

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

September 4, 2015

To: Subcommittee on Health Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Hearing on H.R. 1624, the Protecting Affordable Coverage for Employees Act

On Wednesday, September 9, 2015, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Health will hold a hearing entitled “Protecting Affordable Coverage for Employees.” The hearing will examine H.R. 1624, the Protecting Affordable Coverage for Employees Act. This bill amends the Affordable Care Act (ACA) to classify employers with 51 to 100 employees as large employers for the purpose of health insurance markets.¹ Under present law, states have the option to designate companies with 51 to 100 employees as small employers until 2016, at which point all states will be required to classify these companies as such.

I. BACKGROUND

The ACA has changed the way many Americans obtain health insurance. To date, most of the public’s attention has focused on the availability of health plans sold on the individual marketplaces such as healthcare.gov and the various state-based health insurance exchanges. Overall 11.7 million Americans have selected plans through the individual marketplaces.² However, the ACA also addressed several issues for individuals who work for small employers and may obtain insurance in the small group marketplace.³

¹ H.R. 1624 (online at <https://www.congress.gov/bill/114th-congress/house-bill/1624>)

² Center for Medicare & Medicaid Services. *March 31, 2015 Effectuated Enrollment Snapshot*. (June 2, 2015). <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-06-02.html>

³ Corlette, S. *Small business health insurance coverage in a post-ACA world*. NIHCM Foundation. (June, 2015).

In the decade prior to passage of the ACA, insurance offerings by small employers had steadily decreased. In 2000 43 percent of small firms provided health insurance plans to their employees. By 2010 this share decreased to 33 percent.⁴ The reasons for this are several fold, including rising healthcare costs and associated premiums, the global economic recession and increasing financial strain specific to the small group market due to price volatility in smaller risk pools and larger administrative costs.⁵ In response to this trend, the ACA instituted several reforms.

The ACA small group market reforms largely fall into three categories: insurance coverage reforms, Small Business Health Options Program (SHOP) marketplaces, and tax credits.⁶ Many of the insurance reforms and consumer protections are similar to those provided in the individual marketplaces. These include a ban on discrimination based on pre-existing conditions, caps on lifetime out-of-pocket limits, requirements on minimum essential health benefits, and others. In addition, to help make small group insurance more affordable, the ACA created the SHOP marketplaces to improve employee choice in plan offerings and help grow the risk pools. The law also created limited small business tax credits for small employers with fewer than 50 employees that offer insurance coverage.

II. ACA SMALL GROUP MARKETPLACE EXPANSION

Traditionally, small group health insurance markets have been defined as companies with 50 or fewer employees. Beginning in 2016, the ACA expands this definition to include firms with up to 100 employees. This distinction is important because current law grants issuers broad flexibility in setting premiums for mid-sized groups with 51 to 100 employees. There are no federal limitations in premium-rate development, and at the state level, fewer restrictions are in place for groups sized 51 to 100 compared to those with 50 or fewer employees. The expansion of this market may result in numerous practical implications which are described in detail below. Note that companies with 51 to 100 (and above) employees are also subject to the ACA's employer mandate, while those companies with 50 or fewer employees are not.⁷

The ACA expanded the small group marketplace to address two broad goals: extend the small group marketplace consumer protections to more Americans and to provide long term stability in the small group market. As noted above, the ACA provided numerous consumer protections to individuals in the small group market. This included various provisions such as guaranteed essential health benefit packages, bans on price discrimination based on a worker's

⁴ Holahan, J. Chen, V. *Declining health insurance in low-income working families and small businesses*. Urban Institute. (April 19, 2012).

⁵ Id

⁶ Corlette, S. *Small business health insurance coverage in a post-ACA world*. NIHCM Foundation. (June, 2015).

⁷ Annie L. Mach. *Health Insurance: Small is the New Large*, Congressional Research Service (August 26, 2015).

field of employment and limitations on premium increases based on age.⁸ Notably, these protections do not exist for individuals in the large group or self-insured health insurance markets. By expanding the size of the small group market, the ACA provided these protections to more Americans. A summary of these provisions is listed in the table below.

