



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

July 25, 2014

To: Members, Subcommittee on Health

From: Majority Committee Staff

Re: Hearing Entitled “Protecting Americans from Illegal Bailouts and Plan Cancellations Under the President’s Health Care Law”

On Monday, July 28, 2014, at 4:00 p.m. in 2123 Rayburn House Office Building, the Subcommittee on Health will hold a hearing entitled “Protecting Americans from Illegal Bailouts and Plan Cancellations Under the President’s Health Care Law.” This hearing will focus on the following: (1) taxpayer liability and legal issues regarding payments to health insurance companies under the Patient Protection and Affordable Care Act’s (PPACA) risk corridor program; and (2) plan cancellations and the ability of American workers to keep their group health plan under PPACA.

I. WITNESSES

- Edmund Haislmaier, Senior Research Fellow, Heritage Foundation;
- Stan Veuger, Resident Scholar, American Enterprise Institute; and,
- John Hoadley, Research Professor, Georgetown University.

II. BACKGROUND

A. Risk Corridor

Section 1342 of PPACA created a risk corridor program. The program is designed to limit the losses and profits of health insurance issuers offering qualified health plans. The program allows insurers and the Federal government to share a percentage of higher-than-expected costs or profits based on a statutory formula.

In response to disruptions caused by implementation of the PPACA, the Administration has instituted several changes to the risk corridor payment formula through rulemaking that would generally make the risk corridor program more financially beneficial for health insurance issuers.¹ The Department of Health and Human Services (HHS) has indicated that they “will use

¹ PPACA Exchange and Insurance Market Standards for 2015 and Beyond – Final Rule. Department of Health and Human Services (May 27, 2014), <http://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>.

other sources of funding for the risk corridors payments” in the event health insurance company losses are not offset by receipts into the program.²

Information obtained from health insurance issuers indicates that payment to insurance companies will far exceed collections. Surveys of large health insurance issuers representing the vast majority of covered lives in the exchange indicate that insurers expect nearly \$1 billion in payments in 2015 alone.³

Beyond concerns that taxpayers may be liable for nearly \$1 billion in health insurance company losses through the risk corridor program, there are legal concerns regarding the Administration’s legal authority to make payments to insurers. In January 2014, the Congressional Research Service wrote: “[Section] 1342 would not appear to **constitute an appropriation of funds** for the purposes of risk corridor payments under that section.”⁴

Without an explicit Congressional appropriation, payments to insurers would constitute an unlawful transfer of funds to health insurance companies under PPACA. While the Administration has claimed it has a Congressional appropriation through its classification of the program as a user fee, this claim is inconsistent with how the program was classified in the President’s own budget.⁵

B. Plan Cancellations

President Obama assured Americans during the debate of PPACA, as well as after its passage, “[i]f you like your health care plan, you’ll be able to keep your health care plan, period. No one will take it away, no matter what.”⁶ However, many individuals and small businesses have experienced, or will face, the loss of their current health care coverage if it does not comply with PPACA coverage requirements – many of which became effective on January 1, 2014.

This loss of pre-PPACA health plans was foreshadowed in regulations issued by the Administration on June 17, 2010.⁷ The Administration then estimated that 49 percent to 80 percent of small-employer plans, 34 percent to 64 percent of large-employer plans, and 40 percent to 67 percent of individual insurance coverage would lose grandfathered status by the end of 2013.⁸

² Id.

³ Hansard, Sara. Insurers Expect \$1 Billion in Risk Corridor Payments, Committee Finds. BNA (June 19, 2014), <http://www.bna.com/insurers-expect-billion-b17179891451/>.

⁴ Liu, Edward. Funding of Risk Corridor Payments under ACA Section 1342. CRS (January 23, 2014), <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/20140123CRSriskcorridor.pdf>.

⁵ HHS Ignored Rule of Law to Transfer Billions of Dollars to Insurers Through PPACA Risk Corridor Program. Energy and Commerce (June 19, 2014), <http://energycommerce.house.gov/press-release/hhs-ignores-rule-law-transfer-billions-dollars-insurers-through-ppaca-risk-corridor>.

⁶ President Obama, Remarks Before the American Medical Association (June 15, 2009).

⁷ 75 FR 34537 – Interim Final Rules for Group Health Plans and Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (June 17, 2010).

⁸ Id.

Although the Administration has issued a transition policy to allow for the temporary renewal of individual and group health coverage in some instances, this transition policy is temporary.⁹ Therefore, additional individual and small businesses covered through non-PPACA compliant plans will face plan cancellations absent Congressional action.

C. Legislation for Consideration

At the hearing, we will hear testimony on the following legislation:

- H.R. 4406, Taxpayer Bailout Protection Act: The bill amends PPACA's risk corridor program to require HHS to ensure that the amount of payments to plans for a plan year beginning during calendar years 2014 through 2016 does not exceed the amount of payments to the Secretary for such plan year.
- H.R. 5175, Stop Illegal Payments to Health Insurers Act: The bill amends PPACA to repeal the risk corridor program.
- H.R. 3522, Employee Health Care Protection Act: The bill would allow health insurance issuers to continue to offer group coverage that was in effect during 2013.

STAFF CONTACTS

Should you have any questions regarding the hearing, please contact Paul Edattel or Katie Novaria of Committee Staff at (202) 225-2927.

⁹ Insurance Standards Bulletin Series – Extension of Transitional Policy Through October 1, 2016. CMS (March 5, 2014), <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf>.