

## **House Committee on Energy and Commerce**

*Strengthening Our Health Care System: Legislation to Reverse ACA Sabotage and Ensure Pre-Existing Conditions Protections*

Wednesday, February 13, 2019

10:30 AM, 2322 Rayburn House Office Building

### Purpose

The purpose of this hearing was to discuss improvements to the health care system.

### Members Present

Chairwoman Escho, Ranking Member Burgess, Congressman Pallone, Congressman Griffith, Congressman Guthrie, Congresswoman Matsui, Congressman Shimkus, Congresswoman Castor, Congressman Schrader, Congressman Schrader, Congressman Long, Congressman Ruiz, Congressman Bucshon, Congresswoman Kuster, Congressman Gianforte, Congressman Sarbanes, Congressman Carter, Congresswoman Kelly, Congressman Hudson, Congresswoman Blunt Rochester, Congresswoman Brooks, Congressman Cardenas

### Witnesses

**Ms. Grace-Marie Turner**, President, Galen Institute

**Ms. Katie Keith**, JD, MPH, Associate Research Professor and Adjunct Professor of Law  
Georgetown University

**Ms. Jessica K. Altman**, Commissioner, Pennsylvania Insurance Department

### Opening Statements

**Chairwoman Escho** welcomed this subcommittee. She stated that the Trump Administration sabotaged the ACA. She stated her Republican colleagues have been critical for tax subsidies to create a comprehensive health insurance system. She introduced the four bills considered: H.R. 986, the “Protecting Americans with Preexisting Conditions Act of 2019”, introduced by Rep. Ann M. Kuster (D-NH), would require the Trump Administration to rescind the Section 1332 guidance of the ACA promulgated in October of 2018; H.R. 987, the “Marketing and Outreach Restoration to Empower Health Education Act of 2019” or the “MORE Health Education Act”, introduced by Rep. Lisa Blunt Rochester (D-DE), will restore outreach and enrollment funding to assist consumers in signing up for health care, which has been slashed by the Trump Administration; H.R. 1010, To provide that the rule entitled “Short-Term, Limited Duration Insurance” shall have no force or effect, introduced by Rep. Kathy Castor (D-FL), will reverse the Trump Administration’s expansion of junk insurance plans, also known as short-term, limited-duration insurance plans; and H.R. 1143, the “Educating Consumers on the Risks of Short-Term Plans Act of 2019,” introduced by Chairwoman Eshoo (D-CA), and would require short-term, limited duration insurance (STLDI) to disclose the risks of STLDI to prospective consumers, including disclosure that STLDI may not cover preexisting conditions, may not cover the costs of medical services, and that coverage may be rescinded if the individual seeks treatment for a preexisting condition.

**Congressman Burgess** stated that he disagreed with the last hearing and it was a test run. The bills before them today will not increase the availability of reasonably priced plans. He stated that there is bipartisan support to cover individuals with preexisting conditions. He

stated what he finds most troubling is that the Democrats are questioning flexibility in the ACA. Stated like Alaska have had success with waivers which helps recover from the damage caused by the ACA. He stated that a draft version of the Democrat bill was released to the media, but he has not seen it. Based on what he read, he believes the doctor patient relationship is threatened and government should not hinder a doctor's ability to treat their patient in the best way possible. He stated that this is a recipe for waiting lines and rationing care. The number of Americans that employers pay for healthcare has increased by millions since President Trump took office.

**Chairwoman Escho** stated that she disagrees with the characterization of the last hearing.

**Congressman Pallone** stated that Castor's bill will reverse the Trump Administration's expansion of junk insurance plans, also known as short-term, limited-duration insurance plans. He stated that these junk insurance plans are junk as they are bad for consumers. He stated that they make healthcare more expensive for people with preexisting conditions. He stated that states are required to maintain the affordability of coverage. He stated they will discuss Congresswoman Blunt Rochester's bill will restore outreach and enrollment funding to assist consumers in signing up for health care, which was sabotaged by Trump.

**Congressman Walden** stated they are not addressing the challenge consumers are facing: high cost. He stated they need to help states recover from the damage caused by the ACA. He stated today's bills are not adequately addressing these goals. He stated that the Democrat repeatedly blocked their creative solutions like improving 1332 waivers. He stated that Oregon has an active 1332 waiver, which he supported and has kept prices stable and not seen increases. He stated that they should observe how states react towards the guidance. He stated they want markets that works and patients to have access to high quality and affordable health care.

