

“Rescuing Americans from the Failed Health Care Law and Advancing Patient-Centered Solutions”

House Education and the Workforce Committee Testimony by Dr. Tevi D. Troy

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Introduction

Chairwoman Foxx, Ranking Member Scott, and members of the committee, thank you all for the opportunity to testify today on the effects of the Affordable Care Act (ACA) on large employers and their employees, as well as how to advance patient-centered solutions going forward.

My name is Dr. Tevi Troy, and I am CEO of the American Health Policy Institute (AHPI), a non-profit research organization focusing on employer-sponsored health care benefits. I also served as a senior White House aide in the George W. Bush administration from March 2005 to July 2007 and Deputy Secretary of Health and Human Services from August 2007 until January 2009.

AHPI is a non-partisan 501(c)(3) think tank, established to examine the impact of health policy on large employers, and to explore and propose policies that will help bolster the ability of large employers to provide quality, affordable health care to employees and their dependents. The ACA has catalyzed a national debate about the future of health care in the United States, and the Institute serves to provide thought leadership grounded in the practical experience of America’s largest employers.

While the public debate over the ACA appropriately focuses on the 20 million¹ Americans who are receiving coverage through its exchanges and Medicaid expansion, the Act also significantly, and in many cases unnecessarily, increased the regulatory requirements and burdens on employment-based health care that covers more than 177 million Americans². Too little attention has been focused on this important aspect of the law.

In this time of transition in health care, it is important to protect those who have gained coverage under the ACA, but it is also a critical priority to protect those who are covered by employers. Innovations in large employer-sponsored health care benefits are helping to significantly reduce health care costs for employees, retirees and their dependents – and leading the way for overall system reform. As health care reform moves forward, federal policies should leverage and encourage flexibility in employer-sponsored health care benefits to enable large employers to continue to make these innovations. Such policies will be critical for making the Nation’s workforce healthier and more productive and making the overall American health care system more fiscally sustainable – thereby enhancing American global competitiveness.

ACA Impact on Employer-Sponsored Health Care Benefits

There is clear evidence the ACA has both directly and indirectly increased the cost of employer health care benefits. In 2014, an American Health Policy Institute study³ found that over the next decade, the cost of the ACA to large U.S. employers (10,000 or more employees) will be \$4,800 to \$5,900 per employee, and over the same time period, the total cost of the ACA to all large U.S. employers will be \$151 billion to \$186 billion.⁴ In 2012, an Urban Institute study⁵ estimated the ACA would increase large employer (1,000 or more employees) health care costs by 4.3 percent, and mid-sized employers (101 to 1,000 employees) costs by 9.5 percent. More recently, a survey⁶ of employers by the International

Foundation of Employee Benefit Plans (IFEBP) found the ACA increased actual employer health care costs by an average of 5.8 percent.

Furthermore, the regulatory burden the ACA imposes on businesses and individuals should not be underestimated. Since the ACA was enacted, 106 regulations implementing the law have been published. These regulations will cost the private-sector more than \$51 billion⁷ and require 173 million⁸ hours of paperwork in order to comply. Moreover, hundreds of guidance documents regarding the ACA have been published by various federal agencies since 2010. According to a recent American Action Forum study,⁹ the cost of each ACA regulation published so far has averaged \$426 million and required 1.6 million hours of paperwork.

These overarching cost estimates come from a number of ACA provisions that have a direct impact on employees and employers and on the cost of their health plans. These provisions include benefit mandates such as coverage for adult-children up to age 26 as dependents; offering affordable coverage to part-time and seasonal employees; and the requirement for employers to cover 100 percent of a growing list of preventive services. Although these benefit mandates may be popular, they are not free, and are part of the reason employee health care costs are rising. Other direct ACA costs include the Patient Centered Outcomes Research Institute fee, and general ACA implementation and administrative costs associated with IRS reporting requirements.

The ACA also imposes a number of health care supply-chain taxes that are passed on to employees and employers, such as the medical device tax, the annual fee on the manufacturers and importers of brand-name drugs, and the health insurer tax for fully-insured plans.

According to the Centers for Medicare & Medicaid Services, employer-sponsored health benefits cost¹⁰ \$975.6 billion in 2016, or \$5,697 per covered life. Direct and indirect ACA provisions likely increased the cost of employer-sponsored health benefits by 5.8 percent¹¹ in 2016. This means the ACA likely cost employers \$56.6 billion in 2016, or \$330 per covered life.

Moving Toward Patient-Centered Reform

Going forward, we should move toward a more patient-centered health care system and look to the private sector for transformation. In order for the private sector to be innovative, it is imperative to protect the tax exclusion on employer-sponsored health care benefits as well as the ERISA preemption.

For more than 60 years, employer-provided health benefits have been excluded, without limit, from income and payroll taxes. And over time, this benefit has helped make employer-sponsored care a basic building block of our health care system. Given the role of employer-sponsored health insurance in providing stability in coverage to so many Americans, making a substantial change to the tax treatment of employer-provided health care could cause a significant disruption.

