

## **S. 1002, the Junk Plan Accountability and Disclosure Act of 2021**

Introduced by Senators Casey, Baldwin and Stabenow

The Affordable Care Act (ACA) was an important step in expanding access to quality, affordable health insurance to all Americans. When it was signed into law, it established several important consumer protections for individuals who enroll in health insurance. For the first time, insurance was prohibited from discriminating against consumers with a pre-existing condition. The law also placed important limits on out-of-pocket expenses and established a set of Essential Health Benefits, key services that all health insurance plans must cover.

While these protections have helped millions of Americans, there are still health care arrangements to which they do not apply. These so-called “junk” health insurance plans are varied, and can include excepted benefits plans, short-term, limited duration health insurance and health care sharing ministries. Unfortunately, the previous administration took steps to undermine open enrollment outreach for ACA compliant plans, and actively sought to encourage enrollment in junk health plans. These actions harmed consumers and increased their chances of ending up in non-comprehensive coverage.

An October 2019 oversight report from Senator Casey found that misleading advertisements through online search engines are also helping to funnel individuals into “junk” health insurance coverage. Often, these ads portray the junk coverage as comprehensive, or attempt to trick consumers into thinking that they link to a government site like Healthcare.gov. A follow up, secret shopper investigation from the Government Accountability Office proved that brokers and agents are enrolling consumers in junk plans by lying about what those plans cover. Clearly, Congress must take action to promote increased accountability and disclosure for junk health care arrangements, as well as to ensure that consumers are aware of their options for comprehensive coverage.

The Junk Plan Accountability and Disclosure Act takes several steps to protect consumers against being misled into enrolling in a junk plan on the individual market:

### **FTC OVERSIGHT OF FALSE OR MISLEADING ONLINE ADS**

The Federal Trade Commission’s (FTC’s) authority over misleading advertisements in the health insurance space is currently limited. This legislation will clarify and strengthen FTC’s authority over online health coverage ads that are designed to mislead the consumer into believing that a particular form of coverage offers more comprehensive benefits than it actually does, is less expensive than it actually is or that it is provided through a government sponsored site, like Healthcare.gov, when it is not. This legislation specifies that FTC may take enforcement action against the entity that paid to post the advertisement, and it gives FTC the authority to provide “civil penalties in the first instance” against an entity that sponsors a misleading ad. It also allows the individual states to enact and enforce their own their own protections against misleading online advertisements for health insurance, as long as those measures do not interfere with federal enforcement.

## NEW WARNING AND DISCLOSURE REQUIREMENTS FOR JUNK HEALTH PLANS

The Junk Plan Accountability and Disclosure Act also seeks to ensure that consumers know what they are enrolling in before they sign up, and that they are made aware of where they can find comprehensive health insurance coverage. This bill will require junk plans to provide “plain language” enrollment material to consumers prior to enrollment. It will also require enrollment material to include a warning cover page that informs the consumer that the plan is not comprehensive, and instructs them on how to find the ACA marketplace. It will require consumers to sign this warning page before they enroll.

Under this legislation, junk plans will be required to keep a record proving that the consumer signed the warning page. If they cannot prove that the consumer signed, and the consumer successfully challenges them over the plan’s refusal to cover a service, the plan will be required to provide coverage for that service equivalent to in-network coverage for the second lowest cost silver plan in the ACA marketplace at the time of enrollment.

This legislation will also require junk plans to issue annual enrollment reports to the federal government, unless they already submit this information to the relevant authorities in each state where they operate. Those reports will include the total number of consumers enrolled in the junk plan, whether the plan used an insurance broker, the number of consumers enrolled through that broker, the total amount of claims submitted to the plan over the past year and the total amount of claims denied by the plan during that time. The plan will also be required to submit information on any marketing materials it used for the previous year.

## NEW OPEN ENROLLMENT OUTREACH AND EDUCATION REQUIREMENTS

The Junk Plan Accountability and Disclosure Act also will ensure that the federal government lives up to its obligation to conduct adequate education and outreach efforts for consumers every year during open enrollment season. This bill will annually appropriate \$100 million for ACA outreach and educational activities, and specify that this funding cannot be used to promote non-ACA coverage. It will also restore funding for the ACA’s Navigator program, establish federal reporting requirements for open enrollment and create a separate open enrollment outreach and education grant program for states with state-based marketplaces, funded at \$50 million annually. Together, these provisions will prevent future administrations from engaging in some of the harmful sabotage efforts that the Trump Administration carried out against the ACA, such as when it slashed funding for ACA enrollment outreach.

### **Endorsements**

The Junk Plan Accountability and Disclosure Act has been endorsed by a broad array of health care and patient advocacy organizations. A list is included on the final page of this document.

### **Cosponsorship**

To cosponsor the Junk Plan Accountability and Disclosure Act, please contact Doug Hartman with Senator Bob Casey’s office at [Doug\\_Hartman@help.senate.gov](mailto:Doug_Hartman@help.senate.gov).

## List of Endorsements

The following organizations have endorsed the Junk Plan Accountability and Disclosure Act:

- Aids Institute
- American Diabetes Association
- American Heart Association
- American Kidney Fund
- Asthma and Allergy Foundation of America
- Cancer Support Community
- Center for Health Law and Policy Innovation
- Crohn's & Colitis Foundation
- Cystic Fibrosis Foundation
- Epilepsy Foundation
- Families USA
- Hemophilia Federation of America
- Leukemia & Lymphoma Society
- National Alliance on Mental Illness
- National Hemophilia Foundation
- National Organization for Rare Disorders (NORD)
- National Patient Advocate Foundation
- Susan G. Komen