

MINORITY VIEWS
H.R. 1101, the *Small Business Health Fairness Act*
115th CONGRESS, FIRST SESSION
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INTRODUCTION

Committee Democrats oppose H.R. 1101, the *Small Business Health Fairness Act* because it puts comprehensive and affordable coverage for small businesses and their employees at risk. Committee Democrats were also concerned about the Majority's insistence on considering health-related legislation while two other Committees (Energy and Commerce and Ways and Means) simultaneously considered legislation to gut the Affordable Care Act (ACA).

BEFORE THE AFFORDABLE CARE ACT WORKERS HAD FEW OPTIONS

Before the ACA, employer-provided coverage was shrinking and costs were increasing dramatically. From 1999 to 2010, the cost of premiums for employer-provided health insurance increased by 138%.¹ Additionally, workers often had limited options for affordable health insurance. Those who were employed were often locked in to their employment for fear of losing their health insurance, even if they wanted to retire, work part-time, or start a new business, due to inadequate coverage options outside the employer-sponsored system. Workers with pre-existing conditions were particularly disadvantaged, since they could be charged higher rates or denied coverage altogether in the individual market. Even those with comprehensive and affordable job-based health insurance saw higher premiums due to the high number of uninsured. Estimates show that every American family with insurance had to pay a hidden tax of roughly \$1,000 for the cost of caring for people without insurance.²

Businesses were also struggling before the ACA. Historically, small businesses were charged more for the same benefits compared to large employers. Small businesses employing women or workers with chronic or high-cost illnesses were charged higher insurance rates in many states. Therefore, a single sick or older employee could make health insurance unaffordable. Because small employers have fewer employees to spread risk across than larger employers, premiums varied dramatically from year to year due to changes in workers' health status.

PROGRESS OF THE ACA HELPS SMALL BUSINESSES & WORKING FAMILIES

The ACA took steps to level the playing field. The ACA added reforms to ensure that one small business with an older or sick employee or owner is not disadvantaged compared to other small businesses. The medical loss ratio provision of the ACA requires insurance, including plans that cover small businesses, to spend at least 80% of premiums on health care claims and quality improvement, ensuring that premium dollars go toward the actual health costs of covering the small business and its employees, and not just profits. Further, the ACA created more options for

¹ Kaiser Family Foundation, *Snapshots Employer Health Insurance Costs and Worker Compensation*, (February 27, 2011) available at: <http://kff.org/health-costs/issue-brief/snapshots-employer-health-insurance-costs-and-worker-compensation/>.

² Families USA, *Hidden Tax Americans Pay a Premium*, (2009) available at: http://familiesusa.org/sites/default/files/product_documents/hidden-health-tax.pdf.

employers and workers through the creation of the Small Business Health Options Program (SHOP) and included a tax credit to defray the cost of health insurance for their employees.

The ACA also establishes several safeguards for workers and families. Thanks to the ACA, most insurance plans must now provide coverage without cost sharing for certain preventive health services, including pap smears and mammograms for women, well-child visits, flu shots, and more. Early estimates after the ACA's passage showed that there were around 129 million Americans with a pre-existing condition, 82 million of whom were enrolled in employer-based coverage.³ For these millions of American workers, the ACA means that losing a job does not mean losing health insurance coverage. "Job lock" has been reduced, allowing workers to structure their careers in ways that make sense for them. This is particularly important for young workers, who are very often in school or making the early career choices that have a long-term impact on their careers. This is also important for entrepreneurs who want to start their own business.

THE REPUBLICAN REPLACEMENT PLAN THREATENS THE HEALTH INSURANCE SECURITY OF AMERICAN FAMILIES

Two days prior to the Committee's consideration of the three bills, Republicans released their ACA replacement plan, the *American Health Care Act*. The Ways and Means and Energy and Commerce Committees moved the bill forward through the Committee process, despite the fact that the Congressional Budget Office had not yet released estimates on the legislation's impact on coverage or cost. Committee Democrats expressed their concern about the lack of transparency in moving the bill forward and also further expressed concern that the markup in the Education and the Workforce Committee occurred simultaneous to this process – essentially forcing the Committee to consider legislation that represents a moving target.

