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House Bill to Expand "Grandfathering" of Individual-Market Plans Would Raise Premiums in Insurance Marketplaces and Undermine Market Reforms

By Sarah Lueck

The House is planning to vote this week on a bill allowing insurance companies to continue offering existing individual-market health plans through 2014 even if the plans do not comply with health reform's new standards and consumer protections. The bill, sponsored by House Energy and Commerce Committee Chairman Fred Upton (R-MI), would have serious adverse effects.

By encouraging healthier people to remain in individual-market plans outside the new insurance marketplaces (also known as exchanges), the bill would make the pool of people enrolled in plans offered through the marketplaces sicker, on average, than under current law. That would raise marketplace premiums for coverage in 2015 and beyond (and possibly even for 2014), and could trigger sticker shock when the premiums for 2015 are announced next October. The higher premiums would, in turn, threaten the long-term viability of the marketplaces, potentially placing coverage at risk for millions of uninsured people who stand to gain coverage under the Affordable Care Act (ACA).

Moreover, the Upton bill also would likely undermine the insurance-market reforms that take effect under the ACA in 2014, such as the prohibitions against denying coverage for pre-existing conditions, charging higher premiums based on an individual's health, and offering plans with glaring gaps in coverage, which can leave people subject to catastrophically high costs even though they are insured. The bill also would further disrupt the open enrollment period that started on October 1, and could result in confusion that deters some consumers from enrolling in marketplace plans that offer more comprehensive benefits at lower cost.

The Upton bill, whatever its intention, would cripple the Affordable Care Act and — by causing premium spikes next fall — drive up the ACA's unpopularity right before the 2014 elections.

Bill Would Raise Premiums in Marketplaces and Threaten Their Viability

The Upton bill (H.R. 3350) would allow health insurers that had individual-market plans in effect as of January 1, 2013 to continue selling all of those plans throughout 2014. And, the plans would be available to *new* enrollees as well as current ones. The legislation would deem these plans as

Many Recent Cancellations Not Required Under Health Reform

The Upton bill is intended to address the problem of "non-renewal" or "cancellation" notices that some insurers recently sent to existing enrollees in individual-insurance-market plans, as well as the difficulties that people are currently experiencing in enrolling through the new marketplaces. It is important to note, however, that in many cases, insurers that decided to discontinue certain plans for 2014 *were not* required to do so under the Affordable Care Act but made a business decision to take such action.* In some cases, insurers chose not to renew grandfathered plans that they could have continued. In others, insurers could have continued people's 2013 coverage until various points in 2014 (when a person would have to join a new, ACA-compliant plan) but instead ended the old coverage to coincide with the open enrollment period for ACA-compliant plans.

Also, while some states required insurers to discontinue pre-ACA individual-market plans at the end of 2013 and offer new plans in 2014 that complied with the new standards, in most states, insurers had the option of "early renewal" of their existing individual-market plans, which would have permitted the plans to continue covering enrollees until the end of 2014.** Some insurers chose not to take advantage of this option, however, and sent enrollees non-renewal notices.

The Upton bill does not directly address the non-renewal issue. It gives insurers the option to extend some or all of their pre-ACA plans but does not require them to do so. People who received notices that their plans will not be available in 2014 would not necessarily get a different outcome if this legislation is enacted.

* Sabrina Corlette and Kevin Lucia, "Policy Cancellations – Another Tempest in a Teapot?" Center for Health Insurance Reforms, Georgetown University Health Policy Institute, October 28, 2013.

** Christine Monahan and Sabrina Corlette, "The Affordable Care Act's Early Renewal Loophole: What's at Stake and What States are Doing to Close It," The Commonwealth Fund Blog, August 22, 2013.

"grandfathered," meaning that they would not have to meet various ACA requirements that otherwise apply to individual-market plans in 2014, including plans available through the new insurance marketplaces.

