



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

September 13, 2011

To: Health Subcommittee Members

From: Majority Staff

Re: Hearing Memo

On Thursday, September 15, 2011, at 10:00 a.m. in 2123 Rayburn, the Subcommittee on Health will hold a hearing entitled, “Cutting the Red Tape: Saving Jobs from PPACA’s Harmful Regulations.”

The purpose of the hearing is to discuss H.R. 2077, the “MLR Repeal Act of 2011,” and a Discussion Draft to prevent enforcement of the grandfathered plan regulation and preserve the choice of individuals to maintain their health coverage.

I. Witnesses

Panel One

Steve Larsen

Director

Center for Consumer Information and Insurance Oversight

Centers for Medicare and Medicaid Services

Department of Health and Human Services (HHS)

Panel Two¹

Edmund Haislmaier

Senior Research Fellow

Health Policy Studies

The Heritage Foundation

Grace-Marie Turner

President

Galen Institute

Janet Trautwein

Chief Executive Officer

National Association of Health Underwriters

Wendell Blaine Potter

Senior Analyst

The Center for Public Integrity

Lynn Bates Quincy

Senior Policy Analyst

Consumers Union

¹ Additional Witnesses may be added.

II. Discussion

Major portions of Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA) require implementing regulations. The Center for Consumer Information and Insurance Oversight (CCIIO) at the Centers for Medicare and Medicaid Services (CMS) has been charged by the HHS Secretary as the lead office in developing and implementing these regulations.

III. Issues

A. Grandfathered Health Plans

Section 1251 of PPACA generally sets forth conditions for when a group or individual health plan in effect before March 23, 2010, may be exempt from certain requirements of the law. On June 17, 2010, the Departments of Health and Human Services, Labor, and the Treasury issued an interim final rule imposing additional restrictions that health plans must comply with in order to protect their grandfathered status.ⁱ The Administration issued an amendment to the interim final rules on November 17, 2010.ⁱⁱ

During the debate over health reform, President Obama stated: “[i]f you like your current plan, you will be able to keep it.”ⁱⁱⁱ Yet the rule issued by the Obama Administration has major implications as to whether individuals can maintain their existing health coverage. By the Administration’s own estimates, 49 to 80 percent of small-employer plans, 34 to 64 percent of large-employer plans, and 40 to 67 percent of individual insurance coverage will not be grandfathered by the end of 2013.

The federal rules also have major consequences for employee compensation and job creation – adding to the uncertainty coming from Washington. According to the National Federation of Independent Businesses, employers “will be faced with the difficult choice of paying more to maintain grandfathered coverage, shopping for a new (and more expensive) plan or possibly dropping [coverage] entirely.”^{iv} This lack of flexibility forces employers to divert resources toward health coverage and away from capital investment, wage increases, and job growth.

The Discussion Draft would prevent the Administration from enforcing the June 17 regulation as amended. It would also prevent the Administration from enforcing any requirement or regulation that imposes any standard or requirement set forth in PPACA or the amendments made by such an Act on a grandfathered health plan – thus allowing Americans who like their health coverage to keep it.

B. Medical Loss Ratios (MLR)

Section 1001 of PPACA requires health plans to spend 80 to 85 percent of premium revenue on “reimbursements for clinical services” and “activities that improve health care quality” beginning in 2011. On December 1, 2010, HHS issued regulations defining approved

activities that improve health care quality or fall within the department's definition of clinical services.^v

As a result, the underlying provision gives HHS vast control over the design of private health insurance coverage irrespective of consumer health care preferences. Providers have also raised concerns that the MLR regulation severely limits investment in programs and initiatives to reduce fraudulent payments for services, improve health care quality, and advance better care coordination.

The MLR provision and associated regulation also have major consequences for employers. The MLR rule includes independent agent and broker fees in an insurer's MLR calculation and classifies fees as an insurer-borne expense. Brokers and agents provide critical support and educational services to individuals and employers seeking affordable health coverage and help ensure plans meet a consumer's specific health care needs. Survey data from the National Association of Health Underwriters indicates that this requirement will force 21 percent of agents to downsize their business as a result. Employers more broadly have also expressed concern regarding the potential costs and paperwork burdens associated with administering MLR rebates mandated by PPACA.

H.R. 2077, the "MLR Repeal Act of 2011," would repeal this MLR requirement in section 2718 of the Public Health Service Act as added by PPACA and HCERA.

If you need more information, please call Paul Edattel or Ryan Long at 5-2927.

ⁱ 75 FR 34537 – Interim Final Rules for Group Health Plans and Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (June 17, 2010)

ⁱⁱ 75 FR 70114 – Amendment to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (November 17, 2010)

ⁱⁱⁱ Remarks by the President on Health Care and the Senate Vote on F-22 Funding (July 21, 2009). Transcript available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Health-Care-and-the-Senate-Vote-on-F-22-Funding

^{iv} "New Grandfathering Rules Eliminate Choice, Flexibility for Small Businesses" (June 12, 2010). Press release available at <http://www.nfib.com/press-media/press-media-item?cmsid=51804>

^v 75 FR 74863 – Interim Final Rule Regarding Health Insurance Issuers Implementing MLR Requirements Under the Patient Protection and Affordable Care Act (December 1, 2010)