The *American Health Care Act* is an inadequate and unacceptable replacement plan. The legislation eliminates the ACA premium tax credits that millions of Americans depend on to pay for health coverage, in favor of a completely inadequate flat tax credit that leaves working families totally exposed to premium increases. The tax credits provided by the Affordable Care Act are based on income and are also tied to the cost of insurance premiums. In general, the lower an individual's income, the larger the tax credit and the more expensive the premium, the larger the credit. Therefore, the tax credit adapts to address the situation of the individual. However, under the Republican's plan, the credits range from \$2,000 to \$4,000 depending on age, but do not take into account income or the cost of a typical plan in the area.

In addition, the bill dismantles Medicaid as we know it, endangering the health of 70 million Americans who rely on Medicaid, including seniors with long-term care needs, Americans with disabilities, pregnant women, and vulnerable children. Further, under the Republican bill, American workers could see their premiums and deductibles skyrocket. Also, the American public will have fewer protections – including losing the full protection of the ACA's prohibition against insurers discriminating against people with pre-existing conditions under all

³ Department of Health and Human Services, At Risk: Pre-Existing Conditions Could Affect 1 in 2 Americans: 129 Million People Could be Denied Affordable Coverage Without Health Reform, (November 1, 2011) available at: <https://aspe.hhs.gov/sites/default/files/pdf/76376/index.pdf>.

circumstances. While Republicans increase health costs for many working families, they give tax breaks to the wealthy.

Older Americans will be forced to pay premiums five times higher than what others pay for health coverage, undoing the current limitation that stipulates that older individuals can only be charged three times more than young enrollees are charged. The Republican bill also shortens the life of the Medicare Trust Fund.⁴ Additionally, the bill includes a provision to defund Planned Parenthood for a year, threatening the health care of millions of women and men throughout the country.

The Congressional Budget Office's analysis of the proposal – released after Committee consideration – verified that 24 million more would be uninsured by 2026 under the Republican health care plan.⁵ The report also showed that seven million fewer individuals would be enrolled in employer-sponsored insurance.⁶ Further, the report demonstrated that millions would be worse off under the Republican plan and that millions more will end up paying more for less coverage.

For these abovementioned reasons, hospitals, providers, consumer groups and advocacy groups are opposing Republicans' attempts to cause irreparable harm to the health and financial security of Americans. AARP stated that, "...[the] bill would weaken Medicare's fiscal sustainability, dramatically increase health care costs for Americans aged 50-64, and put at risk the health care of millions of children and adults with disabilities, and poor seniors who depend on the Medicaid program for long-term services and supports and other benefits."⁷ The AFL-CIO maintained that, "The reality is, this isn't a healthcare plan at all. It's a massive transfer of wealth from working people to Wall Street."⁸ The Consortium for Citizens with Disabilities stated that, "[it is] simply unconscionable to pay for the repeal of the Affordable Care Act (ACA) by cutting services for low income individuals with disabilities, adults, older adults, and children."⁹ Due to its glaring shortcomings, the American Hospital Association has stated that it, "...cannot support The American Health Care Act in its current form."¹⁰

H.R. 1101 WILL CREATE MARKET FRAGMENTATION AND THREATEN BENEFITS

Part of the Republican's repeal and replace effort is centered around expanding association health plans (AHPs). Association health plans are groups of small employer groups or individuals that band together to obtain health insurance. Proponents argue that AHPs would expand access and drive down costs, resulting in more health coverage options. However, there are likely to be winners and losers under this approach and many workers and employers will be left out in the cold.

