us the short-term plans she sold did not cover prescription drugs or pre-existing conditions and were not PPACA-compliant, and recommended that we contact the PPACA federal exchange.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
22	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	Limited benefit plan	 <p>The sales representative did not appear to engage in deceptive marketing practices, but was not clear in the explanation of certain information provided to us. The representative accurately described his recommended policy as a non-PPACA indemnity insurance plan and described pre-existing condition limitations that would prevent us from immediately receiving coverage. The representative also provided us with the opportunity to review plan documents for 7 days after signing the application prior to being billed.</p> <p>The representative stated that the prescription discount program he was enrolling us in did not generally cover name brand medications. When we inquired about the potential need for name-brand medications, he told us he would add “prescription coverage” to our plan. However, documents we later obtained indicate that we were enrolled in two non-insurance prescription discount programs, which the representative previously acknowledged would generally not cover name-brand medications. The representative initially stated that he could not speak to whether we would potentially be prescribed name brand medications in the future because he was not a doctor, but in a subsequent phone call told us that it was unlikely. The representative also did not disclose our total cost included a membership that provides individuals with service and product discounts.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
23	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	No coverage purchased	 <p>The sales representative did not appear to engage in deceptive marketing practices, but was not clear in the explanation of the type of plans that were being offered. The customer service representative recommended a PPACA plan due to our pre-existing condition. The representative stated that the plan also included an accidental and critical illness benefit to cover the financial gap that could be created by the plan's deductible and high out-of-pocket maximum, as well as a basic dental plan. Information we later obtained showed that the PPACA plan was free of cost due to our stated income and that 100 percent of the price quoted in the call was for the additional gap coverage and dental plans. However, the representative did not clearly disclose that we could obtain comprehensive PPACA coverage at no cost. He also did not clarify that the additional coverage he sold us was optional and would cost additional money until we specifically requested this information and spoke to the representative in a follow-up phone call made after reviewing the documents we obtained. The representative explained that this optional coverage provided value at a cost that was significantly less money than our stated monthly budget.</p>
24	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	Limited benefit plan	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. Specifically, the representative stated the plan would cover our pre-existing condition, but did not inform us that illness resulting from pre-existing conditions would not be covered for 12 months or that there would be a limit on covered doctor's visits. The representative described the plan he was selling as "a national PPO" that was "a type of insurance" but did not make it clear it was not PPACA-compliant insurance.<sup>b</sup> During the call, the agent denied our multiple requests to provide documentation describing the plan benefits prior to purchase. After purchasing the plan and reviewing plan documents, we found that the representative had sold us a variety of different products – none of which were major medical insurance. These products included a non-insurance prescription discount program, a limited benefit indemnity insurance plan, and a membership that provides individuals with non-insurance services and product discounts.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
25	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	Limited benefit plan	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. For example, the representative stated that diabetes was covered by the plan and that our diabetes was not a pre-existing condition. However, documents we later obtained indicated that our diabetes would be considered a pre-existing condition, and would not be covered for 12 months under the limited benefit plan that we were sold. The representative quoted benefits that did not match information in the documents we received. For example, the representative said our coverage included doctors' visits but did not disclose we were limited to three office visits per plan year.</p> <p>Additionally, we were not informed that we were being enrolled and charged monthly for membership in an association that offers discounts and other benefits or that we were enrolling in a limited benefit health insurance plan. Plan documents we later obtained showed that we were also enrolled in two non-insurance prescription discount programs, though the representative did not inform us that this was the case during the call.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
26	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	Limited benefit plan	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. The representative told us that he was enrolling us into a health plan that was subsidized by the state due to our low income, and that the state required us to purchase supplemental insurance in order to receive these benefits. Moreover, the representative told us that the state subsidy was not available to anyone if they received comprehensive medical insurance. However, when we subsequently asked another representative for clarification on this issue, the representative told us that the state had nothing to do with the product we were purchasing and that the state was not providing any financial assistance.</p> <p>During this call, the initial sales representative also stated that the limited benefit insurance plan he recommended was better than a PPACA plan and quoted benefits that did not match information in the documents we received. For example, the representative stated that the plan would completely cover emergency room visits, but plan documents showed that the plan does not have any benefits for emergency room treatment, and the plan's certificate of coverage does not guarantee the amount we would be required to pay for health care visits that the representative quoted us. The representative also did not inform us that there would be no coverage for our pre-existing condition for 12 months following the effective date of our plan or that the plan would limit us to three physician visits per coverage year. Further, a representative also told us that we would receive free diabetic medication, but we were enrolled in two non-insurance prescription discount programs that would not provide us with our prescription for free.</p> <p>During the call, this representative did not inform us that we were being enrolled in an accidental death and dismemberment policy or joining a small business advocacy, education, and service association. Before completing the purchase, a representative told us that we did not need to read the policy application prior to signing and enrolling because it did not contain information that pertained to our coverage.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
