



House Subcommittee on Ways and Means

Subcommittee on Oversight

Maximizing Health Coverage Enrollment Amidst Administration Sabotage

October 20, 2020

12:00 PM Remote hearing

Purpose

The purpose of this hearing is to examine the state of the health insurance market as a result of actions taken by the current administration

Members Present

Chairman Pascrell, Ranking member Kelly, Representatives Delbene, Walorski, Sanchez, Chu, Wenstrup, Moore, Boyle, Smith, Davis, Sewell, Kildee, Schneider, Horsford

Witnesses

The Honorable Marlene Caride, Commissioner, New Jersey Department of Banking and Insurance

Kevin N. Patterson, Chief Executive Officer, Connect for Health Colorado

Andy Slavitt, Board Chair, United States of Care

Chris Pope, Senior Fellow, Manhattan Institute

Opening Statements

Chairman Pascrell said that the Trump Administration is continuing its remarkable sabotage on healthcare. Since this administration took office, they have been determined the repeal the Affordable Care Act (ACA) with no replacement ready. This type of action puts Americans at a serious risk to lose their vital healthcare coverage in the middle of a pandemic. The administration will do anything it can to gut the American healthcare system. It has become harder and harder for Americans to obtain and retain health coverage. It is time to open up a special enrollment period for the ACA so that Americans will have the opportunity to get the vital health coverage that they need. In a few short weeks, the Supreme Court will be deciding the fate of the ACA. It is now clearer than ever that Congress must fight to protect the ACA.

Ranking member Kelly said that the United States has the best healthcare system in the world. This is due to the fact that the United States is home to unprecedented medical and pharmaceutical innovation. If it is true that the Administration is trying to sabotage healthcare, then it is the worst sabotage job in history. Insurance premiums are down, coverage choices are up and enrollment has stabilized. The restoration of short term health plans have been vital in providing options to families and letting them chose what is best for them. Not every family can afford an ACA compliant plan and it is important for individuals to have choices on the market. Furthermore, Democrats are engaging in scare tactics designed to motivate voters for Election Day. It is simply false that Republicans do

not want to protect people with preexisting conditions. Unfortunately, instead of working to create bipartisan solutions, Democrats are pushing the radical agenda of 'Medicare for All'. Congress should build on recent success in health policy and increase the number of options available to individuals on the market.

Testimony

Ms. Caride said New Jersey has led in protecting the ACA, in stabilizing its health insurance market, and increasing access to coverage based on the guiding principle that health care is a right. Over the course of our administration, the state has moved in a deliberate way toward where we are today – opening our own State-Based Exchange, making coverage more accessible and affordable for our residents and, because we are operating our own exchange, providing more financial help than ever before for most residents to purchase coverage on the Marketplace this Open Enrollment Period. Upon taking office in 2018, Governor Murphy signed an Executive Order directing all state agencies that interact with the public to provide information regarding enrollment in the ACA Marketplace as part of state efforts to help as many New Jersey consumers as possible obtain insurance coverage. We took that work seriously, and worked with our partner agencies to create the first ever public awareness campaign to promote the Open Enrollment Period in our state, as funding for outreach and enrollment efforts were dramatically reduced at the federal level. In 2018, the department took over plan management of the health plans sold on the federal exchange to make sure the state had a role in ensuring they complied with federal law and New Jersey law. The state also enacted two major policies: New Jersey took first-in-the-nation action to continue a requirement to have coverage, after its elimination at the federal level, and implemented a reinsurance program beginning with plan year 2019 to cover high-cost claims and reduce rates in the individual market. The two laws resulted in health insurance rates in the individual market that were 22 percent lower than they otherwise would have been, according to information provided by health insurance carriers. In New Jersey, rates in the individual market went down in 2019 by 9.3 percent. The state decided to establish its own Marketplace in order to better secure access to affordable quality coverage for our residents. Last year, the Governor signed legislation to create a State-Based Exchange and, as part of our transition, the department began operating a State-Based Exchange on the Federal Platform for plan year 2020. While enrollment in Marketplace health plans still took place on Healthcare.gov, we took on the responsibility of providing outreach and of funding and operating the Navigator program. We more than tripled the investment in community organizations, known as Navigators, which provide free education and enrollment help to residents. With the public health emergency we are facing, our residents have lost jobs, income and health coverage, and the need for quality affordable health coverage has never been greater. We believe there is no better time than now to make this transition.

