



Testimony Submitted for the Record

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Subcommittee on Health**

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The National Women’s Law Center (“Center”) has worked for more than 40 years to advance and protect equality and opportunity for women and girls in every aspect of their lives, including health care and economic security. The Center submits this testimony in strong opposition to the “Preexisting Conditions Protection and Continuous Coverage Incentive Act.”

The “Preexisting Conditions Protection and Continuous Coverage Incentive Act” is a false promise of protection. The end result would be to return women to the days of discrimination in the health care market.

As the Center demonstrated in our 2008 report, *Nowhere to Turn: How the Individual Health Insurance Market Fails Women*, prior to the Affordable Care Act, insurance companies used health status and health history, including pre-existing conditions, in order to determine whether an individual received coverage and if so, to determine what premium to charge the individual applicant or what limits to put on that coverage.

Women often fared worst because of conditions unique to them, which insurers deemed “pre-existing conditions.” For example, women have greater health needs than men and are more likely than men to suffer from a chronic condition requiring ongoing treatment, like asthma or arthritis. These conditions could lead to rejection of coverage or higher premiums. In addition, if during the medical underwriting process the insurer discovered that an applicant underwent a past Cesarean delivery, the company might have charged her a higher premium, imposed an exclusionary period during which it refused to cover another Cesarean delivery or pregnancy, or even rejected her for coverage altogether unless she had been sterilized or was no longer of childbearing age. Insurers in DC and nine states were allowed to deny coverage to domestic violence survivors. In addition, news reports at the time documented the practice of insurance companies obtaining prescription drug histories as a basis to reject applicants for health coverage. Women were more likely than men to be potentially affected by this practice – at any age they are more likely than men to take prescription medications on a regular basis.¹

In other words, before the Affordable Care Act, just being a woman amounted to being treated like a pre-existing condition. Because of “pre-existing conditions,” women seeking coverage in the individual market faced limits that made coverage meaningless, such high premiums that they could not afford coverage, or outright rejection from coverage.

The Affordable Care Act changed these practices. Right now, under the health care law, insurers can no longer charge more or deny coverage to an individual because of a pre-existing condition. Insurers cannot limit benefits for that coverage either. Once individuals have coverage, insurers cannot refuse to cover treatment for a pre-existing condition. Approximately 65 million women with pre-existing conditions can no longer be denied or charged more for their health coverage thanks to the Affordable Care Act.²

The “Preexisting Conditions Protection and Continuous Coverage Incentive Act” fails to protect individuals seeking coverage in these ways, leaving them once again vulnerable to the same unfair practices that existed prior to the Affordable Care Act. Although the bill prohibits pre-existing condition exclusions, it does not address the other problems associated with health status underwriting. Specifically, it does not prohibit issuers from charging an individual more for

health insurance coverage based on a pre-existing condition. This means that although health insurance coverage may be theoretically available to a woman with a pre-existing condition, the insurance company could price the premium in such a way that she is effectively denied coverage. Nor does this bill include provisions requiring that insurers cover treatment related to the pre-existing condition. So even if a woman could get coverage, she could be denied coverage for treatments she needs related to the underlying condition. There is no reason to think insurers would not revert to these prior tactics, and in fact, there are incentives for insurers to do so, given that the other parts of the Affordable Care Act that discouraged such practices are absent.

Furthermore, the “Preexisting Conditions Protection and Continuous Coverage Incentive Act” includes an incomplete “placeholder” for a “continuous coverage incentive.” This indicates that the pre-existing condition exclusion is tied to an individual having health insurance and having been insured without a gap for a specified period of time. There are numerous scenarios under which a woman could lose continuous coverage, like losing a job, going back to school, or choosing to pay for groceries one month instead of paying a premium bill. If that were to happen, she would lose the pre-existing condition protection and once again face insurance coverage denials.

Because the “Preexisting Conditions Protection and Continuous Coverage Incentive Act” would return women to being considered a pre-existing condition, we urge you to reject it. No woman should again be denied insurance coverage or charged more because she has had a prior pregnancy or Cesarean delivery, because she received fertility treatment, had breast or cervical cancer, is a survivor of domestic violence, or because she had medical treatment following a sexual assault. The Affordable Care Act made sure that these practices were no longer allowed. Despite claims to the contrary, the “Preexisting Conditions Protection and Continuous Coverage Incentive Act” does not, and would allow insurance companies to return to these harmful and discriminatory practices.

¹ NATIONAL WOMEN’S LAW CENTER, NOWHERE TO TURN: HOW THE INDIVIDUAL HEALTH INSURANCE MARKET FAILS WOMEN 8 (2008), *available at* <https://nwlc.org/wp-content/uploads/2015/08/NWLCReport-NowhereToTurn-81309w.pdf>.

² DEPARTMENT OF HEALTH AND HUMAN SERVICES, *The ACA Is Working for Women* (July 21, 2016), *available at* <http://www.hhs.gov/healthcare/facts-and-features/fact-sheets/aca-working-women/index.html>.