### Testimony

**Ms. Keith** stated she will focus on three changes led by the Trump Administration. She stated that short term plans are medically underwritten. A study in Pennsylvania found that 43% of these plans do not cover mental health services and none covered maternity care. She stated that these plans which are highly profitable tend to only work for those who are healthy. These policies pose a risk for individuals who enroll with them. She stated that newspapers are filled with stories about people who end up facing hundreds of thousands of dollars in medical bills. In regards to section 1332, she stated that the Trump administration is allowing for skimpier plans. She stated that this rises premiums for those with preexisting conditions. The Trump administration has made dramatic cuts to marketing and outreach, from 100 million dollars to 10 million dollars. Outreach brings younger and healthier consumers which keeps premiums low. She stated that the enrollment of new consumers has been dropping.

**Ms. Altman** stated short term plans were created to fill brief gaps in coverage. By extending their duration, the administration is making them look like viable alternatives. She stated that the primary concern with the plan is that they have very limited benefits and consumer protections. She brought up the Pennsylvania study again. She stated that

post claims underwriting results in a denial of coverage, which excludes coverage for those with preexisting conditions. She stated that encouraging the proliferation of short term plans has the potential to drive up costs in the ACA market.

**Ms. Turner** stated that in 2018, 3 million people have less coverage. She stated that 8 states have created programs to separately subsidize individuals with the highest healthcare cost. She stated that Maryland saw a price drop of 43%. She stated that cost relief is essential. She stated that the Trump administration is encouraging short term plans, which typically cost less than half of the ACA plans. Previously, people were protected for 3 months, which has been extended to a year. She stated that ACA ensures that people cannot be turned down or have their policies canceled, but more changes are needed.

### Question and Answers

**Chairwoman Escho** asked about the shortcoming of the short term plans, and the administration's plan to extend them to three years. **Ms. Turner** stated people need to be informed about the policies. **Ms. Keith** stated that the short term plans are 54% less expensive because they can exclude people with preexisting conditions. **Ms. Altman** stated that 70% of the difference price is due to excluding preexisting conditions. **Ms. Turner** stated that 3 months is too short of time to give anyone coverage. **Chairwoman Escho** stated it is important for consumers to have choice. She stated everyone knows what they pay in premium but not what they are getting.

**Congressman Griffith** stated he hears about a lot of people who cannot afford out of pocket deductible. He stated that people are looking into alternatives because they are desperate. He asked if this was true. **Ms. Turner** said this is true. He asked her to go over an example. **Ms. Turner** stated a woman whose premium was \$275 a month when she was first diagnosed with Hepatitis C. Before the high risk pool was closed, she had a 600,000 liver transplant that was totally covered. After the Aca took effect, it rose tremendously.

**Congressman Pallone** stated that the sabotage by the Trump administration led to the decrease in people who are covered. He asked about the Section 1332 insurance waivers and their success. **Ms. Keith** that it is working. It has allowed the government to pass through around a billion dollars in solutions. **Congressman Pallone** stated that the Trump guidance allows states to increase consumer costs and undermine people with preexisting conditions. He asked if this is consistent with the law. **Ms. Keith** stated that the guidance is inconsistent with section 1332, which gives states the flexibility to be innovative and build upon the ACA, not to undermine it. **Congressman Pallone** asked if subsidizing junk plans is consistent with the law. She said no. **Congressman Pallone** stated that most of the sabotage is totally illegal and they should have hearings investigating this.

**Congressman Guthrie** stated that people are looking for alternatives because they cannot afford healthcare. He asked about short term plans. **Ms. Keith** stated the Trump administration has extended the coverage from 3 months to a year. These short term

bridge policies are to fill a need in a particular time for an estimated 2 million people. **Congressman Guthrie** stated that the administration is adding healthcare options. **Congressman Guthrie** stated some people are really struggling to pay for healthcare.

**Congresswoman Matsui** stated that the administration has not expanded coverage and has led to market destabilization and hurt consumers along the way. The junk plans discriminate based on preexisting condition. She stated she is frustrated with this administration, who even slashed marketing funding. She stated that the Trump administration has even acknowledged that the new rule can raise premiums and result in adverse selection issues. She asked how the lack of comprehensive insurance coverage impacted people. **Ms. Altman** stated that it hinders people's ability to seek and pay for the healthcare they need, and often results in debt. **Congresswoman Matsui** asked what steps Ms. Altman's department makes for these plans. **Ms. Altman** stated that they need to get accurate information about short term plans, which have outright lied in their marketing. **Congresswoman Matsui** asked how extending the short term plan from a year to three years is beneficial. **Ms. Keith** stated that they do not protect consumers.

