

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**May 13, 2013**

**MEMORANDUM**

**To: Committee on Energy and Commerce Democratic Members and Staff**

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

**Re: Investigation on the Impact on Cost of Coverage of the Affordable Care Act**

Today, the Republican staff of the Committee on Energy and Commerce issued a report on the impact of the Affordable Care Act on the cost of coverage in the individual health insurance market. The Republican staff report is deeply flawed. The major methodological error is that the report ignores the provisions of the Affordable Care Act that will reduce costs in the individual market, such as tax credits for individuals and small businesses. The result is a one-sided report full of misleading conclusions that conflict with the findings of independent experts.

Committee Republicans requested information from 17 health insurers on the impact of certain provisions of the Affordable Care Act that could raise premiums in the individual market, such as the requirement of guaranteed issue, community and age rating, the inclusion of essential health benefits, and new taxes on health insurers.<sup>1</sup> The Republicans did not request information regarding the provisions of the Affordable Care Act that would reduce costs in this market, such as the individual tax credits provided in the Affordable Care Act Exchanges and the tax credits for small businesses. The Republicans also did not request information on key cost containment measures, such as the availability of lower-cost catastrophic coverage for young adults.

Because of these data limitations, the Republican report is inherently biased. The majority of Americans receive their coverage as part of a large-employer plan or through

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<sup>1</sup> See e.g., Letter from Chairman Fred Upton et al., to Mark T. Bertolini, President and Chief Executive Officer, Aetna (Mar. 14, 2013). Recipients include Aetna, Blue Cross Blue Shield of Florida, Blue Cross Blue Shield of Michigan, Blue Cross Blue Shield of New Jersey, Blue Shield of California, Cigna Health, Coventry Corp., HCSC, Health Net of California, Highmark, Humana, Independence Blue Cross, Kaiser Permanente, Regence, Unitedhealth, University of Pittsburgh Medical Center, and Wellpoint.

government health insurance programs like Medicare or Medicaid, and they are not affected by changes in the individual market. But some individuals do receive coverage in the individual market. To assess the impact of the Affordable Care Act on the out-of-pocket costs of these individuals, both the provisions that raise rates and well as those that reduce costs need to be taken into account. The Republican report fails this basic test of objectivity.

### **The Failure to Consider the Impact of Tax Credits and Other Cost Reduction Measures**

A review of the documents produced to the Committee show that many insurance companies did not produce analyses that incorporated data on Affordable Care Act programs that were designed to drive down premium costs. This is not surprising as the Republican request to insurers did not seek information on tax credits and other cost containment tools. As a result, many analyses provided to the Committee and released in the Republican report failed to include these factors in the cost of coverage.

It is impossible to determine the impact of the Affordable Care Act in the individual insurance market absent information on the effect of these credits and other cost control measures. According to the Congressional Budget Office, 86% of individuals who receive coverage through the new Affordable Care Act Exchanges will receive tax credits, with the average credit reducing costs by over \$5,000 per year.<sup>2</sup> A study of the impact of these tax credits in California estimated that they will reduce premiums by an average of 89% for individuals with an income below 250% of the federal poverty level.<sup>3</sup> Similarly, tax credits available for small businesses will reduce the cost of coverage by as much as 50%.<sup>4</sup>

Some insurers who provided information to the Committee did acknowledge the significant impact of these tax credits. One described the “huge impact” of the subsidies, noting that they are “expected to result in a significant growth in coverage through Individual

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<sup>2</sup> Congressional Budget Office, *CBO's February 2013 Estimate of the Effects of the Affordable Care Act on Health Insurance Coverage* (Feb. 2013) (online at [http://cbo.gov/sites/default/files/cbofiles/attachments/43900\\_ACAInsuranceCoverageEffects.pdf](http://cbo.gov/sites/default/files/cbofiles/attachments/43900_ACAInsuranceCoverageEffects.pdf)).

<sup>3</sup> Milliman, *Factors Affecting Individual Premium Rates in 2014 for California* (Mar. 28, 2013) (online at <http://www.healthexchange.ca.gov/Documents/Factors%20Affecting%20Individual%20Premiums%20FINAL%203-28-2013.pdf>).

<sup>4</sup> U.S. Internal Revenue Service, *Small Business Health Care Tax Credit for Small Employers* (2013) (online at <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>).