⁴ Center on Budget and Policy Priorities, *House Republican Health Plan Would Weaken Medicare*, (March 14, 2017) available at: <http://www.cbpp.org/blog/house-republican-health-plan-would-weaken-medicare>.

⁵ Congressional Budget Office, *Cost Estimate of the American Health Care Act*, (March 13, 2017) available at: https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/costestimate/americanhealthcareact_0.pdf.

⁶ *Id.*

⁷ AARP, *Letter to Chairmen and Ranking Members of the Energy and Commerce and Ways and Means Committees*, (March 7, 2017) available at: <http://www.aarp.org/content/dam/aarp/politics/advocacy/2017/03/aarp-letter-to-congress-on-american-healthcare-act-march-07-2017.pdf>.

⁸ AFL-CIO, *Press release GOP Healthcare Plan Taxes Workers and Destroys Care*, (March 7, 2017) available at: <http://www.aflcio.org/Press-Room/Press-Releases/GOP-Healthcare-Plan-Taxes-Workers-and-Destroys-Care>.

⁹ Consortium for Citizens with Disabilities, *Statement CCD Responds To American Health Care Act*, (March 8, 2017) available at: <http://www.c-c-d.org/fichiers/House-statement-3-8-final.pdf>.

¹⁰ American Hospital Association, *Letter to Congress*, (March 7, 2017) available at: <http://www.aha.org/advocacy-issues/letter/2017/170307-let-aha-house-ahca.pdf>.

Association health plans are not a new idea. In fact, they have been studied at length, including in a 2000 CBO report that found that they would have almost no impact in increasing health coverage.¹¹ Instead, they are likely to exacerbate adverse selection and shift costs on to workers. Although AHPs would be offered in competition with other small group and individual market plans, they would operate under different rules. This would fragment the market as lower-cost groups and individuals would move to establish an AHP, and higher-cost groups and individuals would remain stuck in traditional insurance plans. Such adverse selection would result in higher premiums in non-AHP plans. Ultimately, higher-cost (sicker or older) groups could find it more difficult to obtain coverage.¹²

With the passage of the ACA, health insurance sold through an association to individuals and small employers generally must meet the same insurance standards of coverage sold in the individual and small group market. The *Small Business Fairness Act*, introduced by Representatives Johnson and Walberg, essentially unravels these protections and allows association health plans to play by different rules. For example, they can evade state-mandated benefits and consumer protections. Therefore, those in an AHP may lose out on certain benefits and they may not be aware of that fact. While AHPs may save money if they do not have to bear the costs of these consumer protections, AHP enrollees are likely to incur substantial costs for non-covered services down the road when it is too late for recourse.¹³

Committee Democrats have concerns about the impact that association health plans will have on businesses and workers. The legislation is opposed by a number of consumer and advocacy groups, including the Main Street Alliance and the National Association of Insurance Commissioners. Further, the American Academy of Actuaries outlined in its comment letter to Chairwoman Foxx and Ranking Member Scott that, “the bill as currently written will likely have unintended consequences...”¹⁴

H.R. 1101 GAMBLES WITH THE FINANCIAL SECURITY OF BOTH WORKERS AND EMPLOYERS

There are grave concerns around the solvency of association health plans. The history of multiple employer welfare arrangements (MEWAs) offers insight into the financial challenges that AHPs could face. In 2001, Sunkist Growers, Inc., a licensed MEWA in California covering 23,000 people, became insolvent.¹⁵ When New Jersey’s Coalition of Automotive Retailers, a longstanding MEWA that covered 20,000 people, became insolvent in 2002, it had \$15 million in outstanding medical bills.¹⁶ For years, self-funded MEWAs had no clear regulatory authority and multiple MEWA bankruptcies resulted. Recognizing that it was both appropriate and necessary for states to be able to establish, apply, and enforce state insurance laws with respect to MEWAs, Congress amended ERISA in 1983 to provide an exception to ERISA’s broad

11 Congressional Budget Office, *Increasing Small-Firm Health Insurance Coverage Through Association Health Plans and HealthMarts*, (January 2000) available at: <https://www.cbo.gov/sites/default/files/106th-congress-1999-2000/reports/healthins.pdf>.