Mr. Patterson said at Connect for Health Colorado, our mission is to increase access, affordability, and choice for individuals, families and small employers purchasing health insurance. Since we opened for business in 2013, we have helped hundreds of thousands of Coloradans get the coverage they need to protect their health and livelihood. As noted in Appendix A at the end of the testimony, our Colorado marketplace, or “exchange,” has facilitated more than 1 million medical plan enrollments so far. Just last year, Coloradans received more than 700 million dollars total in federal tax credits through our Marketplace. However, Colorado’s path to increasing access to affordable health care and choice started years before the passage of the Affordable Care Act (ACA). In 2006, a bipartisan group of state lawmakers created the Blue Ribbon Commission for Health Care Reform to

study models for comprehensive reform under then Republican Governor Bill Owens. With the passage of the ACA in March 2010, the Colorado state legislature passed a bipartisan bill creating the Colorado Health Benefit Exchange (COHBE) as a public, nonprofit entity that has a bipartisan legislative oversight committee as well as board members that are appointed by the governor and both Democratic and Republican members of the legislature. The current, ongoing public health emergency has underscored the value of our relationships with our Assistance Network and local counties, as well as the flexibility we wield as a state based marketplace. In mid-March of this year, we made the decision to open an emergency Special Enrollment Period in response to COVID-19, to ensure as many Coloradans as possible had access to affordable health care. In early April, the Adams County commissioners reached out to me and informed me that their constituents were still experiencing furloughs and layoffs as a result of efforts to combat the coronavirus. We were able to consider and ultimately accommodate their request to extend the emergency Special Enrollment Period through the end of the month. Our Assistance Network was ready to field questions from those unexpectedly without coverage and help them enroll. Amid the challenges we face each year as a state-based marketplace, I am encouraged by the fact that we have the flexibility, critical relationships, and proven capability to ensure our residents can access the coverage that they need.

Mr. Slavitt said unfortunately COVID-19 is not the only health threat Americans are facing right now. Rather than support Americans through these trying times, the Trump Administration has added to the uncertainty and insecurity faced by millions of Americans by attacking the very existence of the Affordable Care Act. Rather than implement the law as Congress intended, they have undermined the law with a clinical callousness. We are reminded of this as we approach the beginning of November and a shortened open enrollment period where despite Administration efforts, Americans can once again insure themselves and protect their families. The Affordable Care Act serves several critical functions. It provides every single American a guaranteed set of protections, including prohibiting insurance companies from discriminating against them on the basis of a pre-existing condition, prior medical history, income, gender, or age. The law requires a set of benefits be included in every policy so Americans aren't forced to master the fine print "gotcha" language that kept so many people from getting the health insurance coverage they thought they purchased. The law outlaws insurance companies from not paying claims due to arbitrary annual or lifetime limits. And it requires insurance companies spend a bulk of what Americans pay them on actual medical care. These patient protections have improved the lives of tens if not hundreds of millions of Americans and are wildly popular as a part of the new fabric of our nation. After trying repeatedly to simply eliminate the law, the Trump Administration has taken unprecedented bad faith efforts to undermine Americans' access to provisions that Congress granted. In twelve days, the eighth Open Enrollment period for the ACA exchanges will commence. Despite the dozens of efforts to repeal the law, despite the refusal by Congress to build on the law, despite the continued negligence and sabotage, millions of Americans will get health insurance coverage for their families. They do not understand for the life of them why protecting their families is controversial and has been opposed at every turn by this Administration. Americans would like nothing more than for the partisan bickering over their health to stop. At times like these, people expect the support of their government in the face of major threats to their health-- not making their lives more difficult. All people want is to be able to care for their families, keep them healthy, and not fear bankruptcy at the first sign of illness. They certainly would like to stop fearing the very government they elect. In this great country, that should not be too much to ask.