ACA Insurance Market Requirements by Employer Size⁹			
	Small Group	Large Group	Self-Insured
Required to cover Essential Health Benefits?	YES	NO	NO
Plan choice simplified using metal (bronze, silver, gold) scale?	YES	NO	NO
Premium protection regardless of industry?	YES	NO	NO
Premium protection regardless of coworkers' health?	YES	NO	NO
Premium protection regardless of personal health status?	YES	NO	NO
Caps premium increases based on age?	YES	NO	NO
Prevents premium discrimination based on sex?	YES	NO	NO
Eliminates discrimination based on preexisting conditions?	YES	YES	YES

Beyond consumer protections, the ACA's small group expansion sought to stabilize the historically volatile small group market. With the clear trend from 2000 to 2010 of decreasing health insurance offerings by small firms, a smaller risk pool exacerbated disadvantages faced by small employers. Prior research had already shown that compared to large employers, small

⁸ Id

⁹ Annie L. Mach and Bernadette Fernandez. *Private Health Insurance Market Reforms in the Affordable Care Act (ACA)*, Congressional Research Service (July 24, 2014).

firms are forced to both pay higher premiums and suffer increased year to year costs.¹⁰ If the small group market continued to shrink, these disadvantages would likely be compounded. The ACA aimed to reverse this trend. An expanded risk pool sought to simultaneously minimize volatility and lower rates. In addition, many highlight the expansion as an important tool to add a valuable customer base in the SHOP marketplaces, which would help with their viability. Advocates have argued that increased purchasers through SHOP will attract additional carriers, plan offerings, as well as brokers, to provide customer assistance to small businesses.¹¹

III. IMPLEMENTATION OF SMALL GROUP EXPANSION

The ACA granted states the option to expand the definition of small group health insurance earlier than 2016. No state has yet elected to do so. The SHOP marketplaces, using the original definition of up to 50 employees, remain in their infancy and are still evolving. During the first enrollment period, ending in 2014, only 12,000 businesses enrolled 76,000 individuals through the SHOP marketplaces.¹² In response, numerous improvements to this enrollment system have been developed including an improved website with interactive eligibility tools, improved online enrollment features and personalized enrollment assistance.¹³ Given that the small group market is still evolving, some states would prefer for this marketplace to achieve greater equilibrium before expanding it to include additional, larger employers, as the ACA will require in 2016.

Importantly, during the same time period as the initial SHOP marketplaces were rolled out in March 2014, the Centers for Medicare and Medicaid Services (CMS) issued a transitional policy to allow small businesses additional time to comply with several of the ACA's policy requirements.¹⁴ This policy allowed state insurance commissioners the authority to waive compliance with certain requirements in the small group markets. This waiver included important provisions such as the essential health benefit requirement. To date, 34 states have elected to waive these requirements for the 51 to 100 group for the additional 2 years allowed by

¹⁰ Cutler, D. *Market failure in small group health insurance*. The National Bureau of Economic Research. Working Paper 4879. (October 1994).

¹¹ Small Business Majority. Memo to Secretary Burwell. (March 4, 2015). http://www.smallbusinessmajority.org/_docs/letters/030415-Small-Business-Majority-letter-on-2016-small-group-market.pdf

¹² GAO. *Small Business Health Insurance Exchanges: Low initial enrollment likely due to multiple evolving factors*. Report GAO-15-58. (November 2014).

¹³ Lucia K. Giovanelli J. Miskell S. *After a slow start, federal small business health insurance marketplace offers new and improved functions*. The Commonwealth Fund. (February 19, 2015). <http://www.commonwealthfund.org/publications/blog/2015/feb/federal-shop-marketplace-offers-new-and-improved-functions>

¹⁴ CMS. *Extended transition to Affordable Care Act-Compliant Policies*. (March 5, 2014). <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf>

the CMS policy.¹⁵ This effectively allows these companies in most states to continue their large group coverage into 2017, further slowing the implementation process. Additionally, the transitional policy has delayed data collection on the financial effects of the various ACA-related reforms on small group rates. Until these policies are implemented, there will remain an inherent uncertainty regarding the actual healthcare costs under the new rules. This could translate into insurers charging higher premiums to be safe actuarially until the data is obtained.

