

EMPLOYEE HEALTH CARE PROTECTION ACT OF 2013

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SEPTEMBER 8, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UPTON, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3522]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3522) to authorize health insurance issuers to continue to offer for sale current group health insurance coverage in satisfaction of the minimum essential health insurance coverage requirement, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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#### PURPOSE AND SUMMARY

H.R. 3522 permits a health insurance issuer that has in effect health insurance coverage in the group market on any date during 2013 to continue offering such coverage for sale during 2014 outside of a health care exchange established under the Patient Protection and Affordable Care Act (PPACA). Such plans may be offered notwithstanding the provisions of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act.

#### BACKGROUND AND NEED FOR LEGISLATION

During the debate over PPACA, President Obama stated, “[w]e will keep this promise to the American people: If you like your doctor, you will be able to keep your doctor, period. If you like your health care plan, you’ll be able to keep your health care plan, period. No one will take it away, no matter what.” However, health coverage not in compliance with requirements of PPACA generally cannot be offered after 2014. PPACA’s requirements affect the ability of many individuals to keep plans that they relied upon in both the nongroup and group markets.

While the Department of Health and Human Services has delayed administratively some of PPACA’s requirements and some plan cancellations in certain instances, the remaining non-compliant ACA plans in effect will ultimately be ended under current law.

#### HEARINGS

The Subcommittee on Health held a hearing on H.R. 3522 on July 28, 2014. The Subcommittee received testimony from:

- Edmund Haislmaier, Senior Research Fellow, Heritage Foundation;
- Stan Veuger, Resident Scholar, American Enterprise Institute; and,
- John Hoadley, Research Professor, Georgetown University.

#### COMMITTEE CONSIDERATION

On July 29, 2014, the full Committee met in open markup session and approved H.R. 3522 by a vote of 27 yeas and 20 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 3522 reported to the House, was agreed to by a record vote of 27 yeas and 20 nays. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 48**

**BILL: H.R. 3522**, the "Employee Health Care Protection Act"

**AMENDMENT:** A motion by Mr. Upton to order H.R. 3522 favorably reported to the House. (Final Passage)

**DISPOSITION: AGREED TO**, by a roll call vote of 27 yeas and 20 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell		X	
Mr. Barton	X			Mr. Pallone		X	
Mr. Whitfield				Mr. Rush			
Mr. Shimkus	X			Ms. Eshoo		X	
Mr. Pitts	X			Mr. Engel		X	
Mr. Walden	X			Mr. Green		X	
Mr. Terry	X			Ms. DeGette		X	
Mr. Rogers				Mrs. Capps		X	
Mr. Murphy	X			Mr. Doyle		X	
Mr. Burgess	X			Ms. Schakowsky		X	
Mrs. Blackburn	X			Mr. Matheson	X		
Mr. Gingrey	X			Mr. Butterfield		X	
Mr. Scalise				Mr. Barrow	X		
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers				Ms. Christensen			
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Cassidy	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Braley		X	
Mr. Olson	X			Mr. Welch		X	
Mr. McKinley	X			Mr. Lujan		X	
Mr. Gardner	X			Mr. Tonko		X	
Mr. Pompeo				Mr. Yarmuth		X	
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long	X						
Mrs. Ellmers	X						

07/30/2014

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of this act is to protect Americans from losing their preferred health coverage and provide more affordable choices to America's workers.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3522 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3522 contains no earmarks, limited tax benefits, or limited tariff benefits.

## COMMITTEE COST ESTIMATE

Pursuant to section 402 of the Congressional Budget Act of 1974, the Committee estimates that enacting this legislation would have no significant impact on the Federal budget.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, an estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 was not submitted to the Committee before the filing of the report.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3522 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 3522 does not direct any specific rule making within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

Section 1 provides the short title of “Employee Health Care Protection Act.”

*Section 2. If you Like Your Group Health Insurance Plan, You Can Keep It*

Section 2 permits health insurance issuers to continue to offer coverage effective in 2013, notwithstanding requirements of PPACA. Such coverage shall be treated as a grandfathered health plan for purposes of an individual meeting the requirement to maintain minimum essential health coverage.

## DISSENTING VIEWS

H.R. 3522 would permit any health insurance issuer offering coverage in the group market in 2013 to continue to offer that coverage in 2014 and beyond, regardless of whether those policies include the critical consumer protections provided by the Affordable Care Act (ACA).

While critics of the ACA have inaccurately claimed that enhanced consumer protections for American families would kill jobs, lead to employers dropping coverage and cause increases in the rate of health spending growth, the facts show otherwise.

As key reforms went into effect, health care cost growth was at record lows and the United States has added 10 million private sector jobs. The non-partisan Congressional Budget Office (CBO) and the Centers for Medicare and Medicaid Services' (CMS) Actuary have both found that in recent years Medicare and private health care spending have grown at some of the slowest levels in decades.

And, contrary to fictitious charges that the ACA will lead some employers to terminate employer health insurance coverage because the law's new beneficiary protections will be too costly for businesses, the overall number of Americans receiving employer-based coverage is expected to grow from 156 million in 2014 to 166 million in 2023, and the number of uninsured is expected to fall by 26 million people, according to the latest estimates from CBO.

This outcome is supported by the Massachusetts experience as well. Massachusetts enacted health care reforms that were almost identical to those in the ACA. In that instance, the percentage of employers offering coverage has increased from 72 percent in 2007 to 77 percent in 2010.

The legislation, while masquerading as "choice" for consumers, simply eviscerates the critical consumer protections that ensure women, older workers, people with disabilities, and individuals with pre-existing conditions rely on to make coverage available. The bill would allow insurance companies to discriminate against small businesses if they have an older workforce, more women in their workforce, or if any of their employees or their children have pre-existing health conditions.

Under the legislation, these small businesses would face higher premiums and would continue to see their premiums spike year to year if an employee had an accident, developed a chronic health condition, or had a complicated pregnancy.

Group health insurance plans could continue to impose annual limits on coverage, meaning that insurers could cease to provide any coverage after an individual's care reached a certain overall cost. These plans could also continue to impose extensive waiting periods before individuals could enroll in coverage and they could discriminate against workers with lower compensation by offering them lesser health coverage than highly compensated workers.

In March 2014, the Administration announced a transition policy that would allow small groups who purchased coverage in 2013 to remain in that same coverage into 2016. That coverage would not have to comply with ACA consumer protections going into effect in 2014 but it could not be sold to groups purchasing coverage for the first time or switching coverage.

Many of the ACA's key reforms impacting the group market had already gone into effect for plans sold in 2013. Since 2011, all insurers are required to spend over 80 percent of premiums on patient care rather than excessive profits and administrative costs. Insurers in the large group market are required to spend at least 85 percent of premiums on patient care. All told, these reforms saved consumers more than \$4 billion in 2013 and have resulted in early \$2 billion in rebates directly to consumers.

In short, the legislation is unnecessary, and harms consumers.

HENRY A. WAXMAN.  
FRANK PALLONE, JR.