Mr. Pope said prior to the Affordable Care Act, 49 million Americans lacked health insurance coverage, while an estimated 18% of applications for insurance were denied due to pre-existing conditions. The Affordable Care Act rightly sought to address this situation by making funds available to subsidize the provision of health insurance. However, the ACA did not simply target a subsidy at Americans who were uninsurable or unable to afford insurance coverage at actuarially fair rates. Instead, the legislation required insurers to price plans the same for people who signed up before they got sick, as for enrollees who have major preexisting medical conditions. This made it rational for many people to wait until they got seriously ill before purchasing insurance from the individual market. As a result, the average medical needs of those enrolled in plans began to soar as the ACA's insurance market reforms were implemented in 2014. This forced plans to drive premiums higher, hike deductibles, and cut access to providers most appealing to the seriously ill, in order to stay in business. Average premiums on the individual market rose by 105% from 2013 to 2017. By 2018, premiums for family coverage on the individual market averaged \$14,016 in addition to deductibles averaging \$8,803 – which is to say enrollees were required to pay \$22,819 before insurance coverage kicks in. Short-Term Limited Duration Insurance (STLDI) was specifically exempted from the ACA's insurance pricing reforms, and therefore remained the only form of insurance for which individuals could receive lower premiums in return for signing up before they get sick. The Obama administration in 2016 sought to limit the duration of STLDI plans to 90 days and to prohibit its renewability. In April 2017, I proposed that the Trump administration overturn this rule, which it did from the end of 2018. STLDI coverage is now available for up to a year and can be renewed for up to 3 years – unless restricted by state law. Premiums for STLDI plans are consistently lower than those for ACA plans that offer equivalent benefits and coverage of medical costs, and in some cases are available at half the price. Because ACA regulations effectively impose a tax on the purchase of insurance by people who sign up before they get sick, the savings to be gained from switching to STLDI plans are greater for the purchase of more comprehensive insurance coverage. Satisfaction rates of STLDI plan enrollees (91%) are significantly higher than those in ACA plans (70%). The Congressional Budget Office has estimated that 95% of those shifting from ACA to STLDI coverage will do so in search of comprehensive benefits, rather than so-called “skinny plans.” A survey of individuals purchasing coverage online found 43% of those purchasing STLDI plans would otherwise have gone altogether uninsured, while only 22% would have purchased ACA plans. While subsidized ACA plans are important as a safety-net for low income individuals and those with preexisting conditions, they offer poor value to healthy Americans, and provide little incentive for individuals to purchase insurance before they get sick. STLDI plans are the only plan options that allow Americans to purchase insurance at a fair price if they sign up before they get sick. Critics of STLDI plans argue that they are often misleadingly marketed, and suggest that they put enrollees at risk with surprise gaps in benefits. States have the legal authority and responsibility to protect consumers from fraud, to ensure that coverage lives up to expectations, and to verify that plans have adequate funds to reimburse claims as promised – and to the extent that they are falling short, they should be doing more in this respect.

Questions and Answers

Chairman Pascrell asked if Mr. Pope advocates that the courts should eliminate the ACA. **Mr. Pope** said no. **Chairman Pascrell** asked if access to health insurance is more important ever amidst the ongoing COVID-19 pandemic. **Mr. Patterson** said yes. **Ms. Caride** said yes. **Mr. Slavitt** said yes. **Mr. Pope** said yes. **Chairman Pascrell** asked why New Jersey moved to establish a state based market place. **Ms. Caride** said that New Jersey was sending funds to Washington but then

the state was not allowed to use these funds properly. By keeping these funds in New Jersey, they are able to be tailored to specific residents, hire navigators and conduct greater out reach.

Chairman Pascrell asked how destructive it would be to take away peoples healthcare coverage in the middle of a pandemic. **Mr. Slavitt** said that it would be devastating. Many individuals are contracting conditions that will later be labeled as 'pre-existing'. Repealing the ACA will remove protections for these individuals. **Chairman Pascrell** asked if it is hyperbole to say that millions of Americans lost their jobs and thus health coverage during this pandemic. **Mr. Slavitt** said that it is not hyperbole.

Ranking member Kelly asked what Congress can do to bring down costs in the healthcare sector. **Mr. Pope** said that there need to be a broader array of choices. In addition, individuals should be awarded for signing up for coverage early, before they have gotten sick. **Ranking member Kelly** asked why association health plans can be beneficial. **Mr. Pope** said that large employers have traditionally been the strongest part of the US healthcare system. Association health plans allow small employers to join together and act like a large provider in terms of delivering health coverage.

Rep. Delbene asked if Colorado took steps to enhance ACA marketing and sign up assistance. **Mr. Patterson** said yes. **Rep. Delbene** asked if Colorado has been able to halt short term limited duration plans. **Mr. Patterson** said that in January 2019, the Colorado division of insurance did put restrictions on short term limited duration plans. These regulations included adding essential health benefits to short term limited duration plans. **Rep. Delbene** asked how these actions have impacted the ACA marketplace in Colorado. **Mr. Patterson** said that there has been a 20% reduction in rates over the last year.

