Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515–0315

To: Members, Committee on Small Business
From: Committee Staff
Date: February 6, 2017
Re: Hearing: "Reimagining the Health Care Marketplace for America's Small Businesses"

I. Introduction

On Tuesday, February 7, 2016 at 11:00 a.m. the Committee on Small Business will conduct a hearing titled, "Reimagining the Health Care Marketplace for America's Small Businesses." The purpose of the hearing is to examine the current state of play for small firms in the health insurance marketplace, review recent difficulties and explore options to improve access, affordability, and consistency in America's health insurance market.

II. Overview of the Affordable Care Act ("health care law" or "law")[1]

The health care law made numerous and significant changes to the way health care is financed, organized, and delivered in the United States. The law included a multifaceted set of interconnected provisions that addressed how the private health insurance market functions. Several main tenets made up the bulk of the law, with various interrelated provisions rounding out a massive change in the way Americans purchase and utilize health insurance.

First, the health care law required health insurers to comply with a set of federal standards to ensure that individuals may purchase, keep, and renew coverage that provides a minimum level of benefits and consumer protections, with some limits on costs. Second, the law established private health insurance exchanges (also known as marketplaces) through which individuals and small employers were able to compare and enroll in qualified health plans. The Small Business Health Options Program (SHOP) are exchanges required by the law to assist small businesses in identifying, comparing, and enrolling in health insurance coverage. Some states chose to establish and operate the SHOP exchanges. For those states that did not opt to do so, the federal government was responsible for operating the SHOP exchanges, called a Federally-Facilitated SHOP (FF-SHOP).[2]

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[1] Pub. L. No. 111-148, 124 STAT. 199 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 STAT. 1029 (2010), codified in scattered sections of titles 20, 25, 26, 29, and 42 of the United States Code.
[2] 42 U.S.C. § 18041.

Exchanges operated in every state and the District of Columbia. Small employers with no more than 25 full-time equivalent employees (FTEs) may have also used the exchanges to purchase insurance coverage for their employees and may have qualified for a tax credit to help cover the cost of providing that coverage.

Third, the law's "individual mandate" required most United States citizens and legal residents to obtain coverage. Those who remain uninsured may have had to pay a penalty unless they qualified for an exemption. The individual mandate was intended to encourage healthy individuals to participate in the insurance market and not wait until they get sick to buy coverage.

Finally, the health care law's "employer mandate" required employers with 50 or more FTEs to offer health coverage that meets affordability and adequacy standards for their full-time employees and those workers' dependents. Employers who did not comply with these requirements were subjected to a tax if one or more of their employees purchase coverage through an exchange and receive a subsidy.

In addition to these main tenets, the law contained hundreds of other provisions that address health care access, costs, and quality. The law also includes new taxes and fees as well as adjustments to Medicare payments to hospitals and other health care providers. In total, these new taxes have been estimated at $500 billion or more over the fiscal years 2012 through fiscal year 2022.[3] These provisions were designed to offset the federal spending on exchange subsidies and Medicaid expansion.

III. Current Problems in the Health Care Marketplace

Americans with job-based health care coverage—approximately 155 million people—are now facing higher premiums and higher deductibles since enactment of the health care law.[4] Average premiums in job-based coverage increased by $3,775.[5] The non-partisan Congressional Budget Office (CBO) has said that premiums in the individual market "are projected to grow somewhat more quickly over the next few years because of factors related to the Affordable Care Act."[6] Finally, an analysis by the Heritage Foundation found that three of the health care law's most costly insurance regulations—age-rating restrictions, benefit mandates, and minimum actuarial value requirements—"collectively increased premiums for younger adults by 44 percent, and for pre-retirement-age adults by 7 percent, relative to the previously available least expensive plans."[7]

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[3] http://www.atr.org/full-list-obamacare-tax-hikes-listed-a7010#ixzz1zTXuZUYl.
[4] KAISER FAMILY FOUNDATION, HEALTH INSURANCE COVERAGE OF THE TOTAL POPULATION (2015), *available at* http://kff.org/other/state-indicator/total-population/?dataView=1&currentTimeframe=0.
[5] KAISER FAMILY FOUNDATION, PREMIUMS AND WORKER CONTRIBUTIONS AMONG WORKERS COVERED BY EMPLOYER-SPONSORED COVERAGE, 1999-2015 (2016), *available at* http://files.kff.org/attachment/Report-Employer-Health-Benefits-2016-Annual-Survey.
[6] CONGRESSIONAL BUDGET OFFICE, PRIVATE HEALTH INSURANCE PREMIUMS AND FEDERAL POLICY 10 (2016).
[7] http://dailysignal.com/2016/03/28/3-ways-obamacares-insurance-regulations-could-cost-you/.