27	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes.	Limited benefit plan	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. Specifically, the representative told us multiple times that the plan would cover our diabetes and necessary medication, including insulin. However, plan documents we obtained after purchase stated that pre-existing conditions and prescription drug costs were not covered by the plan.</p> <p>While acknowledging that the plan was not comprehensive, the representative described it as a typical health insurance plan similar to coverage offered by employers. However, the representative sold us a limited benefit health insurance supplement and a vision and dental discount program. When we asked the name of the insurance carrier, the representative instead told us the name of the plan itself instead of the insurance company behind it. The representative also would not provide us with documentation describing the plan's benefits prior to our enrollment.</p>
28	Test performed during the federal health insurance exchange 2020 open enrollment period, with the pre-existing condition of diabetes	Health care sharing ministry	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. The representative falsely referred to the product as an insurance plan that met the PPACA requirements and that was sold by an insurance carrier and did not state that it was a non-insurance health share plan. Unlike a PPACA plan, under this health share plan there is a 12 month pre-existing condition waiting period on inpatient hospitalization.</p> <p>After we provided an income that would allow us to receive subsidies and asked about PPACA coverage, the representative stated that it was difficult to find insurance and available plans in our state, and that the plan he was offering was what was available. However, we independently identified several PPACA plans that were available to our applicant in the state at that time. The representative also told us that we would be required to enroll in the plan prior to receiving documents describing the policy's coverage.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
29	Test performed outside the federal health insurance exchange 2020 open enrollment period, with the pre-existing condition of diabetes	Limited benefit plan	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. During the call, we repeatedly informed the representatives we spoke with that we had diabetes and had recently been seeking treatment for the condition. However, the application filled out by the representative on our behalf, which we obtained after the call, incorrectly stated we had not been treated for or diagnosed with diabetes for the past 5 years. This misrepresentation allowed the application to be submitted and insurance policy to be purchased, but would not allow health care services related to our pre-existing condition to actually be covered under the terms of the policy.</p> <p>The sales representative described our purchase as one comprehensive health insurance plan, but plan documents we later obtained indicate we purchased two limited benefit insurance plans. Further, during this call, the sales representative told us that the plan's pre-existing limitations only applied to people who were pregnant or had cancer, but plan documents we later obtained showed that pre-existing condition limitations would also apply to treatment for our diabetes for both the critical illness and the wellness and preventive plans we were sold. The sales representative also omitted additional limitations of the products being sold, such as the limited number of primary care visits that would be available to us.</p> <p>Prior to speaking with the sales representative who sold us the health plans, a different representative incorrectly informed us that we would not be able to obtain an PPACA plan, that PPACA coverage was expensive, and that it would serve no purpose to try to find one on our own because other representatives would tell us that PPACA was no longer in effect as of 2020, which was not correct. Specifically, during this call, we told the representative we had recently moved into a new state, indicating that we were likely eligible to enroll in a PPACA plan outside the open enrollment period. The sales representative we later spoke to, however, correctly informed us that moving into a new state qualified us to enroll outside of Open Enrollment.</p> <p>The sales representative also told us that private insurance was a better option due to costs associated with a PPACA plan and recommended a plan he stated had better pricing. The representative did not provide us with written information about his recommended plan prior to enrollment.</p> <p>We were ultimately enrolled in a limited benefit preventative and wellness insurance plan, a limited benefit health insurance supplement, a generic medication prescription plan, and a membership that provides individuals with service and product discounts.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
30	Test performed outside the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of diabetes	Limited benefit plan	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. For example, during the call, we informed the representative that we had been admitted to the hospital the prior week and suffered from diabetes. In response, the representative told us that his plan's pre-existing condition limitations did not apply to our diabetes because we were healthy and stated that this plan was offered to healthy individuals. However, plan documents we obtained after enrollment indicate that our diabetes would be considered a pre-existing condition under the plan, and plan limitations would apply, because we received medical treatment for it during the previous 90 days. The representative also stated that we could visit a provider an unlimited number of times, but plan documents stated that such visits were limited to three visits every 12 months. The representative also told us that insulin for our diabetes would be covered by the policy, but plan documents state that prescription medication is excluded from coverage.</p> <p>The representative enrolled us in a benefit association offering a limited benefit indemnity insurance plan. The representative would not provide us with documentation describing the plan prior to enrollment, and stated that we had to purchase the plan on the day of our call if we wanted to be guaranteed the quoted price.</p>

