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BEFORE THE  
COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON OVERSIGHT

HEARING ON THE EFFECTS OF THE AFFORDABLE CARE ACT (ACA)  
ON HEALTH INSURANCE PREMIUMS

WEDNESDAY, JUNE 24, 2015

## INTRODUCTION

Good morning Chairman Roskam, Ranking Member Lewis, and Members of the Subcommittee. Thank you for inviting me to testify before the Subcommittee on the impact that the Affordable Care Act (ACA) has had on health insurance premiums.

My name is Julie Mix McPeak, and I am Commissioner of the Tennessee Department of Commerce and Insurance (TDCI) and also serve as Tennessee's State Fire Marshal. TDCI oversees regulation of Tennessee's insurance industry, the state's fire codes and regulates several hundred thousand Tennesseans in their professions and businesses. I also serve in Committee leadership roles at the National Association of Insurance Commissioners (NAIC), as an Executive Committee Member of the International Association of Insurance Supervisors (IAIS), and as a Member of the Federal Advisory Committee on Insurance (FACI). I have spent most of my career in insurance regulation, having previously led Kentucky's insurance department, and I have a strong affinity for the country's state-based system of insurance oversight.

My testimony this morning will highlight the ACA's impact on the Tennessee insurance marketplace. Tennessee has a federally facilitated marketplace (FFM). My comments today will focus specifically on the ACA's impacts related to insurance premiums and health insurance marketplace participants, both on and off the FFM.

## ACA IMPACT

The ACA legislation was intended to have significant impacts, and in that respect, it has achieved its intent. The ACA introduced rating and underwriting requirements that fundamentally reshaped how health insurance is priced, purchased, and administered. These new requirements make a comparison of pre-ACA policies to ACA-compliant policies a significant challenge. While it is easy to say that insurance premiums, in general, have increased, the insurance products themselves that are ACA-compliant are fundamentally different from the pre-ACA policies. Making a straight comparison of premiums throughout the ACA implementation timeline is not entirely appropriate.

ACA requirements that are cost-drivers in terms of premium prices are well documented and include:

- \*Prohibitions on pre-existing condition exclusions
- \*Guaranteed availability and issue requirements
- \*New essential health benefits (EHB) benchmark plans that create a floor for ACA-compliant plan benefits
- \*Three-to-one (3:1) rate bands based on age
- \*Prohibitions on annual and lifetime benefit limitations
- \*Increased overhead costs for insurance company administration.

By requiring all ACA-compliant plans to meet or exceed the new standard EHB benchmark and introducing new prohibitions, the ACA significantly impacted an insurer's flexibility to design plans to meet consumer demand. In a post-ACA world, plans across carriers are much more similar than they are different, and carriers compete primarily on name recognition, physician networks, and premium price.

The impact of the ACA on Tennessee's consumers, its marketplace and rates has created significant challenges and uncertainty across the state's insurance landscape.

#### ACA IMPACT ON TENNESSEE MARKETPLACE

Today, Tennessee has approximately 215,000 covered lives in ACA-compliant FFM plans, 65,000 covered lives under individual policies off the exchange, 63,000 covered lives under small group policies, and 312,000 covered lives in large fully insured plans.

Before the ACA was enacted, Tennessee had two carriers that made up more than 80 percent of its insurance marketplace. In 2014, when most ACA reforms went into effect, Tennessee continued to have two carriers make up more than 80 percent of its marketplace, although one of those carriers changed. Today, Tennessee continues to have two carriers making up more than 80 percent of its marketplace, and one of those carriers has changed since 2014.

Tennessee has been fortunate enough to experience consistency among the carriers offering policies to our residents. In the first year of the federally

facilitated marketplace (2014), Tennessee had four carriers total writing policies, but only one offering policies in all 95 counties. In 2015, we have five carriers writing policies with three of those carriers writing in all of our counties. We have received filings for 2016 that show five carriers writing policies, with two carriers offering policies statewide.

Outside of the FFM, the ACA and its implementing regulations have had the effect of segmenting Tennessee's marketplace. So-called grandfathered plans and grandmothered plans – also known as transitional plans – remain a large block of business across the state. This segmentation often creates confusion for consumers who know they have a policy with a certain insurer, but do not necessarily understand the block of business that includes their policy. When we help field their questions when they call our office, many times consumers do not realize the different benefit requirements applicable to such blocks of business.

Tennessee had approximately 131,000 covered lives under grandfathered policies in 2014. That number has decreased slightly to approximately 128,000 covered lives in 2015.

Tennessee had approximately 230,000 covered lives under grandmothered policies in 2014. That number has decreased significantly to approximately 170,000 covered lives in 2015 and will continue to drop further throughout the year as one large carrier has decided to terminate its grandmothered block of business.

#### ACA IMPACT ON TENNESSEE RATES

Tennessee had a competitive marketplace before the ACA and that marketplace remains competitive today. Market competition, in part, gave Tennessee some of the lowest priced FFM products in the country. In 2014 and 2015, Tennessee plans have ranked in the top five least expensive plans when ranked based on the premium price of the second lowest cost silver plan on the FFM.

Having a competitive market, however, does not isolate Tennesseans from seeing significant rate increases over the next few years. Tennessee insurance carriers offering plans on the FFM requested the following rate increases for plan years 2015 and 2016.

\*For Plan/Calendar Year 2015: Rates ranged from 7.5 percent to 19.1 percent.

\*For Plan/Calendar Year 2016: Proposed rates range from .4 percent to 36.3 percent.

TDCI is reviewing the proposed 2016 requested increases and per federal guidelines will need to approve rates by the middle of August.

