

**Congress of the United States**  
**Washington, DC 20515**

December 19, 2017

Ted Nickel  
President  
National Association of Insurance Commissioners  
444 North Capitol Street NW, Suite 700  
Washington, DC 20001

Dear Mr. Nickel:

We are writing to express concern regarding recent reports of companies offering products on the individual market that may not comply with federal law, and which appear to put consumers at great financial risk. The Trump Administration's efforts to sabotage the health care system appear to have created opportunities for unscrupulous actors to sell stripped-down insurance plans that could leave families on the hook for tens of thousands of dollars in health care costs. We seek your help and guidance on ways to reduce the risks these so-called "skinny plans" pose for consumers.

The Affordable Care Act (ACA) addressed long-standing problems in the health insurance market, including the practice of insurance companies denying patients coverage for preexisting conditions, dropping coverage when patients became sick or hospitalized, and failing to cover essential services. Consumers now enjoy protection from these unfair practices.

However, recent reports indicate that some companies are avoiding or ignoring these requirements under the ACA by offering skinny plans that claim to be ACA-compliant, but do not offer the same consumer protections required for plans sold in the individual market.<sup>1</sup> For example, one company that offers such plans, Xpress Healthcare, claims that "[o]ur Xpress MEC Plans are an ACA Compliant, affordable, integrated solution that help employers and individuals avoid the penalties under [the ACA]."<sup>2</sup> Despite being marketed as an ACA-compliant plan, it appears that Xpress Healthcare is selling plans that fail to meet the ACA's basic consumer protections such as coverage of hospitalization and the prohibition against insurers setting annual or lifetime limits on coverage.<sup>3</sup> It is unclear whether companies offering these products in the individual market are in compliance with federal law.

In addition to these questionable marketing practices, it is unclear whether these companies are properly licensed under state law to sell these plans in the individual market.<sup>4</sup> Both Xpress MEC and another company, Apex Management Group, appear to be selling these insurance policies across the country, and have reportedly claimed that they do not need approval from state regulators to sell the plans.<sup>5</sup> Xpress Healthcare claims that these policies "are NOT

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<sup>1</sup> *Marketplace Confusion Opens Door To Questions About Skinny Plans*, Kaiser Health News (Nov. 27, 2017).

<sup>2</sup> Xpress Healthcare, *Free Yourself from Traditional Health Benefit Costs: Achieve New Heights with Xpress Healthcare's Minimal Essential Coverage Health Plans*, ([xhc.xpressenrollment.com/gmec/](http://xhc.xpressenrollment.com/gmec/)) (accessed Dec. 5, 2017).

<sup>3</sup> See note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

insurance.”<sup>6</sup> While there is significant variation in state insurance law, it certainly appears that these firms are selling health insurance, and we are concerned that they are attempting to use the claim of not selling insurance to evade state insurance regulations and consumer protections.

We also are concerned that consumers who sign up for these plans are being misled about whether the plans comply with ACA requirements, which could leave consumers without comprehensive coverage. The *New York Times* has reported on cases of insurance brokers fraudulently marketing these plans and failing to advise consumers about what they cover.<sup>7</sup> These cases reportedly include a heart attack victim who was left with \$900,000 in bills after his insurer refused to cover bypass surgery under his short-term plan, and a stroke victim who “was left with \$250,000 in unpaid medical bills because the policy did not cover prescription drugs and other basic treatment.”<sup>8</sup> The *Times* further reported that the companies that sell these types of plans “will sometimes rescind policies if an individual has high medical bills.”<sup>9</sup> These are precisely the types of situations the ACA’s consumer protections were designed to prevent.

The Trump Administration’s efforts to create an uncertain legislative and regulatory landscape pose significant challenges to the state regulation of insurance. These challenges could be exacerbated by the Administration’s actions to further undermine consumer protections under current law, such as pending regulations to allow for expanded use of association health plans and short-term policies. The Trump Administration’s expected actions will leave consumers at greater financial risk if they fall seriously ill, and will also further undermine the ACA’s individual market, which offers insurance that meets federal consumer protection standards. Widespread marketing of these cut-rate skinny plans to the healthiest consumers will further destabilize the individual market, resulting in higher premiums for anyone buying insurance on the market.

