



MEMORANDUM

March 19, 2021

To: Subcommittee on Health Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Building on the ACA: Legislation to Expand Health Coverage and Lower Costs”

On Tuesday, March 23, 2021, at 11 a.m. (EDT), via Cisco Webex online video conferencing, the Subcommittee on Health will hold a legislative hearing entitled, “Building on the ACA: Legislation to Expand Health Coverage and Lower Costs.”

I. BACKGROUND

A. The Affordable Care Act

The Affordable Care Act (ACA) established state and federal insurance marketplaces to increase access to high quality health insurance coverage. To help Americans afford their health insurance premiums, the law provided tax subsidies to individuals and families who earn up to 400 percent of the federal poverty level (FPL) on a sliding scale based on income. The ACA also included comprehensive consumer protections to ensure that all Americans are able to obtain health coverage regardless of health status or a pre-existing condition.

In addition, the ACA allowed states to expand Medicaid eligibility to all adults with incomes below 138 percent of the FPL. The federal medical assistance percentage (FMAP) for the expansion population is more generous than the regular state FMAP. The expansion FMAP is 90 percent, meaning that the federal government pays 90 percent of the cost of care for beneficiaries in the expansion group. Currently, 39 states and the District of Columbia have opted to expand.¹ If the remaining states were to expand Medicaid eligibility, it is estimated that two million individuals, who are currently uninsured, would gain coverage.²

¹ Kaiser Family Foundation, *Status of State Medicaid Expansion Decisions: Interactive Map* (Mar. 8, 2021) (www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/). The expansion was originally implemented to be mandatory; however, in *NFIB v. Sebelius*, the Supreme Court ruled that states’ decisions to expand Medicaid under the ACA are optional.

² Kaiser Family Foundation, *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid* (Jan. 21, 2021) (www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/).

The ACA significantly reduced the uninsured rate and provided health insurance coverage to approximately 20 million Americans.³ The number of uninsured individuals decreased from about 46.5 million in 2010, to a historic low of approximately 26.7 million in 2016.⁴ However, beginning in 2017, these trends reversed, and the number of uninsured individuals climbed to 29.6 million in 2019.⁵ Under the Trump Administration, the number of uninsured Americans increased by 2.3 million.⁶ More than half of those who remained uninsured were still eligible for either the ACA's Medicaid expansion or subsidies.⁷

The Trump Administration took several steps that resulted in coverage losses and increased premiums.⁸ A study by the Kaiser Family Foundation estimated that 2019 marketplace premiums were 16 percent higher than they otherwise would be due to the Administration's actions to eliminate the law's cost-sharing subsidies, expand the availability of short-term limited duration insurance (STLDI), and repeal the individual mandate.⁹ Additionally, the Trump Administration reduced funding for the ACA's Open Enrollment consumer outreach and enrollment educational activities from \$100 million to \$10 million.¹⁰ The Trump Administration

³ Kaiser Family Foundation, *Key Facts about the Uninsured Population* (Nov. 6, 2020) (www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/).

⁴ *Id.*

⁵ U.S. Census Bureau, *Income, Poverty and Health Insurance Coverage in the United States: 2019* (Sept. 15, 2020) (www.census.gov/newsroom/press-releases/2020/income-poverty.html) (press release).

⁶ *Id.*

⁷ Kaiser Family Foundation, *The Uninsured and the ACA: A Primer - Key Facts about Health Insurance and the Uninsured amidst Changes to the Affordable Care Act* (Jan. 2019) (www.kff.org/report-section/the-uninsured-and-the-aca-a-primer-key-facts-about-health-insurance-and-the-uninsured-amidst-changes-to-the-affordable-care-act-how-many-people-are-uninsured/).

⁸ USC Brookings Shaeffer Initiative for Health Policy, *How Would Individual Market Premiums Change in 2019 in a Stable Policy Environment?* (Aug. 2018) (www.brookings.edu/wp-content/uploads/2018/08/Individual-Market-Premium-Outlook-20191.pdf).

⁹ Kaiser Family Foundation, *How Repeal of the Individual Mandate and Expansion of Loosely Regulated Plans are Affecting 2019 Premiums* (Oct. 26, 2018) (www.kff.org/health-costs/issue-brief/how-repeal-of-the-individual-mandate-and-expansion-of-loosely-regulated-plans-are-affecting-2019-premiums/).

