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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

May 18, 2013

To: Subcommittee on Oversight and Investigations Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "Health Insurance Premiums Under the Patient Protection and Affordable Care Act."

On Monday, May 20, 2013, at 4:00 p.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigation will hold a hearing titled, "Health Insurance Premiums Under the Patient Protection and Affordable Care Act."

I. THE HEALTH INSURANCE MARKET PRIOR TO THE AFFORDABLE CARE ACT

Prior to the passage of the Affordable Care Act (ACA), the health insurance market suffered from adverse selection, high administrative costs, and rising premiums. In the decade prior to enactment of the ACA, the percentage of workers receiving health care coverage from their employers declined,[1] premiums increased by 125%, and out-of-pocket health care spending increased by 74%.[2] The number of uninsured was rising rapidly, and many individuals and families with coverage had insurance policies that provided low value and little security if they had a serious accident or illness.[3]

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[1] Kaiser Family Foundation, *Employer Health Benefits Survey 2010 Annual Survey* (online at ehbs.kff.org/pdf/2010/8085.pdf); and Kaiser Family Foundation, *Employer Health Benefits Survey 2011 Annual Survey* (online at ehbs.kff.org/pdf/2012/8345.pdf).

[2] Health Affairs, *A Decade Of Health Care Cost Growth Has Wiped Out Real Income Gains For An Average US Family* (Sept. 2011) (online at content.healthaffairs.org/content/30/9/1630.abstract).

[3] Department of Health and Human Services, *Health Insurance Premiums: Past High Costs Will Become the Present and Future Without Health Reform* (Jan. 28, 2011) (online at www.healthcare.gov/news/reports/premiums01282011a.pdf) and J.R. Gabel et al. *Trends in*

In many states, insurers were permitted to charge individuals dramatically different premiums based on their age, gender, medical history, and other factors. Insurers routinely refused to cover individuals with pre-existing medical conditions and devoted significant resources to the process of medical underwriting – conducting detailed examinations of an applicant's medical history to determine the price at which they could profitably offer coverage to that individual, if at all. In the three years before the passage of health reform the four largest for-profit health insurance companies denied over 600,000 individuals coverage due to pre-existing conditions, with coverage denials increasing significantly each year.[4] As many as 129 million Americans with pre-existing conditions may have been denied coverage prior to reform.[5]

II. AFFORDABLE CARE ACT PROTECTIONS

The ACA established new insurance market consumer protections pertaining to the individual and small group health insurance markets. These provisions only allow premiums to vary based on age, tobacco use, family size, and geography. Beginning in January 2014, insurance companies will no longer be allowed to raise premiums based on any other factors — including pre-existing conditions, gender, and health status. The provisions require a minimum level of coverage and prohibit insurance company abuses like rescissions of benefits when someone gets sick.[6]

In addition to these consumer protections, the ACA creates transparent and competitive marketplaces for high quality insurance to be offered called Exchanges. An Exchange is a mechanism for organizing the health insurance marketplace to help consumers and small businesses shop for coverage in a way that permits easy comparison of available plan options based on price, benefits and services, and quality. By pooling people together, reducing transaction costs, and increasing transparency, Exchanges create more efficient and competitive markets for individuals and small employers. Beginning in 2014, individuals who do not have access to employer-based coverage, Medicare, or Medicaid can purchase health insurance on

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Underinsurance and the Affordability of Employer Coverage, 2004-2007, Health Affairs (June 2, 2009) (online at content.healthaffairs.org/content/28/4/w595.full.html).

[4] Memorandum from Chairmen Henry A. Waxman and Bart Stupak to Members of the Committee on Energy and Commerce, *Coverage Denials for Pre-Existing Conditions in the Individual Health Insurance* Market, 111th Cong. (Oct. 12, 2010) (online at democrats.energycommerce.house.gov/Press_111/20101012/Memo.Pre-existing.Condition.Denials.Individual.Market.2010.10.12.pdf).

[5] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *At Risk: Pre-Existing Conditions Could Affect 1 in 2 Americans: 129 Million People Could Be Denied Affordable Coverage Without Health Reform* (Nov. 2011) (online at aspe.hhs.gov/health/reports/2012/pre-existing/index.shtml).

[6] Department of Health and Human Services, *Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review*, 77 Fed. Reg. 227 (Nov. 26, 2012) (proposed rule).

either a state-based or, for those who live in states that are not creating their own, a federal Exchange.

