

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**September 12, 2016**

**To: Subcommittee on Health and Subcommittee on Oversight and Investigations  
Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “The Affordable Care Act on Shaky Ground: Outlook and Oversight”**

On Wednesday, September 14, 2016, at 10 a.m. in HVC-210, the Subcommittee on Health and Subcommittee on Oversight and Investigations will hold a joint hearing on a number of provisions of the Affordable Care Act (ACA) and recent reports from the Government Accountability Office (GAO) and the Department of Health and Human Services (HHS) Office of Inspector General (OIG).

**I. BACKGROUND**

The coverage provisions of the ACA have resulted in gains in health insurance coverage for an estimated 20 million uninsured adults, as of early 2016.<sup>1</sup> In addition, a recently released Centers for Disease Control and Prevention (CDC) survey found that the uninsured rate has fallen to 8.6 percent, a historic low.<sup>2</sup> The survey also found that 27.3 million people were uninsured between January and March of 2016. By contrast, in 2010, when the ACA was passed, the uninsured rate was 16 percent and 48.6 million people were uninsured.<sup>3</sup>

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<sup>1</sup> Department of Health and Human Services, *Health Insurance Coverage and the Affordable Care Act, 2010-2016* (Mar. 3, 2016).

<sup>2</sup> *Percentage of Uninsured Historically Low*, Wall Street Journal (Sept. 7, 2016).

<sup>3</sup> National Center for Health Statistics, National Centers for Disease Control and Prevention, *Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, January-March 2016* (Sept. 7, 2016).

As of March 31, 2016, 11.1 million consumers had effectuated health insurance coverage through the state and federal exchanges.<sup>4</sup> Of these 11.1 million consumers, about 85 percent, or 9.4 million individuals, were receiving an advance premium tax credit (APTC) to make premiums more affordable.<sup>5</sup> The average APTC for those enrollees who qualified for financial assistance was \$291 per month.<sup>6</sup> Consequently, more than 75 percent of consumers were able to purchase coverage for less than \$100 per month.<sup>7</sup>

In states that have expanded the Medicaid program under the ACA, marketplace premiums are approximately seven percent lower than in those states that have not expanded Medicaid.<sup>8</sup> An August HHS report found that the two forms of coverage – health insurance marketplaces and Medicaid – work together to improve access to and affordability of healthcare. To date, 31 states and the District of Columbia have expanded Medicaid under the ACA.

A recent HHS analysis found that all Healthcare.gov consumers will continue to have affordable coverage options, even if premium rates were to increase by double digits.<sup>9</sup> If rates were to increase by 25 percent, for example, the vast majority of consumers would still be able to purchase coverage for less than \$75 per month. The ACA includes numerous protections that are designed to protect consumers from the effect of rate increases.

Though some preliminary rate filings have started to be filed, marketplace premiums for 2017 will be finalized and public in October. The ACA's fourth open enrollment season will begin on November 1, 2016.<sup>10</sup>

## **II. COMMITTEE HEARINGS ON THE AFFORDABLE CARE ACT IN THE 114<sup>TH</sup> CONGRESS**

The Committee has held numerous hearings on the ACA in the 114<sup>th</sup> Congress. A summary of each hearing and a link to each hearing memo can be found below.

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<sup>4</sup> Centers for Medicare & Medicaid Services, *March 31, 2016 Effectuated Enrollment Snapshot* (June 30, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, *The Effect of Shopping and Premium Tax Credits on the Affordability of Marketplace Coverage* (Aug. 24, 2016).

<sup>8</sup> Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, *The Effect of Medicaid Expansion on Marketplace Premiums* (Aug. 25, 2016).

<sup>9</sup> Department of Health and Human Services, *New analysis shows consumers will still have affordable health coverage options next year* (Aug. 24, 2016).

<sup>10</sup> Healthcare.gov, *Dates & deadlines for 2016 health insurance* (accessed Sept. 7, 2016) (online at [www.healthcare.gov/quick-guide/dates-and-deadlines/](http://www.healthcare.gov/quick-guide/dates-and-deadlines/)).

The Health Subcommittee has held four hearings on the law:

1. A September 2015 hearing on legislation to amend employer designations under the ACA, with testimony from state insurance commissioners and outside experts. For more information, the hearing memo is available online [here](#).
2. An October 2015 hearing on Medicaid and exchange enrollment and eligibility determinations, with testimony from GAO. For more information, the hearing memo is available online [here](#).
3. A May 2016 hearing on patient choice in the state and federal insurance marketplaces, with testimony from outside experts. For more information, the hearing memo is available online [here](#).
4. A June 2016 hearing on several Republican legislative proposals to make changes in the ACA marketplaces, with testimony from outside experts. For more information, the hearing memo is available online [here](#).