¹⁰ Centers for Medicare and Medicaid Services, *FEDERAL HEALTH INSURANCE EXCHANGE 2020 OPEN ENROLLMENT* (Oct. 25, 2019) (www.cms.gov/newsroom/fact-sheets/federal-health-insurance-exchange-2020-open-enrollment).

also reduced funding for the ACA’s Navigator program from \$63 million to \$10 million.¹¹ Further, there was a significant decline in new enrollment under the Trump Administration.¹² At the outset of the coronavirus disease of 2019 (COVID-19) outbreak, there were approximately 30 million uninsured individuals.¹³

B. COVID-19

The COVID-19 pandemic threatened the health of millions throughout the country and ushered in an economic downturn. Over the course of the pandemic, the unemployment rate peaked at an unprecedented 14.8 percent in April 2020, dwarfing the peak unemployment rate of the Great Recession.¹⁴ In March 2021, the Department of Labor reported that ten million Americans are still unemployed.¹⁵ The rapid increase in unemployment has resulted in millions of people losing or experiencing disruptions in employer-sponsored health insurance.¹⁶ However, the Trump Administration did not establish a broad Special Enrollment Period (SEP) that would have allowed uninsured Americans on the federal marketplace to enroll in coverage.¹⁷ Under the Trump Administration’s federal SEP policy, individuals who experienced job loss or a change in income were not necessarily eligible to enroll in coverage. Many state-based

¹¹ Centers for Medicare and Medicaid Services, *In-Person Assistance in the Health Insurance Marketplaces* (www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/assistance) (accessed Sept. 17, 2020).

¹² Centers for Medicare and Medicaid Services, *HEALTH INSURANCE MARKETPLACES 2017 OPEN ENROLLMENT PERIOD FINAL ENROLLMENT REPORT: NOVEMBER 1, 2016 – JANUARY 31, 2017* (Mar. 15, 2017) (www.cms.gov/newsroom/fact-sheets/health-insurance-marketplaces-2017-open-enrollment-period-final-enrollment-report-november-1-2016); Centers for Medicare and Medicaid Services, *2020 Federal Health Insurance Exchange Enrollment Period Final Weekly Enrollment Snapshot* (Jan. 8, 2020) (www.cms.gov/newsroom/fact-sheets/2020-federal-health-insurance-exchange-enrollment-period-final-weekly-enrollment-snapshot).

¹³ Congressional Budget Office, *Who Went Without Health Insurance in 2019, and Why?* (Sept. 2020) (www.cbo.gov/system/files/2020-09/56504-Health-Insurance.pdf).

¹⁴ Congressional Research Service, *Unemployment Rates During the COVID-19 Pandemic: In Brief* (Jan. 12, 2021) (fas.org/sgp/crs/misc/R46554.pdf).

¹⁵ U.S. Bureau of Labor and Statistics, *THE EMPLOYMENT SITUATION -- FEBRUARY 2021* (Mar. 5, 2021) (www.bls.gov/news.release/empsit.nr0.htm).

¹⁶ Urban Institute, *Changes in Health Insurance Coverage Due to the COVID-19 Recession* (July 13, 2020) (www.urban.org/research/publication/changes-health-insurance-coverage-due-covid-19-recession).

¹⁷ *Trump rejects Obamacare special enrollment period amid pandemic*, Politico (Mar. 31, 2020) (www.politico.com/news/2020/03/31/trump-obamacare-coronavirus-157788).

marketplaces (SBMs) established an emergency time limited SEP in response to the COVID-19 pandemic, and experienced a significant increase in enrollment.¹⁸

On January 18, 2021, President Biden signed an executive order¹⁹ strengthening the ACA and Medicaid. The order directed the Department of Health and Human Services (HHS) to consider establishing a federal marketplace SEP, which HHS later announced would run from February 15 through May 15, 2021 and would allow uninsured individuals to enroll in coverage.²⁰ As of March 3, 2021 more than 206,000 individuals have enrolled in coverage through the SEP on the federal marketplace, an increase from 76,000 individuals signing up for coverage during the same period in 2020.²¹ Thirteen of the SBMs have announced similar SEPs.²²

As with previous economic downturns that saw significant job loss, Medicaid enrollment increased significantly during this same time period. Medicaid enrollment has gone up over eight percent since February 2020.²³ As of September 2020, Medicaid enrollment had increased by six million to cover over 77 million individuals.²⁴

C. Recent Congressional Action

¹⁸ Center on Budget and Policy Priorities, *Emergency Special Enrollment Period Would Boost Health Coverage Access at a Critical Time* (July 30, 2020) (www.cbpp.org/research/health/emergency-special-enrollment-period-would-boost-health-coverage-access-at-a-critical).