The ACA already permits people to remain enrolled in grandfathered individual-market plans, as long as they were enrolled in such plans when the ACA was enacted and the plans have not changed significantly since.[1] *The Upton bill would vastly expand the number of people enrolled in individual-market plans that do not comply with ACA requirements.* It would push forward the date when a person's plan is eligible for grandfathered status by nearly three years from 2010 to the beginning of 2013. This means that grandfathered status would be extended to plans made available after health reform was enacted, as well as to plans that have undergone major changes and no longer resemble the plans offered before health reform was enacted. Moreover, it would open all these plans to enrollment by

[1] Under current law, people who were enrolled in individual-market plans as of March 23, 2010 (the date of the ACA's enactment) are allowed to remain enrolled in those plans for as long as the insurer continues to offer them. If plan elements such as benefits and cost-sharing charges do not change significantly (as detailed in federal regulations), these people's coverage is exempt from many of the ACA's requirements. Grandfathered individual-market plans cannot add new enrollees, however, other than dependents. Since turnover is high in the individual market, it has always been anticipated that many people who were enrolled in a plan in 2010 and had grandfathered status would no longer have the same plan by 2014, when most of the ACA's major reforms first apply to the individual insurance market. People who enrolled in non-ACA compliant individual market plans after March 23, 2010 were expected to transition to ACA-compliant plans before or at some point during 2014, such as plans offered through the marketplaces.

new customers, not just people who were already enrolled in the individual market prior to health reform.

As a result, under the Upton bill, insurers offering existing individual-market plans outside of the insurance marketplaces in 2014 could continue to reject people with health problems and charge sicker and older people far higher premiums than younger and healthier people must pay. This would deter sick people from enrolling in plans outside of the marketplaces while enticing younger, healthier people to choose them instead of marketplace plans. In contrast, plans offered through the marketplaces would have to comply fully with ACA requirements — for example, they must take all applicants regardless of pre-existing medical conditions and cannot charge higher premiums based on people's health status.

The Upton bill would create such a disparity in market rules between grandfathered plans and marketplace plans that the people most interested in remaining in the former would heavily be a younger and healthier group — and hence less costly to cover — than the people who would enroll in the latter. This would cause the pool of people buying coverage in the marketplaces to be less healthy, which in turn would drive up premiums substantially for marketplace coverage. This dynamic, known as adverse selection, occurs when healthier and less-healthy people separate into separate pools.[2]

Moreover, as noted, the Upton bill would allow insurers to sign up *new* enrollees in existing individual-market plans. This would open the door to active "cherry picking" by some insurers, who could market their non-ACA-compliant plans to healthier, younger uninsured people who otherwise would have enrolled in marketplace plans for 2014. That would further raise premiums in the marketplaces.

These premium increases would likely occur quickly if the Upton bill were enacted. Insurers now offering marketplace plans likely would immediately seek to modify their 2014 premiums to account for the higher costs of the pool of people they would have to cover. And they clearly would have little choice but to significantly increase their premiums in 2015 based on their higher-than-expected 2014 costs, resulting in "rate shock" that would hit when the 2015 open enrollment period starts — just before the 2014 mid-term elections.

In short, the Upton bill could effectively cripple the Affordable Care Act and drive up its unpopularity before the 2014 election.

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[2] For example, the PacAdvantage small-business pool that operated in California from 1993 to 2006 ultimately ceased operation due to growing adverse selection. PacAdvantage tended to attract people with high medical costs, in part because insurers operating within it were not permitted to charge higher premiums to small firms with less-healthy workers, while insurers in the outside small-group market could do so. Sicker people concentrated in plans offered through PacAdvantage, while small businesses with healthier workers continued to purchase coverage in the outside small-group market. As a result, PacAdvantage premiums climbed ever higher compared to the regular market, making the marketplace less and less attractive to small firms with healthier workers. Eventually, the pool was shut down because PacAdvantage was no longer viable. See Sarah Lueck, "States Should Structure Insurance Exchanges to Minimize Adverse Selection," Center on Budget and Policy Priorities, August 7, 2010.

Finally, while the Upton bill would extend the availability of non-ACA-compliant plans only through 2014, there would be pressure next summer and fall to then extend the availability of these plans through 2015 or (more likely) permanently. That would permanently raise premiums in marketplace plans, further discouraging healthy people from enrolling and threatening the marketplaces' long-term viability.

Enactment of the Upton bill this week thus would create significant risk that the marketplaces would not survive. If they fail, that will keep millions of Americans in the ranks of the uninsured.