Rep. Walorski asked why 2/3 of ACA eligible Americans opted for a different option in 2019. **Mr. Pope** said that the ACAs problem is the simple, it's the price. These plans are far too expensive for what they are. The premiums are high and the deductibles are high. **Rep. Walorski** asked what happened to premiums since the individual mandate has been repealed and short term limited duration plans were expanded. **Mr. Pope** said that premiums have fallen slightly and Americans now have more options on the market place. It is not amazing insurance coverage, but as a safety net, it is very helpful.

Rep. Sanchez asked if the gender rating provisions will be protected if the ACA is overturned in court. **Mr. Slavitt** said that it would not be protected. This would result in women getting charged more for certain services and would exclude the coverage of other services. **Rep. Sanchez** asked if it is fair to say that women would pay more for insurance if the ACA was overturned. **Mr. Slavitt** said yes. **Rep. Sanchez** asked how the ACA has helped communities of color. **Mr. Slavitt** said that data shows that the ACA has reduced the prevalence of disease in communities of color and has increased financial security. Without proper outreach, this would be put at risk. **Rep. Sanchez** asked how NJ and CO are working to connect with communities of color. **Ms. Caride** said that NJ has hired more health navigators.

Rep. Chu asked if President Trump's executive order protects Americans with pre-existing conditions. **Mr. Slavitt** said no. **Rep. Chu** asked how losing the preventative services of the ACA affects family planning in Colorado. **Mr. Patterson** said that it would increase the costs of family

planning for residents of Colorado. **Rep. Chu** asked how short term limited duration plans undermine the ACA. **Mr. Slavitt** said that everyone believes there should be some amount of choices, but there should also be guardrails that exist to ensure a product has a decent value. Many people think they are getting a good deal until they actually have to use it. It is like getting a fire insurance policy that does not cover the kitchen.

Rep. Wenstrup asked why allowing individuals to choose short-term limited duration plans is a good thing. **Mr. Pope** said that the ACA plans were designed to fit the need to individuals with preexisting conditions. But not everyone has a preexisting condition and thus these plans don't work for everyone. People would be allowed to buy insurance that is priced according to their own risk.

Rep. Moore asked what a short term limited duration plan would do to a healthy 20 year old who developed a chronic heart condition. **Mr. Slavitt** said the plan would have no minimum coverage requirements so it is hard to tell exactly what would happen. **Rep. Moore** asked if the uninsured rate decreased due to enrollment in short term limited duration plans. **Mr. Pope** said yes. In addition, the problem with short term limited duration plan is the fact that these plans cannot be renewed for more than 3 years and in some states no more than 6 months.

Rep. Boyle asked what the consequences would be if the ACA were to disappear. **Mr. Slavitt** said that millions of people in Pennsylvania would be at risk of losing their health insurance. It would also introduce an aspect of financial instability. **Rep. Boyle** asked what Congress can do to increase competition. **Mr. Patterson** said that all states are different, so flexibility in how to operate a state based exchange would be helpful.

Rep. Smith asked what would need to be done to revive association health plans. **Mr. Pope** said that small employers would need to be afforded the right to get together and offer plans similar to those offered by a large employer.

Rep. Davis asked what would happen to communities of color if the ACA was repealed. **Mr. Slavitt** said that it is clear that anyone who is living in an underserved community would be disadvantaged. Health disparities would increase, given the fact that the ACA helped to close health disparities. **Rep. Davis** asked what has made it possible for the state of Colorado to enact legislative and regulatory changes. **Mr. Patterson** said that Colorado worked hard to communicate with constituents and get feedback on what the public thought of certain health proposals.

Rep. Sewell asked why protecting the ACA is important for those who care about healthcare inequities in rural and underserved communities. **Mr. Slavitt** said that many individuals who can now afford high value health insurance would lose this protection. This is especially devastating in rural and underserved communities.

Rep. Kildee asked if Mr. Patterson meant that states should have more flexibility within the guardrails of the ACA. **Mr. Patterson** said yes. **Rep. Kildee** asked if overturning the ACA would allow insurers to impose annual and lifetime caps and discriminate against people with preexisting condition. **Mr. Slavitt** said yes.

Rep. Schneider asked what Mr. Slavitt would recommend to improve the ACA. **Mr. Slavitt** said that there needs to be more direct outreach in traditionally underserved communities. Congress should also work together in a bipartisan way to improve the ACA. It was passed 10 years ago and was never supposed to be the final version of healthcare in the US. Rather it was supposed to be a starting point.

Rep. Horsford asked what will happen to Americans if the ACA is repealed. **Mr. Slavitt** said that more and more people will lose coverage with no place to replace it. In addition, individuals with a preexisting condition will essentially be unable to get access to help insurance.

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