Changes in insurer participation have also had a negative impact on the health care marketplace. As a result of losses in this market, some insurers like UnitedHealth and Aetna[8] have withdrawn from the health care law marketplaces or the individual market in some states. In 2016, the number of insurers participating in each state (grouped by parent company) ranged from 1 in Wyoming to 16 in Texas.[9] In states that use Healthcare.gov, the average number of insurers participating in the marketplace will be 3.9 in 2017 (down from 5.4 companies per state in 2016, 5.9 in 2015 and 4.5 in 2014).[10] Marketplace insurer participation in states using Healthcare.gov in 2017 ranges from 1 company in Alabama, Alaska, Oklahoma, South Carolina, and Wyoming, to 15 companies in Wisconsin.[11] Lack of competition among insurers in the exchanges decreases pressure to keep costs down.[12]

Another problem facing Americans seeking health insurance is the repeated failure of government sponsored health insurance "Consumer Operated and Oriented Plans" (CO-OPs) that were designed to presumably provide additional competition to the private health insurance market. Under the program, the Centers for Medicare & Medicaid Services (CMS) uses appropriated funds to award low-interest loans to organizations applying to become CO-OPs—nonprofit, member-run health insurance issuers that sell health insurance in the states in which they are licensed. CMS awarded about $2.4 billion to the 23 CO-OPs that have offered health plans. Of those 23, 18 are now non-operational and not offering health plans or there is not an indication that they will renew or offer health plans in the future.[13] Because of the failure of these 18 CO-Ops, 800,000 individuals have lost their coverage.[14]

IV. The Landscape for Small Businesses

In 2016, the National Federation of Independent Businesses (NFIB) published a survey which found that the cost of health insurance continues as the number one small-business problem,[15] and 52 percent of small-business owners cite the cost of health insurance as critical.[16] Additionally, the National Small Business Association (NSBA) released a survey late in 2015 that found that while the majority of employers think offering health insurance is very important to recruiting and retaining good employees, just 41 percent of

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[8] http://www.washingtontimes.com/news/2016/aug/29/aetna-unitedhealth-pulling-out-of-obamacare-leavin/.
[9] [9] KAISER FAMILY FOUNDATION, 2017 PREMIUM CHANGES AND INSURER PARTICIPATION IN THE AFFORDABLE CARE ACT'S HEALTH INSURANCE MARKETPLACES, (Oct. 2016), *available at* http://kff.org/health-reform/issue-brief/2017-premium-changes-and-insurer-participation-in-the-affordable-care-acts-health-insurance-marketplaces/.
[10] *Id.*
[11] *Id.*
[12] http://www.heritage.org/research/reports/2013/11/obamacare-insurance-exchanges-and-the-lack-of-competition#_ftn5.
[13] *The Failures of Obamacare: Harmful Effects and Broken Promises: Hearing before the House Comm. on Budget*, 115th Cong. (January 24, 2017) (testimony of Grace-Marie Turner, President, Galen Institute), *available at* http://budget.house.gov/uploadedfiles/turner_housebudget_testimony_ii.pdf.
[14] *Id.*
[15] HOLLY WADE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, SMALL BUSINESS PROBLEMS AND PRIORITIES 7 (2016), *available at* http://www.nfib.com/assets/NFIB-Problems-and-Priorities-2016.pdf.
[16] *Id.*

firms with zero to five employees offer health benefits, down from 46 percent in 2014.[17] Overall, 65 percent of small firms (those with fewer than 500 employees) report offering health insurance today, down from 70 percent in 2014.[18] For the smallest firms, those with zero to five employees, the offer rate is less than half that of their counterparts with 20 or more employees.[19]

