

Remarks of Ranking Member Bobby Scott
Full Committee Markup
Full Committee markup of H.R. 1313, *the Preserving Employee Wellness Programs Act*; H.R. 1101, *the Small Business Health Fairness Act*; and H.R. 1304, *the Self-Insurance Protection Act*
Wednesday, March 8, 2017

Thank you, Madame Chair.

During this markup, we will consider three bills that will weaken consumer protections in health coverage and shift costs onto workers.

Now in just a couple of weeks, we will mark the 7th anniversary of the passage of the Affordable Care Act. Seven years ago, Democrats held more than 200 bipartisan hearings and passed legislation that, while not perfect, has improved health care in this country. Yet, in the last eight years, and in a couple of years leading up to the ACA's passage, all you heard from Republicans were complaints about the process and the policy. But now that Republicans are in charge, all we've seen them do

is undertake a chaotic, secretive process and attempt to advance policies that will leave Americans worse off.

While I strongly oppose the bills we are considering today, I commend the Chairwoman for holding legislative hearings on these bills last week and making bill text publicly available before this markup so that we have an intelligent chance to deliberate the merits of the policy in accordance with regular order.

Unfortunately, our Democratic colleagues on the Ways and Means and Energy and Commerce Committees were not given the same courtesy. Today those Committees are marking up legislation that was literally held under lock and key. This is not the open and honest legislative process owed to the American people. This break from regular order is all the more troubling because those Committees are marking up legislation that threatens to strip health care and financial security away from millions of Americans.

It's impossible to have as serious a health care discussion in this Committee while two other Committees are simultaneously repealing the ACA. We are talking about a moving target – the Majority wants to repeal and replace the ACA but so far, we don't have any CBO scores on the cost of coverage estimates with their so-called replacement bill. Now, we are considering three bills that in no way build on the progress of the ACA or are any part of any comprehensive replacement.

For the last eight years, Republicans also complained about the law, promising that when there were in charge, they would do something better. But we can't just take Republicans at their word. We have got to measure their proposal against the progress we've made in the eight years since the ACA was passed.

But to think about the gains made under the ACA, it's important to remind folks what the situation was before the Affordable Care Act was passed. Costs were going through the roof, people with pre-existing

conditions could not get insurance or if they did it was unaffordable, women were paying more than men, and each year, millions of people were losing their insurance.

Since passage of the ACA the costs have continued to go up, but at the lowest rate in about 50 years. Those with pre-existing conditions can get insurance at the standard rate, women aren't pay the same rates as men, and instead of millions of people losing their coverage each year, 20 million have gained coverage since the passage of the ACA. The full name of the law is the Patient Protections and Affordable Care Act.

There are patient protections. Like insurance companies can't cut you off after they've paid a certain amount over your lifetime, we're closing the donut hole, those young people up to 26 can stay on their parents' policies, prevention, and cancer screenings and annual checkups with no co-pays or deductibles.

So as we consider these three bills today, it's impossible to ignore the fact that the Majority is taking action in other Committees to take these benefits away and to take away health coverage for millions.

The bills we are marking up today will also leave workers worse off.

H.R. 1101, the *Small Business Health Fairness Act*, expands Association Health Plans, a 20-year-old, widely discredited idea that segments markets so a few healthy people pay less, but a lot of older or less healthy people pay more. In 2000, the Congressional Budget Office found that the proposal would have little effect on increasing health coverage, and in 2003, the Academy of Actuaries characterized the legislation as "flawed" because it is neither actuarially sound nor does it protect consumers. It's simple arithmetic. Under the ACA, everyone pays the average. But, if you've got a system where healthy folks pay less, then everyone else will have to pay more. This legislation does nothing but accelerate a race to bottom for health coverage at the expense of both workers and employers.

H.R. 1304, the *Self-Insurance Protection Act*, shields stop-loss insurance from certain federal oversight. While stop-loss can help self-insured employers mitigate risk, there are questionable implications for both employers and workers, particularly when smaller businesses decide to self-insure. Even after last week's legislative hearing, it is unclear how this does anything to help workers get quality health insurance and there is ambiguity on the impact that this bill might have on states' ability to regulate stop-loss.

H.R. 1313, the *Preserving Employee Wellness Programs Act*, allows workplace wellness programs to circumvent the protections in the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act. As our witness pointed out last week, this policy gives employers free range to penalize workers who don't want to disclose their medical information or disability through higher health care costs, such as premiums. Consumer and disability rights groups have vocalized their strong opposition of erosion of key civil and

privacy rights in this way. Sadly, after last week's hearing, instead of making improvements to the discussion draft, we see an introduced version of the bill that is actually worse. H.R. 1313 allows wellness programs to require health information of dependents as well. It also undermines the ADA safe-harbor provision, which allows insurance companies and employers to use data and actuarial models to assess and classify risk. The bill's overbroad language would exempt all employer plans from the ADA, regardless of the reasonable accommodation or retaliation protections.

Taken together, these bills do nothing to help insulate the American people from the damage of repealing the ACA.

Last week, I said that if Republicans came up with a plan that is better than the ACA, I would support it. I had my doubts because we had yet to see any plan. Well guess what? We have the plan and it is a bad one. I think Republicans need to go back to the drawing board, or better yet

work with Democrats to improve the ACA. If Republicans would let go of their misguided desire to repeal the ACA, then we can have a serious conversation about how to build on its progress.

Thank you and I yield back.