¹⁹ Exec. Order No. 14009, 86 Fed. Reg. 7793 (Jan. 28, 2021) (www.federalregister.gov/documents/2021/02/02/2021-02252/strengthening-medicaid-and-the-affordable-care-act).

²⁰ U.S. Department of Health and Human Services, *HHS Announces Marketplace Special Enrollment Period for COVID-19 Public Health Emergency* (Jan. 28, 2021) (www.hhs.gov/about/news/2021/01/28/hhs-announces-marketplace-special-enrollment-period-for-covid-19-public-health-emergency.html).

²¹ Centers for Medicare and Medicaid Services, *2021 Marketplace Special Enrollment Period Report* (March 3, 2021) (www.cms.gov/newsroom/fact-sheets/2021-marketplace-special-enrollment-period-report).

²² National Academy for State Health Policy, *Federal and State Special Enrollment Periods Increase Access to Insurance Coverage* (March 12, 2021) (www.nashp.org/federal-and-state-special-enrollment-periods-increase-access-to-insurance-coverage).

²³ Center on Budget and Policy Priorities, *Medicaid Enrollment Continues to Rise* (Sept. 9, 2020) (www.cbpp.org/blog/medicaid-enrollment-continues-to-rise).

²⁴ Kaiser Family Foundation, *Analysis of Recent National Trends in Medicaid and CHIP Enrollment* (Jan. 21, 2021) (www.kff.org/coronavirus-covid-19/issue-brief/analysis-of-recent-national-trends-in-medicaid-and-chip-enrollment/#:~:text=After%20declines%20in%20enrollment%20from,enrollment%20began%20to%20steadily%20increase).

On March 10, 2021, Congress passed H.R. 1319, the American Rescue Plan Act of 2021. The law expands the ACA tax subsidies to more individuals for 2021 and 2022, including individuals with incomes above 400 percent of the FPL. According to the Congressional Budget Office (CBO), 1.7 million more people would enroll in health care coverage through the ACA marketplaces in 2022.²⁵ This provision is also projected to significantly reduce premiums for individuals in qualified health plans for 2021 and 2022.²⁶ For example, a family of four with an annual income of \$40,000 would save \$1,600 a year; a family of four with an annual income of \$65,000 would save \$2,800 a year; and a family of four with an annual income of over \$105,000 would see their premiums almost cut in half and save \$7,000 a year.²⁷

The American Rescue Plan Act also makes the tax subsidies available for individuals receiving unemployment insurance in 2021, and treats their incomes as no higher than 133 percent of the FPL, which CBO estimates would benefit 1.4 million people.²⁸

In addition, the American Rescue Plan Act provides a new incentive for states to expand Medicaid by increasing the FMAP of new expansion states by five percentage points for two years. If the remaining states were to expand, it is estimated that 4.3 million adults would become newly eligible.²⁹ It explicitly requires Medicaid and the Children’s Health Insurance Program (CHIP) coverage of COVID-19 vaccines, treatment, and treatment of conditions that complicate COVID-19 treatment at no cost-sharing. It also provides states with the option to enroll uninsured individuals in a limited Medicaid benefit that covers COVID-19 vaccines, treatments, and conditions that may complicate the treatment of COVID-19, with the costs fully paid for by the federal government. The law also creates a new state option to provide continuous Medicaid eligibility for 12 months postpartum, and provides enhanced federal funding for home- and community-based services (HCBS) to help those with long-term service and support needs to continue to receive care in their homes.

II. LEGISLATION

A. H.R. 1790, the “Fair Indexing for Health Care Affordability Act”

²⁵ Congressional Budget Office, *Reconciliation Recommendations of the House Committee on Ways and Means* (Feb. 17, 2021) (www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf).