12 The American Academy of Actuaries, *Issue Brief Association Health Plans*, (February 2017) available at: <http://www.actuary.org/content/association-health-plans-0>.

13 *Id.*

14 American Academy of Actuaries, *Letter to Chairwoman Foxx and Ranking Member Scott Re Markup of H.R. 1101, the Small Business Health Fairness Act of 2017*, (March 8, 2017).

15 The Commonwealth Fund, *MEWAs The Threat of Plan Insolvency and Other Challenges*, (March 2004) available at: http://www.commonwealthfund.org/usr_doc/kofman_mewas.pdf.

16 *Id.*

preemption provisions by specifically allowing for state regulation of MEWAs. Unfortunately, HR 1101 prohibits state regulation of AHPs, so if the bill is enacted, AHPs will not be covered by state regulations which generally govern consumer protections and solvency requirements.¹⁷

H.R. 1101 allows AHPs to form under limited regulation and oversight, hearkening back to the time when MEWAs also enjoyed limited regulation and gambled with the financial security of both workers and employers. AHPs threaten both employers and workers and have been soundly dismissed as doing little to actually improve coverage or decrease costs in a sustainable way.

COMMITTEE CONSIDERATION OF H.R. 1101

During Committee consideration, Representative Wilson offered an amendment that expressed a sense of Congress that any health care insurance legislation should build on the current progress of the ACA with CBO's analysis that demonstrates improvements in cost and coverage. That amendment was withdrawn.

Several Committee Democrats offered amendments to ensure that association health plans did not unduly disadvantage certain pockets of small businesses and workers. Ranking Member Scott offered an amendment prohibiting the legislation from taking place if CBO determined small group market premiums would rise as a result of the legislation. In his remarks, Ranking Member Scott underscored the potential impact of AHPs on small group market premiums saying, "The reason people want to join an association is because they will be in a pool with younger, healthier people whose healthcare costs are less than average. Of course, no one would form an association for this purpose with people who have above average costs because it would be cheaper for them to just stay in the insurance pool and pay the average rate. So these association plans with healthier people will always work for those lucky enough to get in. But if you have all these healthy, cheaper people in an association, then that leaves those left behind with higher costs in the small group market and then the premiums for the small group market go up. It is simple arithmetic."

Representative Bonamici offered an amendment to require the legislation only take effect if CBO determined premiums for older workers would not increase. Representative Bonamici remarked, "Proponents of the bill argue that association health plans would expand the access and drive down costs. Is that the case for the young and the healthy? Well, what guarantee would older participants have that their costs will go down as well, that they will not be discriminated against? I have concerns that this legislation would actually make it more difficult for people who truly need coverage, older Americans, and that they would be losers."

Representative Norcross offered an amendment to prohibit the legislation from taking effect if the CBO determined that premiums for the middle class increased under the legislation. In offering his amendment, Representative Norcross stated, "I believe together we can make healthcare work better for working families. We can continue to protect those with preexisting conditions, protect women, and lower the cost. So let us put this into action, let us put

¹⁷ United States Department of Labor, *MEWAs - Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA) A Guide to Federal and State Regulation*, (August 2013) available at: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/enforcement/healthcare-fraud/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf>; Amendments enacted as part of Public Law 97-473, available at: <https://www.gpo.gov/fdsys/pkg/STATUTE-96/pdf/STATUTE-96-Pg2605.pdf>.