Exchange.”<sup>5</sup> Another identified “Advanced Premium Tax Credits (i.e. Premium Subsidies)” and “Reinsurance Payments” as “Lower cost drivers.”<sup>6</sup>

Similarly, many analyses provided to the Committee for the small group market did not take into account tax credits. For instance, one insurer wrote to the Committee that the “small group premium analysis ... does not reflect the effect of any tax credits that may be available for select small employers purchasing through the Small Business Health Options (“SHOP”) market place to help cover the cost of coverage.”<sup>7</sup>

In addition to the tax credits, the Affordable Care Act established other programs to mitigate any potential premium increases. An Affordable Care Act reinsurance fund will provide funding to insurers to cover costs resulting from the high claims totals of the people they cover.<sup>8</sup> Affordable Care Act risk adjustment provisions protect insurance companies whose plans contain a large number of high-cost enrollees. And Affordable Care Act risk corridors limit insurer losses and gains, reducing incentives for insurers to overestimate beneficiary costs either to protect against losses or to increase profits.<sup>9</sup> While some of the insurance companies took these cost-containment provisions into account, others did not. One insurer that did take these provisions into account provided documents revealing that these three cost containment tools could reduce premiums by 26% in the individual market in one state and by 15% to 19% in other states.<sup>10</sup> Another insurer noted that the reinsurance program alone could decrease projected premium increase by 10% to 13%.<sup>11</sup> A third noted that “Reinsurance is consistently and significantly favorable” in terms of reducing premiums.<sup>12</sup>

Two other key factors not highlighted in the Republican report that must be taken into account when analyzing premiums in the post-reform individual market are transparency and competition. The Congressional Budget Office has estimated that competition and transparency in the new health insurance marketplaces will drive down costs by between 7% and 10%.<sup>13</sup> In

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<sup>5</sup>[Redacted], *The Commercial Market: Public Exchange and other ACA provisions impacting the Small Group and Individual Markets* (Oct. 26, 2012).

<sup>6</sup> [Redacted], *ACA Drivers and Changes in Individual Insurance – Costs for [Redacted] in Our Context* (undated).

<sup>7</sup> Letter from Counsel to Chairman Fred Upton, House Committee on Energy and Commerce (Apr. 1, 2013).

<sup>8</sup> [Redacted], *Pricing Evolution in the context of Health Care Reform* (Dec. 2012).

<sup>9</sup> *Id.*

<sup>10</sup> [Redacted], *2014 pricing methodology and results: [Redacted] Pre-Read* (Mar. 19, 2013).

<sup>11</sup> [Redacted], *2014 HCR Impact Items* (undated).

<sup>12</sup> [Redacted], *[Redacted] Exchange Pricing for 2014* (undated).

<sup>13</sup> Letter from Congressional Budget Office Director Douglas Elmendorf to Senator Evan Bayh (Nov. 30, 2009) (online at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/107xx/doc10781/11-30-premiums.pdf>).

some states, insurers have indicated that they will significantly lower their proposed rates after seeing the rates proposed by their competitors.<sup>14</sup> In every marketplace, consumers will be able to compare plans with comparable benefits side-by-side and will have the opportunity to select the plan that is right for them.

The Republican report places great emphasis on the rate increases that will be experienced by young, healthy males. But even in this area, the Republican report is one-sided. The report ignores that under the Affordable Care Act, individuals under 30 can purchase low-cost catastrophic coverage. These plans will have higher deductibles and greater cost-sharing than other plans, which will result in lower premiums.<sup>15</sup>

### **Failure to Account for Improved Benefits**

To the extent premiums are increasing, one key factor accounting for this increase is the fact that the health insurance coverage received by millions of people under the Affordable Care Act will be significantly better than the coverage they have now. For example, under the Affordable Care Act, individuals are guaranteed that their plan will pay for between 60% and 90% of the cost of their health care; that their plan will cover a set of essential health benefits such as prescription drugs, maternity care, and mental health care; and that their overall out-of-pocket costs will be capped. Consumers are eligible for preventive care benefits without copays, co-insurance, or a deductible, and their insurance cannot impose lifetime or annual coverage limits. These benefits will limit out-of-pocket costs and give consumers the security of knowing that their coverage is there for them when they need it.