The ACA contains an extensive set of tax credits to help small businesses and individuals and families with incomes up to 400% of the poverty level pay for coverage. According to the Congressional Budget Office, 86% of individuals who receive coverage through the new Exchanges will receive tax credits, with the average credit reducing costs by over $5,000 per year.[7] A study of the impact of these tax credits in California estimated that they will reduce premiums by an average of 89% for individuals with an income below 250% of the federal poverty level.[8] Similarly, tax credits available for small businesses will reduce their cost of coverage by as much as 50%.[9]

III. IMPACTS OF HEALTH REFORM ON PREMIUMS

A. Recent Premium Trends

The impact of the ACA on premiums and overall health care costs has been a controversial subject. Although the law has not gone into effect fully, early results appear to indicate that it has been successful at mitigating increases in premiums and increases in overall health insurance costs. The ACA requires insurers to document, submit for review, and publicly justify rate increases of 10% or more. Since this provision of the law went into effect, average health insurance premium increases have declined by more than 30%.[10] The Congressional Budget Office (CBO) has also reported what one analyst called "a sharp and surprisingly persistent slowdown in health care costs"[11] since passage of the ACA, resulting in a significant

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[7] Congressional Budget Office, *CBO's February 2013 Estimate of the Effects of the Affordable Care Act on Health Insurance Coverage* (Feb. 2013) (online at cbo.gov/sites/default/files/cbofiles/attachments/43900_ACAInsuranceCoverageEffects.pdf).

[8] Milliman, *Factors Affecting Individual Premium Rates in 2014 for California* (Mar. 28, 2013) (online at www.healthexchange.ca.gov/Documents/Factors%20Affecting%20Individual%20Premiums%20FINAL%203-28-2013.pdf).

[9] U.S. Internal Revenue Service, *Small Business Health Care Tax Credit for Small Employers* (2013) (online at www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers).

[10] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Health Insurance Premium Increases in the Individual Market Since the Passage of the Affordable Care Act* (Feb. 22, 2013) (online at aspe.hhs.gov/health/reports/2013/rateIncreaseIndvMkt/rb.pdf).

[11] *Slower Growth of Health Costs Eases Budget Deficit*, New York Times (Feb. 11, 2013) (online at www.nytimes.com/2013/02/12/us/politics/sharp-slowdown-in-us-health-care-costs.html?_r=0).

drop in deficit projections in CBO's most recent budget update.[12] Similarly, the Health and Human Services Actuary reported earlier this year that health expenditures were growing at their lowest rates in over 50 years.[13]

When the ACA's full set of consumer protections and market reforms go into effect in 2014, the majority of the health insurance marketplace is expected to see limited change in premiums.[14] Plans in the large group insurance market already follow many of the same rules that will be required of the individual and small group markets in 2014, and premiums in that market are expected to be stable. Seniors on Medicare and low income individuals participating in Medicaid will face no changes in premiums. However, questions have been raised regarding what will happen to premiums in the individual and small group market in 2014.

B. Republican Staff Report on 2014 Premiums and Democratic Response

On March 13, 2013, Republican Committee staff issued a report on the impact of the ACA on the cost of coverage in the individual health insurance market.[15] The report, which was based on information provided to the Committee by 17 health insurers, found that "PPACA will increase premiums significantly for most Americans," concluding that the results "definitively contradict the promises that the law will lower costs."[16] Republican staff reported that "consumers purchasing health insurance on the individual market may face premium increases of nearly 100% on average, with potential highs eclipsing 400%."[17]

The Democratic staff produced a memo responding to this report. It found that "[t]he Republican staff report is deeply flawed. The major methodological error is that the report ignores the provisions of the Affordable Care Act that will reduce costs in the individual market, such as tax credits for individuals and small businesses. The result is a one-sided report full of misleading conclusions that conflict with the findings of independent experts."

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[12] Congressional Budget Office, *Updated Budget Projections: Fiscal Years 2013 to 2023* (May 2013) (online at www.cbo.gov/sites/default/files/cbofiles/attachments/44172-Baseline2.pdf).

[13] U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services , *National Health Expenditures, Historical Data* (Jan. 2013) (online at www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html).

[14] L.J. Blumberg et al, *Implications of the Affordable Care Act for American Businesses*, Urban Institute (Oct. 2012) (online at www.urban.org/UploadedPDF/412675-Implications-of-the-Affordable-Care-Act-for-American-Business.pdf).