The Oversight and Investigations Subcommittee has held five hearings on the ACA:

1. A September 2015 hearing on implementation of state health insurance exchanges, with testimony from six state exchanges. For more information, the hearing memo is available online [here](#).
2. A November 2015 hearing on the Consumer Operated and Oriented Plan (CO-OP) Program and shutdowns of co-ops throughout the country, with testimony from insurance commissioners, representatives from state co-ops, the HHS OIG, and CMS. For more information, the hearing memo is available online [here](#).
3. A December 2015 hearing on oversight of the state health insurance marketplaces, with testimony from CMS. For more information, the hearing memo is available online [here](#).
4. An April 2016 hearing on the legality of payments to insurers under the reinsurance program in the ACA, with testimony from CMS. For more information, the hearing memo is available online [here](#).
5. A July 2016 hearing on the legality of payments to insurers under the cost sharing reduction (CSR) program of the ACA, with testimony from outside experts. For more information, the hearing memo is available online [here](#).

### **III. RECENT OIG AND GAO REPORTS**

The HHS OIG and GAO have conducted a number of reviews of the ACA and specific programs under the law. This hearing may examine four recent reports.

### **A. OIG Report on CO-OP Conversion of Startup Loans**

Following the November 5, 2015, Subcommittee on Oversight and Investigations hearing entitled “Examining the Costly Failure of Obamacare’s CO-OP Insurance Loans,” the HHS OIG conducted an audit of the CMS conversion of CO-OP startup loans into surplus notes to determine whether the CO-OPs complied with CMS guidance and applicable accounting principles.<sup>11</sup> Last month, the OIG issued a report containing its findings.

The OIG concluded that the CO-OPs complied with CMS guidance and applicable accounting principles when converting startup loans into surplus notes.<sup>12</sup> Each of the 12 CO-OPs that converted startup loans submitted written requests for the loan conversions (as required by CMS) and received approval from its respective state insurance commissioner. Furthermore, each of the 12 CO-OPs satisfied the requirements of the applicable National Association of Insurance Commissioners (NAIC) rule for issuing and holding surplus notes. The OIG also concluded that CMS did not adequately document the potential impact of the startup loan conversions on the Federal Government’s ability to recover the loan payments if the CO-OPs were to fail.<sup>13</sup>

The OIG report includes two recommendations to CMS. The OIG recommends that, prior to approving additional conversions of startup loans to surplus notes, CMS (1) document any potential negative impact that may occur from changes in distribution priority, and (2) quantify the likely impact that the startup loan conversion will have on the Federal Government’s ability to recover loan payments.<sup>14</sup>

### **B. GAO Report on Market Concentration**

As mandated by the ACA, GAO recently released a report on health insurance market concentration and competition in 2014 (the most recent data available).<sup>15</sup>

GAO found that “enrollment in private health insurance plans remained concentrated among a small number of issuers in most states in 2014.”<sup>16</sup> This concentration applied to all three types of health insurance markets: individual, small group, and large group. In most states

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<sup>11</sup> Office of Inspector General, Department of Health and Human Services, *Conversions of Startup Loans into Surplus Notes by Consumer Operated and Oriented Plans Were Allowable But Not Always Effective* (Aug. 2016).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Government Accountability Office, *Private Health Insurance: In Most States and New Exchanges, Enrollees Continued to be Concentrated among Few Issuers in 2014* (Sept. 6, 2016) (GAO-16-724).

<sup>16</sup> *Id.*

the three largest issuers in each market had at least an 80 percent share of the market. GAO did not assess the effect of the ACA on market concentration and issuer participation, since 2014 was the first year of several ACA reforms, making such an assessment “premature.” GAO also found that the number of issuers participating in individual markets decreased from 2013 to 2014 in nearly all states. The small and large group markets saw decreases in fewer states.

The GAO report does not make any conclusions or recommendations.<sup>17</sup>

GAO will be releasing two additional reports on Wednesday, September 14, the day of the hearing. The Committee staff will provide information on those reports as it becomes available.

#### **IV. WITNESSES**

**Andy Slavitt**

Acting Administrator  
Centers for Medicare & Medicaid Services

**Gloria J. Jarmon**

Deputy Inspector General for Audit Services  
Office of the Inspector General  
Department of Health and Human Services

**Seto J. Bagdoyan**

Director of Audit Services  
Forensic Audits and Investigative Service  
U.S. Government Accountability Office

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<sup>17</sup> *Id.*