Statement of
Katherine Hayes, J.D.

Associate Research Professor
The George Washington University
School of Public Health and Health Services,
Department of Health Policy

On

The Affordable Care Act's Effects on Health Coverage and Jobs

Before the

U.S. House Committee on Energy and Commerce, Subcommittee on Health

June 2, 2011

Thank you Mr. Chairman and Members of the Subcommittee for the opportunity to be with you today. I am an Associate Professor of health policy at the George Washington University, School of Public Health and Health Services, where I teach federal policymaking and advocacy. I am also co-principal investigator of Health Reform GPS: Navigating Health Reform, a website devoted to tracking and analyzing implementation of the Patient Protection and Affordable Care Act ("Affordable Care Act"), a project supported by GW's Hirsh Health Law and Policy Program and the Robert Wood Johnson Foundation.

Background

The Energy and Commerce Health Subcommittee has a long history of leadership in assuring the availability of private health insurance to individuals and small businesses. In 1996, former Health Subcommittee Chairman Mike Bilirakis (R-FL) and former full Committee Chairman Tomas Bliley (R-VA) sponsored legislation to assure portability in the small group and individual (non-group) insurance markets, establishing the portability provisions of the Health Insurance Portability and Accountability Act (HIPAA). Under that law, Congress established a federal floor for insurance regulation to assure that certain individuals with prior coverage and small businesses could not be denied health insurance coverage. HIPAA's structure leaves untouched states' authority over the regulation of health insurance under the McCarran Ferguson Act, including the power to adopt more stringent standards, if they so choose.

The Affordable Care Act builds on the structure established under Title I of HIPAA to strengthen insurance market reforms. These reforms are most notable in the small group and individual markets. Similar to the structure established under HIPAA, states may continue to regulate insurance subject to federal standards, and may choose to establish

more stringent standards. Should states choose not to adopt those standards, the Secretary of the Department of Health and Human Services (HHS) has the authority to enforce them.

During Congressional consideration of the Affordable Care Act both political parties expressed concerns about the cost and availability of health insurance for individuals and small businesses. While recommending changes in federal law to stabilize these markets to make coverage more available and affordable, insurance plans, regulators and expert analysts advised Members of Congress that in the absence of the availability of Exchanges to provide private plan options, an individual requirement to purchase health insurance, and tax credits and other financial assistance to purchase the health insurance, special transition policies would be needed. In their absence, past unsustainable and unacceptable premium and underwriting practices would continue and could be made worse.

The Affordable Care Act contains a series of provisions designed to address these concerns including provisions, that among others, 1) grant "grandfather" status to health plans in existence prior to date of enactment, providing an exemption from certain insurance market reforms, 2) provide tax credits to certain low-wage small businesses that provide health insurance coverage to their employees, and 3) provide a series of insurance market reforms to make health insurance more accessible.

Agency Implementation

Since the ACA's enactment, the Administration has issued six major regulations directly affecting to insurance markets. These regulations, implementing provisions included in the ACA, include standards applying to: 1) "grandfathered" health plans;[1] 2) pre-existing conditions, lifetime and annual limits, rescissions and other patient

[1] 75 FR 34537. (June 17, 2010); amendment 75 FR 70114. (November 17, 2010).

protections;[2] 3) coverage of preventive services;[3] 4) internal claims and appeals and external review;[4] 5) medical loss ratios;[5] and 6) rate increase disclosure and review.[6] Collectively, these rules form the basis for regulation of health insurance during the transition period from enactment until full implementation of the law in 2014.

In implementing health insurance market reforms, the administration has clearly attempted to strike a balance between improving the availability of meaningful health insurance coverage and preventing disruptions in coverage for those who have coverage today. In attempting to strike this balance, they have received criticism from patient advocates who want them to be more aggressive and criticism from opponents of the law who charge the use of the transition policies is validation of the weakness of the law.