These substantial rate increases can largely be attributed to medical trends and utilization. In fact, our largest FFM carrier reported for calendar year 2014 a medical-loss ratio of well over 100 percent. To put that in perspective, for every \$1 in premium received, the company paid out over \$1 in claims, operating at a net loss – not including administrative costs of the company.

Medical trends and utilization have also impacted Tennessee's grandfathered and grandmothers blocks of business. Grandfathered plan premiums have increased an average of 11 percent, 14 percent, 12 percent, and 10 percent for years 2012 through 2015, respectively. In addition, grandmothers blocks of business have seen increases of 15 percent in 2013 and 11 percent in 2014. These increases, particularly for grandfathered plans, have priced premiums at levels comparable to ACA-compliant plans in some cases.

The ACA's strict underwriting and business requirements have left carriers with few options to consider to maintain or reduce costs. One option that Tennessee has seen is the use of limited and/or exclusive provider networks. In most of our major metropolitan areas, Tennesseans have the option to select a plan with a tight network of provider options. We have urged consumers to comparison shop for their policies and to make sure they know what their plan covers, including provider options. We continue to receive complaints from consumers who signed up for the lowest cost plan in their area who later discovered they selected a limited network plan that does not include their family physicians.

COMMUNITY HEALTH ALLIANCE: THE TENNESSEE CO-OP The ACA also established the Consumer Operated and Oriented Plan (co-op) Program to help create new market competition. Tennessee is one of 26 States to have an operating co-op. Community Health Alliance Mutual Insurance Company (CHA) was awarded over \$73 million in low-interest loans to establish itself in Tennessee. These first two years of operation have been challenging for CHA, as they would be for nearly any

startup company, as the company has tried to assert itself in the marketplace while also maintaining financial capacity. In 2014, CHA had rates that were on the high side of the market. As a result, the company failed to achieve a significant amount of volume. CHA revised rates for 2015 and was very competitive with its market competition. In fact, CHA grew too big too quickly and approached the Department with a proposal to “freeze” enrollment under U.S. Department of Health and Human Services (HHS) guidance.

TDCI quickly agreed to the proposed freeze and worked with HHS to freeze enrollment thereby effectively taking CHA off the marketplace. The decision to freeze enrollment remains the right decision for the company and most importantly for Tennessee insurance consumers.

Since enacting the freeze, we have fielded numerous calls from CHA policyholders and have been in constant communications with HHS about the complaint process. The process has not been as efficient as we had hoped.

For 2016, CHA has requested an average rate increase of over 32 percent. The rate filing is currently under review, and our policy analysis team recently sent the company a list of questions to further investigate their rate request. We continue to review rate requests as well as the company’s frozen status for marketplace purposes.

#### KING V. BURWELL

The Supreme Court will soon issue a Decision in King v. Burwell that may have major implications for Tennesseans. That is probably a discussion for another day, so I will only provide the Subcommittee with these general numbers this morning:

\*Tennessee has approximately 215,000 covered lives in ACA-compliant FFM plans.

\*Approximately 80 percent of that population receives subsidies to help afford their premium payments.

\*The average monthly premium for FFM products in 2015 is \$321 and the average subsidy for Tennesseans is approximately \$211, leaving the consumer to pick up the net premium of \$110.

Tennessee does not anticipate making any decisions about how the State may respond to King v. Burwell until the decision is released to the public.

#### ACA'S CONSISTENT UNCERTAINTY

The ACA and its implementation by HHS has challenged state regulators and carriers by creating and continuing consistent uncertainty. Uncertainty in the business of risk nearly always drives up costs and/or lessens competition. In the case of the ACA, I think it has done both. From the early days of the ACA until exchanges were rolled out for 2014, governors, insurance regulators, and carriers looked for federal guidance on exchange structure (s) and rules. Delayed or unclear guidance led certain carriers to "sit out" of certain marketplaces in these first few years to better understand the new market. I personally was told by two national carriers that this uncertainty contributed to their decision-making processes for the FFM and their decisions not to participate in our exchange.

A most recent example of HHS guidance introducing uncertainty is market withdrawal guidance issued in the last two weeks. The guidance essentially states that if a company chooses to leave a certain service area (Tennessee has eight), or replace one product offering with another (for example, replacing a PPO with an exclusive provider network) that company is withdrawing from the market. In "regulator-speak", a market withdrawal prohibits a company from operating in that market for five years.

This recent HHS guidance came out after all plans and rates were filed for 2016 -- meaning it was too late, in most cases, for carriers to make any revisions in response to the guidance, and after several regulator calls with HHS representatives where states expressed strong concerns with the HHS approach. HHS decided that it would not enforce the guidance until the 2017 plan year.

Had HHS implemented this guidance for 2016, Tennessee would have lost two of five FFM carriers for five years, meaning consumers in certain rating areas would be left with far fewer options for coverage. This example is not atypical of the implementation effort, and the guidance places further challenges in the path of

states trying to enforce the federal law. The guidance also places significant limitations on business decisions of private insurance companies looking to compete most effectively in the marketplace.

## CONCLUSION

The Tennessee Department of Commerce and Insurance is responsible for regulating the insurance marketplace in Tennessee, including compliance with the ACA.

Implementation of the ACA has been a challenge. The ACA required a minimum package of benefits that was greater than what some plans provided before the ACA was enacted. We continue to review policy forms and rates for next year but we anticipate that Tennessee consumers will see increased insurance costs in 2016.

Thank you for the opportunity to discuss the Tennessee ACA experience with this Subcommittee. I look forward to your questions.