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Subcommittee on Primary Health and Retirement Security
Roundtable on "Small Business Health Care Challenges and Opportunities"
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Chairman Enzi, Ranking Member Sanders, thank you for the opportunity to participate in today's roundtable discussion of issues confronting the small business health insurance market. The three questions you've asked us to discuss today can help you and your colleagues hone in on policies to help support small businesses' efforts to recruit and retain healthy and productive workers at an affordable cost.

What is the current status of the health insurance market for small businesses, specifically plan options and costs in the small group market?

For a number of years now, employer-sponsored insurance has been eroding, and the decline has been more pronounced among small businesses. Small business owners have long struggled with high and often volatile premium costs relative to large businesses, a lack of market power when negotiating premiums, and high administrative costs associated with covering a small number of workers. In addition, minimum participation requirements used by insurers to safeguard against adverse selection used to mean that small employers often could offer only one plan and had to contribute a hefty portion of employees' premiums in order to encourage enough employees to enroll in the plan. These pressures have contributed to the steady decline in the number of small businesses offering coverage, from 44.5 percent in 2002 to 35.2 percent in 2012, leaving their employees disproportionately more likely to be uninsured compared to larger firms. Furthermore, even small business workers who were fortunate enough to receive insurance have historically had less generous coverage than their large business peers and have faced significantly higher deductibles and lower employer contributions for dependent coverage. Small employers have also been less likely to offer their employees a choice of insurers or plans.[1]

The small group market provisions of the Patient Protection and Affordable Care Act (ACA) were designed with the goal of making it easier for small businesses to offer adequate and affordable coverage to their employees. Key pillars of the strategy included changes to insurance rules, which for example broadened risk pooling for small businesses and ensured that minimum participation requirements do not have to be a barrier to small firms offering coverage to their workers. In addition, the new "SHOP" marketplaces offer small businesses a range of group health plans, including the ability for employees to choose their own plan.

What tools and options are available and useful for small employers to offer some assistance to their employees?

In many ways, small employers have some of the most coverage options of any other group, and their options have expanded under the ACA. The can choose to offer coverage or not,

without facing a penalty. They can choose whether or not to enroll in the SHOP, in a private exchange, or directly with an insurer. They can also decide whether to offer their employees a choice of plans, and, through the SHOP or a private exchange, set a defined contribution level.

The ACA created new options and insurance standards in order to address some of the most glaring problems with small business coverage, including unpredictable premium increases because of changes in an employer group's health status, limited benefits, pre-existing condition benefit exclusions, and high out-of-pocket costs. Consistent with the changes effected for the individual market, the small group insurance reforms thus included new rating rules prohibiting variation in premiums based on health status, required minimum essential health benefits and first-dollar coverage of approved preventive services, ended limits or exclusions from plan benefits based on pre-existing conditions, and capped enrollees' annual out-of-pocket liability.

In addition, insurers offering products in the small group market are now required to set rates using a single state-wide risk pool that includes both healthy and sick enrollees across all of their small group plans in the state. Small employers can also avoid having to meet minimum participation and contribution thresholds if they obtain coverage during an open enrollment period running from November to December each year.

New Options for Small Employers

SHOP marketplaces and tax credits

The ACA created the Small Business Health Options Program (SHOP) to provide new, state-based exchanges, or marketplaces, where small businesses can more easily shop for health insurance.[2] Responding to small business owners' concerns about their inability to give employees a choice of health plans,[3] SHOPs are designed to provide an "employee choice" option. As envisioned, instead of having to make a "one size fits all" plan decision for their employees, the employer sets its contribution level and lets each employee choose the plan that best suits his or her needs.

With few exceptions, the SHOPs have been slow to get off the ground and enrollment has been low.[4] During the first year of operation, only a minority of states had the technical capability to offer on-line enrollment, and fewer still prioritized the SHOP in their marketing and outreach campaigns.[5] In addition, mandatory implementation of employee choice was delayed in both 2014 and 2015, resulting in uneven rollout of this option across states. This year, 32 states are

providing some form of employee choice; the feature is expected to be available nationwide in 2016.[6]

A growing number of private exchanges offer another entrée into the market, generally allowing one-stop shopping, defined contributions and employee choice, much like the SHOPs.[7] These exchanges may be run by insurance carriers, insurance brokers, or in some cases by employee benefit firms.

The ACA also included small business premium tax credits to help make insurance more affordable for some very small employers with moderate-income workers. These tax credits are available only to businesses that enroll through the SHOP, and only through 2016. To date, few small businesses have made use of these credits, likely due to the narrow and complex eligibility requirements and relatively low credit amounts.

Non-compliant plans

Under the ACA reforms, many small employers – and their employees – will benefit from the new rating and benefit standards and cost-sharing protections. Others, particularly those with younger and healthier workers, may face premium increases as they are brought into a single risk pool that includes older and sicker workers. Several alternative coverage options currently enable such employers to circumvent the single risk pool, leaving the higher-risk people who remain in the pool to face higher premiums than would otherwise have been the case and threatening the long-term viability of the small group market.