In light of these concerns, we request your help in mitigating financial risks for consumers and request a briefing and responses to the following questions:

1. Are NAIC and its members aware of the extent to which companies are marketing and selling plans in the individual market that are not compliant with the ACA’s consumer protections, potentially in violation of federal law?
  - a. How many consumer complaints have your members received on this issue in recent months? Has this problem become more common in the past year?
  - b. What are the appropriate remedies under state and federal law? What additional remedies or best practices could states adopt to address non-complaint plans? What steps are NAIC and its members taking to address this situation?

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<sup>6</sup> Xpress Healthcare, *Xpress MEC Application*, ([xhc.xpressenrollment.com/iMECapp/](http://xhc.xpressenrollment.com/iMECapp/)) (accessed Dec. 5, 2017).

<sup>7</sup> *Without Obamacare Mandate, ‘You Open the Floodgates’ for Skimpy Health Plans*, *New York Times* (Nov. 30, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

2. Are NAIC and its members aware of non-compliant “skinny plans” being marketed as “compliant” with the ACA, as appears to be the case with Xpress Healthcare?
  - a. If so, what issues have you identified, and what steps are you taking to address these issues?
  - b. How many consumer complaints have your members received on this issue in recent months? Has this problem become more common in the past year?
3. What remedies are available to consumers who believe they have been the victim of fraudulent or deceptive practices by these companies?
4. What actions is NAIC taking to address the issue of brokers and agents who may be participating in marketing these non-compliant plans, or providing inaccurate or misleading information to consumers?
5. Are NAIC and its members aware of companies selling these plans without appropriate licensure? What steps are you taking to ensure that all plans are sold under the appropriate licenses?
6. Have you examined the potential harm to consumers, and implications for the insurance market, as a result of these plans not including key consumer protections?
  - a. What impact is the sale of these policies having on premiums in the ACA-compliant individual market?
  - b. What harm could befall a consumer who is unaware that a potential plan does not offer comprehensive coverage for basic health care services?
  - c. What steps are NAIC and its members taking to notify and educate consumers on these issues, including how to verify whether a plan offers comprehensive coverage?
7. How might these problems be exacerbated if the administration takes action to loosen regulations pertaining to association health plans and short-term limited duration plans?
  - a. What steps are NAIC and its members taking or planning to take to ensure that consumers have the tools they need to make informed coverage decisions in light of the likely proliferation of plans that offer limited financial protection to consumers?

We appreciate your attention to this matter. If you have any questions, please contact Kevin McAloon of the Energy and Commerce Committee’s minority staff at (202) 225-3641, Melanie Egorin of the House Ways and Means Committee’s minority staff at (202) 225-4021,

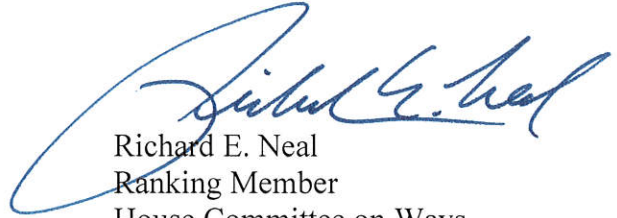
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Colin Goldfinch of the Senate HELP Committee's minority staff at (202) 224-6403, or Arielle Woronoff of the Senate Finance Committee's minority staff at (202) 224-4515.

Sincerely,



Frank Pallone, Jr.  
Ranking Member  
House Committee on Energy  
and Commerce



Richard E. Neal  
Ranking Member  
House Committee on Ways  
and Means



Patty Murray  
Ranking Member  
Senate Committee on Health,  
Education, Labor, and Pensions



Ron Wyden  
Ranking Member  
Senate Committee on Finance