IV. POTENTIAL CONCERNS OF SMALL GROUP MARKETPLACE EXPANSION

Beyond the CMS small business transitional policy and evolving SHOP marketplaces, there exists significant uncertainty on the effect of mid-size employers joining the small group market. Presently, insurers use a variety of metrics to determine premiums in the 51 to 100 groups, including historical claims experience, industry type, group size, gender ratio and employee participation rates.¹⁶ These metrics will change with the new definition and insurers will be limited to rate setting based solely on age, geography, tobacco use and family size. The shift in rate setting policy adds an additional source of marketplace uncertainty for changing the definition of small employers in 2016.

At the employer level, it is clear that the expanded definition will have variable effects on mid-size employers, with some experiencing lower premiums while others seeing their premiums raised.¹⁷ For example, employers with an older workforce may see lower costs as a result of the stricter rating requirements (insurers are not able to as aggressively price older beneficiaries). On the other hand, companies with younger, healthier employees may see higher costs. Higher premiums may result from more comprehensive benefit requirements. One study conducted by Oliver Wyman found that if the policy was to move forward under current law, 64 percent of the groups with 51 to 100 employees would receive a premium increase in 2016.¹⁸ Oliver Wyman estimated this increase to be approximately 18 percent over current premiums.

An additional concern is that the expansion of the small group market may induce adverse selection in the marketplace. Under current law, only 14.3 percent of firms with 50 to 100 employees are self-insured.¹⁹ However, for companies that may see higher costs under the

¹⁵ Williams, A. Corlette S. *State decisions on allowing mid-sized employers to delay a move to the small-group insurance market*. The Commonwealth Fund. (June 9, 2015). <http://www.commonwealthfund.org/publications/blog/2015/jun/state-decisions-on-allowing-mid-sized-employers>

¹⁶ American Academy of Actuaries. *Potential implications of the small group definition expanding to employers with 51-100 employees*. (March, 2015).

¹⁷ Id

¹⁸ Memo from Oliver Wyman to Blue Cross and Blue Shield Association (January 27, 2015) (online at <http://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/51-100%20OW.pdf>)

¹⁹ American Academy of Actuaries. *Potential implications of the small group definition expanding to employers with 51-100 employees*. (March, 2015).

new expanded market, some may choose to self-insure. This would remove healthy individuals from the risk pool and raise rates for the remainder of those in the newly composed small group market. If healthier groups leave the market, this could result in increasing rates for those remaining in the risk-pool and, employees in self-insured companies will no longer be covered by the ACA's consumer protections, benefit and rating reforms.²⁰

V. H.R. 1624 – THE PROTECTING AFFORDABLE COVERAGE FOR EMPLOYEES ACT

The Protecting Affordable Coverage for Employees Act, introduced by Reps. Tony Cárdenas (D-CA) and Brett Guthrie (R-KY), would permanently change the definition of small group employer to those employers with up to 50 employees. Currently, this bill has 207 cosponsors. Under the bill, states could choose to expand their small group markets if they wish, but the default would be to remain at 50 or fewer employees.

Proponents of the bill cite the concerns listed above. Advocates are varied and include groups such as the U.S. Chamber of Commerce, the National Restaurant Association and the National Association of Manufacturers.²¹ America's Health Insurance Plans (AHIP) and the National Association of Insurance Commissioners have also expressed support.^{22,23}

Opponents contend that most insurance reforms included in the ACA were met with similar resistance and claims that the markets would be in turmoil, which has not been the case. They argue that short term uncertainties of the small group expansion can be mitigated through other policy approaches. Additionally, they argue that the long-term benefit of a highly effective SHOP marketplace is crucial for employees in small firms as it will result in lower premiums and diminished pricing volatility for small employers.²⁴

VI. ALTERNATIVE PROPOSAL

Many stakeholders have asked CMS and Congress to delay the expansion for two to three years. A delay would allow the small group market to stabilize and the SHOP marketplaces to prepare for larger groups. Supporters of a delayed expansion argue that the current uncertainty is a time-limited occurrence. With a delayed implementation, insurers will have time to collect data

²⁰ Corlette, S. *Small business health insurance coverage in a post-ACA world*. NIHCM Foundation. (June, 2015).