**Congressman Shimkus** stated junk plans do not all discriminate against those with preexisting conditions. He asked Ms. Turner for her opinion. **Ms. Turner** stated she is a supporter of giving Americans options in health care coverage. **Congressman Shimkus** stated employers across the country are taking advantage of this to save on premiums. He asked her why these junk plans are attractive. She stated that people are desperate for choices, particularly because of the deductibles of 10,000 dollars under that ACA. He stated that Republicans believe in competition and he looks forward to more discussion.

**Congresswoman Castor** stated her bill will stop the expansion of these junk plans. She stated that junk plans allow for discrimination against people with preexisting conditions, and denied basic health benefits. She asked about junk plans and what they look like, how they are marketed. **Ms. Altman** stated that they look like they cover a lot of things. She stated there are many exclusions, like prescription drugs, mental illness, and maternity. She stated that there are annual limits on coverage.

**Congressman Walden** stated he met with wheat growers, who brought up high health care costs. He stated that consumers are picking up the difference in charge. He stated he hopes they do hearings on association health plans. He asked if the rates went down in Pennsylvania and what happened. **Ms. Altman** stated that rates went down two percent. He stated that small entrepreneurs are suffering because of the high rates in his state.

**Congressman Schrader** stated they should work on the individual market place and adjust cost sharing, and maybe expand the 1332 waivers under restraint. He stated the goal of healthcare is to get better health. He asked how the short term plans can be justified. **Ms. Turner** stated that the Administration spent about a year looking on how to write a compliant rule with the ACA. She stated that people need to be aware and be informed. He asked about cutting outreach funding. Ms. Keith stated that marketing has been shown to stabilize premiums.

**Congressman Long** stated that premiums have increased. He asked how she sees the Trump administration's efforts. **Ms. Turner** stated that the section 1332 flexibility and Trump is not sabotage the ACA, but the President is giving people more options.

**Congressman Ruiz** stated that they need to do something about costs and premiums are skyrocketing. He stated that the junk plans are not a solution to high costs, and make costs even higher as it syphons healthy patients into a lower risk pool junk plans, leaving behind the higher risk more expensive patients for everybody else, which results in higher costs for everyone. He asked short term plans effect on price. **Ms. Keith** stated that it has increased premiums by 6%. He asked her to describe the medical underwriting process. She stated if you are applying for a short term plan, you fill out a detailed questionnaire and grant them access to all your medical records. They take that information and give you a price, and use it to dictate what they will and will not cover.

**Congressman Bucshon** stated short terms plan do not discriminate because it is about consumer choice. He stated that the proposals are ineffective. He stated they are not addressing the cost of the product. He stated insurance is about risk and they cannot put everyone in the same pool to get the cost low for everybody. He asked for Ms. Turner's opinion. **Ms. Turner** stated the bills will limit people's coverage options. He stated both sides of the isle agree there needs to be more disclose for the consumers. He stated that the plans are not affordable under the ACA. He stated Congress should try and get the cost of health care down. He asked her about waivers. She stated that waivers have been able to reduce premiums from 7-43% and throwing them back to their previous pools would increase their prices.

**Congresswoman Kuster** asked Ms. Keith about section 1332. She introduced H.R. 986, the "Protecting Americans with Preexisting Conditions Act of 2019", which would require the Trump Administration to rescind the Section 1332 guidance of the ACA promulgated in October of 2018. **Ms. Keith** stated that insurers can discriminate, opt not to cover entire categories of services, and do not cover substance abuse treatment. **Congresswoman Kuster** asked if there are alternatives that can bring down costs. **Ms. Altman** stated that reinsurance is a great example that can lower costs. She also stated that some companies are making 50 cents of profit to every premium dollar.

**Congressman Gianforte** stated that premiums skyrocketed in Montana under the current scheme. He stated thankfully the Trump administration is allowing greater state flexibility. He states that the administration has expanded state waivers, expanded association health care plans trusting the consumers to pick what is best for them. He stated that Obamacare robbed consumers of their choice, and the Trump administration changes are allowing for patients and consumers to benefit. He stated no lawmaker wants to strip protection for Americans with preexisting conditions. He wants to address healthcare affordability. He asked if we would see savings if we move to a single payer program. Ms. Turner stated that the states are so much better able to fine tune their programs than the federal government. She stated a single payer program would undermine our system of government.