Surveys such as the two mentioned above show that small businesses owners want to provide health insurance for their employees, both as a recruitment and retention tool, but also out of a sense of obligation. Numerous small firms have testified before the House Committee on Small Business over the past several years and have provided anecdotal evidence to such, as well as detail the impediments the health care law has provided them.[20]

On January 12 and 13, 2017 respectively, the Senate and the House each passed S. Con. Res. 3, a resolution to provide the budget for fiscal year 2017 and set forth the appropriate budgetary levels for fiscal years 2018 through 2026.[21] The resolution will serve as a first step in paving the way for budget reconciliation and eventual repeal of the health care law. The budget resolution is a non-binding spending blueprint, and because it is not an act of law, it does not require the President's signature.[22]

While no clear legislative path forward to repeal and replace the health care law has yet materialized, several proposals that have the potential to help small firms offer and afford health insurance for themselves and their employees have been put forward from a variety of sources. Proposals such as harmonizing the tax treatment in the employer-sponsored and individual markets, removing restrictions on where health insurance products can be bought and sold, continuing to ensure individuals with pre-existing conditions have the opportunity to purchase and maintain health insurance, and increasing the portability of insurance to limit lapses in coverage due to job loss are main themes in discussions.

Portions of the health care law have already been repealed via legislation at the end of the 114th Congress. On December 13, 2016, President Obama signed the "21st Century Cures

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[17] NATIONAL SMALL BUSINESS ASSOCIATION, SMALL BUSINESS HEALTH CARE SURVEY 2 (2015), *available at* http://www.nsba.biz/wp-content/uploads/2015/11/Health-Care-Survey-2015.pdf.
[18] *Id.*
[19] *Id.*
[20] *See, e.g. The Health Care Law: Implementation and Small Business: Hearing before the House Comm. on Small Business* (113th Cong.) (April 17, 2013) (testimony of Kevin Tindall, Owner, Tindall and Ranson Plumbing and Heating) and William J. Gouldin, Jr., President, Strange Florists, Greenhouses and Garden Centers) *available at* http://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=320843, and *Self-Insurance and Health Benefits: An Affordable Option for Small Business?: Hearing before the House Comm. on Small Business Subcom. on Health and Technology* (113th Cong.) (Nov. 14, 2013) (testimony of Thomas Faria, President, Sheffeld Pharmaceuticals), *available at* http://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=350598.
[21] S. Con. Res. 3, 115th Cong. (2017), *available at* https://www.congress.gov/bill/115th-congress/senate-concurrent-resolution/3/text?q=%7B%22search%22%3A%5B%22budget+reconciliation%22%5D%7D&r=2.
[22] http://www.natlawreview.com/article/house-senate-pass-budget-resolution-first-step-toward-repealing-obamacare.

Act" into law.[23] A provision[24] of this law allows small employers with fewer than 50 full-time employees or equivalents that don't sponsor a group health plan to fund employee HRAs to pay for qualified out-of-pocket medical expenses and for non-group plan health insurance premiums, including for plans purchased on public health care exchanges under the health care law.[25] Specifically, the provision overturns guidance[26] issued by the Internal Revenue Service and the Department of Labor that stated that these arrangements violated the health care law insurance market reforms and were subject to a penalty for providing such arrangements.

V. Conclusion

Improving American's access to quality health insurance at an affordable cost will continue to be a dominant issue throughout the beginning part of the 115th Congress. This hearing will provide members to hear first-hand from small business owners and policy experts about the current state of the nation's health insurance marketplace and hear suggestions about how to improve the system.

[23] Pub. L. No. 114-255.
[24] *Id.* at Sec. 18001.
[25] https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/21st-century-cures-act-stand-alone-hras.aspx.
[26] UNITED STATES DEPARTMENT OF LABOR, TECHNICAL RELEASE NO. 2013-03, APPLICATION OF MARKET REFORM AND OTHER PROVISIONS OF THE AFFORDABLE CARE ACT TO HRAS, HEALTH FSAS, AND CERTAIN OTHER EMPLOYER HEALTHCARE ARRANGEMENTS (Sept. 13, 2013), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/technical-releases/13-03.