[15] Committee on Energy and Commerce, Majority Staff, *The Looming Premium Rate Shock* (Mar. 13, 2013).

[16] *Id.*

[17] *Id.*

Key flaws in the Republican report that were identified in the Democratic response include:

- The failure to acknowledge that the majority of Americans receive their coverage as part of a large-employer plan or through government health insurance programs like Medicare or Medicaid, and they are not affected by changes in the individual health insurance market.

- The failure to account for the impact of tax credits and other cost reduction measures, described by one insurer as having a "huge impact" in reducing premium costs. According to the Congressional Budget Office, 86% of individuals who receive coverage through the new ACA Exchanges will receive tax credits, with the average credit reducing costs by over $5,000 per year.[18] Tax credits available for small businesses will reduce the cost of coverage by as much as 50%.[19]

- The failure to account for the impact of improved benefits. Under the ACA, individuals are guaranteed that their plan will pay for between 60% and 90% of the cost of their health care; that their plan will cover a set of essential health benefits such as prescription drugs, maternity care, and mental health care; and that their overall out-of-pocket costs will be capped. Consumers are eligible for preventive care benefits without copays, co-insurance, or a deductible, and their insurance cannot impose lifetime or annual coverage limits. These benefits will limit out-of-pocket costs and give consumers the security of knowing that their coverage is there for them when they need it. These increased benefits mean savings for individuals when they need coverage.

- The failure to account for the impact of transparency and competition. The Congressional Budget Office has estimated that competition and transparency in the new health insurance marketplaces will drive down costs by between 7% and 10%.[20] In some states, insurers have indicated that they will significantly lower their proposed rates after seeing the rates proposed by their competitors.[21]

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[18] Congressional Budget Office, *CBO's February 2013 Estimate of the Effects of the Affordable Care Act on Health Insurance Coverage* (Feb. 2013) (online at cbo.gov/sites/default/files/cbofiles/attachments/43900_ACAInsuranceCoverageEffects.pdf).

[19] U.S. Internal Revenue Service, *Small Business Health Care Tax Credit for Small Employers* (2013) (online at www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers).

[20] Letter from Congressional Budget Office Director Douglas Elmendorf to Senator Evan Bayh (Nov. 30, 2009) (online at www.cbo.gov/sites/default/files/cbofiles/ftpdocs/107xx/doc10781/11-30-premiums.pdf).

[21] *Two Oregon insurers rethink 2014 premiums as state posts first-ever rate comparison,* The Oregonian (May 9, 2013) (online at (www.oregonlive.com/health/index.ssf/2013/05/two_oregon_insurers_reconsider.html).

- The failure to acknowledge the impact of ACA provisions to mitigate premium increases, such as the reinsurance fund to cover costs resulting from the high claims beneficiaries, risk adjustment provisions to protect insurance companies whose plans contain a large number of high-cost enrollees, risk corridors that limit insurer losses and gains and reducing incentives for insurers to overestimate beneficiary costs, and the availability of lower-cost catastrophic plans for individuals under 30.

- The failure to acknowledge premium reductions for many purchasers of health insurance. The documents provided to the Committee reveal that while some consumers in the individual market may see premium rate increases, others will see premium decreases. One insurance company document on "HCR Impact" revealed "winners" under the ACA: individuals who are "older and/or unhealthy with richer benefits" under their current policies could see a 43% decrease in their premium costs due to the requirements of the law.[22] Another insurer's internal analysis confirms that "[o]lder, sicker populations will have access to coverage and experience some rate relie[f]."[23] Women in particular are likely to experience reductions in insurance premiums on the individual market. One insurer's internal analysis indicated that as a result of the ACA's reforms to gender and age rating, young women in one state would see their premiums decrease by as much as 74%.[24]

IV. WITNESSES

The following witnesses have been invited to testify:

Dan Durham
Executive Vice President, Policy and Regulatory Affairs
American's Health Insurance Plans

Cori Uccello
Senior Health Fellow, American Academy of Actuaries

Chris Carlson
Actuarial Principal, Oliver Wyman

Topher Spiro
Vice President, Health Policy, Center for American Progress

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[22] [Redacted], *HCR Impacts – Front End* (Jan. 31, 2013).

[23] [Redacted], *The Commercial Market: Public Exchange and other ACA provisions impacting the Small Group and Individual Markets* (Oct. 26, 2012).

[24] [Redacted], *Attachment A – Revised April 5, 2013* (Apr. 5, 2013).