Many small group plans are exempt from the ACA market reforms. Some are considered “grandfathered” because they were in existence before the law was passed in 2010 and have not made significant changes to benefits.[8] Over time, the importance of grandfathered plans is expected to diminish as benefits and cost-sharing are inevitably updated. Other small group plans were granted a reprieve under a transitional rule that allows small employers and individuals to remain on the health plans in which they were enrolled before the ACA reforms went into effect in 2014[9] – the so-called “grandmothered” or transitional plans. Not all states implemented these transitional rules, and some required small employers to transition to ACA-compliant plans in 2014.[10] While comprehensive data on how many small employers have remained on their pre-ACA plans are lacking, anecdotal evidence suggests a good many did.[11] In most states, these employers will be permitted to hang onto their old plans until October 1, 2016 (for coverage extending into 2017).[12] If, as expected, it is mainly employers with younger, healthier workers that are remaining in transitional plans, the risk pool for ACA-compliant small group plans and the SHOP exchanges is likely less healthy than it otherwise would have been,

putting upward pressure on premiums for employers on these plans in the short term. However, as healthy groups transition off their pre-ACA plans, the overall risk profile of the small group market should stabilize.

Self-funding

Small employers with healthy groups may also find it tempting to self-fund coverage, meaning that they bear the risk of employees' medical claims. As with the non-compliant plans, such a move exempts them from many of the ACA's rating and benefit reforms and could help lower their costs, at least initially. However, self-funding can also pose significant financial risks for employers and is usually accompanied by a reinsurance or stop-loss policy to cover unexpectedly large claims. Increasingly, these stop-loss policies are incorporating very low thresholds (or attachment points) above which claims are covered; self-funding employers purchasing these policies can mimic traditional health insurance while avoiding health insurance regulations. Researchers have projected that use of such low-risk stop-loss policies can lead to large premium increases for employers remaining in the regulated small group market,[13] undermining stability. A few states have moved forward to protect their small group market from the risks of self-funding, primarily through the regulation of very low-attachment point stop-loss coverage.

At this time, there is limited evidence that small employers are transitioning to self-funding in significant numbers.[14] However, employers moving off of transitional plans over the next couple of years may have greater incentives to self-fund. In addition, when the ACA's small group market reforms are extended to employer groups with 51-100 employees, more mid-sized employers may look to self-funding as an option.

Discontinue offering coverage

Small employers are not subject to the ACA's employer mandate and some, particularly those of very small size (less than 10) or with low-income employees, might find it advantageous to drop coverage (perhaps raising wages to compensate) and encourage workers to seek premium subsidies and enroll in a plan through the individual health insurance marketplaces. Evidence of this is anecdotal at this point, and reductions in offer rates appear to be modest so far.[15] While a shift out of employer-sponsored coverage reduces employers' health-related costs, workers lose the benefit of pre-tax contributions to their premiums and would have to pay taxes on any higher wages. For lower-income workers however, many may benefit from federal premium and cost-sharing subsidies.

What has worked, what hasn't worked, and what policy recommendations do you have for the Committee?

<u>What's Working</u>

All employers, including small employers, are benefiting from the unprecedented slowdown in health care cost growth. Since the ACA was passed, we have seen the slowest growth in health care prices in 50 years. And the three slowest years of growth in real per capita national health expenditures on record were 2011, 2012, and 2013. In employer-based coverage, the average annual family premium was approximately $1800 lower in 2014 than it would have been if premium growth since 2010 had matched the 2000-2010 average rate of growth.[16]

Employers – and their employees – are also benefiting from the ACA's prohibition on discrimination due to pre-existing conditions. No longer can an insurer refuse to cover the care for a new employee because he or she had a medical condition before being hired. Nor can those small employers with a higher proportion of older workers or women be charged a higher premium than competitors with a younger or predominantly male workforce. And small employers no longer have to worry that an employee with cancer, or a difficult pregnancy, will cause their premiums to spike.

For those many small employers who have not been able to offer their workers coverage, they now know there is a viable, high quality alternative coverage option for their employees. Whether through the ACA's health insurance marketplaces or in states adopting the Medicaid expansion, many lower-wage employees may be able to find affordable coverage for themselves and their dependents for the first time. Even when they cannot afford to offer coverage to their workers, small business employers know that health coverage is critical to maintaining a healthy and productive workforce.

What is not working

Without question, the SHOP exchanges have been slow to get off the ground. At this time, they are not able to provide a sufficient "value add" to convince small employers – and (more importantly) their brokers – that a move to a SHOP exchange is worthwhile. Premiums for the same plans inside and outside the SHOP are required under the ACA to be the same, and as noted previously, the small business tax credits are narrowly drawn and difficult to apply for. As a result, the SHOP has not been able to offer small businesses a price advantage. Perhaps even more challenging, the commissions for brokers inside and outside the SHOP are the same, yet enrolling a business in the SHOP currently takes more time than direct enrolling them with an insurer. As a result, brokers have no financial incentive to propose SHOP as an option to their clients.

Policy recommendations

1) Discourage self-funding among employers with fewer than 50 employees. Allowing healthy and younger small groups to self-fund will cause adverse selection and premium increases for those employers in the regulated small group market. Yet insurers are increasingly using low-attachment point stop-loss packages to entice smaller and smaller groups to self-fund (knowing they can dump them back into the small group market if their risk deteriorates). Such products make a farce out of the term "self-funded." When a product looks, acts and breathes like health insurance, it should be regulated as such. Congress should define "self-funding" to exclude these low-attachment point products.
2) Encourage the administration to delay implementation of the ACA's requirement that employer groups of 51-100 become part of the small group market, and commission a study of the potential benefits and risks of such a change. While some employer groups will undoubtedly benefit from the small group market insurance reforms, the most immediate concern is that premiums for younger, healthier groups of this size could face a significant premium increase. Over the longer term, some of these mid-sized groups could face a greater incentive to self-fund, leaving sicker, older groups in the traditionally regulated small group market. At a minimum, policymakers need better data about the impact of this policy change.

Thank you Mr. Chairman, Senator Sanders and members of the subcommittee for the opportunity to join this discussion today.

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