²⁶ Georgetown University Health Policy Institute Center for Children and Families, *American Rescue Plan Act: Health Coverage Provisions Explained* (Mar. 2021) (ccf.georgetown.edu/wp-content/uploads/2021/03/American-Rescue-Plan-signed-fix-2.pdf).

²⁷ Urban Institute, *Expanding ACA Marketplace Premium Tax Credits Could Reduce Financial Hardship and Increase Health Insurance Coverage for Millions of Households* (Feb. 9, 2021) (www.urban.org/urban-wire/expanding-aca-marketplace-premium-tax-credits-could-reduce-financial-hardship-and-increase-health-insurance-coverage-millions-households).

²⁸ See note 25.

²⁹ See note 2.

H.R. 1790, the “Fair Indexing for Health Care Affordability Act”, introduced by Reps. Axne (D-IA), Matsui (D-CA), and Horsford (D-NV), would modify the premium adjustment percentage determination, thereby lowering consumers’ out-of-pocket costs.

B. H.R. 1796, the “Health Care Enrollment Innovation Act”

H.R. 1796, the “Health Care Enrollment Innovation Act”, introduced by Rep. Bera (D-CA), would provide \$200 million a year for three years for states to promote greater enrollment in health insurance coverage.

C. H.R. 1872, the “Marketing and Outreach Restoration to Empower Health Education Act of 2021” or the “MORE Health Education Act”

H.R. 1872, the “Marketing and Outreach Restoration to Empower Health Education Act of 2021” or the “MORE Health Education Act,” introduced by Reps. Blunt Rochester (D-DE) and Scanlon (D-PA), would require HHS to conduct consumer outreach and enrollment educational activities for the ACA marketplaces, and funds these activities at \$100 million per year. It would also prohibit HHS from using the funds to promote plans that do not provide comprehensive consumer protections, and would require the Secretary of HHS to set annual enrollment targets for the federal marketplace.

D. H.R. 1874, the “Expand Navigators’ Resources for Outreach, Learning, and Longevity Act of 2021” or the “ENROLL Act of 2021”

H.R. 1874, the “Expand Navigators’ Resources for Outreach, Learning, and Longevity Act of 2021” or the “ENROLL Act of 2021”, introduced by Rep. Castor (D-FL), would fund the Navigator program for the federal marketplace at \$100 million per year and would impose additional requirements on navigators.

E. H.R. 1875, a bill to amend title XXVII of the Public Health Service Act to eliminate the short-term limited duration insurance exemption with respect to individual health insurance coverage

H.R. 1875, a bill to amend title XXVII of the Public Health Service Act to eliminate the short-term limited duration insurance exemption with respect to individual health insurance coverage, introduced by Reps. Castor and Higgins (D-NY), would eliminate the exemption for short-term limited duration insurance with respect to the definition of individual health insurance coverage beginning January 1, 2023. This would require such plans to comply with the ACA’s market reforms, such as the bans on pre-existing conditions exclusions, the practice of rescissions, and charging individuals with pre-existing conditions or women more for health insurance coverage.

F. H.R. 1878, the “State Health Care Premium Reduction Act of 2021”

H.R. 1878, the “State Health Care Premium Reduction Act of 2021”, introduced by Reps. Craig (D-MN) and Peters (D-CA), would provide \$10 billion annually to states, providing the

option for states to establish a state reinsurance program or use the funds to provide financial assistance to reduce out-of-pocket costs. The bill would also require the Centers for Medicare and Medicaid Services (CMS) to establish and implement a reinsurance program in states that do not apply for federal funding.

G. H.R. 1890, the “Health Care Consumer Protection Act”

H.R. 1890, the “Health Care Consumer Protection Act”, introduced by Rep. Schakowsky (D-IL), would require CMS to promulgate quantitative network adequacy standards for qualified health plans on the federal marketplace. The bill would also require HHS or the state regulatory authority to ensure that any excessive, unjustified, or unfairly discriminatory rates on the marketplaces are corrected before, or as soon as possible after, implementation.

H. H.R. 1896, the “State Allowance for Variety of Exchanges Act of 2021” or the “SAVE Act of 2021”

H.R. 1896, the “State Allowance for Variety of Exchanges Act of 2021” or the “SAVE Act of 2021”, introduced by Rep. Kim (D-NJ), would provide states with \$200 million in federal funds to establish state-based marketplaces.