²¹ Scott, D. *The Obamacare 'Fix' most likely to pass this Congress*. National Journal. (August 31, 2015).

²² AHIP Issue Brief (May 2015) (online at <http://www.ahip.org/IssueBrief/Small-Group-Market/>)

²³ Letter from National Association of Insurance Commissioners to Sen. Scott, et. al. (May 18, 2015) (online at http://www.naic.org/documents/index_health_reform_section_small_group_support_letter.pdf)

²⁴ Letter from Small Business Majority to HHS Secretary Burwell. (March 4, 2015).

on the effects of the ACA reforms to premium determinations.²⁵ Additionally, the SHOP marketplaces are actively in the process of upgrades.²⁶ If progress of the SHOP marketplaces follows the trajectory of the individual marketplaces, significant improvements in both IT infrastructure and enrollment success may have significant room for growth. Overall, a delay would allow policymakers time to develop fully informed decisions without abandoning the possibility of successful reforms.

Of note, prior to the introduction of H.R.1624, many supporters of the current legislation, including the U.S. Chamber of Commerce, publically supported a two-year delay of the small group expansion definition.²⁷ In their letter, they note that a delay would “preserve the intended timeline in the ACA.” Specifically, they note the approach would allow the SHOP marketplaces to stabilize and stressed the importance of two years of data regarding the new premium rating rules.

Finally, an optional two-year delay strategy may minimize disruption to businesses that have already made complex financial decisions under the assumption of the scheduled 2016 expansion. Given the special transitional rule, many carriers have suggested that employers make decisions regarding renewal of large group plans prior to October 1, 2015.²⁸ Given the close proximity to this date, it is likely many businesses have already made these decisions. Furthermore, for individual businesses, the issue goes beyond insurance financing, but also has the potential to affect a business’s compliance with the employer mandate.

VII. CONCLUSION

The small group health insurance marketplace is currently undergoing transformation from multiple different fronts. The ACA implemented a new market for small businesses to obtain health insurance through the SHOP marketplaces. However, these marketplaces are still in their early stages and continue to evolve. Additionally, most states have decided to grandfather existing small group plans from several of the ACA’s consumer protection provisions, making actuarial predictions regarding premiums difficult. Finally, in the insurance community, there is a debate on practical effects of expanding the small group market to include

²⁵ Corlette, S. *More trouble than it’s worth? The Affordable Care Act’s redefinition of the small group market*. Georgetown University Health Policy Institute. (March 3, 2015).

²⁶ Lucia K. Giovanelli J. Miskell S. *After a slow start, federal small business health insurance marketplace offers new and improved functions*. The Commonwealth Fund. (February 19, 2015). <http://www.commonwealthfund.org/publications/blog/2015/feb/federal-shop-marketplace-offers-new-and-improved-functions>

²⁷ U.S. Chamber of Commerce. Letter to Secretary Burwell. (February 18, 2015). https://www.uschamber.com/sites/default/files/delay_expansion_of_the_small_group_market_-_employer_letter_0.pdf

²⁸ Klinger L, Grassli S. *Employers with 51-100 employees: Upcoming ACA changes in 2016*. Leavitt Group. (July 23, 2015). <https://news.leavitt.com/health-care-reform/employers-with-51-100-employees-upcoming-aca-changes-in-2016/>

companies with up to 100 employees. The cumulative effect of these simultaneous changes is increased marketplace uncertainty rather than the smooth transition intended by policymakers.

VIII. WITNESSES

The following witnesses have been invited to testify:

Mike Kreidler
Washington State Insurance Commissioner

Monica J. Lindeen
President
National Association of Insurance Commissioners
and Montana Commissioner of Securities and Insurance

Kurt Giesa
Partner
Oliver Wyman