



# EVERY TEXAN

Formerly Center for Public Policy Priorities

To: House Committee on Insurance  
From: Stacey Pogue, senior policy analyst with Every Texan (formerly CPPP)  
Date: April 13, 2021  
Re: Comments in support of HB 2118, rein in bad actors giving deceptive information on health coverage

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Reports from Texas consumers and research show that people must wade through an alarming amount of misleading and deceptive information in the market for alternative health coverage products.

Broadly, there are 2 types of private health coverage available to people who do not get coverage through their jobs: traditional health insurance and alternative plans. Traditional health insurance plans marketed to individuals must provide comprehensive benefits available regardless of whether a consumer has a preexisting medical condition. Alternative health plans or alternative arrangements are not held to this standard.

As sales of alternative coverage have increased in recent years, so have reports of misleading and deceptive sales practices, generally through sales over the phone. Some alternatives rely heavily on telemarketing, using scripts designed to obscure the plan's limited coverage or lead consumers to believe, incorrectly, that it is Affordable Care Act-compliant.<sup>1</sup> Often these plans refuse to provide any details on benefits in writing until after a consumer signs up and makes a payment.<sup>2</sup>

An alarming recent GAO report found that 1-in-4 secret shopper calls to sales reps for alternative plans included deceptive information serious enough to warrant referral to the Federal Trade Commission for investigation.<sup>3</sup> In these calls, GAO staff posed as a consumer with a preexisting condition like diabetes who wanted coverage for that specified condition. In 25% of calls, GAO was told a plan would cover the preexisting condition, but the plan documents sent later said otherwise. In many of these calls, sales representatives refused requests to provide details on coverage in writing before a payment was made. Many sales also included several add-ons products, like memberships to associations and prescription drug discount cards, not discussed with the consumer. A summary of the GAO findings is attached at the end of these comments.

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<sup>1</sup> Sarah Gantz, "A Philly woman's broken back and \$36,000 bill show how some health insurance brokers trick consumers into skimpy plans," *Philadelphia Inquirer*, November 14, 2019, <https://www.inquirer.com/health/consumer/limited-benefit-skimpy-health-plans-sales-pitch-20191114.html>; and Sarah Gantz, "Pa. woman was convinced she bought Obamacare insurance. She got scammed by a look-alike website," *Philadelphia Inquirer*, May 22, 2019, <https://www.inquirer.com/health/consumer/google-short-term-health-plans-20190522.html>.

<sup>2</sup> Jenny Deam, "Risky Business: Buying health insurance in the new age of deregulation," *Houston Chronicle*, November 27, 2019, <https://www.houstonchronicle.com/business/article/Risky-Business-Buying-health-insurance-in-the-14865415.php>

<sup>3</sup> Government Accountability Office, Results of Covert Testing for Selected Offerings, August 2020, <https://www.gao.gov/products/GAO-20-634R>.

The GAO report findings are consistent with other secret shopper studies from researchers and several media reports.<sup>4</sup> Secret shopper calls made in March 2020, found several salespeople for alternative coverage made misleading statements about COVID-19 related coverage in addition to coverage for pre-existing conditions.<sup>5</sup>

HB 2118 will ensure TDI can better protect consumers. It will both cut down on the misleading information common in this market and ensure TDI can take action against bad actors when a consumer files a complaint.

**Key Provision in HB 2118:**

1. Prohibits certain deceptive or misleading marketing. Sales reps cannot:
  - Say a plan provides benefits it doesn't.
  - Combine different types of products together into one transaction in a misleading manner.
  - Use terms associated with ACA coverage (like "Obamacare" or "essential health benefits") or major medical coverage ("PPO", "network," or "copay") in a misleading way.
  - Misrepresent the annual open enrollment period as applying to alternative coverage.
  - Misrepresent that a premium or price will change if a consumer does not buy right away.
  - Fail to explain how supplemental "excepted benefits" differ from traditional coverage.
  - Solicit sales in writing or over the phone without identifying an agent's name and national producer number, and calling but not leaving a voicemail message.
  - Using marketing materials that haven't been filed with TDI.
2. Requires phone sales reps to record calls marketing alternative benefits and make the recording, a transcript, or written solicitations available to TDI if requested.
3. Requires entities marketing alternative coverage to file marketing materials with TDI for information only.
4. Enhances enforcement tools. A sales rep who uses deceptive tactics and the issuer/entity they are acting on behalf of would be committing a deceptive trade practice under the Insurance Code or Business and Commerce Code and subject to remedies and sanctions, as applicable.

**Summary of GAO report on deceptive marketing of alternative coverage**

The Government Accountability Office (GAO) recently looked into sales of alternative products using secret shopper phone calls.<sup>6</sup> They posed as a consumer with a preexisting condition, like diabetes, who wanted coverage for that specific condition. They encountered an alarming amount of deceptive information. In 25% of their calls they found deceptive information serious enough to warrant referral to the Federal Trade Commission (FTC) for investigation. The basic pattern was the same across the

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<sup>4</sup> The Urban Institute, The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses, January 31, 2019, <https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses>; and see footnotes 1 and 2.

<sup>5</sup> USC-Brookings Schaeffer Initiative for Health Policy, "Misleading marketing of short-term health plans amid COVID-19," March 24, 2020, <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/03/24/misleading-marketing-of-short-term-health-plans-amid-covid-19/>.

<sup>6</sup> Government Accountability Office, "Private Health Coverage: Results of Covert Testing for Selected Offerings," August 2020, <https://www.gao.gov/assets/gao-20-634r.pdf>.

problematic calls: a sales rep would explicitly tell the GAO staffer that a plan would cover care for their preexisting condition, but after GAO paid and was sent the full plan documents, the contract clearly said otherwise.

GAO placed 31 secret shopper test calls:

- 21 resulted in a referral to an appropriate plan that covers preexisting conditions,
- 2 resulted in unclear or inconsistent information that didn't rise to the level of deceptive, and
- 8 calls (25% of all test calls) contained deceptive information and practices, referred to the FTC.

Specific deceptive practices encountered in 2 or more secret shopper calls included:

- Inaccurately saying a plan would cover a person's preexisting condition.
- Refusing to provide plan information to the consumer in writing before paying and enrolling.
- Saying a plan covered benefits it does not, such as emergencies and prescription drugs.
- Inaccurately providing the out-of-pocket costs for specific services, such as saying diabetes medication would be free under the plan.
- Describing or implying that the consumer is getting one, broader insurance product, without identifying separate, add-on products. An examination of documents sent after the sale revealed multiple add-on products were sold without being discussed in several of the secret shopper transactions. Add-on products included prescription discount cards, membership to associations that provide product discounts, accidental death and dismemberment policies; and vision and dental discount cards.
- Inaccurately saying that a person's specific preexisting condition wouldn't count as a preexisting condition under the plan.

Additional deceptive practices encountered in 1 secret shopper call included:

- Saying that if the plan was not purchased immediately, the price could change.
- Misrepresenting a health care sharing ministry as an ACA-compliant health insurance plan.
- Describing a limited benefit plan as typical health insurance, similar to an employer-sponsored plan.
- Being told that ACA coverage isn't available in the area after asking specifically about ACA coverage and providing a subsidy-eligible income.
- Saying there is no need to read the application before signing.
- Making incorrect statements on the application being filled out by the sales representative on behalf of the consumer.