Effect of Health Reform on Jobs and Small Businesses

I have reviewed reports from the National Federation of Independent Businesses (NFIB) Research Foundation[7] estimating job losses of 1.6 million over the first 5 years of implementation. This estimate prepared prior to passage of the Affordable Care Act, assumed that the law would require all employers to offer coverage. In contrast, the legislation exempts the vast majority of these employers who have less than 50 employees. Indeed, Harvard economist David Cutler and USC professor Neraj Sood project that the law will create 4 million new jobs over the next decade – (largely the result of slowing of the growth in health care costs and reversal of the economic drain on companies resulting

---

[2] 75 FR 37187. (June 28, 2010).
[3] 75 FR 41726. (July 19, 2010).
[4] 75 FR 43329. (July 23, 2010).
[5] 75 FR 74863. (December 1, 2010); corrections 75 FR 82277 (December 30, 2010)
[6] 76 FR 29964. (May 23, 2011).
[7] M. Chow and B. Phillips, "Small Business Effects of a National Employer Healthcare Mandate," January 26, 2009.

from that growth in costs). What is not in dispute, however, is the longstanding hardship faced by small businesses in being able to find affordable health insurance coverage for their employees absent the Affordable Care Act.

Although many of the Affordable Care Act's reforms in the insurance and health benefit plan markets apply to all employers regardless of size, the insurance market reforms are expected to have a greater impact on the individual and small group insurance markets than on large groups, which already meet many of the federal requirements. The Kaiser Family Foundation reports considerable variation in what insurers are permitted to charge small businesses, including the health status of the employer group.[8] Although some states currently utilize rate bands whose purpose is to limit the amount by which insurers can vary premiums based on health status, these bands vary substantially across states, with employers exposed to additional surcharges of 100 percent or greater based on health status.

According to an American Academy of Actuaries report issued in February of 2010,[9] relatively lower customer participation rates in the individual and small group markets result in higher claims volatility, which requires higher risk margins. In addition, per policy administrative costs in the individual and small group markets are higher than in the large group market because of a variety of factors including lower benefit levels, underwriting expenses related to risk assessment and classification, and agent and broker expenses, all of which result in higher per-policy administrative expenses.

---

[8] Kaiser State Health Facts, "Small Group Health Insurance Market Rate Restrictions." Available online at: http://www.statehealthfacts.kff.org/comparetable.jsp?ind=351&cat=7. Accessed June 1, 2011.

[9] American Academy of Actuaries, "Critical Issues in Health Reform: Minimum Loss Ratios," February 2010.

Depending on how health insurance markets react to implementation of reforms in the individual small group markets, some argue that the Affordable Care Act will result in premium increases or an exodus by insurers from the marketplace. A review of regulations indicates, however, that the Administration is implementing the law within the scope of authority provided under the Act to minimize disruptions in these insurance markets. Indeed, the Administration has permitted waivers to plans using high deductibles or offering limited benefits in order to avert marketplace disruption until full reforms are available in 2014. While these plans do not provide comprehensive coverage, many Americans do not have any alternative plan available to them. Although the comprehensive reforms available in 2014 will eliminate the need for these types of limited benefit plans, in the meantime they remain an important form of affordable coverage.

Ultimately, small businesses have much to gain under the ACA. Indeed, aiding small business and lessening the burden of health insurance costs was a central aim of the law. For small businesses with lower-wage payrolls that desire to offer coverage to their employees, tax credits are available. Beginning in 2014, small businesses will have the option of providing coverage through health insurance Exchanges designed to offer greater choice of plan offerings, and potentially slow the rate of growth in health insurance costs by lowering administrative costs and pooling risk. Regardless of whether or not they choose to offer through an insurance Exchange, small businesses will benefit from market reforms in the individual market. The elimination of insurance underwriting practices, guarantee issue and the virtual elimination of cost shifting from the uninsured to covered plans will assure that their employees have affordable coverage, which leads to better health status and less absenteeism. The law does not obligate small businesses with fewer than 50

employees to offer coverage, but those that elect to secure coverage through Exchanges will qualify for premium affordability credits. Finally, for the very poorest small businesses with low income workers, the Medicaid expansions will offer much needed additional help.

Conclusion

The Affordable Care Act has great potential to lower costs for small businesses, make their health benefits more competitive with large businesses -- an important factor in recruiting employees – and improve the health of their workforce. Repeal of the Affordable Care Act, in contrast will likely lead to continued reductions in coverage and increases in health insurance premiums for all businesses. According to the 2009 NFIB report discussed above, prior to enactment of health reform premiums for small businesses increased by nearly 130 percent over eight years, averaging 18 percent higher than those of large businesses, costs that, according to NFIB significantly hinder small businesses' ability to invest in and grow their business. While there is a clear difference of opinion about many aspects of the Affordable Care Act, it is hard to conclude that reverting to the previous system would serve small businesses well.

Thank you, Mr. Chairman.