Test Number	Covert Scenario	Type of Coverage GAO Purchased	Test Outcome
31	Test performed during the federal health insurance exchange 2020 open enrollment period with the pre-existing condition of heart disease	Limited benefit plan	 <p>The sales representative we spoke with engaged in potentially deceptive marketing practices by misrepresenting and omitting information. The representative was inconsistent on her explanation of the plan, first stating that the plan included discounts that were in effect immediately while covered benefits for our pre-existing condition would not be covered right away, but later stating without qualification that half the cost of pre-existing condition medical visits would be covered by the limited benefit indemnity insurance plan she sold us. According to the plan documents, we would be required to wait 12 months to receive benefits from an illness resulting from our diabetes. During the call, the representative also stated that the PPACA federal exchange agents did not know how insurance works and stated that we could not receive major medical insurance sold by her because we had a pre-existing condition, but noted that the PPACA federal exchange may be a good option for us because it would cover our pre-existing condition.</p> <p>The representative also did not inform us that we were being enrolled as a member in a service and product discount association and that prescription coverage consisted of two non-insurance discount programs. The representative did not provide us with policy coverage documents prior to the enrollment process, stating that we would only receive complete policy details after we had submitted payment.</p>

Source: GAO analysis of covert phone call recordings and associated transcripts. | GAO-20-634R

<sup>a</sup>The federal health insurance exchange 2020 open enrollment period ran from November 1, 2019, to December 15, 2019, for insurance coverage starting on January 1, 2020. Individuals can enroll in a 2020 PPACA plan after the open enrollment period by qualifying for a Special Enrollment Period due to certain triggering events, including gaining a dependent through marriage, birth, or adoption or permanently moving into a new area and therefore gaining access to new Qualified Health Plans.

<sup>b</sup>Preferred Provider Organizations (PPO) are types of health plans that contract with medical providers, such as hospitals and doctors, to create a network of participating providers. PPOs generally allow enrollees to obtain care from any provider, but charge enrollees less if they obtain care from the plans' networks of preferred providers.

## Enclosure 2: Written Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

August 6, 2020

Mr. Seto Bagdoyan  
Director of Audits  
Forensic Audits and Investigative Service  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Mr. Bagdoyan:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "*PRIVATE HEALTH COVERAGE: Results of Covert Testing for Selected Offerings*" (Job Code 103845/GAO-20-634R).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

**Sarah C. Arbes -S**  
Digitally signed by Sarah C. Arbes -S  
Date: 2020.08.06 17:24:02 -04'00'  
Sarah C. Arbes  
Assistant Secretary for Legislation

Attachment

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED – PRIVATE HEALTH COVERAGE: RESULTS OF COVERT TESTING FOR SELECTED OFFERINGS (GAO-20-634)**

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

HHS is committed to improving access to affordable health coverage. HHS' efforts to expand access to affordable coverage, such as short-term, limited-duration insurance, offer much-needed options, particularly for many middle-class Americans without employer-sponsored coverage who are not eligible for subsidies under the Patient Protection and Affordable Care Act (PPACA). Average benchmark Exchange premiums in states that used HealthCare.gov increased by 62 percent from 2016 to 2020 and, in response, millions of unsubsidized Americans have fled the PPACA-compliant individual market;<sup>1</sup> over one million unsubsidized people left the market in 2018 alone.<sup>2</sup> For Americans without access to subsidized PPACA-compliant plans, short-term, limited duration insurance can offer an affordable coverage option. It is important to note that in none of the covert calls in which GAO identified that potentially deceptive marketing practices took place did the sales representative actually offer or sell a short-term, limited duration insurance plan to the consumer.

States are responsible for overseeing the marketing and sale of PPACA-exempt health arrangements. As GAO noted, HHS does not have the authority to conduct oversight of PPACA-exempt plans. However, HHS staff work with state insurance commissioners to confirm that insurance sales representatives registered to work with the Exchange, which include those who sell both PPACA-compliant and PPACA-exempt plans, have an active state license to sell insurance. In addition, insurance sales representatives, often referred to as agents and brokers, are licensed and regulated by states rather than the federal government. Licensed agents and brokers working with the Federal Exchange must complete registration and training each year with HHS prior to enrolling consumers in Exchange plans. As part of the registration process, HHS verifies their identity and regularly validates their state health license to assist consumers. While the Exchange has no explicit agent and broker restrictions on enrolling consumers in short-term, limited-duration insurance plans or other types of coverage, when a consumer requests assistance via Help On Demand, HHS requires them to assist the consumer with either an Exchange plan or Medicaid/CHIP. The agreements signed by agents and brokers registered to work with the Exchange also include additional requirements, such as prohibiting the provision of misleading or false information to consumers or to the Exchange.

HHS takes consumer protection and program integrity very seriously. While GAO's report does not indicate whether any of the sales representatives contacted by covert callers were registered with HHS to work with the Federal Exchange, HHS plans to review any sales representatives who GAO identified as engaging in potentially deceptive marketing practices to determine if they are registered with the Exchange. If they are registered, HHS will take appropriate action within the scope of our authority.

---

<sup>1</sup> CMS, "Plan Year 2020 Qualified Health Plan Choice and Premiums in HealthCare.gov States," October 22, 2019. <https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/2020QHPPremiumsChoiceReport.pdf>

<sup>2</sup> CMS, "Trends in Subsidized and Unsubsidized Enrollment," August 12, 2019. <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Trends-Subsidized-Unsubsidized-Enrollment-BY17-18.pdf>

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

---

---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<https://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <https://www.gao.gov> and select "E-mail Updates."

---

## Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <https://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

---

## Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).  
Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#).  
Visit GAO on the web at <https://www.gao.gov>.

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <https://www.gao.gov/fraudnet/fraudnet.htm>

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Congressional Relations

Orice Williams Brown, Managing Director, [WilliamsO@gao.gov](mailto:WilliamsO@gao.gov), (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

---

## Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707 U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



Please Print on Recycled Paper.