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House Bill Would Raise Small Business Premiums and Undercut Health Reform's Consumer Protections

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The House this week is scheduled to consider a bill (H.R. 3522) sponsored by Rep. William Cassidy (R-LA) that would allow insurance companies, through 2018, to continue to offer to any small employer the health insurance plans in the small group market that the insurers were selling in 2013.[1] Under the bill, such plans would not have to comply with the Affordable Care Act's (ACA) market reforms and consumer protections that otherwise apply to all health insurance plans offered in the small group market,[2] starting in 2014.[3]

The bill would go well beyond the existing Administration transition policy that permits states to allow insurers to continue — through 2016 — to offer non-ACA-compliant plans in the individual and/or small group market to individuals and employers who were previously enrolled in such plans.[4] As explained below, the Cassidy bill would likely have serious adverse effects both on premiums in the small group market — causing them to rise substantially for many small firms — and on health reform's consumer protections, such as the reform that prevents insurance companies from charging higher premiums to firms with older, less healthy workforces.

[1] States would be able to bar insurers from continuing to offer 2013 plans if they choose. The House will consider a modified version of the introduced bill, which is the version examined by this analysis. See House Rules Committee Print 113-56, http://docs.house.gov/billsthisweek/20140908/CPRT-113-HPRT-RU00-HR3522.xml.

[2] The small group market is the health insurance market for small employers who are not self-insured. The Affordable Care Act defines small employers as firms with fewer than 100 employees (although states may limit the small group market to employers with fewer than 50 workers through 2016). States may expand the small group market to larger firms with more than 100 workers starting in 2017.

[3] For an analysis of similar proposals in this area, see Sarah Lueck, "Landrieu-Manchin Bill Would Raise Premiums and Threaten Viability of Insurance Marketplaces," Center on Budget and Policy Priorities, November 19, 2013, http://www.cbpp.org/cms/?fa=view&id=4052.

[4] For a discussion of the Administration's policy and whether states have adopted it, see Kevin Lucia, Sabrina Corlette, and Ashley Williams, "The Extended 'Fix' for Canceled Health Insurance Policies: Latest State Action," *The Commonwealth Fund Blog*, June 10, 2014, http://www.commonwealthfund.org/publications/blog/2014/jun/adoption-of-the-presidents-extended-fix.

Undercutting Small Group Market Reforms

Under the Affordable Care Act, health insurance plans offered in both the individual and small group markets must comply with a number of major market reforms and consumer protections. The Cassidy bill, however, would exempt from such requirements all small group plans provided in 2013 that insurers continue to offer. For example, 2013 plans could continue to be offered without having to cover "essential health benefits," which are otherwise required of plans in the small group market. The 2013 plans could continue to have substantial gaps in coverage, such as no maternity care, prescription drugs, or mental health and substance abuse treatment. These plans also wouldn't have to comply with the ACA's limits on the annual out-of-pocket costs that a beneficiary can be forced to bear.

Moreover, unlike under the Administration's policy, insurance companies could sell these plans to small businesses that *do not currently offer such plans* and didn't do so in 2013, including firms currently offering plans that *comply* with the ACA. This is particularly important, because insurers offering non-ACA-compliant plans can charge higher premiums to small businesses whose workforces are in poorer-than-average health, impose waiting periods for employees with pre-existing conditions, and charge firms with older workers more than three times what they charge firms with younger employees.

The Cassidy bill thus would enable insurers offering the non-compliant plans to "cherry pick" employers with younger, healthier-than-average workforces while deterring employers with older or otherwise less-healthy workforces. The result would be to leave the small business exchanges established by the ACA (known as SHOP marketplaces), as well as other health plans in the small group market that comply with the ACA, with less healthy enrollees on average — forcing these plans to raise their premiums and thereby making the ACA-compliant plans less attractive.

In short, this bill is another attempt to undermine the ACA and try to ensure it doesn't succeed.

Cassidy Bill Would Intensify Risk of Adverse Selection in Small Group Market

Allowing insurers to continue to offer non-ACA-compliant plans as the Administration's policy does already raises the risk of small employers offering ACA-compliant plans facing somewhat higher premiums because of "adverse selection." As a result of the policy, more comprehensive ACA-compliant plans that do not charge higher premiums based on health status can be more attractive to firms with older employees in poorer health, while *non*-ACA-compliant plans become more attractive to employers with healthier, lower-cost workers.

The Cassidy bill would sharply intensify this risk, by allowing insurers offering 2013 non-ACA-compliant plans not just to maintain their current enrollment but to expand it substantially by signing up other small businesses, including those currently offering health plans that do comply with ACA requirements. In contrast, the Administration's policy allows non-compliant plans to continue being offered only to firms that provided such coverage in 2013.