Bill Would Undermine Key Health Insurance Reforms

The Upton bill would also seriously damage the ACA's major insurance-market reforms that take effect in 2014 by allowing the individual insurance market outside the marketplaces to continue virtually unchanged. For example, by grandfathering a swath of non-ACA-compliant plans, the bill would allow insurers to continue to offer individual-market health plans that don't include essential health benefits. Plans could continue to have coverage gaps such as lack of prescription drugs, maternity care, and mental health and substance abuse treatment, as they often do now. These plans also wouldn't have to cover preventive services at no cost to enrollees. And enrollees could continue facing high out-of-pocket charges even for *covered* benefits because the plans would not have to comply with the ACA caps on annual out-of-pocket costs.[3]

As noted, the Upton bill would also allow insurers offering non-ACA-compliant plans to deny coverage to people who have health conditions and to charge sicker or older customers far higher premiums than healthier and younger people. In addition, these plans would be exempt from reviews to determine whether their premiums are reasonable and from the ACA's prohibition against using benefit designs and marketing tactics that discriminate against people with high-cost health needs. Meanwhile, the plans available through the marketplaces would have to comply with all of these requirements and consumer protections.

If a significant market offering non-ACA-compliant plans continues to exist through 2014, as would be the case if insurers could continue all existing individual-market plans, individuals enrolled in ACA-compliant plans would face sharply higher premiums. This is because more comprehensive plans that do not charge higher premiums based on age and health status would be most attractive to older people in poorer health and others with substantial health needs. The premiums for ACA-compliant plans could become increasingly unaffordable over time — as has consistently occurred when states have reformed pricing and market rules for insurance companies without the rest of the ACA reforms. This dynamic could eventually make the market reforms unworkable.

Moreover, many people who enrolled in non-ACA-compliant plans might not realize the extent of the ACA's market reforms and consumer protections that they would give up by retaining or enrolling in such coverage. Once illness struck, the benefits of the ACA's reforms and the holes in their pre-ACA coverage would become all too clear. They might be able to move to the marketplace during the next annual open enrollment period, but if substantial numbers of people switch from

[3] The ACA requires that non-grandfathered, individual-market plans cap enrollees' annual out-of-pocket costs under the plan — including deductibles, copayments, and coinsurance — at no more than a specified maximum amount. The amount, which is set at $6,350 for a plan covering an individual and $12,700 for family plans in 2014, applies to items and services that are provided in-network and covered by the plan.

non-ACA-compliant plans to marketplace plans only when they expect to need costly health care, it would increase the costs for everyone in the marketplaces even more.

Bill Could Cause Delays and Added Confusion in Current Open Enrollment Period

By extending the option of grandfathered status to all existing individual-market plans, the Upton bill could add new problems to the open enrollment period that began October 1 and potentially delay the start of coverage through the marketplaces that is scheduled for January 1, 2014. In setting their marketplace premiums for 2014, insurers assumed that many (if not all) of their individual-market enrollees would shift into marketplace plans or other ACA-compliant plans outside of the marketplaces. Expanding grandfathered status would result in a sicker-than-expected pool for the marketplaces, as discussed above. Accordingly, insurers would almost certainly seek to modify their premiums for 2014, demand additional time to make their calculations, and submit new, and likely much higher, premium rates. In cases where insurers had planned to stop offering a non-ACA-compliant plan in 2014, they would also need to establish and file new 2014 rates for continuing these newly grandfathered plans, which state insurance departments would likely need to review.

By changing the rules in the middle of the game, the Upton bill also would likely sow more confusion among consumers. Some people would not be aware of the stark differences in coverage that might exist between ACA-compliant and non-compliant plans. Others who are young and healthy and attracted by a low premium would sign up for coverage outside the marketplace without realizing that they could have qualified for subsidies that would have reduced their premiums and cost-sharing charges — possibly to less than they will pay for non-ACA compliant plans — as well as provide them with better coverage, if they had enrolled through the marketplace. The open enrollment period has already been confusing for people looking for individual health insurance; the Upton bill would increase that confusion for many people.

Conclusion

The Upton bill would do serious damage to the Affordable Care Act and the millions of Americans who are expected to benefit from the improved coverage and premium and cost-sharing subsidies available through the new health insurance marketplaces. Allowing insurers to continue selling all existing individual-market plans through 2014 would raise premiums significantly. It also would threaten the long-term viability of the marketplaces and hence the extension of coverage to millions of uninsured near-poor and middle-income Americans, undermine the new insurance market reforms, and create new problems for an already troubled open enrollment period.