We strongly support repealing the ACA's 40 percent "Cadillac Tax" on employer-sponsored health benefits in the upcoming fiscal year 2017 Budget Reconciliation Bill and urge Congress to repeal this tax along with the other ACA taxes and fees. We have seen how problematic the Cadillac Tax's approach is to both businesses and unions. We are glad it has been delayed until 2020 and hope to see it repealed soon.

Reducing or eliminating the tax exemption on employer-sponsored health care would raise the same problems as the Cadillac Tax: It would serve as a middle-class tax hike; drive up health insurance costs for millions of American employees; and eliminate the strong incentives currently in place that constantly pressure large purchasers of health to demand more efficient, affordable, and effective care from the marketplace.

Getting rid of or reducing the tax preference would also harm efforts to maintain strong risk pools and to cover the maximum number of people. As we have learned from experience with the ACA, encouraging people to get covered is a costly and challenging endeavor, and risk pools are difficult to maintain as well. Employers, however, are both good at getting people covered and maintaining manageable risk pools. Public policy should be aimed at encouraging these important goals. As Peter Nelson, Director of Public Policy at the Center of the American Experiment has said, “Employers do get people covered— they very successfully get people covered.”¹²

A second key issue is the ERISA preemption. The Employee Retirement Income Security Act of 1974 (ERISA) is the foundation of employer-sponsored health care benefits and we encourage you to strengthen the protections in the law. The long-standing preemption provision is vital to multi-state employers because it enables them to offer uniform nationwide health care benefits at the lowest possible cost to employees no matter what State they live in. This leads to better benefit design, a reduction in administrative costs through economies of scale, increased purchasing power, and greater innovation. Without it, an employer doing business in 50 different states would be required to comply with 50 different state health care laws, something that would make administering a health care plan a nightmare.

America’s employers strongly believe that as Congress considers moves forward with health care reform, steps should be taken to strengthen the ERISA preemption, which provides the framework for the health care coverage on which millions of Americans depend.

In conclusion, I appreciate the opportunity to testify here today about the importance of employer sponsored coverage and its importance to our system. Going forward, our policy should not be to increase the burdens or costs on employers and the 177 million employees and dependents who get coverage through the employer based system, but to encourage that coverage for the benefit of our system as a whole.

Thank you for having me here today.

¹ “20 Million People Have Gained Health Insurance Coverage Because of the Affordable Care Act, New Estimates Show,” Department of Health and Human Services, March 3, 2016. Available at:

<https://www.hhs.gov/about/news/2016/03/03/20-million-people-have-gained-health-insurance-coverage-because-affordable-care-act-new-estimates>

² Jessica C. Barnett and Marina S. Vornovitsky, “Health Insurance Coverage in the United States: 2015,” U.S. Census Bureau, Table 1, September 2016.

³ Tevi D. Troy and D. Mark Wilson, “The Cost of the Affordable Care Act to Large Employers,” American Health Policy Institute, April 2014. Available at:

http://www.americanhealthpolicy.org/Content/documents/resources/2014_ACA_Cost_Study.pdf

⁴ *Id.*

⁵ “Implications of the Affordable Care Act for American Business,” Urban Institute, October 2012. Available at:

<http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412675-Implications-of-the-Affordable-Care-Act-for-American-Business.PDF>

⁶ “2016 Employer-Sponsored Care: ACA’s Impact,” International Foundation of Employee Benefit Plans, 2016.

Available at: <http://www.ifebp.org/pdf/aca-impact-survey-2016.pdf>

⁷ Sam Batkins, “\$1.8 Billion in Costs,” American Action Forum, October 24, 2016. Available at:

<https://www.americanactionforum.org/week-in-regulation/1-8-billion-costs/>

⁸ *Id.*

⁹ Tara O’Neill Hayes, “The Regulatory Burden of the Affordable Care Act,” American Action Forum, January 27,

2016. Available at: <https://www.americanactionforum.org/weekly-checkup/the-regulatory-burden-of-the-affordable-care-act/>

¹⁰ “National Health Expenditures and Selected Economic Indicators, Levels and Annual Percent Change: Calendar

Years 2009-2025,” Centers for Medicare and Medicaid Services. Available at: <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/Proj2015Tables.zip>

¹¹ “2016 Employer-Sponsored Care: ACA’s Impact,” International Foundation of Employee Benefit Plans, 2016.

Available at: <http://www.ifebp.org/pdf/aca-impact-survey-2016.pdf>

¹² “Getting Beyond Employer-Sponsored Health Insurance: Some Fitful Starts,” The American Enterprise Institute,

March 31, 2016. Available at: <https://www.aei.org/events/getting-beyond-employer-sponsored-health-insurance-some-fitful-starts/>