**Congressman Sarbanes** asked if these short term plans reject people based on preexisting conditions. **Ms. Keith** stated that this is true and this should concern all of us.

**Congressman Sarbanes** asked if these short term junk plans can throw you off after paying premiums. **Ms. Keith** stated that this is true and companies retroactively cancel policies.

**Congressman Carter** asked about the 1332 waiver. **Ms. Turner** stated a number of states are working on figuring out how to do this. In Alaska and Minnesota, premiums went down and enrollment has gone up. He asked for a hearing on prescription drug prices. He asked when people have a gap in coverage, what are the options. The short term plans have been around, but only had been 3 months. How it is a year and can be renewed for another 2 years.

**Congresswoman Kelly** stated the Trump administration has recklessly expanded junk plans. She asked if the ACA has been helpful to anybody. **Mr. Turner** said absolutely and the real issue is how to make the plans more attractive.

**Congressman Hudson** stated the title of this hearing stuck him, particularly the word sabotage. He stated the health care conversation is partisan but should be bipartisan. He stated that short term plans are not a long term solution, but they do provide an option. He stated this is not sabotage. He asked if the disclosure notices are working. **Ms. Tuner** said yes. He asked if Virginia has banned the sale of short term plans. **Ms. Altman** said yes. He stated that states have the option and they are giving them flexibility.

**Congresswoman Blunt Rochester** stated the administration repeal efforts have resulted in new enrollments going down and the cost going up. She stated that when you shorten the amount of time people have to apply and slashing outreach funding feels like sabotage. She asked Ms. Keith about the effect of marketing. Ms. Keith stated that there is value in marketing under the ACA in particular. Making dramatic cut, CMS ran no TV advertisements. **Congresswoman Blunt Rochester** asked why we need marketing. Ms. Keith stated that they need to spread information as people simply do not know details such as the deadline to sign up.

**Congresswoman Brooks** stated she wants to focus on marketing. Marketing and outreach is an important aspect of any product. The more product and choices are, you have to have products people want to consume. The high costs of premiums and deductible are stopping people. She asked how the government can increase enrollment. **Ms. Turner** stated that policies need to be more affordable and there needs to be more competition in these markets. **Congresswoman Brooks** asked if section 1332 waivers have improves access to care. **Ms. Turner** stated that many states have requested waivers to separately subsidize those who have the highest cost.

**Congresswoman Barragan** brought up the example of a junk plan refused to pay 800,000 for a 32 year old's cancer treatment. She entered a letter by this man, Sam, into the record. She asked how insurance companies can defraud patients. **Ms. Keith** stated this was post claims underwriting.

**Ranking Member Burgess** asked about global budgeting. **Ms. Turner** stated whoever controls the money, controls the choices. He asked why a country would want to make a single system. She stated that there is a one of fairness, but stated this is not how it works in reality and people with fewer means wind up with rationed healthcare.

**Congressman Cardenas** stated that since the ACA, more than 20 million Americans became insured. He stated that the administration sabotage efforts have resulted in the highest uninsured rate in four years. He asked if Americans are unaware of the deadline and about outreach. **Ms. Keith** said Americans are unaware and since 2016, new enrollment is down by 50%. She stated by having fewer enrollees, premiums can increase. He asked what the level of awareness in Pennsylvania is. **Ms. Altman** stated that people are unaware about the affordability of coverage.

**Congresswoman Schakowsky** was allowed to weigh in on this subcommittee. She stated that the limiting navigators was sabotage. **Ms. Keith** stated that because of the slashing of the outreach and marketing funding, the marketplace should have increased but did not.

**Congressman Soto** stated that the sabotage of the ACA was made by eliminating cost sharing, cutting enrollment period, eliminating high risk corridors and eliminating individual mandates. He asked if eliminating cost sharing raised rates. **Ms. Turner** said now, while the other two witnesses said yes. He asked why a state like Florida still had an increase in enrollments. **Ms. Keith** stated that there is still continued demand for affordable quality coverage. **Ms. Turner** stated that there is board agreement to make it more affordable. He stated the ACA thrived in Florida.

**Chairwoman Eshoo** introduced letters of endorsement by numerous organizations for the bills introduced today. **Ranking Member Burgess** placed articles into the record. He appreciates the offer for a hearing on association health care plans.