I. H.R. 340, the “Incentivizing Medicaid Expansion Act of 2021”

H.R. 340, the “Incentivizing Medicaid Expansion Act of 2021”, introduced by Rep. Veasey (D-TX), would establish incentives to expand Medicaid by providing states with 100 percent FMAP for expansion beneficiaries for the first three years and gradually declines the FMAP to 93 percent by year six of expansion. The FMAP would eventually drop to 90 percent for year seven and beyond.

J. H.R. 1738, the “Stabilize Medicaid and CHIP Coverage Act”

H.R. 1738, the “Stabilize Medicaid and CHIP Coverage Act”, introduced by Reps. Dingell (D-MI) and Katko (R-NY), would permit Medicaid and CHIP beneficiaries to maintain eligibility for 12 consecutive months once enrolled.

K. H.R. 1784, the “Medicaid Report on Expansion of Access to Coverage for Health Care Act” or the “Medicaid REACH Act”

H.R. 1784, the “Medicaid Report on Expansion of Access to Coverage for Health Care Act” or the “Medicaid REACH Act”, introduced by Rep. Doggett (D-TX), would require non-expansion states to submit annual reports to HHS with data on their Medicaid programs and uninsured rates, including the number of uninsured individuals in the state at or below 138 percent of FPL, and information on current state eligibility levels for different eligibility groups.

L. H.R. 1025, the “Kids’ Access to Primary Care Act of 2021”

H.R. 1025, the “Kids’ Access to Primary Care Act of 2021”, introduced by Reps. Schrier (D-WA), Castor, and Fitzpatrick (R-PA), would require that state Medicaid programs pay primary care physicians no less than the Medicare pay rate.

M. H.R. 66, the “Comprehensive Access to Robust Insurance Now Guaranteed for Kids Act” or the “CARING for Kids Act”

H.R. 66, the “Comprehensive Access to Robust Insurance Now Guaranteed for Kids Act” or the “CARING for Kids Act”, introduced by Reps. Buchanan (R-FL) and McBath (D-GA), would permanently authorize funding for CHIP.

N. H.R. 1791, the “Children’s Health Insurance Program Permanency Act” or the “CHIPPER Act”

H.R. 1791, the “Children’s Health Insurance Program Permanency Act” or the “CHIPPER Act”, introduced by Rep. Barragán (D-CA), would permanently authorize funding for CHIP, and provide states the option to increase Medicaid and CHIP eligibility levels for children up to 300 percent of FPL without receiving a waiver.

O. H.R. 1888, the “Improving Access to Indian Health Services Act”

H.R. 1888, the “Improving Access to Indian Health Services Act”, introduced by Rep. Ruiz (D-CA), would increase the FMAP for Urban Indian Health Programs to 100 percent. It would also authorize Medicaid payment for services furnished by Tribal facilities outside of the four walls of the facility.

P. H.R. 1717, a bill to amend title XIX of the Social Security Act to make permanent the protections under Medicaid for recipients of home and community-based services against spousal impoverishment

H.R. 1717, a bill to amend title XIX of the Social Security Act to make permanent the protections under Medicaid for recipients of home and community-based services against spousal impoverishment, introduced by Rep. Upton (R-MI), would make spousal impoverishment protections for partners of Medicaid HCBS recipients permanent.

Q. H.R. 1880, a bill to amend the Deficit Reduction Act of 2005 to make permanent the Money Follows the Person Rebalancing Demonstration

H.R. 1880, a bill to amend the Deficit Reduction Act of 2005 to make permanent the Money Follows the Person Rebalancing Demonstration, introduced by Rep. Dingell, would make the Money Follows the Person Rebalancing Demonstration permanent.

R. H.R. 1390, the “Children’s Health Insurance Program Pandemic Enhancement and Relief Act” or the “CHIPPER Act”

H.R. 1390, the “Children’s Health Insurance Program Pandemic Enhancement and Relief Act” or the “CHIPPER Act”, introduced by Rep. Wild (D-PA), would provide a temporary 11.5 percentage point increase to the CHIP FMAP through fiscal year 2022.

III. WITNESSES

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