These increased benefits mean savings for individuals when they need coverage. A fair analysis of the impact of the law on health care affordability would factor these savings into account. The Republican report does not do so.

### **Premium Rate Decreases in the Individual and Small Group Markets**

The documents provided to the Committee reveal that while some consumers in the individual market may see premium rate increases, others will see premium decreases. As one insurer explained in correspondence with the Committee: “the impact of the PPACA is not uniform across all Americans, and ... the impact is likely to vary based on the unique attributes of each state’s health care system and market, as well as various demographic factors, such as age.”<sup>16</sup>

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<sup>14</sup> *Two Oregon insurers rethink 2014 premiums as state posts first-ever rate comparison*, The Oregonian (May 9, 2013) (online at [www.oregonlive.com/health/index.ssf/2013/05/two\\_oregon\\_insurers\\_reconsider.html](http://www.oregonlive.com/health/index.ssf/2013/05/two_oregon_insurers_reconsider.html)).

<sup>15</sup> Department of Health and Human Services, *Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review*, 78 Fed. Reg. 39 (Feb. 27, 2013).

<sup>16</sup> Letter from Counsel to Chairman Fred Upton, House Committee on Energy and Commerce (Apr. 1, 2013).

For example, one insurance company document on “HCR Impact” revealed “winners” under the Affordable Care Act: individuals who are “older and/or unhealthy with richer benefits” under their current policies could see a 43% decrease in their premium costs due to the requirements of the law.<sup>17</sup> Another insurer’s internal analysis confirms that “[o]lder, sicker populations will have access to coverage and experience some rate relie[f].”<sup>18</sup>

The documents reveal that women in particular are likely to experience reductions in insurance premiums on the individual market. One insurer’s internal analysis indicated that as a result of the Affordable Care Act’s reforms to gender and age rating, young women in one state would see their premiums decrease by as much as 74%.<sup>19</sup>

The documents provided to the Committee show that many small businesses will also experience rate decreases. One insurance company anticipated premiums to decrease for over 35% of their membership in the small group market in one state and 45% of their small group membership in a different state.<sup>20</sup> Another insurer anticipated premium decreases of as much as 50% for some of their customers.<sup>21</sup>

When analyzing potential premium increases, it is important to note that in the pre-reform individual market, premiums were held down for some policy holders because millions of Americans were either excluded from coverage all together or given an offer of coverage with such unaffordable premiums and cost sharing that they were priced out of the market. When these previously uninsured individuals are allowed into the market, their premiums will be dramatically lower than they would have been if insurers offered them coverage prior to reform.<sup>22</sup>

### **Most Americans Have Employer Sponsored Coverage or Public Coverage**

The majority of Americans receive coverage through their employer or through public programs like Medicare and Medicaid.<sup>23</sup> As the Republican report notes, “most of the insurers

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<sup>17</sup> [Redacted], *HCR Impacts – Front End* (Jan. 31, 2013).

<sup>18</sup> [Redacted], *The Commercial Market: Public Exchange and other ACA provisions impacting the Small Group and Individual Markets* (Oct. 26, 2012).

<sup>19</sup> [Redacted], *Attachment A – Revised April 5, 2013* (Apr. 5, 2013).

<sup>20</sup> *Id.*

<sup>21</sup> [Redacted], *Health Care Reform and Exchanges Transform Employer Markets* (Mar. 2013).

<sup>22</sup> The Henry J. Kaiser Family Foundation, *Why Premiums Will Change for People Who Now Have Nongroup Insurance* (Feb. 6, 2013) (online at <http://policyinsights.kff.org/en/2013/february/why-premiums-will-change-for-people-who-now-have-nongroup-insurance.aspx>).

<sup>23</sup> The Henry J. Kaiser Family Foundation, *Health Coverage and Uninsured* (online at <http://kff.org/state-category/health-coverage-uninsured/>).

contacted by the committee had not conducted an analysis on the PPACA's effects on the large group market." No serious analysis has found that large employers will see significantly higher health insurance costs because of the Affordable Care Act. Similarly, public programs are not expected to increase costs to beneficiaries as a result of the Act. Unfortunately, the Republican report glosses over this important limitation on its purported findings.