The Cassidy bill thus would open the door to active "cherry picking" by various insurers, who could market their non-ACA-compliant plans to employers with young, healthy workforces that otherwise would have enrolled in ACA-compliant plans. In addition, the Cassidy bill would allow

non-ACA-compliant plans in use in 2013 to be offered *through 2018 and into 2019,* two years beyond the cut-off date under the Administration's policy.

As a result, a larger number of states, knowing the 2013 plans wouldn't have to transition to ACA-compliant plans until 2019, might well allow insurers to offer such plans or offer them for a longer duration.[5] More small employers with healthier-than-average workforces (both those that previously offered such plans and those that didn't) would be able to offer these non-ACA-compliant health plans. Large firms that are not self-insured would be able to offer such plans, as well, if states elect to open up their small group market to larger firms.

This would likely result in a substantially greater number of firms with healthier or younger workforces enrolling in non-compliant plans over the next four years, which would cause the pool of employers enrolled in ACA-compliant plans in the small group market to be one with a sicker, more costly set of workers. Premiums for ACA-compliant plans likely would rise significantly as a result. (Moreover, the ACA's temporary "risk corridor" program, which provides payments to marketplace insurers with higher-than-expected costs, ceases after 2016. And the ACA's "risk adjustment" mechanism, while ongoing, would not apply to non-compliant small group plans extended under the Cassidy bill, because they would be *exempt* from the entire risk adjustment system through 2019.)

California's experience with a small-business pool that operated from 1993 to 2006 highlights the dangers of the Cassidy bill. This pool, known as PacAdvantage, disproportionately attracted small employers with workers with high medical costs. That was because PacAdvantage insurers were not permitted to charge higher premiums to small firms with less-healthy workers, while insurers in the outside small group market *were* allowed to do so, similar to how the Cassidy bill would operate. Firms with sicker employees thus concentrated in PacAdvantage plans, 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 with the regular market, making PacAdvantage less and less attractive over time to small firms with healthier workers. Eventually, the pool had to be shut down because PacAdvantage was no longer viable.[6]

Aggravating these problems, if some workers in a small firm in a non-ACA-compliant plan experienced catastrophic illnesses, the employer would — under the Cassidy bill — be able to move to an ACA-compliant plan to avoid big spikes in premium costs. If, however, substantial numbers of employers initially offered the non-compliant plans and then switched to the compliant plans when they expected some of their workers to need costly care, that would further increase premiums for the businesses in the ACA-compliant small group market.

Similarly, insurers could encourage employers who begin to incur high health costs to drop their non-ACA-compliant plans and switch to compliant plans in the small group market. Such employers would retain the right to renew their non-compliant plans, but insurers could start charging them much higher premiums for those plans, based on the employers' claims experience in

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[5] More states adopted the Administration's transition policy when it was extended from 2014 to 2016. In addition, some states adopted the transition policy but for a more limited duration than was permitted. See Lucia, Corlette, and Williams, *op cit.*

[6] Sarah Lueck, "States Should Structure Insurance Exchanges to Minimize Adverse Selection," Center on Budget and Policy Priorities, August 7, 2010, http://www.cbpp.org/cms/?fa=view&id=3267.

the prior year. That would drive more such employers to switch to an ACA-compliant plan when their workforces became sicker, since under the compliant plans, firms could *not* be charged higher premiums based on their workers' health status.

With firms with healthier, lower-cost employees enrolling in non-ACA-compliant plans in substantial numbers, the premiums for ACA-compliant plans in the small group market would become increasingly less affordable, which would risk making the ACA's small group market reforms untenable. The higher premiums would likely also threaten the viability of the "SHOP" marketplaces, an important component of the ACA designed to allow small firms to pool together so that they can choose among an array of affordable, comprehensive health insurance plans.[7]

The SHOP marketplaces already are off to a slow start in enrollment. The Cassidy bill could make it virtually impossible for them to attract the sizable enrollment and balanced mix of employers with healthy and less healthy workers that will be necessary for these marketplaces to have financial stability over time.

Conclusion

Rep. Cassidy's bill would go well beyond the Administration's transition policy and allow insurers to sell small group market plans that were in effect in 2013 and do not comply with Affordable Care Act reforms to any small firms, including those that did *not* offer such plans in 2013. In so doing, the Cassidy bill would likely cause premiums to rise substantially for many small businesses, undercut health reform's small group market reforms and consumer protections, and threaten the viability of the SHOP marketplaces, which are an important part of the ACA's effort to improve the availability of affordable, comprehensive employer-based coverage to more American workers employed in small firms.

[7] The SHOP marketplace is intended to improve the coverage options available to small employers. Prior to health reform, small employers generally had to pay higher premiums for less generous coverage than larger firms and had little or no choice of what plans they could offer. In addition, under the ACA, certain small firms that newly offer health coverage through the SHOP marketplaces may also be eligible for a tax credit for two years, which helps defray the cost of coverage.