



UNDER-COVERED:

How “Insurance-Like” Products Are Leaving Patients Exposed

EXECUTIVE SUMMARY

Our 30 organizations, representing millions of patients and consumers living with serious, acute, and chronic health conditions, call on lawmakers to address the proliferation of health plans that discriminate against people with pre-existing conditions. These non-compliant plans don’t adhere to protections contained in the Affordable Care Act and weaken the ACA by 1) exposing consumers to significant financial risk, 2) segmenting the individual market risk pool and 3) unnecessarily inflating insurance premiums for people who rely on comprehensive coverage provided through the ACA marketplaces.

Non-compliant plans fail to provide the same degree of certainty and security for patients and consumers as ACA-compliant health insurance. Yet due to the unregulated nature of these plans, a full picture of their impact is unknown. This report compiles what is known about the most common kinds of non-compliant plans and makes

recommendations for Congress, the administration, and state leaders on how to act to improve patient protections for millions living with serious and chronic health conditions. The plans examined include:

- Short-Term, Limited-Duration Insurance
- Health Care Sharing Ministries
- Farm Bureau Plans
- Grandfathered Plans
- Multiple Employer Welfare Arrangements and Association Health Plans
- Spurious single-employer self-insured Group Health Plans
- Minimum Essential Coverage-Only Plans
- Excepted Benefit Plans

Key Recommendations

- **Revise Federal Regulations Related to Short-Term, Limited Duration Insurance (STLDI) and Codify Protections into Law:** At a *minimum*, the administration should work to restore the October 2016 regulation that prohibited STLDI plans from extending beyond three months. The administration should limit renewability and close the “stacking” loophole, halt sales of STLDI plans during open enrollment, limit sales via Internet and phone, establish a prohibition on rescissions, improve disclosures, and require plans and brokers to report STLDI enrollment and plan data. States and Congress should codify the 3-month duration limit and additional provisions in statute in order to protect patients and consumers.
- **Prohibit the Use of Brokers for Enrollment:** Congress should prohibit brokers from selling health-care sharing ministry plans and other insurance-like products. Using brokers to enroll members contributes to consumer confusion and increases enrollment in inadequate coverage.
- **Rescind the 2018 Association Health Plan (AHP) Rule:** The administration should move immediately to rescind the 2018 AHP rule. The rule, which was blocked in substantial part by a federal court, is unlawful, endangers consumers, and undermines the functioning of the ACA-compliant individual and small group markets. A new rule should also prohibit sole proprietors from enrolling as a “small group” and strengthen licensing requirements for self-funded AHPs.
- **Strengthen Licensing Requirements for AHPs:** State regulators should require self-funded AHPs to satisfy the same licensure and financial standards required of commercial insurers.
- **Revise the Federal Definition of “Insurance”:** Congress should revise the federal definition of insurance to curtail the inappropriate sale, marketing, and development of insurance-like-products that jeopardize patient health and safety. This should capture any products that are marketed to consumers as—or resembling—health insurance, such as health care sharing ministries, farm bureau plans, association health plans, and some limited-indemnity plans.
- **Investigate Spurious Single-Employer ERISA Plans Arrangements:** There has been a long history of attempts to avoid state insurance regulation by exploiting the ERISA exemption. Congress should thoroughly investigate arrangements that pose risks to patients and consumers. Federal regulators should thoroughly investigate arrangements that pose risks to patients and consumers.
- **Require Issuers Selling Excepted Benefits to Confirm Enrollee is Covered by Comprehensive Coverage and Prohibit the Sale of Excepted Benefits that Mimic Fully-Regulated Insurance:** At the federal level, Congress should provide clear authority to issue regulations that require issuers to confirm enrollees are covered by comprehensive coverage before selling excepted benefit policies. Additionally, Congress should amend federal law governing excepted benefits to clarify that excepted benefits are exempt from regulation only to the extent such benefits do not duplicate, supplant, or mimic the benefits provided by fully regulated coverage.
- **Rescind the Grandfathered Plan Rule:** The Departments of HHS, Labor, and Treasury should withdraw the rule on grandfathered group health plans finalized in January 2021, which weakens existing regulations and further degrades patient protections.
- **Increase Transparency & Data Reporting for HCSMs:** HCSMs should be required to disclose plan data, marketing practices, broker incentives, enrollment information, and complaint information to state and federal regulators. Specifically, state regulators must have information on HCSMs marketing in their states to evaluate whether their operations constitute the business of insurance, to watch for deceptive marketing, and to monitor enrollment.
- **Ensure sufficient oversight of ERISA plans, including AHPs and MEWAs:** State and Federal regulators should commit resources to ensure robust federal oversight of these entities and improved coordination with state regulators.
- **Require Strong Disclosures of Limited Benefits:** Policymakers should require plans to include disclosures that clearly define the limits of coverage and disadvantages of these plans, whether bought alone or in coordination with other coverage. Brokers should be required to first screen applicants for eligibility for financial assistance to buy an ACA plan or to enroll in Medicaid.
- **Maintain or Reestablish Authority over Farm Bureau Plans:** States where these plans exist should repeal the laws carving them out of regulation. States should maintain (or reestablish) regulatory authority over health coverage offered by the Farm Bureau and should not exempt such coverage from the state insurance code.