partisanship aside, and focus on solutions we both can agree to. I hope you will join me in supporting this amendment, which will give Americans peace of mind that their premiums will not go up.” These amendments were withdrawn due to germaneness concerns, but Committee Democrats remain troubled about the impact that AHPs would have on the affordability of coverage for certain workers. Underscoring these concerns, the Main Street Alliance asserts that, “H.R. 1101 would result in higher premiums and poorer coverage for the most vulnerable small business owners.”¹⁸ The National Association of Insurance Commissioners asserts that AHPs create a situation where “unhealthy groups are disadvantaged.”¹⁹

Committee Democrats also recognize that the loss of state mandated benefits and consumer protections threaten comprehensive services for workers and small businesses in AHPs. Representative Shea-Porter offered an amendment that was withdrawn, to ensure that substance abuse disorder coverage and treatment is not compromised through the expansion of AHPs. Representative Shea-Porter stated, “The fight against the heroin, fentanyl, and prescription opioid epidemic is multipronged, but it rests on a base of widespread access to coverage and care... My amendment would defend the gains we have made by ensuring that today's bill would not reduce access to substance use disorder treatment. Let us not pull the rug out from under people who are about to turn their lives around.”

Representative Davis also offered an amendment to ensure that association health plans cover needed health services for women, such as maternity care and direct access to OB-GYN services. In offering her amendment Representative Davis stated, “Madame Chairwoman, we know from our own hearing the other day that these provisions are extremely popular. Both the witnesses from Democratic and Republican staffs suggested that these minimum essential benefits should continue to be offered. So that is why I am so concerned that the bill before us could allow association health plans to be offered that do not offer some of these essential benefits and protections for women... My colleagues insist that expanding unregulated association health plans is about choice. I can tell you, I am all about expanding choices in health care coverage, but not if it means giving plans the choice to charge women more for the services they need... [the amendment] says that reductions in coverage for maternity care or women's preventive health services or limits to direct access to OB-GYN care is not basically the intent of this legislation. This really is an opportunity for all of us to show our seriousness about women's health.” The amendment failed on a party line vote (17-22).

Representative Polis offered two additional amendments to allow prescription drug importation and support hospital pricing transparency. Both amendments were withdrawn.

H.R. 1101 was favorably reported, as amended, on a party line vote (22-17) with all Democratic Members opposing.

¹⁸ The Main Street Alliance, *Letter to Chairwoman Foxx and Ranking Member Scott*, (March 8, 2017) available at: <https://d3n8a8pro7vnm.cloudfront.net/mainstreetalliance/pages/487/attachments/original/1489503369/letteropposingHR1101.pdf?1489503369>.
¹⁹ National Association of Insurance Commissioners, *Letter to Chairwoman Foxx and Ranking Member Scott*, (February 28, 2017) available at: http://www.naic.org/documents/health_archive_naic_opposes_small_business_fairness_act.pdf.

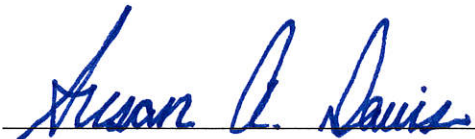
CONCLUSION

After seven years of disparaging the ACA, Republicans released a repeal and replacement plan that will leave millions of Americans worse off. Meanwhile, the *Small Business Health Fairness Act* would erode the protections in the ACA and leave small businesses and their workers vulnerable to unaffordable health coverage and fewer benefits. Association health plans let the fortunate few form an association where they are able to pay less than average, but everyone else outside of the association will have to pay more. The Committee should protect the progress of the ACA and work to improve and expand coverage; the expansion of AHPs will only threaten affordable coverage for those outside of the associations. Committee Democrats are committed to health care as a right, not a privilege for only the healthiest and wealthiest Americans.



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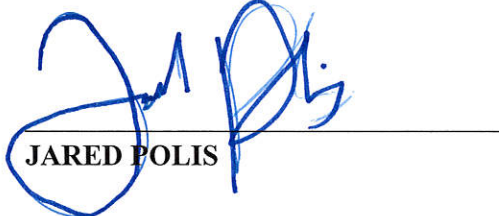
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